
(2012) 04 AHC CK 0043

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 42868 of 2005

Vinay Kumar Agarwal and Another

APPELLANT

Vs

Smt. Kiran Gupta and Others

RESPONDENT

Date of Decision : 30-04-2012

Acts Referred:

Citation : (2012) 6 ADJ 38 : (2012) 4 AWC 4940 : (2012) 135 FLR 591

Hon'ble Judges : Rakesh Tiwari, J; Het Singh Yadav, J

Bench : Division Bench

Advocate : Samir Sharma, for the Appellant; Govind Saran, Krishna Agarwal and Sudhir Agarwal, for the Respondent

Final Decision : Allowed

Judgement

Hon'ble Rakesh Tiwari, J.—Heard learned counsel for the petitioner, Sri Govind Saran, learned counsel for the respondents and perused the record. Counter and rejoinder-affidavits have been exchanged between the parties. The matter in dispute is regarding promotion of respondent No. 1, Smt. Kiran Gupta, who appears to have worked as Junior Draftsman in North Eastern Railway, Gorakhpur (hereinafter referred to as the "NER Gorakhpur"). On her request she was transferred to Allahabad and joined on 16.4.1993. According to the consent given by her, she was placed at the bottom of the seniority list of the Junior Draftsman. A Cadre Re-structuring Scheme was introduced by the Railway on 27.1.1993 whereby it was provided that if increase number of posts had not been reduced the employees may be given promotion on the next higher post. Furthermore, respondent No. 1 alongwith the petitioners appeared in the examination for the post of Senior Draftsman held in July, 1996 and then respondent No. 1 claimed promotion in the Cadre Re-structuring Scheme from NER, Gorakhpur. Objections were filed by the petitioners inter alia, that the seniority lists maintained by the NER, Gorakhpur and Northern Railway, Allahabad are different as they are distinct and separate divisions and that respondent No. 1 had given her consent for being placed at the bottom of the

seniority list of the Junior Draftsman and she failed in the examination of Senior Draftsman, hence she has no right to be considered for giving seniority in the Cadre Re-structuring Scheme from NER, Gorakhpur Division. Petitioners filed O.A. No. 724 of 1998 challenging the orders dated 24.6.1996, 19.1.1998 and 18.6.1998 before the Central Administrative Tribunal, Allahabad Bench, Allahabad (hereinafter referred to as the "CAT") whereas respondent No. 1 filed O.A. No. 929 of 1998 claiming implementation of the order dated 19.1.1998.

2. It appears that before the CAT respondent No. 1 had produced a letter dated 18.6.1998 and the Note-sheet of the Northern Railway on the basis of which the CAT came to the conclusion that there were four posts of senior Draftsman existed in Allahabad and, therefore, procedure for appointment by promotion through examination could not have been undertaken, hence respondent No. 1, Smt. Kiran Gupta in this writ petition was entitled to be promoted on the post of senior Draftsman.

3. In this regard learned counsel for the petitioners has submitted that the CAT has failed to consider that there was no post of senior Draftsman in the year 1993 falling in Allahabad and in any view of the matter, respondent No. 1 having been given her consent of being posted in this division and placed at the bottom of the seniority list she could not have been posted as senior Draftsman.

4. Counter-affidavit has been filed alongwith Delay Condonation Application by respondent No. 1 wherein it has been stated that respondent No. 1 was initially appointed on the post of Telephone Operator in North Eastern Railway, Gorakhpur vide order dated 6.7.1983 in the pay scale of Rs. 260-400/-. Her cadre was changed vide order dated 14.8.1984 by appointing her as Tracer and she was promoted to the post of Assistant Draftsman (now designated as Draftsman) in the pay scale of Rs. 1200-2040/- vide order dated 22.9.1989 issued by the General Manager, NER, Gorakhpur. She made request under Rules 226 and 229 of Indian Railway Establishment Code, Volume (1) read with Rules 154(1) and 312 (ii) of Indian Railway Establishment Manual, Volume (1) for being posted to Allahabad under Northern Railway, New Delhi (now NCR, Allahabad). Her transfer was recommended vide letter dated 24.11.1992 by the NER, Gorakhpur and she joined at NCR, Allahabad on 12.4.1993 on the post of Draftsman in the pay scale of Rs. 1200-2040.

