

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1733/97
T.A. No.

199

(20)

DATE OF DECISION 26.2.98

Vinod Kumar & Ors. Petitioner

Sh. B.S. Mehta Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Sh. R.L. Dhariwal & Sh. H.K. Gopwani. Advocate for the Respondent(s)

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The Hon'ble Mr. te. Muthukumar Member (A)

The Hon'ble Mr. T.N. Bhat Member (J)

1. To be referred to the Reporter or not? Yes

2. Whether it needs to be circulated to other Benches of the Tribunal? Yes

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.1733/97

(21)

New Delhi, this the 26th day of February, 1998

Hon'ble Shri K. Muthukumar, Member (A)
Hon'ble Shri T.N. Bhat, Member (J)

1. Vinod Kumar s/o Gurdhayal
M.C.M. under
Sr. Divn. Electl. Engineer,
EMU Car Shed, Ghaziabad.
2. Narendra Kumar Tomar /so Bhagirath Singh
M.C.M. under
Sr. Divn. Electl. Engineer,
EMU Car Shed, Ghaziabad.
3. Shri Ram s/o Ganga Parsad,
M.C.M. under
Sr. Divn. Electl. Engineer,
EMU Car Shed, Ghaziabad.
4. Tej Pal s/o Shri Ramjilal
M.C.M. under
Sr. Divn. Electl. Engineer,
EMU Car Shed, Ghaziabad.
5. Naresh Kumar s/o Fateh Singh,
Welder Gr.I, under
Sr. Divn. Electl. Engineer,
EMU Car Shed, Ghaziabad.Applicants

(By Advocate: Shri B.S. Maines)

Versus

Union of India through:

1. The General Manager,
Northern Railway,
Baroda House, New Delhi.
2. The Divisional Railway Manager,
Northern Railway, State Entry Road,
New Delhi.
3. The Sr. Divisional Electrical Engineer,
EMU Car Shed, Northern Railway,
Ghaziabad.Official respondents

(By Advocate: Shri R.L. Dhawan)

4. Pavan Kumar s/o Jagdish Chand,
Highly Skilled Fitter Gr.I.
5. Rajendra Kumar s/o Roshan Lal,
Highly Skilled Fitter Gr.I.
6. Sansapal Singh s/o Devraj,
Highly Skilled Fitter Gr.I.

W.W. 26.2.98

(22)

7. Rajendra Kishan s/o Sri Kishan Chand.
Highly Skilled Fitter Gr.I. Private Respondents
(By Advocate: Shri H.K. Gangwani)

O R D E R

delivered by Hon'ble L.N. Bhat, Member (J.J.)

The applicants in this O.A., who are working in the E.M.U. Carshed in the department of Railways at Ghaziabad, are aggrieved by the letters dated 19.5.1997 and 18.7.1997 as also the order dated 1.2.1995 issued by the Senior Divisional Electrical Engineer, Northern Railway, E.M.U. Carshed, Ghaziabad by which applicants were held to be ineligible for selection and promotion to the post of Electric Charge man grade Rs. 1400-2300/-. According to the applicants, their juniors have been considered for selection while the applicants' claim has been ignored. It is further averred that all the applicants are eligible to appear in the said selection.

2. The applicants had initially joined the E.M.U. and came to be promoted as Master Craftsman (hereinafter referred as "MCM" for short) in the scale of Rs. 1400-2300/-. According to the relevant circulars and instructions issued by the Railway Board, there were no avenues of promotion after MCM grade. However, by the letter dated 17.10.1990 issued by the Railway Board in partial modification of the letters issued earlier, persons fitted in the grade of MCM were also made eligible to be considered for further progression to supervisory post alongwith other skilled Grade I Artisans staff. This position continued till 31.12.1993 when the dispensation granting the aforesaid benefit to the MCM was withdrawn and

(23)

in consequence thereof the applicants were held ineligible for being considered for selection to the supervisory post of Electric Chareman in the year 1995 by the letter dated 1.2.1995 which is also one of the letters impugned in this OA. By that letter one of the applicants, namely, Shri Ram was informed that he was not eligible for being considered for promotion to the aforesaid post. Similar letters were also issued to the other applicants. Feeling aggrieved by the aforesaid letter they filed OA No. 285/95 which was disposed of alongwith another OA, being OA No. 2744/91, by a common judgement dated 31st May, 1997 delivered by a Division Bench comprising Hon'ble Shri S.R.Adige and Hon'ble Dr. A. Vedavalli of the Principal Bench. Both the OAs were dismissed by that judgement/order. However, it was observed in the judgement that but for the fact that the dispensation granting the benefit of promotion to MCM had not been extended beyond 31.12.1993, the applicants in those OAs had a good case. It would be of advantage to extract hereinbelow some observations made by that Bench in the judgement (Supra):-

