
(2005) 10 P&H CK 0035

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No's. 3479-CAT and 5674-CAT of 2002

Sanjeev Kumar and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 26-10-2005

Acts Referred:

Citation : (2006) 142 PLR 413

Hon'ble Judges : S.S. Nijjar, J; Nirmal Yadav, J

Bench : Division Bench

Advocate : Vinod Sharma, in C.W.P. No. 3479-CAT of 2002 and Puneet Jindal, in C.W.P. No. 5674-CAT of 2002, for the Appellant; Puneet Jindal, for Respondents Nos. 1 to 3 in C.W.P. No. 3479-CAT of 2002 and P.M. Kansal, for the Respondent

Final Decision : Allowed

Judgement

S.S. Nijjar, J.—This order will dispose of C.W.P. Nos.3479-CAT and 5674-CAT of 2002 as in both the writ petitions the same judgment delivered by the Central Administrative Tribunal, Chandigarh, in O.A. No. 1235-HR of 1997 dated 16.1.2002 has been challenged. C.W.P. No.3479-CAT of 2002 has been filed by the successful candidates whose selection had been challenged by respondents No.4 to 7 and C.W.P. No. 5674-CAT of 2002 has been filed by the Union of India whose decision was quashed by the Tribunal.

2. The undisputed facts, as emerge from the pleadings of the parties, are as under.

3. Service conditions of the employees working in the Indian Railways are governed by the Indian Railway Establishment Manual, Volume-1. Rule 124 of the Manual deals with the post of Goods Guards in the unrevised pay scale of Rs. 1200-2040. The rule is as follows:-

iii. GUARDS

124(1) The vacancies in the category of Goods Guard-in scale of Rs.1200-2040

will be filled as under: -

- i. 15% by direct recruitment from the open market through the Railway Recruitment Boards; and
- ii. 85% by promotion as under; (a) 31% by selection from amongst senior Train Clerks/Train Clerks (E)(NG) 1-86 PM 2-21 (PN-MNFIR) dt. 24.2.87 (b) 54% by selection from amongst Ticket Collectors, Commercial Clerks, Switchman, Yard Staff, Brakesmen as per quota decided by each Zonal Railway Administration for each of these categories (E(NG) 1-78/PM1-100 dt. 18.9.78).

2. Qualification etc. for direct recruitment are as under:-

- i) Educational: A University Degree or its equivalent.
- ii) Age: Between 18-25 years.

The Railway Board is competent authority to make modifications in the departmental Manual by issuing Railway Board Establishment Orders. On 1.8.1991, a decision taken by the Railway Board was communicated to the General Managers of all the Indian Railways, with regard to filling up posts of Guards Grade "C" in the pay scale of Rs. 1200-2040/-. This decision had been taken on the demand raised by the employees in the meeting of the Departmental Council, requesting that 15% of the vacancies in the cadre of Goods Guard, which are earmarked for direct recruitment may be permitted to be filled by serving employees from eligible categories, possessing the requisite educational qualifications. The relevant part of the decision is as under:-

After discussions, it was agreed that while the qualification prescribed for directly recruited candidates will be retained, the posts will be filled up from amongst the existing employees through a limited departmental competitive examination. The eligible categories for such examination could be settled locally in consultation with the recognised unions.

Please acknowledge receipt.

Sd/- (K.L. Lall) Joint Director, Establishment (N), Railway Board. No.E(NG) I/90/PM2/27 New Delhi, dated 1/08/1991.

In terms of the aforesaid decision, a meeting was held in the chamber of Senior Divisional Operations Manager, Northern Railways, Ambala on 4.8.1992 and the following consensus was arrived at:-

- i) All willing Graduate serving railway employees should be permitted to apply for this examination provided they fulfil the following conditions:-
 - a) They are permanent railway employees.
 - b) They are less than 35 years of age.
 - c) They should be working in a Grade Rs. 1200/2040 or below.

d) He should be minimum graduate.

e) The employee can belong to any category of railway staff, of any department provided he fulfills the above conditions.

The aforesaid decision was further clarified on 3.2.1993 by the Railway Board and it was decided that serving employees from among the eligible categories may be allowed to appear in the limited departmental competitive examination subject to the upper age limit of 40 years in the case of General Category and 45 years in the case of SC/ST categories. On the basis of the aforesaid clarifications, a notice was issued on 7.5.1997 inviting applications from the eligible candidates. All the petitioners in C.W.P, No.3479-CAT of 2002 and respondents No.4 to 7 therein submitted applications for appearing in the examination. The petitioners were declared successful and appointed on various dates. Respondents No.4 to 7, however, did not make the selection list. These respondents, therefore, filed O.A. No. 1235/HR of 1997 challenging the order dated 8.9.1997, Annexure P-5 to the writ petition, by which the petitioners have been declared successful. The selection list dated 8.9.1997 was challenged by the respondents on the ground that the notice inviting application dated 7.5.1997 was contrary to the instructions issued by the Divisional Railway Manager, Northern Railway on 24.6.1993. In the aforesaid instructions, it was provided as under:-

Railway Board vide their letter No.E(NG)I/90/PM2/27 dated 1.8.91 and 3.2.93 have decided that 15% vacancies in the category of Goods Guard in pay grade Rs. 1200-2040 (RPS) earmarked for direct recruitment may now be filled by serving employees through a limited departmental competitive examination provided they possess graduation educational qualification subject to the upper age limit of 40 years in the case of general candidates and 45 years in the case of SC/ST candidates.

The competent authority has decided that the categories which are presently eligible for 85% promotee quota should be kept eligible for 85% quota only. The 15% recruitment quota which is now proposed to be filled up amongst the existing employees through limited departmental competitive examination should be thrown open to all categories of operating Branch in grade Rs. 950-1500 and above provided they are graduate and eligible under age limits as noted above. This is with the approval of COM and COP/r.