5. In the mean time, the Railway Board had issued a circular on 27.1.1993 directing for Cadre Re-structuring permitting modified promotion procedure in respect of changed vacancies existing/arising on 1.3.1993 vide paragraphs 4 and 4.1 which read thus :

4. The existing classification of the posts covered by these restructuring orders as selection and non-selection as the case may be remain unchanged. However, for the purpose of implementation of these orders, if an individual Railway servant become due for promotion to a post classified as a selection stand modified in such a case to the extent that the selection will be based only on

scrutiny of service records and confidential reports without holding any written and or viva-voce test. Similarly for posts classified as non-selection at the time of this restructuring the same procedure as above will be followed. Naturally under this procedure the categorization as out-standing will not figure in the panels. This modified selection procedure has been decided upon by the Ministry of Railways as a one time exception by special dispensation, in view of the numbers involved, with the objective of expediting the implementation of these orders.

4.1. Vacancies existing on 1.3.1993 except direct recruitment quota and those arising on that date from this cadre restructuring including chain/ resultant vacancies should be filled in the following sequences :

- (i) From panels approved on or before 1.3.1993 and current on that date;
- (ii) and the balance in the manner indicated in para 4 above.

4.2. So selections which have not been finalized by 1.3.1993 should be cancelled/ abandoned.

4.3. All vacancies arising from 2.3.1993 will be filled by normal selection procedure.

4.4. Extent instructions for D&A/ Vigilance clearance will be applicable for effecting promotions under these orders with the critical date being 1.3.1993.

6. According to the case of the petitioners before the CAT and in the counter-affidavit, as a result of increase in the highest grade in the cadre on account of re-structuring a number of vacancies became available in the feeder cadre also and consequently applying the provisions contained in Railway Board's circular dated 27.1.1993, the deponent was also entitled to be considered for promotion to the post of Draftsman in the pay scale of Rs. 1400-2300/- under Cadre Restructuring Scheme by way of modifying selection procedure and at the time of her transfer the matter pertaining to promotion of the deponent was already pending consideration before NER, Gorakhpur, hence she was not entitled to be placed in the vacancy under the Re-structuring Scheme. It also appears from order dated 12.9.1995 that the NER, Gorakhpur considered the deponent's promotion under Cadre Restructuring Circular dated 27.1.1993 and approved her promotion as Senior Draftsman in the pay scale of Rs. 1400-2300/- w.e.f. 1.3.1993.

7. In rebuttal, learned counsel for the petitioners has placed reliance upon Rule 154(1) of the Indian Railway Establishment Manual, which reads thus :

154 (1) The vacancies in the category of Draftsman in scale of Rs. 1400-2300/- will be filled as under :

- (i) 20% by Direct Recruitment through the Railway Recruitment Boards; and
- (ii) 80% by promotion of Assistant Draftsman in scale of Rs. 1200-2040.

8. In so far as contention of respondent No. 1 that she was entitled for promotion

is concerned, it is stated that respondent No. 1 was transferred on the post of Draftsman to NCR, Allahabad in April, 1993, when there was no vacancy available on the said post in NCR, Allahabad at that time. She was posted against a work charge post which is evident from the order dated 16.4.1993.

9. Learned counsel for the petitioners submits that the order dated 27.1.1993 was clarified by another order dated 19.3.1993 specifically providing that where due to restructuring the posts have been reduced and no new posts are available, in such cases the said posts as existing on 1.3.1993, are not to be filled by way of modified selection procedure (restructuring) and instead such posts could only be filled up on occurrence of any vacancy by the normal selection procedure i.e. through a selection test and interview.

10. He submits that in April, 1993 when respondent No. 1 joined admittedly there was no vacancy on the post of Draftsman; that due to restructuring in NCR, Allahabad in the year 1993, the sanctioned strength to the next higher post of Senior Draftsman was reduced from 8 to 6 posts and therefore, she was not entitled for being placed in higher scale in 1993; that in case she was not transferred to Allahabad, her claim for promotion could have been considered by the NER, Gorakhpur; that at that time 8 Senior Draftsman were working at NCR, Allahabad, hence due to reduction of posts and there being no vacancies on the said post, the said post of Senior Draftsman could not only be filled up by way of restructuring in view of the clarificatory order dated 18.3.1993. He contends that respondent No. 1 was transferred from NER, Gorakhpur to NCR, Allahabad on her consent being placed at the bottom of the seniority list on the cadre of Junior Draftsman.

