

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, CALCUTTA

Dated: 24.9.2015

Present

Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Mr. R. Bandyopadhyay, Administrative Member

1. O.A. 1580 of 2013

(1) Smt. Joyita Brahma,
Wife of Sri Koushik Brahma,
Aged about 34 years,
Working for gain as Peon,
In the office of the Sr. D.P.O.,
Sealdah, Eastern Railway,
Sec. E-1 (Estt.),
Residing at 380/14, Satyam Aptt.,
South Bankimpally,
Madhyamgram – 129.

(2) Smt. Sanchita Pal,
Daughter of Sri Lakhan Paul,
Aged about 27 years,
Working for gain as Peon
In the Office of the Sr. D.P.O.,
Sealdah, Eastern Railway,
Residing at 107, Ram Kamal Sen Road,
P.O. Garifa, P.S. Naihati,
Dist. 24 – Pgs. (N),
Pin – 743 166.

2. O.A. 188 of 2014

(1) Smt. Kalpana Mondal.
Wife of Sandeep Mondal,
Aged about 34 years,
Working as Ferro Khalashi working
Under Senior Divisional Telecom Engineer,
Eastern Railway, Sealdah,
Residing at Flat FN – 1, Jyangra (South Math)
Gouri Villa Apartment,
Kolkata 700 059.

(2) Sri Sandip Sharma,
Son of Sri Pashupati Sharma,
Aged about 29 years,
Working as Helper – II / NH / RRI
Under SSE / SIG / KPA and
Residing at South Naldanga (Bhodo),
P.O. South Naldanga,
District : Hooghly, Pin – 712 123.

Applicants.

B

Versus

1. Union of India
Through the General Manager,
Eastern Railway,
17, N.S. Road,
Kolkata – 700 001.
2. The Director,
Pay Commission – II,
Railway Board,
Ministry of Railways,
Rail Bhawan,
New Delhi.
3. The Secretary,
Railway Board,
Ministry of Railways,
Rail Bhawan,
New Delhi.
4. The Chief Personnel Officer,
Eastern Railway,
17, N.S. Road,
Kolkata – 700 001.
5. The Senior Divisional Personnel Officer,
Sealdah Division,
Eastern Railway, Sealdah,
Kolkata – 700 014.
6. The Divisional Railway Manager,
Sealdah Division,
Eastern Railway, Sealdah,
Kolkata – 700 014.
7. The Assistant Personnel Officer/G,
Office of the Divisional Railway Manager,
Sealdah Division,
Eastern Railway, Sealdah,
Kolkata – 700 014.

..... Respondents.

For the Applicant : Mr. K. Sarkar, Counsel (O.A. 1580/2013)
Mr. S.K. Mondal, Counsel (O.A. 188/2014)
Mr. B. Chatterjee, Counsel (O.A. 188/2014)

For the Respondents : Mr. S.K. Das, Counsel (O.A. 1580/2013)
Mr. B.K. Roy, Counsel (O.A. 188/2014)

B

ORDER

Per Ms. Bidisha Banerjee, JM:

Since identical facts have been pleaded and identical issue raised, the applications are dealt with analogously with the consent of the parties. For the sake of brevity the O.A. 1580 of 2013 is delineated and dealt with first.

This application has been filed seeking the following reliefs interalia:

- "8.(i) Leave may kindly be granted to the applicants to file this joint application in terms of Rule 4(5)(a) of the CAT (Procedure) Rules, 1987;
- (ii) to direct the respondents to cancel, withdraw and/ or rescind the order dated 03.12.2013 as contained in Annexure "A-3" herein;
- (iii) to direct the respondents to declare that the Railway Board's circular dated 08-10-2013 (RBE No.102 of 2013) ultra vires Article 14 of the Constitution of India insofar as it relates to the clause 4.2 thereof, as contained in Annexure "A-2" herein;
- (iv) to direct the respondents to publish the results of the selection test to the post of Jr. Clerk held on 29.09.2013 in terms of notification dated 19.06.2013 as contained in Annexure in Annexure "A-1" herein and to give promotion to the applicants herein;
- (v) to direct the respondents produce the entire records of the case before this Hon'ble Tribunal for adjudication of the issues involved herein;
- (vi) And to pass such further or other order or orders as to this Hon'ble Tribunal may deem fit and proper."

