

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

Date of Decision 8/5/92

O.A. No. 211/87 & O.A. No. 1568/91

O.A. 211/87

Chander Mohan Lal & Others --- Applicants
Vs.

Union of India rep. by Secretary,
Ministry of Railways and others --- Respondents

Counsel for the applicants --- Shri B.S. Mainee

Counsel for the respondents --- Shri R.L.Dhawan

O.A. 1568/91

Atal Prakash Kain & others --- Applicants
Vs.

Union of India through Chairman
Railway Board and others --- Respondents

Counsel for the applicants --- Shri B.B.Raval

Counsel for the respondents --- Shri R.L.Dhawan

CORAM

Hon'ble Mr.S.P.Mukerji, Vice Chairman

Hon'ble Mr.T.S.Oberoi, Judicial Member

1. Whether local reporters may be allowed to see the judgment?
2. To be reported or not?

JUDGMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

Since the circumstances, facts, law and reliefs claimed in these two applications are linked, they were heard together and are disposed of by a common judgment as follows.

2. The first application (O.A.211/87) was filed on 17.2.87 by 10 applicants who have been working as Draughtsmen ^{for promotion as Senior Draughtsmen} in the Northern Railway praying that the impugned order dated December, 1986 at Annexure.A.1 rejecting the representation of the first applicant against ^{for promotion as Senior Draughtsmen} cancelling the selection proceedings be set aside and the respondents directed to declare the results of the written examination and viva held between 8.7.84 and

14.11.84 and give the candidates declared successful the benefits of promotion flowing out of that selection.

3. The second application (O.A.1568/91) dated 8.7.91 was filed by the four of the ten applicants in the first application, praying that the notice dated 18.6.91 at Annexure-A calling upon 63 candidates to appear in the written test for promotion as Senior Draughtsmen be set aside and the respondents directed to promote the applicants as Senior Draughtsmen from the date onwards and in view of the scheme of restructuring with all consequential benefits and other benefits of pay and allowances.

4. The brief facts of these two cases are as follows. All the applicants in these two cases have been working as Draughtsmen Grade III in the scale of Rs.330-560. Their next promotion was to the post of Senior Draughtsmen in the pre-revised scale of Rs.425-600. It appears that the Railways on 14.6.84 issued a notice in the first application (Annexure-A.2) calling upon eligible Draughtsmen to appear in the written examination on 1.7.84 and also intimating that only those who passed the written examination will be called for viva. The ten applicants in the first application were amongst the 17 candidates who were declared successful in the written examination and were called for interview which was held on 13th and 14th of November, 1984. According to the applicants they did well in the interview. The results of this selection have not been announced so far. Instead, the Respondents issued a panel of 10 names on 2.6.86 (Annexure-V in the first application) on the basis of modified selection held on 29.5.86 for the post of Senior Draughtsmen. This list did not include the name of any applicants but

included the names of those who had either not appeared in the selection examination at all. On their representation the applicants were informed that in accordance with the Railway Board's letter dated 16.11.84 (Annexure R.1 in the first application) panels which were confirmed after 15.11.84 have been cancelled. The applicants in the first application have argued that those who had either not appeared in the written examination of 1984 or failed, and excluding those who had qualified in the written test and viva are unconstitutional and arbitrary and that the respondents had no authority to hold 'modified selection' ignoring the earlier selection proceedings held in accordance with the rules.

