

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ADDL. BENCH

ALLAHABAD

Dated: This the 8th day of ^{January} December 1994

Hon'ble Mr. T. L. Verma JM
CORAM : Hon'ble Mr. S. Dayal AM

ORIGINAL APPLICATION NO. 1214/93 and O.A. No. 561/94

1. Tarun Kumar Mehrotra
son of N. K. Mehrotra.
2. Javaid Qamar Ansari
son of Qamruddin.
3. Daya Nand Ojha
son of J. P. Ojha
4. Virendra Prasad Singh
son of Shiv Prasad Singh
5. Baljeet Singh son of
Surendra Singh
6. Anil Changa s/o K.L.Changa,
All T.C.M-I, Telephone Exchange,
North Eastern Railway, IZATNAGAR,
District : Bareilly- - - - - Petitioners
C/A Sri B. D. Mdhyan.

VERSUS.

1. Union of India through
Ministry of Railways,
New Delhi.

2. General Manager (P),
North Eastern Railway,
Gorakhpur.
3. Divisional Railway Manager(P),
Izatnagar, District Bareilly.
4. Senior Divisional Signal and
Telecom Engineer, Izatnagar,
District Bareilly- - - - - Respondents

C/R Shri Govind Saran.

W I T H

ORIGINAL APPLICATION NO. 561/94

1. Rajesh Pathak, S/o Sri Radhey Shyam Sharma,
2. Shahadat Ali S/o Sri Nanheh Shah.
3. Dori Singh Arya, S/o Sri Dhaniram.
4. Rajesh Kumar Labhiyan, S/o Sri Laloo Singh.

All T.C.M. Grade I, Telephone Exchange, N.E. Railway,
D.R.M. Office, Izatnagar, District Bareilly.

5. Kishan Singh Rana, S/o Sri Chhotey Lal, T.C.M. Grade I,
Telephone Exchange, E.R. Railway, Pilibhit.

... Petitioners

C/A Sri B.D. Madhyan

Versus

1. Union of India through Ministry of Railways, New Delhi.
2. General Manager (P) Northern Eastern Railway, Gorakhpur.
3. Divisional Railway Manager (P) Izatnagar, Distt. Bareilly.
4. Senior Divisional Signal and Telecom Engineer, Izatnagar,
District Bareilly.

... Respondents.

C/R

ORDER

By Hon'ble Mr. T. L. Verma JM

Subject matter of challenge in these O.A.s. are the orders dated 28.7.1993, whereby Select list prepared after the trade test for filling up the vacancies of Artisan categories have been withdrawn and the order dated 7.4.1994 whereby the applicants have been reverted to the post of TCM grade II.

2. Admitted facts of the cases are that at the relevant time, applicants were working as TCM grade II in the Signal and telecom department, Izatnagar, Bareilly. There were two vacancies available for promotion from TCM grade II to TCM grade I. At that time, before process for promotion to the said posts could be initiated, Railway Board by its order dated 27.1.1993 initiated a scheme for restructuring certain group 'C' ⁴⁰ posts. Due to restructuring, nine additional posts of TCM grade I were created. Seniority list for promotion to the aforesaid posts was prepared. Sr. D. P. O. wrote a letter to the C. P. O. (Adm) N. E. Railway, Gorakhpur seeking certain clarifications regarding implementation of restructuring scheme. One of the clarifications sought was whether holding of the trade test was necessary for filling/selection of the restructured post. The C.P.O. by radiogram intimated that while intimating the Board's instruction regarding restructuring, trade test in cases of Artisan staff is necessary. After eligible candidates were given 14 days time for preparation for appearing in the aforesaid trade test. Thereafter, trade test of artisan staff for ^{promotion to} TCM grade II.

was conducted and letters appointing the applicants to TCM Grade I, on their clearing the trade test, was issued by order dated 8.7.1993 (annexure 8). Applicants 1, 2 & 4 joined their promotional posts on 9.7.1993 and applicants 3 & 5 on 26.7.1993.

3. The respondents by the impugned order dated 28.7.1993 withdrew the above promotion and reverted the applicants as TCM grade II by order dated 7.9.1994 on the grounds that the selection under restructured scheme was to be made on the basis of modified procedure. The applicants have assailed the order withdrawing the promotion and reverting them to the post of TCM grade II on the ground that the promotion once given on the basis of merit cannot be withdrawn and also on the ground that 9 posts were created due to restructuring for appointment two on the posts were available from before introduction of restructuring scheme could not have been cancelled as these posts were to be filled by holding trade test. It has also been contested that the impugned orders have been passed under pressure of the Union and are, therefore, not bonafide.

