
(2001) 11 RAJ CK 0043

In the Rajasthan High Court

Case No : Civil Special Appeal No. 1 of 2001 and Civil Writ Petition No. 4972 of 2000

Bhagwan Singh and Others

APPELLANT

Vs

Rajasthan State Road Transport Corp. and Another

RESPONDENT

Date of Decision : 20-11-2001

Acts Referred:

Rajasthan State Road Transport Corporation Employees Service Regulations, 1965 — Regulation 105(V)

Citation : (2003) 1 RLW 360 : (2002) 1 WLC 554

Hon'ble Judges : P.P. Naolekar, J;K.S. Rathore, J

Bench : Division Bench

Advocate : Mahendra Shah, for the Appellant; Manish Bhandari, for the Respondent

Judgement

Naolekar, J.—Admittedly, in above noted appeals, the petitioner-appellants ("appellants" herein) were appointed as Conductors, after due selection, in respondent Rajasthan State Road Transport Corporation (for short "the respondent Corporation"). The respondent Corporation invited options from the appellants to be posted on the post of Booking Clerk, as per the settlement arrived at between the Rajasthan State Roadways Employees Union (Etak) (for short "the Union") and the respondent Corporation. The appellants were posted on the post of Booking Clerk. At the time of issuance of the impugned order dated 21.10.2000 (annexed with writ petitions) whereby the appellants have been posted as Conductors on transfer, they were discharging duties on the post of Booking Clerk. As per the appellants, the post of Booking Clerk is a different cadre post then that of a Conductor. By virtue of the settlement arrived at between the Union and the respondent Corporation on 22.3.1979 and approved by the Nigam Sanchalak Mandal on April 16, 1979, the orders came to be issued on 13.3.1980, and the appellants were absorbed on the post of Booking Clerks. Issuance of the order dated 21.10.2000, posting them from the post of Booking Clerk to the post of Conductor tantamounts to change" of service conditions and

reduction in rank without giving them opportunity of hearing or without obtaining consent for the same from the appellants.

2. Aggrieved by the order dated 21.10.2001 the appellants challenged it by way of filing separate writ petitions before the High Court. The writ petitions were dismissed by the learned Single Judge. A detailed judgment dated 28.11.2000 is given in S.B. Civil Writ petition No. 4972/2000. The learned Single Judge has found that the appellants were permitted, for administrative exigencies, to officiate on the post of Booking Clerk and, thereafter the appellants were again transferred to the post of Conductor. Working on officiating capacity does not tantamount to absorption on the post and, therefore, the appellants have no right over the post of Booking Clerk. The learned Single Judge has also held that the appellants have miserably failed to establish that the respondent Corporation had asked them to change their cadre and in pursuance thereof they have exercised their option to change their cadre from the post of Conductor to the post of Booking Clerk. From the entire reading of the judgment of the learned Single Judge has taken the post of Booking Clerk as different cadre post then that of the Conductor.

In *Mohan Lal Sharma v. The Rajasthan State Road Transport Corporation and Anr.* (1), decided along with three other Writ Petitions another learned Single Judge has also held that the post of Booking Clerk is a different cadre post then that of a Conductor. In the judgments delivered in *Surendra Singh Chauhan v. R.S.R.T.C.* (2), decided on 3.8.1998, *Radheyshyam Sharma and Ors. v. Rajasthan State Road transport Corporation and Ors.* (3), *Mohan Lal Soni v. R.S.R.T.C. and Ors.* (4), decided along with batch of writ petition and *Rajasthan State Roadway Employees Union and Ors. v. Rajasthan State Road Transport Corporation* (5), decided along with batch of writ petitions, the learned Single Judges did not consider the post of Booking Clerk to be a different cadre post. Therefore, we have first to decide whether the post of a Booking Clerk is a separate cadre post then that of a Conductor and thereafter whether under the settlement arrived at between the Union and the respondent Corporation the appellants are entitled to any relief and if yes, what shall be the relief?

