

(10)

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. NO. 397/88

DATE OF DECISION : 3.12.91

B. R. SHARMA & ANR.

APPLICANTS

- VERSUS -

UNION OF INDIA & ORS.

RESPONDENTS

O.A. NO. 563/88

KARTAR SINGH & ORS.

APPLICANTS

- VERSUS -

UNION OF INDIA & ORS.

RESPONDENTS

O.A. NO. 677/89

VED PRAKASH

APPLICANT

- VERSUS -

UNION OF INDIA & ORS.

RESPONDENTS

APPLICANTS THROUGH SHRI B. S. MAINEE, ADVOCATE

SHRI S. N. SIKKA, COUNSEL FOR RESPONDENTS IN OA 397/88

SHRI ROMESH GAUTAM, COUNSEL FOR RESPONDENTS IN OA 563/88

SHRI N. K. AGGARWAL, COUNSEL FOR RESPONDENTS IN OA 677/89

CORAM : HON'BLE MR. JUSTICE RAM PAL SINGH, V.C. (J)

HON'BLE MR. I. P. GUPTA, MEMBER '(A)

JUDGMENT

{ Hon'ble Mr. I. P. Gupta, Member (A) }

In this order, three OAs are being dealt with together as they are similar in nature. In these three OAs, seven applicants are involved, namely, S/Shri B. R. Sharma and S. N. Narula (OA 397/88); Kartar Singh, Avinash Chandra Chadha, S. P. Gupta and P. N. Soni (OA 563/88); and Ved Prakash (OA 677/89).

2
Lamliy

2. In terms of their letter No. E.49-BRI/I/3 dated

30.8.1952, the Railway Board formulated a scheme for recruitment of Traffic Apprentices on all India Railways for improving various branches of the Traffic organisation on the Railways. In accordance with the said scheme it was specified that a number of Traffic Apprentices should be recruited annually, on each Railways, eventually filling up a maximum of 25 per cent of the annual vacancies in the posts of Section Controllers in grade Rs.200-300 and in other posts in the same grade in the Yard, TTS and Station Masters' cadre etc. In accordance with the said scheme, 25 per cent of the annual vacancies in the grade Rs.200-300 were to be earmarked for Traffic Apprentices and in case in any particular year it was not found possible to utilize this quota fully on account of sufficient number of Traffic Apprentices not forthcoming, the deficit was to be carried forward to the next year. Again in accordance with the aforesaid scheme, 25 per cent quota reserved for Traffic Apprentices was to be assigned in accordance with the roster points reserved in favour of Traffic Apprentices. In other words, the Traffic Apprentices even if appointed subsequently had to be placed against the roster points reserved for them.

3. It is alleged that the respondents did not comply with the aforesaid scheme strictly in regard to placement of Traffic Apprentices against their reserved points in the seniority with the result that the rankers became senior to Traffic Apprentices. Having exhausted their departmental remedies some Traffic Apprentices filed a writ petition in the Delhi High Court (CW No. 394/1971 : S. S. Lal & Ors. vs. Union of India & Ors.). The said petition came up before the

Lal

Hon'ble Single Judge who accepted the case of the Traffic Apprentices on merits but dismissed the petition on the ground of laches.

4. The unsuccessful petitioners filed an LPA (No. 220/1971) in the Delhi High Court which was ultimately accepted by the Hon'ble Division Bench which held as under :

"The seniority list, attached to the writ petition is quashed. The respondent Railway Administration shall draw a seniority list within three months from today and proceed to make confirmation and/or promotion in the higher grade in accordance with law, rules and orders in force from time to time."

5. Further developments in the matter are best explained in the judgment of the Hon'ble Supreme Court in Virender Kumar, General Manager, Northern Railway vs. Avinash Chandra Chadha & Ors. in CA No. 2013/1990 decided on 25.4.1990.

