

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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CWP-6561-2020

Date of decision : 10.03.2022

Union of India and another

...Petitioners

V/s

Central Administrative Tribunal, Chandigarh Bench,
Chandigarh and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MR. JUSTICE VIKAS SURI**

Present: Mr. Ashish Rawal, Advocate for the petitioners.

G.S. SANDHAWALIA, J. (ORAL)

Challenge in the present petition is to the order dated 17.09.2019 (Annexure P-4), passed by Central Administrative Tribunal, Chandigarh Bench whereby the order dated 22.12.2017 vide which the applicants who had been promoted vide orders dated 25.04.2017 and 14.12.2017 as Telecom Maintainer, Tech-III (TMT-III) Grade ₹5200-20200+1900 (RSRP) against 25% Matric Quota (Intermediate quota) in Signal & Telecom Department, had been reverted to their substantive post of Helper Khalsai/Tele Grade pay of ₹1800/-, was quashed.

The primary reason which weighed with the Tribunal was that there was blatant violation of principles of natural justice as neither any opportunity of hearing was granted nor any show-cause-notice was issued while passing the said order, which in turn, withdrew the benefits granted on 25.04.2017 and 14.12.2017 (Annexure A-6 and Annexure A-7)).

The second reasoning which weighed with the Tribunal was that the order was non-speaking and did not disclose any reason against the applicants, who had approached the Tribunal to represent and therefore, in the absence of any reason, the said order could be sustained. A finding was also recorded that the

respondents were conducting the selection for other Divisions like Jhansi,

Lucknow and Moradabad and made promotions on the same basis and the decision taken by respondent No. 1 would apply to future selections and not the one which had already taken place.

Learned counsel has vehemently argued that the Tribunal has erred in holding that applicants had not been granted any opportunity of hearing in accordance with law nor any show-cause-notice was issued. It is submitted that the relevant provision would provide that the promotion was to be done by 50% of departmental staff having the qualification of Class X Board Examination and another 50% from amongst existing Group 'D' staff in service not having the qualification of Class X Board Examination.

It is not disputed that the private respondents who were promoted, belongs to Group-D category, having the qualification of Class X and it was done after issuance of advertisement dated 05.07.2016 (Annexure A-4). The only ambiguity as such is that it was notified as against 25% intermediate quota. The procedure prescribed was that the Selection Committee would draw a list of suitable candidates, who had to undergo training for a stipulated period. Wide publicity was given amongst the staff and cut-off date for receiving the applications was fixed as 5.8.2016. It is not disputed that the in pursuance of the applications received, written examination was conducted on 20.12.2016 and 14 candidates had made the cut. As per the result declared on 21.02.2017 (Annexure A-5), the promotion orders dated 25.04.2017 and 14.12.2017 (Annexures P-6 and P-7) were issued, granting private respondents the benefits of promotion. The same was, however, abruptly withdrawn on account of the letter addressed by The Divisional Railway Manager, Northern Railway, Ambala on 19.12.2017, wherein it was directed that the corrective steps be taken in order to set right the selection

since the dispute had been raised by the Union. Reliance had been placed on Para

151 of IREM Vol.-1, which had been referred above which provides no provision of Intermediate Apprentice quota and only promotion quota i.e. 50% from the group-D staff having qualification of Class 10th and 50% from the staff in service not having the qualification of Class 10th pass. The relevant Rule does not talk about the promotion which is to be made on the basis of seniority or on the basis of merit.

In such circumstances, the Tribunal had recorded the findings that for other Divisions also, the same procedure had been followed, which was brought on record by filing the replication by the applicants, as had been noticed by it in paragraphs 14 and 15 also.

Counsel has not been able to show in any manner that the certain set of categories of employees were adversely affected by the said promotion which was done by putting the same into public domain and calling for the applications. In pursuance of the same, selection list of 14 candidates had been drawn up, out of which 8 candidates had been promoted.

Counsel has lastly argued that where the selection is erroneous and procedure followed is alien to the Rules, no notice is required.

The said arguments is totally baseless as once the selection list was drawn up and issued, the same cannot be withdrawn without adequate notice or without following the proper procedure. The issuance of show cause notice and also by giving reasons by passing a speaking order are settled procedures to be followed, which is absent in the present case. Even counsel has not been able to justify whether any action has been taken against the higher authority who conducted the selection process which is stated not to be in consonance with the Rules, whereby lowest strata of Class IV employees have earned the promotion

have thus, been targeted on account of the alleged fault of their higher officials

against whom no action has been contemplated. However, we leave it open rather to the appellants to call for the explanation of the concerned official(s).

It is pertinent to notice that in-spite of the letter from the General Manager dated 19.12.2017 (Annexure R-5), the said procedure was followed thereafter on two occasions i.e. on 08.01.2018 and 24.01.2018 and result of the written test was declared. In such circumstances, we are of the considered opinion that the order of the Tribunal in quashing the action of the petitioners in withdrawing the promotion of the private respondents who had applied as per the advertisement notice issued which was given wide circulation and had successfully made the cut, is not liable to be interfered in the extra ordinary writ jurisdiction of this Court.

Accordingly, the present petition is dismissed.

(G.S. SANDHAWALIA)
JUDGE

(VIKAS SURI)
JUDGE

March 10, 2022

Ajay

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No