

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. No. 653/89 198
T.A. No.DATE OF DECISION 22-7-1992Shri Suryakant Ramachandra Shinde Petitioner
and 5 othersShri P.V. Deshpande Advocate for the Petitioner(s)

Versus

Divisional Railway Manager Respondent
Central Railway, Bombay and
7 others.Shri Subodh Joshi, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice U.C. Srivastava, Vice-Chairman

The Hon'ble Mr. M.Y. Priolkar, Member (A)

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? ✓

MGIPRRND-12 CAT/86-3-12-86-15,000

(U.C. SRIVASTAVA)
VICE CHAIRMAN

(12)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original application No. 653/89

Shri Suryakant Ramchandra Shine
and 5 others

V/s

Divisional Railway Manager
Central Railway, Bombay VT
and 7 others.

CORAM: Hon'ble Shri Justice U.C. Srivastava, Vice Chairman

Hon'ble Shri M.Y. Priolkar, Member (A)

Appearance:

Mr. P.V. Deshpande, advocate
for the applicant

Mr. Subodh Joshi, advocate
for the respondents.

JUDGEMENT

DATED: 22-7-1989

I Per Shri U.C. Srivastava, Vice Chairman

The applicants 5 in number who were holding the post of Electricians claiming themselves to be eligible to be considered for the post of HSK grade I (Highly Skilled Fitter Grade I) have approached this Tribunal praying that the names of respondents shown at Sl. No. 7, 8, 10, 11, 13 and 15 in the seniority list of Electricians so published be declared incorrect and respondents 1 and 2 be directed to delete ~~from~~ the names of these respondents from seniority list of Electricians and the respondents ~~see to it~~ ^{3 to 8} ~~see to it~~ who gained ^{recently} ~~by~~ gave wrongful profit ~~but~~ their appointment to the post of TXA(EL) on adhoc basis where as these promotions should have been given to the applicant who may now be compensated for the ~~sad~~ loss. It has been stated that the scale of post of Electricians, HSK -I was the same which is to be Rs. 380 - 560. According to the applicant the duties of these posts were quite different and they were considered to be different cadre as the post of Electrician is

supervisory while the post of HSK grade I is a skilled artisan and the applicant who also aspired to be promoted as TXR(Electric Train Lighting) and preferred to continue as Electrician. At the material point of time the Electrician were considered for promotion to the post of TXR and it is because of wrong policy adopted by the respondents No. 1 and 2, respondents No. 3 to 8 were benefited, Out of whom the respondents No. 7 and 8 have already retired and in case they have not been promoted as HSK grade I they would not have been considered for the post of TXR(EL). The said respondents No 7 and 8 were junior to the applicant.

From the pleading of the parties, the position appears to be that there are 22 posts of fitters were upgraded to that of highly skilled workers in the grade of 170 - 240 (s) / 380 - 560 (Rs) with retrospective effect i.e. 3.6.68. Similarly an equal number of posts were upgraded as HSK grade II in the grade of 130 - 212 (s) / 330 - 480 and prior to this upgradation there were rather no post of HSK grade I fitter in the grade 175 - 200 except a few post of Refrigerator mechanic in the identical grade. This upgradation was done on the basis of work ~~of charge~~ ^{classification} under Shankar Saran Award which initially were made applicable to the workshop later on was extended to the open line establishment. 44 posts were upgraded and the skill ^{ed} artisan were Rs. 110 - 180, as the next higher grade for their promotion being 130 - 210 (s). The award was implemented by filling up of the upgraded post of fitter grade II in the grade 130-210 (s).

3.8.68 was that

The existing channel of promotion on / of skilled grade Electrician in the grade 150 - 250 and Refrigerater Mechanic in the grade 175 - 240 . The employees working in the two grades were considered for promotion as TXR Electrician grade 205- 280(s)/ 425 - 700 (s) and their seniority for the purpose of consideration for the post, the seniority was decided on the basis of their entry in the grade. Both these grades were treated as one for interse seniority and were considered for further promotion .In order to appreciate the controversy it will be desirable to make reference to the channel of promotion from Khalasi in the grade of 450 - 940. As per seniority, the next promotion post is Khalasi helper in the as for grade 800 - 1150 and thereafter ✓ general seniority with trade test and the next promotion post is skilled artigan grade III in the grade of 950 - 1500 (Rs) and thereafter as per seniority the next post of HSK grade II Rs. 1200 - 1800 and at the same time there is a post of Electrician grade 130 - 240 which is to be filled in by willingness cum suitability from HSK grade II. ✓ After HSK grade II the post is HSK grade I in the grade 1320 - 2040 which is adjudged as per general seniority after passing the trade test. Thus the grade of HSK I and Electrician is one and the same. From Electrician, the next promotion post is made as TXR in the grade 1400 - 2300(Rs) as per integrated seniority of HSK grade I on the basis of seniority of all trades and it was by selection and SG The next promotion post is TXR in the grade 1500 - 2360 RPS which is also given as per general seniority and the last promotion post is that of Foreman in the grade 2000 - 3300 RPS which is also by seniority . As a result of implementation of Shankar Saran Award it appears that the respondent felt difficulty in filling up the post which were in the grade 175- 240 which

