

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 420/2003

This the ^{12th} day of November, 2009

Hon'ble Ms. Sadhna Srivastava, Member (J)

Hon'ble Dr. A.K. Mishra, Member (A)

Gautam Chatterjee, aged about 48 years son of Sri B.K. Chatterjee, resident of 21-C, Suderbagh, Lucknow.

Applicant

By Advocate: Sri Sunil Sharma

Versus

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. The Division Railway Manager, Northern Railway, Lucknow.
3. The Senior Divisional Commerce Manager, Northern Railway, Lucknow Division, Lucknow.
4. The Senior Divisional Personnel Officer, Northern Railway, Lucknow Division, Lucknow.
5. Sri Yogesh Kumar Tewari presently working as Enquiry-cum-Reservatio Supervisor, Northern Railway, Lucknow Division, Lucknow resident of Tiwari Sadan, 288/118, Arya Nagar, Lucknow.

Respondents

By Advocate: Sri S. Verma

Sri Rajesh Kumar Singh for Sri Anurag Srivastava

ORDER

Hon'ble Ms. Sadhna Srivastava, Member (J)

The applicant has challenged the the orders issued by the office of DRM, Northern Railway, Lucknow whereby respondent No. 5 namely Yogesh Kumar Tiwari, on being medically decategorizsed has been provided the alternative appointment on the post of Enquiry-cum-Reservation Supervisor in the pay scale of Rs. 5500-9000/-.

2. The facts are that the respondent No.5 while working in the "Running Cadre" post of Goods Guard was declared medically unfit for train running duties as Goods Guard but found fit for category A-2. The Screening Committee recommended for providing him alternative appointment for the post of Enquiry-cum-Reservation Clerk (ERC) in the pay scale of



Rs. 4500-7000. However, the relevant Rule contained in Chapter XIII of the Indian Railway Establishment Manual (IREM) Vol. I providing 30% of the pay to ^{be} added to the maximum and minimum of scale of pay as an element of running allowance for ^{the} purpose of identifying equivalent post for absorption of medically unfit staff was not taken into account. Therefore, the earlier order was modified and the respondent No. 5 was placed in the pay scale of Rs. 5500-9000 on the post of Enquiry-cum-Reservation Supervisor (ERS) i.e. the post of ERS was identified as equivalent post. The applicant alleges that provisions of Para 1307 and 1308 of IREM are violative of Article 14 and 16 of the Constitution.

3. We have heard the counsel for the parties and perused the record.

4. Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred as an Act of 1995) was enacted by Parliament in accordance with the provisions of Article 309 of the Constitution. The history of this legislation has been traced by Hon'ble Supreme Court in the case of **Kunal Vs. UOI and others 2003, SCC (L&S) 482**.

Para 8 of the judgment which reads as follows:-

"The need for a comprehensive legislation for safeguarding the rights of persons with disabilities and enabling them to enjoy equal opportunities and to help them to fully participate in national life was felt for a long time. To realize the objective that people with disabilities should have equal opportunities and keeping their hopes and aspirations in view a meeting called the "Meet to Launch the Asian and Pacific Decades of Disabled Persons" was held in Beijing in the first week of December 1992 by the Asian and Pacific Countries to ensure "full participation and equality of people with disabilities in the Asian and Pacific Regions". This meeting was held by the Economic and Social Commission for Asia and Pacific. A proclamation was adopted in the said meeting. India was a signatory to the said proclamation and agreed to give effect to the same. Pursuant thereto, this Act was enacted, which came into force on 1.1.1996. The Act provides some sort of succour to the disabled person."



5. Section 47 of the said Act of 1995 reads as under:-

"47. Non-discrimination in Government employee- (1) No establishment shall dispense with or reduce in rank, an employee who acquires a disability during his service:

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding could be shifted to some other post with the same pay scale and service benefits.

Provided further, that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability.


Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section."

6. In order to achieve the objective set by the aforesaid Act of 1995, paragraphs 1301 to 1315 of IREM were amended . Para 1304 of IREM after amendment reads as under:-

"Disabled Medically decategorised staff to be absorbed in posts they can adequately fill:- In the matter of disabled, medically decategorised staff in alternative posts, Railway Administration should take care to ensure that the alternative employment offer is only in posts which the staff can adequately fill and as far as possible should broadly be in allied categories where their background and experience in earlier posts could be utilised. While finding alternative posts for absorption of disabled /medically decategorised staff, the Railway Administration should ensure that the interests of other staff in service are not adversely affected and no reversion of any officiating railway servant is made to absorb the disabled medically decategorised staff. For this purpose, attempts should be made to absorb the disabled/medically categorized railway servant not only within the Unit/ Division or Department, but in other Unit/ Division or Department. "

7. Para 1307 of IREM reads as under:-

"Element of Running Allowances to be reckoned while finding alternative post to disabled medically decategorised running staff- In order to determine that same scale of pay for the purpose of absorbing a disabled medically decategorised running staff in the alternative employment, an amount equal to such percentage of pay in lieu of running allowances as may be in force may be added to the minimum and maximum of the scale of pay of the running staff. If the scale of pay so arrived at is not identical with the scale of pay already existing, the same may be replaced by the equivalent existing scale of pay."

