

Haribans Misra and Others

Vs

Railway Board and Others

Civil Appeal No. 1643 of 1984

(M. M. Dutt, S. Natarajan JJ)

11.01.1989

JUDGMENT

DUTT, J. –

1. This appeal by special leave is directed against the judgment of the Allahabad High Court dismissing the writ petition of the appellants whereby they challenged inter alia validity of Rule 328(2) of the Railway Establishment Code as amended by the Railway Board by Advance Correction Slip No. 70.
2. The appellants were appointed Trade Apprentices in Locomotive Component Works (for short 'LCW') in or about January 1959. There was a merger of LCW with Diesel Locomotive Works, Varansi, (for short 'DLW') on August 1, 1961, as a result of which, all the members of the staff of LCW were taken over by the DLW. On July 19, 1962, the appellants were appointed Skilled Artisans after successfully completing a training for three years and a half. The regular channel of promotion of higher posts from the post of Skilled Artisans is in the following order :

1. Skilled Artisan 2. Highly Skilled Grade II 3. Highly Skilled Grade I 4.
Chargeman C. 5. Chargeman B. 6. Chargeman A. 7. Assistant Foreman 8.
Foreman.##
3. It is apparent from the above channel of the promotion that the next higher post to which the appellant could be promoted was the post of Highly Skilled Grade II. In September 1963, the appellants were, however, promoted to the post of Instructor C which is equivalent to the post of Chargeman C. There is a controversy between parties as to whether the post of Instructor C was ex cadre post or not. According to the appellants, it was an interchangeable post with Chargeman C. We shall have occasion to consider the question later in this judgment. It may be stated, however, that there is no dispute that the post of Instructor C is a selection post and the appellants were selected and promoted to the existing vacancies in that post. The next post to which the appellants were promoted on September 22, 1964 is the post of Chargeman B upon their selection by a constituted Selection Board on regular basis. Some of the respondents, who are direct recruits, also competed with the appellants for the post of Chargeman B, but they could not qualify themselves in the written test. To complete the narrative, it may be stated that the appellants have now been promoted to the post of Chargeman A.
4. On August 11, 1966, the General Manager of DLW prepared certain seniority list including a seniority list of Chargeman B on the basis of rules or guidelines framed by him. The said seniority list was challenged by certain direct recruits by filing writ petitions before a Single Judge of the

Allahabad High Court. The learned Single Judge quashed the seniority list and also the guidelines or rules framed by the General Manager, DLW, on the basis of which the seniority list was prepared. The principal ground on which the seniority list and the rules or guidelines framed by the General Manager, DLW, were quashed by the learned Single Judge was that the General Manager, DLW, was not the General Manager of the Railway and, as such, he had no authority to frame rules or guidelines for the purpose of preparation of seniority list. Further, the learned Judge held that the said rules or guidelines dated August 11, 1966 were violative of Articles 14 and 16 of the Constitution of India.

5. Several appeals were preferred against the judgment of the learned Single Judge including preferred by the Railway Administration before the Division Bench of the High Court. While upholding the finding of the learned Single Judge that the General Manager, DLW, was not competent to frame rules or guidelines, the Division Bench could not agree with the finding of the finding of the learned Single Judge that the said rules or guidelines were violation of Articles 14 and 16 of the Constitution. It was observed that there would have been no objection if the General Manager, DLW, had utilised the relevant statutory rules in drawing up the seniority list but, admittedly, the rules in question were ignored. Further, the Division Bench pointed out that all the concerned employees in the writ petition agreed before the learned Single Judge that the seniority list might be prepared on the basis of the relevant rules contained in the Railway Establishment Code and the Railway Establishment Manual. The Division Bench also found that the DLW project was not a temporary project, but appeared to be a permanent project. Upon the above findings, the Division Bench upheld the quashing of the seniority list and directed the General Manager, DLW, to prepare a fresh seniority list in the light of the statutory provisions contained in the Railway Establishment Code and the Railway Establishment Manual.

6. After the aforesaid judgment of the Division Bench of the High Court, what the Railway Board did before preparation of seniority list by the General Manager, DLW, was to issue Advance Correction Slip No. 70 inserting Rules 324 to 328 in the Railway Establishment Manual after rule 323 in chapter III. Of the rules, so inserted, that which vitally affected the appellants in Rule 328(2) which provides as follows :

328(2) Selection and promotion made in Diesel Locomotive Works from August 1, 1961 up to the date of notification of these rules shall not be valid.

7. The rules were amended by the Board by virtue of its power under Rule 157 which provides that the Railway Board has full powers to make rules of general application to non-gazetted railway servants under their control. The date of notification of the amended Rules is March 11, 1973. In view of Rule 328(2), the promotions which were granted to the appellants from August 1, 1961 up to March 11, 1973, shall not be valid. Needless to say, Rule 328(2) has vitally affected the appellants by making invalid all the promotions given to them in the said period. As a result, the appellants were reverted back to the position of Skilled Artisans.