3. In exercise of the powers vested u/s 45 of the Road Transport Corporation Act, 1950, the respondent Corporation has framed the Regulations regarding the conditions of appointment and service of the persons appointed to the services and posts in connection with the affairs of the respondent Corporation. The Regulations are called "The Rajasthan State Road Transport Corporation Employees Service Regulations" (for short "the Regulations of 1965"). They have come into effect from 15.8.1965. Admittedly, the services of the appellants are governed and regulated by the Regulations of 1965. Chapter XIII of the Regulations of 1965 speaks of recruitment, promotion seniority and confirmation. Regulation 105 is a definition clause. Under Clause (v) of Regulation 105 "Service" is defined to be a service of the Corporation as classified in Schedule I. The Corporation is permitted to revise the schedule from time to time as may be

necessary. Regulation 106 is in regard to the cadre strength which says that the Corporation shall determine the strength of each cadre and may revise the same every five years or earlier according to exigencies of service. The Corporation may leave un- filled or hold in abeyance any vacant post without thereby entitling any employee to compensation or may create additional temporary posts in a cadre from time to time as may be necessary. Regulation 107 lays down the source of recruitment i.e. by a competitive examination and/or by promotion from lower post in a cadre. Regulation 108 is in regard to determination of vacancies. Regulation 110 is in regard to the age of a candidate for direct recruitment. Regulation 111 prescribes academic qualifications. Regulation 112 is with regard to the character of a candidate for direct recruitment. Regulation 113 is in regard to physical fitness of a candidate for direct recruitment. Regulation 114 speaks of the period of service required for promotion or appointment to the higher post. Regulation 116 prescribes procedure for direct recruitment whereas Regulation 117 prescribes procedure for promotion. Schedule 1 of Chapter XX gives the classification of services including the nature of posts in each service of the Corporation. Under the heading "B" classification of "Subordinate" Ministerial, Traffic, Technical & Civil Cell Staff is made; at Item No. 6 under sub-heading "b" there is a post of "Adda Conductor" and at Item No. 7 there is a post of "Conductor".

Both the learned counsel appearing on behalf of respective parties could not point out to us any separate post with the nomenclature of Booking-Clerk. (5). However, under heading "Traffic Department" of Schedule II, which is a Schedule of revised new pay scales, there are two posts- (i) booking Clerk and (ii) Conductor/Adda Conductor and the pay scale of both posts appears to be same i.e. 355-10-415-15-550-20-570 as was payable at that time. From the Regulation it appears that the Regulation provides for appointment on the posts in different cadre either by direct recruitment or by promotion. Adda Conductor and Conductor are the posts mentioned under Schedule I whereas under Schedule II the posts of Booking Clerk and Conductor/Adda Conductor are bracketed for the same pay scale. Thus, from the Regulation it does not appear that there is a separate cadre post of Booking Clerk in respondent Corporation. The post of Conductor or Adda Conductor or Booking Clerk are the post falling within one cadre giving different name on the basis of the nature of duties carried out by the employee. With utmost regard we find ourselves unable to subscribe to the view taken by the learned Single Judge that the post of Booking Clerk is a different cadre post then that of a Conductor/Adda Conductor.

4. Admittedly, there was a settlement entered into between the affiliated Union and the respondent Corporation 23.3.1979. Under the settlement it was agreed that the nomenclature of Adda Conductor shall be changed as Booking Clerk. The respondent Corporation shall prepare a seniority list of Conductors and according to depot-wise seniority they shall be posted on the post of Booking Clerk. It has been specifically mentioned that the post of Booking Clerk is not a new creation but only a change of nomenclature from the post of "Adda

Conductor" to booking Clerk. The employees who have been posted on the post of Booking Clerk i.e. the old post of "Adda Conductor" shall only be entitled for promotion. The Conductors who are not willing to discharge the work of the post of Booking Clerk, although senior, may remain on the post of Conductor but they shall not be entitled for further promotion. The conductors, who want to be posted as per their seniority on the post of Booking Clerk, shall submit their option to that effect in a prescribed option form. The matter regarding giving of additional allowance for working on the post of Booking Clerk is under consideration. The option form which has been supplied to the Conductors shows that if the option is not exercised within the time stipulated then it shall be deemed that, according to the seniority of Conductor, they are T.T. willing to be posted on the post of Booking Clerk. The Conductor according to his seniority is not willing to be posted as Booking Clerk may fill his option expressing his unwillingness to join on the post of Booking Clerk.

