

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

...

Original Application No. 89/2012

RESERVED ON : 22.05.2019

PRONOUNCED ON : 29.05.2019

CORAM:

HON'BLE MRS. HINA P.SHAH, MEMBER (J)

HON'BLE MS. ARCHANA NIGAM, MEMBER (A)

1. Bhagwat Singh s/o Shri Dhyan Pal Singh, aged about 53 years, at present employed on the post of JE-I Signal at Luni Railway Station in the office of SSE (Signal) Jodhpur West, NWR.
2. Ramesh Kumar s/o Shri Ram Vyas Paswan, aged about 44 years, at present employed on the post of JE-II Signal at Jaisalmer Railway Station in the office of SSE (Signal), Jodhpur East, NWR.
3. Shiv Shankar Chaudhary s/o Shri Dhanna Ram, aged about 37 years, at present employed on the post of JE-II Signal at Mokalsar Railway Station in the office of SSE (Signal), Samdari, NWR.
4. Hanuman Puri s/o Shri Mohan Puri, aged about 36 years, at present employed on the post of JE-II Signal at Gotan Railway Station in the office of SSE (Signal), Jodhpur East, NWR.
5. Ravinder Kumar s/o Shri Mohan Lal, aged about 38 years, at present employed on the post of JE-II Signal at Makrana Railway Station in the office of SSE (Signal), Merta Road, NWR.
6. Atul Vyas s/o Shri J.P.Vyas, aged about 28 years, at present employed on the post of JE-II Signal at Pipar Road Railway Station in the office of SSE (Signal), East Jodhpur, NWR

C/o Atul Vyas Plot No.1, near Sardar School, Hakim Bag, Jodhpur.

...Applicants

(By Advocate: Shri J.K.Mishra)

Versus

1. Union of India through the General Manager, North-Western Railway, Hqrs, Jaipur Zone, Chainpura, Jagatpura, Jaipur, Rajasthan.
2. Chief Signal and Telecommunication Engineer, North-Western Railway, Hqrs. Jaipur Zone, Chainpura, Jagatpura, Jaipur, Rajasthan.
3. Senior Divisional Personnel Officer, NWR, Jodhpur Division, Jodhpur

...Respondents

(By Advocate: Shri V.K.Vyas)

ORDER

Per Mrs. Hina P.Shah

The applicants have filed this OA praying for the following reliefs:-

- (i) That the applicants may be permitted to pursue this joint application on behalf of six applicant under rule 4(5) of CAT procedure Rules, 1987.
- (ii) That impugned order dt. 5.3.2012 (Annexure A-1) and all consequential/reversion orders thereof, may be declared illegal and the same may be quashed and applicants allowed with all consequential benefits as if no such impugned orders were ever in existence.
- (iii) That any other direction, or orders may be passed in favour of the applicant, which may be deemed just and proper under the facts and

circumstances of this case in the interest of justice.

2. So far as prayer to file joint application is concerned, since the applicants approached this Tribunal against an identical issue, therefore, they are allowed to join together and to pursue their remedy jointly.

3. It is the case of the applicants that applicant Nos. 1, 4 and 5 were initially appointed as Khallasi on 6.1.1993, 18.5.1993 and 8.4.1999 respectively. Applicant No.2 was initially appointed as MSM on 24.8.1998 and applicant Nos. 3 and 6 were appointed as ESM-III on 24.10.2002 and 27.5.2004 respectively. All these applicants enjoyed further promotions and were holding the post of Senior Technician/Technician Signal at various stations prior to their promotion to the post of JE-II (Signal).

The applicants aver that Para 147 of Chapter-I, Section-A of Part-I of IREM Vol.I provides for filling up the post of Signal Inspectors Grade-III [Junior Engineer Gr.II (Signal)] in the pay scale of Rs. 1400-2300/5000-8000/9300-34800 plus Rs. 4200 Grade Pay. As per the said recruitment rule, 40% of the vacancies of JE-Gr.II (Signal)

are to be filled by promotion by selection from Maintainers in the immediate lower grade.

