

Roshan Lal Tandon

Vs

Union of India

Writ Petitions Nos. 154 and 203 of 1966

(CJI K. N. Wanchoo, R. S. Bachawat, V. Ramaswami- I , G. K. Mitter, K. S. Hedge JJ)

14.08.1967

JUDGMENT

RAMASWAMI, J.-

In this case the petitioner, Roshan Lal Tandon has obtained a rule from this Court calling upon the respondents to show cause why a writ in the nature of mandamus under Art. 32 of the Constitution of India should not be issued commanding the respondents not to carry out the directives contained in the notification of the Railway Board No. E(NG)65 PM1-26 dated the 27th October, 1965, Annexure 'D' to the Writ Petition, in so far as it grants protection to the existing Apprentice Train Examiners and lays down the procedure to fill upgraded vacancies. Cause has been shown by the respondents to whom notice of the rule was ordered to be given.

There were originally two scales for Train Examiners - Rs. 100 - 185 ('D' Grade) and Rs. 150 - 225 ('C' Grade). These scales were later revised as a result of the recommendations of the Second Pay commission and the scale of 'D' Grade was increased to Rs. 180 - 240 and that of 'C' Grade to Rs. 205 - 280. On February 18, 1961 the Railway Board issued a letter No. PC-60/PS5/TP-8, Annexure 'A' to the Writ Petition to the General Managers of all Indian Railways conveying its decision that vacancies in the Entry Grade of Train Examiners (in the scale Rs. 180 - 240) with effect from February 18, 1961 should be filled as follows :

- (i) 50% of the vacancies should be filled from Apprentice Train Examiners who successfully have completed the prescribed (4 years) apprenticeship, the remaining 50% of the vacancies being filled by promotion of skilled artisans.
- (ii) 20% of the annual requirements of Apprentice Train Examiners should be drawn from skilled artisans who are not more than 35 years old on 1st July of the year in which the apprenticeship is likely to commence."

Promotion to Grade 'C' of Train Examiners used to take place on the basis of seniority-cum-suitability without any distinction whether the employee entered Grade 'D' of the Train Examiners directly or was selected out of the category of skilled artisans. This rule was laid down by the Railway Board in its letter No. E(S) 1-57-TRS/41, dated January 25, 1958 which states :

"Ref : Para 2 of Board's letter No. E(R) 49-JAC/13 dated 23-2-50 lying down that 20% of the posts in the TXR grade Rs. 150 - 225 should be reserved and TXR in the grade of Rs. 80 - 160 (since revised Rs. 100 - 185) promoted from skilled and semi-skilled ranks. The Board have reviewed the position and have decided that promotion

to the TXR grade of Rs. 150 - 225 should hereafter be made solely on the basis of seniority-cum-suitability and the reservation of only 20% as mentioned above will no longer be operative."

(Annexure 'B' to the Writ Petition)

On the basis of this rule the Divisional Personnel Officer, New Delhi, prepared a seniority list for the Train Engineers of Grade 'D' of Delhi Division as on December 31, 1964 (Annexure 'C' to the Writ Petition). On October 27, 1965 the Railway Board issued the impugned notification (Annexure 'D' to the Writ Petition). The notification states in the first place that on and from April 1, 1966 vacancies in the Entry Grade of Train Examiners scale Rs. 120 - 240 should not be filled from Apprentice Train Examiners upto 50% as hitherto, but should exclusively be filled by promotion from amongst artisan staff. with regard to the next higher grade i.e. Grade 'C' it was provided that 80% vacancies would be filled by Apprentice Train Examiners who had successfully completed the prescribed training of 5 years (three years in case of Diploma Holders and three years in case of Artisan recruited as Apprentice Train Examiner). Twenty per cent. of the vacancies were to be filled by the Train Examiners from Grade 'D'. It was further provided that the Train Examiners Grade 'D' who began as Apprentice Train Examiners and who were to be absorbed in the 'C' Grade against 80% vacancies reserved for them should not be required to undergo selection before being absorbed in that grade. As regards 20% vacancies reserved for the other class of Train Examiners the promotion was to be on selection basis. The materials portion of the notification of the Railway Board dated October 27, 1965 is reproduced below :

"RECRUITMENT :

- (i) Vacancies in the entry grade of Train Examiners in the authorised scale Rs. 180 - 240 should not be filled from apprentice TX Rs. up to 50% as hitherto, but should exclusively be filled by promotion from amongst artisan staff.
- (ii) (a) Vacancies in the next higher grade Rs. 205 - 280 (AS) should be filled from amongst the TXRs. in grade Rs. 180 - 240 (AS) to the extent of 20%.
- (b) The remaining 80% vacancies should be filled by Apprentice TX Rs. who have successfully completed prescribed apprenticeship mentioned in para 2 below.
- (c) 25% of the annual requirements of apprentice TXRs. should be drawn from skilled artisans who are not more than 35 years old on 1st July of the year in which apprenticeship is likely to commence.