The decision of the Division Bench referred to above is of 30.7.1975. Against this decision, the Railways preferred an SLP which was dismissed. Thereafter, the Railways prepared a fresh seniority list in 1976. It appears that this seniority list took care of the grievances only of the employees who were parties to the petition. Against the said seniority list, therefore, some of the Traffic Apprentices filed a writ petition being writ petition No. 948 of 1976 challenging the seniority. That writ petition was transferred to the Tribunal and numbered as T.A.No.246 of 1985. It appears that in the meanwhile in 1983, the Railways, in compliance with the judgments delivered by the High Courts of Allahabad and Punjab & Haryana prepared a fresh seniority list, and the Tribunal disposed of the transfer petition (TA No.246 of 1985) by order dated June 25, 1986. By this order, the Tribunal observed that the application before the Tribunal

Lambh

was to direct the respondent Railways to quash the impugned seniority list, i.e., the seniority list of 1976 and to prepare a fresh seniority list and to make the confirmations and promotions in accordance with the fresh seniority list. The Tribunal observed that relief had already been granted by the Delhi High Court in LPA No. 220 of 1972 by its decision which is already referred to above. Hence, no fresh directions were necessary. The Tribunal also found that a fresh seniority list had been prepared in 1983 in pursuance of the directions given by the High Court. It appears further that since the seniority list was not prepared within three months as directed by the High Court and according to a respondent in that application before the Tribunal, the seniority list was also not in conformity with the other directions contained in the High Court judgment, a contempt petition was filed before the High Court and the same was pending before it. The Tribunal, therefore, stated that it expressed no opinion as regards the validity or otherwise of the seniority list prepared in pursuance of the High Court's directions. The Tribunal also made it clear that unless otherwise ordered by the competent authority or the High Court, as the case may be, the seniority list prepared in pursuance of the directions of the High Court shall be acted upon and :

"the confirmations and promotions made on the basis of that list within a period of four months from the date of the receipt of this order. Further, promotions shall be made strictly in accordance with the list prepared in 1983 in pursuance of the directions of the High Court in LPA No. 220 of 1972."

6. It appears, therefore, that the Railways had prepared a seniority list of 1983 in pursuance of the directions of the Delhi High Court in LPA No. 220 of 1972 decided on July 30, 1975. The grievance of the petitioners in TA No. 246 of 1985

Ramdh

(writ petition No.948 of 1976) was against the seniority list of 1976 and since that seniority list was superseded by 1983 list which the Tribunal observed was in pursuance of the High Court's directions, nothing survived in the grievance of the applicants there (viz., Chadha and others in that application).

7. It further appears that according to the statement made on behalf of the applicant Railways, the Railways had already worked out the promotions upto and inclusive of Class-II posts by 14th February, 1988. However, the applicants, Chadha and others in TA No.246 of 1985 filed a contempt petition being CCP No.17 of 1987 before the Tribunal in TA No.246 of 1985. On that application, the Tribunal passed the impugned order of September 14, 1988, which is the subject matter of the present appeal. The Tribunal has observed that the full consequences of the judgment of the Tribunal were spelt out by the General Manager of the Railways in his letter of July 30, 1982 forwarded to the Railway Board. The Tribunal then set out the said consequences as contained in General Manager's letter and observed that the General Manager had correctly appreciated the consequences of the directions of the High Court and of the Tribunal. The Tribunal then stated that, however, in implementing the order, the Railways did not give effect to the said judgments. The Tribunal then directed that the seniority list prepared on the basis of the panels of 1972-73 and 1978-79 for promotion to Class-II posts should be revised. We are not concerned here with the said directions. However, the Tribunal observed further that the Railways' contention that the earlier direction of the Tribunal did not entitle the petitioners, i.e., Chadha and others to be considered for promotion to

Leave 114

Class-II or Class-I or Junior Administrative grade was not correct and the same was contrary to its order as well to the implications of the said order spelt out by the General Manager himself. The Tribunal then went on to observe as follows :p

".....when the Tribunal had directed not only confirmations and promotion be made in accordance with the revised seniority list but also directed further promotions to be made on that basis, it was the duty of the respondent not only to give promotion in Class-III but also to give further promotion to Class-II, Class-I and Junior Administrative Grade. Of course, these promotions have to be given in accordance with the rules with effect from the date when the juniors were given promotion. The petitioners should have also been considered and promoted to Class-II, Class-I or Junior Administrative Grade just as their juniors were considered and promoted. Further inclusion in the panel of 1978-79 cannot, therefore, be insisted upon since they have already qualified.

