

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

(7)

O.A. No. 326
TAXA

1986

DATE OF DECISION 3.8.1987

Shri S. B. Sharma and others Petitioner

Shri S. C. Gupta with Sh. B. S. Mainee Advocate for the Petitioner(s)

Versus

Union of India Respondent

Shri K. N. R. Pillai Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. S. P. Mukerji, Administrative Member.

The Hon'ble Mr. Ch. Ramakrishna Rao, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? Y
2. To be referred to the Reporter or not? Y
3. Whether their Lordships wish to see the fair copy of the Judgement? NO

Ch. Ramakrishna Rao
(Ch. Ramakrishna Rao)
Judicial Member

S. P. Mukerji
(S. P. Mukerji)
Administrative Member

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
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O.A. No.326/86 (6)

DATE OF DECISION : 3.8.1987

Shri S.B. Sharma and
others . . . Applicants

Versus

Union of India . . . Respondents

Shri S.C.Gupta with Counsel for
Shri B.S.Mainee . . . Applicants

Shri K.N.R.Pillai . . . Counsel for Respondents

CORAM :

The Hon'ble Mr. S. P. Mukerji, Administrative Member
The Hon'ble Mr. Ch. Ramakrishna Rao

(Order pronounced by Hon'ble Sh.S.P.Mukerji,
Administrative Member)

JUDGMENT

Shri S. B. Sharma and nine others who entered railway service through the Railway Service Commission as directly recruited Graduate Engineers to the post of Apprentice Signal Inspectors Gr.II between 4.5.1983 and 24.9.1984 on various dates, have moved this application under Section 19 of the Administrative Tribunals Act, 1985 praying that they should be automatically promoted to the upgraded scale of Rs.700-900 with effect from 1.1.1984 and the respondents be restrained from going in for directly recruited Graduate Engineers in the upgraded scale of Rs.700-900 till all the applicants

are promoted. They have also prayed that the engineering graduates recruited subsequent to the applicants should be junior to the applicants.

2. The matrix of the relevant facts of the present application can be summarised as follows. As already indicated the applicants were selected by the Railway Service Commission and appointed as apprentices on various dates between 4.5.1983 and 24.9.1984. After their respective period of apprenticeship they joined the working posts of Inspector Gr.II in the scale of Rs.550-750 on various dates between 20.5.1984 and 2.7.1985. In the meantime the Railway Board on 11.5.1984 issued orders relating to cadre review and restructuring of group 'C' cadre increasing the percentage of higher posts in various Group 'C' categories with effect from 1.1.1984 as a result of which additional vacancies arose in various grades. The railway servants working in a particular grade were given one step promotion to the vacancies of the next higher grade on the basis of seniority-cum-suitability without any addition against the vacancies existing on 1.1.1984 and those arising due to restructuring. It was also laid down that direct recruitment of engineering graduates to the grade of Rs.550-750 to which the applicants had been appointed will be stopped and replaced by direct recruitment of engineering graduates in the scale of Rs.700-900 to the extent of 20% and 80% will be by promotion against the vacancies arising after 1.1.1984. The specific qualifications prescribed

for engineering graduates for the abolished direct recruitment to the scale of Rs.550.750 were to apply automatically to the direct recruitment for the grade of Rs.700-900.

3. The applicants have primarily claimed that since by the restructuring order dated 11.5.84 the direct recruitment of engineering graduates in the scale of Rs.550-750 has been virtually replaced by the direct recruitment of the engineering graduates to the scale of Rs.700-900. The applicants who were directly recruited to the former grade should be absorbed automatically as direct recruits in the scale of Rs.700-900. They have justified this claim by stating that if it is not done the engineering graduates who would be directly recruited in future after the applicants, would automatically get into the higher scale of Rs.700-900 and will become senior to the applicants. They have also argued that by giving the retrospective effect to promotion with effect from 1.1.84 even those who have been holding regular posts of Rs.550-750 and had been selected or promoted to this grade after the applicants have been selected by the Railway Service Commission, would be senior to the applicants by one step promotion to the next higher grade of Rs.700-900.