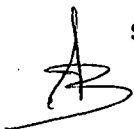


8. Para 1308 of the IREM reads as under:-

"Fixation of Pay- The pay of the disabled/medically decategorised Railway servants will be fixed on absorption in an alternative post at a stage corresponding to the pay previously drawn in the post held by them on regular basis before acquiring disability medically decategorisation. For running staff, the fixation will be based on the basic pay plus a percentage of their basic pay, representing the pay element of running allowances as may be in force

If the basic pay so arrived at does not correspond to any stage in the absorbing grade, the pay may be fixed at the stage just below and the difference allowed as personal pay to be absorbed in future increase in pay. Similarly, if the pay so arrived at exceeds the maximum of the absorbing grade, the pay may be fixed at the maximum and the difference may be allowed as personal pay to be absorbed in future increments/increases in pay. Other allowances such as Dearness Allowance, City Compensatory Allowance and House Rent Allowance should be allowed on pay plus personal pay, if any, in the absorbing grade.

9. There is no manner of doubt that respondent No. 5 has been provided alternative employment in accordance with Act of 1995 (Supra) and the provision of chapter XIII of IREM (Supra) applied to railway employees. The validity of Act of 1995 need not be doubted. The Supreme Court relying on the provisions of the said Act has granted relief to the appellant in the case of Kunal Singh (Supra). The provisions of chapter XIII of IREM are in consonance of Act of 1995. Therefore, on the face of it, the provisions of chapter XIII of IREM or part thereof cannot be termed as forbidden legislation within the meaning of Article 14 and 16 of the Constitution. In a catena of decisions, the Hon'ble Apex Court has held that Article 14 forbids class Legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question. The thrust of Article 14 is that the citizen is



entitled to equality before law and equal protection of laws. In the very nature of things, the society being composed of unequals, a welfare state will have to strive by both executive and legislative action to help the less fortunate in society to ameliorate their condition so that the social and economic inequality in the society may be bridged. In the light of these pronouncements, we are unable to agree with the arguments at the bar that the said Act or provisions of chapter XIII of IREM are violative of Article 14 and 16 of the Constitution. The persons who suffer disability during tenure of service form a different class, they are not comparable with the other group. Therefore, the classification as has been done for the benefit of less fortunate people cannot be held arbitrary or discriminatory.

10. The another argument made by the learned counsel for the applicant is that absorption of respondent No.5 on the post of ERS is bad in law as it affects the chances of promotion of applicant.

11. The Constitution Bench in ***State of J&K Vs. T.N. Khosa***, ***AIR, 1974 SC 1*** has amongst others held:-

"If rules governing conditions of service cannot ever operate to the prejudice of those who are already in service, the age of superannuation should have remained immutable and schemes of compulsory retirement in public interest ought to have foundered on the rock of retroactivity. But such is not the implication of service rules nor is it their true description to say that because they affect existing employees they are retrospective. It is well settled that though employment under the Government like that under any other master may have a contractual origin, the Government servant acquires a 'status' on appointment to his office. As a result, his rights and obligations are liable to be determined under statutory or constitutional authority which, for its exercise requires no reciprocal consent. The Government can alter the terms and conditions of its employees unilaterally and though in modern times consensus in matters relating to public services is often attempted to be achieved consent is not a pre-condition of the validity of rules of services, the contractual origin of the service notwithstanding."(emphasis added)




12. The Constitution Bench in **State of Orissa Vs. Durga Charan Das**, AIR 1966 SC 1547 was considering Rule 6 of Rules issued by Government General in Council on 15.9.86 for protection of members of a provincial or subordinate service required to serve in State of Orissa. It held:-

