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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

O.A. No. 345/89

Date of decision 25/8/92

Shri Bishamber Lal Malhotra ... Applicant(a)
and Others

v/s

Union of India and Ors. Respondents

CORAM:

Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman (J)

Hon'ble Member Shri I.P. Gupta, Member (A)

For the Applicants ... Shri G.D. Bhandari

For the Respondents ... Shri B.K. Aggarwal

1. Whether Reporters of local papers may be allowed to see the Judgement ?

2. To be referred to the Reporter or not ?

JUDGEMENT

Delivered by Hon'ble Shri I.P. Gupta, Member (A)

In this application filed under Section 19 of the Administrative Tribunal Act, 1985, the applicants are Senior Draughtsmen in the grade of Rs. 425-700 in Northern Railways. While working as Draughtman (grade 330-560) they were appointed to officiate as Senior Draughtsman purely on ad hoc basis pending selection against the existing vacancies. They were promoted from dates ranging between 1982 and 1983 by order dated 4.10.1983.

2. The post of Senior Draughtsman is a selection post and the vacancies are to be filled in the following manner as laid down in the Railway Board's letter dated 19.8.1972 :-

(i) 25% of the vacancies from amongst Assistant Draftsmen in scale Rs. 150-240 (A).

(ii) 25% of the vacancies from amongst Tracers and Asstt. Draftsmen who possess the requisite qualifications for Apprentice Mechanics and are within the age limit for serving employees.

(iii) 50% of the vacancies from Apprentice Mechanics recruited directly.

3. The Ministry of Railways issued cadre review and restructuring of Group 'C' and Group 'D' categories vide their order dated 16.11.1984 (Annexure A-2). These instructions incorporated, inter-alia, the following provisions :-

(1) For the purpose of restructuring, the cadre strength as on 1.1.1984 will be taken into account and will include rest giver and leave reserve posts.

(2) The existing classification of the post covered by the restructuring order as selection and non-selection, as the case may be remains unchanged. However, for the purpose of implementation of these orders if an individual railway servant becomes due for promotion to only one grade above ^{1/2} grade of post held by him at present on a regular basis, and such higher grade post is 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 a scrutiny of the service record without holding any written and/or viva voce test.

(3) Vacancies existing on 1.1.1984 and those arising on that date from this cadre restructuring should be filled in the

following sequence -

From panels approved on or before 15.11.1984 and balance in the manner indicated above.

(4) The contention of the Learned Counsel for the applicant is that in terms of restructuring orders dated 16.11.84 37 vacancies were required to be filled on the basis of the modified selection scheme based on assessment of service record only but ^{this was not done} A case was filed by 18 ad hoc promotees including applicants in Civil Court which on transfer was given No. T-193/86. The judgement in the case included the following observations :-

" Shri K.N.R. Pillai, learned counsel for the respondents states that out of the 18 applicants the case of the 14 applicants for regularisation has already been considered and they have been duly selected and that the case of the remaining 4 unselected petitioners, namely Shri Bishamber Lal, Shri Kedar Nath, Shri Ved Prakash and Shri B.B. Bhasin shall be reverted strictly in accordance with their respective seniority if unavoidable and that their case will be considered sympathetically for regularisation. Shri Sethi, learned counsel for the petitioner states that in view of the above statement of the learned counsel for the respondents he wants to withdraw the petition as infructuous. In view of the above statements of the learned counsel for the parties the petition is dismissed as infructuous."

The three applicants are among the remaining four 'unselected petitioners'. The learned counsel further argued that the method of filling the post by direct recruitment had broken down and, therefore, all the vacancies should

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the
have been filled on 1.1.1984 by promotion under
modified procedure and not by the selection
in future or by direct recruitment
method. He drew our attention to the obser-
vations in the counter itself where it was
observed that 'since the candidates against
the 50% direct recruitment quota reserved
for them were not available through Railway
Recruitment Board, staff promoted on ad hoc
basis were allowed to continue over and
above their 25% ^{quota} ~~promotee~~ pending selection.
Post reserved and meant for 50% direct
recruitment quota were being manned by pro-
moting the staff purely on ad hoc basis
pending selection. When the process to
fill up 50% direct recruitment quota was
initiated, a panel of 14 candidates were
available in the panel of 1986, and so they
were appointed accordingly on their direct
recruitment quota. For the remaining
vacancies candidates from Railway Recruit-
ment Board are not becoming available
to complete the remaining vacancies kept
for direct recruitment quota." Therefore,
the counsel contended that the direct
recruitment quota had broken down.

