
(2002) 05 RAJ CK 0108

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3722 of 2001

Union of India (UOI) and Others

APPELLANT

Vs

Rajendra Kumar Gaur and Others

RESPONDENT

Date of Decision : 30-05-2002

Acts Referred:

Citation : (2003) 2 RLW 1203 : (2002) 4 WLC 60 : (2002) 5 WLN 529

Hon'ble Judges : Arun Kumar, C.J;Prakash Tatia, J

Bench : Division Bench

Advocate : S.S. Vyas, for the Appellant; S.N. Trivedi, for the Respondent

Final Decision : Dismissed

Judgement

Tatia, J.—The petitioners have filed this writ petition challenging the order of the Central Administrative Tribunal (for short "the Tribunal"), Jodhpur dated 11.5.2001 passed in O.A. No. 286/98.

2. Brief facts of the case are that a Notification dated 8.7.1998 was issued by the petitioners (the railway in particular) to fill up one vacancy of Welfare Inspector in the Grade of Rs. 5000-8000/-. The vacancy was declared reserved for the Scheduled Caste (for short "the SC") candidate. Aggrieved against the reservation of the vacancy, non-petitioners No. 1 and 2 submitted Original Application No. 286/98 before the Tribunal, Jodhpur Bench, Jodhpur on the ground inter alia that by filling up one vacancy of Welfare Inspector only from among the reserve category candidates, will amount 100% reservation of the post which is impermissible in law and will deprive the applicant from participating in selection for the post. It was further submitted that in view of the judgment of the Hon"ble Supreme Court delivered in the case of U.P. Financial Corporation and Others Vs. Naini Oxygen and Acetylene Gas Ltd. and Another, , and in the case of Union of India v. J.C. Malik and Ors., Civil Appeal No. 2017/78, reservation of SC and ST categories cannot exceed 15% and 7.5% respectively, therefore, the Notification issued by the Railway on 8.7.98 for reservation of one

vacancy is contrary to law as laid down by the Hon''ble Apex Court. It was also submitted that the Department of Personnel and Training (for short "the DOPT") of the Government of India vide memorandum dated 2.7.1997 issued the model roster for implementation of the directions and instructions issued by the Hon''ble Apex Court in Sabharwal's case. According to the aforesaid roster (Annex. A/2) submitted in the original application, in model roster 200 posts, every 7th post/vacancy has been shown reserved for SC candidate and every 14th post vacancy has been shown for reserved for ST candidate for reservation in promotions, keeping in view of prescribed percentage of reservation i.e. 15% and 7.5% for SC/ST candidates respectively. The contention of the applicant was also that with regard to a cadre of 13 posts, a unique vacancy post L-type roster has been introduced for making reservation up to the extent of 15%. This L-type roster has also been challenged by the applicant.

3. The applicant also submitted that even when there was office memorandum dated 2.7.97 issued by the DOPT, the Chairman, Railway Board issued another post based roster of 200 posts as well as vacancy based L-type roster for the cadre for less than 14 posts vide Notification dated 21.8.1997 (Annex. A/3) placed before the Tribunal. According to the contention of the applicant, by virtue of Notification dated 21.8.1997.

The Chairman Railway Board reserved 4th post/vacancy for SC and 8th post/vacancy for ST and by virtue of this provision, the reservation of SC will increase to 25% against permissible limit of 12.5% reservation, in favour of ST will increase upto 12.5% against permissible limit of 7.5% and, therefore, the Notification dated 21.8.1997 is liable to be quashed. It was also submitted that the instructions of the reservation policy issued by the DOPT, Government of India are binding upon all the Ministries of Government of India and since the Railway Board has issued Notification dated 21.8.1997 which runs contrary to the Notification issued by the DOPT, Government of India, therefore, the Notification issued by the Railway Board dated 21.8.1997 is liable to be quashed.

4. The petitioners in the present writ petition, original non- applicants before the Tribunal submitted reply to the O.A. and contended that the Railway Board being a law making authority, has right to issue office memorandum dated 21.8.1997. It is also submitted that model roster issued by DOPT is only a model roster and not final roster. Office memorandum issued by the DOPT itself instructed concerned department to prepare their own roster, therefore, roster issued by the Railway Board is as permitted by the memorandum of DOPT and the roster issued by the Board is not running contrary to the memorandum of DOPT, therefore, it is validly issued by the Board. It was also submitted that the cadre strength of post of Welfare Inspector is two, against which the first vacancy was filled up by Shri Sanjay Gangwal (general category candidate) (unreserved post) and the second post was filled by Shri Tarachand Gehlot (unreserved post). Thereafter when one post of Welfare Inspector became vacant, the first replacement was done by unreserved person and Shri Surya Prakash was

promoted and when another vacancy became available then the second replacement was kept reserved for SC candidates as per L-type roster issued by the Railway Board. It was contended by the petitioner-non-applicants that they have not exceeded the percentage of 15% and 7.5% of SC and ST candidates and, therefore, the model L-type roster issued vide office memorandum dated 21.8.1997 by the Railway Board is not in contravention of the law laid down by the Apex Court.

