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(1966) 12 SC CK 0006

In the Supreme Court Of India

Case No : Civil Writ Petn. No. 705-D of 1965

Narinder Mohan Dass — APPELLANT

Vs

General Manager, Northern Railway, Baroda House, New Delhi and Another — RESPONDENT

Date of Decision : 12-12-1966

Acts Referred:
Constitution of India, 1950 — Article 226, 309
Railway Establishment Code — Rule 157, 158

Citation : (1966) 12 SC CK 0006

Hon'ble Judges : K. S. Hegde, C.J

Bench : Single Bench

Final Decision : Dismissed

Judgement

(1) These are connected with petitions under Article 226 of the Constitution. They raise common questions of law and fact. Hence they can be considered in a common judgment.

(2) In these petitions, the petitioners who are serving as Enquiry Cum Reservation Clerks in the Northern Railway, seek the following reliefs:

1. A writ of mandamus to Respondent No.1 (General Manager, Northern Railway) requiring him to withdraw his order dated November 3, 1965, (order No. 754E/20-II (Trip) (EIC) and to restore the names of the petitioners of the panel as shown in Annexure `E' to the petition and to make promotions on the basis of that panel;

2. A writ of mandamus to Respondent No. 2 (Railway Board) to withdraw its direction and orders to Respondent No.1 to partially cancel the panel shown at Annexure `E' to the petition and

3. For consequential reliefs.

(3) The Railway Board by its communication No. E (NG) 63 PMI-52 dated

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February 29, 1964 to the General Manager, All Indian Railways prescribed a channel of promotion for Enquiry Cum Reservation Clerks, who up till then had no channel of promotion. That letter conveyed the following decision of the Railway Board:

"The total number of higher grade posts of Assistant Reservation Supervisors in the scale of Rs. 205-280(AS), Reservation Supervisors in the scale of Rs.250-380 (AS) and Chief Reservation Inspector in the scale of Rs.370-475 (AS) shall be 25 per cent of the total number of posts in the cadre. In other words, in every unit of various 20 posts, the distribution of posts in the various categories shall be as under:

Category No. Of posts Scale of pay Classification Enquiry cum Reservation Clerks 15 Rs.150-240(AS) Selection Assistant Reservation Supervisors 2 Rs.205-280(AS) Non-Selection Reservation Supervisors 2 Rs.250-380(AS) Selection Chief Reservation Inspector 1 Rs. 370-475(AS) Selection." Under that scheme, at the base were the Enquiry Cum Reservation Clerks on the pay scales of Rs.150-240, the next rung in the ladder was the Assistant Reservation Supervisors in the grade of Rs.205-280.. Then came the Reservation Supervisors in the grade of Rs. 250-380. At the apex was the Chief Reservation Inspector in the grade of Rs. 370-475.

(4) In pursuance of the aforementioned communication of the Railway Board, the General Manager, Northern Railway, accorded sanction to the upgrading of the following posts from 1-4-1964, in the cadre of Enquiry Cum Reservation Clerks.

1. 11 posts as C.R.I. Grade Rs.370 to 475.

2. 18 posts as Reservation Supervisor Grade Rs. 250 to Rs.380.

3. 26 posts as Assistant Reservation Supervisor grade Rs.205 to Rs.280.

(See Annexure-`B')

The Railway Board by its letter No. E (NG) 62 PMI/91 dated July 10, 1964, prescribed the following procedure for filling up of non-gazetted selection posts:

"The number of persons to be placed on a panel should be equal to the existing and anticipated vacancies plus 25 per cent thereof for unforeseen vacancies. Anticipated vacancies connote only those which are likely to arise due to normal wastage during the currency of the panel.

(ii) The currency of the panel for non-gazetted selection posts should be two years from the date of approval of the same by the competent authority or till exhausted whichever is earlier.

(Remaining portion is not necessary for our present purpose)

(See Annexure `C').

(5) On the basis of the Railway Board's letter dated 10-7-1964, the General

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Manager, Northern Railway, sent the following communication to the Divisional Superintendents under him on January 22, 1965:

"Subject: - Selection for the post of Reservation Supervisor grade Rs. 250-380(AS).