The instructions contained in Board's letter No. 29(NG)-61 MI/101 dated 6-6-62 should be kept in view.

Training

2. The Apprentice TXRs required on and from 1/4/66 shall be given a training for a period of five years (three years in the case of diploma holders). From the same date artisans in lower grades (recruited as apprentice TXRs.) shall be given 'in service' training for period of three years. Instructions regarding a revised syllabus for the training of the Apprentice TXRs. will follow :-

DISTRIBUTION OF POSTS IN DIFFERENT GRADE

Fifty per cent. of existing posts of TXRs in grade Rs. 180 - 240 which were required to be earmarked for (Apprentice TXRs. in terms of Board's letter No. PC-60/PS-6/TP-8 dated 18-2-1961 should be upgraded to scale Rs. 205 - 280.

REVISED DESIGNATIONS AND CLASSIFICATION OF POSTS OF TXRS.

#-----	Designation	Scale of Pay
ClassificationT. X. Rs. Grade 'D' 180 - 240 Non-selection	T. X. Rs. Grade 'C' 205 - 280 Selection for Promotees from grade 'D'	T. X. Rs. Grade 'B' 250 - 380 Selection
X. Rs. Grade 'A' 335 - 425 Non-selection	Head T. X. Rs. 370 - 475 Selection	Chief T. X. Rs. 450 - 575 Selection
Carriage Foreman-----		
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Protection to the existing apprentice TXRs. procedure to fill upgraded vacancies.

It has also been decided that with effect from 1-4-66 all the Apprentice TXRs. (Diploma holders as well as others) on successful completion of their training should be straightaway brought on to the scale Rs. 205 - 280 (AS) instead of being first absorbed in scale Rs. 180 - 6 - 240 as at present. Consequently they should be allowed stipend in scale Rs. 180 - 6 - 210 during the period of their training. As a regard the apprentice TXRs. who are undergoing training at present, and will not be brought on to the work working post before 1-4-66, it has been decided that from the date of this letter, they should be allowed stipend in scale Rs. 180 - 6 - 210 during the remaining period of their training. Their period of training should also be increased to 5 years, on completion of which they should be put on to the working posts in scale Rs. 205 - 280 (AS). the Apprentice TXRs. who have already been or will be absorbed in scale Rs. 180 - 240 upto 31-3-66 should first be accommodated in scale Rs. 205 - 280 against the quota of 80% vacancies reserved for them. Such staff should not be required to undergo a 'Selection' before being absorbed in that grade. The upgraded vacancies in scale Rs. 205 - 280 left over after earmarking those for the apprentices under training on 2-4-66 should be filled by promotion of TXRs. in scale Rs. 180 - 240 on a selection basis. While computing the number of posts available for promotion of TXRs. in scale Rs. 180 - 240 the vacancies likely to occur during the period of apprenticeship of the apprentices under training as on 1-4-66 should also be taken into account. In other words, it would be necessary to keep in reserve only the number of posts equal to the number of posts equal to the number of apprentices under training as 1-4-66, who cannot be absorbed in the anticipated Vacancies which will arise by the time they qualify."

The petitioner, Roshan Lal Tandon entered railway service on March 6, 1954 as skilled fitter on the Northern Railway. He was selected for the training for the post of Train Examiner Grade 'D' on June 5, 1958 and was confirmed in that grade on October 25, 1959. The case of the petitioner is that he alongwith the direct recruits formed one class in Entry grade 'D' and their condition of service was that seniority was to be reckoned from the date of appointment as Train Examiner in Grade 'D' and promotion to Grade 'C' was on the basis of seniority-cum-suitability test irrespective of the source of recruitment. It was alleged that there was no difference between the apprentices and those selected out of the skilled artisans when they entered Grade 'D' and that portion of the impugned notification which gave a favourable treatment to the direct recruits in Grade 'D' with regard to promotion to Grade 'C' was arbitrary and discriminatory and violated the guarantee under Arts. 14 and 16 of the Constitution. It was contended that the petitioner having been brought to grade 'D' by undergoing the necessary selection and training and having been integrated with the others who had been

brought in through direct recruitment in grade 'D' could not be differentiated for the purpose of promotion to the senior Grade 'C'. The petitioner has therefore moved this Court for the grant of a writ under Art. 32 of the Constitution to quash the notification of the Railway Board dated October 27, 1965.

