

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

DA 1186/1996

MUMBAI, THIS THE 6 TH DAY OF JUNE, 2001

HON'BLE SHRI S.L.JAIN, MEMBER (JUDL.)
HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (ADMNV.)

1. G.N.Rao
2. H.D.Joshi
3. S.C.Bose
4. S.M.Pande
5. B.V.Naik

All are working as Foremen 'B' on adhoc basis
in the pay scale of Rs. 2000-3200 (RPS) at
Central Railway's Electric Loco Shed, Kalyan

C/o G.S.Walia
Advocate, High Court
16, Maharashtra Bhavan,
Bora Masjid Street, Fort
Mumbai - 400 001.

...Applicants

(By Advocate Shri G.S.Walia)

V E R S U S

1. Union of India : Through
General Manager
Central Railway
Head Quarters Office,
C.S.T., Mumbai - 400 001.
2. Divisional Railway Manager
Mumbai Division, Central Railway
Headquarters Office,
C.S.T, Mumbai - 400 001.
3. Senior D.E.E. (TRS)
Central Railway,
Electric Loco Shed,
Kalyan.

...Respondents

(By Advocate Shri S.C.Dhawan)


O R D E R

By Hon'ble Shri Govindan S.Tampi, Member (A)


Challenge in this OA is directed against the respondents' Notification dated 4-11-1996, proposing to fill up, adopting the policy of reservation, the vacant post of Foreman 'B' in the pay scale of Rs. 2000-3200/-, which arose on 1-1-1993, on account of restructuring of the cadre.

2. Heard S/Shri G.S.Walia and Shri S.C. Dhawan learned counsel for the applicant and the respondents respectively.

3. All the five applicants are working as Foreman 'B', on ad hoc basis w.e.f various dates during June 1995 to February 1996. This is a selection post usually to be filled by written test as well as viva-voce, though at times a modified selection process is adopted for filling up the above by way of seniority-cum-fitness. The category of Technical Supervisors in Railway to which applicants belonged was restructured by letter dated 27-1-1993, as on 1-3-1993, which letter directed that vacancies arising on 1-3-1993 should be filled by modified selection procedure and the selection procedure which were already on were to be held back till the above instructions are fully implemented. On the basis of the




order of the Tribunal holding that the upgraded post arising from restructuring need not be filled by following reservation policy, the posts should have been filled up by seniority-cum-fitness, which the respondents had declined to do. Three posts for SC and three posts for ST were kept in abeyance, vide letter dated 20-1-1994, but on 7-10-1995 and 6-2-1996 these were filled on ad hoc basis by the applicants subject to the final decision of the Supreme Court in the case of UOI Vs. J.C.Malik & Ors. (Civil Appeal No. 2017/78) and SLP against the CAT, Bombay Bench's Judgement of 5-10-1993 in OA 727 of L.C.Awasthi Vs. UOI & Ors. In terms of respondents' letter dated 4-11-1996, 12 posts of Foreman 'B' were to be filled up with 8 going to general candidates and 3+1 going to SC/ST. According to the applicants since they were the senior most eligible employees in the feeder cadre and were permitted to hold these posts, though on ad hoc basis, they should be permitted to be adjusted against those posts by the modified procedure without subjecting them to written test or viva-voce. The respondents had added the vacancies which arose on restructuring on 1-3-1993, to those which arose subsequently and issued the Notification dated 4-11-1996, for filling them through the selection procedure, which was incorrect and illegal. Though no modification in respect of the vacancies was permissible, the respondents proposed to do just the same



by even including a few persons, who were never employed in the locoshed and who were thus never eligible.


4. Reservation was not applicable to the promotion against the upgraded post and the same were to be filled up only by adjusting the applicants by the modified procedure on seniority-cum-suitability basis. The move by the Department to adopt the selection procedure was improper. As the decision in J.C.Malik's case (supra) having already been issued the vacancies deserved to be filled up on the basis of Railway Board's Order dated 27-1-1993 i.e. without subjecting the applicants for a written test and interview, but on seniority-cum-suitability basis provided for in the modified procedure. They also point out that though 11 posts of Junior Shop Superintendents were available, only six (6) have been filled on a regular basis, while the remaining five (5) were only filled on ad hoc basis. If these five posts, available for being filled by modified procedure and the applicants are regularised, their prayers would be fulfilled, is their plea.

