

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 10<sup>th</sup> DAY OF JULY, 1995

Original Application No. 410 of 1993

HON. MR. JUSTICE B.C. SAKSENA, V.C.

HON. MR. S. DAS GUPTA, MEMBER(A)

Jokhan Prasad, son of Sri Swami Nath  
Helper-Khalasi, Ticket No.10661,  
Carriage & Wagon Shop, Mechanical  
Department, N.E. Railway, Gorakhpur

.... Applicant.

BY ADVOCATE SHRI SWARAJYA PRAKASH

Versus

1. The Union of India through  
the General Manager, North  
Eastern Railway, Gorakhpur, Head  
Quarter at Gorakhpur.
2. The Town Engineer, North Eastern  
Railway, Gorakhpur, Gorakhpur.

.... Respondents

OR D E R (Reserved)

JUSTICE B.C. SAKSENA, V.C.

We have heard the learned counsel for the  
applicant when the O.A came up for admission. Through  
this O.A. the applicant has sought the following two  
reliefs:

- (1) That the son of the applicant Sri Rajesh  
Kumar may be provided employment under  
the Loyal Quota.
- (2) That the cut off dates shown in the Railway  
Board's Circular may be declared to be  
arbitrary, illegal and hit by Articles 14 &  
16 of the Constitution of India.

2. In short, the facts giving rise to the present O.A. are as follows:

3. The applicant was removed from service by an order passed by the Town Engineer dated 19.11.91. The applicant filed a suit in the court of Munsif, Gorakhpur. The suit was decreed. The Railway Administration preferred a first appeal and the Addl. District Judge Gorakhpur allowed the appeal no. 240/76. The applicant states that he filed a second appeal no. 353/79 in the High Court of Judicature at Allahabad. The second appeal was allowed by a judgment and order dated 20.8.81. The applicant pursuant thereto the said judgment and decree, ~~xxxxxxx~~ was reinstated in service and was paid his salary and other allowances from the date of termination of his service upto 5.2.1982 and he was treated to be <sup>continuing</sup> in service from 17.5.1972 to 5.2.1982. The applicant alleges that he made a representation to the Town Engineer, Northern Railway Gorakhpur on 13.11.86 and thereafter followed by another representation on 29.1.1987, requesting him to provide employment to his son Rajesh Kumar. The claim for appointment of applicant's son is based on the provisions contained in Railway Board's circular letter dated 13.2.74, 10.9.75 and 16.6.76, Annexures 6, 7 and 8 with Compilation II & III. The said circular inter alia, provided that 20% of the vacancies in the class III service in initial recruitment grades including apprentices categories should be filled by the General Managers through their own administrative arrangements. The Minister for Railways had made an

:: 3 ::

in Parliament  
announcement for appointment against the 20% of the  
vacancies of wards of Loyal Railway Servants who did not  
participate in the All India strike by the Railway men.  
Initially the date for appointment against the said 20%  
quota was fixed as <sup>upto</sup> 31.12.75 and by subsequent circulars  
was extended upto 30.9.76.

3. Admittedly, no claim for appointment of the  
applicant's son had been made within the prescribed time.  
Consequently faced with this, the applicant seeks to  
challenge the validity of the Cut off date.

4. The learned counsel for the applicant in support  
of his challenge of the cut off date relied on a Supreme  
Court decision in 'D.S. Nakara Vs. Union of India 1983  
Supreme Court Cases(L&S) 145. The said decision has been  
explained and distinguished by the Hon'ble Supreme Court  
in subsequent decision viz 'Krishna Kumar Vs. Union of  
India 1990(4) SCC 207 Indian Ex-Service League Vs. Union  
of India, 1991 SCC(L&S) 536 and State of Rajasthan Vs.  
Rajasthan Pensioner's Samaj, 1991 SCC (L&S) 1176. The  
subsequent decisions have been relied upon to distinguish  
the decisions in Nakara's case by the Hon'ble Supreme  
Court in the latest decision reported in 1995(29) ATC 199  
State of Rajasthan Vs. Sevanirvriti Karmachari Hitkari  
Samiti.

