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Reserved.

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

ORIGINAL APPLICATION NO. 285 of 1987
Arjun Kumar and others ... applicants.

Versus

The Union of India and others. .. Respondents.

Hon'ble D.S.Misra-AM

Hon'ble G.S.Sharma-JM

(Delivered by Hon'ble D.S.Misra-AM)

This is an application under Section 19 of the Administrative Tribunal Act No. XIII of 1985, challenging the orders dated 19.12.1986 and 27.3.1987 passed by the Divisional Railway Manager(P) N.E. Railway Lucknow (respondent no.2).

2. The petitioners' case in brief is that they were appointed as Foremen (Maintenance) in the Grade of Rs. 700-900 by an order dt. 24.10.1985 passed by the respondent no.2, (copy annexure-1); that the petitioners have been discharging their duties with utmost sincerity devotion and dedication; that respondent no.2 issued the impugned order dated 19.12.1986 modifying the earlier order dated 28.12.1986 and stating that the petitioners would be allowed to officiate as Foreman (M) only in officiating capacity and till proper persons are appointed by the positive act of selection; that the respondent no.2 then passed the ~~order~~ impugned order dated 27.3.1987 (copy annexure VII) stating therein that a written test shall be held on 11.4.87 to fill in the post held by them. The petitioners have contended that their earlier appointment dt. 28.10.1985, effective on 1.1.1984 was made against the additional posts having become available as a result of restructuring order dt. 1.5.84, ~~effective~~ of the

Railway Board(copy annexure-2). It is further stated that the petitioners had made two separate appeals to the Divisional Railway Manager, N.E.Railway Lucknow against the order dated 27.3.1987 but no action has been taken in the matter. The petitioners have requested that the respondents be directed not to hold written test and not to declare the results of the same and not to appoint any person on the basis of the said examination on the posts held by the petitioners. After considering the request, in the circumstances of the case, the respondents were directed not to declare the results of the test going to be held on 11.4.87. In the reply filed on behalf of the respondents, it was stated that the posts of Foreman(M) in the scale of Rs. 700-900 were head quarter controlled posts and promotions of such posts was controlled by the head quarter on the basis of the combined seniority lists of the entire Railway; that the post of Foreman(M) in the scale of Rs. 700-900 is a selection post; that after 31.3.1985 the said post of Foreman(M) was decentralised and different divisions of Zonal Railways were authorised to make appointments and promotions at their level on the basis of seniority list maintained by them (copy annexure- RA 1); that the Railway Board vide their letter dated 1.5.84 reviewed and restructured the posts of Group 'C' cadres and certain number of posts of Chargeman(A) (550-750) were upgraded in the category of Foreman(M) in the scale of Rs. 700-900; that as at the time of said restructuring the said posts were head quarter controlled posts, the Head Quarters office vide their office orders dt. 25.9.84, 10.12.1984 and 2.5.85 issued promotion orders with respect to posts of Foreman in implementation of restructuring scheme in

order to fill up the upgraded posts; that as the applicants did not come under the field of eligibility they were neither considered nor ever promoted as Foreman(M) in the scale of Rs.700-900 on the basis of the said restructuring by the Head Quarter Office at the time of implementation of said restructuring scheme; that after decentralization of the post of Foreman(M) in the scale of Rs.700-900 certain vacancies arose in the cadre of Foreman(M) Lucknow division due to retirement, promotions and transfers; that due to inadvertence, ^{in the} order to fill up the aforesaid resultant vacancy, the benefit of restructuring was given and the applicants were provisionally promoted as Foreman(M) in the grade of Rs.700-900 on the basis of the modified selection procedure to be adopted in filling up the posts arising out of restructuring and when the said error was detected then the case was fully examined and the orders of the promotions dt. 24.10.1985/2.11.1985 were cancelled by subsequent order dt. 12.12.1986; that the petitioners were allowed to continue purely on ad hoc basis till the availability of regular empanelled candidates; that annexure-I to the application is not the correct copy of the order inasmuch as the applicants were never promoted temporarily but provisionally (copy annexure RA-II); that as the earlier promotion orders were not in conformity with the circular, the same have been rightly and legally cancelled and the orders passed there-upon are perfectly valid and legal; that the representations received from the petitioners ^{were} still under consideration and the petition filed by the petitioners was not within the limitation prescribed under Section 21 of the A.T. Act, 1985.

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-4-

3. In the rejoinder-affidavit filed on behalf of the petitioners, it is stated that the orders were passed for filling upgraded posts Foreman(M) by Head Quarter on different dates; namely September, 25, 1984, October 7, 1984, December, 1984 and 2nd May, 1985; that in respect of Lucknow division only 5 persons were promoted to the posts in question; that since the total number of posts of Foreman in Lucknow Division has been increased from 4 to 13 and since 4 persons were already working before restructuring and only 5 persons were promoted by the Head Quarter, 4 posts of Foreman still remained vacant and it is these posts which were later on filled up by promotion order dt. 24.10.1985/2.11.1985; that it is these 4 posts in which the petitioners are still working. The petitioners denied the contention of the respondents that they were promoted on provisional basis against the vacancies resulting from retirement, transfer and promotions, etc. The petitioners filed a copy of order dated 29.4.85 (annexure 5-A) said to have been issued by the Divisional Railway Manager(P), Lucknow adding 9 more posts in the cadre of Loco Foremen in the scale of Rs. 700-900. The petitioners have also contended that the promotions on the basis of restructuring orders have been done against the additional posts as a result of restructuring in other division of N.E. Railway. The petitioners have filed copy of representations to the higher authorities made against the order dated 19.12.1986 and 27.3.1986.