5. In the counter affidavit filed by the respondents in the first application it has been conceded that 17 candidates were successful in the written examination held in July, 1984 and they were interviewed on 13/14-11-1984. However, the Railway Board issued orders on 16.11.84 of restructuring and upgradation in the cadre of ^{D/mem} Draftsman with retrospective effect from 1.1.84. According to the Railway Board's instructions the existing vacancies as on 1.1.84 plus vacancies ^{occurring} as a result of upgradation are to be filled up by modified selection i.e., 'based only on scrutiny of service records without holding any written/other viva test'. (Railway Board's letter dated 16.11.84 at Annexure R.1 in the first application). The panels which could not be approved by 15.11.84 became infructuous. Accordingly since the results of the selection commenced in July, 1984 could not be finalised till 15.11.84, and the selection test was treated as null and void. By the process of modified selection based on the confidential reports of

dated 1.1.84 have been rejected. In the previous three years, the seniormost candidates available at that point of time, who had applied on 1.1.84 were placed in the panel of 10 at Annexure A.V. dated 2.6.86. They have argued that merely having been successful in the written examination and appearing in the viva the applicants in the first application cannot be said to have acquired any vested rights as against those who had failed but had been included in the panel through modified selection based on seniority.

6. In the rejoinder in the first application the applicants have stated that the cut off date of 15.11.84 for cancellation of the panel is arbitrary. They have also stated that in cases of some other categories, the cut off date would probably date has been declared to be 30.6.85. Their main argument is that even under the Railway Board's order of 16.11.84 the vacancies which were not available on 1.1.84 but had arisen after 1.1.84 could have been filled-up by means of modified selection process.

7. The four applicants who moved the second application dated 21.7.1991 were amongst the 10 applicants selected for the first application. They were promoted as Senior Draftsman on adhoc basis between December 1986 and March, 1987. Apart from the grievance indicated in the first application, their further grievance in the second application is that the Railways without declaring the results of 1984 selection and after issuing the panel of modified selection in 1986, again held the written test in June, 1987 and viva on 15.12.88 for promotion as Senior Draftsman. They have challenged this selection through an M.P. in the first application which was rejected thereby compelling the applicants to participate in the test in 1987 without their result of 1984 test still not announced. According

to the applicants the respondents to break & vengeance on the applicants for moving the Tribunal in the first application and to teach them a lesson, failed them in the written test but gave them adhoc promotion as Senior Draftsman between December, 1986 and March, 1987, while their juniors were allowed to qualify in the test of May, 1987 and February, 1988 and were placed in the regular panel of Senior Draftsman. Some of them have since been further promoted as Head Draftsmen. They were again required to appear in a written test notified on 20.7.91 but it was postponed to September, 1991 and cancelled thereafter. Their prayer in the second application is that the notice for the 1991 test be cancelled and respondents directed to promote them from the date of the scheme of restructuring as Senior Draftsmen. They have alleged that respondent No.3 Shri Keemat Anand who is working as an Executive Engineer in the Northern Railway is animically disposed towards the applicants and is manipulating to promote his own favourites by holding various tests and withholding the promotion due to the applicants since 1984. Their further contention is that the number of posts of Senior Draftsman enhanced from 29 as on 31.3.86 to 37 in November, 1987 due to restructuring/the upgradation and therefore these 8 posts should have been filled up by the modified selection process of seniority-cum-suitability without any written test or viva. The respondent No.3, however by violating the directions of the Railway Board arranging to hold written test one after another followed by viva for promoting his

favourites who were junior to the applicants. The applicants were compelled to appear in these tests and failed. They have also claimed that the vacancies resulting upon Cadre review/restructuring in the Civil Engineering Staff by conversion of the post of Tracers into Junior Draftsman through six monthly review were also to be filled up by the modified selection process which the third respondent has ignored. Their further contention is that having continuously held the post of Senior Draftsman for more than 5 years they are entitled to be regularised. In the M.P.No 2482/91 of 3rd September, 1991 the applicants further prayed that respondent No.3 should be disassociated from the whole process of selection.

