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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No.453 of 2006
Cuttack, this the 7th day of May, 2009

B.B.Ranavaishaw & Anr. Applicants
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of the CAT or not?

(
JUSTICE K.THANKAPPAN)
MEMBER (JUDICIAL)

(
C.R.MOHAPATRA)
MEMBER (ADMN.)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.453 of 2006
Cuttack, this the 7th day of May, 2009

C O R A M:
THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)
A N D
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

.....

1. Shri Binod Bihari Rasavainshaw, son of Ganeswar Ranavainshaw aged about 44 years, Station Superintendent, Bargarh Road Railway Station, Po/Dist. Bargarh, (Orissa), PIN-768 028.
2. Shri Ram Chandra Bharasagar, son of late Udhab Bharasagar, aged about 47 years Station Superintendent, Loisinga Railway Station, PO-Loisinga, Dist. Bolangir.

.....Applicants

Advocate for Applicant: M/s.Ashok Mishra, S.C.Rath.

-Vs-

1. Union of India represented by Secretary, Railway Board, Ministry of Railways, Rail Bhawan, New Delhi.
2. The General Manager, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
3. Divisional Railway Manager, East Coast Railway, Sambalpur, PO. Modipada, Dist. Sambalpur, PIN 768 002.
4. Divisional Personnel Officer, East Coast Railway, Sambalpur, PO Modipara, Dist. Sambalpur, PIN 768 002.
5. Sri Uddab Ram, aged about 42 years, Station Manager, Mahasamund Railway Staton, PO/Dist. Mahasamund (Chhatisgarh).
6. Sri Daniel Soreng, aged about 44 years, Station Manager, Sambalpur City Railway Staton, PO-Dhankauda, Dist. Sambalpur.
7. Sri P.K.Das, aged about 49 years, Station Manager, Balangir Railway Station, PO/Dist. Bolangir.
8. Shri H.P.Bag, aged about 55 years, Station Manager, Kesinga Railway Staton, PO-Kesinga, Dist. Kalahandi.

....Respondents

Advocate for Respondents: Ms.S.L.Pattnaik.

O R D E R

Per- MR.C.R.MOHAPATRA, MEMBER (A):-

There are two Applicants in this Original Application. Both the Applicants are working as Station Superintendent and posted at two different Railway Stations of the East Coast Railway. According to them, they joined the Railway as ASMs in the scale of pay of Rs.330-560/-.

Subsequently, they were promoted to the post of SM in the scale of pay of Rs.1400-2300/- and, thereafter to the post of Dy. SS in the scale of pay of Rs.5500-9000/-. In the year 2002 they were promoted to the post of Station Superintendent. To fill up six posts of Station Manager carrying the scale of pay of Rs.7540-11,500/- (RPS) by way of positive act of selection, pursuant to the notification dated 08.08.2003 (Annexure-A/1), Respondents conducted selection test and published the panel vide Memo No.110/2003 dated 13/11/2003 (Annexure-A/2). But out of six only two candidates were appointed, vide order dated 19.11.2003 under Annexure-A/3, to the post in question and others could not be appointed as they did not have the minimum period of two years service in the feeder cadre. Subsequently, out of the panel list under Annexure-A/2, Respondents 2 and 8 were appointed to the post of Station Superintendent retrospectively w.e.f. 25.2.2004 with all consequential service and financial benefits and were retained in the place they were working. On restructuring of the cadre strength of Gr. C & D posts as per Railway Board's letter dated 09.10.2003 (RBE No. 177/2003), there was increase in the cadre strength of Station Manager from 3% to 6.5% and Station Superintendent-I from 15% to 22% and change of the existing norms (i.e. by way of positive act of selection) to that of on the basis of seniority and scrutinization of record of service. Soon-after, issuance of the Letter dated 09.10.2003, Railway Board vide letter dated 06.01.2004 directed that the normal vacancies existing as on 01.11.2003 except direct recruitment quota and those arising on that date by virtue of cadre restructuring including chain/resultant vacancies should be filled up out