5. During his oral submissions, Shri Walia, learned counsel reiterated that the posts arising on upgradation and restructuring and which have arisen on 1-3-1993, deserved to be filled up only by the modified procedure




without any written test or viva-voce and any attempt to change the same was improper. He also referred to the decision of the Hon'ble Supreme Court in Civil Appeal No. 1481/96 i.e. All India Non-SC/ST Empl. Assn. (Railway) Vs. V.K. Aggarwal & Ors. wherein it has been held that if as a result of, re-classification or re-adjustment there are no additional post which are created and it is a case of upgradation then the principle of reservation will not be applicable. The applicants in the circumstances, plead that the Notification dated 4-11-1996, seeking to fill up the posts by selection procedure be quashed and set aside and their promotion be regularised as Foreman 'B' w.e.f. 1-3-1993 with all consequential benefits.


6. In the reply on behalf of the respondents and argued through Shri S.C. Dhawan, learned counsel, it is pointed out that the applicants were attempting to convert a selection promotion to a non-selection promotion which had no sanction in law. The application was mis-conceived and malafide. Though they are working on ad hoc basis as Foreman 'B' from the respective dates mentioned in the OA, they have not been promoted to the said post against any of the vacancies on 1-3-1993 which have already been filled on 20-1-1994. Railway Board's instructions making available the additional posts had also provided for quota for SC/ST, but they have been



held back on account of decision of the Tribunal, which finally directed on 31-3-1997 that their can be reservation in restructuring. Therefore, the responents were authorised to fill the posts following the policy of reservation for the post arising on restructuring. The applicants were not, infact promoted on ad hoc basis against any of the post held back, but promoted due to the exigencies of the service as a stop gap arrangement. Respondents confirm that the relevant posts had remained selection posts, though in special circumstances the method of selection alone was modified. The modified selection procedure indicated in Railway Board's letter dated 27-1-1993, was an one time exception applicable to additional posts, which were created and available at that time in the higher grade while the Notification dated 4-11-1996, related to filling up the 12 vacancies which have arisen and were likely to be filled up after restructuring of process was ordered. Modified method of selection was not, therefore, at all applicable to the relevant vacancies and the same had to be filled up only by the selection method. The applicants also are in the consideration zone for selection and no prejudice has been caused to them, as they had been holding the posts only on ad hoc basis and no right devolved on them. Railway Administration had passed orders for filling up the posts arising on restructuring which showed the total



number of posts before and after revision remained 141 and certain changes were directed only after the additional posts were created, when it was found that the reservation percentage for SC/ST was less than prescribed number. According to them as against short fall of 5 SC and 3 ST vacancies, only two (2) SC posts were filled on 20-1-1994, leaving 3 posts of SC & 3 posts of ST unfilled. Vacancies held back were clearly post restructuring vacancies in respect of which the applicants had no vested right. Since the applicants were promoted only on ad hoc basis and as stop-gap arrangement and were not promoted against any of the vacancies on 1-1-1993, they did not or could not have any specific ground or grievance against the respondents. It is not a case where posts which were existing as on 1-3-1993 were made available to the reserved candidates showing them to be post upgradation vacancies. The applicants who are the general category candidates should have no grievance in this matter, more so as the action taken by them was in pursuance of the Tribunal's decision on 31-3-1997. The respondents reiterate that reservation was applicable to the upgraded post and the averment by the applicants to the contrary was improper and, therefore, they have no right for consideration against those posts. As the relevant posts could be filled up only by the selection process in which the applicants



have been invited to join, they have no case for any complaint. Moreover posts which are meant to be filled up by those belonging to SC/ST community would perforce to be filled by those who are from the relevant category and the applicants cannot have any case against the organisation in this matter. That being the case, Shri Dhawan, learned counsel submitted that the application was mis-conceived and deserved to fail on that count itself.


