

Har Swarup

Vs

The General Manager, Central Railway and Others

Writ Petition No. 515 of 1972

(K. K. Mathew, N. L. Untwalia JJ)

29.10.1974

JUDGMENT

UNTWALIA J.

1. The sole petitioner in this petition under Article 32 of the Constitution of India has prayed for a Writ of Mandamus or any other appropriate directions to the General Manager, Central Railways, Bombay - respondent No. 1, to the General Manger, Western Railways - respondent No. 2 and the Union of India, Ministry of Railways, Railway Board, New Delhi - respondent No. 3 to place petitioner as an Executive Engineer above Shri C. S. Patankar - respondent No. 4 for the purposes of seniority, pay, grade, arrears of pay and further promotions to higher grade and posts and also for a Writ of Mandamus for placing the petitioner in the grade of Rs. 450-575 in the post of Inspector of Works from April 1, 1958 for all purposes. The petition has been resisted by respondent No. 1 on whose behalf a counter-affidavit has also been filed. The petitioner has filed an affidavit in reply.

2. As we proceed to state the facts of the case, it would be clear that this writ petition has got to fail on the ground of delay, laches of the petitioner, his claim being stale and barred by res judicata.

3. The petitioner was appointed in the year 1947 as Inspector of Works in the grade of Rs. 200-300 in the old BB & CI Railway on April 28, 1947 which subsequently became Western Railway. As he was appointed against a 'war reserve vacancy' he was confirmed in the same year. On April 1, 1948 the petitioner was promoted to officiate in the post in the grade of Rs. 260-350 and subsequently from October 1, 1948 he was promoted to officiate in the grade of Rs. 360-500. This last promotion was in a fortuitous vacancy and not by selection. The petitioner was reverted to a substantive grade of Rs. 200-300 in the post of Inspector of Works with effect from December 1, 1949. On June 17, 1952 the petitioner was selected for promotion to the post of Assistant Engineer, Class II and his name was placed for short-term vacancies as per letter dated May 17, 1952, Ext. 4. The first grievance of the petitioner in paragraph 7 of the writ petition is that two persons (not parties to this writ petition) had scored lesser number of marks than the petitioner but they were placed above him. No relied has, however, been claimed on that account.

4. The petitioner's case further is that on December 3, 1952 he was posted as Assistant Engineer by respondent No. 2 telegraphically. The order was confirmed by letter dated December 11, 1952 (Ext. 5). He was posted to officiate as Assistant Engineer, Udaipur in the pay scale of Rs. 350-900 in place of one Shri R. S. Jhaj. But the Regional Engineer, Ajmer wrote a D.O. letter dated December 10, 1952 (Ext. 6) to the Chief Engineer, Bombay, objecting to the petitioner's posting as Assistant Engineer at Udaipur. As a result of his interference, the petitioner's promotion was wrongly withheld. The action of the Regional Engineer was motivated. An enquiry had been started against

the petitioner in November, 1952 by respondent No. 2 for his alleged action of making false allegations against his superiors. The petitioner states that on the intervention of the then Minister of Railways, the enquiry against him was dropped but he did not get his promotion. Even though there had been selections for promotion to the post of Assistant Engineer in 1953-54 in the Western Railways, the petitioner was not called for selection as his conduct was said to be under enquiry. In 1955 there was a selection for the post of Assistant Engineer. The petitioner was called but was sent back on the ground that his conduct was under enquiry. On October 1, 1954 however the petitioner was promoted in the post of Inspector of Works in the grade of Rs. 260-350 but he did not get his promotion to the post of Assistant Engineer. In October, 1955 the services of the petitioner were transferred from Western Railways to Central Railways. In June, 1955 there was a selection for promotion to the post of Assistant Engineer in the Central Railways. In this selection respondent No. 4 and three more persons named in paragraph 13 of the writ petition were placed on the panel of Assistant Engineers for short-term or occasional vacancies. The petitioner claims that since he had been empanelled in 1952 for being posted in the short-term vacancy of Assistant Engineers he was senior to respondent No. 4 and others. In the Western Railways also many persons junior to him were promoted.