4. We have heard the learned counsels for the parties and perused the records carefully.

5. The instruction issued by the Railway Board on 27.1.1993 on the subject of restructuring of certain group D' and 'C' posts may be seen at annexure R-1 of the C.A. In para para 4 of the instructions, it has been provided that existing classification of the posts covered by the restructuring orders as selection and non selection as the case may be, shall remain unchallenged. It further provides that for the purpose of implementation of these instructions, if the individual railway servant became due for promotion to a post classified as a selection post, the said selection procedure will stand modified in such

to the extent that selection shall be based only on scrutiny of service records and confidential reports without holding any written or viva-voce test. Similarly it also provides that the post classified as non-selection post at the time of restructuring, the same procedure as above will be followed. This modified procedure has been decided as one time exception by special dispensation. It would thus appear that for filling up posts under the restructured scheme, holding of trade test/viva-voce test for promotion to TCM Grade I was not necessary according to the modified selection procedure to be followed.

6. Admittedly before holding the trade test, a clarification was sought from the General Manager(P) North Eastern Railway, Gorakhpur whether holding trade test was necessary for filling up the restructured post. The reply to the clarification was received in the affirmative and accordingly trade test was held. Trade test ~~was~~ ^{was} dehors the instructions issued by the Railway Board in that behalf. It is not in dispute that the instructions issued by the Railway Board have force of statutory rules. Therefore, holding of trade test in contravention of the instruction issued by the Railway Board will vitiate the entire selection process.

7- The concession granted by the modified selection procedure, exempted persons, eligible for being considered for promotion to the post of TCM grade I, from appearing in any kind of test. The decision of the respondents to hold trade test, therefore, had a necessary implication of depriving such eligible persons from the benefits of the aforesaid concession. This was obviously against the spirit and content of

the instructions issued because according to the restructuring scheme, promotion from TCM grade II to TCM grade I was to be made on the basis of scrutiny of service records. Therefore, promotions made on the basis of trade test held in contravention of the instructions did not confer any indefeasible right on such promoters. In this view of the matter, the respondents were perfectly justified in withdrawing the promotions of the applicants ^{made} on the basis of trade test and reverting them to the post of TCM grade II.

8. We also find no merit in the arguments of the learned counsel for the applicant that the two posts available for being filled from before the introduction of restructuring scheme should have ~~have~~ been ^{not} cancelled as these posts ought to have been filled by holding the trade test. The instructions contained in the letter dated 27.1.1993 (annexure R-1) clearly provide that the vacancies existing on 1.3.1993 except direct recruitment quota and those arising on that date from cadre restructuring including chain/resultant vacancies have to be filled in the following sequence:

i) from the panel approved on 1.2.93 and current on that date.

ii) The balance in the manner indicated in para 4 above.

In other words, the vacancies existing on 1.3.1993 have to be filled according to the modified selection procedure. The procedure for filling up the vacancies available from before, therefore, had to be filled according to the modified selection i.e. on the scrutiny of service records and confidential records.

9. The action of the respondents in holding trade test for promotion of TCM grade II to TCM grade I thus was contrary to the instructions contained in Railway Board's letter dated 27.1.1993 and thus was illegal and without jurisdiction.

10. In the facts and circumstances discussed above, we find and hold that the respondents were justified in withdrawing the select list prepared after the trade test for filling the vacancies of artisan categories and reverting the applicants to the post of TCM grade II. The decision of the respondents to make promotion to the post of TCM grade I from TCM grade II on the basis of service records and confidential reposts was in keeping with the instructions contained in the Railway Board's instructions dated 27.1.1993. These applications therefore, are devoid of merit and the same are accordingly dismissed, leaving the parties to bear their own costs.

11. Before parting with the case, we may, however, like to observe that such of the applicants who are not promoted on the basis of their seniority in terms of modified selection procedure and have already passed the trade test for such promotion will not be subject to further trade test and will be entitled to promotion to TCM grade I as and when vacancies occur.

Shanmugam
AM

JM
JM