4. The respondents have stated that the competent authorities have the power to modify the rules for administrative requirements and the respondents had the right to replace direct recruitment of engineering graduates in the scale

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of Rs.550-750 by that to the scale of Rs.700-900. The applicants have been enabled to compete as direct recruits ~~has~~ age relaxation up to the age of 45 years ^{has} been provided for. So far as the applicants' argument that the junior appointees to the scale of Rs.550-750 or Rs.425-700 being eligible for promotion with effect from 1.1.1984 to the next higher grade of Rs.700-900 or Rs.550-750 respectively will become senior to the applicants is concerned, the respondents have stated that since the applicants have been working as apprentices while others were holding working posts of Rs.550-750/Rs.425-700, the applicants should have no grievance, if those holding the working posts are eligible for consideration for promotion to the next higher grade with effect from 1.1.1984.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. So far as the applicants' prayer for automatic promotion as direct recruits to the next grade of Rs.700-900 is concerned, this issue was adjudicated upon by the Madras Bench of the Tribunal in transferred application no.784/86 by the judgment dated 9.1.1987. Paras 8 to 10 of the judgment is quoted below.

"8. The learned counsel for the petitioners has argued that since fresh Engineering Graduates would become senior to Engineering Graduates with greater experience and will be doing the same type of job, all Graduate Engineers working in the grade of Rs.550-750 must be promoted automatically to the grade of Rs.700-900. He has argued that had the grade of Rs.700-900 been made available earlier, no Engineering Graduate would have joined in the lower grade. The learned counsel for the Respondents, however, made it clear that the responsibilities of supervisors in the grade of Rs.700-900 are

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higher than those working in the grade of Rs.550-750. It is true that further recruitment of Engineering Graduates in the grade of Rs.550-750 is discontinued; it does not automatically entitle the Engineering Graduates working in the grade of Rs.550-750 for promotion to the next grade. However, their chances of promotion are excellent as 80% of the vacancies in the higher grade would be filled in by promotion. This promotion, however, will not be limited to Engineering Graduates but also to those who are already in that grade on promotion from various feeder services. Many persons now working in the supervisory Group 'C' cadres, who are not Engineering Graduates, are in fact senior to some of the Engineering Graduates and, therefore, the question of promoting all Engineering Graduates, over the head of others in the same grade, cannot arise.

9. We feel that the Railways have made a change to improve the position both for the Engineering Graduates as well as the non-Engineering Graduates by increasing the promotion quota from 75% to 80%. In fact, by increasing the percentage of posts in the grade of Rs.700-900 from 15% to 27% and in the grade of Rs.840-1040 from 10% of posts in Rs.700-900 to 10%, we find that the number of posts available for promotees from the grade of Rs.550-750 would be much larger than they would have got earlier. The number of posts in the grade of Rs.700-900 has gone up nearly by 100% of which 80% would be by promotion from the grade of Rs.550-750. As such, in the overall, even the Engineering Graduates would stand to benefit by the cadre restructuring. Government certainly have a right to stop further recruitment of Engineering Graduates to a lower grade and start such recruitment at a higher grade but that by itself does not give any right to the persons working in a lower grade to automatically assume higher responsibilities. It is not the case that the grade of Rs.550-750 has been changed to Rs.700-900. There can be similar qualifications for posts in different grades but the responsibilities and pay scales may be different for such posts. We feel that by restructuring the chances of promotion of Engineering Graduates would become better even though it is true that some fresh Graduate Engineers may become senior to them because of their initial recruitment to a higher grade carrying higher responsibilities as well.

10. In the circumstances of the case, we see no merit in the arguments of the petitioners and the petition is, therefore, rejected. There will be no order as to cost."

respectfully
We agree with the above judgment and find that the
applicants has no case for automatic promotion as

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direct recruits to the higher grade of Rs.700-900.

The applicants can compete for the higher grade as direct recruits as sufficient age relaxation up to the age of 45 years has been provided for.

6. In sofar as the applicants contention that their juniors in the scale of Rs.550-750 have been made eligible for promotion to the next higher grade ^{or Rs.425-700,} _^ is concerned, it is an admitted fact that the

⁶ applicants were appointed only as apprentices on various dates between 4.5.83 and 1.6.1984 and in that capacity they were given only [^] _^ stipend. It is also admitted that they joined the regular working posts in the scale of Rs.550-750 on different dates between 20.5.84 and 4.5.85. It is thus clear that on 11.5.84 when the restructuring order was passed giving accelerated promotions to the existing incumbents of various grades with effect from 1.1.1984, None of the applicants had taken over any working post in the scale of Rs.550-750. Thus, the existing incumbents ^{in that scale} of regular posts as on 11.5.84 will have to be deemed to be senior to the applicants even if the promotion to the existing incumbents were not given retrospectively from 1.1.84 but from 11.5.84. Likewise, even if the promotion of persons from the next lower grade of Rs.425-700 to the scale of Rs.550-750 were not given retrospective effect from 1.1.1984 but from the date of issue of order ^{will} i.e. on 11.5.1984 they will [^] _^ have to be deemed to be senior to the applicants who joined the scale of Rs.550-750 later than 11.5.1984. Thus, the applicants

can have no grievance by the promotion under the restructuring scheme ^{of} the existing incumbents from the scale of Rs.425-700 to the scale of Rs.550-750 with retrospective effect from 1.1.1984 nor by the promotion of existing incumbents ^{of} Rs.550-750 to the next higher scale of Rs.700-900 with effect from 1.1.1984.

