
(2014) 07 MAD CK 0177
In the Madras High Court
Case No : Writ Petition No. 18878 of 2011

Union of India

APPELLANT

Vs

Central Administrative Tribunal

RESPONDENT

Date of Decision : 30-07-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2014) 7 MLJ 19

Hon'ble Judges : V. Dhanapalan, J;S. Vimala, J

Bench : Division Bench

Judgement

S. Vimala, J.—Whether respondents 2 to 4, who were given ad hoc promotion, on completion of the training course (before selection), but not successfully, can claim priority over the candidates, who successfully completed training, in the fixation of seniority, without qualifying themselves in the selection process (written examination), is the issue canvassed in this writ petition. Respondents 1 and 2 in O.A. No. 773 of 2009 have filed the writ petition praying to quash the order passed by the Central Administrative Tribunal, Madras Bench, dated 08.12.2010.

2. The applicants in O.A. No. 773 of 2009 are respondents 2 to 4 in this writ petition. Respondents 3 to 6 in O.A. No. 773 of 2009 are the respondents 5 to 8 in this writ petition.

3. For the sake of convenience, the parties are referred to as per the nomenclature assigned to them by the Tribunal.

Brief facts:

4. The applicants/petitioners were working as Sr. Asst. Guard/Asst. Guard, in the Southern Railway, along with 13 other employees, in the said cadre. They were rendered surplus due to the surrender of the posts of Sr. Asst. Guard/Asst. Guard. The surplus employees were promoted as Goods Guard on ad hoc basis in various spell with the approval of the competent authority. In due course, some

of the employees were regularised as Goods Guard in regular pay scale against vacancies which arose in the direct recruitment quota. The dates of ad hoc promotion and regular promotion are as indicated in the tabulation below:

4.1. Some of the Sr. Asst. Guard/Asst. Guard were directed to attend the initial training course for the post of Goods Guard, in order to utilise them in the Goods Guard vacancy. They have completed the training course and were promoted as Goods Guard on ad hoc basis, subject to the condition that they should qualify in the training course. Subsequently, they have completed the training course and have been regularised as Goods Guards. But the fact remains that they did not get through in the written examination.

4.2. The post of Goods Guard in the scale Rs. 4,500-7,000 is a safety category and the mode of filling up is prescribed in paragraph 124 (1) of the Indian Railway Establishment Manual (IREM). Paragraph 124 of IREM as amended by Advance Corrections Slip No. 47 reads as under:

"(i) 60% by general selection from amongst serving regular employees with a minimum of three years service working in grade(s) Rs. 3050-4590/3200-4900/4000-6000 in the categories of Train Clerk/Sr. Train Clerk, Commercial Clerk/Sr. Commercial Clerk, Ticket Collector/Sr. Ticket Collector, Switchmen, Assistant Guard/Sr. Asst. Guard and Yard staff.

(ii) 15% by LDCE plus shortfall if any against (i) above, from amongst regular, non-ministerial Group "C" employees with a minimum of 3 years service, working in grade(s) Rs. 3050-4590/3200-4900/4000-6000 up to 40 years of age (45 years in the case of SC/ST) and having the qualification of graduation and

(iii) 25% by direct recruitment quota through Railway Recruitment Board plus shortfall if any against (ii) above and having the qualification of graduation."

4.3. For each category, individual quota was earmarked after consultation with the organized labour. There were four categories with individual quota prescribed for Asst. Guard/Sr. Asst. Guard, being 30%, Train Clerk/Sr. Train Clerk at 15%, Switch men, Shunting Master, etc., at 10% and Ticket Collector, Sr. Ticket Collector, Commercial Clerk and Sr. Commercial Clerk at 5%.

4.4. Selection to the post of Goods Guard in the pay scale of Rs. 4,500-7,000 against 60% promotional quota for 18 vacancies was initiated and volunteers were called for from the categories of employees as found eligible.

4.5. Written test was conducted on 16.02.2006. 38 employees came out successfully in the written examination. Out of 38 employees, 15 employees were selected vide letter, dated 07.03.2007, with the approval of the competent authority. All the selected employees were absorbed as Goods Guard, on successful completion of the training course.

