

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

NO
Restructuring
of cadre

(D)

O.A. No. 312/89

XXXXXX

DATE OF DECISION 4.2.1993

Shri Vasudev Bhailal Suthar and Petitioner
Nemichand Fulchand Rathod

Mr. D. P. Padhy

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Mr. B. R. Kyada

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C. Bhatt, : Member (J)

The Hon'ble Mr. V. Radhakrishnan : Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

1. Vasudev Bhailal Suthar,
2. Nemichand Fulchand Rathod

... Applicants

Vs.

1. Union of India,
The General Manager,
Western Railway,
Churchgate,
Bombay- 400 020.

2. The Divisional Rail Manager,
Western Railway,
Kothi Compound
Rajkot- 360 001.

... Respondents.

O R A L J U D G M E N T

O.A. No. 312/89

Date: 4.2.1993

Per: Hon'ble Mr. R.C. Bhatt, Member (J)

1. Heard learned advocate Mr. D.P. Padhyo,
for the applicants and Mr. B.R. Kyada, learned advocate
for the respondents.

2. The two applicants serving as Head
Draftman and Head Estimator respectively with the
respondent Railway have filed this application under
Section 19 of the Administrative Tribunals Act, 1985,
seeking the reliefs as under:

...3....

- (1) In restructuring, 20 Tracere posts turned into junior Draftsmen post by the G.M. (para 4 above) should be included in cadre posts making cadre of 50 posts (para 5 above) in terms of para 1 of GM's letter dated 27.7.87 (A/4).
- (2) The Benifit of restructuring fixation be given from 1.1.1984 in terms of para 4 of R.B. letter dated 16.11.84 (A/3).
- (3) The restructuring be done without any written or oral test in terms of para 5 (1) of R.B. letter dated 16.11.84 (A/3).
- (4) The applicants be declared the holders of posts senior Draftsman/ Senior Estimator on and from 1.1.84 will all consequential benefits in terms of R.B. letter dated 16.11.84 (A/5) and GM's letter dated 27.7.87 (A/4).
- (5) The selection with written test on 30.8.88 and oral test on 5.5.89 be set aside be declared null & void as tests are in violation of instruction of R.B. (A/3) & GM (A/4).
- (6) The cost be awarded to the applicants from the respondents.
- (7) Any other reliefs that the lordship pleased to grant."

3. The case of the applicants in short, is that the restructuring percentage on the basis of 50 strength was represented by the applicants vide representation dated 8th August, 1988, and 18th August, 1988, vide Annexure A/5 and A/6, but therewas no response to this representation. The case of the applicants is that in term of para 1 of GM's letter dated 27th July, 1987, vide Annexure A/4, while restructuring the cadre of the

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drawing office staff, the Tracers' post converted in to 20 junior Draftsman posts were to be taken in to account as junior ^{and} draftsman percentage distribution was to be done on the total cadre strength including these twenty posts. The case as pleaded in the application is that, the total strength including these 20 posts was 50, hence, the restructuring distribution percentage was to be given on the basis of 50 posts. It is the case of the applicants ~~that~~, that, the Railway Board's letter Annexure A/4 has given 30 % restructuring to the grade Rs. 425-700. It is alleged that the, Rajkot Division, while giving, this 30 % restructuring took only 30 posts as cadre strength whereas actually it was 50 as mentioned in the para 4 (5). The applicants alleged that this resulted into short fall posts of senior draftsman/ Senior Estimators present grade Rs. 1400- 2300 and that came to 9 posts instead of 15 in that grade which had adversely effected in still higher grades.

4. The respondents in the reply have denied the allegations of applicants in para 6 of the reply. They contended that the 20 posts of tracers which was frozen and merged with the cadre of Jr. Draftsman and counting of the same for higher grade allotment of post of the annual review was already under examination of this office on the basis of the cadre as on 1st April, 1988, and these posts can be up-graded only

after sanction from the H.Q. office CCG and not as contended by the applicants in the application. The respondents have referred to four documents R/1 ~~xx~~ to R/4 in the reply. It is contended by the respondents that there is no illegality in the action of the respondents.

5. The applicants have filed rejoinder controve-
ting the contentions taken by the respondents in the
reply.

6. The learned advocate for the applicants has taken us through the pleadings and documents on record. The main grievance of the learned advocate for the applicants at the time of hearing is that ~~through~~, the applicants made a representation at Annexure A/5 dated 8th August, 1988, and Annexure A/6 dated 18th August, 1988, Annexure A/9 dated 9th May, 1989, there was no ~~response~~ ^{in which} to their representations and this specifically contention is taken in para 4 (6) of the application and also in para 4 (10), of the application. The respondents in reply para 3 have given general denial but they have not specifically contended that they have not received the representations referred to by the applicants in the application. We therefore, have reasons to believe that respondents must have received these representations.

7. The learned advocate for the applicants submitted that, the respondents ought to have considered

and disposed of the representation Annexure A/6 dated 18th August, 1988, according to Rules. We find much substance in this submission of the learned advocate for the applicants. The learned advocate for the applicants submitted that the respondents should decide this *whether* *the* *should* representation of the applicants and *whether* consider *whether* the benefit of restructuring fixation could be given from 1.1.1984, in terms of para 4 of Railway Board's letter dated 16th November, 1981, Annexure A/3 and the respondents also may decide as to whether the posts of senior draftsman/ senior estimator from 1.1.1984 should be given to the applicants. The learned advocate for the applicants submitted that the document Annexure A/14 dated 19.12.1991 support the applicants case.

8. After hearing, the learned advocates and *we find that* considering the pleadings and documents on records, this application can be disposed of by giving the directions to the respondents to dispose of the representation of the applicants according to Rules.

9. Hence, we pass following order:

The application is partly allowed. The respondents or any of the respondent's competent authority are directed to decide the representations of the applicants, Annexure A/6 dated 18th August, 1988, as per the Rules and to intimate the decision to the applicants within four months from the receipt of the copy of the ~~final~~ order of this Tribunal. The applicants also may send true copy of the representation to the respondents to avoid delay. The application is disposed of. No order as to costs.

19d
(V. Radhakrishnan)
Member (A)

Rebel
(R.C. Bhatt)
Member (J)