

RESERVED 37

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration T.A. No.1312 of 1986

R.K.Gaur & Others ..... Plaintiffs

Versus

Union of India ..... Defendant

Hon.D.S.Misra, A.M.

Hon.G.S.Sharma,J.M.

(By Hon.D.S. Misra, A.M.)

This is an original Suit No.1207 of 1982 which was pending in the Court of Munsif IV, Gorakhpur and which has come on transfer under Section 29 of the Administrative Tribunals Act XIII of 1985. The plaintiffs have sought a declaration that the order of the Railway Board contained in letters dated 20.7.78 and 8.11.1981 are illegal, unconstitutional and the selection for the posts of Draftsmen against 25% vacancies notified in the letter dated 14/15.9.82 is illegal and void. The plaintiffs' case is that plaintiffs 1 to 3 have been working as Draftsmen in the scale of Rs. 150 - 240 (revised to 330 - 560 with effect from 1.1.73) in a permanent capacity with effect from 1967; that the plaintiff No.4 has been working as Assistant Draftsman in the scale Rs.330-560 with effect from July, 1973 and is holding the post in permanent capacity; that the post of Draftsman in the scale of Rs.425 - 700 to the extent of 75% was being filled through the Railway

52



43/2

- 2 -

Service Commission and remaining 25% were filled through the medium of selection from amongst the senior Assistant Draftsmen in the scale Rs.330-560; that 8 posts of Draftsmen in the scale of Rs. 425-700 were vacant from 1977 but were not filled in with a view to give illegal benefit to the juniors; that the Railway Board vide its letter dated 20.7.78 and 8.11.1981 had revised the rules for filling in the vacancies of Draftsmen reducing the quota for direct recruitment from 75% to 50%; that the General Manager (P) N.E. Railway, Gorakhpur vide his letter dated 22.4.82 invited applications from amongst Draftsmen in the scale Rs.330 - 560 and Tracers scale Rs.260-430 who were Matriculates and not above 45 years of age to apply for appearing at the selection for the post of Draftsman in the scale Rs.425-700 against 25% vacancies. The plaintiffs grievance is that by prescribing the age limit of 45 years they are being deprived of their legal right to be considered for promotion in the scale Rs.425-700.

2. In the reply filed on behalf of the defendant it is stated that instructions contained in the letter of the Railway Board dated 20.7.78 provides for revised mode of filling up the post of Draftsman in the grade Rs.425-700 in the Signal and Tele-Communication Departments. There were three modes of filling up the post of Draftsman in the Mechanical and Engineering Departments. However, in the

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Signal and Tele-Communication Department only two modes were prescribed i.e. 75% by direct recruitment through the Railway Service Commission and 25% through promotion of working employees; that the recognized Unions of the Railway represented to the Railway Board that this anomaly in the Signal and Tele-Communication Department should be removed and the mode of selection in the grade of Draftsman in the Signal and Tele-Communication Department should be made at par with the Mechanical and Electrical Departments; that the effect of the circular dated 20.7.78 was that it gave wider scope of promotion to the serving employees; that the circular provides a new channel of promotion to the newly created 25% category from amongst Assistant Draftsman in the scale Rs.330-560 and Tracers in the scale Rs.260-430; that the persons selected against the newly created 25% category were taken as Inter-Apprentices and were given one year's training and on completion of one year training they were appointed as Draftsmen in the grade of Rs.425-700; that in case they fail to qualify in the training they were to be reverted to their substantive posts; that in the second category of 25% posts to be filled in by promotion even persons who are on the verge of retirement are also eligible for promotion and the promotees in that categories are not given any training; that the second category of 25% promotees, as existing prior

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- 4 -

to 20.7.78 was left untouched; that the original circular of 20.7.78 provided for the maximum age of 35 years which was raised to 45 years on the representations of the Unions vide Railway Board's circular dated 8.11.1981.