4. After the above clarification, we do not think that there would be any further difficulty in implementing the order and in granting promotion to Shri Chadha and Shri Sandhu in respect of whom alone this petition is pressed.

5. It is stated that although the implications were correctly understood by the General Manager, even where the orders were implemented to a certain extent, no arrears have been paid. It is hereby clarified that on such promotion, they would also be entitled to payment of arrears. The orders of the Tribunal in T-246/85 (sic) as further clarified hereinabove shall be implemented accordingly and compliance reported to the Tribunal within six weeks from today."

8. The Hon'ble Supreme Court further observed as follows in the SLP:

"8. Two additional facts need be stated. The combined seniority list which was prepared in 1983 of Class-III posts for promotion to Class-II posts was finalized in March, 1987 and was made the basis of the postponed selection to Class-II service as per orders of the Tribunal and panel was issued on 13/3/1987. Therefore, on the basis of orders passed by the Tribunal on 9.12.1987, the Traffic Apprentices who

Ramnath

(H)

became eligible for promotion in the first batch after revision of seniority were considered by a Review Departmental Promotion Committee and interpolated in the Class-II panels of 1972-73 and 1975-76. As a result, the seniority of the personnel from the Commercial Department was affected since direct recruit-Traffic Apprentices from the Traffic and Transportation Department were given seniority according to the quota and rota rule from 1954 onwards. Hence M/s. A. P. Chowdhary and K. N. Saxena, Officers belonging to the Commercial Department approached the Tribunal by their applications Nos. 360 of 1988 and 936 of 1989 respectively, challenging the new seniority list, and also on the ground that they were not parties to the earlier proceedings.

9. It further appears that three of the respondents, Chadha, Sandhu and Malik filed an application before the Tribunal making a grievance that they were not given their due promotion.

10. It also appears that the Departmental Promotion Committee prepared two fresh panels - the first panel was for promotions to the posts which were vacant between 1972-73 and 1975-76 and the second for the vacant posts for the year 1978-79. In the second panel, KN Saxena stands selected.

11. In this appeal, we are concerned with two limited issues, viz., (i) whether in the context of the history of the litigation and the decision and directions of the High Court and the Central Administrative Tribunal, the respondents should be given promotions in all posts Class-II service as a logical corollary to their new ranking in the revised seniority list of 1983, and (ii) whether on such promotions being given, they should be paid emoluments of such higher posts with retrospective effect. We have stated that we are concerned with the promotions of the respondents in the posts above Class-II service because, as stated earlier, the appellant-Railways have already worked out their promotions in Class-II service. There is, therefore, no dispute with regard to the respondents' promotions in Class-II service. However, the dispute still survives with regard to their entitlement to the emoluments in Class-II service with retrospective effect.

12. As regards the promotion to posts above Class-II service, we find that initially when the petitioners approached the court, their grievance was with regard

D
Lambh

to their seniority in and promotions to the grades in Class-III service. The High Court had also in its direction said nothing about the promotions to Class-II service. However, as stated earlier, the appellants have worked out the promotions to Class-II service of the year 1983. The respondents, therefore, have gained substantially since, as stated earlier, the promotions to Class-II and above were not the subject matter of the writ petition before the High Court. We are afraid the Tribunal has gone beyond the scope of the original petition while dealing with the contempt petition. The respondents, therefore, are not entitled to claim in these proceedings as a matter of right promotions to any higher posts. We, however, do not desire to make any observations which will come in their way if the UPSC is inclined to look into the matter. In that case, the UPSC may constitute review Departmental Promotion Committees and give them pro forma promotions and seniority in the promotional posts from the relevant years, if they are otherwise eligible to the same. We say nothing more on the subject.

