

20

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH; NEW DELHI.**

O.A.No. 213 OF 1994

New Delhi this the 28th day of July, 1999.

Hon'ble Mr. V. Ramakrishnan, Vice Chairman (A)
Hon'ble Mrs. Lakshmi Swaminathan, Member (J)

1. Prem Shanker Lal
S/o Shri Hira Lal
Driver Goods
Northern Railway Loco Shed
Shakurbasti
Delhi 110 034
Residential Address:
Prem Shanker Lal
T-238/4 Railway Colony
Shakurbasti, Delhi-34.
2. Prem Nath Sharma
S/o Chint Ram Sharma
Driver Goods
Rly Q.No. 297/1,
Shakurbasti,
Delhi 110 034.
3. Mohinder Kumar
S/o. Khan Chand
Driver Goods
WZ 108 Rishi Nagar
Shakur Basti,
Delhi.
4. Surinder Singh
S/o S.Gurbachan Singh
Driver Goods
168/5 Railway Colony
Delhi Kishan Ganj

58

21

5. Ram Prakash
S/o. Shri Mehar Chand
Driver Goods
705 Rishi Nagar
Shakurbasti,
Delhi 110 034

Applicants.

(By Advocate: Shri G.D.Bhandari)

VERSUS

1. Union of India through
The General Manager
Northern Railway, Baroda House
New Delhi 110 001
2. The Divisional Railway Manager
Northern Railway
State Entry Road
New Delhi 110 001

(By Advocate: Shri P.S.Mahendru)

ORDER (Oral)

Hon'ble Mr. V. Ramakrishnan, Vice Chairman (A)

We have heard Shri G.D.Bhandari, learned counsel for the applicant and Shri P.S.Mahendru, learned counsel for the respondent Railway Administration.

2. The applicants, regular Goods Drivers, have approached the Tribunal seeking the following reliefs:

62

22

"8. In view of the facts and circumstances explained and humble submissions made, the applicants, respectfully pray this Honourable Tribunal to be graciously pleased to:

(i) Set aside and quash respondents letter dt. 15.12.93 (A-7), whereby, on the basis of written test held on 16.12.92 and supplementary written test held on 21.8.93 and viva voce test held on subsequent dates, a panel of the illegally selected persons is sought to be declared in violation of para 4.2 of the Restructuring orders dt. 27.1.93 (A-1).

(ii) Direct/Command/Order the respondents to make selection to the post of Driver Passenger grade Rs.1600-2600 in terms of para 4 and its sub-paras and based on the modified selection procedure so stipulated therein, declare the result of selected persons.

(iii) Any other relief deemed fit and proper may also be granted and in addition to the cost of the case."

3. Shri Bhandari submits that these five applicants were appointed as regular Goods Driver and they were made to officiate as Passenger Drivers on an adhoc basis by an order dated 10.6.92 as at Annexure A-8. All of them have since retired as adhoc Passenger Drivers in the scale 1600-2660. The posts of Passenger Drivers are selection posts for which the feeder category is the post of Goods Drivers. The Railway Administration initiated the process of selection by their order dated 18.11.92 as at Ann. A-2 where they notified 60 vacancies of Passenger Drivers. This selection was not completed for quite some time and meanwhile the Railway Board issued orders of restructuring. These orders provided that while the total cadre strength remained the same a number of posts were added in the higher level by reducing posts at the lower level. A copy of restructuring order dated

23

27.1.93 is at Annexure A-1 which took effect from 1.3.93. Shri Bhandari draws attention in particular to para 4 of the restructuring orders which introduced a modified selection procedure in respect of selection posts as a one time exception by a special dispensation. The selection would stand modified in such a case to the extent that it would be based only on scrutiny of service records and Confidential Reports without holding any written and/or viva-voce test. Para 4.1 of this circular goes on to say that the vacancies which had arisen on the date of the cadre restructuring as also resultant vacancies should be filled up by modified selection procedure provided that there is no approved panel on or before 1.3.93, Shri Bhandari says that admittedly the selection process for passenger drivers was not completed before 1.3.93 and there was no approved panel. He draws attention also to para 4.2 which provides that the selection which had not been finalised by 1.3.93 should be cancelled/ abandoned. According to him, as the selection initiated by order dated 18.11.92 had not been finalised, the same should have been cancelled or abandoned and the post of Passenger Drivers should have been filled up by modified selection procedure and the applicants being seniors should have been given the higher posts on regular basis if the Railway Administration find on the basis of their character roll that they were fit. This has not been done and the Railways had continued the selection process and had declared the results as at Annexure A-7 on 15.12.93 where a number of persons who are junior Goods drivers had been appointed as Passenger Drivers.

Shri Bhandari submits that the restructuring order also introduced a higher grade of 1600-2660 for the post of Goods drivers and the applicants being senior were given that scale. However if they had been promoted as regular Passenger Drivers by virtue of their seniority they would in fact be

2A

given the same scale of ¹⁶⁰⁰⁻²⁶⁶⁰~~1640-2900~~ and would have advanced to the next higher scale before retirement. According to him, the action of the respondents in continuing the selection is in clear violation of the restructuring orders and should be quashed.

