

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

O.A. No. 292/90

Lucknow this the 30<sup>th</sup> day of June, 2000.

HON. MR. D.C.VERMA, MEMBER(J)

HON. MR. A.K. MISRA, MEMBER(A)

J.P. Chaurasia, aged about 49 years, son of late Sri Pyare Prasad mandal, resident of House No. 555 G.A/92/2, Subhash Marg, Alambagh, Lucknow.

2. Shri O.N. Chaurasia aged about 54 years son of late Sri B.L. Chaurasia, resident of 94, Jai Narain Rod, Husainganj, Lucknow.

Applicants.

By Advocate Shri Vimal Kumar.

versus

1. Union of India through Secretary Ministry of Railways, Rail Bhawan, New Delhi.

2. General Manager(personnel) Northern Railway, Headquarter office baroda House, New Delhi.

3. Chief Personnel Officer, northern Railway, baroda House, New Delhi.

4. Chief Works Manager, Northern Railway Locomotive Workshop, Charbagh, Lucknow.

Respondents.

By Advocate Shri S. Verma.

O R D E R

The two applicants of this O.A. claimed the relief for quashing of the order dated 20th August, 1990 by which the applicants were being subjected to process of selection dated 2.9.90 (Annexure 1 to the O.A.). Further prayer is to quash the selection held in pursuance thereto and to regularise the services of the applicants from the date of their continuous officiation in the grade of Rs425-700 (revised to Rs 1400-2300) on the post of Senior Draftsman with all consequential benefits and fixation of pay.

2. During the course of arguments, the learned counsel for the applicants informed that the applicant No. 2 O.N. Chaurasia has expired. The case against the



applicant No. 2 abates. The relief claimed by applicant No.1 would only be considered in this case.

2. The brief facts of the case are that the applicant No. 1 was initially appointed in the Locomotive Workshop Charbagh on 1.12.1958. The applicant was promoted as Senior Draftsman in the scale of Rs 425-700 on 21.4.82. The post of Senior Draftsman is a selection post. The applicant was however, not regularised on the post of Senior Draftsman. The Ministry of Railways issued a Cadre Review and Restructuring of Group C and D categories vide order dated 16.11.84 whereby the cadre of Draftsman was also affected. The restructuring was given effect retrospectively w.e.f. 1.1.84. The promotion ~~of the applicant~~ on the post of Senior Draftsman, in accordance with the order dated 16.11.84, was to be made only on the basis of service record without holding any written/viva voce test. On 1.1.84, there were 10 Senior Draftsmen. According to the applicant only 5 posts were considered for restructuring whereas the remaining 5, one of which was occupied by applicant No. 1 was not treated as Senior Draftsman against restructured post. Consequently, the name of the applicant was not included in the selected post of Senior Draftsman. The claim of the applicant is that all the 10 vacancies are required to be filled in on the basis of modified selection based on assessment of service record only without holding a written test and/or viva voce test.

3. The respondents' case is that the post of Senior Draftsman is required to be filled in the manner laid down in the Railway Board's letter dated 19.8.1972. This requires 25% of vacancies to be filled up from amongst the Assistant Draftsman, 25% of vacancies from amongst the Tracer and Assistant Draftsman who possessed the required qualification for apprentice mechanics and are within the age limit and the remaining 50% of vacancies were to be filled from

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Apprentice Mechanic recruited directly by Railway Recruitment Board. The applicant's case would come in the first category of 25% which is to be filled from amongst Assistant Draftsman which may be referred to as Promotion quota. It is admitted that the Draftsman is a selection post and 25% vacancies against promotion quota can be filed up after holding regular selection. The mere fact that the applicants were officiating as Senior Draftsman does not entitle the applicants for regularisation without passing the prescribed selection. The respondents' case further is that as per Anneuxre A-2 dated 23.4.82 the applicant No. 1 J.P. Chaurasia was only put to officiate as Senior Draftsman without undergoing any selection process. The selection was held in 1989. Both the applicants appeared in the said selection but failed. Both the applicants were again called for selection in 1990 but none of them appeared and challenged the said selection by filing the present O.A.