8. The General Manager, DLW, by his circular dated December 7/8, 1973 directed the appellants to appear at the trade test. It was further directed that if the staff concerned would fail to appear in the trade test, that would be passed over for fixation of seniority in the Highly Skilled Grade II, although the appellants had in 1962 crossed the position of Highly Skilled Grade II. The appellants made a representation against the said circular to the General Manager, DLW, on December 12, 1973. That representation was turned down the General Manager on the ground that in view of the said Rule 328(2), the claim for either higher positions or exemption from passing any trade test was

not tenable. It was also stated that if the appellants would fail to appear in the trade test, they would be passed over for fixation of seniority in the Highly Skilled Grade II.

9. Being aggrieved by the introduction of the said Rule 328(2) directly affecting the appellants and also the said circular of the General Manager, DLW, requiring the appellants to appear at the trade test for the purpose of preparation of the seniority list in Highly Skilled Grade II, the appellants filed a writ petition before the High Court. The High Court overruled the contention of the appellants that the new rules, which have been inserted in the Railway Establishment Manual including Rule 328(2) by the Advance Correction Slip No. 70 by the Railway Board by virtue of its power under Rule 157 of the Railway Establishment Code, were invalid. The High Court held that the said rules were quite valid and were not arbitrary or discriminatory as contended on behalf of the appellants. In regard to the promotions of the appellants, the High Court took the view that they only interim and provisional and not regular promotions under the normal rules, and that such provisional selections and promotions conferred no right on the appellants to hold the posts to which they were promoted. Upon the above findings, the High Court dismissed the writ petition. Hence this appeal by special leave.

10. Mr. Sanghi, learned counsel appearing on behalf of the appellants, has challenged before us the validity of Rule 328(2) as inserted in the Railway Establishment Manual by the Advance Correction Slip No. 70. It has been already noticed that in view of the said rules, the promotions of the appellants up to the position of Chargeman A stand set aside and the appellants are reverted back to their original position of Skilled Artisan. In other words, the length of service of the appellants for a period of about nine years has been completely wiped out by Rule 328(2).

11. The High Court took the view that the promotions which were granted to the appellants were by way of interim measure and did not confer on them any title to the posts to which they were promoted. In support of that view, the High Court has referred to the order of the General Manager, DLW, dated May 14/16, 1962 which reads as follows :

As an interim measure, all supervisory technical posts in the Mechanical Department will be treated as ex cadre posts and promotions will be regulated by selection.

12. Before considering the question of the validity of Rule 382(2), we may first of all examine whether the promotions of the appellants up to the post of Chargeman B were by way of interim measures, as found by the High Court, and/or whether such promotions are permissible by rule or not. In this connection, we may refer to the circular of the Railway Board dated May 27, 1963 regarding the procedure to be followed for filling up the selection posts (non-gazetted). The Board directed that if the requisite number of staff was not available in the grade next to the grade for which selection was being held, the administration could go the lower grade in order to make up the four times the number required to be called up for selection but, in no case, can the eligibility be extended to staff in the grade lower than three times. This circular of the Board is quite consistent with Rule 216 of the Railway Establishment Manual. Rule 216 also provides for similar procedure. The direction of the Board read with the provision of Rule 216 clearly empowers the administration to select the persons from two grades lower than the post to which promotion was to be made.

13. The next circular dated November 2, 1963 of the General Manager, DLW, regarding the formation of the panel for promotion of mechanical supervisors and instructors is significant. The said circular clearly provided that all staff in Mechanical Department including instructoral staff under the Principal Technical Training School in two grades below the grade for which selection

was going to be held, were eligible. The Skilled Artisans having not less than one year's service were permitted to apply for the post of the Instructor in the grade of Rs. 205-280 (AS) which is equivalent to the post of Chargeman C. In the channel of promotion, which has already been noticed above, the feeder post for promotion to the post of Chargeman C is Highly Skilled Grade I but, in view of the said circular dated May 27, 1963 of the Board read with Rule 216 of the Railway Establishment Manual, persons holding posts two grades below the post to which the promotion was to be made, that is, the post of Instructor which is equivalent to the post of Chargeman C, were allowed to apply for the same. The reason for the said circular or said rule is that at all times suitable candidates might not be available and just to avoid administrative inconvenience, the promotions are given from posts below the feeder post. The said circular of the General Manager, DLW, dated November 2, 1963 does not show that the promotions to the posts of selection and/or promotion to the post of Instructors would be by way of interim measure or ad hoc arrangement. In the absence of any such indication, it will not be unreasonable to presume that such promotions were anything other than by way of interim measure or ad hoc arrangement, as contended on behalf of the respondent. In view of the said circular dated November 2, 1963, the appellants applied for the post of Instructors and they were selected after the requisite tests. In the office order No. 3421 dated December 30, 1963, appointing the appellants to the post of Instructor (Machinist Grade C), it is clearly stated that they are appointed to the post of Instructor (Machinist Grade C) against existing vacancies.

