

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO. 1355/87

Date of decision: 30.11.1990.

Shri S.C. Gupta ...applicant

Versus

Union of India & Others ...Respondents

CORAM:

THE HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN

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

Advocates:

For the applicant Shri R.P. Oberoi

For the respondents Shri O.N. Moolri

(Judgement of the Bench delivered by Hon'ble
Mr. I.K. Rasgotra, Member (A))

Shri S.C. Gupta, Assistant Station Master (ASM),
Rajghat Narora, Moradabad Division, Northern Railway
has filed this application under Section 19 of the
Administrative Tribunals Act, 1985, aggrieved by lack
of response to his representation dated 14.8.1986
addressed to respondent No.2 viz. General Manager,
Northern Railway, seeking exemption from appearing in
the competitive examination for 10% graduate quota for
the post of Section Controllers (Rs.250/270-380).

2. The applicant was selected for appointment in
1961 as Station Master Group Student and was appointed
ASM (Rs.80-170) in the transportation department of the
Railways. The revised scale of the post of ASM
occupied by him w.e.f. 1.1.1986 is Rs.1400-2300. In

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pursuance of a decision taken in February, 1972 to fill up 10% of the posts of Traffic Apprentices from serving employees of Group 'C' (non-ministerial) working as Guards, Station Master, etc. who are graduates and who are less than 33 years of age, applications were invited by respondent No.3 to hold a qualifying competitive examination for the post of Section Controller (Rs.250/270-380) on 9.3.1973. The applicant submitted his application on 16.3.1973 for appearing in the competitive examination. However, the competitive examination was not held. In January, 1975, fresh applications were invited without any change in the condition of eligibility as prescribed in 1973 for competitive examination. Since the age of eligibility 33 years remained unchanged, the applicant became ineligible for the examination proposed to be held in 1975 having crossed the age of 33 years. It is alleged that in 1977, respondent No.3 promoted some employees on the basis of interview against 10% graduate quota when some of the ineligible persons i.e. who had crossed the age of 33 years were also called for selection by interview and appointed to fill up some of the posts. One of the persons so appointed is said to be Shri R.P. Singh who is at srl. No.11 of the list of candidates at Annexure-3. He was appointed as Section Controller in the pay scale of Rs.455-700 (R.S.).

Since a number of serving employees who were eligible for the competitive examination in 1973 became ineligible in 1975, the matter was represented by the applicants through their association to the respondents for considering the eligibility for 1975 examination. Consequently, a decision was taken on 9.6.1983 vide

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circular letter No.E/10/83.Graduate quota/Trans. to invite applications from such of the serving employees who were in service on 18.3.1972 and who had become ineligible on account of their having attained the age of 33 years between the period 18.3.1972 to 20.1.1975. It was further stipulated that the employees so selected through 1975 examination will rank junior to those who have already been appointed. The condition of seniority was, however, modified vide letter dated 24.12.1985 to the effect that "such of the employees who take the examination and come within the first 13 positions and who had become ineligible earlier by having crossed the age of 33 years prior to January, 1975 will be given seniority over those who had been appointed on the basis of examination held on 31.1.1976."

3. The applicant had in the meantime been promoted to the grade of Rs.455-700 w.e.f. 1.8.1982 under the restructuring and upgradation scheme for Group 'C' staff. The case of the applicant is that he had applied in the year 1973 for the competitive examination and had become ineligible having crossed the age of 33 years in 1975 when fresh applications for 10% graduate quota were invited and since he had already been promoted to the grade of Rs.455-700 w.e.f. 1.8.1982, his seniority should be antedated and placed above those who qualified in the examination held on 31.1.1976, after exempting him from passing the competitive examination. The applicant had sought exemption from appearing in the examination in 1975 on the ground that he had already been promoted to the higher grade of Rs.455-700. . The applicant's claim was investigated by the respondents but the result of the enquiry has not been communicated to him. The

applicant has come to the Tribunal as his representation dated 14.8.1986, seeking exemption from 1975 examination and the restoration of seniority above those who passed in 1975 examination, has not been answered by the respondents. He had also qualified/attained status in the following selections:

- i. he had passed the selection test for the higher grade post like Commercial Inspector (Rs.700-900) held in 1976;
- ii. Passed promotional course P-16 in December, 1980 and
- iii. qualified in the test for filling up general pool vacancies of 75% in the grade of Rs.455-700 in the year 1982.

