

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 5/5/2000

OA 291/94

Charanji Lal, H.S.Gd.Machinist under Foreman, Western Railway, Kota Division, Kota.

... Applicant.

v/s.

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. General Manager, Western Railway, Churchgate, Mumbai
3. Chief Works Manager, Western Railway, Kota Division, Kota.

... Respondents.

CORAM:

HON'BLE MR. S. K. AGARWAL, JUDICIAL MEMBER

HON'BLE MR. N. P. NAWANI, ADMINISTRATIVE MEMBER

For the Applicant

... Mr. Shiv Kumar, proxy counsel  
for Mr. J. K. Kaushik

For the Respondents

... ~~Mr.~~ Mr. Manish Bhandari.

O R D E R

PER HON'BLE MR. S. K. AGARWAL, JUDICIAL MEMBER

In this Original Application the applicant makes the following prayers :-

- i) to quash and set aside the order dated 5.11.93 (Ann.A/1) after being declared illegal.
  - ii) to declare the order dated 22/23.3.93 (Ann.A/2) as illegal and unconstitutional to the extent it provides for conducting the trade test for promotion under restructuring scheme,
  - iii) to direct the respondents to consider the candidature of the applicant for extending the benefits of restructuring scheme as per the modified selection procedure laid down by the Railway Board, with all consequential benefits.
2. The facts of the case, as stated by the applicant, are that the applicant, who is working as Machinist Grade-II, was initially appointed as Khalasi on 21.9.72. He was later on promoted on the posts of semi-skilled, skilled and high skilled Artisan in the year 1976, 1981 and 1986 respectively. It is stated that the Railway Board had issued restructuring scheme



by adopting the modified selection procedure. It is further stated that case of the applicant was taken up for consideration and the applicant appeared in the trade test as there was no option to the applicant except to obey the orders, but he was declared failed. It is also stated that in the restructuring scheme no ~~xx~~ element of promotion is there and only higher pay scale on the basis of seniority-cum-suitability is given, and the applicant has been told that the trade test is required. The main contention of the applicant in this OA has been that the rules providing for trade test for promotion under the restructuring scheme are inconsistent and such rules have been withdrawn by the North-Eastern Railway (NER), Gorakhpur. It is stated that the benefits of the restructuring scheme are to be given without conducting any trade test and the Railway Board in specific terms has dispensed with the requirement of trade test issued for extending the benefit of restructuring scheme. Therefore, the rules framed by the Railway Board are unconstitutional and deserve to be struck down so far these are inconsistent.

3. Reply was filed. In the reply it has been stated that it is a normal practice for promotion under the restructuring scheme for Skilled Artisan to conduct trade test and the Railway Board never issued instructions for dispensing with the trade test for promotion to artisan class in specific terms. It is also stated that the applicant appeared in the trade test and failed. Therefore, he is estopped to raise objection regarding the trade test as the persons who have passed the trade test have already been given the benefit of the scheme. It is also stated that in the circular dated 27.1.93 there was no mention about the trade test, therefore, the headquarters issued necessary orders in this regard vide Annexure A/2 which are not at all ~~xx~~ inconsistent with the instructions issued by the Railway Board dated 27.1.93. It

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is also stated that if the North-Eastern Railway, Gorakhpur, has withdrawn the provision of trade test, the same is not binding on the Western Railway and the applicant failed to make out a case to struck down the provision of trade test, as given in the letter Annexure A/2. Therefore, the applicant has no case and this OA is liable to be dismissed having no merit.

4. Heard the learned counsel for the applicant and also perused the whole record.

5. It is an admitted fact that there was no mention about the trade test in the circular dated 27.1.93 issued by the Railway Board. Therefore, the matter was discussed before the Cadre Restructuring Committee, to which representatives of both the recognised Federations are associated, and decided that for promotion under the restructuring scheme trade test is necessary for Skilled Artisan, which is clearly evident from the letter dated 26.7.94. It is also pertinent to mention that the applicant himself has appeared in the trade test and failed in the said trade test, and the others who were declared successful have already been given benefits of the restructuring scheme. Therefore, after appearing in the trade test without protest and failed therein, the applicant is estopped to raise any objection regarding the trade test. Moreover, the applicant also failed to establish the fact that the provision regarding the trade test in the impugned order is in any way unconstitutional or repugnant to the Constitution or arbitrary or inconsistent with the instructions issued by the Railway Board from time to time in this regard. Therefore, we are of the considered opinion, that there is no basis to struck down the provision made in the impugned letter Ann.A/2 regarding the trade test.



6. The learned counsel for the applicant has also argued that this case is squarely covered by the order passed in

OA 542/93 dated 26.7.95, Mohammed Idu v. Union of India and others. We are not inclined to accept the contention of the learned counsel for the applicant. In this OA, the impugned order Annexure A/2 has not been the subject matter in issue. Moreover, the impugned letter Annexure A/2 clearly reveals that the decision of conducting trade test has been taken by the Cadre Restructuring Committee, which was associated with both the recognised Federations and after great deal of discussion this decision was taken which, in our considered view, cannot be said to be unconstitutional, repugnant to the Constitution and inconsistent with the provisions of the Railway Board, issued from time to time for this purpose.

7. We, therefore, dismiss this OA having no merit, with no order as to costs.



(N.P. NAWANI)  
MEMBER (A)



(S.K. AGARWAL)  
MEMBER (J)