14. Again, a similar circular dated July 18, 1964 was issued from the office of the General Manager, DLW, with regard to the filling up of the posts of Chargeman B in the scale of Rs. 250-380 (AS). It was clearly stated in the circular that the staff in Mechanical Department in two grades below the grades for which the selections would be held, were eligible to apply. The appellants applied for the post and had to appear at the written and viva voce examinations along with the appellants but they failed, while the appellants succeeded and were empanelled for appointment to the post of Chargeman (Machinist Grade B). In view of such an empanelment, the appellants were appointed Chargeman B in the grade of Rs. 250-380 against existing vacancies sometime in February 1965.

15. We may now refer to a very significant document which is office order No. 25 dated January 22, 1966. In that order, it is stated that the staff mentioned therein will have their paper lien maintained in the Shops/Division as mentioned against each and will seek their promotions in their respective Division/Shops. In the list annexed to the said order, the present designation of the first appellant has been mentioned as "Instructor B" and his revised position or designation as "Chargeman B". In the last column under the heading "place where the lien is kept", it is stated that his lien is kept under the Production Engineer (PE). The present and revised designation of the appellants 2 and 3 have been shown as Chargeman B. The place of lien of appellant 2 has been stated to be under the Production Engineer while that of the third appellant has been stated to be under the Works Manager (B). It is urged on behalf of the respondent that the said office order No. 25 does not show that the appellants have any lien on the posts of Chargeman B. It only mentions that they have lien on certain places. We are unable to accept this contention. A person may have lien on a post and not a lien on a place. And all that the said order means is that they have the lien on the post of Chargeman B, but in certain places under either Production Engineer or the Works Manager. There can be no doubt that a person appointed to a post on an ad hoc basis cannot have any lien on the post. It is only when a person is appointed on a permanent basis, he can claim lien on the post to which he is so appointed. It is, therefore, not correct to say that the appellants were appointed or promoted to the post of Instructor C or Chargeman C on an ad hoc basis or by way of an interim measure, as held by the High Court in the impugned judgment. If they were appointed on an ad hoc or purely temporary basis, they could not have been promoted to the post of Chargeman B and the said order

No. 25 dated January 22, 1966 would have been quite inconsistent with such ad hoc or temporary appointments.

16. At this stage, it will be pertinent to refer to the counter-affidavit of the Railway Administration in the previous writ proceedings. In paragraph 15 of the counter-affidavit, it has been stated inter alia that the post of Junior Instructor carries the same scale of pay as Chargeman C and that the two posts being of the same rank and scale, staff of the one post could be transferred to the other posts and vice versa. This statement in the counter-affidavit of the Railway Administration clearly indicates that the post of Instructor C and Chargeman C are interchangeable posts. Further, it is stated as follows :

Respondents 8 to 11 (which include the three appellants herein) in the first instance offered for the post of Instructors in grade Rs. 205-280 (equivalent to Chargeman C grade) and they were selected by duly constituted Selection Board. Subsequently they offered for the post of Chargeman B grade Rs. 250-380 (AS) and were promoted as such after having been selected by a Selection Committee. Respondents 8 to 11 were appointed to grade Rs. 205-280 and subsequently to grade Rs. 250-380 after having been selected by a duly constituted Selection Board

17. In the circumstances, we are of the view that the appellants were not appointed on an ad hoc or a purely temporary basis by way of interim measure as held by the High Court, but they were appointed on a permanent basis in the post of Instructor or Chargeman Grade C, which are interchangeable posts and thereafter, promoted to the post of Chargeman B. The appointment or promotion of the appellants to the post of Chargeman C from the post of Skilled Artisans or to Chargeman B were made in accordance with the circular of the Railway Board and/or in accordance with Rule 216 of the Railway Establishment Manual. It cannot, therefore, be said that the appellants were promoted to the post of Chargeman C illegally or in violation of any rule. There is a controversy between parties whether the post of Instructor C is an ex cadre post or not. It is submitted on behalf of the respondents that the post of Instructor C being an ex cadre post, the appellants could not be appointed or promoted to the post of Chargeman C. This contention is unsound and is fit to be rejected. It is the clear case of the Railway Administration, as pointed out above, that the posts of Instructor C and Chargeman C are interchangeable posts. Even assuming that the post of Instructor C is an ex cadre post, nothing turns out on that inasmuch as according to the Railway Administration itself, the two posts of being of the same rank and scale, the staff of one post could be transferred to the other post and vice versa. The appellants might have been appointed to the post of Instructor C, but they were transferred to the post of Chargeman C and therefore, there was no difficulty in promoting them to the post of Chargeman B.