4.6. Respondents 1 and 2 gave promotion to the goods guard, namely, K. Ayyadurai, P. Clement Leo Paulraj, M.R. Ramachandran, S.N. Srinivasan, N.

Muneeswaran and T. Ambalabalan, as Senior Goods Guard, by the Order, dated 03.04.2009. Contending that the juniors, who completed the training course only in the year 2007 have been promoted disregarding the applicants (O.A. No. 773 of 2009) who had successfully completed the training course in 2006, O.A. No. 773 of 2009 was filed.

5. The claim of the applicants were resisted by respondents 1 and 2 (in the O.A.) with the following contentions:

5.1. The applicants have not come out successfully in the written examination in the promotional quota. The applicants, who failed to secure the qualifying marks in the selection conducted under 60% promotional quota were absorbed as Goods Guard under 25% direct recruitment quota, as one time exemption, for the purpose of redeploying the surplus employees in the category of Sr. Asst. Guard/Asst. Guard. Since the selection of the applicants were subsequent to the selection conducted under 60% promotional quota, the claim for seniority over and above the candidates selected under 60% promotional quota cannot be accepted.

5.2. Paragraph 302 of the Indian Railway Establishment Manual, Vol-I, deals with seniority in the initial recruitment grade only. It reads as under:

"302. Seniority in initial recruitment grades - Unless specifically stated otherwise, the seniority among the incumbents of a post in a grade is governed by the date of appointment to the grade. The grant of pay higher than the initial pay should not, as a rule, confer on a railway servant seniority above those who are already appointed against regular posts. In categories of posts partially filled by direct recruitment and partially by promotion, the criterion for determination of seniority should be the date of regular promotion after due process in the case of promotee and the date of joining the working post after due process in the case of direct recruit, subject to maintenance of inter-se-seniority of promotees and direct recruits among themselves. When the dates of entry into a grade of promoted railway servants and direct recruits are the same they should be put in alternate positions, the promotees being senior to the direct recruits, maintaining inter-se-seniority of each group."

5.3. Even if the date of joining is on the same day, the promotees are to be placed as seniors to the direct recruit.

6. When the applicants, who were promoted to the post of Goods Guard, which was subsequent to the posting of private respondents, who stood qualified in the written examination and empanelled as Goods Guard under the promotional quota, the claim of applicants for seniority over and above the private respondents is not tenable, is the contention of the Railways.

6.1. The absorption of the applicants in the post of Goods Guard itself is under challenge in O.A. No. 557 of 2009 and in O.A. No. 836 of 2009 by the applicants therein, who have passed in the written examination and were not empanelled,

in view of the percentage wise quota prescribed for the categories, as stated supra.

6.2. The contention therein is that the candidates who failed in the written examination conducted for the selection to the post of Goods Guard under 60% promotional quota have been absorbed as Goods Guard, under 25% direct recruitment quota, ignoring the candidates who came out successful in the written examination, like the applicants in O.A. No. 557 of 2009 and O.A. No. 836 of 2009.

6.3. On this ground also, the claim of the applicants for seniority is not tenable.

7. The contention of the applicants is that the action of the Railway Authority is arbitrary, an act coupled with colourable exercise of authority and the exercise of authority, being violative of Articles 14 and 16 of the Constitution of India, the order passed by the Railway Authority is liable to be set-aside.

8. The Tribunal, while considering the rival contentions, came to the conclusion that the Railway Authorities held that the act of subjecting the applicants to qualify themselves in the written examination under the promotional quota itself is unwarranted, since the Railways have regularised the services of the applicants under direct recruitment quota.

8.1. On this ground, the Tribunal held that the applicants are entitled to the seniority over and above the private respondents, who have completed the training after the applicants.

8.2. In this view of the matter, the order, dated 03.04.2009, was set-aside by the Tribunal. This order is under challenge in this writ petition.