In the counter-affidavit respondent No. 1 has denied that there was any violation of the guarantee under Arts. 14 and 16 of the Constitution. It was conceded that prior to April 1, 1966 promotion to the post of Grade 'C' Train Examiner was on the basis of seniority-cum-suitability but the impugned notification was issued by the first respondent because it was decided that the posts of senior Train Examiners in Grade 'C' should be filled by men possessing adequate technical knowledge and so the period of training of senior Train Examiners was increased and it was decided that in future 80 per cent. of the vacancies in 'C' grade should be filled directly by Apprentice Train Examiners and the remaining 20 per cent. was to be made available for recruitment from the category of Train Examiners to which the petitioner belonged. This recruitment of 20 per cent. vacancies was to be made on the basis of merit. It was said that the reorganisation of the Service was made with a view to obtain a better and more technically trained class of Train Examiners. The reason was that there were more complicated designs of Carriages and Wagons, acquisition of modern type of Rolling Stock and greater speed of trains under dieselisation and electrification programmes. It was considered that there should be a better calibre of technically trained and technically qualified personnel for proper maintenance and safety of the Rolling Stock. In view of the decision to recruit Apprentice Train Examiners directly in 'C' Grade with effect from April 1, 1966 those who were Apprentice Train Examiners in Grade 'D' before the date had to be upgraded in the scale of Rs. 205 - 280. It was therefore thought that these posts should be upgraded "so that there should be parity of treatment with the Apprentice Train Examiners who were to join after April 1, 1966". The first respondent has also controverted the allegation of the petitioner that the procedure outlined in the impugned notification dated October 27, 1965 in regard to the upgraded vacancies was discriminatory.

The main question to be considered in this case is whether the notification by the first respondent dated October 27, 1965 is violative of Arts. 14 and 16 of the Constitution in so far as it makes a discrimination against the petitioner for promotion to Grade 'C'. According to the impugned notification the existing Apprentice Train Examiners who had already been absorbed in grade 'D' by March 31, 1966 should first be accommodated in grade 'C' in 80% of the vacancies reserved for them without undergoing any selection. With regard to 20% of the vacancies there is a reservation in favour of the departmental Train Examiners, but the promotion is by selection and not by the test of seniority-cum-suitability which prevailed before the date of the impugned notification. It was not disputed by Mr. Mehta on behalf of the petitioner that the Railway Board was competent to say that with effect from April 1, 1966 vacancies in the Entry grade posts of Train Examiners should not be filled from Apprentice Train Engineers upto 50% but should exclusively be filled by promotion from amongst artisan staff. As regards the recruitment to grade 'C', the impugned notification states that with effect from April 1, 1966 all the Apprentice Train Examiners on successful completion of their training should be straightaway brought on to the scale Rs. 205 - 280 instead of being first absorbed in scale Rs. 180 - 6 - 240 as at present. The period of training was also increased to 5 years on completion of which they should be put on to the working posts in scale Rs. 205 - 280. So far as this portion of the notification is concerned. Counsel for the petitioner did not raise any constitutional objection. But the contention of the petitioner is that the following portion of the notification was constitutionally invalid :

"The Apprentice TXRs. who have already been or will be absorbed in scale Rs. 180 -

240 upto 31-3-66 should first be accommodated in scale Rs. 205 - 280 against the quota 80% vacancies reserved for them. Such staff should not be required to undergo a 'Selection' before being absorbed in that grade. The upgraded vacancies in scale Rs. 205 - 280 left over after earmarking those for the apprentices under training on 2-4-66 should be filled by promotion of TXRs. in scale Rs. 180 - 240 on a selection basis."

