
(1974) 08 RAJ CK 0002
In the Rajasthan High Court
Case No : Civil Writ Petition No. 287 of 1969

Ramjilal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 26-08-1974

Acts Referred:

Constitution of India, 1950 — Article 226, 309

Citation : (1974) RLW 407 : (1974) WLN 726

Hon'ble Judges : Kan Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kan Singh, J.—This is a writ petition by one Shri Ramji Lal under Article 226 of the Constitution. He prays that the selection of respondents No. 5 & 6 as Pipe Fitters be quashed and further the respondents Nos. 1 to 4 be directed to promote the petitioner as Pipe Fitter.

2. The petitioner was a Khalasi to Pipe Fitter under the Inspector of Works South at Jaipur. In pursuance of circulars dated 29.8.64 and 7.9.64 he applied, for taking the Trade Test, to the Divisional Engineer (E) Jaipur. He was directed to appear at the Trade Test. He passed the Trade Tests and was at No. 7 in the result Ex.2. The respondents Jagan Nath and Pratap Ram, according to the petitioner, never appeared at the Trade Test for a Pipe Fitter and it by Ex 2 they were declared to have passed the Trade Test for promotion to the post of Pipe Fitter. They were then appointed as Pipe fitters and the petitioner is challenging their appointment. The petitioner contends that under the guise of a Trade Test, which respondents Jagan Nath and Pratap Ram had really never taken, they were promoted as Pipe fitters and were, given undue preference over the petitioner. The petitioner further contends that the respondents were Blacksmith Tradesmen and could, therefore, claim promotion in their channel and not as Pipe Fitters. Lastly, it was urged that the respondent No 4, the Divisional Engineer, was personally interested in respondents Nos. 5 and 6 and he has managed their

promotion.

3. The writ petition has been opposed by the respondents. It is denied that respondents Nos. 5 and 6 had not taken the Trade Test. It was submitted that applications for Trade Test were invited vide circular No F/E/ 1130, 1 Vol IV dated 16.5.64 according to which "the petitioner too had given an application for appearing in the Trade Test. The respondent Nos. 5 and 6 had also applied and they appeared at the Trade Test held on 15.7.64 and these respondents had passed the test. The petitioner had passed the test which was held in pursuance of the circular dated 12.2.65, but the result of the two tests was declared by order Ex 2. Further, according to the respondents Nos. 1 to 4 Shri Jagan Nath and Shri Pratap Ram were much senior to the petitioner. They had been appointed as B.T.M. (Basic Tradesman)/Blacksmith on 29.3.42 and 24.7.52 respectively (vide Ex 2), but the petitioner was appointed as a Khalasi to Pipe Fitter on 1.7.60 and, therefore, according to the respondents, the petitioner cannot make any grievance of Pratap Ram's and Jagan Nath's having been appointed as Pipe Fitters. As regards the channel of promotion, respondent the case is that for semi skilled workmen it is not confined to any particular trade as such Reliance is placed on Ex R/1 and it was submitted that semi skilled artisans and basic Tradesmen of all the Departments in the pay scale of Rs. 3560 were eligible for promotion to the posts of skilled artisans on their passing the standard Trade Test.

4. When confronted with this learned Counsel for the petitioner put reliance on Rule 108 occurring in the Indian Railway Establishment Manual (Second Edition) at page 118 which reads as follows:

Rule 108. I Promotion to skilled categories. Semi-skilled artisans and basic tradesman are eligible for promotion to skilled grades if they pass the prescribed trade test. Railway Administration Should regular the recruitment for skilled grades to ensure that for at least 50% of vacancies over a period trade apprentices are recruited, the balance of vacancies as far as possible but not exceeding 50% being open for Promotion of semi-skilled artisans/basic tradesmen. Semi-skilled artisans for whom there is no channel of promotion should be transferred as basic tradesmen in other trades to provide an avenue of promotion. In ordering such transfers due consideration should be paid to the interests of the staff working in the respective trade. It should also be assured that the person transferred is really fitted for work in the other trade.

