

Surendra Singh Punia & Ors. : Applicants

Vs.

Union of India & Ors. : Respondents

Mr.S.K.Jain : Counsel for applicants

Mr.Manish Bhandari : Counsel for respondents No.1&2

Mr.R.N.Mathur : Counsel for respondents No.3 to 7

CORAM:

Hon'ble Mr.Gopal Krishna, Member(Judl.)

Hon'ble Mr.O.P.Sharma, Member(Adm.).

PER HON'BLE MR.O.P.SHARMA, MEMBER (ADM.).

Applicants Surendra Singh Punia, Kuldeep Mahala, Naveen Kumar and Devendra Chaudhary have filed this application under Sec.19 of the Administrative Tribunals Act, 1985, in which they have prayed that the respondents No.3 to 7 who have been promoted to the post of FWI-1 and posted in other Divisions may be ordered to be relieved forthwith and the applicants may be considered for promotion as per their turn in the grade Rs.2000-3200. They have further prayed that the order Annx.A-4 dated 15.9.93 by which they have again been promoted as FWI-1 be quashed and the respondents may be directed not to promote these respondents against the up-graded posts created with effect from 1.3.93, while enforcing the decentralisation scheme dated 22/23.2.93. They have also prayed that the applicants may be allowed pay of the post of FWI-2 since the creation of the vacancies on account of promotion and transfer of respondents No.3 to 7 vide Annx.A-1 & A-2, with arrears and interest thereon at the rate of 24% per annum.

2. The case of the applicants is that they were appointed as FWI-3 in 1989 and 1990. FWI-3 was the initial induction post in the Railways for them. The channel of promotion for FWIs is as below:

PWI-3 to PWI-2

PWI-2 to PWI-1

PWI-1 to CPWI

Seniority in the post of PWI-3 is on Divisional basis whereas that in the grades of FWIs-2 to CPWI is on Zonal basis. Promotion orders Annx.A-1 and A-2 dated 29.8.92 were passed by the Jaipur Division promoting the respondents No.3 to 7 who were then working on the post of PWI-2 to the post of PWI-1. These orders were issued in pursuance of certain orders issued by the Central Headquarters of the Western Railway. By these orders, the respondents No.3 to 7 were not only promoted as FWIs-1 but were also transferred out of Jaipur Division, to various other Divisions in the Western Railway. This was because the seniority of FWIs-1 was reckoned on Zonal Basis. The orders dated 29.9.92 were however not implemented and the respondents No.3 to 7 were not relieved on promotion on account of "administrative exigencies or deliberations of the administration". Thereafter, vide order dated 15.9.93 (Annx.A-4) issued by the Jaipur Division, these respondents were promoted as PWI-1 but retained in Jaipur Division. With effect from 22/23.2.93, the scheme of Divisionalisation of FWIs-2 and FWIs-1 was brought into effect, as a result of which promotions, transfers etc. of FWIs-2 and FWIs-1 were effected on Divisional basis. With effect from 1.3.93, a scheme of upgradation was brought into effect, as a result of which vacancies of FWIs-1 arose in Jaipur Division. Against the vacancies arising on upgradation in Jaipur Division in the post of FWIs-1, respondents No.3 to 7 were again granted promotion vide order dated 15.9.93 (Annx.A-4) and posted within Jaipur Division itself. Had the orders Annx.A-1 & A-2 passed in Sept. 1992 been enforced, the respondents No.3 to 7 would have been required to be relieved from Jaipur Division for posting on their promotion to other Divisions, thereby creating vacancies of FWIs-2 within Jaipur Division. On these vacancies of FWIs-2, the applicants could then have been appointed on promotion in their turn. Thus because of the respondents No.3 to 7 being accommodated within Jaipur Division on promotion as FWIs-1, in the circumstances stated above, the chances of promotion of the applicants ~~xx the rank of PWI-2~~ have been seriously affected. Further, according