9. Whether mere completion of training without complying with the stipulated conditions for successful completion of training can be construed as completion of training, is the issue before this Court.

9.1. What is the meaning of completion of training? What is the interpretation to be given for completion? Does it mean, the completion of the period earmarked for training or does it mean the successful completion of the prescribed conditions?

9.2. According to the applicants in O.A. No. 773 of 2009, it is their claim that they should be ranked seniors, because of the ad hoc promotion given to them, despite not qualifying themselves in the written examination conducted on 16.12.2006 for the post of Goods Guard. It is also an admitted fact that they were given ad hoc promotion on 26.07.2008, but the regular promotion was given to R-2 in the writ petition on 28.02.2009, R-3 on 06.05.2009 and the R-4 on 17.03.2009. The other 15 employees were promoted earlier to R-2 to R-4.

9.3. It is evident from the contention of the Railways that when the Government of India took a policy decision to lease out the SLRs (luggage van) in the mail/express trains, on contract basis to the private persons, some of the Asst. Guard/

Sr. Asst. Guard were rendered surplus. In order to redeploy the surplus employees to suitable categories, they have been accommodated by way of stop gap arrangement in the category of Goods Guard.

9.4. But, it is the contention of Railways that even though they have been promoted as ad hoc Goods Guard, (as an interim measure) they continued to work as Asst. Guard/Sr. Asst. Guard till in the year 2008. Even though they did not qualify in the 60% promotional quota, they have been absorbed as Goods Guard under 25% direct recruitment quota as a one time measure, on account of redeployment of surplus staff.

10. When the employer has chosen to adopt an ingenious method, as a measure of grace, to accommodate employees who would become surplus, does it enable the employee to claim that there is not even a necessity for him to qualify in the examination. Just because they are taken in the direct recruit vacancy, it does not mean that they are exonerated from appearing for the examination or to pass out successfully in the written examination. Grant of ad hoc promotion in the direct recruitment quota was only an interim arrangement to accommodate those who are rendered surplus. Under such circumstances, the expectation that they need not even qualify themselves by getting a pass in the training programme is not legitimate.

10.1. Only for the purpose of accommodating them, by invoking a deeming provision, they have been accommodated as direct recruits. But, that does not mean that they are the actual direct recruits. When it is clear that they have not qualified themselves in the written examination, they ought not to have asked for superior seniority (just because there had been an ad hoc promotion). Ad hoc promotion does not confer any right while counting the seniority. The criteria for determination of seniority would be the date of regular promotion and not the date of ad hoc promotion.

10.2. In *State of W.B. and Others Vs. Aghore Nath Dey and Others*, . The Tribunal is of the view that ad hoc service to count for seniority must be rendered continuously till the date of regularisation for 15 years or more and, therefore, it held that the appellants could not take advantage of the ad hoc promotions made purely as a stop gap arrangement and it is only in special circumstances such ad hoc service could be counted for the purpose of seniority as noticed in some of the decisions of this Court. Consequently, the application filed by the contesting respondents was allowed and it was declared that the appellants were not entitled to count their ad hoc service in the post of Executive Engineers (Electrical) for seniority, confirmation, promotion, etc.

10.3. In the decision of *Davinder Bathia and Others Vs. Union of India and Others*, . it has been held that the period of ad hoc services, which was a stop gap arrangement without undergoing the selection process could not be counted for the purpose of determining the seniority in the cadre of selection post.

10.4. The decision rendered by the Division Bench of this Court, in W.P. No.

13569 of 2011, dated 05.07.2012, is relied upon. The second respondent therein was held entitled for fixation of the seniority based upon the merit list prepared on the basis of result of the written examination conducted and after successfully completing the training from 09.04.2007 to 30.05.2007. This dictum laid down in this case only supports the case of the Union of India wherein the defence taken is that even though respondents 2 to 4 had completed the training, but not successfully, they cannot claim seniority over and above those persons who have successfully completed the training. In the result, the writ petition filed by the Union of India is allowed. The order passed by the Tribunal in O.A. No. 773 of 2009 is hereby set-aside. No costs.