5. The petitioner was posted as Inspector of Works in the grade of Rs. 260-350 at Jabalpur when he joined his duty on October 9, 1955 in the Central Railways. He wanted to be posted as Assistant engineer in preference to respondent No. 1 did not consider his request at all. On or about January 2, 1956 there was a selection in Central Railways for promotion to the grades of Rs. 260-350, Rs. 300-400, and 360-500 in the posts of Inspector of Works. The petitioner was called to attend the selection for the three grades. He attended under protest since he had officiated in the higher grades in the Western Railways already. The petitioner was selected. His name was placed on the panel for all the three grades. On February 17, 1956 he was promoted to the grade of Rs. 300-400. Although his juniors got the grade of Rs. 360-500 he did not get it. In June, 1956, there were proceedings of the selection board to draw up the selected candidates for promotion to the posts of Assistant Engineers in the Central Railways. The petitioner was called at this selection. He attended under protest as he ought to have been promoted to the post of Assistant Engineer without subjecting him to the procedure of selection afresh. The petitioner's claim was by-passed. He was not posted either to work as Inspector of Works in the grade of Rs. 360-500 or in the post of Assistant Engineer. His juniors got the chances.

6. The petitioner's case further is that in or about July, 1956 he received a letter from the Chief Engineer, Central Railways asking him for details of his property. The petitioner submitted the details. He made representations for his promotion. He was told that since his conduct was under investigation he would not be promoted in view of rule 1707 S.R. 20. Finally, by a letter dated September 17, 1957, petitioner's name was removed from the panel of Inspector of Works grade Rs. 360-500. He challenged the action of the Railway authorities in the Bombay High Court by filing Writ Petition No. 3495 of 1957 which was decided on March 18, 1958. The impugned order dated September 17, 1957 was set aside. According to the petitioner, in complete disregard of the Bombay High Court's order, respondent No. 1 in or about April, 1958 held a fresh selection for Inspector of Works in the grade of Rs. 360-500 and asked the petitioner to take test. The petitioner did not attend the selection. Another enquiry was started against the petitioner and the petitioner was subjected to harassment. The Railway Establishment Code was amended providing that removal of name from the panel of a Railway employee would not amount to penalty. The petitioner was removed from the panel of Inspector of Works grade Rs. 360-500 but before that in the year 1958 the petitioner had filed Civil Suit No. 455 in the Court of Bhusawal claiming promotion to the post of Assistant Engineer. The suit was dismissed in the year 1960 inter alia on the ground of lack of jurisdiction.

7. The petitioner further states that the preferred an appeal to the Railway Board from the decision of the authorities concerned removing his name from the panel of Inspector of Works grade Rs. 360-500. The appeal was not forwarded by the first respondent in view of the amended rule of the Establishment Code. Thereupon the petitioner moved the Nagpur Bench of the High Court of Bombay in his Writ Petition No. 317 of 1960 praying that the order of the General Manager removing his name for the panel may be quashed and he may be restored in his lawful position in grade Rs. 360-500 in the post of Inspector of Works. The writ petition was partly allowed and the first respondent No. 1 was directed to forward the petitioner's appeal to the Railway Board. The Railway Board, However, rejected the petitioner's appeal on December 1, 1961. The petitioner thereupon filed Special C.A. No. 19 of 1962 before the Nagpur Bench of the Bombay High Court for getting relied against the removal of his name from the panel of the higher grade of Inspector of Works. The petition was dismissed as withdrawn on the ground of jurisdiction.

8. The petitioner's grievance further is that during the period 1952 to 1969 several false and malicious charge-sheets were framed against him. The departmental enquiries were abnormally delayed and in all the departmental proceedings the petitioner was completely exonerated. A list of some of the charge-sheets has been given in paragraph 25 of the writ petition.

9. After the dismissal of Special C.A. No. 19 of 1962 at Nagpur on the ground of want of jurisdiction the petitioner moved the Delhi Bench of the Punjab High Court in C.W.P. No. 629-D of 1962 seeking relief against the removal of his name from the panel and for his pay, seniority and further promotion. This petition was dismissed by the Delhi Bench of the Punjab High Court on February 25, 1964 after final hearing. The petitioner's grievance is that he was discriminated and did not get justice at the hands of the authorities concerned during all these years. He had some tussle with some Railway officials in the year 1963. In the year 1963 the petitioner did not apply for selection for the promotion to the post of Assistant Engineer and was not considered. On May 4, 1967 a letter (Ext. 8) was written to the petitioner from the Central Railway Headquarters that after finalizing the charge-sheets which were pending against him his case was being referred to the Railway Board for selection to the post of Assistant Engineer. But nothing was done.