13. As regards the emoluments of higher posts with retrospective effect, we find that the High Court had categorically denied the same to the respondents even on the basis of their claim to higher grades in Class-III posts. Further, even the entitlement of the respondents to the higher grades in Class-III posts as per the directions of the High Court was on the basis of the quota and rota rule which in itself is both inequitable and irrational. Time and again, the rule has been criticised on account of the absurd result to which it leads, viz., the deemed appointments have to be given to the concerned employees even from the dates when they were not in service and probably when they were still in their schools and colleges. We are informed across the Bar that this is the situation even with respect to some of the respondents herein. The quota and rota rule had to be worked out in the present case from the year 1954 as per the direction of the High Court and the Tribunal. There is, therefore, neither equity nor justice in favour of the respondents to award them emoluments of the higher posts with retrospective effect. It is for this reason that we are of the view that the decision of this Court such as in P. S. Mahal & Ors. v. Union of India & Ors (1984) 3 SCR 847 directing the payment of higher emoluments with retrospective effect on account of the deemed promotions of earlier dates will not be applicable to the facts of the present case and have to be distinguished.

L. and H.

It is true that the appellant-Railways had failed to give correct effect to the decision dated July 30, 1975 of the High Court in LPA No. 220 of 1972, and had kept the matter hanging till this day for no fault of the respondents. The High Court by its said decision had directed the appellant-Railways to prepare a seniority list within three months from the date of the decision, and also to proceed to make further promotions in the higher grades in accordance with law, rules and orders in force from time to time. But it is equally true that during all these years the higher posts were not vacant and were manned by others and the appellant-Railways had paid the incumbents concerned the emoluments of the said posts. The respondents have not actually worked in the said posts and, therefore, on the principle of "No work no pay" they will not be entitled to the higher salary. Hence, we give no directions in this behalf and leave it to the appellant to give such relief as they may deem fit.

9. In June, 1983, the General Manager, Northern Railway, issued a revised seniority list in regard to Traffic Apprentices recruited from 1954 to 1962 keeping in view the judgments delivered by various High Courts, Railway Board's instructions and after examining all representations. The seniority list was circulated for information of the concerned staff. The General Manager wrote a letter dated 30.7.1982 to the Secretary (Establishment), Railway Board, New Delhi saying that as a consequence of revision of seniority list in Class-III the following repercussions will arise :

i) Several Traffic Apprentices who will get higher seniority will have to be incorporated in the panels already formed and operated in the past for promotion to Class-III and II in T(T) & C Department.

ii) As a result of revision of seniority of Traffic Apprentices some Class-II officers of T(T) & C Deptt., may be due for reversion and similarly some senior scale officers may have to be reverted to Class-II or Junior scale.

L. M. H.

(19)

iii) The total number of Traffic Apprentices whose seniority is to be revised from 1954 to 1963 is about 100 out of which about 42 Traffic Apprentices are yet to be promoted to Class-II service.

iv) In the absence of complete records, the dates of promotion/seniority will be revised completely on notional basis.

v) The rankers in the categories of Station Supdt./Traffic Inspectors/Chief Yard Masters/Chief Controllers will not be affected as most of them have since retired except about 10 to 15 rankers who are still in service.

vi) As a result of amendment in Class-II panels, the names of Class-II officers of T (T) & C Deptt., who will get higher seniority, may have to be incorporated in the panels formed by the Railway Board in consultation with UPSC for their promotion to senior scale and JA Trade.

vii) Proforma promotions as well as refixation of pay will have to be done in large number of cases of Traffic Apprentices who will be getting higher seniority from retrospective effect.

