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CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

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Original Application No. 761 of 1991

Durg Pal Singh and another

... .. Applicants

Vs.

Union of India and Others

.. .. Respondents

Connected with:

Original Application No. 216 of 1989

N.P. Saxena and another

.. .. Applicants

Vs.

Union of India and Others

.. .. Respondents

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

Hon'ble Mr. K. Obayya, Member(A)

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

In these two cases the facts are same hence they are taken up together. The applicants filed this instant application praying for quashing the impugned order of reversion dated 13.11.90 and for issuing direction to the respondents not to interfere with the working of the applicants as Asstt. Yard Master Sr. 1400-2300(RPS) and treat them as regularly selected Asstt. Yard Master from the respective dates of joining as AYM in the year 1986 with all consequential benefits. While in the other case i.e. O.A. No. 216/89 the prayer is that the respondents be directed to regularise their services as AYM on the existing permanent post w.e.f. 7.4.86 as they have completed more period than required.

2. The applicants have challenged this reversion orders of ~~the~~ regularisation for the post of AYM on the ground that in the notification dated 20.2.86 there was no mention about the exigency, Kumbh mela or adhoc promotions. It is a notification to hold a selection and promote selected persons as AYM Gr. 455-700/- The applicants applied for the same, were selected and were promoted as AYM. The applicants once promoted after selection and having worked quite satisfactorily for over a period of 5 years continuously cannot be reverted to their original cadre of ASM may it be in the similar pay scale. The respondents could not treat these promotions as adhoc under any provisions of rules assuming without admitting that the respondents wanted to hold another selection and they mentioned it in the appointment letters, then as per rules they should have held selection at an interval of every six months till 22.7.88 when the channel was revised. In their fresh notification dated 4.8.88 while ASMs Gr. 1400-2300 were made ineligible, the Wagon Movement Inspectors and Shunting Master Gr. 1400-2300 are still eligible for AYM and, therefore, the new channel is discriminatory and violative of Article 14 and 16 of the Constitution of India. The respondents have acted arbitrarily and discriminately in promoting Sri Adil Jiya Siddiqui who was QMI grade Rs.1400-2300(RPS) while they have rejected the applications of the applicants for selection of AYM in 1988. They have also claimed that they have completed 8 years service and they cannot be

reverted. Neither the respondents treated the applicants as regularly selected AYM, nor they held any fresh selection within six months as per rules. They kept on with the adhoc arrangement till 4.8.88. From the perusal of the notification dated 4.8.88 it will be clear that whereas the ASMs grade Rs.1400-2300, who were previously eligible for promotion as AYM, were made ineligible in terms of respondents letter dated 22.7.1988. The wagon Movement Inspectors at item no.4 and Shunting Masters at item no.5 of the aforesaid Notification who are also in the pay scale of Rs.1400-2300 equivalent grade of AYMs have been made eligible for promotion as AYMs which is highly discriminatory and violative of Art. 14 of the Constitution of India. Consequent upon restructuring of posts, the posts of Asstt. Yard Master grade Rs.425-640(RS) were upgraded to Rs.455-700(RS) with the result that the percentage of posts allotted to different categories for filling up the posts of AYM grade Rs.455-700 changed. It took some time to revise the existing channel of promotion and in order to cope up with the ~~rush of~~ work of Kumbh mela at Haridwar in 1986 it was decided to make the posts of AYM grade Rs.455-700(RS) by making adhoc and stop gap arrangement from amongst the existing channel of promotion pending regular promotion after adjudging the suitability of eligible staff. The applications were invited from the eligible staff. Since the channel of promotion for promotion to the posts of AYM grade had not been finalised by the headquarter the applicants alongwith others were posted at different stations vide order dated 7.5.86. There was no mention of ad hoc promotion in the notification dated 20.2.1986. Adhoc promotions after holding selections by the Divisional Operating Superintendent

Moradabad, were made in anticipation of change in the channel of promotions for the post of AYM Gr. 455-700(RS) Under no rules the action of the respondents in promoting the selected persons on adhoc basis is justified. The respondents have acted arbitrarily in using the word 'ad hoc' in the promotions order of the applicants when they had held selection, adjudged suitability and thereafter those only who were found suitable, were promoted. Assuming without admitting only for the sake of arguments that selection was not held properly in 1986 and the x promotions were made on ad hoc basis pending regular selection, even then the respondents could have held selections after Kumbh mela was over in May 1986 at an interval of every six months.

Since the petitioners were promoted on ad hoc basis as AYM and further they were not called for selection as AYM as they are ineligible for being considered for the post of AYM grade Rs.1400-2300(RPS) being in a similar pay as ASM in their parent cadre, there is no question of their regularisation as Asstt. Yard Master. Since the petitioners were promoted as AYM Gr. 1400-2300 (RPS) purely on ad hoc basis and since after finalisation of the channel of promotion for the post of AYM, the petitioners did not fall within the field of eligibility and accordingly were not called for selections held on 9.3.89 and 13.3.89, the question of giving them benefit of 18 months working on the post of AYM does not arise. The applicants are in the same grade in their substantive cadre of ASM and it is not understood why they do not want to repatriate to their parent cadre and seek promotions there.