3. We have heard the arguments of the learned counsel for the parties and have carefully perused the documents on record. The main point for consideration in this case is whether the plaintiffs have been adversely affected in the matter of their promotion to the post of Draftsmen in the grade Rs.425-700. The first contention of the plaintiffs is that there were 8 vacancies of Draftsmen available during the year 1977 and these were not filled in by the defendant and the rules were changed on 20.7.78 with retrospective effect. The defendant admits the existence of vacancies and states that they were unable to fill in these posts due to administrative reasons. According to the then existing rules, out of these 8 posts two posts would have gone to the share of promotees. However, it is not the case of the plaintiffs that they were senior most Assistant Draftsmen eligible for promotion to these two vacancies. In the seniority list dated 3.9.82, 24-C, the plaintiff No.1 is shown at Sl. No. 9, plaintiff No.2 at Sl.No. 8, plaintiff No.3 at Sl.No.11 and plaintiff No.4 at Sl.No.12. In the year 1977 the position of the plaintiffs in the seniority list could not have been better than what is

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42/4

- 5 -

available in the seniority list of 1982 mentioned above. We are of the opinion that the plaintiffs were not senior enough in the year 1977 to lay claim for promotion to the two promotion quota vacancies available in the year 1977. It thus follows that the non filling of the two vacancies of Draftsmen in the year 1977 did not adversely affect the chances of promotion of the plaintiffs.

4. The second contention of the plaintiffs is that the age limit of 45 years introduced by the order dated 8.11.1981 of the Railway Board for promotion to the post of Draftsman adversely affects them in the matter of their promotion. The defendant's contention is that the restriction of age for promotion is in respect of the new category of 25% out of 75% direct recruitment quota and therefore these posts are being filled in by an entirely different method of promotion to include the lower category of Tracers who may prove their suitability in the written examination and one year apprenticeship training for successful candidates. The defendant also contends that this newly created 25% quota is in addition to the 25% quota available to the plaintiffs without any restriction of age before attaining the age of retirement.

5. We have considered the contentions of the parties. The learned counsel for the plaintiffs contends that there cannot be any age restriction

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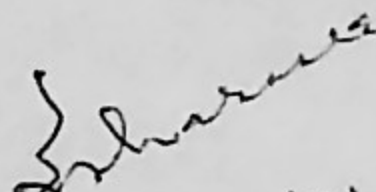


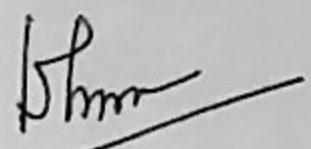
for promotion to the posts of Draftsmen and in support thereof he cites the case <sup>decided by</sup> / Hon'ble Supreme Court decided in Indravadan H. Shah versus State of Gujarat and Another ATR 1986 SC 353. In the above mentioned case the Gujarat Judicial Service Recruitment (Amendment Rules), 1979 provided that a Civil Judge (Senior Division) after completing 45 years of age will not be eligible for consideration for promotion to the post of Assistant Judge but there was no such restriction for the promotion of Assistant Judge as District Judge. The Hon'ble Supreme Court struck down this rule as being arbitrary and violating the salutary principles of equality. We have considered this matter and we are of the opinion that this case law is not applicable to the instant case due to the reasons given hereafter. The Railway Board's instructions dated 20.7.78 has introduced a new channel of recruitment to the post of Draftsman by reducing the direct recruitment quota from 75% to 50%. This new 25% quota is to be filled in by a wider source which includes Tracers in the lower scale of Rs.260-430. This quota is at the cost of the direct recruits and not at the cost of the plaintiffs who were earlier as well as now entitled to be considered for promotion to the old 25% promotion quota. It would thus follow that the Assistant Draftsman, who are below 45 years of age are eligible for promotion as Draftsmen by two sources of recruitment. In this way there has been improvement in the chances of the promotion without causing any loss to their old channel of promotion.

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On the facts and circumstances of the case, we are of the opinion that the grievance of the plaintiffs is misconceived and has no merit.

6. For the reasons mentioned above, there is no merit in the suit and the same is dismissed without any order as to cost.

  
Member (J)

  
Member (A)

Dated the 31<sup>st</sup> Jan. 1989.

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