

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

...

C. No. 148 of 1991

along with

T.A. No. 2000 of 1987 (K.C. Srivastava Vs. U.O.I. & Oths)

Shri Jagdish Chandra Pandey Petitioners/
Applicant.

Versus

Railway Board and others Respondents.

Hon. Mr. Justice U.C. Srivastava, V.C.

Hon'ble Mr. A.E. Gorathi, Member (A)

(By Hon. Mr. Justice U.C. Srivastava, V.C.)

By means of this application, the applicants have prayed that the respondents be directed to give all the consequential benefits to the applicants in pursuance of their promotion and treat applicant nos. 1 & 2 as Chargemen-B w.e.f. 1.6.1968 and applicant no. 3 as High Skilled Welder w.e.f. 2.2.1970. The applicant Nos. 1 & 2 after being appointed as Chargemen-C vide letter dated 2.6.1968 worked on the said post continuously till 9th August, 1975 thereafter they were arbitrarily reverted to the rank of High Skilled Grade-II, Fitter despite the fact that both the applicants had passed the prescribed trade-test for the promotion to the High Skilled Fitter Grade-I and were appointed on the said post vide letter dt. 7.12.1965. The applicants have passed the prescribed departmental test for the promotion to High Skilled Fitter Grade-I on 7.12.1965 and had worked on the said post till 1.6.1967 thereafter, they were promoted to the post of Chargemen on the basis of their suitability test, subsequently, in the year 1972, the applicants were made Chargemen-B as the post of Chargemen-C was merged with Chargemen-B. Likewise, the applicant no. 3 having qualified in the relevant trade-tests was promoted as High Skilled Welder Grade-II on 17.3.1969 and High Skilled Welder Grade-I on 2.2.1970, but he too was reverted to the ~~new~~ post ^{w.e.f.} ~~as~~ High Skilled Grade-II w.e.f. 9.8.1975.

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2. It appears that on 4.12.1971, the Railway Board issued advance correction slip no. 70 amending provisions of Chapter-III of the Railway Establishment Manual. Rule 301 of the Manual was substituted by New Rule 301, which provides that the determination of the non-gazetted employees of the D.L.W. and their promotion would be governed by the New Rule 324 brought in this correction slip no. 70. In the said correction slip, it was provided that selections and promotions made in Diesel Locomotive Works from 1.8.1961 upto date of notification of the rules shall not be valid. Against the said reversion order, the applicants and other similarly placed persons filed a representation, in which it was also pointed out by them that that in the said Railway Boards' letter dated 12.8.1971, it was clearly stated that the staff who had been promoted on regular basis after due selection or suitability test should be given all the benefits of confirmation after two years of continuous officiating service in the grade provided a clear vacancy exist, and a similar direction was issued by the Railway Board regarding the confirmation of staff working in the High Grade. Thereafter, the applicants have approached to this Tribunal after failing to get relief as the result of their representation.

3. The respondents have resisted the claim of the applicants and it has been stated by them that in order to build up a nucleus cadre at the initial stages, in D.L.W., the services of a large number of staff were ~~procured~~ procured from a diverse sources under different conditions at different points of time viz; on transfer from open line Railway Production Units and Construction Units including Locomotive Components Works and by direct

recruitment from open market. Pending preparation of seniority lists, promotion to non-gazetted posts, wherever made, were on adhoc basis making it clear to staff concerned that such promotion will not confer any right whatsoever for claiming seniority over others or for continuing in the higher grades in the regular cadre.

4. The applicants had already passed the trade for the post of High Skilled Grade-II and Highly skilled Grade-I. They were not subjected to a fresh trade test in terms of Rule 328(3) of ACS 70. Since the revised seniority position assigned to the applicants in terms of ACS 70 did entitle ^{them} ~~them~~ for promotion to the post of ⁴ Highly Skilled Grade-I. The applicants were reverted as highly skilled Fitter Grade-II and their pay on reversion was protected in terms of Rule 328(7) of ACS-70. In terms of Railway Board's letter dated 12.8.1971, the staff who are promoted on regular basis after due selection and suitability should be given all the benefits of confirmation after two years of continuous officiating service in the grade provided a clear vacancy exists. Since the promotions made in DL were not in accordance with the normal rules ^{but were} ~~ent~~ provisional and adhoc and as such have ⁴ been declared invalid by the Railway Board in terms of rule 328(2) of ACS-80. The applicants were ^{not} ~~not~~ promoted to the post of Chargeen-C which ^{was} ~~were~~ ⁴ purely on temporary and adhoc basis with further stipulation that these promotions will not confer on them any right to claim preference for such appointment over their seniors in future.

