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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 374/86

~~F.A. No.~~

198

DATE OF DECISION

14-3-1991

Shri S.S.Sequeira & Ors.

Petitioner

Shri G.S.Walia.

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Shri A.L.Kasturey

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P.S.CHAUDHURI, MEMBER(A),

The Hon'ble Mr. N.DHARMADAN, MEMBER(J).

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

Yes

Yes

Yes



(P.S.CHAUDHURI)
MEMBER(A).

(13)

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

Original Application No. 374/86.

Shri S.S. Sequeira & Ors.

... Applicants.

V/s.

Union of India & Ors.

... Respondents.

Coram: Hon'ble Member(A), Shri P.S. Chaudhuri,
Hon'ble Member(J), Shri N. Dharmadan.

Appearances:-

Applicant by Mr. G.S. Walia,
Respondents by Mr. A.L. Kasturey.

JUDGMENT:-

¶ Per Shri P.S. Chaudhuri, Member(A) ¶

Dated: 14-3-1991

This application under section 19 of the Administrative Tribunals Act, 1985 was filed on 28.10.1986. In it the applicants, who are working as Chief/Head/Senior/Draftsman on Western Railway are challenging the basis on which the respondents have determined the number of posts in their cadre that are to be upgraded w.e.f. 1.1.1984 and also the selection held in 1985 by which the upgraded posts have been filled and have sought connected/consequential reliefs.

2. It is the case of the applicants that they belong to the Drawing Office cadre of the Mechanical Department at the Headquarters office of Western Railway, Churchgate. By letter dt. 16.11.1984 the Railway Board issued instructions regarding the re-structuring of certain Group 'C' and 'D' cadres as detailed in that letter.

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The cadres so re-structured included Junior/Senior/Head/Chief Draftsman and the effect of the re-structuring in terms of item 6 of the Annexure mentioned in para:1 of the above mentioned letter dated 16.11.1984 was as follows:-

<u>DESIGNATION</u>	<u>SCALE OF PAY</u>	<u>REVISED PERCENTAGE</u>
Jr.Draftsman	Rs.330-560	20%
Sr.Draftsman	Rs.425-700	30%
Head Draftsman	Rs.550-750	25%
Chief Draftsman	Rs.700-900	25%

These instructions regarding re-structuring stipulated that:-

" Restructuring of certain Group 'C' and 'D' cadres have been under consideration in consultation with the Staff Side in the Committee of the Departmental Council of the JCM (Railways) for sometime. The Ministry of Railways have decided with the approval of the President to restructure certain categories of Group 'C' and 'D' as detailed in the Annexure enclosed.

2. While implementing these orders specific instructions given in the foot note under the different categories should be strictly and carefully adhered to.

3. For the purpose of restructuring, the cadre strength as on 1.1.1984 will be taken into account and will include Rest Giver and Leave Reserve Posts.

4. Staff selected and posted against the additional higher grade posts as a result of re-structuring will have their pay fixed under Rule 2018-B(FR-22C) RII w.e.f. 1.1.1984. The benefit of fixation effective from 1.1.1984 will also be applicable to the chain/resultant vacancies. In effect, the benefit of fixation from 1.1.1984 should be given against all vacancies which arise from restructuring.

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5. The existing classification of the posts covered by these restructuring orders, as "Selection" and "Non-Selection" as the case may be, remains unchanged. However, for the purpose of implementation of these orders, if an individual railway servant becomes due for promotion to only one grade above the grade of the post held by him, at present, on a regular basis and such higher grade post is classified as a "Selection" post, the existing selection procedure will stand modified in such a case to the extent that the selection will be based only on scrutiny of service records without holding any written and/or viva voce test. Under this procedure, the categorisation 'Outstanding' will not exist.

5.1 to 12. Do not concern us".

By a subsequent letter dt. 25.6.1985 the Railway Board issued instructions regarding the restructuring of certain other Group 'C' and 'D' cadres. This restructuring included Tracers in the Drawing Office of the Engineering Departments including the above mentioned Mechanical Department. The relevant portions of these instructions are quoted below:-

"2. While implementing these orders specific instructions given in the foot note under the different categories should be strictly and carefully adhered to.

3. For the purpose of restructuring the cadre strength as on 1.1.1984 will be taken into account and will include Rest Giver and Leave Reserve Posts.

VI. TRACERS (Rs.260-430)

The existing regular incumbents of the post of Tracers in all the four disciplines of the Engineering Departments viz. Civil Engg., Mechanical Engg., Signal & Telecommunication Engg. and Elect. Engg. Departments will be promoted in the following manner:-

(i) Those who possess the diploma in Draftsmanship from recognised institutions will be upgraded as junior Draftsman scale Rs.330-560.

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(ii) Those who do not possess diploma in Draftsmanship but have completed 5 years of service as on 1.1.1984 will be upgraded as Junior Draftsman in scale of Rs.330-560.

(iii) The balance non-qualified Tracers will be progressively promoted by upgrading their posts as junior Draftsman (Rs.330-560) as and when they complete 5 years of service or acquire the necessary qualification. The review will be done every six months commencing from 1.7.1986.

