

A3
7

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH, JODHPUR.
AT JAIPUR

Date of decision: May 8, 1989.

T.A. No. 2075/86

UNION OF INDIA THROUGH
GENERAL MANAGER,
WESTERN RAILWAY, BOMBAY
AND OTHERS.

... Appellants.

Shri G.P. Soral

... Counsel for Appellants.

VERSUS

SHRI HARGUN DAS & OTHERS

... Respondents.

Shri M.S. Singhvi

... Counsel for Respondents.

CORAM:

THE HON'BLE SHRI B.S. SEKHON, VICE CHAIRMAN.

THE HON'BLE SHRI G.C. SINGHVI, ADMN. MEMBER.

G.C. SINGHVI

Aggrieved by the judgment and decree passed by the learned Additional Munsif No.1, South Kota (in Civil Suit No.46/1979) on 22.10.1983, the appellants preferred an appeal in the Court of learned District Judge, Kota on 11.11.1984 (No.C.A.R.15/1984) from where it was transferred to the Court of learned Additional District Judge No.1, Kota on 13.9.1985 (No.46/85). Then by virtue of the operation of Section 29(1) of the Administrative Tribunals Act, 1985, the appeal was transferred to the Tribunal and rechristened as Transferred Application No.2075/1986.

2. The plaintiffs (now respondents) had filed a Suit in the Court of learned Additional Munsif No.1, South Kota seeking a permanent injunction on the facts set out in the plaint. The plaintiffs were Head Fitter Signal Maintainers in the pay scale of Rs.130-212 in the Western Railway. In

8/5/89/15
C
8/5/89

this pay scale there were 8 posts in Kota Division. According to the plaintiffs, they were appointed on these posts only after passing the trade test and that they had been confirmed thereon. 8 posts in this pay scale were upgraded to the pay scale of Rs.175-240 and vide defendants order dated 2.8.1972 the plaintiffs were given that pay scale on the post of Head Fitter. On 5.9.1972 the defendants ordered the plaintiffs to pass the trade test for going into the pay scale of Rs.175-240 and fixed the date for the trade test despite the fact that the plaintiffs had passed the trade test earlier. They submitted a representation to the defendants on 7.10.1972 but did not get any response. In the meantime on 18.11.1972 the defendants again directed the plaintiffs to appear at the trade test. The plaintiffs submitted a representation on 11.11.1972 to the General Manager as well as the Railway Board but to no effect. On 16.12.1972, they were again directed to appear at the trade test. On 23.12.1972 the defendant No.3 issued an order that the plaintiffs were unwilling to appear at the trade test and therefore, employees junior to them who were in the pay scale of Rs.110-180 should keep in readiness to appear at the trade test for getting into the pay scale of Rs.175-240. Actually, an employee in the pay scale of Rs.110-180 gets promotion to the pay scale of Rs.130-212 and not to the pay scale of Rs.175-240. According to the plaintiffs, this action on the part of the defendants was malafide. They wanted to favour the junior employees. In the plaint the plaintiffs laid stress on the fact that there was no difference between a Head Fitter getting the pay scale of Rs.130-212 and a Head Fitter getting the pay scale of Rs.175-240. Moreover, 8 posts in the scale of Rs.130-212 had been abolished by upgradation to the pay scale of Rs.175-240. According to the

P/S 189 A

Cc
8/5/89

plaintiffs Head Fitter Mechanical Maintainers and M.S.M. both were separate posts and their categories were different. Therefore, the Rules relating to promotion are not applicable to the Head Fitters in this pay scale. Moreover, the posts in the pay scale of Rs.130-212 had been upgraded to the pay scale of Rs.175-240 and therefore the plaintiffs should be deemed to have been appointed in the pay scale of Rs.175-240. Their prayer in the Suit was that the defendants be restrained by issue of a permanent injunction from subjecting the plaintiffs to a trade test for getting into the pay scale of Rs.175-240 and that the plaintiffs may not be demoted on account of their not appearing at the trade test. They also prayed that the defendants may be restrained from cancelling or amending their order issued on 2.8.1972. The defendant No.1 be restrained from declaring the result of the trade test.