On the basis of this learned Counsel submits that this is a rule made by the the Railway Board in exercise of their powers under Rule 157 of the Indian Railway Establishment Code-set of Rules made by the President under Article 309 of the Constitution. Learned Counsel for the parties took differing positions regarding the effect of this Rule 108. While learned Counsel for the petitioner maintained that this rule envisages promotion within a particular trade only unless a tradesman with bleak prospects is transferred from the other trade to the particular trade in which promotion is to be made, learned Counsel for the Union,

on the other hand argues that is not so and Rule 108 which was subsequently framed is in keeping with what was already contained in Ex R/11 made in 1954.

5. The only point that arises for consideration is whether the appointments Nos. 5 and 6 as Pipe Fitter vide order Ex.2 were legal.

6. Now for appreciating the import of Rule 108 one has to look to the scheme of the group of Rules in which this rule occurs. The relevant rules start from Rule 101. The sub-heading is "Promotion to higher grades in Class IV and Class III posts". Rule 101 deals with Transportation (Traffic) and Commercial Department. It is laid down therein that all Railway servants in the lowest grade of Rs. 70 85 should be eligible for consideration for promotion to higher grades in both the Transportation and Commercial branches. All the Railway servants who apply will be considered and further an ad hoc seniority list will be prepared on the basis of length of continuous service in the grade and suitable men would be selected and placed on a panel for training. Rule 102 is about the Civil Engineering Department. Here also provision is made for Trolley-men, Gatemen and Chowkidars to be grouped with Gangmen for being eligible for promotion as keymen and mates. Again a similar provision is made in Rule 103 for the Medical Department, It is laid down that all Railway servants employed in the hospitals as attendants, orderlies, dispensary (sic), stretcher bearers, and others are eligible for promotion as dressers and laboratory attendants. The same thing has been said for the Signal and Telecommunication. Engineering Department, Mechanical Engineering Department, Electrical Engineering Department and for the Satarwalas or Sanitary cleaners in other Departments. It is in this context that Rule 108 occurs By reading all the rules together the inference is irresistible that no category of lower employees is to be excluded from consideration for higher categories and there should be no sub-categorisation within the respective branches. Learned Counsel for the petitioner lays stress on the words "semi-skilled artisans for whom there is no channel of promotion should be transferred as basic tradesmen in other trades to provide an avenue of promotion." Learned Counsel, however, overlooks that this is a provision for semi-skilled artisans who are certainly lower than basic tradesmen. Here one is not dealing with a semi-skilled artisan vis-a-vis another semi skilled artisan, but the respondents Nos. 5 and 6 were already basic tradesman (E 8.) For them there was no question of being transferred as basic tradesmen to any other category or sub-category. They could be considered for being promoted as skilled tradesmen. They had put in much longer service than the petitioner. In my view, therefore, the petitioner cannot make any grievance if the respondents No. 5 & 6 came to be promoted as Pipe Fitters. There is nothing like a fixed or rigid channel of promotion for semi-skilled persons like the petitioner to the post of a Pipe Fitter. This is open to all B.S.T. persons or semi skilled persons for that matter. Therefore, it appears to me that the policy underlying Ex R/11 that semi-skilled artisans and basic tradesmen of all the Departments should be eligible for promotion as skilled artisans has not been given up in the rules, but that has been given expression to when Rule 108 was made in 1956. Learned Counsel was certainly wrong in saying that

the respondents Nos. 5 and 6 had not passed the Trade Test Indeed they had passed the Trade Test earlier to the petitioner and there the petitioner had clearly made a mis-statement of fact which would again disentitle im from seeking any aid of this Court in exercise for its extraordinary jurisdiction.

7. The writ petition has no force and is accordingly hereby dismissed, but the parties are left to bear their own costs.