

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
New Delhi

(60)

CCP NO. 107/93 in DA NO. 1568/91

New Delhi this the 16th day of November, 1993.

CORAM :

THE HON'BLE MR. JUSTICE V. S. MALIMATH, CHAIRMAN
THE HON'BLE MR. S. R. ADIGE, MEMBER (A)

1. Atal Prakash Kain,
S/O Shri (Late) Jagdish Kain,
Aged about 37 years,
R/O F-45, Sector-27,
NOIDA (UP).

2. Chander Mohan Lal,
S/O Shri M. M. Lal,
Aged about 37 years,
R/O C-3/D, Basant Lane,
New Delhi.

... Petitioners

By Advocate Shri B. B. Raval

Versus

1. Dr. Y. P. Anand,
Chairman,
Railway Board,
Rail Bhawan, New Delhi.

2. Shri Raj Kumar,
General Manager,
Northern Railway,
Baroda House, New Delhi.

3. Shri Keemat Lal Anand,
Executive Engineer (P&D),
Northern Railway,
Baroda House, New Delhi.

... Respondents

By Advocate Shri R. L. Dhawan

O R D E R

Hon'ble Shri S. R. Adige, Member (A) —

In this contempt of court petition bearing No. 107/93, arising out of O.A. No. 1568/91, S/Shri Atal Prakash Kain and Chander Mohan Lal, Senior Draughtsmen, Northern Railway, New Delhi, who were two out of the four applicants in O.A. 1568/91, have prayed for contempt of court action to be initiated against the

respondents for alleged contumacious violation of this Tribunal's judgment dated 8.5.1992 disposing of O.A.211/87 as well as O.A.1568/91.

2. The two applicants were working as Draughtsmen Grade-III and their next promotion was as Senior Draughtsmen which is a selection post. On 14.6.1984, the Railways issued a notification calling upon eligible Draughtsmen to appear in a written examination on 1.7.1984 and also intimated that only those who had passed the written examination would be called for interview. The two applicants were amongst the 17 candidates who were declared successful in the written exam and were called for interview on 13/14.11.1984. The results of this selection were, however, not announced, because on 16.11.1984 the Railway Board issued instructions regarding restructuring and upgradation in the cadre of Draughtsmen with retrospective effect from 1.1.1984. According to these instructions, the existing vacancies as on 1.1.1984 plus the vacancies arising as a result of upgradation were to be filled up by modified selection, that is, based only on screening of service records, without holding any written examination/interview. The panels which could not be approved by 15.11.1984 became infructuous and as the results of the selections of July-November, 1984 could not be finalised till 15.11.1984, the selection test was held null and void. By the process of modified selection based on the confidential reports of the previous three years,

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the senior-most candidates available on 1.1.1984 were placed in the panel dated 2.6.1984. Soon after, the two petitioners were promoted as Senior Draughtsmen on ad hoc basis w.e.f. 31.12.1986. The respondents again held a written exam on 15.12.1988 for promotion as Senior Draughtsmen, but the applicants failed in the written test while those junior to them who qualified were regularised as Senior Draughtsmen. They were again required to appear in a written test notified on 20.7.1991, but it was postponed to September, 1991 and thereafter cancelled. On 3.1.1992, the respondents initiated action to hold a fresh written exam. These exams were stayed by an order dated 21.1.1992, which, however, was vacated on 19.2.1992 allowing the respondents to proceed with the holding of the written examination and viva, but directing them not to declare the results till further orders.

3. Meanwhile, in O.A.211/87, the ten applicants who include the two before us, who were two amongst the four applicants in O.A.1568/91, prayed that the impugned orders of December, 1986 rejecting their representation against cancellation of the selection proceedings held in July-November, 1984 for promotion as Senior Draughtsmen be set aside, and the respondents be directed to declare the results and give the candidates declared successful benefits flowing therefrom. In O.A.1568/91, the four applicants had prayed that the notice dated 18.6.1991 calling upon 63 candidates to appear in the written exam for promotion as

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Senior Draughtsmen be set aside and the respondents be directed to promote them as Senior Draughtsmen from the date of the scheme of restructuring, with consequential benefits of pay and allowances.