3. The defendants resisted the suit and justified the action taken by them. In the written statement they stated that there were 8 posts of Mechanical Signal Maintainers grade II in the pay scale of Rs.130-212 which were upgraded to the pay scale of Rs.175-240 vide Railway Board order dated 9.11.1971 temporarily with effect from 11.7.1972. By the same order four posts of Mechanical grade II in the pay scale of Rs.110-130 were upgraded to the pay scale of Rs.130-212. The defendants denied that the plaintiffs were confirmed in the pay scale of Rs.130-212. They also stated that the plaintiffs were not entitled to get into the pay scale of Rs.175-240 without passing the trade test. The notice issued by the plaintiffs was illegal. On these pleadings the defendants prayed that the Suit be dismissed with costs.

4. On the pleadings of the parties the following issues were framed by the learned Additional Munsif:



8/5/89 B

C
8/5/89

Issue No.1: Whether the trade test given to the plaintiff Nos.5,6 & 7 on 9.1.1973 by defendant No.3 was illegal and irregular and whether the orders dated 15.9.1972, 25.1.1973 and 5.2.1973 issued by the defendants to plaintiffs Nos.1,2, 3 & 4 for appearing at the trade test were illegal and inoperative ?

Issue No.2: Whether the plaintiffs had no right to submit a joint plaint and whether the plaint was not valid on that count ?

Issue No.3: Whether the defendant Nos.2 & 3 had wrongly been named as defendants in terms of Section 79 of the Code of Civil Procedure ?

Issue No.4: Whether the notice issued by the plaintiffs to the defendants under Section 30 of the CPC was not valid ?

Issue No.5: Whether the Court had jurisdiction ?

Issue No.6: Whether the Suit being not justiciable deserved to be dismissed ?

Issue No.7: Whether the valuation of the Suit made by the plaintiffs was faulty and the Court Fee paid by them in adequate ?

Issue No.8: Whether the defendants were entitled to get special costs ?

Issue No.9: Relief ?

5. As the first eight issues were decided in favour of the plaintiffs, the learned Additional Munsif arrived at the conclusion that the Suit deserved to be decreed. He, therefore, vide his judgment dated 22.10.1983 issued a decree and permanent injunction restraining the defendants from demoting

8/5/89
C
8/5/89

the plaintiffs who had not appeared at the trade test and who had either not appeared or appeared and failed at the trade test. He also restrained the defendants from making any changes in their order dated 2.3.1972 as also from declaring the result of the trade test of plaintiffs Nos.5, 6 & 7 given on 9.1.1973. The learned Additional Munsif made it clear that the decree will be restricted to the rights of the 7 plaintiffs only. If any order had been issued against any other person, that will not be affected by this decree. No orders were issued as to costs.

6. In the appeal the appellants contended at the outset that the judgment and decree passed by the Lower Court were contrary to law and facts. They also averred that the Lower Court had erred in deciding that for getting into the pay scale of Rs.175-240 passing of the trade test was not necessary. The learned Additional Munsif misinterpreted the Railway Headquarters order dated 20.6.1967 when he arrived at the conclusion that for the Mechanical Signal Maintainers grade-I passing of trade test was not necessary. The learned Additional Munsif also did not appreciate the fact that consequent upon the upgradation of the posts, the plaintiffs (Respondents in the appeal) had been appointed on adhoc basis only and had therefore, no right to continue on that post without passing the trade test. The learned Munsif had also erred in basing his judgment on the order dated 10.6.1983. Other grounds of appeal included the findings of the learned Additional Munsif on issues No.2 & 7. The appeal was valued at Rs.400.00 and court fee amounting to Rs.30.00 was duly paid. The appeal was within limitation period. It was stated that other grounds of appeal will be put up at the time of the arguments. On these pleadings the appellants prayed that the judgment and decree passed by the learned Additional Munsif on 22.10.1983 be set aside and order be issued for payment of costs of the suit to them.