5. However, for our purposes it is not necessary  
to enter into the controversy ~~and~~ challenge/the validity  
of the cut off date for the reasons that there is no  
averment in the petition that the applicant was a loyal  
railway worker within the meaning of the said expression

used in the circular. The said expression has, however, not been explained and defined in the said circulars but from the contents of the said circular, it would be evident that such of the Railway servants who had not participated in the All India strike in the year 1972 and continued to report and work were meant to be treated as Loyal Railway Servants. Admittedly, the applicant's services were terminated in the year 1971. He was reinstated subsequent to the decision by the High Court in the second appeal. The learned counsel for the applicant urged that the effect of the judgment in the second appeal is that the applicant was treated as having continued in service and have been paid arrears of salary and allowances i.e. the consequence which flows from the judgment but that necessarily does not make the applicant a Loyal Railway Servant. He was not in service at the relevant time and thus he cannot claim that he had not participated in the strike. The learned counsel for the applicant was unable to indicate any of the provisions in the said circulars ~~which~~ <sup>which</sup> they would govern the applicant.

There is no question of deeming the applicant as Loyal Railway servant on the ground that by a subsequent decree and judgment he was deemed to have continued in service throughout <sup>It</sup> would be for the purposes of arrears of salary seniority etc. The said judgment and decree do not necessarily clothe him with the right of being treated as a loyal railway servant and for his son to be given appointment.

6. In the decision in State of Rajasthan Vs. Sewani ~~ir~~ vrit Karmachari Hitkari Samiti (Supra), it was held that the Cut off date mentioned in Rule 268-H of the Rajasthan Service Rules which came to be considered was not an ipse dixit of the State Government and introduced in an arbitrary and

capricious manner taking out of hat without any basis whatsoever. The benefit extended by the Railway Board's circulars was with a specific purpose to give benefit to Railway servants who had not participated in the All India Railway Servants strike in the year 1972. As was held in the said case by the Hon'ble Supreme Court/clearly with a policy decision:

" The wisdom in a policy decision of the Government, as such, is not justiciable unless such policy decision is wholly capricious, arbitrary and whimsical thereby offending the Rule of Law as enshrined in Article 14 of the Constitution or such policy decision offends any statutory provisions or/provisions of the Constitution. Save as aforesaid, the Court need not embark on uncharted ocean of public policy.

7. In view of the aforesaid observation of the Hon'ble Supreme Court in the last case we are also persuaded to hold that a decision in the circular was a policy decision announced by the Minister for Railways in the parliament the fixation of the date in the circular had a nexus to the object of the policy. The cut off date, in the circumstances, cannot be held to be arbitrary or whimsical. Admittedly, the applicant did not make any representation for the employment of his son within the time prescribed for the purpose by the said circulars. The learned counsel for the applicant strenuously urged that the applicant could not have made such a request till finalisation of the judicial proceedings by which he has challenged the order for his termination.

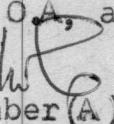
:: 6 ::

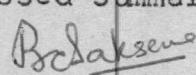
8. The second appeal was decided in 1981. The applicants first representation as shown in the O.A. is after elapse of almost five years i.e. to say on 30.11.86. The applicant having defaulted or may be not in a position to invoke the benefits provided in the circular earlier than 1981 cannot in our considered opinion giving him the right to challenge the validity of the ~~cut~~ off date.

9. In view of our finding hereinabove, the challenge to the cut off date is also wholly untenable.

10. The learned counsel for the applicant next submitted that there has been violation of Art. 14 of the Constitution of India and the applicant's son has been discriminated by others being wards. Loyal Railway servants have been appointed. He drew our attention to paragraph 11 of the O.A. In that para it has been indicated that one Mohd. Feroz Khan was appointed by order dated 26.11.74 and Smt. Vibha Kumari was appointed by order dated 8.1.76. All these appointments were made within the time provided by the circulars. The plea of discrimination is wholly untenable.

11. In view of the discussion hereinabove, we find no merit in the O.A. and it is accordingly dismissed summarily.

  
Member (A)

  
Vice Chairman

Dated: 10<sup>th</sup> July, 1995

Uv/