The respondents have admitted that the applicant is presently working in the revised pay scale of Rs.1400-2300. It has been further submitted that the selection scheduled to be held in 1973 had to be abandoned due to some difficulty in the channel of promotion. It is also admitted that the respondents granted the benefit to those who qualified in 1975 but were otherwise ineligible on account of having crossed the age of 33 years, subject to such employees producing satisfactory evidence that they had applied for the post of Section Controller in the year 1973. The applicant, however, has not been able to produce such evidence to the satisfaction of the respondents. Whatever evidence the applicant adduced in the enquiry held by the respondents has been found to be unacceptable. The respondents have denied that any appointments were made merely on the basis of interview by respondent No.3 for 10% graduate quota. They have averred that a written test was held for the

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competitive examination on 28.11.1976 and 16.8.1977, viva voce was held for the 18 persons who qualified in the written test on 23.8.1977 and the result of the selection declared on 9.3.1979. It has also been denied that Shri R.P. Singh who is alleged to be ineligible was 33 years of age on the crucial date i.e. 1.1.1976, his date of birth being 1.1.1943. The allegations are thus stated to be baseless. The respondents have further clarified that the applicant was promoted to the grade of Rs.455-700 w.e.f. 1.8.1982 against the restructuring and upgraded posts of ASM. In regard to the various other examinations passed/qualified listed in paragraph 6.12 of the application the respondents have stated that:

- i) there is no record available to indicate that the applicant had qualified in the written test for the post of Commercial Inspector in the grade of Rs.700-900 in 1976.
- ii) He did pass P-16 course but that was a prerequisite for promotion to Rs.455-700 even when the promotion was ordered against restructured and upgraded posts.
- iii) He passed the written test against 75% vacancies in 1982 but this does not confer any benefit on him.

Further the representation made by him on 29.3.1986 is stated to have not been received by the respondents. His representation dated 15.9.1986 was replied by the respondents, directing him to produce the acceptable documentary evidence in support of his having been applied for the post of Section Controller in 1973

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which he has failed to do.

4. The applicant in the rejoinder (paragraph 6.6) has submitted that no intimation was given to the applicants who had applied for the competitive examination in response to circular dated 9.3.1973 as to why the applications had not been considered by the respondents. If the applicant had been advised of the fate of his application submitted in the year 1973, the present impasse would not have arisen. He has reiterated that besides representation dated 14.8.1986 at Annexure-I he had submitted several representations individually as well as through the staff union subsequently. However, the particulars of such representations have not been furnished.

5. Shri O.N. Moolri, the learned counsel for the respondents who was directed to produce the relevant records, however, submitted that the same are not available at this instant date.

6. Shri R.P. Oberoi, the learned counsel for the applicant filed some more documents along with an affidavit of the applicant and one acknowledgement duly received from the office of the Divisional Railway Manager which bears the postal stamp of 18.6.1975. He has also filed a copy of the application dated 15.1.1986 which bears the statement that this was a fresh application in continuation of "my old claim of 1973 and 1975 when I was not called by the administration to appear in the test vide DS Moradabad letter No.E3/75/SM dated 28.5.1975." The applicant has also denied that he ever received the letter of Divisional Railway Manager, Moradabad No.ET/4/72 Section Controller dated 28.1.1988 stating that the applicant failed to produce acceptable documentary evidence to prove that he had applied for selection to the post of Section Controller against the 10% graduate

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quota in the year 1973. He had denied that the signature affixed on the said letter in token of having received the same was his signature.

