

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
 CIRCUIT Sittings AT NAGPUR
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 T.A. No. 185 of

198 7

DATE OF DECISION 4.11.1988

1. Shri G. Ramarao Petitioner's
 2. Shri K. Ramarao
 3. Shri K.N. Murthy

Miss N.R. Sarin for Applicant No.1 Advocate for the Petitioner(s)
 None present for Applicants Nos. 2 & 3

Versus

1. The General Manager, S.E.Rly, Calcutta Respondent
 2. Divisional Superintendent, S.E.Rly,
 Nagpur

Mr. P.N. Chandurkar, assisted by Advocate for the Respondent(s)
 Mrs. Sharda S. Wandile

CORAM :

The Hon'ble Mr. M.B. Mujumdar, Member (J)

The Hon'ble Mr. P.S. Chaudhuri, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
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?]

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT Sittings AT NAGPUR.

Tr. Application No.185 of 1987

1. G. Ramarao
Conservancy Supervisor,
South-Eastern Railway,
M/65/1 Itwari Railway Qtrs.,
Nagpur.
2. K. Ramarao,
Conservancy Supervisor,
South-Eastern Railway,
Railway quarters, Nagbhitar,
Tq. Brahmapuri,
Dist: Chandrapur.
3. K.N. Murthy,
C/o A.M.O.,
South-Eastern Railway,
Chindwada (M.P.)
Tq. and Dist: Chindwada

.. Applicants

V/s.

1. The General Manager,
South Eastern Railway,
Garden Reach,
Calcutta.
2. Divisional Superintendent,
South-Eastern Railway,
Nagpur.

.. Respondents

Coram: Hon'ble Member (J), Shri M.B. Mujumdar
Hon'ble Member (A), Shri P.S. Chaudhuri

Appearance:

Miss N.R. Sarin,
advocate for applicant No.1.
None present for applicant No.1 & 3.

Mr. P.N. Chandurkar assisted by
Mrs. Sharda S. Wandile
advocate for respondents.

JUDGMENT:-

BY PER: Shri P.S. Chaudhuri, Member (A)

Qm
Dated: 4.11.1988

Writ Petition No. 1895 of 1979 ~~which~~ was originally
filed before the Nagpur Bench of the Bombay High Court on
26.7.1979. It was transferred to this Tribunal under
Section 29 of the Administrative Tribunals Act, 1985

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and numbered as Transferred Application No.185 of 1987.

In it there are three applicants who were working as Conservancy Supervisors on South Eastern Railway.

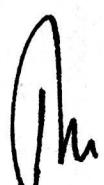
Their prayer is, first, that the order dated 21.3.1979 creating three posts of Health Inspector Grade-B in the scale of Rs. 330-560(RS) by simultaneously surrendering three posts of Conservancy Supervisors in the scale of Rs. 225-308(RS) and three posts of Sanitary Cleaners and, secondly, that the order dated 15.3.1979 indicating that the three Conservancy Supervisors who will be rendered surplus will be transferred one each to Chakradhapur, Bilespur and Dongoaposi and, thirdly, that the order dated 23/24-7-1979 absorbing applicant No.3 as a Record Sorter in the scale of Rs. 210-270(RS) be set aside.

2. An amendment to the application was allowed by the Nagpur Bench of the Bombay High Court on 17.8.1979. An interim order staying the operation and effect of the impugned orders dated 15.3.1979, 21.3.1979 and 23/24-7-1979 until further orders was passed by the Nagpur Bench of the Bombay High Court on 5.9.1979.

3. The respondents have opposed the Writ Petition by filing their reply before the Nagpur Bench of the Bombay High Court on 19.3.1980. We heard Miss N.R.Sarin, learned advocate for applicant No.2. Applicants No.1 and 3 were neither present nor represented. We heard Mr.P.N.Chandurkar, assisted by Mrs.Sharda S.Wandile, learned advocate for the respondents.

4. In order to appreciate the case it is necessary

to state a few facts. Applicant No.1 was appointed as Mal-Jamadar on the then Bengal Nagpur Railway in 1945, promoted as Malaria Educated Mate in 1951 and finally absorbed as Conservancy Supervisor on the successor South Eastern Railway in 1963. Applicant No.2 was directly appointed as a Malaria Educated Mate in 1954 and was absorbed as a Conservancy Supervisor in 1963. Applicant No.3 joined service as a temporary Mosquito Man in 1951, was thereafter promoted as Malaria Educated Mate and finally absorbed as Conservancy Supervisor in 1965. All the three applicants were confirmed as Conservancy Supervisors on 1.1.1979. Due to eradication of malaria the cadre of staff in the Malaria Wing ~~of~~ the Medical Department, to which the applicants belonged, was treated as a diminishing cadre and the staff in the Malaria Wing was gradually absorbed in the Sanitary Wing. Thus, on 21.3.1979 an order was issued creating three posts of Health Inspectors Grade-B in the scale of Rs. 330-560(RS) at Itwari, Naghbir and Chindwara by the simultaneous surrender of three posts of Conservancy Supervisors one each at Itwari, Naghbir and, apparently, Chindwara in the scale of Rs. 225-308(RS) and three posts of Sanitary Cleaners in the scale of Rs. 196-232(RS). As a result, the three applicants were rendered surplus. On 15.3.1979, prior to this sanction, orders had been issued that the three Conservancy Supervisors who would be rendered surplus would be transferred one each to Chakradharpur, Bilaspur and Dongoaposi. On 23/24-7-1979 orders were issued that on being rendered surplus as Conservancy Supervisor at



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Chindwara in the scale of Rs. 225-308(RS), applicant No.3 was absorbed as a Record Sorter in the scale of Rs. 210-270(RS) and posted at Gondia. Being aggrieved at these orders, the applicants filed Writ Petition No. 1895 of 1979 before the Nagpur Bench of Bombay High Court and obtained a stay.