18. Now, we may consider the question as to the propriety or otherwise of Rule 328(2) as inserted in the Railway Establishment Manual by the Railway Board in exercise of its power under Rule 157 of the Railway Establishment Code. It has already been noticed that in the previous writ proceedings the Division Bench of the High Court quashed the seniority list and directed the Director General, DLW, to prepare a fresh seniority list in the light of statutory provisions contained in the Railway Establishment Code and Railway Establishment Manual. The principal ground for quashing the seniority list was that the General Manager, DLW, had no authority to frame guidelines or rules for the purpose of preparing the seniority list. It has also been noticed that while the learned Single Judge took the view that the guidelines or rules framed by the General Manager were violative of Articles 14 and 16 of the Constitution, the Division Bench took the contrary view and after considering the rules or guidelines in detail came to the finding that none of the guidelines or rules

framed by the General Manager was contrary to the provisions of Articles 14 and 16 of the Constitution. Indeed, the Division Bench was of the view that no objection could be taken to the said rules or guidelines, but it had to quash the seniority list framed on the basis of such guidelines or rules inasmuch as the General Manager had no authority to frame such rules or guidelines. Accordingly, the Division Bench directed the General Manager to prepare the seniority list in accordance with the existing statutory rules.

19. It is curious that instead of preparing the seniority list in accordance with the existing statutory rules, as directed by the High Court, the Railway Board amended the rules and inserted by the Advance Correction Slip No. 70, among others, Rule 328(2) which has been extracted above. That rule not only wipes out the promotions granted to the appellants up to the post of Chargeman Grade B, but also the length of service of the appellants for about nine years. The appellants have been directed by the order dated December 7/8, 1973 of the General Manager to appeal in a trade test in respect of the post of Highly skilled Artisans Grade II, otherwise their seniority in the said post will be passed over. In other words, the appellants are in a way reverted to the post of Skilled Artisan which they were holding before their promotion to the post of Instructor/Chargeman C. No reason appears to have been given for the introduction of Rule 328(2) by the Advanced Correction Slip No. 70. It was not the case of Railway Administration in the previous writ proceedings that the promotions that were given to the appellants were purely on an ad hoc basis. The High Court in the previous writ proceedings did not find that the appellants' promotion to the post of Instructor/Chargeman C or to the post of Chargeman B were on an ad hoc basis. We have, after considering the relevant facts, come to the finding that the appellants were regularly promoted to the post of Chargeman C and thereafter, Chargeman B. In the circumstances, we do not find any justification for the Railway Board to incorporate a new rule, that is, Rule 328(2) to the serious prejudice of the appellants.

20. The Railway Administration was to comply with the order of the High Court and in compliance with that order, it should have prepared the seniority lists in accordance with the existing rules. It is not the case of Railway Administration that under the existing rules the seniority list could not be prepared. There is, therefore, no reasonable justification for the Railway Board to insert in the Railway Establishment Manual Rule 328(2). There can be no doubt that by virtue of Rule 157 of the Railway Establishment Code, the Railway Board has the power to frame rules, but such rules must be framed with certain objects in view and must not be arbitrary. The court is always entitled to examine whether a particular rule which takes away the vested right of a railway employee or seriously affects him with retrospective effect, has been made to meet the exigencies of circumstances or has been made arbitrarily without any real objective behind it. In the instant case, we do not find any objective or purpose behind the framing of Rule 328(2) to the serious prejudice of the appellants. In other words, Rule 328(2) is arbitrary and, therefore, cannot be allowed to be operative to the detriment of the appellants. The only justification for Rule 328(2) as advanced by the learned counsel for the respondents is that the appellants were promoted on ad hoc basis to the posts of Chargeman C and Chargeman B, they had no right to hold these posts and, accordingly, they were to be reverted to the post of Skilled Artisan. This contention of the respondents does not find support from the counter-affidavit filed by the Railway Administration in the previous writ petition nor does it appear from any order or circular of the Railway Board or the Railway Administration in support of the same. Moreover, we have on a conspectus of the facts and circumstances and the circulars of the Railway Administration come to the finding that the appellants were not promoted on an ad hoc basis.

21. For the reasons aforesaid, the appeal is allowed and the judgment of the High Court is set aside.

It is directed that respondents 1 and 2 shall not give effect to Rule 328(2) as inserted in the Railway Establishment Manual by the Advance Correction Slip No. 70 in the cases of appellants and respondents 3 to 6. The impugned orders dated December 7/8, 1973 and January 7, 1974 are quashed. Respondents 1 and 2 are further directed to fix the seniority of the appellants and the said respondents 3 to 6 on the basis of their promotions to the posts of Instructor/Chargeman C and Chargeman B.

22. There will be no order as to costs.

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