

Shiv Singh

Vs

Union of India and Others

Writ Petition No. 29 of 1970

(CJI S. M. Sikri, A. N. Ray, S. N. Dwivedi, D. G. Palekar, M. H. Beg JJ)

17.11.1971

JUDGMENT

DWIVEDI, J. –

It is a petition under Article 32 of the Constitution. The petitioner, Shiv Singh, challenges the order of the Divisional Engineer, Telegraphs East Division, Jullundur, the third respondent, dated July 7, 1969 and prays for his confirmation to the post of the Sub-Inspector in the scale of Rs. 105-155.

2. This case was first heard on September 20, 1972. The Court adjourned the further hearing of the petition and directed the respondents to file a further affidavit with respect to certain matters. The respondents have now filed an affidavit. The petitioner has filed an affidavit in reply and the respondents have also filed a rejoinder affidavit.

3. Facts of the case are now abundantly clear. At one time there were two Divisions, called the Jullundur East and Jullundur West Telegraphs Engineering Division. Jullundur East Telegraph Engineering Division will hereinafter be called as Jullundur East. The petitioner was employed as a Linesman in Jullundur East in 1954. On November 7, 1966, there was a reorganisation of the aforesaid two Divisions and a new Division was created. The new Division was called the Ferozepur Telegraph Engineering Division. On the eve of the aforesaid reorganisation and establishment of a new Division, Kamta Prasad and eleven other respondents were working as Linesmen within the area which became the newly created Ferozepur Telegraph Engineering Division. They opted for Jullundur East. But they could be posted in Jullundur East for want of vacancies.

4. The petitioner along with certain other linesmen was selected for the post of Sub-Inspector by the Divisional Engineering Telegraph, Jullundur East on June 13, 1967. He was appointed as Sub-Inspector with effect from June 16, 1967. A similar selection for the post of Sub-Inspector was, it appears, held in the Jullundur Telegraph Engineering Division. But Kamta Prasad and others were considered for promotion neither there nor in Jullundur East. The Circle Secretary, All India Telegraph Engineering Employees Union and Linesmen Staff and Class III Union, Jullundur Branch, complained to the Post Master General, Punjab Circle, by letter, dated May 28, 1968, that the Divisional Engineer, Telegraph, Jullundur East had not considered the 'optees' for appointment as Sub-Inspector. The Post Master General made an enquiry about the relevant facts on July 8, 1968. The enquiry revealed that the 'optees' for appointment as Sub-Inspector. The Post Master General made an enquiry about the relevant facts on July 8, 1968. The enquiry reveals that the 'optees' had not been considered in both Divisions. Consequently, on August 6, 1968, the Director of Telegraphs passed an order cancelling the selection of the petitioner and others. He further directed that the

aforesaid optees should also be considered for promotion to the post of Sub-Inspector. The order regarding cancellation of the selection was issued by the office of the Post Master General on August 20, 1968.

5. On September 19, 1968, there was a general strike in the Postal Department. The petitioner admittedly participated in the general strike. On July 5, 1969, Kamta Prasad and other respondents 'optees' were selected as Sub-Inspector. The petitioner and certain other persons who had participated in the strike were not selected. On July 7, 1969, the Divisional Engineer Telegraph, Jullundur East approved the aforesaid selection. Pursuant to this approval, the petitioner was sent back to his substantive post of linesman.

6. Two arguments have been advanced on behalf of the petitioner : One Kanta Prasad and other respondents 'optees' were not eligible for appointment as Sub-Inspector in Jullundur East; two, the petitioner had been reverted mala fide on account of his participation in the strike.

7. As regards the first argument, reliance is placed on the words "in the Division" in Rule 464 of the Posts and Telegraphs Manual, Volume IV. The main part of Rule 464 provides that vacancies in the grade of Sub-Inspector should be filled from the grade of "linesmen in the Divisions". The argument is that the respondents 'optees' were actually working in the Ferozepur Engineering Division at the time of the petitioners selection in May, 1967 and were accordingly not "Linesman in the Division", It appears to us that it is a too narrow interpretation of the phrase "in the Division". We think that the 'optees' who had opted for Jullundur East in 1966 and who, for no fault of their own, were working in the Ferozepur Division at the relevant time, would be deemed to be "linesmen in the Division" for the purpose of Rule 464. Indeed, there was in force a direction of the appropriate authority to that effect on the relevant date. According to it, the 'optees' should be repatriated in the Division of their choice as early as possible and whenever fresh vacancies occurred. It also provided that even though they were not working in the Division of their choice, they should be considered for promotion in that Division as and when vacancies occurred. It also provided that even though they were not working in the Division of their choice, they should be considered for promotion in that Division as and when vacancies occurred. As the respondents 'optees' were not considered at all for promotion to the post of Sub-Inspector in May, 1967, the selection of the petitioner and others was invalid. Accordingly it has been rightly cancelled. The petitioner can have no legitimate grievance.

8. Coming to the second argument, it may be pointed out at the outset that strikes in the Posts and Telegraphs Services were banned by an order of the Central Government under Section 3 of the Essential Services Maintenance Ordinance, 1968. In spite of that order, the petitioner and others struck work on September 19, 1968.

9. As regards the effect of participation in the strike on promotional prospects, there were several orders by different authorities. It is not necessary to mention every one of them. Notice may be taken of two orders. On June 16, 1969, the Director General, Posts and Telegraphs, issued an order to the effect that the employees who had participated in the strike would be considered for promotion provided they were not guilty of acts of violence, active instigation or intimidation and their work and conduct subsequent to September, 1968, had been found to be satisfactory. The petitioner seeks to rely on this order. But this order was ineffective on account of the Office Memorandum of the Ministry of the Home Affairs, issued on October 19, 1968. The office Memorandum provided that the adverse entry in the character roll of an employee who took part in the strike would be taken in to consideration for promotion on confirmation. All employees who

were on unauthorised absence on September 19, 1968, would suffer the consequences of strike for five years. Accordingly, the petitioner cannot rely on the order of the Director General. The Petitioners obviously became ineligible for promotion as Sub-Inspector on account of the Office Memorandum for a period of five year's. So he could not be considered for promotion as Sub-Inspector in July, 1969, when the respondents 'optees' and certain other persons were selected as Sub-Inspectors.

10. It is admitted by the Divisional Engineer Jullundur East that the petitioner was not considered for promotion as Sub-Inspector on account of the aforesaid directive of the Ministry of Home Affairs. The plea of the petitioners that he has been reverted mala fide on account of his participation in the strike is clearly untenable. There is no mala fide. The order cancelling his selection was passed one month before the strike. The Divisional Engineer was bound to follow the directive of the Ministry of Home Affairs and hold a fresh selection according to it.

11. There is no force in the petition and accordingly it is dismissed. Parties shall bear their own costs.

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