10. By writing a letter (Ext. 9) on September 4, 1968 the petitioner again pressed his claim for promotion. In July, 1968 he was obliged to move the Bombay High Court in Special C.A. No. 1953 of 1963 to quash the proceedings initiated against him by Memo dated August 30, 1963 and to allow promotion as Assistant Engineer and in the highest grade of Rs. 450-575 in the post of Inspector of Works. When the said petition was pending in the Bombay High Court the Divisional Officer again charge-sheeted the petitioner. He was placed under suspension also. Thereupon the petitioner filed another Special C.A. No. 2268 of 1968 praying to quash the order of enquiry and to place him in the post of Assistant Engineer for all purposes of his pay, seniority etc. and in the grade of Rs. 450-575 as Inspector of Works. By its judgment and order dated June 17, 1969 (Ext. 3) the Bombay High Court directed the Railway authorities to consider the petitioner for promotion to the post of Assistant Engineer, Class II in accordance with the order dated October 26, 1965 and if found suitable to interpolate his name in the panel above his juniors. The petitioner's grievance is that in the affidavit filed in the Bombay High Court several wrong and false information was given on behalf of the Railway authorities. As a result of the judgment of the Bombay High Court the petitioner was required to undergo fresh test and interview. He, therefore, moved that court for grant of a certificate to appeal to this Court. The prayer was refused. Other charges were framed against the petitioner in the year 1969 when he was preparing to move to this Court for special leave to appeal against the judgment of the Bombay High Court. Some proceedings for contempt were filed against the Railway authorities and the petitioner also filed Special C.A. No. 2056 of 1969 to quash

the order of enquiry dated September 9, 1969 and to place the petitioner as Asstt. Engineer for all purposes and to get his pay, seniority, etc. in the highest grade of the post of Inspector of Works. The petitioner's grievance is that several false statements and affidavits were made on behalf of the Railway authorities in the Special C.A. No. 2056 of 1969 also. Eventually the charge-sheet was withdrawn, apology was tendered in the contempt proceedings and the judgment in Special C.A. No. 2056 of 1969 was also given on December 16, 1969 (Ext. 2). Assurance was given to the High Court that the petitioner would be considered for promotion as Inspector of Works grade Rs. 450-575 and for the post of Asstt. Engineer in accordance with the scheme laid down by the Board as per as their letter dated October 26, 1965 as amended by letter dated May 25, 1967 within a period of one month and if found suitable he would be placed in the appropriate panel. Since the petitioner did not get relief, he again moved the Bombay High Court in Special C.A. No. 182 of 1971 praying to direct the Railway administration to place him as Asstt. Engineer above respondent No. 4 in the panel and promote him in the year 1955 for all purposes of seniority, fixation of pay, arrears of pay, pension and to give him further promotions as if the enquiry against the petitioner was never initiated. It may be noticed here that the prayer made in the present Writ application is exactly in the terms of the prayer made in the Bombay High Court in Special C.A. No. 182 of 1971. This writ petition was dismissed on November 29, 1971. A copy of the judgment is Ext. 1. The petitioner wanted a certificate from that court to appeal to this Court. It was refused. He came to this Court for special leave but the special leave application was dismissed as withdrawn. Thereafter the petitioner has filed this writ application for the same reliefs. He argued his case in person.

11. In the counter-affidavit filed on behalf of the first respondent many facts have been admitted and many denied. It is not necessary to refer to all of them, only the salient one will be stated in this judgment.

12. The petitioner's allegation that he was not allowed to join the post of Assistant Engineer at Udaipur because of the letter dated December 10, 1952 of the Regional Engineer is denied. It is asserted that the petitioner's promotion in the short-term vacancy could not be given effect to since there was cancellation of the posting on transfer of Shri Jhaj as another Assistant Engineer became available for posting as Asstt. Track Supply Officer in the newly created post. The orders for the petitioner's promotion in the post of Inspector of Works in the grade of Rs. 260-350 were issued on October 24, 1954 but they were issued as a stop-gap arrangement and not as a result of any selection by a duly constituted Selection Board. The services of the petitioner were transferred from Western Railway to Central Railways in October, 1955.

