

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

O.A. No. 274/89

198

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DATE OF DECISION 24.9.1991

PANDHARINATH MAHADEO AND 26 ors. Petitioner

G.S.WALIA

Advocate for the Petitioner(s)

Versus

UNION OF INDIA and others

Respondent

V.G.REGE,

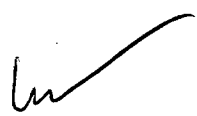
Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. JUSTICE U.C.SRIVASTAVA, Vice-Chairman

The Hon'ble Mr. M.T.PRIOLKAR, MEMBER (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? *ye*
2. To be referred to the Reporter or not? *ye*
3. Whether their Lordships wish to see the fair copy of the Judgement? *no*
4. Whether it needs to be circulated to other Benches of the Tribunal? *no*



(15)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, BOMBAY.

ORIGINAL APPLICATION NO.274/89.

1. Pandharinath Mahadeo & 26 Others  
C/o. G.S. Walia, Advocate High Court,  
89/10, Western Railway Employees'  
Colony, Matunga Road,  
BOMBAY - 400 019.

.. Applicants.

V/s.

1. Union of India, through  
General Manager,  
Central Railway,  
BOMBAY - 400 001.
  2. Chief Workshop Manager,  
Central Railway,  
Workshop at Matunga,  
BOMBAY - 400 019.
- & 26 Others.

.. Respondents.

CORAM : Hon'ble Shri Justice U.C. Srivastava, Vice Chairman.  
Hon'ble Shri M.Y. Priolkar, Member (A).

Appearances:-

Mr.G.S. Walia, Advocate  
for the applicants.

Mr.V.G. Rege, Advocate  
for the Respondents.

JUDGMENT

DATED: 24-9-1991

{ PER : Hon'ble Shri U.C. Srivastava, Vice Chairman }

The applicants 27 in numbers ~~also~~ started their service in Railways as Khalasi and at the time of filing of the application were working at Matunga Workshop as High Skilled Grade I after getting intervening promotions as Skilled and thereafter High Skilled Grade II have approached the Tribunal for quashing and setting aside the orders dated 11.1.1989 and for declaration that they are entitled to

O.A.274/89.

continue as High Skilled Grade I with all consequential benefits in respect of back wages seniority, promotions, increments etc. The two orders in respect of which prayer for quashing has been made are sanction for reversion of applicants to their substantive post of Highly Skilled Grade II and the order by which opposite parties 3 to 28 have been promoted to the post of High Skilled Grade I posts hitherto occupied by the applicants.

2. The applicants have stated that these posts are non-selection post and seniority on promotion on these post is regulated by para 320 of Indian Railway Establishment Manual. The said paragraph provides that promotion shall be on the basis of seniority cum suitability <sup>which</sup> is judged by oral and/or written test or departmental examination or trade test as considered necessary and the record of service except in cases of appointment against short term <sup>vacancy</sup> not exceeding two months and in no case beyond four month which would not give railway servants any advantage if this appointment. Employee qualifying in earlier test and is promoted to non fortuitous vacancy and is reverted thereafter would rank senior to all others in the subsequent test. Seniority test of non-selection post in the channel of various categories combined seniority list of employees passing suitability test based on the length of service in comparable service without disturbing the interse seniority of staff belonging to same category. Although earlier the respondents 3 to 28 were senior to the applicants but applicants were promoted as High Skilled Grade II and the

O.A.274/89.

High Skilled Grade I as they had passed the trade test<sup>in</sup> which the respondents did not show their willingness to appear for the trade test that is why they were not promoted. The respondents were promoted as High Skilled Grade I vide order dated 11.1.1989 after they passed the trade test that is <sup>some</sup> two years after passing of test and promotion of the applicants. However benefit of fixation of pay was given to the applicants and Respondents from 1.1.1984. It is only that applicants received their pay packet with reduced amount on 12.2.1989 on enquiry they could learn that without apprising any thing regarding it and hearing them they have been reverted unilaterally after few years of working which order were never served upon them.

3. The promotion order of respondents indicate that the same was in accordance with Railway Board's letter dated 10.7.1985. The said circular provided that except for the category of ESM's all their skilled categories the distribution ratio is to be revised as 30:35:35 instead of existing one viz. 20:25:55. In the category of ESM's revised distribution of HSK Gr.I, HSK Gr.II and Skilled categories are to be in the ratio of 50:30:20. It also provided that the benefit of retrospective fixation from 1.1.1984 and current payment from 1.7.1985 will not be applicable to those employees who were promoted against vacancies existing on the date of restructuring/reclassification and they will be granted benefits from the date of promotion itself.

4. The respondent nos. 1 and 2 have filed a written statement opposing the claim of the applicants praying for

O.A.274/89.

dismissal of the application alleging concealment as well as misrepresentation and misreading of Boards letter dated 10.7.1985 which is for fixation of pay and not for the purpose of seniority.