4. The Central Administrative Tribunal has allowed the O.A. with the observation that the action of the Divisional Railway Manager in inviting applications for the posts of Goods Guards in the grade of Rs. 1200-2040 against 15% direct recruitment quota through departmental competitive examination from all categories of the employees including Group-D employees was contrary to the decision of the General Manager, "Northern Railway, New Delhi as contained in letter dated 24.6.1993. It has been observed that the Divisional Manager on his own could not overlook and go against the decision of the General Manager as

contained in the letter dated 24.6.1993.

5. Mr. Vinod Sharma, learned Counsel appearing for the petitioner submits that the reasoning of the Tribunal is contrary to the statutory rules as contained in the Railway Establishment Manual. 15% of the posts have been reserved for direct recruitment from the open market through the Railway Recruitment Board under rule 124(i) 85% of the posts are reserved to be filled by promotion on the basis of the different quotas as described under rule 124(ii). The aforesaid rule also provides the qualifications for direct recruitment as a University degree or its equivalent. The candidate has also to be between 18-25 years of age. It was this rule which was considered and modified by the Railway Board by order dated 1.8.1991. It was decided to limit the field of eligibility for direct recruitment to the existing employees who were to be selected through limited departmental competitive examination. The categories of employees who would be eligible for the examination was to be settled locally in consultation with the recognised Unions. In consequence of the aforesaid decision, a meeting was held in the chamber of Senior Divisional Manager (Operations), Northern Railway, Ambala on 4.8.1992 between the members of the Unions and the railway officials. At that meeting, a consensus was arrived at. It was decided that all willing graduates serving railway employees should be permitted to apply for the examination provided they fulfill the eligibility conditions. It was emphatically decided that the employee can belong to any category of railway staff, of any department, provided he fulfills the required conditions. Thereafter, again by a decision taken by the Railway Board, the upper age limit was raised to the age of 40 years in the case of general category candidates and 45 years in the case of SC/ST categories candidates. On the basis of the aforesaid decision, the requisite notice inviting applications was published on 7.5.1997. Therefore, the decision taken by the Railway Board is neither without jurisdiction nor unreasonable. Learned Counsel submitted that the letter issued on 24.6.1993 by the Divisional Railway Manager could not supersede the earlier instructions issued by the Railway Board. Learned Counsel also submitted that the instructions contained in Annexure P-6 dated 24.6.1993 in C.W.P. No.3479-CAT of 2002, are without jurisdiction as it is only the Railway Board which is competent to make modifications in the railway manual.

6. Mr. Puneet Jindal, learned Counsel appearing for the Union of India in both the writ petitions, has reiterated the submissions made by Mr. Vinod Sharma. He has further added that even in the instructions dated 24.6.1993 issued by the General Manager (Personnel), it is provided that the categories which are presently eligible for 85% promotee quota should be kept eligible for 85% quota only. Therefore, on this basis even respondents No.4 to 7 would not be eligible to compete as they were eligible to be promoted under the 85% quota. He has also pointed out that during the pendency of the writ petitions, respondents No.4 to 7 have been promoted under the 85% quota. The learned Counsel further submitted that the aforesaid instructions limiting the field of candidature to operating branch seems to be a typographical error, as otherwise it would be

contrary to the first part of the instructions where it has been laid down that those candidates who are eligible for promotion under the 85% quota would not be eligible for direct recruitment.

7. On the other hand, Mr. Kansal appearing for the contesting private respondents submits that the reasoning adopted by the Tribunal cannot be faulted, as the instructions dated 24.6.1993 have emanated from the highest authorities within the railways. The Divisional Manager could not ignore the aforesaid instructions and issue the notice inviting applications dated 7.5.1997.

8. We have considered the submissions made by the learned Counsel for the parties.

9. We are of the opinion that there is much force in the submissions made by Mr. Sharma and Mr. Jindal. A perusal of the various documents makes it abundantly clear that the orders dated 1.8.1991 were issued to remove the hardship being caused to some graduate employees of the railways. In view of the bleak chances of promotion, an opportunity was given to the existing employees of the railways to compete for direct recruitment. Under rule 124 of the Indian Railway Establishment Manual, Volume-I, 15% of the posts are already reserved to be filled up by direct recruitment by way of open competition. It was only to provide an opportunity to the existing employees that the field of selection was limited to the graduate employees of the railways. Thereafter, the Railway Board took a decision to increase the upper age limit to 40 years in the case of candidates belonging to general category and 45 years in the case SC/ST categories candidates. All the employees belonging to any category were made eligible to appear in the limited departmental competitive examination on the basis of a decision arrived at between the railway authorities and the railway unions on 4.8.1992. This decision had been taken in furtherance of the decision which had been taken by the Railway Board on 1.8.1991 in which it had been decided that eligible candidates for such examination could be settled locally in consultation with the recognised unions. It would not be possible to hold that the order dated 4.8.1992 suffers from any illegality or infirmity. We are also of the opinion that even the order dated 24.6.1993 clearly provides that 15% quota would be applicable only to the candidates who are not eligible for promotion under the 85% quota. It could not have been further limited to only the Operating Branch by the General order of General Manager being contrary to the orders issued by the Railway Board was liable to be ignored.

10. We, therefore, hold that the petitioners in C.W.P. No.3479-CAT of 2002 have been rightly selected and appointed. We also hold that the decision of the Tribunal is contrary to the rules as well as the executive instructions issued by the competent authority.

11. In the result, the writ petitions are allowed. The judgment of the Tribunal is quashed and set aside. No orders as to costs.