2. The indisputable facts which could be culled out from the pleadings of the parties are as under:

"That in order to fill up the vacancy of junior clerk in PB-I GP Rs. 1900/- from erstwhile Group 'D' (Now Group - C) in PB-1 with GP. Rs. 1800/- against 33 ½ % promotion vacancy UR-99, SC-10, ST-02, and against 16 2/3% was floated calling option from the staff over SDAH Divn., against 16 2/3% vacancy UR-39, SC-01, ST-NIL.

The date of written examination was fixed on 29.09.13 against 16 2/3% departmental promotion quota and Result thereof could not be finalized since

cadre restructuring had come with the instruction that all selection will be cancelled which has not yet been finalized.

The date of written examination of vacancy against 16 2/3% was fixed on 29.09.13 vide office letter dated 16.09.2013.

Since restructuring order vide CPO/KKK's SI.No. 111/2013 A/2 had come with the instruction that all selection will be cancelled which has not yet been finalized upto 01.11.2013.

The entire selection process was declared to be cancelled. After completion of restructuring process further process of normal selection to fill up the vacancies on or after 02.11.13 and onwards will be undertaken."

3. The RBE 102/13 impugned in the present O.A. vires whereof is under challenge is extracted infra to the extent relevant and germane to the present lis:

"Sub : Restructuring of certain Group 'C' cadres.

The Ministry of Railways have had under review Cadres of certain Group 'C' staff in consultation with both the recognized Federations (AIRF/NFIR) with a view to strengthen and rationalize the staffing pattern on Railways. As a result of the review undertaken on the basis of functional, operational and administrative requirements, it has been decided with the approval of the President that the Group 'C' categories of staff as indicated in the Annexure "A" to "H" to this letter should be restructured in accordance with the revised percentages indicated therein. While implementing these orders the following instructions should be carefully and strictly adhered to :

Date of effect 1. The restructuring of the cadres will be with reference to the sanctioned cadre strength as on 01.11.2013. The staff who will be placed in higher grade pay as a result of implementation these orders will draw pay in higher grades w.e.f. 01.11.2013. The benefit of restructuring will be restricted to

the persons who are working in a particular cadre on the cut-off-date i.e. 01.11.2013.

Applicability to various cadres 2. These orders will be applicable to the permanent regular cadres (excluding surplus & supernumerary posts) of the Open Line establishments including Workshops, Production Units, RDSO and Centralized Training Institutes. Only those temporary posts which are in operation for atleast three years may also be taken into account for the purpose of applying revised percentage. This will be subject to certification that these posts are meant for regular activities which will continue and not for any sporadic requirements.

These orders will also be applicable to the regular posts of Group 'C' cadres, borne on the permanent establishment of Centralized Training Institutes, chargeable to Revenue and identical in AVC, Grade Structure, Designation & Recruitment pattern to that of same categories on the Zonal Railways.

Pay Fixation 3. The pay of staff promoted against the additional higher grade posts as a result of restructuring (including chain/resultant vacancies) will be fixed as per Rule 13 of RS(RP) Rules, 2008 with the benefit of one increment @ 3% of basic pay, with the usual option for pay fixation as per extent rules.

Existing classification and filling up of the vacancies 4. The existing classification of the posts covered by these orders as 'selection' and 'non-selection', as the case may be remains unchanged. However, for the purpose of implementation of the orders, if any individual Railway servant becomes due for promotion to a post classified as a 'selection' post, the existing selection procedure will stand modified in such a case to the extent that the selection will be based only on scrutiny of service records and confidential reports without holding any written and/or viva voce test. This modified selection procedure has been decided upon by the Ministry of Railways as a one time exception by special dispensation, in view of the numbers involved, with the objective of

expediting the implementation of these orders. Similarly for posts classified as 'non-selection' at the time of this restructuring, the promotion will be based only on scrutiny of service records and confidential reports. In the case of Artisan staff, the benefit of restructuring under these orders will be extended only on passing the requisite Trade Test.

4.1 Normal vacancies existing on 01.11.2013 (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 01.11.2013 and current on that date;
- (ii) And the balance in the manner indicated in para 4 above.