B/5/89/2
G
8/5/89



7. After the transfer of the Suit to the Tribunal the parties were afforded opportunities to file affidavits and additional documents. Accordingly, an affidavit on behalf of the respondents was filed by respondent No.1 Shri Hargun Das on 3.8.1988. In this affidavit it was asserted that the appeal filed by the Union of India and others had become infructuous on the grounds enumerated in the affidavit. To start with the respondents Nos.2,4 & 7 had already retired from Railway Service in the year 1985, 1986 & 1984 respectively. In so far as the respondent No.6 (Shri Babulal) is concerned he retired on medical grounds as Head Fitter M.S.M. and thereafter had expired also. In so far as the Respondent No.1 is concerned he passed the pre-promotional test alongwith Shri Shakur in June, 1983. A photo-stat copy of the communication dated 10.6.1983 was produced as Annexure R-1 in pursuance of which he was promoted as Signal Inspector Grade-III in November 1983. Thereafter vide order dated 20.12.1985 he was promoted to the Grade of Rs.550-750 on adhoc basis (Annexure R-2). Subsequently he was promoted to the grade of Rs.700-900 vide order dated 9.6.1987 (Annexure R-3). In grade Rs.175-240 (Rs.380-560), he was permitted to cross the efficiency bar with effect from 7.8.1982 vide order dated 17.9.1982 (Annexure R-4). In view of this he submitted that the appeal filed by the Union of India and others against him (respondent No.1) had become infructuous. Turning to respondent No.3 Shri Shakur it was submitted that after passing the test in pursuance of Annexure R-1 he was promoted to the grade of Rs.425-700 vide order dated 19.11.1984. He also passed the suitability test for the post of Master Craftsman vide communication dated 2.3.1987 (Annexure R-5). Shri Shakur had also been promoted to the grade of Rs.425-640 vide order dated 17.3.1987 (Annexure R-6). Shri Shakur had also been permitted to cross efficiency bar in the year 1982 in the pay scale of Rs.175-240 (Rs.380-560). Coming to respondent No.5 Shri Ram Asre it was stated



8/5/89
Ce
8/5/89

that he was also promoted to the pay scale of Rs.425-700 as Signal Inspector grade III vide order dated 19.11.1984 and was subsequently reverted. This respondent also passed the suitability test in the grade of Rs.425-540 on 2.3.1987 and was therefore promoted to that grade vide order dated 17.8.1987 (Annexure R-6). Shri Ram Asre had also crossed the efficiency bar in the grade of Rs.175-240(Rs.380-560) in the year 1982. In view of these events respondent No.1 submitted that the appeal filed by the appellants had become infructuous. He also stated that even otherwise the respondents can not be reverted because of non passing of the trade test which the appellants claim to be necessary because after completing 18 months of service on the upgraded post reversion cannot be ordered. At any rate, after continuing on the upgraded post for so long it would not be fair on the part of the appellants to ask the respondents to undergo the trade test for that very post. In these circumstances, the respondent No.1 prayed that the appeal filed by the appellants be dismissed with costs.

8. We have heard the arguments addressed at the bar and have gone through the pleadings and documents on record.

9. We shall now take up the grounds of appeal as adduced by the appellants in the appeal one by one.

(i) The appellants have contended that passing of the trade test was necessary for getting into the pay scale of Rs.175-240 and that the learned Additional Munsif had erred in interpreting the Railway Headquarters order dated 20.6.1967. This order was therefore, looked into. This order was issued by the Western Railway Headquarter, Bombay on the subject: "Rules for recruitment and training of Apprentice Assistant Signal Inspectors and their avenue of



8/5/89

Promotion". At page 4 of the order under head 'MSM Group/ ESM Group' it has been stated that the General Rules applicable to both these categories will be as follows:

(a) Posts of Signal Maintainers (Mechanical) or Signal Maintainers (Electrical) in grade Rs.110/180(A) will be filled up by suitable departmental semi-skilled staff after necessary trade tests to the extent of 50% (In any unit all unskilled staff will be entitled to appear for trade tests for all semi-skilled categories. After entering any particular semi-skilled category however, an employee will take further promotion in that category only). The rest 50% will be equally distributed between skilled artisans from open market (including staff employed in Construction or Workshops) and from trade apprentices. The directly recruited staff who thus comprise 50% of the total posts will be required to enter into an agreement to serve an apprenticeship period as laid down under the extant rules".

Similarly on page 7, it has been stated that the following features will be applicable separately to MSM Group and ESM Group:

(1) MSM Group: In this group the posts in grade of Rs.130/212(A) are designated as Head Fitters. Since the work is only maintenance of Mechanical Signalling gear, this will be designated as MSM Grade II so that it fits in the normal avenue of promotion. The posts in scale Rs.110/180(A) will be known as MSM grade III and those in grade Rs.175-240(A) as MSM Grade I.

(2) ESM Group: The conditions as mentioned in the previous paragraphs are equally applicable for ESMs upto the grade of Rs.110/180(A). Further beyond this grade, there will be a distinction compared to the



8/5/89 B
Cc
8/5/89

MSM group.

