

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No. 11 /94

Dt. of order: 16-5-1995

Mohd. Hussain : Applicant

Vs.

Union of India & Ors. : Respondents

Mr. J.K. Kaushik : Counsel for applicant

Mr. Manish Ehandari : Counsel for respondents

CORAM:

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

Hon'ble Mr. Ratan Prakash, Member (Judl.)

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

In this application under Sec. 19 of the Administrative Tribunals Act, 1985, Shri Mohd. Hussain, has prayed that order Annx.A1 dated 4.10.1993 passed by respondent No.4, Chief Mechanical Engineer (Carriage Workshop) Ajmer Division, Ajmer, by which the applicant was declared as failed in the trade test for the post of Welder Grade-I may be quashed and that order dated 22/23.3.93 (Annx.A2) issued by the General Manager, Western Railway, Church Gate, Bombay, in so far as it provides for conduct of trade test for promotion under the re-structuring scheme may be declared illegal and unconstitutional and may be struck down. He has further prayed that the respondents may be directed to consider the candidature of the applicant for extending to him the benefit of re-structuring scheme as per the modified selection procedure laid down by the Railway Board, Annx.A3 with all consequential benefits at par with his next junior.

2. The case of the applicant is that he was appointed as Khalasi in the Railways on 21.4.'65, he passed the requisite trade test for the posts of Skilled Welders Grade-III and Grade-II and got his due promotions. He also passed trade test for the post of High Skilled Welder Grade-I scale 1320-2040 on 8.3.1990 and was promoted to the said post on 2.4.'90. However, the result of the said trade test was cancelled on 27.9.90 and the applicant was reverted vide order dated 3.8.90 to the

post of Welder Grade-II.

3. The Railway Board vide their letter dated 27.1.93 (Annx.A3) issued a re-structuring scheme for certain Group-C and Group-D cadres. As per this scheme the holding of any test for granting upgradation/promotion was specifically dispensed with. The applicant became entitled to the benefit of upgradation under the re-structuring scheme, from the post of Welder Grade-II to that of Welder Grade-I scale Rs.1320-2040. However, the applicant was subjected to trade test for the post of Welder grade-I for extending him the benefit of re-structuring in spite of the specific order of the Railway Board that there was no requirement of such trade test. The applicant had no option but to comply with the orders of the higher authorities for appearing in the trade test for the post of Welder Grade-I. He appeared in the said test on 26.9.93 but was declared as failed in the said test vide letter dated 4.10.93 (Annx.A1). He submitted a representation (Annx.A4) dated 11.10.93 challenging the very holding of the trade test and requested for extension of the benefit under the re-structuring scheme without any such test. There has been no response to the said representation and his next junior Shri Habib High Skilled Grade-II has already been promoted to the post of High Skilled Grade-I under re-structuring scheme w.e.f. 1.1.'93 on the ground that the said Shri Habib had passed the trade test. The applicant was informed that there are instructions from respondent No.2, General Manager, Western Railway, that trade test is required to be held for promotions/upgradations under the re-structuring scheme. Under the instructions issued by the General Manager, W.Rly, by letter dated 22/23.10.93 (Annx.A2) it has been stated that promotion under the re-structuring scheme in skilled category will be based on a trade test. Although the General Manager is empowered to frame rules, there is a requirement under Rule 124 of the Indian Railway Establishment Code Vol.I that such rules shall not be inconsistent with any such rules made by the President or by the Ministry of Railway i.e. the Railway Board. The rule framed by the General Manager

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prescribing trade test for the skilled categories is inconsistent with the rules framed by the Railway Board for upgradation under the restructuring scheme as laid down in Annex.A3. In other Railways also similar rules were framed by the General Manager, but these were withdrawn subsequently.

4. The respondents in their reply have stated that the modified selection procedure for providing upgradation under the restructuring scheme was not applicable to posts for which promotions are granted on the basis of qualifying in the trade test. Therefore, the applicant's interpretation of the contents of Annex.A3 is erroneous. The applicant was within the zone of consideration for promotion to High Skilled Grade-I and accordingly he was asked to appear in the trade test, in which he did appear without any protest. When he could not qualify the trade test he filed the present application which is not maintainable on the principle of "estoppel". Once a candidate appears in a test he cannot thereafter be allowed to make any grievance about such test. If the applicant was aggrieved by his being called for the trade test he should have made a representation at least before appearing in the said test. However, representation by the applicant was submitted only after declaration of the result of the trade test. They have denied that the policy framed by the General Manager is inconsistent with the direction issued by the Railway Board. Also, the decision as incorporated in Annex.A2 by the General Manager was taken in consultation with both the recognised Unions. The decision taken by other Zonal Railways to dispense with the trade test for any skilled category of posts is not binding on the respondent Western Railway. Finally, the respondents have stated that after the holding of the trade test, list of eligible candidates has already been published and promotions to such candidates have already been granted. Now, at this stage juncture if any order regarding the justifiability of holding the trade test is passed, the rights of all those employees who have already been promoted are going to be adversely affected. Still, however, none of such employees have been impleaded as parties to the

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application. Therefore, the grievance of the applicant cannot be redressed by the Tribunal now.