It has been decided to hold a selection for the post of Reservation Supervisor grade Rs. 250-380(AS). The written test of the staff eligible to appear in the said selection will be conducted on the respective divisions on which they are employed on 13-2-1965. The question papers will be sent a day earlier through special messengers. The answer books in the sealed covers should be sent to Sco (G) through the same special messengers on 13-2-1965.

2. A list of staff required to attend the above written test on 13-2-1965 is enclosed. It is requested that the staff concerned may please be informed immediately and necessary arrangements to conduct their written test on the stipulated date may please be made early.

3. The interviews for staff of Delhi area including Delhi Division will be held in this office on 16th to 18th February. They should be directed to attend this office on the said dates.

4. The date for interview of staff of other divisions will be advised in due course.

5. A statement indicating punishment and commendations during the last three years received by the staff in the enclosed list may please be sent to this office very early. Their C/R's may also be sent to Apo (II) by name in a sealed cover.

6. The staff shown in the attached are being called on the basis of available provisional. Seniority lists, which are liable to be revised. As such the mere fact of their having been called for interview/selection in this letter will not confer upon the staff concerned any right for eligibility in the above selection.

The receipt of this letter may please be acknowledged.

(6) The tests as prescribed in the above letter were duly held. The Selection Committee selected 38 persons including the petitioners. The names of the persons in the panel were published on August 1, 1965, in the Northern Railway Gazette. The petitioners are ranked at no. 25 or below. The said notification further stated that "the staff concerned may please be informed that retention of their names on the panel is subject to their work remaining satisfactory during the currency of the panel. The mere fact that their names are on the list panel will not confer upon them any right for permanent absorption as Reservation Supervisors."

(7) After the publication of the panel some of the senior members of the staff who had not been selected appear to have carried on certain agitations as regards the mode prescribed for promotion. In that connection certain questions also appear to have been put in the Parliament.

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(8) Some time thereafter, it appears, the Railway Board wrote to the General Manager, Northern Railway, the following confidential letter:

"The Board have considered the matter of great length and observed that your administration have not followed the correct procedure in accordance with extant instructions as detailed below:

I. Ordinarily the up gradation orders should have been implemented earlier by filling up posts in the initial grades and above step by step. In any case, it was incorrect to have "held a selection for the intermediate grade Rs. 250-380 (AS) as a first step without first promoting staff to Grade 205-280(AS).

II. The panel of 24 should have been formed to cover 18 upgraded vacancies in the grade of Rs.250-380 (AS) plus 1 vacancy on account of retirement during the currency of the panel, and five vacancies representing 25 per cent of 18 plus 1 for contingencies. The field of choice should have, therefore been 24 x 4 = 96 and not 152 as adopted in this selection.

2. In view of the above, the Board have decided that the panel already published should be operated to the extent of first 24 persons only deleting the names of the remaining 14 persons forthwith. Action should be taken to hold a selection for filling up upgraded posts in scale of Rs.370-475 (AS) for considering the eligible staff. After formation of that panel, a further selection should be held for filling up the resultant vacancies in the grade of Rs. 250-380(AS). Care should however, be taken to see that no eligible staff are overlooked for being called up for selection on the grounds that they were not selected in the last selection. Simultaneously action should be taken to fill up posts in the scale of Rs.205-380 (AS).

3. Implementation of the Board's orders No. E (NG) 63 PMI-52 of 29-2-1964 has been very badly delayed already and the Board desire that the total implementation of these orders should be completed with the utmost expedition and report submitted to them in due course."

(9) Evidently because of the aforementioned directions of the Board, the General Manager, Northern Railway, issued the following communication to the Divisional Superintendents in the Northern Railway:

"Subject: - Selection for the post of Reservation Supervisor now designed as Chief Engineer and Res. Clerk grade Rs. 250-380 (AS).

It has been decided that the panel of 38 persons for the above mentioned post circulated vide this office letter of even No. Dated 7-7-1965, is to be operated upto the first 24 persons only and the names of the remaining 14 persons be treated as deleted from the panel.

The staff covered may please be informed accordingly.

Please acknowledge receipt .....

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(Annexure `T').

