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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. Nos. 65, 67, 73 & 74 of 1986

DATE OF DECISION: 8.10.'86

SHRI SAJJAN FAKIRA
SHRI OMPRAKASH JOSHI
SHRI BALCHAND BARUPAL &
SHRI L. C. PATEL

... Petitioner

SHRI Y. V. SHAH

... Advocates for the Petitioners

Versus

UNION OF INDIA & ORS.

... Respondent

SHRI K. K. SHAH

... Advocate for the Respondents

CORAM:

The Hon'ble Mr. P. H. TRIVEDI

(Vice-Chairman)

The Hon'ble Mr. P. M. JOSHI

(Judicial Member)

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(6)

O.A. 65/86; O.A. 67/86; O.A. 73/86 & O.A. 74/86

Per: Hon'ble Shri P.H.Trivedi, Vice-Chairman

JUDGMENT

For convenience, with the consent of the advocates, we have decided to hear the four cases together, as the essential questions of facts and law for determination are nearly identical. In two cases 74/86 & 73/86, the applicants, Shri L.C.Patel & Shri Balchand Barupal are ordered to be reverted from the posts of Permanent Way Inspector (P.W.I.), scale 425-700, to Permanent Way Mistry (P.W.M.), scale 380-560, and in O.A. 65/86, applicant Shri Sajjan Fakira and O.A. 67/86, Shri Omprakash Joshi, are reverted from the posts of Permanent Way Mistry (P.W.M.), scale 380-560 to that of Permanent Way Mate, scale 225-308. The applicants' case is that the reversion is said to be on account of contraction of cadre, but if this is so, reversion should have been made in the order of seniority - the juniormost being reverted first - and that the applicants are being reverted inspite of their not being juniormost and inspite of persons junior to them being not reverted. The applicants have named specific individuals who are, according to them, junior to them, and have not been so reverted. It is the case of the applicants that Survey and Construction Department, on which they are borne, has to have a combined seniority with Open Line Department according to the policy and instructions governing the respondents, and inspite of Railway Board's instructions of 13.3.'72 & 5.10.'72, to prepare combined seniority lists and a letter of 14.3.'74, directing the respondents to prepare it without further delay, these instructions have not been followed in taking the decision regarding the reversion of the applicants. The applicants have also referred to the decision of the Bombay High Court in Civil Appeal 2518 of 1974,

in which the drawing up of the combined seniority lists and promotions and the proceedings for promotion and its consequences are discussed. (7)

In reply, the respondent has urged that Survey & Construction Department work is tied to various construction projects and by its nature it is a temporary department having temporary works charge posts which are filled up from four sources:-

- (a) Permanent & temporary employees from Open Line (Permanent Department) are taken on transfer to S & C Department retaining their liens/paper position in their parent departments.
- (b) Railway Recruitment Board selected candidates are appointed in the S&C Department against temporary work-charged posts from the list obtained from Central Recruiting Office viz. General Manager's Office, Churchgate, Bombay.
- (c) By local recruitment of staff in certain categories on the projects available on the spot.
- (d) By obtaining employees of transfer from other Railways on deputation to Western Railway.

As and when works of specific projects are completed or curtailed the situation regarding rendering employees surplus and releasing them for reversion to their substantive posts has to be in the nature of things. It is also a feature of the work of Survey & Construction Department that promotions are offered to persons who are available on hand for limited periods and that such promotions cannot give substantial or long-term benefits or seniority vis-a-vis parent services from which the employees are drawn. The respondents have stated that the seniority of P.W.I. staff have already been combined division-wise up to the grade 550-750 from 1.4.'85 vide General Manager, Bombay letter dated 6.2.'85 which the respondents have filed and that in terms of such seniority the

respondents have stated that applicants have no claim for being retained in the promotion posts. However, the respondents have not shown any documents until and during the hearing, clearly stating the position of the applicants vis-a-vis the persons specified by the applicants as being junior to them and who, the applicants contend are still being retained. Both parties have been given sufficient opportunity to file such documents or replies or rejoinders before the hearing. We would have been willing to see the documents even during the hearing, had they been cited or produced. The learned advocate for the respondent, Shri K. K. Shah, has been unable to throw any clear light on the position of the applicants vis-a-vis the persons junior to them stated in the applications or in regard to the seniority lists drawn up in accordance with the instructions for combination of cadres in Open Line and in Survey & Construction division. The plea that Survey & Construction Division is only temporary and that its staff is also only temporary and that it is liable to be reverted according to the exigencies of work, does not take into account the instructions dated 13.3.'72, extract of which is reproduced below:

"It has been decided that there should be a combined cadre comprising the staff in the open line as well as in the Survey and Construction to ensure that there is no disparity in the prospects of promotion between the Open Line staff and the Construction staff. There is, however, no objection to allow to the Staff in the Survey and Construction Department, promotions to one grade higher than the Open Line, in the exigencies of work. This benefit of one grade higher shall not be taken into consideration for any purpose including eligibility for selection to Class II posts.

2. The Board desires that the Railways who follow a different practice may revise their procedures in terms of the decisions contained in paragraph 1 above in two phases so as to ensure complete implementation of these orders within a period of two years. In merging the cadre, the staff in the Survey & Construction shall be assigned seniority which they would have got on Open Line for working in Survey & Construction."

These instructions are clear enough to indicate that the Ministry has directed that there should be no disparity in the

prospects of promotion between Open Line staff and Construction Department is often allowed promotion in one grade higher than in the Open Line in the exigencies work and that even the Railways which follow a different practice while being allowed to revise their procedures in two phases have yet to do so to ensure complete implementation of these orders in a period of two years. The staff in Survey & Construction is required to be assigned seniority which they would have got on Open Line but for service in Survey & Construction Division. These instructions have been reiterated on 5.10.'72 and after full review have been confirmed on 14.3.'74. To the extent to which the combined seniority lists are thus to be drawn up and operated upon, the plea that the Survey & Construction Department is adhoc or temporary and that its staff can be reverted or retrenched according to exigencies of the work needs to be very considerably modified. We are unable to conclude from the facts made available to us, in documents and during hearing, whether the applicants are being reverted inspite of their juniors being retained, because no admitted seniority lists have been produced. We, however, would like to give a direction that pending the seniority list of the relevant employees in the relevant categories or posts in the Survey & Construction department being finalised and communicated to the applicants, the applicants be not reverted. Such seniority lists should be drawn up both for the combined seniority lists for the Open Line and Survey Departments and for Survey & Construction Department separately for operational purposes, and the position of the applicants vis-a-vis the persons stated by them to be junior to them be communicated to the applicants within a period of three months, from the date of this order. With these observations, we allow the applications and issue no order as to costs.

sd/-
(P. H. TRIVEDI)
Vice-Chairman
sd/-
(P. M. JOSHI)
Judicial Member