5. We have heard the learned counsel for the parties and have gone through the records. Both the counsel argued on their interpretation of Annx.A3 dated 27.1.1993, being the restructuring scheme formulated by the Railway Board and the instructions Annx.A2 dated 20/23.3.93 issued by the General Manager, W.Rly, on the subject and whether the latter are inconsistent with the former. However, so far as the present application is concerned, we are of the view that it can be decided on the limited question whether it was necessary for the applicant to implead those persons who had appeared in and passed the trade test and had been granted promotion on the basis of such passing, as respondents, before this application can be taken up for adjudication. The learned counsel for the applicant stated that what the applicant had assailed was the policy framed by the General Manager, vide Annx.A2, which was inconsistent with the policy laid down earlier by the Railway Board vide Annx.A3. He added that the applicant was not seeking any relief against an individual but only against the government of India, or the Western Railway. Therefore, in these circumstances it was not necessary to implead those who had already been promoted on the basis of passing the trade test and who also became senior to the applicant. In support of his view he cited the judgment of the Tribunal in T.N.Chakravarty & Anr. Vs. Union of India & Ors. SLJ 1994(3) CAT 361 in which a reference has been made to a judgment of the Hon'ble Supreme Court holding the view that in such circumstances impleading of persons likely to be affected by the decision of the Court or Tribunal is not necessary. He also drew our attention to provisions of para 228 of the Indian Railway Establishment Manual Vol.I 89 Edition, page 65, which lays down how erroneous promotions are to be dealt with. He stated that the Tribunal can direct the respondents to follow the procedure laid down in para 228 as aforesaid, for dealing with the promotions which have been erroneously granted by holding the trade test, when no such test was required. In any case, according to him,

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if an erroneous policy has been followed by the authorities, the applicant cannot be made ^{to} bear the consequences thereof.

6. The learned counsel for the respondents stated that all the persons who had appeared in the trade test on the basis of the rules framed by the General Manager and had been promoted after passing the trade test will have their seniority and other rights affected if the Tribunal now holds that ~~no~~ no trade test for high skilled category was required before granting promotion to this post. Therefore, according to him, impleading such persons as respondents was necessary before the application could be taken up for adjudication by the Tribunal.

7. We have given our careful consideration to the matter. We are of the view that it was necessary in the circumstances of the present case for the applicant to have impleaded all those persons who had appeared in the trade test alongwith the applicant and had passed it. They had been granted promotion on the basis of passing such trade test. Although, the applicant's counsel claimed that relief was being sought against the Union of India and the General Manager, fact remains that if the applicant's pleas are accepted and it is held that no trade test is necessary for promotion to the post of High Skilled Grade-I, the applicant would become entitled to promotion, thereby affecting the rights of several employees, who have ^{been} now appointed to the post of High Skilled Grade-I and are, therefore, senior to the applicant. The relief claimed, therefore, ^{is} not merely against the government respondents but also against the private individuals. Even if we direct that the procedure as laid down in para 228 of the Indian Railway Establishment Manual Vol.I, cited by the applicant may be followed, it would virtually mean affecting the rights of those who have already been promoted. The procedure prescribed in para 228 *ibid* is for the department to be followed, in cases considered appropriate by them. If the Tribunal had directed the respondents to follow the procedure laid down in the said para, it would be granting relief to the applicant without the

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individuals whose rights are likely to be affected being impleaded as parties and therefore without their being given an opportunity of being heard. We do not know what they may have to say in the matter unless they are heard. The applicant himself cited the case of Shri Habib , who has been promoted as High Skilled Grade-I though he is junior to the applicant. Certainly now if any relief is granted to the applicant the rights of Shri Habib would be affected without the Tribunal having heard him.


8. In Ishwar Singh & Jay Kumar & Ors. Vs. Kuldeep Singh & Ors, (1995) 29 AIC 144 decided by the Hon'ble Supreme Court, selection and appointment of 15 candidates to the posts of Inspectors of Industries/Managers Industrial Estate for Small Scale Cottage and Village Industries, Haryana, was challenged by two unsuccessful candidates before the High Court by filing a writ petition. The High Court allowed the Writ Petition on the ground that the interviews held for the posts ^{were} neither fair nor ~~appropriate~~ proper thereby vitiating the selection. The Hon'ble Supreme Court held that the High Court was not justified in hearing the Writ Petition in the absence of the selected candidates especially when they had already ^{been} appointed. The Hon'ble Supreme Court noted that none except one of the selected and appointed candidates had been impleaded. The judgment of the High Court was set aside and the matter was sent back to the High Court for fresh decision after notice to the parties. In the above case decided by the Hon'ble Supreme Court even where the selection was challenged as being unfair, the Hon'ble Supreme Court held that hearing of the persons already appointed on the basis of the selection which was challenged as unfair was necessary. In the instant case, the selected candidates have appeared in the trade test on the basis of the ^(even if it is assumed to be erroneous) policy formulated by the General Manager and in no circumstances can ^{it} be said therefore that they are not necessary parties to the application.

9. We, therefore, dismiss this application on the ground that those who have been appointed to the post of High Skilled Gr.I

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on the basis of passing of the trade test have not been impleaded as respondents in this application. No order as to costs.


(Patan Prakash) 12/15/78
Member (J).


(C.P. Sharma)
Member (A).