

(1998) 05 SC CK 0041

In the Supreme Court Of India

Case No : C.A.No. 2733 of 1991 (with C.A.No. 2734 of 1991)

Davinder Bathia and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 12-05-1998

Acts Referred:

Administrative Tribunals Act, 1985 — Section 29

Citation : (1998) 5 AD 664 : AIR 1998 SC 2098 : (1998) AIRSCW 1977 : (1998) 79 FLR 932 : (1998) 4 JT 99 : (1998) 3 SCALE 654 : (1998) 5 SCC 262 : (1998) SCC(L&S) 1331 : (1998) 3 SCR 343 : (1999) 1 SLJ 13 : (1998) 5 Supreme 28 : (1998) 2 UPLBEC 1304

Hon'ble Judges : G. B. Pattanaik, J;A.P. Misra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Pattanaik, J.—Both these appeals are directed against a common judgment of the Central Administrative Tribunal, New Delhi dated 7.12.1990 disposing of the two suits filed before the sub-Judge, Delhi but stood transferred to the Central Administrative Tribunal in accordance with Section 29 of the Administrative Tribunals Act. The plaintiffs in both these suits who are the appellants herein have been working as Commercial Class-III staff in the Grade of 260 - 430. The post of Enquiry and Reservation Clerk was in a higher grade of 330 - 560. The railway administration promoted the respondents to officiate as Enquiry and Reservation Clerk in the year 1978, though on ad-hoc basis. The policy of filling up the post of Reservation Clerk has been changing from time to time. Prior to 1978, there was no direct recruitment to the post of Enquiry and Reservation Clerk and people from commercial side used to be posted as Enquiry and Reservation Clerk on optional basis by obtaining declarations from the employees that once they would be absorbed as Reservation Clerk they would not claim to go back to their original cadre, namely, commercial side. On the commercial category direct recruitment was made to the post of Junior Commercial Clerk in the pay scale of Rs. 260 - 430 and from that post promotion was being made to

the post of Senior Commercial Clerk in the pay scale of Rs. 330 - 560 from which cadre a further promotion was available as a Head Commercial Clerk in scale of pay of Rs. 425 - 640. On the reservation side, the Junior Commercial Clerks were being engrafted by way of promotion by obtaining their option and the declaration as already stated, in the post of Reservation Clerk having the pay scale of Rs. 330 - 560 and from the said post further promotion was available as Head Reservation Clerk. In accordance with the Railway Board's Circular dated 29.2.1964, the post of Enquiry-cum-Reservation Clerk was a selection post required to be filled up from amongst the staff who volunteered for absorption in the category from Commercial categories, namely, Ticket Collectors, T.T.Es, Goods, Luggage, Parcel and Booking Clerks with not less than 3 years' service and in making the selection, the railway administration was required to take into consideration the imperative need for having the Enquiry and Reservation Offices manned by smart persons of integrity who can maintain good public relations and whose record of service is unexceptionable. It was also indicated that there would not be direct recruitment to the posts of Enquiry-cum-Reservation Clerks but once staff from other commercial categories have offered for selection and have been drafted as Enquiry-cum-Reservation Clerks, they would seek further promotions in that cadre only. The relevant portion of the aforesaid circular is extracted hereinbelow in extenso :

(ii) The posts of Enquiry-cum-Reservation Clerks in grade Rs. 100-185 (PS)/150-240(AS) will be "Selection" posts to be filled from amongst staff who volunteer for absorption in the category from Commercial categories, namely, Ticket Collectors, T.T.Es, Goods, Luggage, Parcels and Booking Clerks with not less than 3 years service. In making the selection, the Railway Administrations would, no doubt, take into consideration the imperative need for having the Enquiry and Reservation Offices manned by smart persons of integrity who can maintain good public relations and whose record of service is unexceptionable.

(iii) There will be no direct recruitment to the posts of Enquiry-cum- Reservation Clerks in the initial grade Rs. 100-185(PS)/Rs. 150-240(AS) but once staff from other Commercial categories have offered for selection and have been drafted as Enquiry-cum-Reservation Clerks, they would seek further promotions in that cadre only. They will, however, be eligible for higher grade posts of commercial Inspectors and above in the Commercial Department along with other eligible staff. Suitable adjustments in the channels of promotions may be made as necessary.

(iv) For purposes of promotion, all the Enquiry and Reservation Offices on a particular Railway shall be considered as one unit.

2. As the cadre is being re-organised it will be necessary to give the existing staff, an option either to continue in the re-organised cadre as above or to return to their parent cadres. Accordingly, they may be given an option to indicate their choice. This will not, however, apply to the direct recruits."

