

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
N E W D E L H I

(11)

O.A. No. 999/86
xxXXXXXX

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DATE OF DECISION 14.8.1991.

Shri Satya Parkash & Ors. Petitioner

Shri G.D. Bhandari Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Shri B.K. Aggarwal Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. T.S. Oberoi, Member (J)

The Hon'ble Mr. I.K. Rasgotra, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. Whether it needs to be circulated to other Benches of the Tribunal ? No

D.S.
(T.S. Oberoi)
Member(J)
14.8.91.

I.K.R.
(I.K. Rasgotra)
Member(A)
14.8.91.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO.999/1986

DATE OF DECISION: 14.8.1991.

SHRI SATYA PARKASH & ORS.

...APPLICANTS

VERSUS

UNION OF INDIA & ORS.

...RESPONDENTS

CORAM:

THE HON'BLE MR. T.S. OBEROI, MEMBER (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANTS SHRI G.D. BHANDARI, COUNSEL

FOR THE RESPONDENTS SHRI B.K. AGGARWAL, COUNSEL

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR. I.K. RASGOTRA, MEMBER (A))

S/Shri Satya Parkash, Raj Narain, Tilak Raj Bhardwaj and Ripu Daman, who are working as Senior Fuel Inspectors (SFIs)/Senior Loco Inspectors (SLIs) on the Northern Railway have filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, challenging the order No.940-E/17/XXV(Eia) dated 13.9.1985 against the respondents (Union of India through General Manager, Northern Railway and four other respondents) who are working as Assistant Mechanical Engineer (Diesel) (AME Diesel for short) viz. S/Shri K.K. Asthana, AME Diesel, Shakurbasti, J.R. Logani, AME Diesel, Tughlakabad, V.K. Asthana, AME (Diesel), Bhagat-ki-kothi (Rajasthan) and S.K. Bhatnagar, AME (Diesel), Mughal Sarai.

2. The case of the applicants is that after receiving various promotions, applicant No.1, 3 and 4 were promoted as Senior Loco/Fuel Inspectors w.e.f. 19.9.1975 while

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applicant No.2 was promoted w.e.f. 16.6.1977 in the grade of Rs.840-1040 (RS). The applicants were confirmed in the feeder grade of JFI/JLI/JDI of Rs.700-900 w.e.f. 11.7.1975 except applicant No.4 who was confirmed earlier on 1.3.1972. The next promotional grade for the applicants is that of Assistant Mechanical Engineer in Group 'B'. These posts are filled up in accordance with Railway Board's letter No.E(GP)74/2/20 dated 31.8.1978 (Annexure E) according to which 75% of vacancies in Group 'B' are filled up by promotion through selection from amongst staff holding the post in the grade of Rs.425-640 (AS) and in higher Group 'C' grade on a regular basis provided they have rendered a minimum of three years' non-fortuitous service and have reached the stage of Rs.560/- in the scale of Rs.425-640 (AS) or above. The remaining 25% of the vacancies are to be filled through a limited departmental competitive examination open to all Group 'C' staff in the grade of Rs.425-640 (AS) and above and who have put in a minimum of five years' regular service in the grade.

A selection for the Group 'B' posts of AME was held in the year 1980. In the list of candidates the applicants No.3,1 and 4 appeared at srl. No.72, 74 and 76 whereas Respondents No.3, Shri J.R. Logani appeared at srl. No.85. In the next selection held in the year 1984 the applicants' name appeared in the list of candidates considered for promotion at srl. Nos.22, 28, 20 and 24 respectively whereas the names of Respondents No.3, 4 and 2 find place at srl. Nos.42, 46 and 47 respectively. Respondent No. 5, Shri S.K. Bhatnagar was not within the field of eligibility. In these selections neither the applicants nor the respondents were empanelled by the Departmental Promotion Committee. The Respondents No.2-5 though juniors to the applicants, however, were promoted on ad hoc basis as AME in 4/1982, 1985, 1982 and 9/1985 respectively and it is the ad hoc promotion

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of junior persons that the applicants are aggrieved of. The applicants further submit that Respondent No.2 filed an Original Application No.726/86 under Section 19 of the Administrative Tribunals Act, 1985, claiming his right to be selected as AME on regular basis and which is said to be pending in the Tribunal. He had based his claim, taking into consideration ad hoc service rendered by him in the grade of Rs.700-900. Similarly, another Original Application No.732/86 filed by V.M. Mahajan is also said to be pending. The applicant therein had challenged the Railway Ministry's order dated 5.3.1983 which directed preparation of integrated seniority of the Railway servants in the grade of Rs.700-900 and Rs.840-1040 for determining eligibility of candidates. Both the OAs viz. 726/86 and 732/86 are said to be pending. The applicants submit that they have been working in the grade of Rs.700-900 and Rs.840-1040 regularly without any break. There are no adverse remarks in their confidential reports and that their work performance has been excellent. They, therefore, contend that they have been ignored by the respondents for ad hoc promotion to the post of AME "Rs.650-1250" arbitrarily and illegally. The applicants made various representations against promotion of their junior but there has been no response. They further contend that the concerned heads of department viz. Mechanical, Operating and Personnel were convinced of the stand of the applicants and that they recommended their case for ad hoc promotion as AME to CMPE (Diesel) in file No.940-E/17.XVII/Eia maintained in the office of Respondent No.1 but the CMPE (Diesel) instead of accepting the right of the applicants decided to ignore their case.