4. On behalf of the applicant, it was contended that the applicants have passed the Trade Test and

obviously they were not required to appear in the test again and this correction slip having been declared invalid, the applicants were entitled to get due seniority and their confirmation could have been effected. Both the parties have placed reliance on the case of Harbans Mishra Vs. Railway Board, AIR 1989 SC, 696, in this case following observations have been made by the court on which parties have placed their reliance;

"It is urged on behalf of the respondents that the said office order No. 25 does not show that the appellants have any lien on the posts of chargeman-B. It only mentions that they have a lien on certain places. We are unable to accept this contention. A person may have lien on a post and not a lien on a place. All that the said order means is that they have lien on the post of Chargeman-B, but in certain places under either the Production Engineer or the Works Manager. There can be no doubt that a person appointed to a post on an adhoc basis can not have any lien on the post. It is only when a ~~perman~~ person appointed on a permanent basis, he can claim lien on the post to which he is so appointed. It is, therefore, not correct to say that the appellants were appointed or promoted to the post of Instructor-C or Chargeman-C on an adhoc basis or by way of an interim measure, as held by the High Court in the impugned judgment. If they were appointed on adhoc or purely temporary basis, they could not have been promoted to the post of Chargeman-B and the said order No. 25 dated January, 22, 1966, would have been quite inconsistent with such adhoc or temporary appointments."

It was further observed that in the circumstances, we are of the view that the appellants were not appointed on an adhoc or purely temporary basis by way of interim

measure as held by the High Court, but they were appointed on a permanent basis in the posts of instructor or Chargeman Grade-C. On behalf of the applicant, a reference has been made to the case of E.I. Srivastava and others Vs. The Railway Board and others, Civil Appeal No. 2039 of 1990, in which Hon. Supreme Court allowed the appeal in terms of the judgment given in Harbans Mishra's case and directed the Railway Administration to fix the seniority of the appellant on the basis of their promotion to the post of Chargeman-B/ Instructor-B.

6. On behalf of the applicant, it was stated and documents were filed to say that all these applicants who were before the Hon'ble Supreme Court were already appointed on adhoc basis and consequently, it was contended that the benefit of Harbans Mishra's case will also be available to those who are promoted on adhoc basis. The case was decided on the basis of the case of Harbans Mishra which ~~was~~ made it clear that these employees were not adhoc promotees, as such, reference was made that the adhoc employees were not entitled to the same. A reference was also made in C.I. No. 653 of 1989, B.S. Noosa Vs. The Railway Board, decided by a Bench of Allahabad C.A.T. on 4th October, 1991, in which it was held that the applicants before us were not entitled for the benefit of the decision of the Hon. Supreme Court before they were regular Chargeman-C.

7. The applicants were reverted in view of the selections held to the post of Chargeman-B in the Grade 425-700 (Rs) and adjustment of staff according to the

seniority position was made and posting orders were issued as a regular measure terminating the present adhoc appointments but the pay of the adhoc employees which included the applicant, protected. Thus, although so far as the pay-scale is concerned, the applicants who were given number of promotions in the existing vacancies, though in the earlier one for construction ~~work~~ ^{for} but latter or they were given promotions on adhoc basis against existing vacancies. They were given chance to appear in the trade-tests but their suitability was not judged in the way in which regular selected were judged and selected. In the matter of selection, there can-not be any substantial differences and if there was any difference, the applicants undoubtedly ^{were in} in loss. It seems that some of these considerations were taken into account while protecting their services. As the result of the termination of their adhoc appointments and they are to go back to the places ^{from which} ~~whether~~ they are promoted on adhoc basis and there appears to be no reason why they should not be allowed to continue on adhoc basis doing same work as on the same pay-scale, they will be doing the work ⁱⁿ the grade ⁱⁿ from which they were promoted. The nature of the appointment which was made after testing their suitability which entitles them to ^{be} consider for regularisation on the post of Chargemen-C from which they have been reverted but for the purposes of seniority, they can-not claim it over and above those who have been regularly appointed.

8. Accordingly, this application deserves to be allowed in part in as much as the reversion order is quashed with the observations that they will continue

to work as adhoc employees and will be confirmed on the said posts or regularised ^{them} as and when their ^{own} terms come, ^{but} taken into consideration the period of continuous officition and their seniority will be determined accordingly, ^{but} ^{and} they cannot claim seniority over those whose names found place in the list because of whose appointments, their adhoc appointment has been terminated. The application is disposed of with the above observations. Parties to bear their own costs.

Sd

— Member (A)

Dated: 17th 12.1991

(n.u.)

Sd

Vice-Chairman