
(2010) 05 DEL CK 0017

In the Delhi High Court

Case No : Writ Petition (C.) No. 3369 of 2010

K.L. Pathak

APPELLANT

Vs

Genral Menager, Northern Railway and Others

RESPONDENT

Date of Decision : 17-05-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2010) 05 DEL CK 0017

Hon'ble Judges : Mool Chand Garg, J;Anil Kumar, J

Bench : Division Bench

Advocate : Ashutosh Bhattarjee, for the Appellant; Jairaj Mudgul, for the Respondent

Final Decision : Dismissed

Judgement

Mool Chand Garg, J.

C.M.6760/2010

For the reasons stated in the application delay in re-filing the petition is condoned and the application is allowed.

W.P. (C.) No. 3369/2010

1. By this writ petition filed under Article 226 of the Constitution of India, the petitioner has assailed the judgment and order dated 16.09.2009 as well as the order dated 01.02.2010 passed in O.A. No. 819/2007 and in R.A. No. 11/2010 whereby the original application filed by the petitioner as well as the review application filed by him were dismissed.

2. It is the case of the petitioner that he joined the services of Indian Railways w.e.f. 28.03.1982 as skilled Mechanist. He was thereafter promoted to Mechanist Grade-II on 01.02.1992 and was confirmed as such w.e.f. 20.07.1998. As per the seniority list dated 26.08.1997 his rank was fourth in the list. The cadre of Mechanist was a separate cadre with its specific responsibilities. Vide order dated

06.01.2009, four categories of cadres namely, MOM/Tech-I/Tech-II and Tech-III were merged in the cadre of isolate category as Technician Grade-I. During the year 2003-2004, 32 employees from various cadres were transferred as Technicians. This was done with a view to extend the benefit of re-structuring. In this process benefits of ungradation were granted to juniors of the petitioners as well as similarly situated persons. Thus, the petitioner along with the others who were similarly situated persons represented against the aforesaid action of the respondents by way of filing the representation but it was not considered.

3. The petitioner and other similarly situated persons then filed O.A. No. 1081/2005 before the Central Administrative Tribunal for redressal of their grievances due to transfer of junior and similarly situated persons to the post of Technician without calling for their options by contending that the respondents violated the principal contained under Article 14 and 16 of the Constitution of India. While disposing the aforesaid original application, the respondent No. 2 was directed to consider the representation made by the petitioner and pass an appropriate order. The order disposing the O.A. is dated 16.09.2009. A representation was made in consonance with the directions given in the aforesaid O.A. by the petitioners and Others which was considered by respondent No. 3 and was disposed of vide order dated 08.08.2008 whereby an assurance was given that the merger of all cadres took place in consultation with the unions and with a view to provide better promotional avenues to the staff working in those categories. However, the benefits sought for by the petitioners was not granted to them on the ground that there had been no surrender of post or redeployment and even after restructuring all cadre and there was no change in the cadre of strength of Mill wright, Electrician and Crane Driver.

4. It was also informed to the petitioner that as far as Mechanist several posts have been surrendered and only the senior staff members in the grade have been transferred to the technician grade and as such there was no pick and choose or arbitrary action by the respondents. According to them there was no scope for granting benefit of restructuring in any of the affected cadres. However, the respondents also agreed to consider cases of remaining staff working in those cadres.

5. It is also the case of the petitioner that vide order dated 29.08.2008, the respondents decided to transfer mechanist to Technicians-II as was done earlier by transferring five Mechanist who are junior to the petitioner. The respondent also transferred two mechanists who were senior to the petitioner. Thus, persons, senior as well as the juniors were transferred in clear violation of existing policy which was bad in law. It has been submitted that while passing the order dated 29.08.2008, the respondents failed to consider the claim of the applicant/petitioner on the plea that the channel of promotion for the petitioner in his category was separate and, therefore, it did not deserve consideration at this stage.