11. After hearing learned counsel for the parties and on perusal of the record the following facts emerge.

(i) Respondent No. 1 was transferred from NER, Gorakhpur to NCR, Allahabad, which is distinct and separate division from NCR, Allahabad where she was placed at the bottom of the seniority list of Junior Draftsman;

(ii) She could not have been considered for promotion by the NER, Gorakhpur as he was transferred to another Division, Allahabad under NCR, Allahabad;

12. The claim of respondent No. 1 of promotion by way of cadre restructuring is therefore, misconceived as-

(a) Respondent No. 1 had given her consent to transfer to NCR, Allahabad on the post of Junior Draftsman at bottom of the seniority list and hence, since the date of joining at Allahabad i.e. on 12.4.1993 she did not remain in the cadre strength of NER, Gorakhpur;

(b) Any benefit of cadre restructuring to respondent No. 1 could only be given to her in case she was posted only in NER, Gorakhpur as-

(i) The post of Senior Draftsman having been reduced due to cadre re-

structuring at NCR, Allahabad hence, the same could only be filled up by a normal selection procedure;

(ii) There being no posts for promotion under cadre restructuring at NCR, Allahabad, respondent No. 1 could not be granted the said benefit at Allahabad; and

(iii) As the next higher post of Senior Draftsman could only be filled up by way of normal selection procedure and as respondent No. 1 had acquiesced to the said post of Senior Draftsman in 1995/1996 and having failed to qualify the same, was estopped from claiming promotion to the said post by way of restructuring.

13. It appears that respondent No. 1 could be benefited if there was any increase of the posts of Senior Draftsman and there is diminish of post. In the instant case, the post of Senior Draftsman was reduced from 8 to 6 under the aforesaid scheme. In view of the clarificatory order dated 18.3.1993 the post Senior Draftsman at NCR, Allahabad could not be filled up by way of cadre restructuring. Respondent No. 1 had acquiesced to the said position and had appeared in the selection test held for the post of Senior Draftsman at NCR, Allahabad in the year 1995-96 and had failed to qualify the said test in which the petitioners duly qualified and had been granted promotion. Even the Divisional Personal Officer, Northern Railway, Allahabad through his letter dated 9.4.1996, (copy of which already annexed as Annexure-12 to the writ petition) had reiterated the said stand that respondent No. 1 could only be granted cadre restructuring benefit in NER, Gorakhpur. Since vide order dated 24.6.1996 respondent No. 1 was given the benefit of cadre restructuring by NER, Gorakhpur when she did not even remain in the cadre strength of NER, Gorakhpur at that time i.e. 1996, hence, NCR, Allahabad could not have passed any order giving benefit of cadre restructuring to respondent No. 1 and that even cadre restructuring has not been done in the year 1996, respondent No. 1 could not have been granted promotion or pay fixation on the promoted post of NER, Gorakhpur in the years 1996-97 for being given effect to by the NCR, Allahabad.

14. In our considered opinion, the Central Administrative Tribunal has not considered the case of the petitioners in its right perspective by holding that respondent No. 1 was entitled for promotion by way of cadre restructuring at NCR, Allahabad. The order dated 19.1.1998 which was subsequently implemented in view of the orders dated 8.10.1998 and 7.12.1998 is also against respondent No. 1, hence she could not have been given the benefits as the same authority who had issued earlier order dated 19.1.1998 had clarified subsequently by letters dated 8.10.1998 and 7.12.1997 that respondent No. 1 was not entitled for promotion by way of cadre restructuring at NCR, Allahabad. For all the reasons stated above, the writ petition is allowed and the impugned order dated 17.3.2005 is quashed. The orders dated 24.6.1996, 19.1.1998 and 18.6.1998 are also quashed. No order as to costs.