In reply to the supplementary rejoinder it is stated that the applicants have not been reverted vide order dated 13.11.90 but they are posted back to their substantive posts as ASMs in the same grade and pay from the posts of Adhoc AYMs as per prior conditions already mentioned in the office order dated 7.4.86. The respondents have explained the position that Adil Jiya Siddiqui was a ASM in the grade of Rs.1200-2040 and not in the grade of 1400-2300. The promotion orders of Adil Jiya Siddiqui from the post of ASM grade Rs.1200-2040 to the post of ASM grade Rs.1400-2300 issued vide order dated 8.9.88 were not effected and implemented since he was ready to take his promotion as AYM grade 1400-2300 instead of his promotion as A-i grade Rs.1400-2300. Thus Adiljiya Siddiqui remained in grade 1200-2040 till his promotion as AYM grade Rs.1400-2300. It is wrong to say that there is discrimination in the revised channel of promotion and neither it has been challenged by the applicants.

A reference is made to a case 'Nirmal Chandra Bhattacharjee and others Vs. Union of India and Others, 1992 Supreme Court Cases (L&S) 236', in which although the court held that "technically the Tribunal appears to be correct in its view that once in consequence of restructuring the appellants were placed in class 'C' they could not be selected against class 'C' posts reserved for class 'D'. But practically it results in such glaring injustice that the benefit which the petitioners got in consequence of restructuring made them worse

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off by depriving them of their chance of promotion to higher scale" The effect of Tribunal's order has resulted in pushing down the appellants from class III post and in some cases even from still higher post as they had been granted second promotion as well to the post which they held in 1983. The hardship which stares in the face is that the appellants as a result of restructuring on which they had no control were placed in class 'C' but thereby they lost the chance of moving on the promotional ladder had they chosen to remain in class 'D'. In other words by upgradation and restructuring of posts the appellants became worse off than what they would have been if they would have continued in class 'D'. Putting it differently the appellants who by virtue of restructuring came in class 'C' could not be promoted to the post of Ticket Collectors which is in class 'III'. Whereas the respondents who had been rejected in the selection along with the appellants and could not come in 65 per cent quota of the 'D' class when it was restructured, have chance of being promoted against 33½ percent in class 'C' to the post of Ticket Collectors and then further on. By this process the juniors and those who could not be selected, are likely to become senior and better placed than those who were placed in class 'C.' But here in this case the applicants cannot be said to be looser for the emoluments. They have accepted the higher grade earlier and now they have been placed in the same grade merely because they have got a separate channel of

promotion. May be that in these particular channel they have got their earlier promotion that will not be a ground for rejecting the promotion and in the said case before the Hon'ble Supreme Court the position was not the same as in this case. In that case the respondents were working in class 'D' of N.E. Railways in the pay scale of Rs.200-240 next class above it according to Railway Board circular dated May 31, 1976 was 'C' with posts carrying scale of pay with a maximum of Rs.290/- but less than Rs.900/- 33½ per cent of posts in this class were to be filled by promotion from class 'D'. One of such posts was the post of Ticket Collector. It was a class III post as compared to post held by appellants and respondents which were class IV posts. Selection by promotion for various categories was held in 1982. Since promotion to the post of Ticket collector had not been held it was processed in pursuance of notice dated May 22, 1983 in respect of existing vacancies. Written test was held in October 1983 and Viva voce in February 1984 and those successful were appointed. Applicants were successful and respondents were not successful and that is why they have challenged the selection in which they have failed by taking resort to restructuring order issued by Railways on August 1, 1983. They claimed that since August 1, 1983 incumbents of class 'D' to the extent of 65 per cent were placed in higher scale appellants became members of class 'C' therefore they could not avail of benefit of 33½ per cent promotional quota reserved for class 'D'. The Tribunal while rejecting claim of the respondents that there could not be promotion from class 'C' to class 'C' accepted their claim, that appellants having ceased to be of class 'D' could not be promoted to class 'C' against 33½ per cent reserved for class 'D'. It further held that

time of test, interview and selection were material and not occurrence of vacancy. That indeed would be very unfair. No rule or order which is meant to benefit employees should normally be construed in such a manner as to work hardship and injustice specially when its operation is automatic and if any injustice arised then the primary duty of the court is to resolve it in such a manner that it may avoid any loss to one without giving undue advantage.

In the instant case the ~~adhoc~~ <sup>ments</sup> appoints are being given and the applicants have known from the very beginning that their appoints <sup>ments</sup> are adhoc appointments. The explanation which has been given by the respondents as to why the delay has been caused is acceptable explanation and the applicants were knew that so far as their appointment is concerned it has been made at a particular point of time relating to fully adhoc basis appointment and there was promotion and they accepted the higher grade. If in the promotion policy those who are <sup>in</sup> lower grade were allowed to switch over to that side. Though to some extent the applicants may have the right that their juniors even get a higher channel of promotion but that cannot be a ground for striking down the case do not exist. The 1st contention that the applicants have been worked in the said post for 18 months. It appears that the Railway Board's order is made correctly. Those who have been passed the suitable test can appear in the channel. Here in this case they have worked in the said post for 18 months. Accordingly both these applications are liable to be dismissed and are dismissed with no order as to the costs.

Member (A)

Vice Chairman

Dated: 10.8.1992:

(Uv)