10. The Railway Board had issued various orders from time to time interpolating the names of the applicants in the panels for promotion to Group 'B' service in T(T) & C Department.

11. The applicants have requested for the relief to interpolate their names in Group 'B' panel of 1972-73 as amended on 12.2.1988 at appropriate places above their juniors and direct the respondents to fix their salaries accordingly after having interpolated them in Group 'B' panel. The payment of arrears of pay and allowances as admissible has also been requested.

12. The important contentions of the learned counsel for the applicants are -

Learned

(i) after re-fixation of seniority according to judgments of courts and CAT, the applicants should be interpolated in 1972-73 panel on the basis of their ACRs as their juniors were included;

(ii) the 'selection procedure' has become irrelevant since in the zones of selection for preparation of panels, those who have become junior on revision of seniority, were also taken and some of them would not have come in the zone if seniority was correctly taken. Therefore, the assessment of comparative merit on the basis of gradings, namely, outstanding, very good and good, have lost meaning;

(iii) even retired employees were included in the panel reducing the number of vacancies;

(iv) the applicants had qualified in the tests, and should be interpolated in 1972-73 panel;

(v) the arrears of pay should also be admissible according to the decision taken in the case of Vishnu Dange vs. Union of India (SLJ 1988(3) CAT 315). The learned counsel for the applicant quoted other cases also in this regard.

11. The contentions of the learned counsel for the respondents are -

(i) those who were eligible and suitable for interpolations according to revised seniority have already been interpolated according to their revised seniority in the panels of the appropriate years:

Launhly

(ii) revised seniority list was prepared in February, 1987 in terms of Tribunal's judgment in Avinash Chandra Chadha vs. Union of India (T-246/85) and in O. P. Malik vs. Union of India (T-431/85) and CCp No.17/87 on the basis of which supplementary selections for grade-B of T(T) & C were made. Thus apart from 1978/79 selections which could not be acted upon for quite long due to pendency of cases in courts, supplementary tests were also held in 1980 and 1987 and as a result of the tests of 1978-79, 1980 and 1987 interpolations have already been made;

(iii) the judgment of the Hon'ble Supreme Court had mentioned that promotion was not contemplated from grade-III to grade-II (Group 'B') in earlier judgments of the High Court;

(iv) those retired as well as persons on deputation have to be accounted for in the panel, if they were in service or on deputation at the relevant time;

(v) regarding payment of arrears, the Hon'ble Supreme Court has clearly observed in CA No.2013/90 that payment of higher emoluments with retrospective effect on account of deemed promotions of earlier dates was not applicable;

(vi) Shri Ved Prakash (one of the applicants), had passed in the written test of 1978-79 but failed in viva voce of 1979;

(vii) the applications of Shri Ved Prakash and Shri B. R. Sharma and others are barred by limitation. Further the application of Shri Kartar Singh says that the application was

Lamby

filed by him and four others whereas the total number of applicants is four only and not five. The application is not signed and verified by the applicants other than Shri Kartar Singh. The designations of the applicants other than Shri Kartar Singh are also not given and the applicant is undated.

12. The counter in the case of Shri Ved Prakash filed by the respondents has not been taken on record since this counter was filed after the right to file it was forfeited due to default despite several opportunities having been given earlier. Besides the applicant's counsel did not have the opportunity to go through the counter and give rejoinder.

13. We would now first deal with the last contention of the learned counsel for the respondents in regard to the technical defects in the applications. It is found that the case of Shri Ved Prakash is not barred by limitation since he had filed a representation on 9.2.1988 and the application filed on 30.3.1989 was well within 18 months. The case of Shri B. R. Sharma & ors. is also within limitation since his application was filed on 8.3.1988 and is against the panel of 12.12.1988 and subsequent ones. Similarly the case of Shri Kartar Singh filed on 5.4.1988 against panels of 1988 are within the period of limitation. The application of Shri Kartar Singh, though not technically verified by other applicants, yet there is a memo of signatures of other applicants attached to the application. Though the designations of the other applicants are not given, yet their addresses are available. Because of prolonged litigations in the cases, it should not have been difficult for the

Learned

respondents to know their designations. In any case, small technicalities should not stand in the way, if substantial issues are involved.