"6. The Rule in question protects the condition of service as respects pay, allowances, leave and pension of the members falling under its purview, and it guarantees that in no case shall the terms in relation to the said conditions of service be less favourable than they were immediately before the 1st of April, 1936. The question is: do any of the conditions specified in R.6 include a claim for promotion to a higher selection post and confirmation in it? It is well known that promotion to a selection post is not a matter of right which can be claimed merely by seniority. Normally, in considering the question of a public servant's claim for promotion to a selection post, his seniority and his merits have to be considered and so, it seems to us very difficult to accept the view taken by the High Court that in R.6 of the Protection Rules, a guarantee can be inferred in regard to promotion to a selection post. What the Rule guarantees is that the public servants who were transferred to Orissa will not suffer in regard to their pay, allowances leave and pension, and these respective conditions do not seem to include a claim for promotion to a higher selection post; and indeed, it seems very unlikely that any protection could ever have been reasonably intended to be given in regard to promotion to a selection post." (emphasis added).

13. The Constitution Bench of Apex Court in **Ram Chandra Deodhar Vs. State of Maharashtra**, AIR 1974 SC 259 has held:-

"12.....All that happened as a result of making promotions to the posts of Deputy Collectors division wise and limiting such promotions to 50% of the total number of vacancies in the posts of Deputy Collector was to reduce the chances of promotions available to the petitioners. It is now well settled by the decision of this Court in **State of Mysore Vs. G.B. Purohit**, C.A. No. 2281 of 1965 D/- 25-1-1967 (SC) that though a right to be considered for promotion is a service, mere chances of promotion are not. A rule which merely affects chances of promotion cannot be regarded as varying a condition of service. In Purohit's case, the district-wise seniority of sanitary inspector was changed to State-wise seniority, and as a result of this change the respondents went down in seniority and became very junior. This, it was urged affected their chances of promotion which were protected under the proviso to Section 115. Sub Section (7). This contention was negative and Wanchoo, J (as he then was), speaking on behalf of this court observed.



"It is said on behalf of the respondents that as their chances of promotion have been affected their conditions of service have been changed to their disadvantage. We see no force in this argument because chances of promotion are not conditions of service. It is, therefore, clear that neither the Rule of 30th July, 1959 nor the procedure for making promotions to the posts of Deputy Collector divisionwise varies the conditions of service of the petitioners to their disadvantage. The proviso to Section 115, sub.s. (7) is accordingly not attracted and the Rules of 30th July, 1959 cannot be assailed as invalid on ground of non-compliance with that proviso. (emphasis added).

14. The Apex Court in ***Union of India Vs. N.Y. Apte*** AIR 1998 SC 2651 has held :-

"8. Further, what all has been done in the rules is only to include such persons in the field of consideration and give an opportunity to them to be considered for promotion. It should not be forgotten that such promotion is only by selection and that too by a Board consisting of High officials in consultation with UPSC on each occasion. In such a situation, there is no warrant for the contention of the respondents that they have been deprived of any right. It is too well settled that chance of promotion is not a right nor a condition of service. (emphasis added)


15. The Apex Court in the case of ***Dharam Pal Vs. Food Corporation of India***, AIR 1998 SC 247 has held:

"5. It is difficult to understand how can there be any challenge if the Corporation decides to form a separate Accounts cadre considering the administrative necessity in its working. We also fail to see as to how the petitioners who are similarly placed like other employees in the general cadre, prejudiced by formation selection of the separate Accounts Cadre and consequent amending of the Regulations prescribing the qualifications for the initial absorption in the newly created cadre and subsequent filling up of the posts in that cadre. The petitioners cannot challenge the qualifications fixed by the Corporation for absorption or subsequent recruitment in the Accounts Cadre. It is not the case of the petitioners that they possessed the requisite qualification for absorption in the Accounts Cadre or even if they were qualified they gave any option for absorption in the Accounts Cadre or their absorption was not acceded to. Grievance of the petitioners appears to be that the optees who went to the Accounts Cadre got accelerated promotion which the petitioners were unable to get while still working in the General Administration Cadre. That is a chance an employee takes in any service. The petitioners refer to as many as 12 such officials who had been promoted to the posts of Assistant Manager (Accounts) when they possessed qualifications upto Matric. High Secondary or Intermediate



and they were lower in seniority to the petitioners in the General Administration Cadre. Apart from mentioning their names, qualifications and their placement in the seniority no particulars have been given if those officials were first initially taken in Grade III (Accounts) and subsequently got promotions. In the absence of any particulars it is not possible for us to accept the plea of the petitioners. (emphasis added)

16. In view of the facts and case laws discussed above, we do not find any ground to interfere in the matter. Resultantly, the O.A. is dismissed without any order as to costs.


(Dr. A.K. Mishra)
Member (A)


(Ms. Sadhna Srivastava)
Member (J)

HLS/-