13. The fact that there was selection for promotion to the post of Asstt. Engineer in the Central Railways in June, 1955 is admitted. It is also admitted that the selection was for short-term vacancies. But it is asserted that such a panel loses its force on expiry of two years According to Rule 217 of the Railway Establishment Manual any Railway employee who was put on the panel but could not be promoted due to any reason will have to appear before a new Selection Board if a fresh chance becomes available after two years. This was the view expressed by the Bombay High Court in its judgment delivered in the petitioner's case namely Special Civil Application. The petitioner's claim therefore that after his selection in 1952 he should be deemed to have been selected for ever is not correct. The selection of Shri Gurdas Ram and others and placing them on the regular panel with effect from October 10, 1955 was legal and valid. Although the petitioner was selected in all three grades of the post of Inspector of Works in the year 1956, he could not be placed in the highest grade of Rs. 360-500 since there was no vacancy at that time. The allegations of the petitioner regarding starting of departmental proceedings in an unjustifiable and illegal manner are denied. In the matter of selection also there was no discrimination between the petitioner

and respondent No. 4 or with anybody at any time or on the year 1963. Eventually the petitioner was called for selection in the year 1970 and was placed on the panel for the post of Inspector of Works grade Rs. 450-575. In the year 1970 the petitioner was also considered for the post of Asstt. Engineer, but he was not found suitable for the same.

14. It is admitted that the petitioner's Writ Petition No. 2056 of 1969 related to his request for promotion as Inspector of Works grade Rs. 450-575 and as Asstt. Engineer and for the dropping of the proceeding initiated in the review by the General Manager. Counter-affidavits were filed in this case, but the facts mentioned were not false. In pursuance of the judgment of the Bombay High Court, the petitioner was called for supplementary selection for the post of Inspector of Works grade Rs. 450-575. He was found suitable and his name was interpolated in the panel of 1964. The petitioner was also called for selection for the post of Asstt. Engineer, Class II but was not found suitable for being put on the panel for promotion to Class II service. It is asserted that the petitioner moved the Bombay High Court for certificate to appeal to this Court from its judgment in Special Leave Application No. 182 of 1971. By the said judgment (Ext. 1) the High Court had held that the petitioner was given chances to appear for supplementary selections in the years 1966 and 1969 and since he failed to appear in both the chances the Court found no justification for making any directions and to give one more chance to petitioner for supplementary panel. The petitioner's prayer for a certificate to appeal to the Supreme Court was rejected and his special leave application was withdrawn not because there was any new point in the petition but because there was no merit in the case. The various grounds taken by the petitioner in his writ application to challenge the various orders and actions of the Railway authorities have been controverted in the counter-affidavit.

15. From the facts stated above it will be seen that the petitioner has made out no case to enable him to get any relief from this Court. The claims made by him are all stale. This Court cannot examine them after the delay of about a decade or two. Off and on the petitioner has been ventilating his grievances and sometimes with success too. Whatever relief he got from the Bombay High Court in its judgment (Ext. 2) in Special C.A. No. 2056 of 1969 was given effect to. Nothing further can be directed to be done by this Court. The judgment of the Bombay High Court (Ext. 1) in Special C.A. No. 182 of 1971 operates as res judicata and disentitles the petitioner from claiming any further relief from this Court.

16. It would appear from Ext. 1 that the relief claimed by the petitioner in Special C.A. No. 182 of 1971 were exactly the same as in the present case. The grounds covered were also identical. The High Court held that the petitioner was not entitled to any relief and dismissed his writ application. He failed in getting a chance to appeal to this Court from the judgment of the Bombay High Court. In such a situation it has got to be held that the petitioner's claim is barred by the principles of res judicata vide *Daryao v. State of U. P.* ((1962) 1 SCR 574 : AIR 1961 SC 1457) and *Virudhunagar Steel Rolling Mills Limited v. Government of Madras* ((1968) 2 SCR 740 : AIR 1968 SC 1196).

17. In the result the writ application fails and is dismissed. But in the circumstances and specially in view of the fact that the petitioner must have retired by now, we shall make no order as to costs.

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