was a little ~~more~~ higher than that of Electrician and as such the Labour Unions were considered and there after a decision was arrived ~~on~~ ^{at} 16.7.78 when both the Unions were advised vide letter dated 16.5.78, that the Electricians will be considered for the benefit of upgraded post on the basis of seniority position as skilled artisan in the grade 110- 180 (s) / 260 - 400 Rs and it was also made clear that the procedure will apply only for filling up of upgraded post ~~and not for any other purposes~~. But prior to the implementation of the decision, recommendation of Railway workers classification Tribunal (RWCT) award which were received under ~~the~~ the posts of skilled artisans were upgraded on percentage basis to Grade I and II in the ratio of 25: 55 which was to come into effect on 1.8.78. ~~This was~~ ^{against} ~~the~~ mass upgradation on percentage basis and the 22 posts which were to be upgraded with retrospective effect remained unfilled and became part of the 78 upgraded post. The number of upgraded to the grade 175 - 200 / 380 - 560 Rs as on 1.8.78 was 53 which included the 22 posts to be upgraded with retrospective effect from 3.6.68. The RWCT award was on time bond basis. All upgraded posts to be filled in on the basis of seniority 'cum' suitability by considering the employee working as fitter grade II ~~which~~ was found that as sufficient number of grade II employee ^{for} on promoting to the grade I employee was not there. So it was considered to give double promotion ~~for the promoted~~ as HSK grade I. In this manner all the upgraded post of HSK fitter grade I in the grade 175 - 240 (s) / 380- 560 Rs were filled with effect from 1.8.78. ~~In order~~ to implement the award the persons who could be eligible for financial benefit as HSK fitter grade I ~~were identified~~. It was decided to consider these employees who were

working as Electrician on 3.6.68 and was senior in upgraded category skilled for the benefit in the post of HSK I and as a result of the implementation of third pay commission report the ~~disparity~~ in the case of Electrician and HSK grade I were distinguished and that is why it was decided to give an opportunity to Electricians who were to be considered for the benefit of upgradation with retrospective effect and option were also called for. At Passing the trade test the senior most 22 employees including the HSK fitter were identified for the benefit of fixation and payment of arrears with retrospective effect. The applicant has given names of 8 employees who were identified for benefit of upgradation but were not posted to work as HSK fitter grade I. According to the respondents ~~that~~ in order to give effect of RWCT award ~~and~~ the only course left was to identify the senior most employees including Electrician who were brought under consideration on the basis of their seniority position as fitter in 110- 180. At the time of ~~implementation of award~~ there was no desparity in HSK grade I fitter and that of Electrician as has been pointed out above. The posting of these 8 employees would have resulted in the reversion ~~of 8~~ employees who was working as grade I fitter and so also reversion in the lower grade and there would be 8 vacancies of Electrician and this would have been filled by employee working in HSK grade II volunteer for the post and as the posts of electricain are filled on voluntary basis it could not be said that the senior most grade II employees came forward for consideration for the post of Electrician. These 8 person were allowed to continue in the post ~~and~~ as there was no desparity in the scale and given the benefit of upgradation. The senior employees ^{are} already working in HSK grade I

who would have faced the reversion by transferring the Electrician as HSK Grade-I were protected as protection of senior employee was given and the applicant can-not raise any grievance against the same. The facts as stated above make it clear that upgradation was to be done as provided ⁱⁿ Shankar Saran Award. At the time when the question of the implementation of award came RCWT award has already come into effect and the award provided for one time promotion and as this HSK Grade-I and Electrical were in the same grade after removing the disparity in the pay scale, there was no question why the Electrician were not to be considered from the same post which specified for implementing the award. The juniors were also given promotion in order to bring them within the eligible criteria, the applicant can not raise their voice against the same. If the contention of the applicant is accepted, it would be that they would have got not only 22 seats which were earmarked or found out but they would have got 8 more posts ~~to~~ which would not have been in ^{by} confirmatory with the Railway Board's circular or correct implementation of award and would have resulted ~~the~~ in discrimination and disparity. Accordingly, the plea of the applicant, that had they known this earlier ~~have~~ they ^{have} preferred to work, continue to work as HSK and Electrician does not stand scrutiny and it can not be said that the policy which has been implemented is arbitrary or it is a wrong policy has got to be rejected. As a matter of fact, there is no policy decision and in fact, ~~the~~ both the award ~~were~~ referred to ~~have~~ were to be given effect and a decision was arrived at after consulting the recognised Union and the same was done. Merely because the others were also

been promoted that could not have given a cause of grievance to the applicant as in implementing the award, the post would not have gone to them. In case the applicant's grievance is accepted, it would mean that the award has not been implemented faithfully and for implementing the same ~~long~~ ^{long} solution could have some difficulty. A ~~reasonable~~ ^{different} solution ~~could~~ ^{perhaps} ~~not~~ have been found out but the solution which ~~have~~ ^{and} been found out ^{which have} been implemented is in quite conformity with the terms of the award and cannot be said to be unjust. When the turn of the applicants will come, they always get the promotion. Accordingly we do not find any good ground to interfere in the promotion which is made and accordingly the application is ~~deserves to be~~ dismissed. No order as to ~~Cost~~

Yours
(M.Y.PRIOLKAR)

MEMBER (A)

U.C.SRIVASTAVA
(U.C.SRIVASTAVA)
VICE CHAIRMAN