Applicant No.1 again sought personal interview with General Manager and C.O.P.S. and requested for their intervention. He submits that in File No.99/17/XXX/Eia, verdict was given in his favour and the file sent to

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Chief Personnel Officer who in turn agreeing with the recommendations of the COPS asked CMPE (Diesel) to give his concurrence to the promotion of applicant No.1., yet he was not promoted. The applicants, however, base their claim on seniority and having qualified in the Advance Fuel Economy Course for ad hoc promotion to the post of AME and find support for their claim in the Railway Board letter No.E(NG)1-81/PMI-221 dated 28.6.1982 which stipulates that only the seniormost persons available in the seniority list should normally be promoted in ad hoc arrangements unless the competent authority declares them unsuitable (Annexure H).

By way of relief the applicants have prayed that the impugned order of ad hoc promotion dated 13.9.1985 alongwith other similar ad hoc orders of respondents No.2-4 as AME be set aside and quashed, being violative of statutory rules and that applicants be ordered to be considered for ad hoc promotion in place of the respondents.

3. The respondents in their counter-affidavit have pointed out that there are different streams of Class III categories in Mechanical Department of the Northern Railway who are considered for promotion as AME, Group 'B'. The applicants constitute one stream viz. Loco/Fuel Inspectors while respondents No.2-5 belong to another stream viz. Diesel Maintenance side. Regular promotion to the post of AME is made after a selection in accordance with the rules framed by the Ministry of Railways on the basis of integrated seniority, prepared on the basis of date of appointment to the grade of Rs.700-900 (RS) on a non-fortuitous basis. The inter-se-seniority within each stream is to be maintained, i.e, those selected earlier will be senior to those selected later. The litigation between the two streams viz. Loco Fuel Inspectors and Diesel Maintenance side has been going on in the Tribunal for

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quite some time and, consequently, it has not been possible to hold regular selection and appointments have been made to fill up the vacancies on ad hoc basis. In absence of the proper selection, ad hoc promotions have been made only in public interest and keeping in view the exigencies of service. The respondents submit that the applicants have already retired from service; nevertheless, Shri Satya Parkash, applicant No.1 was considered while making adhoc promotion and since he had no experience of diesel locos he could not be promoted on ad hoc basis.

4. The learned counsel for the applicant Shri G.D. Bhandari submitted that the applicant No.1 Shri Satya Parkash had been recommended for promotion by the Chief Operating Superintendent and Chief Personnel Officer but the CMPE (Diesel) did not accept the recommendation. He, therefore, requested that the record of the case may be summoned and examined by the Tribunal. The learned counsel for the respondents, Shri B.K. Aggarwal was accordingly directed to produce the record. On the final date of hearing on 9.8.1991, Shri Aggarwal submitted File No.946-E/17.XXVI/Eia and stated at the bar that there was no file with No.99-17/XXX/Eia. The learned counsel for the respondents also furnished a copy of the relevant note to the learned counsel for the applicant.

5. We have gone through the record file carefully and find that the policy for adhoc promotion followed on the Northern Railway is brought out in the Dy.CPO (G)'s note dated 6.11.1985. The relevant extract of the same is given below:-

"3. C.M.E. has, however, recommended that adhoc promotion as AME/Dsl. may be made only from the Diesel trained staff. In this connection, it is submitted that:-

- a) In the past also, adhoc promotion as AME/Dsl., have been made from amongst the Diesel trained staff.

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The last such promotion made was that of S/Shri Jagjit Singh, GFO/Dsl./LDH and S.K. Bhatnagar, GFO/BKGT, vide G.M's approval at PP 27-28 of Confidential Linked file No.E-258/G-IRSME.

4. In the seniority list of Loco/Dsl. Streams, there are 30 persons senior to Shri S.P. Murgai. Shri Murgai is, however, seniormost suitable in the Diesel side for adhoc promotion as AME/Dsl.

It is submitted that joint representation has been received from Shri Satya Parkash, SFI/Hd.Qrs. and others vide S.No.402 in which it has been requested that adhoc promotions to Class II may be made on seniority-cum-suitability basis and they may also be considered in Diesel side, "since they also qualified Diesel Advanced Course and are fully conversant with the techniques and maintenance aspect of diesel operations."

5. C.M.E. may kindly consider the claim of the Representationists. If it is considered that in administrative interest, Diesel trained staff could only be considered for adhoc promotion as AME/Dsl., the proposal for such promotion of Shri S.P. Murgai may be submitted to G.M. for his approval."

The C.M.E., however, expressed the view that "none of the representationists (applicants herein) have any experience and idea of maintenance of diesel locos for which the post of AME Diesel exists in Diesel shed. Further they are due retirement in a year or two and cannot be accepted to learn a new technology and any effective contribution at this stage."

We, therefore, find that there was no specific recommendation from any head of the department that the applicants, particularly, applicant No.1 should be promoted as AME (Diesel). All that transpires from the notes is that

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the Personnel Branch had brought out on record the normal policy stipulated by the Railway Board for adhoc promotion on the basis of seniority-cum-suitability. The Mechanical Branch, however was of the view that untrained diesel hands will not be able to work as AME (Diesel) and, therefore, decided to continue the policy followed for adhoc promotion to the grade of AME (Diesel) in the Mechanical Branch, as brought out in the Deputy CPO (G)'s note. Since the post of AME (Diesel) is a technical post, involving technology different from the technology of the steam traction and the promotion of the junior persons from the diesel maintenance side recommended/made is in line with the policy followed on the Railways, We do not find any justification, warranting our interference in the matter of ad hoc promotion of AME (Diesel). The O.A. is, accordingly, dismissed, with no order as to costs.

Dalupur
(I.K. RASGOTRA)
14.8.91.

/SKK/

oberoi
(T.S. OBEROI)
MEMBER(J)
14.8.91.