

(1990) 01 DEL CK 0006

In the Delhi High Court

Case No : Original Appeal No. 2409 of 1989

Jaipal Singh and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 31-01-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

Citation : (1990) 40 DLT 415

Hon'ble Judges : T.S. Oberoi, J; I.K. Rasgotra, J

Bench : Division Bench

Advocate : B.S. Mainie, O.N. Moolri and G.D. Bhandari, for the Appellant;

Judgement

I.K. Rasgotra, Adm. Member

(1) The applicants vide application dated 1.12.1989 have challenged the action of the respondents in giving promotion to SC/ST candidates to certain categories over and above the percentage of 15% for Sc and 7 1/2 for St respectively. By way of relief, the applicants have sought that the respondents may be directed :

(A) to promote the applicants to the higher grades from the dates from which their juniors SC/ST employees have been promoted over and above their prescribed quota : (b) to fill up the existing vacancies in the higher grade of certain categories in accordance with the law as pronounced by the Allahabad High Court, Central Administrative Tribunal, Chandigarh Bench and Jodhpur Bench and the orders passed by the Hon"ble Supreme Court. (c) to give original seniority to the general category employees when they join SC/ST employees in the higher grades, in which junior SC/ST employees had been promoted by virtue of reservation for SC/ST.

(2) After hearing the learned counsel for the applicants on 5.12.1989, notice was issued to the respondents on admission of the O.A., returnable on 18.12.1989. The Tribunal also directed the respondents to make promotions, if any, strictly in accordance with the directions contained in the order passed by the Hon"ble

Supreme Court on 21. 12.1984 (Page 34 of the paper book) as an interim measure. The respondents were further directed "to maintain the Status Quo as of today" so far as promotions to the post of Guards "A" (Special) are concerned.

(3) On 18.12.1989, learned counsel for the applicants stated that he wanted to amend the application so as to include the representations, made by the applicants to the respondents to seek redressal of their grievance .While the prayer to add representations in the O.A. was allowed by January 4, 1990, the interim order passed on 5.12.1989 was vacated by the Tribunal as no impugned order was either submitted with the O.A. or produced on 18.12.1989. In the hearing on 8.1.1990 the learned counsel for the respondents 1 and 2 Shri O.N. Moolri and learned counsel for the respondents 3 and 5 Shri G.D. Bhandari contended that the amended application filed by the learned counsel for the applicants besides incorporating the representations made as permitted by the Tribunal, has made large scale amendments to the O.A. which change the very character of the original application. Learned Counsel for the applicants was, Therefore, directed to file a proper application seeking to make various amendments to the O.A. in accordance with the procedure. Accordingly, learned counsel for the applicants filed a Misc. Petition 100/1990 on 9.1.1990.

(4) While filing the reply to the M.P. the learned counsel for the respondents 1 and 2 on] 5.1.1990 raised the following objections to admitting the said M.P. :

(A)The applicants were all the time aware about the introduction of Shatabdi Express and consequent need to increase the strength of Guards "A" (Special), whereas in para 6 of the application it was stated that- "the applicants have also come to know that two more super fast trains have been introduced on Delhi Division". That the Shatabdi Express was already introduced has now been admitted vide para 3.2 of the amendment sought : (b) The amendment sought in para 8.2 attacks the seniority list of 1987, which is a settled matter and invokes limitations. (c) While the Tribunal had only allowed specific amendments by way of adding representations made by the applicants to the respondents, a large number of unauthorised amendments have been made in the amended application. (d) The seniority lists filed with the O.A. were those of Mail Guards as on 1.7.87 and Guards Grade "C" as on 2.7.78 the seniority list of Passenger Guard as on 1.7.87 has been placed on record in addition to seniority list of Guards Grade "C" as on 2.7.78 without disclosing the ground for challenging the seniority list of 1.7.1987, an issue patently time barred.

(5) Learned Counsel for the respondents 3 to 5 submitted that while the original application on 1.12.1989 contains only 52 pages, the amended Oa contains 62 pages and, in fact, carries out whole-sale amendment. Again while the case for seeking relief is being made out for the category of Guards, the opening paragraphs and the paragraphs seeking relief refer to the prayer for relief to categories of ticket Checking/Parcel office staff.

(6) While the original O.A. had the seniority list of Guards "A" (Special), in the

amended application seniority list of Passenger Guards as on 1.7.1987 has been introduced retaining the Seniority list of Guards Grade "C" as on 2.7.1978.

(7) The amended application has introduced documents like the links of Guards "A" (Special) on 1.5.89 and 14.11.89.

(8) The Ld. Counsel for the respondents 3 to 5 further submitted that the real cause of action, causing grievance to the applicants is Railway Board's letter No 87-E (SCT) 1/72/1 dated 6.9.88 (Page 35 and 35 of the Paper Book) dealing with regulation of promotion of SC/ST candidates against the reserved vacancies. This, has not been challenged.

(9) Learned counsel for the applicants, however, maintained that the tenor shape and object of the petition continues to remain unchanged and Therefore amendments are sustainable in accordance with order 6, Rule 17 of Code of Civil Procedure. He further cited judicial pronouncement to the effect that where substantial justice and technical considerations are putted against each other the cause of justice deserves to be preferred 1989 (3) Slj 353 Karan Gauha v. Union of India 1989 (3) S.L.J. B.Krishna Rai v. State of Karnataka & Others and 1988 (1) S.L.J. 523.

(10) We however, feel that judicial pronouncement cited by the learned counsel for the applicants ,have to be viewed in the context of the merits of each of the cases discussed therein.

(11) Having heard the learned counsels of both the parties carefully and having studied matter on record, we fell that the amended application goes much beyond the amendments permitted by the Tribunal. Further, the thrust of the arguments in the amended application has shifted from the over representations of the Sc and St candidates in higher grades by virtue of providing reservation against vacancies instead of against posts in the cadre to that of challenging the seniority list of Passenger Guards dated 1.7.1987.

(12) The general rules in allowing amendment is that a party is not allowed by amendment "to set up a new case or a new cause of action when a suit on the new cause of action is barred. Expression "cause of action" in this context does not mean every fact which is material to be proved to entitle the plaintiff to succeed. The expression only means a new claim made on a new basis constituted by new facts. The words new case mean the new set of ideas. Thus no amendments will be allowed to introduce new set of ideas to the prejudice of any right acquired by any party by lapse of time, as held in A.K. Gupta and Sons Vs. Damodar Valley Corporation, .

(13) As a result of the above discussion, the application is partly allowed to the extent as mentioned in our order dated 18.12.1989, regarding addition of the representations made to the department. Amended application incorporating this amendment be filed within ten days. List before the Bench for further directions/ admission on 8.2.1990. Application partly allowed.