8. In the counter affidavit the respondents have stated that the scheme of restructuring in drawing office was effected vide Railway Board's letter of 16.11.84 with effect from 1.1.84 and the panel for promotion as Senior Draftsman was issued on 2.6.86 (Annexure A.3). The cause of action of the applicants accrued in 1986 and accordingly the second application is time barred. The selection of 1984 was cancelled as the panel could not be finalised before 15.11.84. They have stated that in the panel of 10 prepared on the basis of modified selection no person junior to the applicants was empanelled. They have further clarified that the applicants ^{also} appeared in the selection process for promotion as Senior Draftsman initiated in 1987 but they failed ~~not~~ ^{to be} qualified. They have denied any animus held by the respondents against the applicant. They have contended

33

that the post of Senior ~~Draftsman~~ is a selection post and are filled up by way of written test and viva. Because of their seniority the applicants were appointed as Senior ~~Draftsman~~ on an adhoc basis and by the interim orders of the Tribunal have not been reverted from those posts. The applicants cannot be given seniority as Senior ~~Draftsman~~ over those who had been selected in the years 1986 and 1987. They have clarified that on the upgradation of the post of Tracers as Junior ~~Draftsman~~ ^{was} the review conducted in April, 1990 taking into account the sanctioned cadre as on 31.5.86 and November, 1987 and 24 posts were upgraded in accordance with the percentage distribution at the various levels of ~~Draftsman~~. They have categorically stated that nowhere in the Railway Board's instructions of 25.6.85 and 7.11.90 (Annexure A.6 and A.9) has it been laid down that posts increased as a result of abolition of the cadre of Tracers have to be filled up on the basis of modified procedure. They have explained that increase in the number of posts of Senior ~~Draftsman~~ on the basis of cadre review cannot be filled-up by modified selection but by the normal procedure. The normal procedure of selection is by written test and viva.

The Selection Board consist of three persons and where the competent authority does not accept the recommendations of the Selection Board the case has to be referred to the General Manager. Thus the question of any manipulation by any person does not arise. They have also argued that the applicants have not submitted any representation to the superior officers ^{but} ~~and~~ have approached the Tribunal ^{prematurely} ~~prematurely~~ ^{primarily} before exhausting the remedies available in the parent department.

9. The applicants on 1.6.92 moved an M.P. praying that the action initiated by the respondents on 3.1.92 proposing to hold a fresh test be stayed. Though holding of the examination was stayed by the interim order dated 20.1.92 on 21.1.92 the stay was vacated on 19.2.92 and the respondents were allowed to proceed with the holding of the test as well as viva but were not allowed to declare the results until further orders.

10. In the rejoinder the applicants have challenged the counter affidavit filed by the Assistant Personnel Office as without authority and have argued that the restructuring ordered from 1.1.84 is not yet complete and have stated that there are still vacancies of Senior Draftsman left to be filled by modified selection by which only 10 persons have so far been covered. Their contention is that the vacancies arising due to restructuring as well as upgradation should be filled by modified selection process and not by holding examination.

11. We have heard the arguments of the learned counsel for both the parties and gone through/documents carefully. The restructuring of the cadre of drawing office was effected by the order of the Railway Board dated 16.11.84 covering the various grades of Draftsman arranging from the "Highly skilled" to pay scale of Rs.330-560 to that of Rs.700-900. It may be noted that it does not include the grade of Tracers in the scale of Rs.260-400 which was covered by a similar

circular of the Railway Board dated 25.6.85 at Annexure-
of the second application.

A. VI. We are bringing these facts in order to meet the
arguments of the learned counsel for the applicants that
the circular of the Railway Board dated 25.6.85 in para
5.3 gives a cut off date for the validity of panel, as 30.6.85
as against the cut off date of 15.11.84 indicated in para
5.3. of the similar circular dated 16.11.84 at Annexure

A.2. It is thus clear that the cut off date of 30.6.85
applies to the cadre of Tracers and not of Senior ^{Drafts-}
man which are covered by the circular of 16.11.84 for
which the cut off date is 15.11.84.

12. The main point which falls for decision is
whether the vacancies in the cadre of Senior ^{Drafts-}
man which arose after 1.1.84 can be covered by the modified
selection procedure laid down by the circular of 16.11.84.