4. Shri. Mahendru, learned counsel for the respondents resists the application. He draws attention to the reply statement particularly para 4.9 which brings out that there has been no increase in the number of posts of Goods Drivers or Passenger Drivers. All that has happened is introduction of a category of Senior Goods Drivers and Senior Passenger Drivers to remove the stagnation. In the case of Goods Drivers and also the Passenger Drivers 20% posts were ear-marked in the higher scale. In the light of this position there is no question of modified selection procedure as no additional vacancies had fallen due on account of the restructuring order. He also says that this has been brought out clearly in para 4.12 and 4.18 and 4.19 of the reply statement, The applicants appeared but failed in the selection. According to him, applicant No.1 was given adhoc promotion as Passenger Driver by virtue of order as at Annexure A-6 but he did not join and this contention has not been rebutted in the rejoinder statement. However, Shri Bhandari says that this statement is not correct as Annexure A-6 itself would show that they had been given pay in the scale of Passenger Driver on account of their adhoc promotion.

5. We have carefully considered the contention of both counsel. The controversy as to whether the applicants were functioning as adhoc Passenger Drivers before retirement is not very material for considering the present OA as they were in any case holding the scale of 1600-2660. The issue involved in this OA is whether the modified selection procedure would

25

be applicable for promotion as Passenger Drivers in the context of the restructuring order. We may refer to the relevant paras of the Railway Board's letter dated 27.1.93. Para 3 and para 4 which read as follows:

"3. Staff selected and posted against the additional higher grade posts as a result of restructuring will have their pay fixed under Rule 1316(FR 22-C) R II w.e.f. 1.3.93 with necessary option for pay fixation as per extant instructions.(emphasis added)

4. The existing classification of the posts covered by these restructuring orders as selection and non-selection as the case may be remain unchanged. However, for the purpose of implementation of these orders, if an individual Railway servant become due for promotion to a post classified as a selection post, the existing selection procedure will stand modified in such a case to the extent that the selection will be based only on scrutiny of service records and Confidential Reports without holding any written and or viva voce test. Similarly for posts classified as non-selection at the time of this restructuring the same procedure as above will be followed. Naturally under this procedure the categorisation as 'outstanding' will not figure in the panels. This modified selection procedure has been decided upon by the Ministry of Railways as a one time exception by special dispensation, in view of the numbers involved with the objective of expediting the implementation of these orders."

✓ We also find from the annexure to the Board's letter dated 27.1.93 that the Goods Drivers were in the existing grade of 1350-2200 and 100% of post prior to 1.3.93 were to be allotted only that scale. The revised arrangement provided that 80% of the total posts would be in the scale of 1600-2660 was sanctioned in respect of 20% of the cadre strength at the level of 1600-2660. From the perusal of this circular it would be evident that the number of posts

29


at the level of Goods Drivers or Passenger Drivers did not undergo any change. Shri Bhandari has drawn attention to the notice of the Northern Railway dated 18.5.93 which shows the revised strength on account of restructuring. This notice shows that the existing strength of Passenger Drivers is 121 and the revised strength after the restructuring was shown as 97 in the scale 1600-2660 and there were 24 posts in the higher scale of 1640-2660. The learned counsel for the applicant submits that in addition to the posts of 60 for which the selection was held by virtue of notice in November 1992, 24 more posts become available in the higher scale. According to him, the additional vacancies should have been filled in accordance with the modified selection procedure. We do not agree. It is clear from the pleadings that the total cadre strength of Passenger Drivers has remained at 121 and while 24 of Passenger Drivers had been allotted the scale of 1640-2660, 97 had been retained in the lower scale. There has therefore been no increase in the cadre strength either at the level of Goods Drivers or Passenger Drivers.

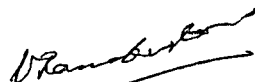
The restructuring orders aim at removing stagnation by sanctioning additional posts in the higher grade by reducing the post in the lower grade keeping the total strength the same. When such additional posts in the higher level are normally to be filled up by selection the restructuring orders provided that those who are eligible may be considered for the higher post as per the modified selection procedure. In such a situation the vacancies as existed on 28.2.93 will also be filled up by the same method as for filling up the additional vacancies created on account of restructuring. In the present case the stagnation in respect of Goods Drivers has been removed not by reducing the number of Goods Drivers and increasing the number of Passenger Drivers but by introduction of a senior grade for 20% of the posts.

27

The same is the position in respect of the Passenger Drivers also. When no additional vacancies at the level of Passenger Drivers had arisen on account of restructuring, there is no question of filling up the same or existing vacancies as on 28.2.93 by the modified selection procedure. Para 3 of the restructuring order specifically refers to additional higher grade posts. The only additional posts created in the cadre of Goods Drivers is that 20% of the cadre strength would be in the scale 1600-2660 and this has admittedly been filled up on the basis of assessment of fitness and the applicants had been given the scale. Para 4.1 and para 4.2 of the restructuring order will not be relevant in so far as the present selection of passenger drivers initiated in November 1992 is concerned, as no additional vacancy of Passenger Drivers arose on 1.3.93 as a result of cadre restructuring and there is therefore, no bar in continuing the selection for the existing vacancies as on 1.3.1993. In the light of this position, the action of the respondents in continuing the selection for the post of passenger drivers which are admittedly selection post, in terms of the normal rules without abandoning the same is legal and in accordance with the rules and is not in any way in violation of the instructions contained in the restructuring order.

6. In the light of the foregoing discussion, we do not find any merit in the OA, which is dismissed. No order as to costs.


(Mrs. Lakshmi Swaminathan)
Member (J)


(V. Ramakrishnan)
Vice Chairman(A)

Vtc.