

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY 400614

TRANSFERRED APPLICATION NO. 168/86

1. Mr. R M Rao
IOW Gr.II
R.E.RLY.Qrs.
Ajni, Nagpur.
2. Rangappa K Kubde
IOW Gr.II
Rly. Qrs. Wardha
3. Modukuri Dharam Rao
IOW Gr.II
Anantnagar, Nagpur
4. Vasantrao Joshi
IOW Gr.II
R.Peth, Nagpur
5. Pran Nath Ghai
IOW Gr.II
Rly.Qrs.
Ajni, Nagpur
6. Vinayak P. Kulkarni
IOW Gr.II
Bajajnagar, Nagpur
7. K R Gopala Krishnan Nair
IOW Gr.II
Rly.Qrs. Ajni, Nagpur

Applicants

V/s

1. The Union of India
Ministry of Railways
through Chairman
Railway Board, Rail Mantralaya,
Rail Bhavan, New Delhi.
2. General Manager
Central Railway
Bombay V.T.

Respondents

Coram: Hon'ble Member(A) J.G. Rajadhyaksha
Hon'ble Member(J) M.B. Mujumdar

Appearance:

1. Mr. Y B Phadnis
Advocate
for the Applicants
2. Mr. D S Chopra
Advocate
for the Respondents

JUDGMENT

[Per: J G Rajadhyaksha, Member(A)]

Dated : 21.09.1987

Writ Petition No.1499/85 filed by the applicant
(original petitioners) in the High Court of Judicature
at Bombay, Nagpur Bench, Nagpur, has been transferred

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY 400014

TRANSFERRED APPLICATION NO. 168/86

W/s

JUDGMENT

to this Tribunal for disposal and it now bears Transferred Application No. 168/86.

The seven applicants working as Inspector of Works, Gr.II (IOW, for short) filed the Writ Petition as they felt that they had been denied promotion of IOW Gr.I in terms of orders issued by the Railway Board on 1.5.1984 on the subject of "Cadre Review and Restructuring of 'Group C' Cadre". It is their case that there are 592 posts in the 'Group C' cadre of IOWs and if these are taken into account the number of posts available for upgradation and promotion of applicants would be much higher than what the Railway Administration has to-day filled. Therefore, they filed this Writ Petition asking for reliefs viz., (a) direct the respondents 1 and 2 to implement the circular on restructuring of cadre faithfully with effect from 1.1.1984, and (b) determine the appropriate placement of the applicants from that date; (c) followed by all consequential monetary and seniority placement benefits. They also asked for other reliefs such as costs.

The petition has been resisted by the Respondents by their reply dated nil October, 1986. The reply states briefly that the applicants cannot claim promotion as of right. That the applicants were engaged as Work Charged employees and for the purposes of upgradation of posts only the total number of Revenue Charged posts, both permanent and temporary, were required to be taken into account. Therefore, on verification of such Revenue Charged strength the percentages as revised by the Railway Board were applied and the appropriate number of persons have been upgraded in terms of the Railway Board

orders of 1.5.1984. It is further stated that after promoting the last seniormost IOW-II as well as for planning to accommodate IOWs belonging to SC/ST, the Administration could not reach the applicants and unless and until the seniors as well as the SC/ST candidates on the waiting list are accommodated it will not be possible to promote the applicants.

Shri Y B Phadnis appearing for the applicants has contended that there are 592 posts. In support he cited the seniority list in which that many persons have been shown in appropriate order. He does not propose to challenge either the seniority list or the percentages prescribed in upgradation ^{of orders} which are indicated at page no. 18 of the compilation. He merely challenges the implementation of the Railway Board's directives.

On page 2 of the application the applicants have given the total sanctioned strength of Group C cadre IOW personnel as per their calculations. It is as follows:

Sr. No.	Grade/Scale	Perma- nent posts	Constru- ction reserve	Temp. posts	Work- charged	Total
1.	Spl.Gr.840-1040	2	--	-	--	2
2.	Gr.I 700-900	21	6	3	75	105
3.	Gr.II 550-750	44	13	6	101	164
4.	Gr.III 425-700	92	79	6	144	321

They have mentioned at page 5 of the application the percentages which stood revised as per 1.5.1984 orders and stake their claim as follows:

Sr. Grade/ No. Scale	Total No. of posts in cadre on 1.1.84	Revised % as per restruc- turing	Posts that should have been filled	Posts actually filled	Posts filled less / or excess
1. Spl.Gr. 840-1040		10%	59	29	30 less
2. Gr. I 700-900		27%	160	110	50 less
3. Gr.II 550-750		30%	178	196	18 excess
4. Gr.III		33%	195	257	62 excess
	592		592		80 less filled in higher grades