2. The aforesaid Circular was revised by another circular dated 5.8.1976 for revitalizing the cadre of Enquiry-cum-Reservation Clerks and the said circular provided that 25% of the posts should be filled up by direct recruitment with the minimum educational qualifications for such recruitment being graduate. It was also stipulated that the women candidates should be favourably considered for absorption in the cadre. The said Circular of 1976 is extracted hereinbelow in extenso for better appreciation of the point in issue:

The Board have had under consideration for some time past the question of revitalizing the cadre of Enquiry-cum-Reservation Clerks and its merger with the cadre of other Commercial Clerks. After careful consideration of various factors as well as the general set up obtaining at the more important Enquiry & Reservation offices on Railways, the Ministry of Railways have decided as under :-

(i) the entire cadre of ECRCs should be Headquarters controlled. However, the D.Ss may still continue to order transfer of staff in the lowest grade (Rs. 150-240 AS) in the normal course within the division with intimation to Headquarters.

(ii) 25% of the posts in the initial scale Rs. 150-240 (AS) 330-560 (RS) should be filled up by direct recruitment. The minimum educational qualifications for such recruitment should be graduation.

(iii) Women candidates should be favourably considered for absorption in the cadre of Enquiry-cum-Reservation Clerks not only on promotion from other categories to the initial grade but also in the proposed recruitment quota.

3. In 1978, the railway administration took a decision that the Reservation offices in the four metropolitan cities of Bombay, Calcutta, Delhi and Madras should constitute a seniority unit separate from the rest of the Enquiry and Reservation cadre of the Railway and these units will have only women employees as Reservation Clerks. The existing quota of 25% by direct recruitment and 75% by selection from eligible staff was held not to apply to these units and all vacancies in the post of Enquiry-cum-Reservation Clerk were required to be filled up by the women staff available with the railway and then by direct recruitment of women candidates. The relevant part of the Circular of 1978 is extracted hereinbelow in extenso:

"Sub: Employment of women as Reservation/Booking Clerks in the major Booking and Reservation Offices in Metropolitan Cities.

Please refer to Board's letter of even number dated 28.4.1978 and confidential letter of even number dated 29.4.1978. The Ministry of Railways have since considered the points raised at the meeting of Chief Commercial Superintendents at Bombay on 13/14.6.78 and decided that you should immediately take action as follows to implement the Minister's directive.

(1) The Reservation offices in the four metropolitan cities of Bombay, Calcutta, Delhi and Madras should constitute a seniority unit separate from the rest of the Enquiry and Reservation cadre on the Railway. It should be made clear that

Government's intention is to have in this unit only women employees as Reservation Clerks and in due course as Supervisors. Male employees who volunteer to move out will be given full protection of the pay and grade both substantive and officiating in a non-fortuitous arrangement. Subject to vacancies being available they would also be given choice of the place of posting.

(ii) Existing vacancies of Enquiry & Reservation Clerks and those likely to arise in the next one year by normal wastage or transfer of male volunteers, should be assessed immediately.

(iii) The existing quota of 25% by direct recruitment and 75% by selection from eligible staff will not apply to this unit. All vacancies in the initial grade of Rs. 330-560 may be filled by volunteers from serving women staff of all categories on the Railway to the extent suitable candidates are available and the balance by direct recruitment of women.

(iv) Volunteers from women staff in all categories on your Railway for working as Enquiry & Reservation Clerks Gr. 330-560 in the concerned metropolitan city, should be called immediately (even before the assessment of vacancies is finished) not later than 7th July, with last date for receipt of applications as 17th July. A test should be held by a Committee of Officers which should be over and the results made available by 31st July. Immediately thereafter they should be given training for a month (for which arrangements should be made in advance) from 10.8.78 to 9.9.78 after which they should be posted as Enquiry and Reservation Clerks and be in position by 15th September, 1978.

(v) For the balance of vacancies, direct recruitment may be undertaken by the railway administration by issue of advertisements with the qualifications as already prescribed for direct recruitment of Enquiry and Reservation Clerks i.e., graduates. This advertisement need not await the selection mentioned in (ii) above or assessment of vacancies, but should be immediately issued by 7th July with last date for applications as 17th July and selections processed and completed by 31st July by which time the vacancy position will be known. They should be given training for 8 weeks from 7th August to 23rd September and successful candidates should be in position in the Reservation offices by 25.9.1978.

Railways, who have already got panels from the RSC or are likely to get such panel shortly, should appoint the women candidates from those panel before resorting to direct recruitment. It should, however, be ensured that where the RSC selection has been a continued one, the men candidates higher in the merit orders are also accommodated in other Reservation Offices on your Railway.

(vi) At the moment only the Reservation work will be entrusted to women Enquiry and Reservation Clerks. Each Reservation counter would have two staff - one a woman in charge of Reservation work and a Booking Clerk to issue tickets as is the procedure in the Churchgate Reservation Office of the Western Railway.

Booking work in those offices may continue as at present.

Note : The target dates laid down in (iv) and (v) above are outer limits. Any Railway Administration which is able to complete the work earlier, should do so.

The General Manager's, the CCSs and CPOs should personally ensure that items (i) to (vi) above are completed and the Upper and Lower Class Reservations Offices in the metropolitan cities before 1st October, 1978.