Respondent No.3 had initiated process to conduct a selection for filling up six vacancies of JE-II (Signal) in the pay scale of Rs. 9300-34800 + Rs. 4200 Grade Pay under 40% promotee quota and accordingly a final eligibility list was issued vide letter dated 16.12.2010. Names of the applicants were found at Sl.Nos.3,6,7,9,13 and 18 respectively. The written test for selection was scheduled to be held on 8.1.2011. The applicants appeared in the written test and qualified for paper screening for selection in question vide letter dated 3.2.2011. Thereafter a selection panel was prepared in which names of all the applicants find place at Sl.Nos. 1 to 6 (Ann.A/5). All these applicants were subjected to Special Training Course for Promotee JE-II (Signal) and they passed the same vide letter dated 26.2.2011 and were accordingly promoted to the post to JE-II (Signal). The applicants joined on the promotional post at their respective stations of posting.

Thereafter the respondent No.3 has issued order dated 5.3.2012 (Ann.A/1) whereby the panel dated 7.2.2011 was abruptly ordered to be cancelled due to irregularities but no

irregularity has been disclosed. The applicants were neither given any opportunity of hearing nor any prior notice to make a representation against such action was given to them. Therefore, aggrieved by the action of the respondents, the applicants have approached this Tribunal.

4. This Tribunal on 12.3.2012 had granted interim order staying the effect of the impugned order dated 5.3.2012. The said interim order is continuing till date.

5. After issue of notices to the respondents, they have filed reply. The respondents have not disputed the facts relating to past promotions of the applicants and about appearing in the selection to the post of JE-II (Signal). The respondents have stated that the applicants were empanelled for the post of JE/Signal pay band Rs. 9300-34800 + Rs. 4200 Grade Pay and promoted to the post of JE/Signal against promotee quota, but due to some irregularities noticed by the railway administration, the panel issued vide letter dated 7.2.2011 has been cancelled vide letter dated 5.3.2012. Accordingly, the applicants were proposed to be reverted in their present cadre on 13.3.2012, but due to stay granted by this Tribunal, they could not be reverted back to their original post.

The respondents have further stated that as per IREM Para 147 and 148 of the Railway Board's letter under RBE No.161/2009, promotee quota for JE/Signal Pay band Rs. 9300-34800 + Grade Pay Rs. 4200 has been fixed for 40%, intermediate quota 20% and direct recruitment quota 40%. The post of JE/Signal are being filled up by promotion by selection from Sr. Technician/Signal in the ratio of 1:3. In order to initiate selection for the post of JE/Signal, vacancies have been assessed as 6 posts. Accordingly, 18 employees were called for appearing in the written test and supplementary written test. The above written test was postponed and thereafter further fixed for 18.12.2010 and finally held on 8.1.2011. A final eligibility list was issued vide letter dated 16.12.2010 wherein 18 eligible employees were called for appearing in the written test. The applicants appeared and were declared as passed. Thereafter on paper screening, all these employees have been placed on provisional panel of JE/Signal. The applicants have also completed their promotional course and thereafter they were promoted to the post of JE/Signal vide letter dated 15.3.2011. But due to some irregularities noticed by the Selection Committee, it was proposed by the Selection Committee to cancel the entire selection procedure in view

of the fact that Selection Committee has evaluated the marks taking into account two parts of one question paper, but it was to be evaluated as two parts of the question paper separately where each employee should be declared passed only after getting 60% marks in each paper. Due to above irregularity, the Selection Committee had finally decided to cancel the panel dated 7.2.2011 after approval of the competent authority vide letter dated 5.3.2012. The respondents have further stated that the panel approving authority has full powers to cancel the panel. Since panel has been cancelled, the applicants have no right to continue on the post of JE/Signal pay band Rs. 9300-34800 + Grade Pay Rs. 4200, and they were required to be reverted.

6. The applicants have filed rejoinder to the reply reiterating the averments made in the OA.

7. We have heard Shri J.K.Mishra, counsel for the applicants and Shri V.K.Vyas, counsel for the respondents and perused the material available on record.

8. Besides reiterating the facts mentioned earlier, it is the submission of the applicants that cancellation order was passed without giving them opportunity of being heard as no show-cause notice was given and the select panel was

directly cancelled vide impugned order dated 5.3.2012. The applicants have also relied on para 219 (1) of the IREM Vol.I, which provides that:-

“219. Procedure to be adopted by Selection Board

(a) To k xxx

(1) After the competent authority has accepted the recommendations of the Selection Board, the names of candidates selected will be notified to the candidates. A panel once approved should normally not be cancelled or amended. If after the formation and announcement of the panel with the approval of the competent authority it is found subsequently that there were procedural irregularities or other defect and it is considered necessary to cancel or amend such a panel, this should be done after obtaining the approval of the authority next higher than the one that approved the panel.”