"For filling up ESM (Block Maintainers) in grade of Rs.130/212(A) there will be direct recruitment of apprentices to the tune of $55\frac{2}{3}\%$. ESMs in grade of Rs.110/180(A) will get promotion to this grade of Rs.130/212(A) to the extent of $33\frac{1}{3}\%$. Promotion of departmental staff will be on the results of the trade test."

It was on the basis of this order of 1967 that the learned Additional Munsif had arrived at the conclusion that passing of trade test was necessary for appointment to the grade of Rs.110-180 and Rs.130-212 but it was not necessary for employees getting into the scale of Rs.175-240. He had also stated that the learned Counsel for the defendants could not show to him any order from where it could be inferred that passing of the trade test was necessary for getting into the pay scale of Rs.175-240. We then come to the order dated 10.6.1983 because the appellants have stated that the learned Munsif based his judgment and decree on this order. Copy of this order has been produced as Annexure R-1. It is a communication addressed by Principal. STS/SBI to CPM(RE) Kota and others and the subject of the letter is: "Result of pre-promotional course for ESM grade I and MSM grade I to SI grade III from 18.4.1983 to 4.6.1983". A perusal of its contents goes to show that 13 candidates enumerated therein had attended the pre-promotional course from 18.4.1983 to 4.6.1983 and had passed it. The name of the Respondent No.1 Shri Hargun Das and Respondent No.3 Shri Sakurji finds place in this list of 13. The learned Additional Munsif had stated that when these respondents had passed this higher trade test, there was no need for them to pass the lower trade test. It was in these circumstances that the learned Munsif decided

B.5/89/B
G.
8/5/89



issued No.1 in favour of the plaintiffs and we therefore do not find any substance in the grounds adduced in the appeal against Issue No.1 as framed by the learned Additional Munsif.

10. The other grounds adduced in the appeal relate to Issues No.2 and 7. The appellants have contended that the learned Additional Munsif had erred in deciding that the plaintiffs (now the respondents) had a right to file a joint plaint. The learned Additional Munsif had stated that the cause of action of all the plaintiffs was the same and by filing suits separately they would have simply multiplied litigation. The only legal issue which was in controversy for all the plaintiffs was whether passing of the trade test was necessary. In these circumstances, there was full justification for filing a joint plaint. This issue was therefore decided in favour of the plaintiffs by the learned Additional Munsif and his decision in our view cannot be faulted with. The other ground raised in appeal related to Issue No.7. The appellants have laid stress on the fact that the learned Additional Munsif had erred in deciding that the court fee paid by the plaintiffs (now the respondents) was adequate. The learned Munsif had stated that the suit had been filed for the issue of a permanent injunction and the suit had been valued properly and adequate court fees had also been paid. This issue was therefore, decided in favour of the plaintiffs. The appellants have not been able to show how the learned Munsif had erred in his decision on Issue No.7. Therefore, decision of the learned Munsif on Issue No.7 also cannot be faulted with.

11. Upshot of what has been said and discussed above, is that the grounds adduced by the appellants in the appeal for setting aside the judgment and decree passed by the learned Additional Munsif have no force. On the other hand the respondents' case has merit and force. Actually the



8/5/89
C
8/5/89

respondents' case has got a new lease of life by the subsequent events made mention of by respondent No.1 in his affidavit dated 2.4.1988. What is significant to note is that in none of the orders of promotion issued in favour of the respondents and referred to in the affidavit have the appellants stated that that order will be subject to the result of this appeal. In these circumstances reversing the cloth and demoting the plaintiffs would be grossly unjust and unfair. In such a case, an appellate forum would be loath to interfere even if the appeal is held worth acceptance. This is, however, not so in the instant case.

12. In view of the foregoing we hold that the appeal is devoid of merit. Accordingly, the judgment and decree passed by the learned Munsif on 22.10.1983 are hereby affirmed. In fine, the appeal filed by the appellants is hereby rejected. The Transferred Application is disposed of accordingly leaving the parties to bear their own costs.

Singhvi
(G.C. SINGHVI)

ADMN. MEMBER

8-5-89.

B.S. Sekhon
(B.S. SEKHON)
VICE CHAIRMAN

8-5-89

Re-dated
for
14/5/89

Copy of document sent to
Ref. I VIDE no. 2084 Date 15/5/88
by fast.