7. The learned counsel for applicants Shri S.C.Gupta strenuously argued that in accordance with para 4.3 of the order of 11.5.1984 the applicants who had already been selected by the Railway Service Commission before 30.4.84 should be promoted to the next higher scale of Rs.700-900. A perusal of paras 4.1, 4.2 and 4.3 and paras 5.1, 5.2 and 5.3 of the aforesaid ^{order on quoted below} will make the position clear.

"4.1. The existing classification of the posts covered by these restructuring orders, 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 the grade of the 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 scrutiny of service records without holding any written and/or viva voce test. Naturally, under this procedure, the categorisation as "Outstanding" will not exist.

4.2. In case, however, as a result of these restructuring orders, an individual railway servant becomes due for promotion to a grade more than one grade above that of the post held by him at present on a regular basis, the benefit of the modified procedure of selection as aforesaid will be applicable only to the first such promotion (if that post happens to be a "Selection" post, the second and subsequent promotions, if any, will be based only on the normal rules relating to filling in of "Selection" or "Non-Selection" posts (as the case may be).

4.3. Vacancies existing on 1.1.1984 and those arising on that date from this cadre restructuring should be filled in the following sequence:-

- i) from panels approved on or before 30.4.84 and current on that date; and
- ii) balance in the manner indicated in paras 4.1 and 4.2 above.

5.1. The extant orders regarding recruitment of Engineering Graduates to grade Rs.550-750 will stand modified in that :-

- 1) 20% of vacancies arising after 1.1.1984 in trade Rs.700-900 in the category of technical supervisors of all Departments will be filled by direct recruitment of Engineering Graduates through Railway Service Commissions.
- 2) There will be no direct recruitment in future in the grade of Rs.550-750, except that where a panel of candidates for direct recruitment in this grade has already been received by a Railway Administration from the Railway Service Commissions, appointments therefrom (subject to usual formalities) will be made to the grade Rs.550-750.

5.2. Specific qualifications prescribed for Engineering Graduates for recruitment currently to grade Rs.550-750 will now automatically apply to grade Rs.700-900.

5.3. There is currently provision for direct recruitment in the category of Chemists and Metallurgist assistants in grade Rs.425-700 to the extent of 33-1/3%. Consequent to restructuring the percentage of direct recruitment to grade Rs.425-700 will be raised to 66-2/3%. The qualifications prescribed will remain unchanged. This will, however, be effective for vacancies arising after 1.1.1984.

The above will show that provisions in paras 4.1, 4.2 and 4.3 apply to promotion of officers holding regular posts in one grade to the next higher grade.

The 'Panels' referred to in para 4.3 are about the panels prepared by the Departmental Promotion Committees for promotion to the next higher grades and cannot include the applicants who were directly recruited by the Railway Service Commission

and were only in the state of apprentices when the aforesaid order was issued on 11.5.1984. The learned counsel Shri S.C.Gupta further argued that the applicants are entitled to promotion against 20% vacancies in the scale of Rs.700-900 by virtue of para 5.1 above. A bare reading of the aforesaid para clearly indicates that direct recruitment to the 20% vacancies in the scale of Rs.700-900 will be against the vacancies which arose only after 1.1.1984; i.e., after ^{the} ~~filled~~ ^{and the} ~~filled~~ vacancies as on 1.1.1984. Vacancies arising due to restructuring have both been filled up in accordance with para 4.3 above. The applicants who were recruited as the apprentices in the scale of Rs.550-750 and joined the working posts after 11.5.1984 in that grade cannot claim automatic promotion ^{accordance with} ~~to~~ the scale of Rs.700-900 in para 5.1 above.

as
In the circumstances, there is no
merit in the application the same is rejected.
There will be no order as to costs.

Announced in open court.

Ch. Ramakrishna Rao
(Ch. Ramakrishna Rao)
Judicial Member

S.P. Mukerji
3.8.87
(S.P. Mukerji)
Administrative Member