In our opinion, the constitutional objection taken by the petitioner to this part of the notification is well-founded and must be accepted as correct. At the time when the petitioner and the direct recruits were appointed to Grade 'D', there was one class in Grade 'D' formed of direct recruits and the promotees from the grade of artisans. The recruits from both the sources to Grade 'D' were integrated into one class and no, discrimination could thereafter be made in favour of recruits from one source as against the recruits from the other source in the matter of promotion to Grade 'C'. To put it differently, once the direct recruits and promotees are absorbed in one cadre, they from one class and they cannot be discriminated for the purpose of further promotion to the higher grade 'C'. In the present case, it is not disputed on behalf of the first respondent that before the impugned notification was issued there was only one rule of promotion for both the departmental promotees and the direct recruits and that rule was seniority-cum-suitability, and there was no rule of promotion separately made for application to the direct recruits. As a consequence of the impugned notification a discriminatory treatment is made in favour of the existing Apprentice Train Examiners who have already been absorbed in Grade 'D' by March 31, 1966, because the notification provides that this group of Apprentice Train Examiners should first be accommodated en bloc in grade 'C' upto 80 per cent. of vacancies reserved for them without undergoing any selection. As regards the 20 per cent. of the vacancies made available for the category of Train Examiners to which the petitioner belongs the basis of recruitment was selection on merit and the previous test of seniority-cum-suitability was abandoned. In our opinion, the present case falls within the principle of the recent decision of this Court in *Mervyn v. Collector* ([1963] 3 S.C.R. 600). In that case, the petitioners who were Appraisers in the Customs Department filed a writ petition under Art. 32, challenging the validity of the "rotational" system as applied in fixing the seniority of Appraisers and Principal Appraisers. The system, as laid down in the relevant departmental circulars was that vacancies occurring in the cadre of Appraisers were to go alternatively to 'promotees' and 'direct recruits'. According to the petitioners of that case this resulted in inequality, especially in view of the fact that the number of direct recruits over the years was very low. Promotion to the grade of Principal Appraisers was from the cadre of Appraisers; only those who had served as Appraisers for five years were entitled to be promoted to the higher grade. Since the direct recruits had to wait for five years before they could become Principal Appraiser the promotees below them who had put in five years as Appraisers became Principal Appraisers. In order to restore the seniority of the direct recruits thus lost, the rotational system was applied to the cadre of Principal Appraisers also i.e., one vacancy was to go to a promotee and the other to a direct recruit. The plea of inequality in violation of Art. 16(1) of the Constitution was raised by the petitioners in respect of this also. It was held by this Court, in the first place, that there was no inherent vice in the principle of fixing seniority by rotation in a case when a service is composed in fixed proportion of direct recruits and promotees. It was held in the second place that the same could not be said when the rotational system was applied to the recruitment of Principal Appraisers. The source of recruitment for these was one only, namely, the grade of Appraisers. There was no question of any quote being reserved from two sources in their case. In so far therefore as the Government was doing what it called restoration of seniority of direct recruits in Appraisers grade on their promotion to the higher grade it was clearly denying equality of opportunity under Art. 16 of the Constitution. At page 606 of the Report

Wanchoo, J., as he then was, speaking for the Court observed as follows :

"This brings up to the question of Principal Appraisers. We are of opinion that the petitioners have a legitimate grievance in this respect. The source of recruitment of Principal Appraisers is one, namely, from the grade of Appraisers. There is therefore no question of any quota being reserved from two sources in their cases. The rotational system cannot therefore apply when there is only one source of recruitment and not two sources of recruitment. In a case therefore where there is only one source of recruitment, the normal rule will apply, namely, that a person promoted to a higher grade gets his seniority in that grade according to the date of promotion subject always to his being found fit and being confirmed in the higher grade after the period of probation is over. In such a case it is continuous appointment in the higher grade which determines seniority for the source of recruitment is one. There is no question in such a case of reflecting in the higher grade the seniority of the grade from which promotion is made to the higher grade. In so far therefore as the respondent is doing what it calls restoration of seniority of direct recruits in Appraisers' grade when they are promoted to the Principal Appraisers' grade, it is clearly denying equality of opportunity to Appraisers which is the only source of recruitment to the Principal Appraisers' grade. There is only one source from which the Principal Appraisers are drawn, namely, Appraisers, the promotion being by selection and five years' experience as Appraiser is the minimum qualification. Subject to the above all Appraisers selected for the post of Principal Appraisers must be treated equally. That means they will rank in seniority from the date of their continuous acting in the Principal Appraisers' grade subject of course to the right of government to revert any of them who have not been found fit during the period of probation. But if they are found fit after the period of probation they rank in seniority from the date they have acted continuously as Principal Appraisers whether they are promotees or direct recruits. The present method by which the respondent puts a direct recruit from the grade of Appraiser, though he is promoted later, above a promotee who is promoted to the grade of Principal Appraiser on an earlier date clearly denies equality of opportunity where the grade of Principal Appraiser has only one source of recruitment, namely from the grade of Appraisers. In such a case the seniority in the grade of Principal Appraisers must be determined according to the date of continuous appointment in that grade irrespective of whether the person promoted to that grade from the Appraisers' grade is a direct recruit or a promotee. This will as we have already said be subject to the government's right to revert any one promoted as a Principal Appraiser if he is not found fit for the post during the period of probation. The petition therefore will have to be allowed with respect to the method by which seniority is fixed in the grade of Principal Appraisers. That method denies equality of opportunity of employment to the Appraisers who are the only source of recruitment to the grade of Principal Appraisers. What the impugned method seeks to do is to introduce a kind of reservation in respect of the two categories of Appraisers from which the promotions are made, and that cannot be done when the source of promotion is one."