5. The Tribunal, after hearing arguments, quashed the model roster issued by the Railway Board dated 21.8.1997 and directed the petitioner to adopt the model roster as issued by the DOPT. The petitioners Union of India and the Railway Board preferred this writ petition challenging the order of the Tribunal dated 8.7.1998.

6. According to the learned counsel for the petitioners, the L- type roster as well as model roster issued by the Railway Boards is not contrary to the roster of the DOPT nor it goes contrary to the law laid down by the Hon"ble Apex Court in Sabharwal's case on the grounds that Hon"ble Apex Court in that case has not decided that which points or reserve slots in roster may be enumerated for SC/ ST. Both rosters are issued in implementation of the law laid down in Sabharwal's case and is legally sustainable. It was also submitted that the roster issued by the DOPT is only in the form of guidelines and as such directive in nature and not mandatory specially in view of para 3 and 7 and ground No. 12 given in the memorandum dated 2.7.1997 issued by the DOPT. It was also submitted that the roster has been issued by the Railway Board in order to give proper and effective representation to SC/ST and to give 15% and 7.5% representation in small cadre and it was kept in mind that the reservation should not exceed 50% as has been held in the case of M.R. Balaji and Others Vs. State of Mysore, According to the learned counsel for the petitioners, interest of weaker section of the society is a first charge on the State and union of India and, therefore, it is to be adjusted with the interest of the community as a whole in a small cadre reservation. In a cadre of 15 posts or more, reservation has been provided on the basis of the posts and in small cadre, no reservation can be made on the basis of percentage of the post, therefore, assumed progressive rotational basis by replacement has been provided by the Railway Board vide model roster dated 21.8.1998. The petitioners also challenged the finding recorded by the Tribunal that the Railway Board had no authority to issue model roster because as per para 123 of the Railway Establishment Code, the orders and instructions of the Railway are treated as law and since the model roster issued by the Railway Board is in consonance with the directive principles of the State policy, therefore, the action of the Railway Board is in accordance with the policy and should not have been quashed by the Tribunal.

7. The learned counsel for the respondent-original applicants, supported the impugned order of the Tribunal (Annex. 3) dated 11.5.2001 and submitted that as per the office memorandum dated 1.1.1998, the Ministry of DOPT issued

orders that if other Ministries/Department intend to depart from the policies laid down by the Department of Personnel, it is mandatory for them to consult the Department of Personnel in terms of Sub-rule 4 of Rule 4 of the Transaction of Business Rules, otherwise the policies laid down by the Department of Personnel are binding on them. It was further made clear that in view of the judgment of the Hon'ble Apex Court delivered in the case of All India Indian Overseas Bank Scheduled Castes and Scheduled Tribes Employees Welfare Association and Ors. v. Union of India and Ors., Civil Appeal No. 13700 of 1996, the National Commission for the Scheduled Castes and the Scheduled Tribes has no powers to direct withholding of the operation of any orders issued by the Government. According to the learned counsel for the respondent, the memorandum/order issued by the Railway Board dated 21.8.1997 runs contrary to the memorandum/order dated 2.7.1997 issued by the DOPT and in view of the binding order dated 6.1.1981, which was made clear by office memorandum dated 1.1.1998, the order of the Railway Board dated 21.8.1997 is illegal.

8. The point in controversy In this matter is whether office memorandum dated 2.7.1997 is binding upon the Railway Board and whether office memorandum dated 21.8.1997 issued by the Railway Board runs contrary to the office memorandum dated 2.7.1997 issued by the DOPT and if it runs contrary or there is some deviation from the procedure prescribed for filling up the vacancy, it is permissible in view of para 3, 7 and 12 of the office memorandum dated 2.7.1997.

9. The learned Tribunal, in its order dated 11.5.2001, held that if there is plurality of posts in a cadre, the roster by rotation can be applied, The reservation in a single post cadre has been rejected as it will amount to total exclusion of general candidates. In any case, the reservation is impermissible beyond the limit of 50%. The office memorandum issued by the DOPT is binding on the Railway Board as per Sub-rule 4 of Rule 5 the Transaction of Business Rules and the roster issued by the Railway Board is at variance with the roster issued by the DOPT and, therefore, the Tribunal has quashed the Notification dated 8.7.1998 issued for filling up vacancies and held that the vacancy shall be treated as unreserved and the petitioners (Railway) were directed to adopt the same model roster as issued by the DOPT.

