

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

* * *

Date of Decision:

5-6-2012

OA 98/97

1. H.S.Saxena s/o Shri P.S.Saxena r/o Rly.Or.No.1681/B, Colony No.1, Circular Road, Ajmer.
2. Laxman Singh s/o Shri Devi Singh r/o 19/1790, Naya Ghar, Nai Basti, Gulab Bari, Ajmer.
3. Mohan Madho s/o Shri Madhoo r/o Rly.Or.No.1208/A, Ramganj, Ajmer.

... Applicants

Versus

1. Union of India through General Manager, W/Rly, Mumbai.
2. FA & CAO (WST), W/Rly, Mumbai.
3. Chief Cashier, W/Rly, Churchgate, Mumbai.
4. Asstt.Chief Cashier, W/Rly, Ajmer.

... Respondents

CORAM:

HON'BLE MR.A.P.NAGRATH, ADM.MEMBER

HON'BLE MR.J.K.KAUSHIK, JUDL.MEMBER

For the Applicants ... Mr.P.V.Calla

For the Respondents ... Mr.U.D.Sharma

O R D E R

PER HON'BLE MR.A.P.NAGRATH, ADM.MEMBER

In this application filed u/s 19 of the Administrative Tribunals Act, 1985, the applicants have prayed for the following reliefs :-

- "a) Issue necessary directions to the Respondents No.2 and 3 calling for the records and proceedings concerning the selection of candidates to the post of Remittance Cashiers scale Rs.1200-2040 (R) conducting during the period January to April, 1993 and after examining the validity and propriety of the action taken by these respondents, be pleased to quash and set aside Annexure A/4 (Panel Notification).
- "b) Direct the respondents No.2 and 3 to promote/regularise the applicants forthwith on the post of Remittance Cashiers scale Rs.1200-2040 (R) with effect from 1.3.93 strictly in terms of instructions contained in Railway

Board, New Delhi's letter dated 27.1.93 (Annexure A/6) treating the post as Non-selection to be filled by seniority.

c) Direct the respondents No.2 and 3 to adjust their promotion on the post of Remittance Cashiers, scale Rs.1200-2040 (R) as on 1.3.93 against clear/resultant vacancies with consequential further service benefits, arising therefrom.

d) Allow this case application with costs of the Suit and any other relief which the Hon'le Tribunal may feel it and justified in the peculiar circumstances of this case."

2. What the applicants are claiming apparently is their promotion to the post of Remittance Cashier scale Rs.1200-2040 w.e.f. 1.3.93 against restructuring scheme which became effective from that date. The applicants had been working on ad hoc basis from the year 1992 onwards. By letter dated 27.12.96 (Ann.A/1) they were reverted to the scale of Rs.950-1500. Their claim has been denied by the respondents for the reason that they were not covered under the restructuring scheme. Further, it has been stated that they had appeared in the written test conducted for that post on 30.1.93 but the applicants were unsuccessful in that test. The viva-voce for that selection was held on 8.4.93 and 12.4.93 and those found successful were duly promoted, which admittedly included their juniors.

3. The controversy which has come up for our consideration in this case is whether the applicants were entitled to be promoted against restructuring scheme. As per procedure under the restructuring scheme, the normal process of selection had been done away with and a modified procedure was adopted. This means that the eligible employees were not required to appear in the written examination and the promotions were based on their service record and seniority. The learned counsel for the respondents justified the action of the department in denying promotion to the applicants for the reason that in the restructuring scheme there has been in fact a curtailment of posts from 30 to 29 and in such a situation, the modified procedure was not required to be adopted. In support of this contention, the learned counsel, Shri U.D.Sharma, referred to the Railway Board's letter dated 27.1.93, circulated vide Western Railway's letter dated 29.3.93 (Ann.R/5). While referring to para (ii) of the said letter, the learned counsel stated that the existing vacancies as on 1.3.93

were to be filled up by process of normal selection and not by modified procedure.

4. The learned counsel for the applicants, Shri P.V.Calla, vehemently disagreed with the interpretation given by Shri U.D.Sharma and emphasised that the modified procedure was definitely required to be followed in this case. While referring to Ann.A/5 dated 6.7.93, he drew our attention to the revised cadre strength of Head Cash Counter scale Rs.1400-2300. In this scale the number of posts were increased from 13 to 18 because of restructuring. As a consequence of this, five Remittance Cashiers were required to be placed in the higher grade leaving thereby resultant vacancies in the cadre of Remittance Cashiers. Considering that one post has been curtailed in the cadre there would still leave four resultant vacancies in the cadre of Remittance Cashiers. Thus, the learned counsel urged that this was a case duly covered by the restructuring scheme and the respondents have acted illegally by filling up the posts by the process of normal selection. The selection panel was issued on 20th April, 93, whereas under the restructuring scheme issued by the Railway Board it had clearly been directed that vacancies existing on 1.3.93, arising on that date from cadre restructuring, should be filled up by the modified procedure and the selections which had not been finalised by 1.3.93 were required to be cancelled.

5. In face of these rival contentions, the issue which has come up for our consideration is whether the respondents were right in filling up the vacancies of Remittance Cashier by conducting a normal selection, the result of which was declared on 20.4.93 (Ann.A/4). For this purpose, it is essential to revert to the orders contained in R.B.E. Circular No.19/93 on the subject of ~~restructuring~~ of certain Group-C and D cadres issued on 27.1.93 (Ann.A/6). In the first para of this letter itself, a duty has been cast upon all the Railways that "while implementing these orders the following detailed instructions should be strictly and carefully adhered to". Paras 4.1 & 4.2 of the said letter contained the following instructions :

"4.1 Vacancies existing of 1.3.93 except direct recruitment quota and those arising on that date from this cadre restructuring including chain/resultant vacancies should be filled in the following sequence:

(i) from panels approved on or before 1.3.93 and current on that date; and

(ii) the balance in the manner indicated in para 4 above.