5. It has been stated by them that non passing of trade test by respondent is of no relevance in the peculiar circumstances in the case and further seniority is not to be determined in accordance with para 320 read with para 212 of Indian Railway Establishment Manual.

6. It has been stated that after initial appointment of Khalasi option is given to choose particular shops and/or trades. There are 7 such shops/trades divided in sub shop/sub trades. From Khalasi one advances to the post of semi skilled after passing trade test of particular sub trade and further advancement in said trade and no one can change over to any other sub trade. These persons are required to appear in the trade test in particular shop and from the date of passing of trade test in particular sub trade as per choice of employee seniority is fixed. In the year 1982 upgradation with retrospective effect viz. from 1978 was made and as such it became essential necessary and review all the appointments made from 1.8.1978 to the date of implementation of order of upgradation on such recasting senior persons who did not appear in trade test and were not promoted are to be treated as seniors. Regarding classification it has been said that certain percentage of posts of Khalasis, Strikers, Furnaceman, Power Hammer Operators, Power Press Operators, Machineman (Smithy) which were unskilled and semi skilled were

(12)

O.A.274/89.

reclassified as semi skilled and skilled categories that is upgraded as mentioned above. Similarly in 1985-86 there was restructuring of cadres of the Matunga Workshop in view of the orders issued by Railway Board vide letters dated 4.4.1984 and 10.7.1985 and though the restructuring was done in 1986 but it was made effective from 1.1.1984. In the matter of making appointments to these upgraded posts as a result of restructuring the normal method of appointment was given ago- by and in the matter of first the requirement of passing trade test was dispensed with and appointment was made on the basis of seniority cum suitability. But the next stage of promotion was to be made in accordance with classification selection or non-selection as the case may be. After 1.8.1978 a category designated as Basic Tradesman (hereinafter known as BTM). <sup>came into existence</sup> As certain categories were upgraded as skilled it was considered necessary to make a provision in between cadres of unskilled and skilled category for persons who want to go to skilled category <sup>that is why</sup> as such this new category of BTM came with existence. The promotion which were effected before receipt of order dated 13.11.1982 reclassifying posts with retrospective effect viz. 1.3.1978 and also before receipt of orders dated 4.4.1984 and 10.7.1985 the seniority <sup>which</sup> given with effect from date of promotion was ~~recreated and reviewed and it was found~~ <sup>it was found that</sup> as a result of same respondents were required to be appointed to the post to which they were legally entitled to and if necessary by raising the promotions already made. It was <sup>also</sup> found that respondents nos. 3 to 28 and applicants 2, 13, 20 and 21 were holding semi skilled category with effect from 1.8.1978 without ~~requiring to~~ <sup>ing</sup> undergo any trade test. Applicants 2, 13, 20, 21 and 25 were not promoted to semi skilled category till 31.7.78

O.A.274/89.

and were working in the unskilled category on that date they became entitled to be promoted to semi skilled category on 1.8.1978 without undergoing any test in accordance with the percentage of 60% of post having been upgraded from unskilled to skilled category. Applicants Nos. 11,12,17,18,24,25,26 and 27 were promoted earlier having passed trade tests for skilled category in year 1981 and 1982 before issuance of reclassification of posts issued on 13.11.1982 with retrospective effect viz. 1.8.1978, <sup>the</sup> which order did not contain any provision for protecting the promotions already made. All the respondents and applicants Nos. 2,13,20,21 and 25 have been deemed to have been promoted to skilled category with effect from 1.8.1978 and as they were holding post in skilled category on 31.12.1983 they became entitled to restructuring upgradation with effect from 1.1.1984 and as such they were treated <sup>to</sup> have been promoted to HSK Grade II categories with effect from that date ignoring the fact respondents have not passed trade tests and these applicants have passed the said test in 1986. The respondents also passed the trade test subsequent to thereof and thus became entitled to promotion with effect from 1.1.84 to the post of HSK Gr.I and such became entitled to fixation of their seniority according to date of promotion which obviously was to result in reversion of the applicants even though they had passed the trade test earlier and were also promoted earlier in the post of HSK Gr.II and Grade I. The respondents have further stated that as Applicants Nos.2,13, 20, 21 and 25 have been promoted with effect from the date as a result of re-examination and so far they are concerned this application has become infructuous though according to them <sup>it is not so far</sup> they even then have been placed below respondents.

O.A.274/89.

7. Learned counsel for the applicants strongly contended that applicants were promoted according to rules as it existed after passing trade test they could not have been reverted and made junior as a result of some subsequent decision which could not have deprived them of rights already accrued to them and in any view without giving them an opportunity of hearing.

