

JAIPUR.

O.A. No. 736/88

Date of Decision: 20.4.94

SUBODH NARAYAN R.

: Applicant.

VERSUS

UNION OF INDIA & ORS

: Respondents.

Mr. P.V. Calla

: Counsel for the applicant.

Mr. Manish Bhandari

: Counsel for Respondent No.1-3.

Mr. R.N. Mathur

: Counsel for Respondent Nos.4-23.

CORAM:

Hon'ble Mr. Justice D.L. Mehta, Vice-Chairman

Hon'ble Mr. B.B. Mahajan, Administrative Member

PEP HON'BLE MR. B.B. MAHAJAN, ADMINISTRATIVE MEMBER:

Subdoh Narayan has filed this application U/S 19 of the A.T. Act, 1985. He was appointed as Cleaner and promoted as Senior Cleaner on 15.11.86. The Railway Board vide letter dated 3.11.87 (Annexure A-1) issued revised instructions regarding mode of filling up the post of First Fireman/Diesel Assistant/Electric Asstt and Steam Shunter. A copy of the relevant part i.e. para 4 of these instructions is reproduced below:-

"4. The demand of the Staff Side has been considered carefully by the Board keeping in view the foregoing and in the light of the discussions held with the Staff Side in the Departmental Council Meeting. As a result, the Board have decided as follows, in supersession of the existing orders dated 19.2.1981 and 30.4.1982:-

- i) The vacancies in the grade of First Fireman (Rs. 950-1500) will be filled at present by promotion of Second Fireman in Scale Rs.825-1200 by a process of selection but without any restriction of age or qualification. Shortfall, if any, will be made good by direct recruitment through Railway Recruitment Boards.
- ii) The vacancies in the grade of Diesel Assistant, Electric Assistant may be filled as under:-
 - a) 50% of the vacancies shall be filled by lateral induction from among First Fireman who are atleast 8th Class pass and are below 45 years of age; in the case of shortfall, by promotion by usual selection procedure from among Second Fireman who are atleast 8th Class pass and are below 45 years of age.

- b) Balance 50% of vacancies shall be filled by lateral induction of matriculates First Fireman with minimum three years of continuous service, shortfall, if any, by promotion of Matriculate Second Fireman through departmental examination.
- c) Shortfall, if any against (a) and (b) above shall be made good by direct recruitment through the Railway Recruitment Boards.
- d) Whenever the existing AVC provides for 20% of the vacancies in the grade of Electric Asstts being filled from amongst Artisan who are atleast 8th Class pass and below 45 years of age, the same practice may continue and the mode as indicated at (a) and (b) above will apply the remaining 80% of the vacancies in this category.

XXXX XXXXX XXX "

2. It was stated that in Kota Division 20% of vacancies are meant to be filled from Artisans who are 8th Class and below 45 years and in accordance with Para 4(ii)(d), reproduced above, 20% of these vacancies in Kota Division was required to be filled up by promotion amongst the Artisans who are atleast 8th Class and below 45 years. The applicant stated that he was an Artisan and was entitled to be considered for promotion to the post of Diesel Asstt/ Electric Asstt. in accordance with the above instructions but the Railway authorities had taken steps for filling up of these vacancies of Diesel Asstt/Electric Asstt. entirely by direct recruitment. He, therefore, prayed for direction to the respondents to fill up the posts of Diesel Asstt/ Electric Assistant/A.C. Assistant which are lying vacant in Kota Division by way of promotion as provided in Circular dated 3.11.87. The respondents Nos. 1, 2 and 3 who are Railway authorities have stated that the applicant was working on the post of Senior Cleaner in the scale of 775-1025. As per the channel of promotion, he is eligible for promotion to the post of Second Fireman scale Rs. 825-1200. He was subsequently given promotion to the post of Second Fireman on 2.5.89. Hence the applicant cannot be considered in the category of artisan and is not entitled to be considered for promotion to the post of Electric Asstt. Driver. The

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applicant has also been given further promotion on the post of First Fireman vide order dated 19.6.92. They have also stated that 25 direct recruits were appointed on 28.12.88 on the posts of Electric/Diesel Assistant. The above appointments were given to meet the urgent requirement as no eligible rankers were available with the respondents. The private respondents Nos. 4 to 23 have stated that they had applied for the posts of Diesel Assistant in response to the advertisement dated 8.11.1985 ^{in use} given by the Railway Recruitment Board, Ajmer. These respondents appeared in the selection test and qualified the same on 1.3.88. They were subsequently sent for training and they were appointed against the vacancies which had occurred prior to the issue of Railway Board's circular dated 3.11.87.

3. We have heard the learned counsel for the parties. A perusal of para 6.5 of the reply submitted by Respondent Nos. 1, 2 and 3 shows that they have taken the plea that the applicant cannot be considered in the category of Artisan only because he had already been promoted as Second Fireman. However, his promotion as Second Fireman on 8.5.89 would not take away his claim for consideration for promotion as Diesel/Electric Assistant prior to the date in accordance with the provisions of Para 4(ii)(d) of the Railway Board's Circular dated 3.11.87.

