

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

(20)

O.A. No. 127/92
T.A. No.

199

3-9-97

DATE OF DECISION

Sh. Arvind Singh & Ors.

Petitioner

Shri S.P. Gupta

Advocate for the Petitioner(s)

Versus

Shri & Others

Respondent

Smt. R.L. Dhawan

Advocate for the Respondent(s)

CORAM

The Hon'ble Smt. Lakshmi Guaminathan, M(J)

The Hon'ble Shri T.R. Mehta, M(C)

1. To be referred to the Reporter or not? *Yes*

2. Whether it needs to be circulated to other Benches of the Tribunal? *X*

Lakshmi Guaminathan
 (Smt. Lakshmi Guaminathan)

Member (J)

Central Administrative Tribunal
Principal Bench

O.A. 427/92

(21)

New Delhi this the 8 th day of April, 1997

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri R.K. Ahooja, Member(A).

1. Shri Nirmal Singh,
S/o Shri Ucham Singh,
2. Shri Ami Lal,
S/o Shri Bhikam Chand.
3. Shri Shyam Sunder,
S/o Shri Ram Piare.
4. Shri Kanshi Ram,
S/o Shri Bodhan Singh.
5. Shri Vinod Chorey,
S/o Shri Phanku Lal Chorey,

(All Chargeman, Northern Railway,
Diesel Shed, Tughlakabad, New Delhi) ... Applicants.

By Advocate Shri O.P. Gupta.

Versus

1. Union of India, through
General Manager,
Northern Railway, Baroda House,
New Delhi.
2. The Divisional Personnel Officer,
Northern Railway, DRM Office,
Paharganj,
New Delhi.
3. Shri Rajeshwar Prasad,
S/o Shri Jagdish Prasad,
4. Kaushal Prasad,
S/o Shri Durga Prasad,
Chargeman,
Northern Railway, Diesel Shed,
Tuglakabad,
New Delhi.
5. Shri Chaman Lal,
S/o Shri Ram Chand,
Chargeman,
Northern Railway, Diesel Shed,
Shakurbasti,
Delhi.

.. Respondents

By Advocate Shri R.L. Dhawan.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J)

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The applicants are aggrieved by the order

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dated 3.1.1992 issued by the respondents dereserving the two posts which were earlier reserved for Scheduled Caste candidates and one post for Scheduled Tribe candidate and then placing Respondents 3 to 5 who are general candidates on the provisional panel.

2. The brief facts of the case are that the selection was held in 1986 to the post of Chargeman Grade Rs.1400-2300 and again in January, 1990. According to the applicants, none of the applicants as well as Respondents 3 to 5 were declared successful in those selections. However, applicants 1 to 4 were posted as Master Craftsman in Grade Rs.425-640 (Rs.1400-2300 revised) in Diesel Shed Tughlakabad with an option to go back to the respective parent sections. Their grievance is that the respondents have picked up their juniors-Respondents 3 to 5 -to officiate as Diesel (Mechanic) Chargeman on ad hoc basis by letter dated 15.10.1986 and the applicants themselves, as mentioned above, were appointed as Master Craftsman on 3.10.1987. The applicants submit that applicant 5, who belongs to Scheduled Tribe has been denied the post of Chargeman although he was entitled to be so appointed by operation of quota rota rules. The main grievance of the applicants is that since applicants 1 and 2 who are Scheduled Castes and / Scheduled Tribe are senior, they ought to have been given charge as Chargeman on ad hoc basis in preference to Respondents 3 to 5 who were promoted to officiate on ad hoc

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basis by the letter dated 15.10.1986. They have submitted that some of the applicants have made representations against the promotions given to Respondents 3 to 5. However, the respondents have now passed the impugned letter dated 3.1.1992 which, according to the applicants, is, therefore, illegal. They have also submitted that the applicants 1 and 3 are senior to Respondents 3 to 5 and the applicants 4 and 5 who are Scheduled Caste and Scheduled Tribe have the right to be absorbed against the posts reserved for them. In the circumstances, Shri O.P. Gupta, learned counsel for the applicants, has prayed that the order dated 3.1.1992 should be set aside as being illegal, — against the Railway Rules and ~~as~~ against the principles of natural justice and the applicants should be considered for promotion to the post of Chargeman in the Grade of Rs. 1400-2300, and for future promotion with all other consequential benefits. The learned counsel for the applicants had also raised two preliminary objections, namely,

- (i) that Shri R.L. Dhawan, learned counsel, who had appeared on behalf of the respondents, is not authorised to appear; and
- (ii) the counter affidavit filed on behalf of the respondents by Shri N.K. Kanojia, APO, is not in order as he has not been duly authorised.

He had relied on the Notification issued under Order XXVIII CPC, 1908 to support his second contention.

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3. The respondents have filed their reply controverting the above facts. Shri R.L. Dhawan, learned counsel, has also produced for our perusal File No.111P/Conf/10/86 containing selection proceedings and sanction for dereservation as well as Railway Board's letter No.95/LC/15/Delhi/6 dated 6.4.1996 regarding his appointment as Presenting Officer for the Railways.