(10) In view of that communication, the names of the petitioners stand removed from the panel. Their efforts to get withdrawn the aforementioned communication of the General Manager, Northern Railway, have failed. Hence these writ petitions.

(11) The petitioners allege that under political pressure, the Railway Board was compelled to direct the General Manager, Northern Railway to operate the panel upto the first 24 persons only and the General Manager, Northern Railway, despite the fact that he did not agree with the interpretation placed by the Railway Board on the expression 'normal wastage' found in the Railway Board's communication dated July 10, 1964 was constrained to issue the impugned order in obedience to the order of the Railway Board. It was said that the order of the General Manager, Northern Railway, dated November 3, 1965 having been made as a result of the directions received by him from the Railway Board, which direction according to the petitioners was given for collateral reasons, this Court should direct the General Manager, Northern Railway to withdraw his order dated November 3, 1965.

(12) The allegation that the interpretation placed by the Railway Board on the expression `normal wastage' was not a bona fide interpretation but one that was given under political pressure is denied by the respondents. A plea of mala fides is easy to advance but difficult to establish. In the petition as originally filed allegations in that regard were quite vague and devoid of details. The plea of mala fides made by the petitioners was repudiated by the respondents. In the reply affidavit, the petitioners gave some details in support of their plea. In view of the seriousness of the allegations made therein, despite the fact that these allegations were not found in the petition as originally filed, I directed the respondents to file a further affidavit in that regard. In the further affidavit filed on behalf of the respondents, the allegations made were completely denied. Before me, there is no satisfactory proof in support of the allegation of mala fides. Hence it must be held that that allegation is unsubstantiated.

(13) It was next contended that the interpretation of the expression, `normal wastage' given by the Railway Board, is a wholly erroneous interpretation and the said expression had been correctly interpreted by the General Manager, Northern Railway; his interpretation accords with the view taken by the General Managers of other Railways; therefore the General Manager, Northern Railway, should not have accepted the interpretation given by the Railway Board. I do not see any merit in this contention. The expression `normal wastage' is not a defined expression. It appears to have been a term coined by the Railway Board. Therefore, the Railway Board is the best authority to say what it meant by that expression. The interpretation placed by the Railway Board on that expression, assuming that it is open for me to adjudge its correctness, cannot be said to be a wholly unsustainable interpretation.

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(14) It was next urged on behalf of the petitioners that the interpretation of the expression `normal wastage' given by the Railway Board was confined only to the promotion of Enquiry-Cum-Reservation Clerks of the Northern Railway, that expression had been interpreted in a different manner by the other Railways; yet the Railway Board has not chosen to interfere with the selection made by the other Railways nor with the selections of Class Iii officials made in the other Departments of the Railways; therefore the impugned direction of the Railway Board is violative of Article 14 of the Constitution and consequently it is liable to be struck down. The respondents have repudiated the above allegations.

It is asserted on their behalf that the interpretation in question is of general application and the same is binding on all the Railways. According to them, the Railway Board had to send the communication in question to the General Manager, Northern Railway, as there were complaints in the matter of the preparation of the panel by that Railway. It may be noted that the aid of equality clause was not invoked in the petition as originally filed. That plea came in as if it were by a side wind in the reply affidavit filed. From the material on record, I am unable to conclude that any discrimination was made by the Railway Board between the various Railways in the matter of implementation of its order dated July 10, 1964.

(15) The maintainability of those petitions was challenged by the respondents on the ground that the petitioners cannot be considered as having been aggrieved by the impugned order of the General Manager, Northern Railway. The fact that their names were found in the panel merely gave them a chance of being promoted. The Gazette which published the panel had clearly stated that "the mere fact that their names are on the panel will not confer upon them any right for permanent absorption, as Reservation Supervisors." Hence, according to the respondents, the petitioners had not acquired any legal right. There is force in this contention. The placing of the names of the petitioners in the panel only qualified them for promotion. It did not entitle them for promotion. Neither the Railway Board's letter dated July 10, 1964, nor the publication of the panel conferred on the petitioners a right to be promoted. In view of the fact that their names were included in the panel, all that could have been said is that they were qualified to be promoted, if their chance for promotion came within the period prescribed.