Paras 5.1 to 5.3 of this Circular reads as follows:

5.1. The existing classification of the posts
covered by these restructuring cadres, 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 proced-
ure 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. Under this
procedure, the categorisation "Outstanding"
will not exist.

5.2. 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 benefits
of the modified procedure of selection as aforesaid
will applicable only to the first such promotion
(if that post happened to be a "Selection"
post), the 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).

36
"5.3. 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 15.11.84 and current on that date; and
(ii) balance in the manner indicated in paras 5.1 & 5.2 above."

(emphasis added)

From the above extracts it is clear that the vacancies which remain unfilled till 31.12.83 and those are carried over to 1.1.1984 and the additional vacancies which arise due to restructuring, only are to be filled up firstly by the panels approved before 15.11.84 and thereafter by the modified selection procedure. As a corollary to this, it is clear that the vacancies which arose in the normal course after 1.1.84 are excluded from the operation of para 5.3 of the circular above. In other words the vacancies which arose in the normal course after 1.1.84 can be filled up by the panels which are approved after 15.11.84.

13. When the learned counsel for the respondents was directed to identify the vacancies for which the written test and viva were held during July and November 1984 and to clarify how only panel of 10 officers was prepared under the modified selection procedure to fill up the vacancies arising out of restructuring/upgradation, after consulting the relevant files, he indicated the position on 10.4.92 which was recorded in the order sheet of that date, which reads as follows:

"O.A.No.1568/91 with O.A.No.211/87.

10.4.1992.

Applicants through Shri B.S.Mainee, Counsel and Shri B.B.Raval Counsel.

Respondents through Shri R.L.Dhawan, Counsel.

We have heard the learned counsel for both the parties on O.A.211/87 and also on O.A.No.1568/91 as both these cases appeared to us to be linked. The learned counsel for the respondents Shri R.L.Dhawan brought to our notice the file in which

9
"the number of vacancies for selection held in July-November, 1984 was shown. In the note dated 23.12.83 the vacancies were estimated as under:-

Existing vacancies	.. 15
Vacancies likely to occur due to normal wastage	.. 4
Vacancies borne in panel and awaiting absorption	.. 2
New selections during one year	.. 6
20% anticipated vacancies	.. 2
Total	.. 29

Shri Dhawan clarified that by the modified selection procedure only 10 persons were included in the panel for promotion as Senior Draughtsman. He also brought to our notice that as a result of restructuring the cadre of Senior Draughtsman in the grade of Rs.425-700 in terms of Board's letter dated 16.11.84, the following posts of Senior Draughtsman (Rs.425-700) have become available:

Restructuring/upgraded	.. 1
Resultant in grade	
Rs.550-750	.. 11
Total	.. 12

Two of the aforesaid posts are to be filled by direct recruitment and 10 by promotion in terms of para 139 of REM. He further explained that the existing vacancies as on 23.12.83 were 15 but when the panel for filling of upgraded/restructured posts was prepared in June 1986 the existing vacancies as on 23.12.83 shrunk to 10 by excluding the Work charged posts which in the intervening period got abolished. Judgment deferred."

Sd/-
T.S.Oberoi
Member(J)

Sd/-
S.P.Mukerji
Vice Chairman(A)."

From the above clarification it comes out that after excluding the existing vacancies of 15 as on 23.12.83 the vacancies which were anticipated to arise after 1.1.84 were as follows:

Vacancies likely to occur due to normal wastage	.. 4
Vacancies borne in panel and awaiting absorption	.. 2
New selections during one year	.. 6
20% anticipated vacancies	.. 2
Total	.. 14 "

It is thus clear that it cannot be said that there were

no vacancies arising after 1.1.84, which could be filled

up by selection process initiated in July, 1984. The

fact that the last interview was held on 14.11.84 and therefore the panel could not be approved before 15.11.84

may be correct but that does not make the selection null

and void qua the vacancies which arose after 1.1.84.