7. We have carefully considered the matter and deliberated^m the rival contentions as well as the facts brought on record. The point for determination in this case is whether the Notification dated 04-11-1996 calling for applications for conducting the selection to the post of Foreman 'B', keeping in mind the policy of reservation was correct. While the applicants state that as the posts which were being sought to be filled up belonged to the category of restructured posts, they could not be filled up adopting the reservation policy, the respondents state that the Tribunal had also permitted the reservation to be followed in similar vacancies and that the vacancies did not belong to the category of restructured posts. In this context the decision of Hon'ble Supreme Court in the case of All India Non-SC/ST Employess Association (Railway) Vs. V.K. Aggarwal & Ors.

h

Cont.Pat.(Civil) 304/1999 in Civil Appeal No. 1481/1996 decided on 31-01-2001 is relevant. The short order of the Hon'ble apex Court is reproduced below :-

" It appears from all the decisions so far that it as a result of reclassification or readjustment, there are no additional post which are created and it is a case of upgradation, then the principle of reservation will not be applicable. It is on this basis that this Court had held that reservation for SC & ST is not applicable in the upgradation of existing posts and civil appeal No. 1481/1996 and the connected matters were decided against the Union of India. The effect of this is that, where the total number of post remained unaltered, though in different scales of pay, as a result of re-grouping and the effect of which may be that some of the employees who were in the scale of Rs. 550 to 770/- will go into the higher scales, it would be a case of upgradation of post and not a case of additional vacancy or the post being created to which the reservation principle would apply. It is only if in addition to the total number of existing posts, some additional posts are created that in respect of those additional posts the reservation will apply, but with regard to the additional posts the dispute does not arise in the present case. The present case is restricted to all existing employees who were re-distributed into different scales of pay as a result of the said upgradation".

We find that this decision of Hon'ble apex Court totally and squarely covers the dispute in question in this OA. In terms of the averments of the respondents themselves, it is found that as against total number of 141 posts, the same number of posts have come into existence even after restructuring. The only change which has taken place is that the number of Foreman 'A' has gone up from 14 to 24 and that of Foreman 'B' from 38 to 39, while strength Chargeman 'A' and Chargeman 'B' have gone down from 43 to 36 & 46 to 42 respectively. No additional

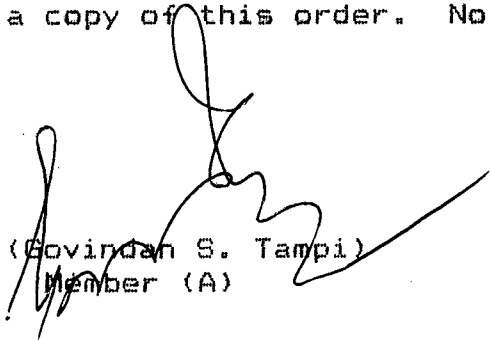


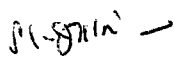
number of posts have been created and, therefore, these are clearly restructured posts. In respect of these restructured posts, reservation does not apply and, therefore, for filling up of these posts the modified procedure as prescribed in Railway Board's letter dated 27-1-1993 alone should have been followed. The respondents have not successfully rebutted the pleas raised by the applicants and specifically shown which, if any, exactly are the posts, created after restructuring and as additional posts. As the apex Court has directed, only when those additional posts are identified they can successfully resort to the principle of reservation and follow the selection method. In the circumstances of the case, therefore, in filling up the impugned posts, the modified procedure, based on the principle of seniority-cum-fitness without following reservation should have been followed. The applicants who are working against those posts have a right to be considered for filling up those vacancies (five vacancies) without their being directed to take the written test as well as the viva-voce. The same cannot be denied.

8. In the result the application succeeds and is accordingly allowed. The selection procedure initiated in terms of Notification dated 4-11-1996 is quashed and set aside and the respondents are directed to consider

12

the case of the applicants for regularising them against five posts of Foreman 'B', which they are holding on ad hoc basis, by selection through the modified procedure and without insisting upon their appearing for the written test and viva-voce. This exercise shall be completed within three months from the date of receipt of a copy of this order. No costs.


(Govindan S. Tampi)
Member (A)


(S.L. Jain)
Member (J)

/vikas/