The said qualification cannot be considered as a legal right conferred on the petitioners. It is true, because of the fact that their names were removed from the panel they were not qualified to be promoted. They lost their qualifications to be promoted, during the currency of the modified panel. In this connection, reference can be usefully made to the decision of the Madras High Court in L. Balakrishnan Vs. The Deputy Inspector-General of Police, Southern Range, Madurai and Another, .

(16) There was considerable argument on the question whether the order of the Railway Board contained in its letter dated July 10, 1964, is merely an

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administrative instruction or whether the same has statutory force. It cannot be denied that the order in question prescribes some of the conditions of service of the Enquiry-cum-Reservation Clerks. The petitioners, are non-Gazetted Railway Servants under the control of the Railway board. Under Rule 157 of the Indian Railway Establishment Code, Volume 1, which are admittedly rules framed under Article 309 of the Constitution, the Railway Board have full powers to make rules of general application to non-Gazetted Railway Servants under their control. The order of the Railway Board referred to earlier could have been made under that rule. The counsel for the respondents did not show me any other source of power for the Railway Board to issue the order in question. Therefore, it must be considered that the order in question is a rule framed under Rule 157 of the Railway Establishment Code. The view taken by Mody, J. In M.P. Patil Vs. D.R. Khanna and Another, , accords with my above view.

(17) The power conferred under the order mentioned above is neither a judicial powers nor a quasi-judicial power as contended by the counsel for the petitioners. It is purely an executive power. Therefore, the Railway Board which passed that order whether it had power to retrospectively modify that order or not, had power to interpret the same. It is only in the case of a judicial power, the authority which conferred that power will have no authority to interpret the scope of the power conferred. But when the power conferred is an executive power, the scope of that power can be explained by the authority which conferred that power unless it can be successfully established that the explanation given is not a bona fide explanation. It was quite open to the Railway Board to entirely scrap the procedure for promotion laid down in its communication dated July 10, 1964, if by doing so, they did not affect any existing legal right of the parties."

The persons put on the panel would have acquired a legal right only on promotion. Till then, they had only an expectancy. If that be the true position in law, as I think, it is, then I fail to see why the Railway Board had no power to explain to the General managers what it meant by the term `normal wastage'. In this view, it is not necessary to refer to the decisions read to me bearing on the scope of a judicial power.

(18) There is no basis for the contention that the impugned order of the General Manager, Northern Railway, is a rule made under Rule 158 of the Indian Railway Establishment Code. The order merely implements the order of the Railway Board dated July 10, 1964. It is also not correct to contend that the Board exceeded its authority in interfering with the discretion of the General Manager, Northern Railway, in issuing the direction in question. Under the order of the Railway Board, dated July 10, 1964, no discretion was given to the General Managers. Nor did the General Manager, Northern Railway, purport to exercise any discretion. The only question that arose for consideration was as to the true meaning of the expression `normal wastage' in the Board's communication of July 10, 1964. The difference of opinion between the General Manager, Northern

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Railway and the Railway Board centered round on that question. Hence, the rule laid down by the Supreme Court in Commissioner of Police, Bombay Vs. Gordhandas Bhanji, , is not attracted to the facts of the present case.

(19) It was next urged that principles of natural justice were violated inasmuch as the petitioners were not heard before the General Manager, Northern Railway, made the impugned order. In support of that contention, reliance was placed on the decision of the High Court of Australia in the Queen v. Anderson, 113, Complainant. Wlr 177. Therein the High Court was dealing with the question of issue of a charter licence. In other words, it was dealing with the exercise of a judicial power. The rule enunciated in that decision or that enunciated in Merricks v. Nott-Bower, is inapplicable to the facts of the present case.

(20) Aid was sought from the decision of the Supreme Court in Strawboard Manufacturing Co. Ltd. Vs. Gutta Mill Workers' Union, , for the contention that the General Manager, Northern Railway, became functus officio, once he published the panel, therefore, he was, not competent to issue the impugned order. In my opinion that decision has no relevance for our present purpose.

(21) For the reasons mentioned above, these petitions fail and they are dismissed. But in the circumstances of these cases, I direct the parties to bear their own costs.

(22) Petition dismissed.

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