14. It is also to be kept in mind, as observed in the judgment of the Hon'ble Supreme Court in CA No.2013/90 that promotion to Class-II post (Group 'B') is not made exclusively from Class-III service of T & T Department. The incumbents of Class-III service in Commercial Department are also entitled to be considered for promotion to Class-II post.

15. So far as the allegation of inclusion of retired personnel is concerned, it is seen from their letter of 16.2.1989 that the Railway authorities have already excluded the names of persons already retired/absorbed in RITES.

16. Analysing the issues in the aforesaid applications and on the basis of pleadings in the cases and the arguments, the position that emerges in regard to interpolation of the applicants in the panels is indicated below :-

(i) Shri B. R. Sharma has already been included provisionally in the panel of 1972-73 vide letter of 12.12.1989;

(ii) Shri Kartar Singh is approved by the Railway Board for inclusion in 1972-73 panel vide letter of 16.2.1989;

(iii) Shri P. N. Soni is also approved for inclusion in 1972-73 panel vide letter of 16.2.1989.

Lamli

17. Thus the relief in regard to inclusion in 1972-73 panel has already been given to the three applicants above. We are now left with four applicants.

18. It is observed from the letter of 10.6.1988 (Annexure-X of MP 1504/88 in Kartar Singh's case) that S/Shri S. N. Narula, S. P. Gupta and A. C. Chadha had taken the selection test in 1978-79 and were successful. So far as Shri Ved Prakash is concerned, the learned counsel for the respondents intimated that he had passed in the 1978-79 written test but failed in viva voce and, therefore, he could not be interpolated. There is nothing on record also to show that he had qualified.

19. It has been argued by the learned counsel for the applicants in the course of hearing as also in the rejoinder that those who had qualified in the first attempt should be interpolated in the earlier panel of 1972-73 according to their revised seniority.

20. In the conspectus of the aforesaid facts and especially keeping in view the position that S/Shri Narula, Gupta and Chadha had qualified in the test of 1978-79, we would direct that these three applicants should be considered for interpolation in 1972-73 panel if they are eligible according to their revised seniority and if they are also suitable according to their ACRs, provided the vacancies existed. In determining the vacancies it has also to be kept in view that if a junior has been included in the panel whose grading was not higher than that of any of the three applicants or if any junior who would not have come in the zone but was included even with a higher grading than that of

Lambh

(25) (6)

any of the applicants, he would have no claim over the three applicants. So far as Shri Ved Prakash is concerned, if he had failed in *viva voce* in 1979, then his case for interpolation has to be considered only in a later panel according to the rules and principles of the Railway Board after he qualifies in the selection. If as a result of consideration as above, if any existing incumbent in the panel is adversely affected, he should be given a chance of hearing or representation in accordance with the basic principle of natural justice [1986(3) SLR 416 - *Jhaman Singh & Ors. vs. Union of India*]. The consideration as proposed in this para should be finalised within a period of six months from the date of receipt of a copy of this order.

21. So far as the arrears of emoluments are concerned, there is no case for payment of arrears, as this matter has already been clearly dealt with in the judgment of the Hon'ble Supreme Court in CA No.2013/90. However, pro forma promotion and notional fixation of pay should be done from the dates of deemed promotions after inclusion in panel. This would also be consistent with para 8(vii) of Railway Board letter dated 30.7.1982 (Annexure A-9 to the application of Shri B. R. Sharma & Anr.).

22. With the directions as given in the preceding two paras, the case is disposed of with no orders as to costs.

(I. P. Gupta)
Member (A)

(Ram Pal Singh)
Vice Chairman (J)