to the applicants, the G.M's letter dated 21/23.10.92 makes a mention of certain earlier letters of 28.5.91 and 25.6.91 and prescribes that persons who have been promoted should be relieved immediately. These instructions of the Headquarters were not followed by the Government respondents in the matter of promotion and relieving of respondents No.3 to 7. Further, the respondents 3 to 7 were all promoted under the old rules prior to the divisionalisation of the posts of FWIs-I and they should have been relieved within a period of 30 days from the date of their promotion. Had this been done, by now vacancies in the posts of FWI-2 would have been available against which the applicants could expect promotion. It is also the case of the applicants that since respondents No.3 to 7 have already been promoted and posted out of Jaipur Division, they are no longer members of the staff of Jaipur Division. Therefore, they are not entitled to promotion/appointment against the up-graded posts in Jaipur Division. Also once an employee belonging to a particular Division is allowed to be retained at the same station on the same post, ^{he} will be subject to promotion against the same post after one year subject to continued validity of the panel on which he is borne. If he is not so borne on the panel after one year, he would be required to appear in the selection once again. Since, the respondents remained on their original posts for one year or more after promotion to the post of FWI-1, they were not entitled to be re-promoted against the upgraded posts.

3. The respondents in their reply have stated that the posts of FWI-1 are required to be filled-up at the Divisional Level. The FWI-1 cannot ^{now} be posted anywhere in the Western Railway. The applicants have described themselves as FWIs-2, therefore, their rights are not affected by the persons promoted as FWIs-1 not being relieved from Jaipur Division.

4. During the arguments the learned counsel for the applicants stated that orders Annx.A-1 and A-2 were passed by a higher authority namely the Western Railway Headquarters and these orders cannot be altered by a lower authority namely the Divisional Headquarters. The orders Annx.A-4 virtually superseding the orders

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Annx.A-1 & A-2 was passed by the Divisional Headquarters, which was against all principles of administration. Therefore, order Annx.A-4 by which the respondents No.3 to 7 were promoted and posted within the Division is illegal. If the respondents No.3 to 7 had refused to accept promotion in pursuance of orders Annx.A-1 and A-2, they were to be debarred for one year for promotion. Thus, they could not get promotion upto Sept.1993. However, by the procedure adopted by the official respondents, the respondents No.3 to 7 have been granted promotion in Sept.1993 and retained within the Division, without affecting their rights in any manner. In effect all the persons who have been promoted vide order Annx.A-4 have been repromoted, while there is no provision for repromotion of a person who has already been promoted. The learned counsel for the applicants also drew our attention to the provisions of para 4.1 of the restructuring scheme, copy of which was made available during the arguments. According to this para vacancies existing as on 1.3.93 except direct recruitment quota and those arising on that date from this cadre restructuring should be filled from the panels approved on or before 1.3.93 and current on that date and the balance posts should be filled-up in the manner indicated in para 4 above which is not relevant for our purpose. The stress of the learned counsel for the applicants is that posts existing on 1.3.93 with certain exceptions should be filled-up from the panels approved from 1.3.93 which will be current on that day. Therefore, the posts arising as a result of upgradation could not have been filled-up by appointing respondents No.3 to 7. He has also drawn attention to the orders of this Tribunal in the case of Haran Singh Chouhan & Ors. Vs. Union of India & Ors. O.A.No.364/93 decided on 6.7.93. The facts of that case were almost identical to those of the present case. In the case decided on 6.7.93 (copy of the decision at Annx.A-5) the official respondents were directed to implement orders dated 28.9.92 which are also presented as Annx.A1 and A-2 with this application. 15 days time was given to the respondents to implement the said order dated 6.7.93. Still however, the respondents No.3 to 7 were not relieved and sent out on their promotional posts outside Jaipur Division.

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5. The learned counsel for the official as well as private respondents contended that the applicants have themselves admitted that the respondents No.3 to 7, after issue of their promotion orders Annx.A1 & A2, were retained in Jaipur Division in the exigencies of administration. Therefore, once the administration decided to retain them in Jaipur Division in the interest of administration, they continued to be members of the staff of Jaipur Division even after passing of orders Annx.A-1 & A2. The learned counsel for the government respondents categorically stated during the arguments that respondents No.3 to 7, after being retained in Jaipur Division in spite of the orders Annx.A-1 & A2 initially continued to work as PWIs-2. It was only in Sept.93 that they were promoted as PWIs-1 against vacancies arising on upgradation and retained in Jaipur Division. It was not a case of repromotion of the respondents who had already been promoted. Implidely, the promotion orders Annx.A-1 & A-2 passed earlier in Sept. 1992 had been cancelled. The earlier orders Annx.A-1 & A2 have been passed by Jaipur Division with the concurrence or approval of the Central Headquarters ~~as~~ as the post of PWIs-1 at that time was with seniority on Zonal basis. However, once the divisionalisation scheme came into force from Feb. 1993, the Division was free to pass orders promoting respondents No.3 to 7 and posting them within Jaipur Division. This did not amount to changing the orders passed by the Central Headquarters, but it was a case of the Division exercising powers as a result of decentralisation, ~~effect~~. Para 4.1 of the upgradation scheme, does not in any way suggests that the vacancies arising as a result of upgradation cannot be filled-up in the manner done by the respondents. The requirements of Annx.A-3 regarding relieving persons on promotions are directory and not mandatory and in the altered circumstances in the present case the Divisional authorities were within their powers to retain respondents No.3 to 7 in the Division after their promotion to PWIs-1. After all in the first instance the respondents No.3 to 7 were retained within Jaipur Division in the interest of administration, in spite of the orders Annx.A-1 & A-2, ordering their promotion and posting outside Jaipur Division. It was only after