By order dated 2.8.1981 it is clarified that in the respondent Corporation there are 1740 sanctioned posts of Adda Conductor, out of them 1576 posts are permanent and 164 posts are temporary. As per the seniority list prepared by the respondent Corporation, 1950 conductors are being posted on the post of Booking Clerk. The conductors who have given their option not to work on the post of Booking Clerk, shall not be posted on the post of Booking Clerk. Thereafter the respondent Corporation has issued an order dated 24.10.1991 whereby the respondent Corporation has withdrawn the condition that the employees who have not been posted on the post of Booking Clerk shall not be entitled for promotion on the higher post.

5. Appointment and promotion Rules of Respondent Corporation, under the heading of "Traffic Department" at Item No. 7, provides for recruitment on the post of Conductor/Adda Conductor, 100% by direct recruitment and their promotion post is Station Incharge/Assistant Traffic Inspector. The respondent Corporation by its order dated 24.6.1997, in exercise of the powers vested in it u/s 45(2)(c) of the Act of 1950 has issued the amended Schedule of the posts which can be filled in by direct recruitment as well as by promotion in the respondent Corporation. There does not appear to be any separate post of Adda Conductor or that of Booking Clerk in the amended Schedule, post shown in the Schedule is only of Conductor. By amendment the post of Adda Conductor is deleted. The post of Conductor is to be filled in hundred percent by direct recruitment and the higher post of Assistant Traffic Inspector is to be filled in 33.33% by direct recruitment and 66.67% to be filled in by promotion on seniority- cum-merit basis from the post of Booking Clerk/Conductor having five years experience. The material placed on record indicates that the post of Conductor/Adda Conductor or Booking Clerk falls within the same bracket, The senior Conductors are called Adda Conductors to whom new nomenclatures have been given as Booking Clerk having the similar pay scale and the same promotional avenues.

Therefore, it cannot be held that the appellants have been appointed on a different cadre post of Booking Clerk from the post of Conductor and, as such, they cannot be relegated to the post of Conductor by issuance of the order of transfer dated 21.10.2000. The respondent Corporation is within its rights to ask its employees to work in the same cadre post on a different job jot for the agreement arrived at between the Union and the respondent Corporation.

6. But, at the same time, we have to consider whether the respondent Corporation can straightway ask these Conductors, who are working on the post of Booking Clerk for all these years and that too under the agreement entered into between the Union and the respondent Corporation, to work on the post of Conductor without taking into consideration the length of service they have carried on the post of Booking Clerk.

7. Having considered all aspects of the matter particularly the agreement between the Union and the respondent Corporation, we are of the view that similar nature of directions, issued to the respondent Corporation by the learned Single Judge in *Mohan Lal Soni v. R.S.R.T.C. and Ors.* (supra), decided on 22.1.1997 along with batch of petitions, shall met the ends of justice and, thus, we set aside the impugned judgment of the learned Single Judge and direct that-

(i) The appellants, who are working on the post of Booking Clerk on a clear vacancy, shall not be posted as Conductors on transfer;

(ii) If the posts of Booking Clerk, on which the appellants are working, are not available, the respondent Corporation shall first adjust the appellants in their order of seniority on vacant posts of Booking Clerk at any other Depot of the respondent Corporation in the State of Rajasthan and the appellants shall give their option to work, at any such Depot where the vacancies of Booking Clerk are available, within a period of four weeks from today. While exercising the option, the appellants may give the name of three places of their preference where the posts of Booking Clerk are vacant at any other Depot of the respondent Corporation in the State of Rajasthan. The respondent Corporation shall see that the preference given by the appellants is given due weightage, if it is administratively possible;

(iii) After above mentioned adjustments it is found that the number of posts of Booking Clerk available with the respondent Corporation are less than the number of the Conductors occupying the posts of Booking Clerk, then the junior most Booking Clerk shall first to be posted on the post of Conductor and so on;

(iv) in the eventuality of post/post of Booking Clerk becoming available later on, then seniormost conductor amongst the persons who have been posted from the post of Booking Clerk to the post of Conductor; shall be posted first as Booking Clerk and that shall be followed till all those persons are not adjusted on the post of Booking Clerk, subject to their giving consent for such posting.

8. Accordingly, the appeals are disposed of.