

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Original Application No: 1160/92

Date of Decision: 2-1-98

E.Narayan Konar & Ors.

Applicant.

Shri Ramesh Ramamurthy.

Advocate for  
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri S.C.Dhawan.

Advocate for  
Respondent(s)

CORAM:

Hon'ble Shri. B.S.Hegde, Member(J),

Hon'ble Shri. M.R.Kolhatkar, Member(A).

(1) To be referred to the Reporter or not?

(2) Whether it needs to be circulated to  other Benches of the Tribunal?

*M.R.Kolhatkar*

(M.R.KOLHATKAR)  
MEMBER(A).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 1160/92.

Proounced this the 2<sup>nd</sup> day of Jan 1992.

Coram: Hon'ble Shri B.S.Hegde, Member(J),  
Hon'ble Shri M.R.Kolhatkar, Member(A).

1. E.Narayan Konar
2. Dattu S.Patil
3. Sheikh Mohiddin
4. Pramod Bhikhaji Gawand
5. Kashinath Harishchandra
6. Mohammed Yoosuf
7. Ramjar Bambadin
8. Sudam Narayan
9. Pichhayya Laxman
10. Ashappa Santappa
11. Govind Sonaji
12. Paramashivam K.Nadar
13. Laxman Govind
14. Digambar Soma,  
C/o. Ramesh Ramamurthy,  
Advocate, High Court,  
n IIIrd floor, Gulestan,  
Prescot Road,  
Bombay - 400 001. ... Applicants.

(By Advocate Shri Ramesh Ramamurthy)

V/s.

1. Union of India through  
the General Manager,  
Central Railway,  
Bombay V.T.,  
Bombay - 400 001.
2. Senior Personnel Officer,  
Central Railway,  
Matunga Workshop,  
Matunga,  
Bombay - 400 019.
3. The Chief Workshop Manager,  
Central Railway,  
Matunga Workshop,  
Bombay - 400 019.

... Respondents.

(By Advocate Shri S.C.Dhawan).

O R D E R

(Per Shri M.R.Kolhatkar, Member(A))

In this O.A. the 14 applicants are challenging

the order dt. 1.6.1992 (at Annexure - K page 76) reverting the applicants from the post of Highly Skilled Grade-I (for short, HSK Gr.I) to Highly Skilled Grade-II (for short, HSK Gr.II) in purported implementation of the Judgment of the Tribunal in O.A. No.274/89 decided on 24.9.1991 (Pandharinath Mahadeo & 26 Ors. V/s. Union of India & Ors. ~~Copy at Ex.'J'~~). The relief sought by the applicants is to quash and set aside this Memorandum and to direct the Respondents to restore the applicants to HSK Gr.I. It is further contended that the Judgment of the Tribunal neither binds the applicants nor does it authorise the impugned order of reversion. The basic stand of the respondents is that the reversion was in pursuance of the Tribunal's order referred to above and ~~(1)~~ amounts to challenging the Judgment of the Tribunal which cannot be done by means of an O.A.

2. The matter was earlier considered by the Tribunal and certain orders were passed on 4.4.1995 which may be reproduced for ready reference :

" Shri R.Ramamurthy for the applicant.  
Shri Subodh Joshi for the respondents.

2. After we heard the matter for sometime, it was pointed out to us that before the order reverting the applicants was passed, 160 posts were surrendered by the respondents and out of them 22 of the category to which 14 applicants herein belonged. Our attention was drawn to the judgment of the Tribunal in O.A. 274/89 decided on 24.9.1991 but that apparently decides only the question of seniority inter se and what was set aside therein was the order reverting the applicants in that case and there was no direction for reverting the applicants as seems to have been made on the basis of the impugned order dt. 1.6.1992. There is no answer to the point raised by the applicants about the surrendering of the posts except a bald statement that there were no posts in which the applicants could be accommodated. The applicants have been granted promotion on 1.3.1993 under re-structuring orders of 1993. The question is whether on the day on which the applicants in O.A. 274/89 came to be promoted there were

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vacancies available for the applicants despite the relief granted in the earlier O.A.

3. Shri Subodh Joshi, learned counsel for the respondents states that he will have to obtain instructions on this aspect and make his submissions.

4. The respondents to file additional written statement giving these particulars year-wise and how the applicants would fair if additional posts were available after accommodating the applicants in O.A. 274/89, within four weeks. Liberty to the applicants to file a Rejoinder."

3. We have quoted the above order not because we necessarily agree with its interpretation of the Judgment in O.A. 274/89, but because it narrows down the points required to be decided. In terms of the above order, additional affidavits were filed by the respective parties. In their affidavit dt. 10.6.1995/that 175 posts were surrendered as part of cadre review of Matunga Workshop, ~~done~~ in December, 91 and March, 92 respectively, but only 5 of the posts belonged to the impugned cadre viz. Black Smith and Spring Smith. According to the respondents 18 vacancies occurred in 1989, 1990, 1991 and 1992, out of which 6 were those who would have been reverted along with applicants, but for their demetting service. 3 applicants ~~were~~ promoted along with 14 applicants were retained against vacancies reserved for SC/ST and 3 applicants who were promoted earlier were also retained being senior to 14 applicants. According to respondents there were no posts available to accommodate these 14 applicants when in terms of the Judgment of the Tribunal the respondents were required to accommodate 27 applicants in O.A. 274/89.

4. The applicants, however, contend vide their further affidavit dt. 12.10.1995 that there were enough vacancies to accommodate the applicants in the relevant

trades and there has been precedent of posting employees of one trade to another trade in the exigencies of service. According to the applicants it is a wrong implementation of the Judgment of the Tribunal in the earlier O.A. that has led to the reversion. Although the applicants ~~are~~ reported to have been re-promoted on 27.1.1993 the applicants had to suffer the loss of seniority and were required to work under juniors in the relevant period.

5. We have considered the matter. The main contention of the applicants is that since they were promoted as part of re-structuring orders for which there were vacancies, the department could not have reverted them in purported implementation of the Judgment of the Tribunal. This contention, however, does not appear to be correct. The Tribunal in its order in para 9 has clearly stated as below :

"Thus this became the settled position before issuance of letter dt. 10.7.1985 regarding reclassification relied on by respondents Relief to unskilled and skilled categories which apparently is not its subject as it deals with pay scale and its retrospective effect and proforma 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 dt. 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 did not touch Rule 320 and 212 of the Railway Establishment Manual regarding seniority or determination of seniority. It has not superceded the earlier letter dt. 4.4.1984 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 pertaining the nature of rules creating certain right to the posts in the promotees. The letter dt. 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 dt. 4.4.1984 not having been superceded or rescinded 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 were promoted. They were entitled to benefit of Railway Board's letter dt. 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 incidentally touching this subject and that too without hearing the affected person."

6. The Tribunal has clearly interpreted the two sets of Circulars and has held that the restructuring orders do not supercede the earlier vested rights and the operation of the Rules 320 and 212 of the Railway Establishment Manual regarding seniority. The applicants cannot make a grievance when they ~~were~~ reverted in implementation of the clear finding and direction of the <sup>and</sup> ~~Tribunal~~ <sup>are</sup> in the absence of vacancies. We ~~therefore~~, of the view that the O.A. has no merit and the same is therefore dismissed with no orders as to costs.

M.R.Kolhatkar  
(M.R.KOLHATKAR)  
MEMBER(A)

B.S.Hegde  
(B.S.HEGDE)  
MEMBER(J).

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