of the panels approved on or before 01.11.2003 and remaining vacancies through modified selection procedure. It was also indicated that selections process started but not finalizd as on 01.11.2003 should be cancelled/abandoned. Again vide Railway Board's letter dated 03.06.2004 it was directed that normal vacancies existing as on 1.11.2003 except direct recruitment quota and those arising on that date from this cadre restructuring including chain/resultant vacancies should be filled up from the panels approved on or before 05.01.2004 and current on that date and balance in the modified selection procedure as directed in letter dated 06.01.2004 and it was reiterated that selection undertake but not finalized by 5.1.2004 should be cancelled. In compliance of the RB's letter quoted above, the Respondents published a panel, taking into consideration the seniority position as on 01.11.2003 in which applicant No.1 shown at Sl.No.14 and Applicant No.2 at Sl.No.11. The candidates who were selected under Annexure-A/1 but could not be appointed due to non-completion of the minimum two years of service in the feeder grade (i.e. Respondent Nos. 5 & 8) were placed at Sl.No.15 and 18 respectively in the list under Annexure-A/7. Thereafter, by way of modified selection procedure, nine persons from out of the list prepared under Annexure-A/7, were appointed to the post of Station Manager on 01.10.2004 though all of them ^{had} ~~were~~ failed in the selection held on 08.08.2003. Further case of the Applicants is that being aggrieved by such action of the Respondents they made representation but the Respondents turned down the representation of the applicants without due application of mind. Hence, by filing this Original

Application u/s.19 of the A.T. Act, 1985 they have sought the following directions:-

“8-a. To direct the respondent Nos.1 to 4 to promote the applicants to the post of Station Manager in the scale of Rs.7450-11,500/- (RPS) as per the restructuring cadre and to declare the annexure-A/4 void in view of the Annexure-A/4 & A/6 as the applicants are senior to Respondent Nos.5 to 8;

- b. Grant all consequential monetary and service benefits in favour of applicants
- c. And/or pass such other order/direction as this Hon'ble Tribunal thinks just and proper;
- d. Direct the Respondents to pay cost to the applicants.”

2. The stand of the Respondents, in the counter filed in this case, is that in order to fill up six posts (UR-05, SC-1) of Station Manager Gr.I, in the scale of pay of Rs.7450-11500/- (RPS), written test was conducted on 23.08.2003 and on 13.09.2003. Result of the written test was published on 21.10.2003. Out of 18 candidates, only nine candidates came out successful. After completion of all other formalities, a list of six candidates was published vide letter dated 13.11.2003. Since completion of two years minimum service in the feeder grade is mandatory, out of the panel of six candidates, only two candidates possessing the requisite two years of service in the feeder grade, were appointed to the post in question vide letter dated 19.11.2003 and rest four candidates could not be appointed due to non-fulfillment of the requisite years of qualifying service in the feeder grade/cadre. Meanwhile, Railway Board issued instruction (Estt.Srl.No.5/2004) for restructuring of the cadre of Gr.C&D. It was directed that the cadre restructuring will be made effective from 01.11.2003 and selection which

was not finalized by 01.11.2003 should be cancelled/abandoned. This was modified vide RBE no. 114/2004 providing that selection which has not been finalized by 05.01.2004 should be cancelled. According to the Respondents since the panel of Station Manager, Gr.I in the scale of pay of Rs.7450-11500/- (RPS) was published on 13.11.2003 the same was not cancelled as per RB Estt.Srl.No.114/2004 and as such, those staff who were empanelled were promoted against the existing vacancies available prior to restructuring of cadre i.e. 01.11.2003. The rest four empanelled candidates were promoted to the post of Station Manager Gr.I w.e.f. 25.2.2004 i.e. after completion of two years regular service in the immediate lower grade. Further stand of the Respondents is that on restructuring of cadres, nine more vacancies in the cadre of Station Manager, Gr.I were made available to be filled up through modified process of selection in terms of Estt. Srl.No.152/2003, 5/2004 and 114/2004; for which selection was conducted on 30.09.2004 and result of the said test was published under Annexure-R/6 dated 01.10.2004. Names of the applicants did not find place in the panel due to lesser position in the seniority list of Station Manager Gr.II and, as such could not be empanelled due to non-availability of sufficient vacancies in the promotional cadre.

3. Applicants by filing rejoinder questioned some of the contentions raised in the counter filed by the Respondents. It has been stated that as per panel (Annexure-A/2) two senior-most candidates who completed two years of regular service in the immediate lower grade were promoted to the post of Station Manager Gr.I vide Annexure-A/3 is not at

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all correct. Though Promotional posting order was issued to them but the same could not be implemented up-to 11.09.2006. Restructuring order dated 09.10.2003 (Annexure-R/1) was partially modified vide RBE No.5/2004 dated 06.01.2004 (Annexure-R/2) but instead of canceling the panel, the Respondents intentionally and deliberately kept the matter pending till issuance of RBE No.114/2004 dated 03.06.2004 (Annexure-R/3) although the panel formed on 22.10.2003 (Annexure-13) for the post of Dy.SS and the panel formed vide Memo dated 24.11.2003 for the post of Ch.DTI were cancelled. According to them, as per the RB letter promotion to the upgraded posts arising out of restructuring and the existing vacancies will be operated w.e.f. 1.11.2003 and as such, the panel list drawn on 13.11.2003 ought not to have superseded the panel dated 01.10.2004 thereby allowing promotion and financial benefits w.e.f. 01.11.2003. As such, instead of 9 vacancies, the Respondents ought to have filled up 15 posts through modified procedure of selection after restructuring of the cadre pursuant to the RB guidelines stated above.