4. In view of the Respondents letter dated 8.4.1996 appointing Shri R.L. Dhawan as Railway advocate for conducting cases in the Tribunal, the objection raised by the applicants' counsel is rejected. We also find no merit in the other preliminary objection raised by the learned counsel for the applicants. It may also be added that the facts stated in the reply which have been verified by Shri N.K. Kanojia, APO, a Gazetted Officer, on behalf of the respondents have been borne out by the records contained in File No. 111P/Conf/10/86 which has been submitted for our perusal. We, therefore, find no substance in the two preliminary objections raised by the learned counsel for the applicants and they are accordingly rejected.

5. Coming to the merits of the case, the respondents have admitted that applicant 4 belongs to Scheduled Caste community and applicant 5 belongs to Scheduled Tribe community and that selection

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to fill up the vacancies of Chargeman in Grade Rs.1400-2300 was held in the year 1986 against 11 vacancies, and 26 general candidates and six Scheduled Caste candidates were called according to the seniority of highly skilled Fitter in Grade Rs.1320-2040. No Scheduled Tribe candidate was available then. They have further submitted that applicant 4, Shri Kanshi Ram, a highly skilled Fitter Grade-I was at Serial No. 70 in the seniority list of semi-skilled Fitters Grade-II in the ^{scale of} Rs.1200-1800 and, therefore, he was not eligible for selection and hence was not called. They have also admitted that Respondents 3 to 5 are junior to the applicants 1 to 3 in the seniority of highly skilled Fitter Grade-I. While the respondents 3 to 5 qualified in the written test for the post of Chargeman as per D.P.O./New Delhi's letter dated 23.7.1986, applicants 1-3 had not qualified in the written test. Therefore, the respondents have submitted that the applicants have no claim for promotion as Chargeman. As no Scheduled Caste candidate qualified in the written test and no Scheduled Tribe candidate was available against the reserved posts, a decision had been taken by the respondents to allow respondents 3 to 5 to officiate as Chargeman in Grade 'B' in Rs.1400-2300, by letter dated 15.10.1986. Thereafter, the case was referred to the Headquarters for dereservation of the posts and after obtaining the necessary approval for dereservation, respondents had regularised their services by letter dated 26.2.1992. In a subsequent

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selection held on 21.12.1989, applicants 1 to 4 had been called for the written test in which only Shri Ami Lal, applicant 2, qualified but failed in viva voce test. Applicants 1 to 3 have been put to officiate as Chargeman vide Office letter dated 21.12.1989 on ad hoc basis. In the circumstances, the respondents have, therefore, prayed that the application may be dismissed.

6. As seen from the pleadings in the case, the main grievance of the applicants is with regard to the action taken by the respondents in allowing Respondents 3 to 5 who are general category candidates to be posted as Chargeman as well as the selections held in 1986 after dereserving the posts which were earlier reserved for Scheuled Caste and Scheduled candidates Tribe. We have seen the original records submitted by the respondents regarding dereservation of the posts. In the selections held in 1986 for the posts of Diesel Mechanic Chargeman, it is seen from the letter dated 1.1.1992 that there were seven posts for general category, two posts for Scheduled Castes and one for Scheduled Tribe. As no Scheduled Caste candidate had qualified the written test and no Scheduled Tribe candidate was available, the result for/ seven general candidates was issued on 26.8.1986 and it was decided by the respondents to obtain dereservation for the other three posts reserved for Scheduled Caste and Scheduled Tribe candidates.

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Meanwhile, the three general candidates who had also otherwise qualified, namely, Respondents 3 to 5, who were not within the zone of consideration in the general category, were promoted as Diesel (Mechanic) Chargeman on ad hoc basis. The post facto approval was accorded by the competent authority i.e. the Addl. G.M. for dereservation of the two posts reserved for Scheduled Caste and one post reserved for Scheduled Tribe for the selections held in 1986 with the stipulation that this has been done as an exceptional case. The selection list has also been submitted/ by the respondents from which it is seen that Respondents 3 to 5 have qualified. Since admittedly the applicants had not qualified in the selection for the post of Chargeman in 1986, they cannot have an enforceable right for promotion to those posts. Having regard to the facts and circumstances of the case, particularly that the respondents have obtained post facto approval from the competent authority for dereservation of the three posts which were originally reserved for Scheduled Caste and Scheduled Tribe/ candidates as none in the reserved category had qualified, the action of the respondents cannot be faulted. It is also relevant to note that the respondents had also taken a decision to allow the three general candidates who had qualified in the 1986 selection to work as Chargeman on ad hoc basis provisionally, subject to obtaining approval for dereservation of the posts, and the applicants had not objected to the same at that time. The impugned

order dated 3.1.1992 is consequent on the decision of the respondents to dereserve the two posts for Scheduled Caste and one post for Scheduled Tribe in the category of Chargeman for the selections held in 1986. We, therefore, find that the applicants have not established any good case justifying any interference in the matter because they themselves have not qualified ~~nor~~ were they in any case eligible to be promoted to the post of ~~Chargeman~~ at any time. We have also carefully considered the other arguments advanced by the learned counsel for the applicants but find no merit in the same.

7. In the result, the application fails and it is dismissed. No costs.

Rakesh -
(R.K. Ahooja)
Member(A)

Lakshmi
(Smt. Lakshmi Swaminathan
Member(J)

'SRD'