4.2 Such selections which have not been finalized by 01.11.2013 should be cancelled/abandoned.

4.3 All normal vacancies arising from 02.11.2013 will be filled by normal selection procedure."

The Ld. Counsel for the applicant while drawing our attention to the para 4.2 of the said RBE vociferously submitted that in their case the selection was over, long before 1.11.13, as such the selection in which they had participated ought not to have been disturbed. He has submitted that while the applicants had appeared in the Gr. C selection and had no indefeasible or absolute right to seek an appointment, yet the same did not give a licence to the railway authorities to cancel the selection of Gr. C and the result thereof in an arbitrary manner. The least which the applicants who were otherwise eligible for appointment and who had appeared in the selection that constituted a step-in-aid of a possible appointment in their favour, were entitled to is to ensure that the selection process was not allowed to be scuttled for malafide reasons or in an arbitrary manner.

The Railway respondents do not enjoy an unqualified prerogative to refuse an appointment in an arbitrary fashion or to disregard the merit of the applicants.

The validity of the impugned order dated 03.12.2013 and its decision not to make an appointment is thus a matter which is not beyond judicial review before a competent writ court. If any such decision is found to be arbitrary by this Tribunal, appropriate direction for appointment of the applicants can be issued in the matter.

He has urged that the impugned acts and/or activities on the part of the respondent authorities is not only violative of principles of natural justice, procedural justice and fairplay in action but also it offends Articles 14, 16, 21 & 300A of the Constitution of India.

4. Per contra the respondents submitted that as far as cadre restructuring is concerned senior most employee within the cadre is considered for promotion by way of modified selection against upgraded post, if any.

In the instant case applicant was not within the cadre and being eligible from Gr. 'D' cadre as per criteria of the notification for the initial post of ministerial cadre she applied and appeared in the written selection for the post of Clerk Grade-II. The written selection was completed but prior to finalization of the entire selection process order of restructuring having effect from 01.11.13, came with direction to cancel all the selections which have not yet been finalized. In the said restructuring order cadre position was ordered to be considered as on 01.11.13 for restructuring.

5. We have heard the Ld. Counsels for the parties, considered their rival contentions and perused the materials on record.

6. We note as follows:

- (1) Due to cadre restructuring the posts/vacancies which were not filled up till 1.11.13 on the basis of selection (as per merit) were proposed to be filled up

on the basis of modified selection procedure in terms of para 4 of RBE (supra) as one time exception by special dispensation. Similar was the case with non selection posts.

Thus seniors in a cadre would gain advantage over the juniors without any selection. Similarly if the juniors are eligible in terms of seniority would be benefited by direct promotion without selection.

- (2) Whether the vacancies in question arose prior to restructuring order or the selection was held against anticipated vacancies likely to arise after 2.11.13 is not clarified, i.e. whether the vacancies would come within the ambit of para 4.3 of the restructuring order supra, is not clear.
- (3) In terms of para 4.1 ibid, the vacancies existing as on 1.11.13 other than the Direct Recruitment quota and the resultant chain vacancies of restructuring would be filled up under modified selection procedure.
- (4) Although we note that cadre restructuring is a policy matter and no policy can be interfered with casually, the reason for bringing the present selection within the ambit of cadre restructuring is not understood.
- (5) The respondents have emphatically declared that even after final stage of the selection they waited for the bar order of cadre restructuring to step into the field. It is not clarified whether due to administrative reasons the panel could not be published before 1.11.13 and what is the implication of the word "finalized" whether it would mean finalisation of the selection or finalization of selection with publication of panel.
- (6) It is also emphatically declared that no normal selection procedure has been undertaken to fill up the vacancies arising after 2.11.13, i.e. the present applicants were never considered thereafter as such they still languish. The reason of depriving them is not apparent.
- (7) We further note that the earlier restructuring order of Railways issued under RBE 114/04 the candidates left out in the un-operated portion of the above panels could be considered as per their seniority for promotion as per para

4(ii) of the circular. If they were not promoted as per their seniority such candidates placed on the un-exhausted portion of the panel could be considered for promotion against the anticipated vacancies for which they were selected, without subjecting them to fresh selection, provided they are otherwise eligible as per normal rules and the panel was also in force which, concession was absent in the recent restructuring "order" under RBE 102/13.

(8) We also fail to comprehend the reason, when the applicants were subjected to a selection why should they be subjected to another selection procedure and why the concession alike the earlier RBE 114/04 be not provided to them.

7. In such view of the factual revelation as enumerated hereinabove the competent respondent is directed to issue a reasoned and speaking order to clarify the aforesaid position and pass appropriate orders within 2 months.

8. Both the O.A.s¹¹ are accordingly disposed of with this common order. No costs.

(R. Bandyopadhyay)
AM

(Bidisha Baherjee)
JM

drh