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about one year that they were promoted as PWIs-1 and posted within Jaipur Division. Therefore, there was no irregularity in retaining the respondents No.3 to 7 within Jaipur Division and passing order Annx.A-4 promoting them as PWIs-1 and then posting them within Jaipur Division.

5. We have heard the learned counsel for the parties and have gone through the records. It has been accepted in the application that respondents No.3 to 7 were retained within Jaipur Division even after their promotions vide Annx.A-1 & A-2, in the exigencies of administration. Thus, the Divisional authorities were within their rights in retaining them within Jaipur Division in spite of their orders of promotion and posting outside Jaipur Division. The respondents No.3 to 7 were not retained within Jaipur Division initially from September 92 onwards against the higher post of PWIs-1 but were retained on the lower posts of FWI-2 held by them before orders Annx.A-1 & A-2 were passed. This is clear not only from the statement of the learned counsel for the official respondents during the argument but also from a perusal of the orders Annx.A-4 which show that respondents No.3 to 7 holding the posts of FWI-2 have been promoted as PWIs-1. The respondents No.3 to 7 were thus very much part of the staff of Jaipur Division once they were retained there by a valid action of the official respondents. Thereafter, they were entitled to the usual benefits available to persons working in the Division including promotion as and when opportunity arose. Once the upgradation scheme came into force, respondents No.3 to 7 being PWIs-2 were entitled to be promoted to the upgraded posts of FWI-1. Since on account of the divisionalisation the posts of FWI-1 had been declared to be posts in respect of which orders could be passed by the Divisional authorities, the Divisional Authorities were justified in retaining them within the Division after granting them promotion on account of upgradation of posts. Ordinarily persons promoted to a higher posts are expected to be relieved within a certain period to enable them to join their higher promotional posts but the right of the administration to retain them at their original place of posting or in their original posts in the interest of administration cannot be denied. Even

if the orders of restructuring came into force w.e.f. 1.3.93, the respondents No.3 to 7 had been made to forgo their promotions in the interest of administration and after 1.3.93 they would be eligible for promotion as per the new rules. It is not the import of Annx.A-3 that persons promoted on a higher post must necessarily and invariably be relieved in all circumstances.

7. We have also gone through the orders dated 6.7.93 passed by this Bench of the Tribunal (Annx.A-5). While it is true that there is a direction therein that order Annx.A-1 which is also the order Annx.A-1 to the present O.A., should be implemented within a fortnight, there is also an ~~xxx~~ option given to the respondents to implement the revised scheme of seniority and take other consequential action such as promotions, postings, etc. in accordance with the new Scheme. A proper and harmonious construction of the contents of the order Annx.A-5 would suggest that the sentence "However, the respondents will also be at liberty to implement the revised scheme of seniority ..." will supersede the implementation of order Annx.A-1 if the respondents choose to implement the new scheme of promotions etc. as a result of restructuring.

8. It is true that if orders Annx.A-1 & A-2 had been implemented vacancies in the posts of FWI-2 would have arisen to which the applicants could expire. However, the applicants had no immediate right of promotion in this case. Secondly, the administration had a right to retain the promoted persons in the Division on the same post held by them earlier before promotion and the interests of administration have naturally to over-ride the interests of individual, if there is any clash between the two. We, therefore see nothing wrong in the action of the respondents including their passing order Annx.A-4, promoting the respondents No.3 to 7 ^{to} in the higher posts of FWI-1 in September 1993 and retaining them _h within the Division.

9. In the result the O.A. is dismissed with no order as to costs.

(O.P.Sharma)
Member(A)

Chakraborty
(Gopal Krishna)
Member(J).