5. Miss Sarin's first contention was that the posts of Conservancy Supervisor had been ~~upgraded~~ to the posts of Health Inspector and hence the applicants should have been automatically absorbed in these upgraded posts. We do not see any force in this argument because the order dated 21.3.1979 clearly indicates that the three posts of Health Inspector were created by the simultaneous surrender of three posts of Conservancy Supervisor and three posts of Sanitary Cleaner.

6. Miss Sarin's next contention was that by a Circular dated 17.8.1967 (~~at~~ Annexure-G to the application) the respondents had made a provision for Malaria Overseers who did not posses Sanitary Inspector's qualifications to be absorbed as Health Inspectors. It was her contention that this concession should be made available to the applicants also. The respondents, however, drew our attention to Rule(iv) of the above Circular which reads as follows:-

"....Malaria Overseers who do not posses similar certificates and are senior to those who have already been absorbed as Health Inspectors may be advised that the question of their absorption in the Sanitary Wing will be considered when they secured Sanitary Inspectors' Certificate..."

It was their contention that this made acquisition of the prescribed qualifications necessary. The applicants

had not obtained the necessary certificates and hence they were not eligible for absorption as Health Inspector. Based on this discussion, we do not see any force in this line of argument.

7. Miss Sarin's next line of argument was that the Circular dated 17.8.1967 did provide for relaxation of the qualifications requirements for absorption as Health Inspector and that two persons, viz. A.S.Roy and S.C.Mitra, had been so absorbed on Nagpur Division itself ^h ~~where~~ the applicants were working. She added that these two persons had been so promoted after 1967 and were therefore, not covered by the relaxation which had been built into the circular because they were not working as Health Inspectors on the date of circular. It was her case that these two employees had been promoted even though they did not possess the qualifications which the respondents considered as necessary and that denial of the same benefit to the applicants was unconstitutional. The respondents mentioned that the two employees in question were very senior employees and that in any case relaxation of the requirement in the special circumstances of one case did not bestow a right to a similar relaxation in every other case. They also contended that no charge of malafide had either been made or substantiated. It is quite evident that there has been a departure from the requirements in some cases but we do not see how this can give a right to the applicants for similar consideration.



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8. An additional point raised by Miss Sarin in respect of denial of equality was that others had not only been absorbed as Health Inspectors in spite of not having the requisite qualifications, but had even been promoted still higher. This contention is no doubt correct but here again we do not see how this can give a right to the applicants for similar consideration.

9. The next point made by Miss Sarin was that the applicants were entitled to consideration for departmental promotion as Health Inspectors and for such departmental promotion there are no qualification requirements. The respondents contended that there is no departmental promotion to the post of Health Inspector and even if there was, qualification requirements could be prescribed. Bearing in mind the nature of the duties to be performed, we do not see any force in this line of argument.

10. The penultimate point raised by Miss Sarin was that a person, viz. S.K.Kamruddin, respondent No.6, who was junior to the applicants had been promoted as a Health Inspector at Waltair even though he was not qualified. The respondents contended that the applicants had no claim in respect of the Posts at Waltair because promotions in the cadre to which the applicants belonged was on the basis of Divisional seniority. The applicants were working in Nagpur Division whereas S.K.Kamaruddin was working in Waltair Division. There does not appear to be any force in the respondents' contention in this regard because the impugned order dated 15.3.1979 had indicated that the applicants were being transferred to stations on Chakradharpur and Bilaspur Divisions. The respondents have, no doubt, stated that in the cadre of Health Inspector Grade-B, seniority is jointly maintained between Bilaspur and Nagpur Divisions but it has nowhere been contended that Chakradharpur Division is also in this same unit. The respondents themselves have ordered inter divisional transfers in respect of the applicants. But, be that as it may, we are unable to conclude that S.K.Kamruddin's absorption as Health Inspector in relaxation of the qualification requirements entitles the applicants to a similar absorption.

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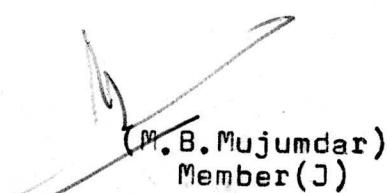
11. Miss. Sarin's final point was that applicant No.2 had been appointed in a Group 'C' post and was continuing as a Group 'C' employee. It was her contention that the alternative post that had been offered to applicant No.3, viz. Record Sorter, was a Group 'D' post. If a similar offer was made to applicant No.2 it would mean that a confirmed Group 'C' employee was being reduced to Group 'D'. We note that applicants No.1 and 3 were appointed in Group 'D', but were subsequently promoted and confirmed in Group 'C'. We also note that all the applicants have been working in the Group 'C' post of Conservancy Supervisor for almost 25 years each, have been confirmed in these posts for almost 10 years, and have been stagnating at the maximum pay of the grade for many years. It would be a genuine hardship to them to be absorbed in Group 'D' posts, now that they have been declared surplus and have, at most, only a short while left to serve. We, therefore, recommend that the respondents may sympathetically consider their case for absorption in suitable Group 'C' posts, if available, at any suitable place.

12. With this, we dismiss the application with no order as to costs. Simultaneously, we hereby vacate the stay that was granted by the Nagpur Bench of the Bombay High Court on 5.9.1979.



(P.S. Chaudhuri)
Member(A)

4-11-88



(M.B. Mujumdar)
Member(J)