4. The Tribunal after hearing the concerned parties in both the O.A.s, disposed of the same through a common judgment dated 8.5.1992, operative portion of which reads thus :-

"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 at least 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."

5. On behalf of the petitioners, Shri Raval has challenged the competence of the answering deponent to file the reply on the part of the respondents. We do not find much force in this challenge because in this C.C.P. we are primarily interested in determining whether there has been any contumacious disobedience of this Tribunal's judgment dated 8.5.1992 or not. Shri Raval has further asserted that although

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the petitioners belong to the 1984 panel, and as per the Tribunal's judgment they were to be regularised w.e.f. 2.1.1984, they are being continued as Senior Draughtsmen in a purely ad hoc capacity and have even been threatened with revision while those in the 1992 panel who are eight years junior to them, have been promoted as Senior Draughtsmen on regular basis, which amounts to contumacious disobedience of the Tribunal's judgment.


6. We are unable to agree with these assertions. One of the directions in that judgment was to declare the results of the selection for the post of Senior Draughtsman held in July-November, 1984, and we note that the results were declared on 16.12.1984 and the two petitioners who had qualified were included in the panel of the said date (Annexure-I to the respondents' reply). Shri Raval has criticised the use of the word 'provisional' in the order describing the panel, but in fact nothing turns on that word. Shri Dhawan, learned counsel for the respondents has pointed out that consequent to their empanelment, the petitioners who had been appointed to officiate as Senior Draughtsmen on ad hoc basis w.e.f. 31.12.1986, have been regularised with effect from that date vide notice dated 26.5.1993 (Annexure-II to the reply). The judgment nowhere states that the regularisation has to be effected from 2.1.1984. All it states is that if any of the petitioners are promoted on the basis of the 1984 selection, they should be promoted retrospectively

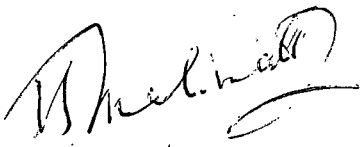
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and regularly with effect from the earliest of the dates when any of their juniors were promoted through normal selection. We note from Annexure-II to the reply that none of the juniors of the petitioners were promoted as Senior Draughtsman regularly from a date earlier than 31.12.1986. Question of paying arrears does not arise as they have received the pay of the promotional post from 31.12.1986, they having been promoted on ad hoc basis from that date. Shri Dhawan, learned counsel for the respondents, has submitted that not only have the petitioners been assigned seniority as Senior Draughtsmen w.e.f. 31.12.1986 as against persons in the 1992 panel who have been promoted/regularised as Senior Draughtsmen-w.e.f. 10.7.1992, but by notice dated 23.7.1993 they have also been allowed pro forma promotion to the next higher grade of Head Draughtsman w.e.f. 30.4.1991 on which date their juniors were promoted to that post, with corresponding pay fixation (Annexure-II-A to the reply). Shri Dhawan further submitted that no arrears of pay as a result of the petitioners' pro forma promotion have, however, been paid to them as the same is not admissible to them in the light of the Supreme Court's judgment in Virender Kumar, General Manager, Northern Railway vs. Avinash Chandra Chadha & Ors. : 1990 (4) SCC 472 as the petitioners have not actually worked in the said post and, therefore, would not be entitled to the higher salary, on the principle of no-work-no-pay. Besides, there is no direction to pay arrears for further promotions not contemplated by the order.

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7. In the result, we find no reason to hold that there has been any contumacious disobedience of this Tribunal's judgment dated 8.5.1992, and this petition is, therefore, dismissed.


(S. R. Adige)
Member (A)


(V. S. Malimath)
Chairman

/as/