4. The respondents have argued that so far as vacancies existing prior to 3.11.87 are concerned, they would be governed by the earlier orders, reproduced at para 1 of the circular which provides for promotion to Artisans only for the posts of Assistant Electric Drivers and only the vacancies of Electric Assistants arising after 3.11.87 will be filled up by amongst the artisans in accordance with the provisions of Para 4(ii)(d). They have referred, in this connection, to the Judgment of the Hon'ble Supreme Court in State of Andhra Pradesh Vs. J. Sreenivasa Rao & Others, (1982) 3 SCC 224. That Judgment, however, refers only to the promotional posts

and held ^{that} vacancies in the promotional posts occurring prior to the amendment have to be filled up in accordance with the unamended rules. They have also referred to the Judgment of Hon'ble Supreme Court - 1988(Supp) SCC 740 - P. Ganeshwar Rao & Others Vs. State of Andhra Pradesh & Ors. A perusal of Para 7 of the Judgment which is reproduced below, shows that the Hon'ble Supreme Court has held that the amendment would apply to the vacancies which arise after the date of the issue of the amendment rules only because the amendment rule itself referred to vacancies arising in the category of Assistant Engineers. They have held that the amended clause would have applied even to the vacancies which had arisen prior to the date of the amendment but had not been filled up before the date if the clause ^{had} read "37 1/2 per cent of the substantive vacancies in the category of Assistant Engineers shall be filled by the direct recruitment".

"7. It is clear from the Special Rules as they were in force prior to the amendment on April 28, 1980 that it was open to the State Government to fill 37 1/2 per cent of the vacancies (both substantive and temporary) in the cadre of Assistant Engineers by direct recruitment. It is also not in dispute that during the years 1978 and 1979 the position of the vacancies was such that it was permissible for the State Government to appoint 51 Assistant Engineers by direct recruitment. The only question which has now to be considered is whether the amendment made on April 28, 1980 to the Special Rules applied only to the vacancies that arose after the date on which the amendment came into force or whether it applied to the vacancies which had arisen before the said date also. The crucial words in the Explanation which was introduced by way of amendment in the Special Rules on April 28, 1980 were "37 1/2 per cent of the substantive vacancies arising in the category of Assistant Engineers shall be filled by the direct recruitment". If the above clause had read "37 1/2 per cent of the substantive vacancies in the category Assistant Engineers shall be filled by the direct recruitment" perhaps there would not have been much room for discussion. The said clause then would have applied even to the vacancies which had arisen prior to the date of the amendment but which had not been filled up before that date. We feel that there is much force in the submission made on behalf of the appellants and the State Government that the introduction of the word 'arising' in the above clause made it applicable only to those vacancies which came into existence subsequent to the date of amendment."

5. There is no similar stipulation in the Railway Board's

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circular dated 3.11.87. The instructions contained in this circular will, therefore, apply to all vacancies which existed on that date. There is no force in the contention of the respondents that this could amount to giving retrospective effect to the circular because it would apply only to the appointments to be made after the date of the issue of the circular.

6. The learned counsel for the respondents have thereafter referred to the Judgment of Hon'ble Supreme Court in (1990) 3 SCC 157 - N.T. Devin Katti & Others Vs. Karnataka Public Service Commission & Others. It was held in Para 11 of the Judgment that a candidate on making application for a post pursuant to an advertisement does not acquire any vested right of selection, but if he is eligible and is otherwise qualified in accordance with the relevant rules and the terms contained in the advertisement, he does acquire a vested right of being considered for selection in accordance with the rules as they existed on the date of advertisement. He cannot be deprived of that limited right on the amendment of rules during the pendency of selection unless the amended rules are retrospective in nature. This Judgment squarely covers ~~to~~ the facts of the present case. Respondents Nos. 4 to 23 had applied in response to the advertisement issued on 8.11.85. They were eligible for the posts and have been duly selected. They had been considered rightly for selection in accordance with the rule which existed at the time of advertisement. There is no averment that these respondents do not fulfil the requirement qualifications or there has been any irregularity in their selection. In the circumstances, their appointments are valid and these cannot be quashed.

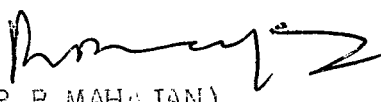
7. While the respondents Nos. 1 & 2 have stated in para 6.9 of their reply that no eligible rankers were available, they have not specifically stated that the

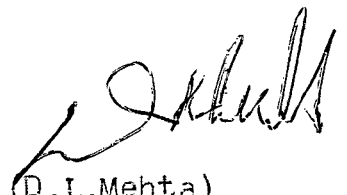
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applicant and similarly situated Artisans were considered for the posts of Diesel Assistant/Electric Assistant against their 20% quota.

8. In view of the above discussion, we allow this application partly and direct that the applicant alongwith similarly placed Artisans in the Kota Division should be considered for promotion against 20% quota of the vacancies in the grade of Electric Assistant existing on 3.11.87 after excluding the vacancies which have been filled through the advertisement dated 3.11.85, and if they are found suitable they shall be promoted from that date. They will, however, be entitled only to the notional fixation of pay as Electric Assistant from that date and ~~not from~~ if any from 8.5.89 the date from which he was promoted as Second Fireman. The learned counsel for the applicant states that he does not press claim for arrears of wages before that date. This direction will, however, not apply if the railway authorities had after 3.11.87 and before the promotion of the applicant on 8.5.89 issued a notification inviting application for filling up of the 20% vacancies in the grade of Electric Assistant from amongst the Artisans and the applicant had not applied for the same.

9. The DA stands disposed of with these directions. Parties to bear their own costs.


(B.E. MAHAJAN)
Member (A)


(D.L. Mehta)
Vice-Chairman