"3. The answer to this is provided in respondents letter dated 10/17.4.1995 itself. Its perusal clarifies that the "dispensation" whereby Gr.I Artisans and Mistries other than those in the Fitter Trade were eligible for selection upto 31.12.1993. This "dispensation" was not extended beyond 31.12.1993 and under the circumstances when respondents issued their letter dated 1.2.1995 this stand was legally correct that ancillary categories of Artisans were ineligible to compete.

(2A)

"4. However, respondents appear to have given the matter further thought and by letter dated 10/17.4.1995 decided to continue that "dispensation" subject to certain conditions.

"5. However, the fact remain that at the time the selections were scheduled in Feb., 1995 the "dispensation" in favour of Ancillary category artisans had come to an end w.e.f. 31.12.1993, and had not yet been ordered to be continued by respondents order dated 10/17.4.1995..."

"6. It is unfortunate that the selections in which applicants were desirous of participating in, fell after 31.12.1993 and before 10/17.4.1995, but in the light of the foregoing analysis, it is not possible to grant any relief to applicants".

3. It now appears that the applicants have been denied the benefit of the said dispensation even after it was restored by the Railway Board's letter dated 10/17.4.1995. By the aforesaid letter, it has been provided that the dispensation in favour of the then existing Gr. I Artisans which was initially current upto 31.12.1990 and later on extended upto 31.12.1993 would again be available" and the dispensation would continue to be applicable to the then existing Grade I Artisans till they are promoted as Chargeman-B Mistris. The provision was, however, made subject to the condition that if a Grade I Artisan is not found suitable for the post of Mistry he would be considered junior to a Grade I Artisan who may qualify for the post of Mistry and be promoted thereto.

4. The action of the respondents in refusing to allow the applicants to appear in the selection even in the year 1997 has been assailed on the ground that it goes counter to the rules and instructions issued by the Railway Board from time to time.

(25)

5. The respondents have resisted the OA mainly on the ground that the applicants having failed in their attempt to gain entry in the higher post by promotion and the earlier OA filed by them having been dismissed, the applicants cannot claim the same relief in the instant OA. Another important averment made is that only those employees who had been working as Electric Fitters ~~and~~ ^{or} on similar other posts in the Electric Wing of the Railways were eligible to be considered for the post of Electric Chargeman and that those who belong to the ancillary categories are not so eligible. It may be mentioned here that initially the OA had been filed only against the official respondents, being respondents No. 1 to 3, but subsequently at the request of some private individuals who had appeared in the selection, they were impleaded as party-respondents. They have filed a separate counter contesting the OA and according to them also the applicants were not eligible for being considered in the selection.

6. We have heard the learned counsel for the parties at length and have perused the material on record.

7. As already mentioned, the main contention raised by the respondents is that those who do not belong to the Electric Wing and who were not working as general Fitter Artisan could not be considered, as they were not eligible. According to the respondents the applicants are ancillary category Artisans and they could claim promotion in their own cadre and not in the cadre of Electric Chargeman. When asked as to whether there was any such specific provision in the relevant recruitment rules,

(26)

both the counsel appearing on behalf of the official as well as private respondents, relied on paras 140, 141 and 159 of the Indian Railway Establishment Manual - Volume II. We have carefully gone through those paras but have been unable to find any provision under which only general category Artisans or the Gr. I Artisans of the Electric wing were eligible for being considered for promotion to the post of Electric Chargeman. It is true that so far as the MCM are concerned their avenues for further promotion had been severely curtailed as that cadre was considered to be a "terminal cadre". But it is equally true that by the letter dated 17.10.1990 they were made eligible for being considered for promotion to the higher posts in the supervisory grade, which admittedly included the post of Electric Chargeman "B".

8. The contention of the learned counsel for the respondents that OA filed earlier by some of the applicants (OA No. 285/95) had been dismissed on the ground that the Artisans belonging to the ancillary categories had at no time been made eligible for promotion to the post of Electric Chargeman "B" cannot be accepted, as this Tribunal had in the judgement disposing of the aforesaid OAs clearly held that such Artisans were made so eligible for the period between the years 1990 and 1993 and after a gap of one year or so they were again made eligible by the letter issued by the Railway Board on 10/17.04.1995.