In view of above, it is clear that a panel once approved should normally not be cancelled or amended and if after announcement of the panel if there were any procedural irregularities or defects, the same can be cancelled after obtaining approval of the authority next higher than the one that approved the panel. In the instant case, the respondents have clearly stated that the approving authority was competent to cancel the panel and accordingly the panel was cancelled. As such, no approval of the next higher authority was obtained and the selection

was cancelled by the authority, which has no power to cancel the same.

The applicants have further referred to letter dated 10.4.2012 (Ann.R/4), which provides that in case of selection for ranker quota i.e. by promotion as usual there will be one paper as part of written examination and 60% marks are required in that paper. It is further made clear in that letter that the past selections finalized or at final stage need not be re-opened or disturbed, but where written examination is yet to be held/is to be conducted as per policy circulated now, these orders will be effective from the date of issue of this letter.

9. On the other hand, the respondents reiterated their stand and stated that action taken by the respondents was prefect as there were some irregularities noticed by the Selection Committee and the Selection Committee proposed to cancel the entire selection procedure. It is the case of the respondents that the panel approving authority has full powers to cancel the panel and accordingly decided to cancel the panel of JE-II (Signal) against promotee quota with the recommendations of the Selection Committee and since the panel has been cancelled, the applicants have no

right to continue on the post and they are required to be reverted to their original post.

10. Considered the rival contentions of both the parties.

11. The facts of selection of the applicants to the post of JE-II (Signal) are not in dispute. It is also an admitted fact that before passing the impugned order dated 5.3.2012 cancelling the selection panel dated 7.2.2011 on the basis of which the applicants joined the post and are working, no show-cause notice had been given to them in compliance of the principles of natural justice. The Hon'ble Apex Court time and again has held that while taking action against an employee which affects him adversely, he should be given proper opportunity of hearing before such action is taken. The Hon'ble Apex Court in ***Canara Bank v. V.K Awasthy***, (2005) 6 SCC 321 : AIR 2005 SC 2090 while dealing with the doctrine of principles of natural justice had observed as as under:

"8. Natural justice is another name for common sense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common sense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

9. The expressions "natural justice" and "legal justice" do not present a water-tight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigants' defence.

10. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the "Magna Carta". The classic exposition of Sir Edward Coke of natural justice requires to "vocate interrogate and adjudicate". In the celebrated case of *Cooper v. Wandsworth Board of Works*, (1963) 143 ER 414, the principle was thus stated:

"Even God did not pass a sentence upon Adam, before he was called upon to make his defence. "Adam" says God, "where art thou has thou not eaten of the tree whereof I commanded thee that though should not eat".

11. Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

12. Principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice."

We have also noted that the selection panel could not have been cancelled by the panel approving authority, as the provisions of Para 219(1) of the IREM provides that if there are some procedural irregularities, this should be done after obtaining approval of the next higher authority than the one who approved the panel, whereas the stand of the respondents is that panel approving authority has full powers to cancel the panel.

It is also noted that vide Ann.R/4 the competent authority has decided that the cases of selection for ranker quota i.e. by promotion as usual there will be one paper as part of written examination and 60% marks are required in that paper. All these applicants have secured marks in the said manner. It is further provided in the said letter that past selections which have been finalised or are at final stage need not be re-opened or disturbed. In the present case, as the selection took in place and the applicants were promoted on 15.3.2011, therefore, as per impact of Ann.R/4, now the past selection finalised need not require to be re-opened or disturbed.

12. In view of above facts and circumstances of the case, we are of the view that cancellation of select panel vide

impugned order dated 5.3.2012 (Ann.A/1) was not justified for the reason that it is violative of the principles of natural justice, the selection panel was cancelled with the approval of an incompetent authority and that as per the policy decision (Ann.R/4), the past selections need not be reopened or disturbed. Therefore, the impugned order dated 5.3.2012 is required to be quashed, which is accordingly, quashed and set-aside.

13. The OA stands allowed in above terms with no order as to costs.

(ARCHANA NIGAM)
ADMV. MEMBER

(HINA P.SHAH)
JUDL. MEMBER

R/