4.2 Such selections which have not been finalised by 1.3.93 should be cancelled/abandoned."

In the context of these instructions, the first point for consideration is whether any vacancies arose in the cadre of Remittance Cashier because of restructuring. It is clear from the document dated 6.7.93 (Ann.A/5) that prior to restructuring there were 30 posts of Remittance Cashier in the scale of Rs.1200-2040 and 13 posts of Head Cash Counter in the scale of Rs.1400-2300. After restructuring, the number of posts were changed to 29 and 18 respectively. In other words, on implementation of the restructuring scheme, the number of posts of Head Cash Counter were increased by five and those of Remittance Cashier were reduced by one. The resultant effect would be that five Remittance Cashiers were getting covered under the restructuring scheme to be promoted as Head Cash Counter leaving four resultant posts of Remittance Cashier vacant. As per para 4.1, the vacancies for restructuring were to include the existing vacancies as on 1.3.93 and chain/resultant vacancies. Obviously, in this case, four resultant vacancies had occurred and there is no force in the argument advanced by the learned counsel for the respondents that the cadre of Remittance Cashiers was not covered by the restructuring scheme. The respondents have placed reliance on Railway Board's letter dated 29.3.93, by which clarifications have been given regarding manner of implementation the cadre restructuring. Para (ii) of the said letter is relevant for this purpose, on which emphasis was laid by the learned counsel for the respondents. This part of the clarification is reproduced below :

"(ii) Filling up of vacancies where no restructured posts are available.

Doubt has been raised that in cases where percentages have been reduced in the lower grade and no new posts become available as a result of restructuring but existing vacancies are available as on 1.3.93 whether such vacancies also be filled up by modified selection procedure. It is clarified that in such cases vacancies existing on 1.3.93 should not be

filled up by modified selection procedure."

It is normally accepted legal position that no clarificatory letter can impart a meaning to the original policy instructions which the original instructions did not themselves imply. Having said that, we find in this particular case, there is no contradiction between the clarification and the original policy. As per this clarification, it has been stated that where the percentages have been reduced in the lower grade and no new posts become available as a result of restructuring but existing vacancies are available as on 1.3.93, such vacancies should not be filled up by modified procedure. In the case before us, we are concerned with the fact whether any vacancy has occurred, because of restructuring. This has to be read in conjunction with para 4.1 of the letter of restructuring dated 29.3.93. The obvious inference is that if some resultant vacancies occurred in the lower grade, they will obviously cover by the restructuring scheme and such vacancies alongwith other existing vacancies in the cadre shall have to be filled only by modified procedure. In this background, we have no hesitation in concluding that the vacancies required to be filled up in the cadre of Remittance Cashiers were decidedly covered by the restructuring scheme and could only be filled up by modified procedure. As per para 4.2, selections which had not been finalised on 1.3.93, should have been cancelled/abandoned. The respondents in this case did not abide all these instructions and went ahead with the selection which had been initiated prior to 1.3.93 but it was completed only on 20.4.93. This action is contrary to the orders of the Railway Board and this action is certainly not sustainable.

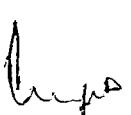
6. Having said that, the next question to be considered is whether in the event the vacancies of Remittance Cashier as on 1.3.93 were to be filled up by modified procedure, could the applicants derive any benefit. A seniority list relating to these cadres, issued on 22.1.92, has been placed before us by the learned counsel for the respondents for our perusal. We find that in the list of Shroff scale Rs.950-1500, which is a feeding grade for the post of Remittance Cashier, applicant H.S.Saxena's name appears at S.No.28 while that of applicant Mohan Madho is at S.No.57 and applicant Laxman Singh at S.No.58. By the process of selection, 25 persons

were placed in the panel vide order dated 20.4.93 (Ann.A/4). Even if we consider that all these 25 posts were available as on 1.3.93, and were to be filled up by the process of modified selection, then only the first 25 candidates in order of seniority would have found place in the panel. The first number in the seniority is one G.B.Dave, who is also shown as first successful candidate in the panel ~~on~~ 20.4.93. Obviously, none of the applicants finds place in the first 25 names in the seniority list. The last person is one Shankaran at S.No. 25. There is no doubt that the panel dated 20.4.93 includes some persons like S.B.Paleja, L.V.Nayak, R.B.Paunikar, who are all junior to the applicant H.S.Saxena, though senior to other two applicants. This fact merely cannot give any relief to any of the applicants. They would have been entitled to the benefit of restructuring scheme provided their names find place in the first 25 positions in the seniority list. All these applicants are below ^{No.} 25 and are at position No.28, 57 and 58. Even if the plea taken by them has been found to be correct that at the relevant time the vacancies in the cadre of Remittance Cashiers should have been filled up by modified procedure, they cannot be given any relief. In such a situation, the panel dated 20.4.93 cannot be quashed at their behest. The successful candidates of that panel have been holding the position for the last more than 9 years and their status cannot be disturbed at the bidding of those who are not going to derive any benefit whatsoever. In these circumstances, we are not inclined to interfere in the selection, the result of which was notified vide Ann.A/4.

7. We, therefore, dismiss this O.A but under the circumstances parties are left to bear their own costs.


(J.K.Kaushik)

Member (J)


(A.P.Nagrath)
Member (A).