4. The respondents' case further is that there were 11 posts of Senior Drsaftsmen but as a result of restructuring, one post was reduced, as per percentage laid down by Railway Board, i.e. 30% in the grade of Rs 425-700. After considering the whole case of restructuring, only two resultant posts came into existence as vacancy to be filled up w.e.f. 1.1.84. Accordingly, it has been submitted, the senior most persons, namely Trilok Singh and S.S. Srivastava <sup>e</sup>were accordingly promoted.

5. Heard the learned counsel for the parties at great length and have gone through the pleadings on record. It is not the case of the applicant that the applicants were promoted in the year 1982 after following due procedure prescribed for selection for the post of Senior Draftsman. The applicant was accordingly, to our mind, officiating only as a stop gap arrangement till a proper selection is made. When a



selection process was taken up in 1989 and the applicant was allowed to appear, the applicant failed to clear the test. In the O.A. or in the Rejoinder filed to the Counter reply nowhere it has been claimed that the applicant cleared the selection test held in 1989. In reply to the respondents' assertion that the applicant failed in the selection held in the year 1989, it has been asserted in the Rejoinder that the applicant, due to continuous officiating on a substantive post have got a right on the post held by him. Thus, there is no specific denial of the respondents' case that the applicant failed in the selection test of 1989. If a procedure is prescribed for selection, one can be promoted to the selected post only after clearing the said selection and not otherwise. The applicant, therefore, has no claim of promotion to the post of Senior Draftsman under promotion quota, unless he clears the selection process.

6. It may be mentioned here that when this case was taken up at the initial stage on 31.8.90 for grant of Interim Relief, an order was passed wherein it was made clear that the decision of the applicant not to appear in the test, solely vests in them. Thus, it was own decision of the applicant not to appear in the test held in the year 1990 which affected his promotion, in case of selection.

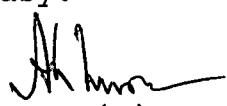
7. As regards the claim that as a result of the applicant restructuring/ be given promotion in the higher grade, ~~xxxx~~ has no merit. The applicant was only officiating against the post of Senior Draftsman. Admittedly, in the category of Senior Draftsman no additional post was available for upgrading w.e.f. 1.1.84, instead one post was reduced, as per percentage laid down by the Railway Board. Consequently, instead of 11, only 10 posts were

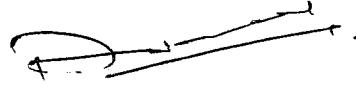


for Senior Draftsman. As a result of restructuring only 2 posts came into existence w.e.f. 1.1.84. Against these two vacancies, Trilok Singh and S.S. Srivastava were promoted. It is not the case of the applicant that Trilok Singh or S.S. Srivastava were junior. Consequently, the applicant can have no better claim as regards Trilok Singh and S.S. Srivastava.

8. The respondents have filed a chart with their counter reply giving name of 10 persons who were working against the post of Senior Draftsman and according to the respondents, 5 persons from serial Nos. 6 to 10 were working only on adhoc basis. The name of applicant No., 1 J.P. Chaurasia is at serial No. 8 of this list whereas the name of Trilok Singh and S.S. Srivastava is at serial No. 3 and 4 of this list. Thus, the applicant who stood at serial no. 8 could not have been promoted by by-passing Trilok Singh and S.S. Srivastava who stood at serial nos. 3 and 4. Thus, the applicant was rightly not given the benefit of restructuring. The respondents were not working against any rule by ignoring the name of the applicant for putting him to selection test held in the year 1990 against 25% promotion quota.

9. In view of the discussions made above, we do not find any merit in the O.A. and dismiss the same. Costs easy.

  
MEMBER (A)

  
MEMBER (J)

Lucknow; Dated: 30.6.2000 -

Shakeel/-