Therefore, though all 592 posts have been filled in various grades of IOWs, their contention is that 80 posts have been short-filled by the Administration and these should have been available to Gr.II IOWs for upgradation and promotion. They have arrived at the figure 80 by referring to shortfilled 30 in Special Grade which would be filled from IOW Gr.I, and shortfilled 50 posts in IOW Gr.I, which should be filled from IOW Gr.II. This Mr. Phadnis says is their only grievance and they seek this position to be remedied, quoting the Railway Board's circular dated 1.5.1984. It is Mr. Phadnis's contention that all the applicants are shown in the seniority list and, therefore, the total strength of 592 has to be taken into account and the contention of the respondents in their reply that only Revenue Charged posts both permanent and temporary are to be

taken into account is not correct. He also refers to Annexure 7, which are the minutes of the meeting between Construction Heads of Department (HOD) meeting with Chief Accounts Officer (C) [CAO(C)] held in his chamber on 27.2.1985 at 10.30 p.m. Mr. Phadnis drew our attention to item no. 1.5 to rely upon that portion which says :

"Upward revision in the percentage as per restructuring of the cadre now applicable on the open line as per board's recent directives vide letter No.PC/III/83/UPG/3 dated 1.5.85 must straight way be made applicable to construction posts. There is no need to make any reference to the Board in this regard."

It is Mr. Phadnis's contention, therefore, that even the construction reserve has to be taken into account in terms of these minutes. There is however no reference to workscharged establishment in these minutes.

Mr. D S Chopra appearing for the respondent argues that a seniority list is prepared so that every one who is in the service will be shown as being borne on the cadre whether it is a permanent post, temporary post, construction reserve or work charged establishment. He further contends that posts of IOW are not compartmentalised as is suggested by the Learned Advocate for the applicants, but they are interchangeable inasmuch as a persons would be posted to do particular jobs according to exigencies of circumstances. Therefore, there cannot be any hard and fast rule applicable to the seniority list. In so far as maintenance of the



seniority list is concerned, it will not, therefore, show whether a person is on the permanent list or on the temporary list or in construction reserve or on work charged establishment. He, however, points out that the seniority list will be strictly in order of seniority according to the principles which are generally known to all including the applicants; that it will be arranged normally according to the date of entry into service / date of confirmation and so on. It is his further contention that in operating the upgradation of posts the Administration has reached a particular number in the seniority list on the basis of calculations of vacancies according to the posts borne on the Revenue Charged establishment (both permanent and temporary). Annexure-7 does not necessarily mean that construction reserve has also to be taken into account. He shows us a letter dated 4.2.1987, which is a further clarification from the Railway Board to the Chief Engineer, Central Railway, and it states as follows:

"2. The question of applying percentage distribution of posts in different cadres in Projects and Construction organisations including construction reserve has been examined in detail in Board's office and it has been decided that percentage structure should not be applied to these organisations, including construction reserve. The subject matter had also been discussed recently with Staff side in DC/JCM and the position has been accepted by them.

"3. As you are aware, construction reserve is directly related to operation of posts in Projects

and Construction which, in turn, is purely dependent on requirement of work. The Board are of the opinion that application of percentages to work-charged establishments will be neither in the interest of work nor in the interest of employees. Accordingly the existing system of creating work-charged posts in appropriate grades applicable to the cadres on the basis of justification has to continue without any reference to percentage concepts which are applicable to cadres on the Open Line."

Even if we do not feel ourselves bound by these clarifications given on 4.2.1987, we must observe that as a rule construction reserve is a strength maintained for activities of a particular time and is not permanent strength. Of course, there is nothing which would prevent the Administration from converting construction reserve into permanent posts or temporary posts as and when necessary, in due course, but as things stand such posts do not necessarily become permanent or temporary posts. So far as the term 'Work Charged Establishment' is concerned it is a well established definition that such establishment is maintained for particular projects only whether they are construction or of any other type and the establishment is borne on the strength of the project. Their pay and allowances etc., are charged to the project and though the project might figure in the overall budget of the organisation, the staff would not at all come on to the permanent strength of the organisation. This being the case, we are unable to accept Mr. Phadnis's contention that in calculating

the total strength of IOWs all the posts viz., the permanent, the temporary, the construction reserve and the work-charged establishment must be taken into account. It would not be either according to the letter of Railway Board's directives dated 1.5.1984 or the spirit thereof. We understand that these orders were passed for removing stagnation and this is a measure beneficial to the cadre in C Group and in this particular case the Cadre of IOWs. We cannot possibly imagine that the benefit would be stretched so far as to cover construction reserve as well as work-charged establishment of the Railways.

We, therefore, feel that the applicants have not made out a good case. Their application is misconceived inasmuch as they wish the entire cadre strength to be considered, ~~whereas~~^{whereas}, the respondents have rightly contended that only the Revenue Charged establishment would be taken into account for this upgradation. We need not go into the other contentions of the Learned Advocate Mr. Phadnis, nor need we ~~go~~ go into the question as to why the Railway Board circular dated 1.5.1984 does not distinguish between the permanent, temporary or revenue charged establishments and construction or work charged establishments. We are satisfied from the respondent's reply and the arguments advanced by the Learned Advocate that the applicants have no case. We, therefore, pass the follows order:

ORDER

1. The application is dismissed.
2. In the circumstances, however,
we pass no order as to costs.

(M H Mujumdar)
Member (J)

(J G Rajadhyaksha)
Member (A)

Delivered in
Open Court on
21/9/98