10. To find out whether the office memorandum issued by the DOPT is binding upon the Railway Board, there is no dispute that the DOPT issued office memorandum as back as on 6.1.1981 saying that if other Ministries/Department intend to depart from the policies laid down by the Department of Personal, it is mandatory for them to consult the Department of Personnel in terms of Sub-rule 4 of Rule 4 of the Transaction of Business Rules, otherwise the policy laid down by the Department of Personnel are binding on them. This direction was reiterated in office memorandum dated 1.1.1998. It is also relevant to mention here that even during course of arguments also it was not the case of the petitioner that the Railway Board is not bound by the policy decisions of DOPT.

Further these office memorandum are not under challenge by the Railway Board. This is also not the case of the Railway Board that before issuing memorandum dated 21.8.1997, the Railway Board consulted the DOPT as required under Sub-rule 4 of Rule 4 of the Transaction of Business Rules. Therefore, the tribunal was right in holding that the decision of DOPT was binding upon the Board.

11. So far as the contention of the learned counsel for the petitioners that the Railway Board has powers to issue orders under the Railway Establishment Code and they are treated as law is concerned, it appears to be applicable to the Railway Establishment whereas the Transaction of Business Rules govern the working of the various Ministries and Departments of the Union of India under the statutory provisions of the Rules and it is not the case of the even Railway Board that, the Railway Board can refuse to follow the policies laid down by the DOPT. Therefore, the policies laid down by the DOPT are binding upon the Railway Board and it cannot be said that the Railway Board can depart from the policies laid down by the DOPT.

12. Now the question arises whether there was any deviation from the policies laid down by the DOPT by the Railway Board by issuing office memorandum dated 21.8.1997. For this, the submission of the learned counsel for the petitioners is of two folds; one is that the office memorandum of the Railway Board dated 21.8.1997 is not having any variance from the policy laid down by the office memorandum of the DOPT dated 2.7.1997. According to the learned counsel for the petitioners, the policy is to provide reservation of the candidates of SC/ST/OBC and this reservations should not exceed in total beyond 50%. By office memorandum dated 21.8.1997, the Railway Board has not provided for reservation beyond the limit of 50%. The roster has been prescribed by the Railway Board to give 15% and 7.5 representation of the SC and SC candidates in small cadre which is also in consonance of the policy decision and in taking into account the legal aspects which were considered and decided by the Hon''ble Apex Court.

13. To find out whether there is any variance between two office memorandums, we have to find out from the two orders itself. In the office memorandum of the DOPT dated 2.7.1997, in para No. 4 of the memorandum, principles for preparing the roster has been narrated and in sub-para (e) of para 4 a specific point of providing method for preparation of the roster in small cadres upto 13 posts was considered wherein it is provided that in small cadres of upto 13 posts, the method prescribed for preparation of rosters does not permit reservation to be made for all the three categories. In such cases, the administrative Ministries/ Departments may consider grouping of posts in different cadres as prescribed in DOPT's office memorandum No. O.M. No. 42/21/49 NGS dated 28.1.1952 and subsequent orders and prepare common roster for such groups. It was also provided that in the event it is not possible to resort to such grouping, enclosed rosters (Appendices to Annexure-11, III and IV) for cadre strength upto 13 posts may be followed. In para No. 7, it is specifically mentioned that all Ministries/

Departments are requested to initiate immediate action to prepare rosters and operate them according to these guidelines. The model roster was drawn up keeping in mind two fundamental principles; (1) the reservation for the entitled categories is to be kept within the prescribed percentage of reservation and (2) the total reservation should in no case exceed 50% of the cadre. The controversy in this case is for the vacancies in small cadres, for which the provision has been made in para 4(e) of the memorandum of DOPT, wherein it is specifically provided that in the event of vacancy of small cadres of upto 13 posts, the administrative Ministries/Departments may consider grouping of posts in different cadres as already prescribed and in the event it is not possible to resort to such grouping, as per the enclosed rosters and Appendices annexed with the office memorandum of the DOPT provides model roster for cadre strength upto 13 posts. Therefore, it is clear from the above memorandum that in memorandum, there is a specific provision for providing roster for promotion for small cadre strength upto 13 posts, whereas in the office memorandum issues by the Railway Board dated 21.8.1997, there is a significant change in the matter of small cadre reservation upto 13 posts. Para 4(e) of the order of the DOPT dated 2.7.1997 reads as under :

"4(e) In small cadres of upto 13 posts, the method prescribed for preparation of rosters does not permit reservation to be made for all the three categories. In such cases, the administrative Ministries/Departments may consider grouping of posts in different cadres as prescribed in this Department's O.M. No. 42/21/49 NGS dated 28.1.1952 and subsequent orders reproduced at pages 70 to 74 of the Brochure on Reservation for Scheduled Castes & Scheduled Tribes (Eighth Edition) and prepare common rosters for such groups. In the even it is not possible to resort to such grouping, the enclosed rosters (Appendices to Annexures- II, III & IV) for cadre strength upto 13 posts may be followed. The principles of operating these rosters are explained in the explanatory notes."