(iv) The vacancies which occur in the normal course in scale of Rs.330-560, will continue to be filled as per existing pattern.

(v) After the entire cadre of the Tracers has been fully accommodated in the higher grade post of junior Draftsman in scale Rs.330-560, future vacancies in scale of Rs.330-560 will be filled cent percent by direct recruitment of diploma holders in Draftsmanship. Detailed instructions will follow.

NOTE

The existing cadre of Tracers is to be frozen and actual requirements reviewed and determined with Board's approval within six months. In this connection, reference is invited to Ministry of Railways letter No.E(NG)II-85/RC-2/7 dated 27.2.1985. Once the cadre of the Junior Draftsman in scale of Rs.330-560 is fixed finally, it will be taken into account for percentage distribution applicable to the Drawing Office staff vide item 6 of Annexure to this Ministry's letter No.PC III/84/UPG/9 dated 16.11.1984 in the subsequent annual cadre reviews. "

It is the contention of the applicants that as a result of the restructuring of the cadre of Tracers in terms of the letter dt. 25.6.1985 (supra) a Memorandum was issued on 19.8.1985 upgrading 4 erstwhile Tracers to Junior Draftsmen w.e.f. 1.1.1984 on proforma basis with current payment w.e.f. 1.1.1985. It is their case that these four posts of Junior Draftsmen which thus came into effect from 1.1.1984 should be taken into account for determining the per centage distribution of posts of Junior/Senior/Head/Chief Draftsman in terms of the order dt. 16.11.1984

para 3 of which unequivocally stipulates that for the purpose of restructuring, the cadre strength as on 1.1.1984 will be taken into account. It is their case that before the 4 posts of Tracers were upgraded to Junior Draftsman there were 31 posts in the scale of Junior Draftsman and higher and this figure of 31 increased to 35 with effect from 1.1.1984 with the upgradation of 4 posts of Tracers to Junior Draftsman. It is the case of the applicants that when the respondents^{failed to} restructure the cadre of Junior Draftsman and higher on the basis of a strength of 35 posts with effect from 1.1.1984 they approached their Union which, in turn, wrote to the respondents on 27.1.1986. In their reply dated 23.6.1986 the respondents informed the Union that the upgraded posts of Junior Draftsman had already been taken into account in the annual review to be conducted as on 1.4.1985 and that the senior eligible persons would automatically be given the benefit of promotion to the consequential additional upgraded posts w.e.f. 1.10.1985. Being aggrieved with this reply the applicants have filed the present application.

3. The respondents have opposed the application by filing their written reply. We have heard Mr.G.S.Walia, learned counsel for the applicants and Mr.A.L.Kasturey, learned counsel for the respondents.

4. The whole case of the applicants rests on the submissions that 4 posts of Tracers were upgraded to Junior Draftsman w.e.f. 1.1.1984, that therefore

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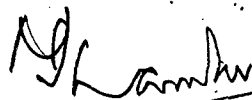


the cadre strength of Junior Draftsman and higher as on 1.1.1984 should include these 4 posts also, that the Drawing Office cadre is to be re-structured on the basis of the cadre strength as on 1.1.1984. and so the number of posts in the higher grades as per percentage entitlement should be determined after taking these 4 posts into account. After going through the record and hearing the learned counsel for both sides we find ourselves totally unable to go along with this proposition. Para:2 of the letter dt. 25.6.1985 in terms of which the posts of Tracers were re-designated as Junior Draftsman clearly stipulates that "while implementing these orders specific instructions given in the foot note under the different categories should be strictly and carefully adhered to". This letter details the manner in which the existing Tracers will be promoted to posts of Junior Draftsman. The foot note to these instructions, clearly states that "once the cadre of the Junior Draftsman in the scale of Rs.330-560 is fixed finally it will be taken into account for percentage distribution applicable to the Drawing Office staff vide item 6 of Annexure to this Ministry's letter No.PC III/84/UPG/9 dt. 16.11.1984 in the subsequent annual cadre reviews". (emphasis supplied): In other words, the order itself clearly stipulates that the enhanced strength of Junior Draftsman shall not be taken into account for determining the distribution of higher grade posts as on 1.11.1984. It clearly states that it will only be taken into account in the subsequent annual cadre reviews. Mr.Kasturey

submitted that in terms of the Railway Board's letter dated 17.5.1971 annual review on the basis of percentages in respect of various categories was required to be completed at the latest by 1st of October of each year and in case, due to unavoidable circumstances, it is not possible to do so, the persons eligible for promotion against the upgraded posts should be entitled to draw the pay due on promotion from the 1st October of that year irrespective of where they may be working. It was his submission that this is precisely what the respondents have done and informed the applicants vide their reply dated 23.6.1986 mentioned in para 2 above.

5. In this view of the matter we see no merit in the application.

6. The application is accordingly dismissed. In the circumstances of the case there will be no order as to costs.



(N.DHARMADAN)
MEMBER(J)



(P.S.CHAUDHURI)
MEMBER(A).