

PETITIONER:

K. K. WAHI & ORS

Vs.

RESPONDENT:

THE GENERAL MANAGER, N. RLY. & ORS.

DATE OF JUDGMENT 10/01/1975

BENCH:

KHANNA, HANS RAJ

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KHANNA, HANS RAJ

RAY, A.N. (CJ)

GOSWAMI, P.K.

CITATION:

1975 AIR 761 1975 SCR (3) 157
1975 SCC (3) 501

ACT:

Railway Establishment Code-Paragraph 216-Scope of.

HEADNOTE:

The nine petitioners before the High Court were selected for the post of computers and were empanelled. After a few months the panel was cancelled. In a writ petition under art. 2 of the Constitution the petitioners contended that there were no procedural irregularities or defects in the selection and as such the cancellation of the panel, was improper. The High Court held that since there were only four vacancies only five persons could be selected for the panel after taking into account 25 per cent unforeseen vacancies and rejected the contention of the petitioners that work-charged short term vacancies should also have been taken into account. Dismissing the appeal.

HELD : The High Court was right in holding that work-charged short term vacancies were not such as should be said to arise due to normal wastage during the currency of the panel. Vacancies arising due to normal wastage during the currency of a panel are such as could generally be foreseen because they occur on account of retirement of those at present holding the posts or for other similar cause. A short term vacancy for a work-charged job cannot be said to arise due to normal wastage. [159C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 654 of 1972. Appeal by Special Leave from the Judgment & Order dated the 14th July, 1971 of the Delhi High Court in L.P.A. No. 44 of 1971.

B.R. L. Iyengar, S. K. Mehta, K. R. Nagaraja and M. Qamaruddin for the appellants.

P. P. Rao and Girish Chandra, for the respondents.

KHANNA, J. This appeal by special leave by K. K. Wahi and two others is directed against the judgment of the Delhi High Court affirming on appeal the decision of the learned single Judge whereby petition under article 226 of the

Constitution of India filed by nine petitioners, including the three appellants, to challenge an order about the cancellation of a panel by the Railway Board was only partly allowed.

The Senior Personnel Officer, Northern Railway notification May 11, 1970 the names of nine writ petitioners as having been selected' for the posts of computers in the grade of Rs. 335-485. Prior to that date, four of the petitioners were officiating as computers on ad hoc basis. The fifth petitioner was officiating as head draftsman and the remaining four petitioners were working as draftsmen. The post of computer was a selection post. The procedure for filling of such,

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a post is given in paragraphs 213 to 216 of the Indian Railway Establishment Manual. Paragraph 216, which is material for our purposes, reads as under :

"216. After the competent authority has accepted the recommendations of the Selection Board, the names of the 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 defects and it is considered necessary to cancel or amend such a panel, this should be done after obtaining the the approval of authority next higher than the one that approved the, panel."

The Senior Personnel Officer notified on October 30, 1970 the ,cancellation of the panel relating to the nine petitioners by the Railway Board.

Feeling aggrieved against the order of the Railway Board, the nine petitioners filed writ petition in the High Court praying for the issuance of a writ for quashing the order dated October 30, 1970. It was urged on behalf of the petitioners that the power to cancel the panel could be exercised under paragraph 216 reproduced above if it was found that there were procedural irregularities or other defects. There was, it was further submitted, no procedural irregularity or other defect in the selection of the petitioners and as such the cancellation of the panel was not proper. As against that, it was stated on behalf of the railway administration that there had been procedural irregularities and other defects in the selection of the petitioners for the panel. The cancellation of the panel was in the circumstances stated to be not improper.

It was not disputed before the learned single Judge that there were only four vacancies when applications for the selection of the panel were invited on May 21, 1969. In view of those four vacancies and 25 per cent for unforeseen vacancies, only five of the petitioners, it was held, could be selected for the panel. The contention on behalf of the petitioners that, in considering the number of vacancies for the selection of panel, work charged short-term vacancies should also have been taken into account as they constituted anticipated vacancies was rejected. In the result the learned single Judge quashed the order for cancellation of the panel in so far as it related to five out of the nine petitioners. The cancellation order was, however, upheld in respect of the remaining four petitioners including the three appellants.

On cross appeals having been filed by the appellants and

the railway administration, the Division Bench of the High Court affirmed the decision of the learned single Judge and dismissed both the appeals.

Before us Mr. Iyengar on behalf of the appellants has submitted that apart from the vacancies which were taken into account by the

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High Court, there were workcharged short-term anticipated vacancies. It is submitted that these short-term anticipated vacancies too should have also been taken into account in considering the total number of vacancies for which selection was to be made for the panel. We are unable to accede to the above submission. According to the instructions contained in letters dated November 12, 1968 and April 30, 1969 anticipated vacancies could be only those vacancies which were likely to arise due to normal wastage during the currency of the panel. A panel under paragraph 217 was to be current for two years from the date of approval by the competent authority or till its exhaustion, whichever %-as earlier. We agree with the High Court that workcharged short-term vacancies are not such as can be said to arise due to normal wastage during the currency of the panel. Vacancies arising due to normal wastage during the currency of a panel are such as can generally be foreseen because they occur on account of the retirement of those at present holding the posts or for other similar cause. A short-term vacancy for a workcharged job cannot be said to arise due to normal wastage.

The result is that the appeal fails and is dismissed, but in the circumstances without costs.

P.B.R.

Appeal dismissed.

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