Whereas, para 4(d) of the office memorandum dated 21.8.1997 of the Railway Board reads as under :-

"4(d) In the small cadre upto "13" posts the method prescribed for preparation of rosters does not permit the reservation to be made for both categories SC/ST. Therefore, enclosed roster (Annexure-III) for cadre strength upto 14 posts may be followed. The principles of operating the rosters has been detailed in the Explanatory Notes. The reservation even in single post have been held as constitutional and valid recently by the Hon"ble Supreme Court in the case of Union of India and Another Vs. Madhav Gajanan Chaubal and Another,

14. What has been done by the Railway Board is that instead of providing roster for upto the 13 posts, it has provided for the cadre strength upto 14 posts resulting into radical change in the replacement position of the SC/ST candidate. In DOPT's Model roster in the cadre strength of number of two posts/vacancies, for SC candidates, comes at 5th place and ST candidates comes at 8th place, whereas in the office memorandum of the Railway Board dated 21.8.1997, in the

cadre strength, the post for SC candidate comes at 2nd place and for ST candidates it comes at 6th place. Again SC candidate at 10th place. In cadre strength of three, the posts comes to the SC candidate at 4th place and for the ST candidate at 11th place, whereas in the memorandum of the Railway Board, for cadre strength of three, the post to the SC candidates comes at 1st place, for ST at 5th place. Again for SC comes at 9th place. Therefore, the sequence of availability of the post to SC/ST candidates has been changed by the memorandum of the Railway Board. No reason has been assigned in the order of the Railway Board for departing from the roster prescribed by the DOPT and no reason has been given to provide for roster upto 14 posts instead of upto 13 posts. Therefore, it is clear from the memorandum issued by the DOPT and the memorandum issued by the Railway Board that the Railway Board has not adopted the roster which is at material variance from the roster issued by the DOPT, The submission of the learned counsel for the petitioner is factually wrong,

15. The next contention of the learned counsel for the petitioners was that in view of paras No. 3 and 7, the Railway Board and other Departments were permitted to prepare their own roster. The contention of the learned counsel for the petitioners deserves to be rejected on the ground that in para No. 3 of the office memorandum of the DOPT, all the Ministries and Departments and concerned authorities were directed to prepare respective rosters based on the principles elaborated in the Explanatory Notes given in Annexure-I and illustrated in the model rosters annexed with the memorandum, this nowhere provides that the Ministries/Departments or concerned authorities can make any departure from the model roster sent with the office memorandum of the DOPT. It only provides that the concerned Ministries/Departments and authorities have to work out their vacancies as per the model roster given to them along with this office memorandum. It has not been explained by the petitioners anywhere that if this model roster was only in the form of the model then what was the necessity for preparing model roster which can be changed by any Ministry/Department or authority, that too without explaining any reason for not following the model roster sent by the authority whose decisions are binding upon the receiving Ministries/Department or authority. Not only this but sub-para (e) of para 4 when specifically provided the provision for reservation of small cadre upto 13 posts with specifically providing the appendices, to meet with the contingencies in which, when grouping is not possible as provided in the earlier orders then to follow the roster (Appendices to Annexure-II, III and IV) for cadre strength upto 13 posts. What was the reason for increasing posts 13 to posts 14 for preparing roster resulting into the material change in the availability of the posts to the candidates of SC and ST. Sub-clause (e) of para 4 of the O.M. of DOPT has not left discretion with the any Ministry/Department or authority to resort for any other method for small cadre post strength upto 13 post. Para 7 of the order of the DOPT specifically directed all the Ministries and Departments to initiate immediate action to prepare rosters and operate them according to the guidelines issued by the DOPT. It is not the case of the petitioners that by

adopting the roster as provided by the DOPT, it will flout the reservation policy, then also there was no reason for the Railway Board to depart from the model roster sent to them by the concerned DOPT. It is also not the case of the petitioners that by following the roster provided by the DOPT, there will be any violation of the policy decisions for providing reservation for the weaker section or the roster provided by the DOPT runs contrary to the any of the judgment of the Hon''ble Apex Court. Therefore also, there was no reason for departing from the decision taken by the DOPT and the Tribunal was right in allowing the petition of the applicant-non- petitioners.

16. There is no force in this writ petition and the same is hereby dismissed.