4. In view of the aforesaid change of policy decision several women candidates were appointed either by way of direct recruitment or by promotion from the existing staff, in super-session the claims of the appellants herein, who by that date have been continuing on ad hoc basis. Subsequently these appellants also went through the process of selection and their services regularised as Enquiry and Reservation Clerk in the year 1982. But being aggrieved by the recruitment of the women candidates in the year 1978 on account of the changed policy decision and as in deciding the inter se seniority in the cadre of Enquiry-cum-Reservation Clerk the services rendered by the appellants as Enquiry-cum-Reservation Clerks on ad hoc basis had not been taken into account, they filed the two suits in the court of sub-ordinate Judge, Delhi which suits were ultimately transferred to the Central Administrative Tribunal u/s 29 of the Administrative Tribunals Act and the Tribunal by the impugned decision having rejected the claim of the appellants, the present appeals have been preferred. The Tribunal has come to a conclusion that the appointment of the appellants as Enquiry-cum-Reservation Clerks being purely on ad hoc basis as a stop gap arrangement and thus appellants not having been appointed as Enquiry-cum-Reservation Clerks after going through a process of selection, the period they have served on such stop gap arrangement cannot be counted for reckoning their seniority in the cadre of Enquiry-cum-Reservation Clerk, and therefore, the railway administration rightly calculated their seniority in the cadre from the date the appellants were regularised as Enquiry-cum-Reservation Clerks after undergoing the process of selection.

5. The learned counsel appearing for the appellants, Mr. Anis Suhrawardy in Civil Appeal No. 2734 of 1991 and Mr. BB Sawhney who gave the written submissions in Civil Appeal No. 2733 of 1991, challenged the decision of the Tribunal on the ground that the appellants no doubt were appointed as Enquiry-cum-Reservation Clerks on ad hoc basis but they have been duly recruited as Junior Commercial Clerks through a process of selection by the Railway Service Selection Board and they having continued uninterruptedly in the post of Enquiry-cum-Reservation Clerk, there is no justification on the part of the railway administration to ignore the period they have served as Enquiry-cum-Reservation Clerk on ad hoc basis prior to their due absorption in 1982 in the cadre of Enquiry-cum-Reservation Clerk. The learned counsel also urged that while appointing them as Enquiry-cum-Reservation Clerks, the railway administration having taken their option that they will not be permitted to go back to the commercial side and thereafter having appointed as Enquiry-cum-Reservation Clerk. Gross injustice has been meted out

by not counting their services which they have rendered as Enquiry-cum-Reservation Clerk on ad hoc basis, inasmuch as their counter-parts in the commercial side have got accelerated promotion whereas the appellants are suffering in the reservation side. Mr. Mahajan, the learned senior counsel appearing for the railway administration, however, vehemently contended that the post of Enquiry-cum-Reservation Clerk being a selection post and the appellants prior to their selection in 1982 merely having been promoted on ad hoc basis whereas the women candidates were appointed by due process of selection in accordance with the changed circular of the Railway Board of the year 1978, the ad hoc period of the appellants cannot be taken into account for reckoning their seniority in the cadre of Enquiry-cum-Reservation Clerk and in that view of the matter there is no infirmity with the impugned decision of the Central Administrative Tribunal.

6. In view of the rival submissions at the Bar, the only question that arises for our consideration is : whether the ad hoc continuance of the appellants in the cadre of Enquiry-cum-Reservation Clerk can be counted for the purpose of seniority in the cadre, even though, they were regularly absorbed by a process of selection only in the year 1982? The answer to this question depends upon the relevant provisions of the Rules governing the manner of filling up of the post of Enquiry-cum-Reservation Clerk. Undisputedly, the post of Enquiry-cum-Reservation Clerk is a selection post and therefore the railway administration would be entitled to select competent persons to man the cadre. As it appears, prior to 1978, 25% of the posts were being filled up by way of direct recruitment but rests of the 75% were being filled up by giving promotion to the Junior Commercial Clerks those of whom were exercising their option and also were giving a declaration that they would not revert back to the commercial side. But in 1978, the policy was changed and the Government decided to fill up the post by the direct recruitment by women candidates only. The appellants, no doubt, have been brought to the reservation side prior to 1978 but admittedly there had been no process of selection in their case and they were posted as Enquiry-cum-Reservation Clerks merely on ad hoc basis as a stop gap arrangement. The post of Enquiry-cum-Reservation Clerk being a selection post, the persons like the appellants who were posted against those posts without going through the process of selection on ad hoc basis do not have a right to be in the cadre until and unless they are duly regularised after going through a process of selection. In the case in hand, this process of selection was made only in the year 1982 and the appellants have been absorbed in the cadre of Enquiry-cum-Reservation Clerks after being duly selected. In this view of the matter, their continuance on ad hoc basis from 1978 to 1982 cannot be counted for the purpose of their seniority in the cadre of Enquiry-cum-Reservation Clerk nor can they be held senior to the women candidates who were directly recruited as Enquiry-cum-Reservation Clerks under the changed policy by undergoing a process of selection. In the aforesaid premises, we see no infirmity with the order of the Tribunal so as to be interfered with by this Court. The appeals are accordingly

dismissed but in the circumstances there will no order as to costs.

the aforesaid premises, we see no infirmity with the order of the Tribunal so as to be interfered with by this Court. The appeals are accordingly dismissed but in the circumstances there will no order as to costs.