4. Heard the reiteration of the contentions made in the pleadings of the respective parties and perused the materials placed on record.

5. From the pleadings of the parties, it is established that to fill up existing six vacancies of Station Manager Gr.I notification was issued on 08.08.2003, written test was conducted on 23.08.2003 and 13.09.2003, result was published on 21.10.2003 and after completion of all other formalities, a list of six candidates was published vide letter

dated 13.11.2003. Accordingly, vide letter dated 19.11.2003 order of appointment was issued in favour of two candidates. Rest of them could not be issued order of appointment as they did not fulfill the requisite two years of service in the feeder grade. Meanwhile, Railway Board issued instruction (Estt.Srl.No.5/2004) for restructuring of the cadre of Gr.C&D. It was directed that the cadre restructuring will be made effective from 01.11.2003 and selection which was not finalized by 01.11.2003 should be cancelled/abandoned. This was modified vide RBE no. 114/2004 thereby extending the cut off date 01.11.2003 to 05.01.2004. The rest four empanelled candidates were promoted to the post of Station Manager Gr.I w.e.f. 25.2.2004 i.e. after completion of two years regular service in the immediate lower grade vide letter dated 01.10.2004. Law is well settled in a plethora of judicial pronouncements holding that vacancies existing prior to formal amendment to the rules held are to be filled up according to rules applicable prior to amendment-**A.Monoharan and others v Union of India and others**, (2008) SCC (L&S) 870; once the advertisement had been issued on the basis of the circular obtaining at that particular time, the effect would be that the selection process should continue on the basis of the criteria which was laid down and it cannot be on the basis of the criteria which has been made subsequently (para4)-**Madan Mohan Sharma and another v State of Rajasthan and others**, 2008 (2) SLR 797 and Rules which would be applicable for selecting candidates would be the one which were prevailing at the time of the notification for inviting applications for recruitment-**Marripati Nagaraja and Others v Government of AP and Others** (2008) 1 SCC

(L&S) 68. In view of the above, filling up of the six vacancies existing prior to coming into force of the RB letters stated above and selection made within the cut off date of 05.01.2004 cannot be faulted in any manner. Second ground of the Applicants is that there was no reason on the part of the Respondents to wait till issue of RBE no. 114/2004 extending the cut off date till 05.01.2004. But the Applicants did not challenge the said RBE No. 114/2004 at any point of time. In view of the above, we find no force in the aforesaid contention of the Applicants. Similarly, the plea of the applicants that the Respondents need to fill up 15 posts (i.e. 9 + 6) falls to the ground as the applicants have not made all those six candidates as party in this OA. Non-joinder of all selected candidates violates the constitutional requirement and therefore, no relief can be granted-**Rashmi Mishra vs. MP Public Service Commission and others** [2007]2 SCC(L&S) 345 is the law of the land. Hence, the aforesaid plea of the Applicants is also rejected accordingly.

6. Undisputedly, on restructuring of cadres, nine more vacancies in the cadre of Station Manager, Gr.I were made available to be filled up by way of modified process of selection in terms of Estt, Srl.No.152/2003, 5/2004 and 114/2004; for which selection was conducted on 30.09.2004 and result of the said test was published under Annexure-R/6 dated 01.10.2004. The Applicants did not find place in the panel due to lesser position in the seniority list of Station Manager Gr.II and, as such could not be empanelled due to non-availability of sufficient vacancies in the promotional cadre. It is not the case of the Applicants that persons junior to them have been promoted

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 through modified selection process. Since the Applicants could not be promoted due to their position in the seniority list, we hardly find any merit to interfere in the selection and appointment made to the post of Station Superintendent Gr.I through modified process of selection.

7. For the discussions made above, this Original Application stands dismissed by leaving the parties to bear their own costs.

Kappan

(JUSTICE K.THANKAPPAN)
 MEMBER (JUDICIAL)

Shapla

(C.R.MOHAPATRA)
 MEMBER (ADMN.)

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