4. We have heard the arguments of the learned counsel for the parties. Dr. R.G. Padia, for the petitioners, contended that the copy of order dt. 28.10.85/2.11.1985 filed by the petitioners as Annexure-1 to

Page 7

-5-

to the petition was the correct copy and the copy at Annexure R.A.-II, filed by the respondents was amended or corrected subsequent to its issue on 2.11.1985. He invited our attention to the photo stat copy of the order filed as Annexure-1 to the rejoinder-affidavit. The difference between photo stat copy available Annexure-1 to the rejoinder-affidavit and Annexure-RA-2 in respect of two entries is obvious. In the photo stat at R.A.2, word 'Temporarily' has been struck off and substituted by word 'provisionally' by hand. In the last column against serial no.5, Munna Lal Sharma 570 has been changed to 610. There are also tick marks in the last but one column against serial nos. 5,6,7,8,9 and 10. The learned counsel for the respondents is unable to explain this difference between the two photo stat copies. In the absence of any satisfactory explanation by the respondents, we are of the opinion that the photo stat copy filed by the petitioners as Annexure-1 to the rejoinder-affidavit is the correct photo stat copy of the order dated 2.11.1985 and the subsequent corrections made by the respondents have to be ignored. It would be relevant to reproduce the wording of this order;

" In terms of Railway Boards letter no. PC/III/83 UPG/3 dt. 1.5.1984 communicated under GM(P)/GKP'S endorsement no. E/213/PC/73/6-Pt. II(12) dated 10.5.1984, the undernoted supervisory staff of shed Maintenance, who have been considered fit for promotion, are promoted temporarily to the post and posted to the sheds noted against each from 1.1.1984 against the vacancies arising due to restructuring.....".

5. The names of 4 applicants appear at sl.no. slto4

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-6-

in this order and it is evident that they were promoted temporarily against the vacancies arising due to restructuring . The respondents have failed to file any documentary evidence in respect of their contention that the petitioners were promoted against the vacancies arising due to retirement, transfers etc. The learned counsel for the respondents pointed out that in the last paragraph of the above mentioned promotion order, it has been stated as follows:

" The promotions made above as a result of restructuring are deemed to be provisional and no, arrears should be payable from 1.1.84 to the date, however, they are being allowed proforma fixation of pay and the payment in higher grade payable from the date they actually hold the responsibilities of higher grade."

Inter alia, the learned counsel for the respondent contended that the promotion order was provisional and not temporary as contended by the petitioners. We are unable to accept this contention as the words " as a result of restructuring" used in this paragraph are a clear proof that the promotions were made against the vacancies which had become available as a result of restructuring of the cadre. The respondents had also failed to deny petitioners' contention that there were ^{of} a/total/ 13 posts of Foreman(M) in the scale of Rs.700-90 in the Lucknow division and the petitioners were promoted against these posts. We are of the opinion that the respondents have failed in their contention that the order of promotion dated 24.10.1985 2.11.1985 was issued due to inadvertence.

6. The learned counsel for the respondents

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-7-

cited case law (State of Punjab Vs. Jagdip Singh and others reported in A.I.R.1964 S.C.page 521) in support of their contentions that the order dated 19.12.1986 cancelling the promotion order dated 24.10.1985/2.11.1985 of the petitioners to the post of Foreman(M) was within their right of cancelling a wrong order issued due to inadvertence. In this case, the Hon'ble Supreme Court has held that the order of the Financial Commissioner confirming the respondents to the post of Tehsildar under the Punjab Tehsildari Rules, had no legal foundation as there were no vacancies in which the confirmation could take place and therefore, the order was held to be wholly void. We have considered this matter and we are of the opinion that the ratio of this case law cannot be applied to the present case as the respondents have failed to indicate the vacancies against which the petitioners were appointed allegedly on a provisional basis. In the absence of the identification of such ad hoc vacancies and in the light of words "against the vacancies arises due to restructuring" used in the office order dated 24.10.1985/2.11.1985, it is not possible to accept the contention of the respondents. The respondents have also not denied that the petitioners' salary was fixed in the higher scale of pay after giving the benefit of proforma promotion with effect from 1.1.1984, the date from which additional posts became available.

7. On the facts and circumstances of the case, we are of the opinion that the petitioners were promoted to the posts of Chargeman(M) in the scale of Rs.700-900 on a regular basis and subsequent order

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dated 19.12.1986 cancelling the order of promotion ~~and~~
dated 24.10.1985/2.11.1985 was illegal and must be
declared void. Accordingly, the order dated 27.3.1987
containing the decision of holding test for making
selection against the posts held by the petitioners
was also illegal and uncalled for and the selection
made thereafter is declared null and void.

The application is allowed. The
parties shall bear their own costs.

[Signature]
A.M. 25/6/87

[Signature]
J.M. 25/6/87

25.6.87
Shahid/JS.