8. Prior to issuance of letter of the year 1985 ~~the~~ <sup>per</sup> ~~base of~~ respondents case Railway Board took certain decisions and issued two letters one on 4.4.1984 and other on 24.4.1984 and that too with reference to earlier letter dated 13.11.1982 which were placed before us. Vide letter dated 4.4.1984 the Railway Board with reference to earlier letter dated 13.11.82 decided that ~~percentage~~ <sup>d</sup> distribution of skilled post of artisans in Highly Skilled Grade I, High Skilled Grade II and Skilled Grade ~~in~~ <sup>was</sup> in the ratio of 20:25:55 as provided in Board's letter dated 24.8.1978 be extended to the categories of semi skilled trades mentioned in Board's letter dated 13.11.1982 which have been reclassified with certain stipulations. It provided that the additional number of higher grade posts in the Highly Skilled Grade I and Highly Skilled Grade II which become available should be distributed in the cognate trades which were in existence prior to issue of Board's order dated 13.11.1982 and which constitutes the prescribed channel of promotion to the semi skilled trades reclassified in terms of instructions of 13.11.1982. In the other letter dated 24.4.1984 circulating Boards other decision dated 4.4.1984 the Board provided that for giving the benefit of promotion against Highly Skilled Grade II and I



O.A.274/89.

posts upgraded under these orders the staff are required to pass prescribed test (emphasis supplied) in the relevant trade. The additional posts in Highly Skilled Grade II and admissible as a result of implementation of these orders should be distributed in the cognate skilled trade. The eligible staff promoted against the upgraded posts after passing the requisite trade tests are to be allowed proforma fixation of pay with effect from 1.4.1983 and actual payment from 1.4.1984. It was further directed that the Boards order be implemented before 30.6.1984 and report be submitted before 1st week of July, 1984.

9. Thus this became the settled position before issuance of letter dated 10.7.1985 regarding reclassification relied on by respondents ~~and~~ relief to unskilled and skilled categories which apparently is not its subject <sup>as it</sup> deals with pay scale and its retrospective effect and ~~pro~~forma fixation. It also provides with reference to initial allotment of semi skilled grade to unskilled staff to be on the seniority cum suitability without subjecting the eligible staff for trade test as one time exception. The benefit of retrospective fixation from 1.1.1984 and current payment from 1.7.1985 will not be applicable to those employee who are promoted against vacancies existing on the date of restructuring/reclassification. They will be granted benefits only from the date of promotion as per normal rules. The scope of letter dated 10.7.1985 was limited and it was concerned with the relief particularly pay scale and modification in upgradation or reclassification which had been done as a result of discussion with the employees Union. It

O.A.274/89.

did not touch Rules 320 and 212 of the Railway Establishment Manual regarding seniority or determination of seniority. It has not superceded the earlier letter dated 4.4.1964 and 24.4.1964 which made trade test obligatory or compulsory. It has not stated anything regarding promotion already given in accordance with rules or orders partaking the nature of rules creating certain right to the posts in the promotees. The letter dated 10.7.1985 had prospective effect with benefit in the matter of pay scale and upgradation with retrospective effect to the extent permitted in it. It undoubtedly created a one time exception for taking of trade test for initial appointment. But it is scrupulously silent as to the seniority between those who have been promoted after due test and those who will be promoted without test. The letter dated 4.4.1984 not having been superceded or resinded it continues to hold ground in so far it prescribes trade test in respect of Highly Skilled Grade II and I posts. The five applicants mentioned in the written reply but all the applicants had passed the trade test and thereafter they were promoted. They were entitled to benefit of Railway Board's letter dated 4.4.1984 and the benefit which had accrued to them could not have been taken away by a second circular or different subject collaterally or incidently touching this subject and that too without hearing the affected person. The order reverting the applicants on the ground of promotion of respondents is not supportable by law as the applicants were promoted in accordance with law. Restructuring/reclassification can be to their benefit but cannot take away rights and benefits already accrued without any statutory sanction or executive sanction having the same force which too is wanting

O.A.274/89.

in this case. Accordingly the order reverting the applicants being illegal cannot be sustained. So far as respondents are concerned who passed the trade test subsequently in view of restructuring and one time exception undoubtedly could get initial promotion without trade test but so far as seniority is concerned they would rank below. In the matter of higher post selection or non selection thenormal rules of promotion would prevail. The seniority in initial promotion and subsequently promotion is to be decided in accordance with para 320 of the Railway Establishment Manual. Accordingly the applicationis allowed to the extent that the reversion order dated 11.1.1989 is quashed and set aside and applicants would be deemed to be senior to respondents in initial post and seniority in that category and the higher categories will be fixed in accordance with para 320 of the Railway Establishment Manual. Let it be done within 3 months of the date of communication of this order. There will be no order as to costs.

  
( M.Y. PRIOLKAR )  
MEMBER (A).

  
( U.C. SRIVASTAVA )  
VICE CHAIRMAN.