

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No. 34 of 1996

Present : Hon'ble Mr. Justice A.K. Chatterjee, Vice-Chairman
Hon'ble Mr. M.S. Mukherjee, Administrative Member

1. Shri Bal Mukund Ram, s/o Late Bhaglu Ram, aged about 42 years, working as Catering Supervisor Gr.III under the Chief Catering Service Manager, Eastern Railway, Koilaghata, Calcutta-1, residing at C/o. Railway Yatri Nivas, Eastern Railway, Howrah-1 ;
2. Shri Roshan Ali, s/o Late Md. Manzoor Alam, aged about 40 years, working as Catering Supervisor Gr.III under the Chief Catering Service Manager, Eastern Railway, Koilaghata, Calcutta-1, residing at C/o. Howrah(N.W.), Eastern Rly, Howrah-1;
3. Md. Abdus Sakur, s/o Md. Fakhruddin, aged about 41 years, working as Catering Supervisor Gr.III under the Chief Catering Service Manager, Eastern Railway, Koilaghata, Calcutta-1, residing at Vill: Aagampur, PO & PS - Souhoulahat, Dist. Bhagalpur;
4. Shri M.G. Sharma, s/o Late Chhatrahari Sharma, aged about 39 years, working as Catering Supervisor Gr.III under the Chief Catering Service Manager, Eastern Railway, Koilaghata, Calcutta-1, residing at P.O. Kadhav, Vill: Kadhav, Dt. Nawadha, Bihar.

..... Applicants

-versus-

1. Union of India service through the General Manager, Eastern Railway, 17, Netaji Subhas Road, Calcutta-700 001 ;
2. The Chief Personnel Officer, Eastern Railway, 17, Netaji Subhas Road, Calcutta-1 ;
3. The Chief Catering Service Manager, Eastern Railway, 3, Koilaghata Street, Calcutta-700 001.

..... Official Respondents

4. Shri Gopal Mukherjee, Sr.Cook, posted at Coffee Corner, Howrah, working under the Chief Catering Service Manager, Eastern Rly, Cal-1. ;
5. Shri Subhendu Mullick, Sr.Cook, posted at Base Kitchen, Howrah, working under the Chief Catering Service Manager, Eastern Rly., Calcutta-1.;
6. Shri Joydev Chakraborty, Sr.Cook, posted at Railway Yatri Nivas, Howrah, working under the Chief Catering Service Manager, Eastern Rly, Cal-1.;
7. Shri Dipak Kumar Das, Sr.Cook, posted at D G R, working under the Chief Catering Service Manager, Eastern Railway, Calcutta-1.

..... Private Respondents

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Counsel for the applicants : Mr. B. Mukherjee

Counsel for the official respondents : Mr. C. Samaddar

Counsel for the private respondents : None

Heard on : 3.12.1996 - Order on : 17.12.1996

O R D E R

A.K. Chatterjee, VC

These four petitioners are working as Catering Supervisor under the Chief Catering Service Manager, Eastern Railway, Calcutta in different stations, which is the feeder post for promotion to the post of Catering Supervisor, Gr.II according to the provision of Para-132 of Indian Railways Establishment Manual - Vol.I, 1989 Edition. However, the railway authorities have issued call letters dt.22.12.95 to 9 employees to appear in suitability test for selection for promotion to the post of Catering Supervisor - Gr.II, which included four employees from cooking category for whom there is separate channel of promotion to the post of Head/Master Cook. The petitioners contend that these four employees in the cooking category employed as Sr.Cook cannot be called upon to appear in the suitability test for selection for promotion to the post of Catering Supervisor - Gr.II being in violation of the provision of Indian Railways Establishment Manual referred to above and hence the instant application has been filed, inter alia, for a direction upon the respondents not to allow those 4 Sr.Cooks impleaded as respondents 4 to 7 in the suitability test in question and other appropriate reliefs.

2. The official respondents have filed a counter stating that the avenue of promotion of Catering Supervisor to Catering Supervisor - Gr.II and the cooking category staff to Sr.Cook or Master Cook was revised in 1995 in consultation with the recognised union and it was decided that 40% of the vacancies in the category of Catering Supervisor - Gr.II will be filled up calling upon from the category of Sr.Cook and the remaining 60% vacancy will be filled up from the seniormost candidates of Catering Supervisor.

3. The private respondents 4 to 7 have not entered appearance and the petitioners have filed a rejoinder contradicting the case made out by the official respondents in their counter.

4. We have heard the Ld.Counsel for both the parties and perused the records before us. There was no controversy that according to para-132 of the Indian Railways Establishment Manual - Vol.I - Revised Edition 1989, the normal channel of promotion of Catering Supervisor is to the post of Catering Supervisor - Gr.II and there is no provision for filling up these posts by promotion of cooking category staff for whom there is separate avenue of promotion. Now, the Ld.Counsel for the railway respondents, however, has drawn our attention to the provision of para -114 of the said Manual, which empowers the General Manager or the Chief Administrative Officer in special circumstances and for reasons to be recorded in writing relax or modify the rules and also to issue orders for deviation from the rules in respect of certain categories etc. Now a plain perusal of rule.114 will at once reveal that such power can be exercised by the General Manager or the Chief Administrative Officer, provided the relaxation are purely on a temporary basis and otherwise prior approval

of the Railway Board is required. The counter filed by the official respondents is altogether silent whether the power was exercised by the General Manager or his Chief Personnel Officer or the Chief Administrative Officer personally. This is important because the rule expressly provides that this power cannot be redelegated. Apart from this, the counter filed by the official respondents states that the revision was made in 1995 creating a quota of 40% of the vacancies in the category of Catering Supervisor -Gr.II for promotion from the category of Sr.Cook subject ofcourse to the option exercised by them. This purports to be a revision on a permanent or atleast on a long term basis and there is nothing before us to show that prior to such revision, the Board's approval was obtained. In such circumstances, the revision in the avenue of promotion as made in 1995 must be held to be contrary to the provision of the Manual and is liable to be struck down.

5. It appears from the record that no interim order was passed restraining the respondents 4 to 7 to appear in the selection test but an order was made on 5.1.96 permitting the petitioners to appear in the suitability test with further direction that the result should not be published until further order and that if any of the respondents 4 to 7 is appointed to the post of Catering Supervisor - Gr.II, the same would abide by the result of the case. In such situation, we propose to dispose of the application that ^{if} any of these respondents has been appointed to the post of Catering Supervisor - Gr.II, the same shall stand quashed and the petitioners on the basis of the result in the suitability test may be considered for appointment to the post of Catering Supervisor - Gr.II subject to their fitness and

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other rules in this behalf.

6. We accordingly dispose of the application quashing the appointments of respondents 4 to 7 to the post of Catering Supervisor - Gr.II if made and directing the official respondents to consider ^{within 6 months from the date of communication of the order} the petitioners for appointment to the post of Catering Supervisor - Gr.II subject to their fitness and other rules in this behalf.

7. Parties to bear their own costs.

Mukherjee
17/12/96
(M.S. Mukherjee)
Member (A)

A.K. Chatterjee
17.12.86
(A.K. Chatterjee)
Vice-Chairman