6. We have heard the learned counsel of both the parties. Our first observation is that the respondents have not been able to produce the original documents to prove or disprove the case of the applicant. The respondents had the matter investigated by a Welfare Inspector vide copy of the report at Annexure-R-1. The applicant has deposed in the inquiry that he had handed over his application for the said examination for 10% graduate quota to the Station Master/KD for onwards transmission to Divisional office, Moradabad. He demanded acknowledgement from SM/KD but he refused to oblige him. The Enquiry Officer has considered this as unbelievable, "as SMS and ASMs working at the same station live like one family" and such situations ordinarily do not arise. Moreover, Station Master was officially bound to give an acknowledgement to the applicant. Further the applicant remembers that he has submitted the application to the SM/KD who refused to give him acknowledgement, he does not remember the name of that Station Master nor does he recall the media through which SM/KD sent his application to Divisional office. He also does not recall as to whom the applications were to be addressed in the DS office. The only documentary evidence which he has been able to produce is his representation dated 16.6.1975 This has not been relied upon as in reply to question No.14 he stated that he had sent this representation directly although he has been sending these applications/representations through proper channel.

He had also not been able to produce a copy of his application. Postal acknowledgement due received shown to the Enquiry Officer and now filed by the learned counsel for the applicant bearing No.557 bears the postal stamp as earlier said of 18.6.1975. This is only acknowledgement due for representation. The Enquiry Officer has also brought out that the written test was arranged for Section Controller vide circular dated 14.1.1975 for nongraduates. The written test for serving graduates was fixed on 8.6.1975 vide circular dated 28.5.1975. Shri M.B. Lal, ASM, KD a colleague of the applicant had applied for the test but Shri Gupta did not. Shri Gupta on the other hand, showed ignorance of any such circular. In view of the statement of Shri Gupta and the enquiry officer's findings, no conclusive evidence emerged that he had applied for the examination 1973.. At the same time, we cannot ignore the reality that the respondents have not been able to produce the original documents. The investigation carried out and the conclusions drawn are also based on the statement of the applicant.

The mainstay of the claim of the applicant is that the application dated 16.6.1975 containing reference to the earlier application dated 16.3.1973 was sent by him under registered cover acknowledgement due and that another representation dated 29.3.1986 too was sent under a registered cover acknowledgement due. This, however, is not said to have been received by the respondents while these documents do not constitute direct evidence leading to a conclusive substantiation of the claim of the applicant, they do give a tilt to the balance in his favour, in absence of the original documents. Notwithstanding, we are not

persuaded to accept the argument that since he had already been promoted to the grade of Rs.455-700 w.e.f. 1.8.1982 under the restructuring and upgradation scheme his promotion should be made retroactive conferring him seniority along with those who appeared in the competitive examination for 10% graduate quota duly relaxing the age of eligibility in case of those who had appeared in the competitive examination held on 28.11.1976 and 16.8.1977 and finally empanelled after holding viva voce test vide declaration of the result on 19.3.1979. There seems to be no justification for such a claim as the applicant was promoted under the scheme and restructuring and upgradation without going through even the prescribed selection which would have been held under the normal circumstances for promotion to the grade of Rs.455-700. In fact he was appointed under modified selection procedure - a special relaxation given by the respondents. The claim of the applicant for grant of seniority above those who appeared in the competitive examination for 10% graduate quota in 1976/1977 on the basis that he was promoted to the grade of Rs.455-700 under the scheme of restructuring and upgradation lacks substance and merit. Further, such a claim is based on the assumption that had the applicant appeared in the competitive examination, he would have made the grade in the top 13 empanelled employees. We are not inclined to accept a hypothetical proposition where seniority is conferred on the applicant purely on the basis of an assumption that he would have made the grade in the competitive selection held in 1976/1977

but for his having been promoted under the restructuring scheme. The competitive examination and promotion under the restructuring scheme are not comparable and, therefore, the benefit claimed cannot be granted. We do not see any merit in the reliefs prayed for by the applicant.

In view of the above, the application fails and is dismissed with no order as to costs.

I.K. Rasgotra
(I.K. RASGOTRA)
MEMBER (A) 30/11/90

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30.11.90
(AMITAV BANERJI)
CHAIRMAN

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