4. In the above background the applicants have
requested for quashing of the orders for subjecting
the applicants to the process of selection vide ^{further} respondents' letter dated 1.2.1989 (Annexure A-1), and
the respondents should be directed to regularise the
applicants from their respective dates of officiation
as Senior Draughtsmen.

5. The Learned Counsel for the respondents brought
out that the sanctioned strength of Senior Draughtmen
prior to 1.1.1984 was 41. As a result of restructuring
of the cadre, this was reduced to 35. There were 12
staff already available in the grade on that date.
Therefore there were 23 vacancies. These 23 vacancies
were distributed in the ratio of 50% (direct recruit),
25% (promotee quota) and 25% intermediate apprentice
i.e. $11+6+6 = 23$. Thus 6 posts were allotted to

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promotee quota. Even taking 14 upgraded vacancies against promotion quota the total number of posts against promotion quota could be 20 and 20 persons were promoted according to the modified scheme and they were all senior to the applicants. Against future vacancies the applicant cannot claim advantage of modified selection scheme which was available as on 1.1.1984 and he has therefore to be reconsidered for promotion according to the prescribed method of selection. It is in this context that impugned letter of 1.2.1989 has been issued asking the applicants to appear for the selection test.

6. We find that some Senior Draughtsmen (other than applicants) who were reverted by order dated 26.6.1986 consequent on joining as Apprentice Draughtsmen on successful completion of their prescribed training had approached the Tribunal by O.A. 725/86 for setting aside the impugned reversion. The Tribunal dismissed their applications on 11.10.1991. The following may be quoted from that judgement :-

" They (Respondents) have also contended that the applicants are ad hoc promotees and they are occupying posts of the quota allotted to the direct recruits and intermediate apprentices. They have to be reverted when the qualified persons return from their training and report for duty. R-II filed by the respondents was a clarification to R-1 and by it protection was given only to those officiating beyond 18 months who were empanelled and not ad hoc promotees like the applicants. As the applicants have not been empanelled, they cannot claim the relief as prayed for in this O.A. Hence, keeping in view the principles enunciated in the Full Bench judgement in the case of Jetha Nand (supra), we hold that this O.A. is devoid of any merit. "

7. The respondents have explained that 20 posts were filled against promotion quota under modified scheme, and

those promoted were all senior to the applicant. The applicants cannot have any grievance that his junior was promoted. As regards break down of quota rule even if we assume for a moment in the absence of all the details that the quota rule had broken down, the settled law on the subject as enunciated in the case of direct recruit Class II Engineering Officers Association v/s the State of Maharashtra [AIR 1990 SC 1607] is as follows :-

" Where the quota rule has broken down and the appointments are made from one source in excess of the quota, but are made after following the procedure prescribed by the rules for the appointment, the appointees should not be pushed down below the appointees from the other source inducted in the service at a later date."

It is not the case here that the applicants were officiating against the excess promotion posts after having been promoted duly according to the rules and instructions and the quota rule should be deemed to have been relaxed. They were ad hoc promotees, promoted without selection test for promotion which stood prescribed when they were promoted on ad hoc basis. The break down of the quota rule, if at all such a break down was there, will not therefore come to their rescue. There was nothing illegal or arbitrary about the respondents' action in regard to filling the post of Senior Draughtsman by the prescribed method of selection by their communication dated 1.2.1989. Incidentally, by interim order dated 10.3.1989 status quo in regard to continuance of the application in the posts of Senior Draughtsman was allowed. The applicants were

for

thus not reverted. They have since retired.

8. In the conspectus of the aforesaid facts, arguments and analysis, the application is dismissed with no order as to costs. The interim orders stand vacated now and in any case they have become infructuous, since the applicants have retired.

I.P. Gupta
Member (A)

25/8/92

Ram Pal Singh
Vice Chairman (J)