9. It is, next, argued by the learned counsel for the private respondents that since the post of Electric Chargeman "B" comes in the Safety category it must be assumed that only those persons would be eligible for

(27)

promotion to that post who had earlier worked in the Electric Department and those who belonged to other categories such as Painters, Welders, Motor Vehicle Drivers, etc. could not claim promotion to the post of Electric Chargeman, as that would lead to chaos and a spate of accidents. In reply, the learned counsel for the applicant has laid emphasis on the point that the applicants had initially joined the Electric Wing in different capacities and were later promoted as Fitters in the same wing. He further states that two out of the five applicants in this OA had initially joined as Electric Fitters in the year 1982 and had worked as such for several years. All the applicants had been promoted as Highly Skilled Fitters Gr. II and later on to Grade I. According to the learned counsel the applicants still belong to the Electric department, being employed in E.M.U. Carshed, Ghaziabad which is a branch of the Electric Wing of the Railways. It is further contended by the applicants' counsel that after being promoted to the post of Electric Chargeman the applicants will have to be imparted training and only then would they perform the functions of that post. However, the learned counsel for the respondents do not agree with this contention, as according to them there is no provision in the relevant rules/instructions providing for training being imparted to promotees to the post of Electric Chargeman.

10. Having considered the rival contention made at the Bar, we find ourselves in agreement with the learned counsel for the applicants. No provision has been brought to our notice under which persons appointed/promoted to the post of Electric Chargeman are

exempted from or not required to undergo some training. It is further amply clear that the applicants belong to the E.M.U. which is an Establishment dealing with matters connected with Electricity generation and maintenance. In the seniority list of 1982 (Annexure I to the rejoinder) they have been described as ELCHSF-I, that is, Electric Highly Skilled Fitter, Grade-I. It is true that they had later opted for absorption in other trades. But it is equally true that this would not make them strangers to the E.M.U. organisation, as they have been absorbed in that organisation itself though in the "Ancillary categories".

11. The main question arising in this case is as to whether a person working as M.C.M. or Artisan Grade I in an ancillary category in the E.M.U. Carshed, Ghaziabad is eligible to be considered for promotion to the post of Electric Chargeman. In view of the facts and circumstances mentioned above, the answer to this question must be in the affirmative, as there is a clear provision made in the letter dated 17.10.1990 as also the letter dated 10/17.4.1995 by which all Grade-I Artisans who were in position at the relevant time were made eligible for being considered for promotion to the supervisory posts including Chargeman "B" and Mistries. Although this dispensation was discontinued for some time after 31.12.1993, as there was no specific letter/order issued for extending the said dispensation, it was once again restored by the letter dated 10/17.4.1995. The applicants can legitimately claim consideration of their cases under the aforesaid letter of April, 1995 in any selection held subsequent to the issuance thereof. In the instant case the selection was held in the year 1997. The applicants

(29)

ought to have been afforded the opportunity to participate in the selection. This opportunity has been denied to the applicants on the ground that they were not eligible as they did not belong to the General Fitter category. This plea of the respondents, as already demonstrated, was incorrect and unsustainable.

12. For the foregoing reasons we are convinced that the action of the respondents in refusing to allow the applicants to participate in the selection held for promotion to the post of Electric Chargeman 'B' is liable to be quashed. In the result this OA is allowed and the impugned letters dated 19.5.1997 and 18.7.1997 to the extent these letters denied to the applicants the right to be considered for selection are quashed. As regards the letter dated 1.2.1995, the said letter cannot be quashed in its entirety, for the reason that the eligibility of the applicants for promotion to the post of Electric Chargeman was non-existent at the time when the aforesaid letter was issued, as the dispensation granting the aforesaid benefit to the applicants and similarly placed other persons belonging to the ancillary categories of Artisans had been discontinued. The same, however, came to be restored later.

13. The official respondents are hereby directed to hold a supplementary selection for the applicants and thereafter to prepare a fresh panel, depending upon the number of vacant posts in the cadre of Electric Chargeman 'B' available at the relevant time. Needless to say that the panel already prepared may have to undergo some change and it shall be open to the respondents to appropriately re-cast the panel.

(30)

14. With the above order, this OA is disposed of, leaving the parties to bear their own costs.

h.s.m.
(T.N.Bhat)
Member (J)

26.2.1998

h.s.m.
(K.Muthukumar)
Member (A)

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