6. The petitioner thereafter filed the present O.A. praying inter alia for quashing

of the order dated 08.08.2008 and 29.08.2008 whereby some of the mechanist were transferred to posts of technicians without inviting options from the affected employees and to re-designate the petitioner as Technician with retrospective effect from the date his claimed juniors had been so redesignated with consequential benefits of financial upgradation under the restructuring scheme.

7. However, the Tribunal after considering all the submissions made on behalf of both the parties made the following observations:

6. To conclude, the detailed factual scrutiny does not reveal any trace of arbitrariness in the actions of the respondents. Even as per the 1991 Masters circular, the requirement to declare only the junior most employees as surplus, was not a mandatory obligation in all situations. At the most, it was only a general guideline to be followed normally. As per the respondents, in this case, they have consistently followed the policy of adjusting only the senior most persons in different grades in the redesignated categories. We also note that the

Whatever may have been the reasons for the respondents to follow this policy at the given point of time, in hindsight the wisdom of their action stands vindicated. This is evidently so because many of the redesignated staff also got the opportunity for further promotions under the restructuring scheme. The allegation of pick and choose in such selection has not been found to be borne out as per facts before us. The catch is in the respective grades. Since the applicant belonged to Machinist Grade-II and the five posts identified for surrender initially in 2003 were of Machinist Grade III, the applicant could not have been considered for redesignation. As per the respondents, the persons who were considered i.e. JS Bajpayee and Ashok Kumar, were the seniormost in this category of Machinist Grade III. The contention of the applicants that they were junior to him is based on a blurring of the grade-wise differences on which the readjustments had been made. Further in the subsequent order of 2009 passed in pursuance of the Tribunals direction in the OA 2804/2005, two persons who had been redesignated i.e. Shri Deen Dayal and Shri Rajendra Prasad were admittedly senior to the applicant as Machinist Grade II. Hence the contention of arbitrariness or pick and choose is not borne out.

We also do not find that the questioning of the grades in which these posts had been declared as surplus or the decision for merger of the cadres with small strengths tenable. This, of course, depends upon administrative exigencies and is well within the domain of the executive. In a catena of judgments, the Apex Court has zealously laid down the limits of judicial interference in such matters. With due respect, we would like to quote the dicta of the Apex Court in P.U. Joshi and Others Vs. The Accountant General, Ahmedabad and Others,

...Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled

for such promotions pertains to the field of policy is within the exclusive discretion and jurisdiction of the state subject of course to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunals, at any rate, to direct the government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the state.

Again in *Mallikarjuna Rao and Others Vs. State of Andhra Pradesh and Others*, the Apex Court had observed:

It is neither legal nor proper for the High Courts or the Administrative Tribunals to issue directions or advisory sermons to the executive in respect of the sphere which is exclusively within the domain of the executive under the Constitution.

In view of the forgoing, we do not find any justification for our meddling with the decisions taken by the respondents who have not only followed consistently a uniform policy in the matter of readjustment of the redesignated posts but have also made sincere efforts to implement the directions of the Tribunal to give better chances of promotion to maximum possible number of employees rendered surplus. The OA is found to be utterly bereft of merit and is dismissed. No order as to costs.

8. The aforesaid order clearly goes to show that the Tribunal has examined the entire facts in detail and it was observed that both the grounds raised by the petitioner that it was a 'pick and choose' policy and further that the persons junior to him were transferred has no legs to stand. It had been found that this was essentially a case of identification of surplus posts for surrender and readjustment of the incumbents against certain specified posts carrying the same pay scale. It is for that reason that the Review Application filed by the petitioner was also dismissed.

9. We have given our thoughtful consideration to the submissions made on behalf of the petitioner and we find that except raising the issues again the petitioner is unable to bring out any illegality or infirmity committed by the Tribunal while passing the impugned order.

10. In view of the aforesaid, we find no reason to interfere with the order passed by the Tribunal in dismissing the petition filed by the petitioner while exercising powers under Article 226 of the constitution of India. Accordingly, the writ petition is dismissed with no orders as to costs.

11. All the pending applications are also disposed of.