Accordingly we find that there is no reason why the

respondents should have cancelled the selection held

during July/November, 1984 when vacancies not covered by

the modified selection were available to be filled up.

14. As regards the vacancies of Senior Draughtsman

which arose during 1985 and later years due to upgradat-

ion of the post of Tracers or cadre review those cannot

be filled up by modified selection procedure which

according to the Railway Board's Circular of 16.11.85

applies only to the vacancies existing on 1.1.84 and

those arising on that date from cadre restructuring.

15. We have studied the Railway Board's circular

of 25.6.85 at Annexure VI read with the annexure

of 19.7.85. It is clear that the cadre of Tracers

are to be gradually phased out by upgrading the post

to that of Junior Draughtsman, after all those Tracers

who possess diploma in Draughtsmanship, all those Tracers

who do not possess diploma but have completed 5 years

of service as on 1.1.84 and the rest as and when they

complete 5 years of service or acquire necessary qual-

ifications are absorbed. Review is to be conducted for

this purpose every 6 months commencing from 1.7.86. The

note below the category of Tracers reads as follows:

The existing cadre of Tracers is to be frozen and actual requirements reviewed and determined with Board's approval within six months. In this connection, attention is invited to Ministry of Railway's letter No.E(NG)/II-85/PC-5/7 dated 27.2.1985. Once the cadre of the Junior Draughtsman in scale Rs.330-560 is fixed finally, it will be taken into account for percentage distribution applicable to the Drawing Office staff

vide Item No.6 of Annexure to this Ministry's letter No. PCIII/84/UPG/9 dated: 16.11.1984 in the subsequent annual cadre reviews."

The note above makes it clear that the expanded strength of Junior Draughtsman will be taken into account for percentage distribution and consequent determination of the strength of Draughtsman in various grades only after total absorption of Tracers takes place. That would be well after 1.7.86. In any case absorptions of Tracers as Junior Draughtsman will have no impact on determining the number of posts of Senior Draughtsman due to ^{emerging} restructuring as on 1.1.84. Since the modified selection procedure is applicable only to the vacancies as on 1.1.84 the applicants cannot claim modified selection process ^{for} due to vacancies arising after 1.1.84 and periodical cadre reviews. The increase in the number of posts of Senior Draughtsman from 29 to 37 between 1986 and 1987 cannot therefore be covered by the modified selection.

16. It will be difficult for us to accept the contention of the applicants that Respondent No.3 by getting the vacancies of Senior Draughtsman filled up through a written test and viva is helping his favourites. The selection by examination and viva is always more rigorous and objective than selection on the basis of seniority and confidential reports and so long as the applicants are also participating in the written test and viva they cannot be heard to say that they have been discriminated against.

17. In the conspectus of facts and circumstances we dispose of the aforesaid two applications only with the direction that the respondents shall declare the results of the selection held in July-November, 1984 and fill up the vacancies of Senior Draughtsman which arose in the normal course after 1.1.84 but excluding the

vacancies which arose due to restructuring. These latter vacancies should cover atleast the period from 2.1.84 to till November, 1985 till which date the panel of November, 1984 would have been followed. If any of the applicants in these two applications is promoted on the basis of the selection of 1984 he should be promoted retrospectively and regularly with effect from the earliest of the dates when any of his juniors was promoted through normal selection with all consequential benefits of arrears of pay and seniority. There will be no order as to costs.

(T.S.OBEROI)
MEMBER (JUDICIAL)

(S.P.MUKERJI)
VICE CHAIRMAN

ks27492.

प्रमाणित प्रतीक्षित
CERTIFIED TRUE COPY
दिनांक/Date.....
✓
अधिकारी कार्यालय/Offices
केन्द्रीय न्याय निवारक अधिकारी
Central Administrative Service Tribunal
न्याय निवारक अधिकारी
Principal Bench, New Delhi