We pass on to consider the next contention of the petitioner that there was contractual right as regards the condition of service applicable to the petitioner at the time he entered Grade 'D' and the condition of service could not be altered to his disadvantage afterwards by the notification issued by the Railway Board. It was said that the order of the Railway Board dated January 25, 1958.

Annexure 'B', laid down that promotion to Grade 'C' from Grade 'D' was to be based on seniority-cum-suitability and this condition of service was contractual and could not be altered thereafter to the prejudice of the petitioner. In our opinion, there is no warrant for this argument. It is true that the origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Government servant is more one of status than of contract. The hall-mark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. The emolument of the Government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee. It is true that Art. 311 imposes constitutional restrictions upon the power of removal granted to the President and the Governor under Art. 310. But it is obvious that the relationship between the Government and its servant is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of status. It is much more than a purely contractual relationship voluntarily entered into between the parties. The duties of status are fixed by the law and in the enforcement of these duties society has an interest. In the language of jurisprudence status is a condition of membership of a group of which powers and duties are exclusively determined by law and not by agreement between the parties concerned. The matter is clearly stated by Salmond and Williams on Contract as follow :

"So we may find both contractual and status-obligations produced by the same transaction. The one transaction may result in the creation not only of obligations defined by the parties and so pertaining to the sphere of contract but also and concurrently of obligations defined by the law itself, and so pertaining to the sphere of status. A contract of service between employer and employee, while for the most part pertaining exclusively to the sphere of contract, pertains also to that of status so far as the law itself has been fit to attach to this relation compulsory incidents, such as liability to pay compensation for accidents. The extent to which the law is content to leave matters within the domain of contract to be determined by the exercise of the autonomous authority of the parties themselves, or thinks fit to bring the matter within the sphere of status by authoritatively determining for itself the contents of the relationship, is a matter depending on considerations of public policy. In such contracts as those of service the tendency in modern times is to withdraw the matter more and more from the domain of contract into that of status."

(Salmond and Williams on Contracts. 2nd edition p. 12).

We are therefore of the opinion that the petitioner has no vested contractual right in regard to the terms of his service and that Counsel for the petitioner has been unable to make good his submission on this aspect of the case.

But for the reasons already expressed we hold that the impugned part of the notification violates the guarantee under Arts. 14 and 16 of the Constitution and a writ in the nature of mandamus should be issued commanding the first respondent not to give effect to the impugned part of the notification, viz., :

"The Apprentice T.X.Rs. who have already been or will be absorbed in scale Rs. 180 - 240 upto 31-3-66 should first be accommodated in scale Rs. 205 - 280 against the

quota of 80% vacancies reserved for them. Such staff should not be required to undergo a 'Selection' before being absorbed in that grade. The upgraded vacancies in scale Rs. 205 - 280 left over after earmarking those for the apprentices under training of 2-4-66 should be filled by promotion of T.X.Rs. in scale Rs. 180 - 240 on a selection basis. While computing the number of posts available for promotion of T.X.Rs. in scale Rs. 180 - 240 the vacancies likely to occur during the period of apprenticeship of the apprentices under training as on 1-4-66 should also be taken into account. In other words, it would be necessary to keep in reserve only the number of ports equal to the number of apprentices under training as on 1-4-66, who cannot be absorbed in the anticipated vacancies which will arise by the time they qualify."

The application is accordingly allowed, but there will be no order with regard to costs in this case.

Writ Petition No 203 of 1966

The material facts of this case are parallel to those in Writ Petition No. 154 of 1966 and for the reasons already given we hold that the petitioner is entitled to the grant of a writ in the nature of mandamus commanding the respondents not to give effect to the impugned part of the notification dated October 27, 1965, Annexure 'D' to the Writ Petition. The application is accordingly allowed, but there will be no order as to costs in this case.

Petitions allowed.

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