

S.B.Sarkar and others

Vs

Union of India and others

Civil Appeal No. 2054 of 1990

(Ranganath Misra, R.M. Sahai JJ)

30.04.1990

JUDGMENT

R.M.SAHAI J

1. Special leave granted.

2. Station Masters of South Eastern Railway are aggrieved by implementation of the scheme of restructuring by the Chief Personnel Officer framed by the Railway Board for 'C' and 'D' cadre. Their claim was not accepted by the Central Administrative Tribunal, as implementation as such was beneficial to the majority. It was further found that alternative 'I' of the scheme meant for the combined cadre was rightly adopted as the cadre of Assistant Station Master (ASM) and Station Master (SM) in the South Eastern Zone was combined before 1983. The appellants have challenged correctness of these findings. They also claim that implementation of scheme is highly unjust and inequitable.

3. Prior to restructuring the cadre comprised of Assistant Station Masters at the bottom and Station Superintendent at the top. Initial appointment of ASM was made in the scale of Rs.360-540. The promotional ladder bifurcated into (i) ASM to ASM and (ii) ASM to SM, both in the scale of Rs. 425-640 (non-selection) and then Rs. 455-700 (selection) before becoming one common source for promotion to Deputy Station Superintendent/ SM Rs. 550-750 (non-selection), Rs. 700-800 Station Superintendent (selection) and Rs. 840-1010 Station Superintendent (non-selection). For moving up the promotional ladder every ASM was required to opt if he would proceed on the channel of ASM to ASM or ASM to SM. Restructuring was done in 'C' and 'D' cadres in the scales, designation and percentage in selection and non-selection posts. Two alternatives were framed described as alternative 'I' for the combined cadre and alternative 'II' for the separate cadres. They were to be adopted by the respective zones depending on the cadre pattern prevalent there.

4. One of the principles visualised for group 'C' was that if all posts in an existing grade were en bloc placed in a higher grade the existing regular incumbents thereof were to be allowed the higher grade without subjecting them to any selection. For ASM/SM two alternatives were provided to be adopted by the respective zones depending on whether the existing cadre was separate or combined. In alternative 'I' meant for the combined cadre SMs in the scale of Rs.425-640 and Rs. 455-700 were designated as Deputy Station Superintendents and Station Superintendents in the scale of Rs. 550-750 and Rs. 700-900 respectively. Therefore, the appellants claim that if alternative 'I' was adopted, then it should have been given full play and the SMs who were working in the aforesaid scales

should also have been placed en bloc in the re-designated posts without any further process of selection.

5. In pursuance of the restructuring, the Chief Personnel Officer issued a letter to the Divisional Manager, South-Eastern Railway that it had been decided that alternative 'I' enunciated by the Board shall be followed on the South-Eastern Railway. It further provided that the existing system of calling for options from ASMs for the post of SMs/ ASMs in the higher grade was being dispensed with and seniority of staff in each grade shall be determined on the basis of nonfortuitous service rendered in such grade. Other paragraphs of the letter are not relevant for the resolution of the present controversy. Since the direction of the Chief Personnel Officer worked to prejudice of numerous persons who had exercised their options to the promotional channel of Station Master, they approached the High Court or Tribunal by way of Writ Petition or Claim Petition but without any success. Some of such disputes; came up for disposal before this Court in Civil Appeals Nos. 1536-41 of 1987 which were disposed of by order dated 30th July, 1987, directing the Railway Board to consider if the Chief Personnel Officer while implementing" the scheme deviated from its terms and @page-SC29 implemented it to the prejudice of those appellants. Since it was conceded that the scheme did not affect present status and emoluments, this Court then made it clear that implementation should not be done to prejudice of appellants. It further protected the interests of those who due to wrong implementation might have got benefit by directing that they shall not be disturbed. The direction given by this Court was not complied with; therefore, contempt proceedings were filed the hearing of which was deferred till the disposal of the present appeals.

6. When these appeals were taken up for hearing, it transpired that total number of employees of the appellant's category were not more than 206. Therefore, the Court passed the order on 26th July, 1989 that if relief was granted to these 206 employees by implementing the scheme in the Manner indicated in the earlier order of 1987, they shall be satisfied and the litigation shall come to an end. But nothing more was done and on 8th September, 1989 this Court after hearing learned Counsel for the parties at great length recorded that two questions were required to be looked into: (i) if the cadre of ASM and SM was common or different and (ii) if alternative 'I' was adopted, then why the SMs could not be re-designated as Deputy Station Superintendents and wanted response of the Administration about them. On both these aspects an affidavit was filed by the Chief Personnel Officer. Regarding the first, it is stated that cadre of ASM and SM before restructuring was a common one in SouthEastern Railway for all 'intents and purposes'. It is explained that separate cadre meant that the ASMs and SMs would have sought their advancement separately, in a way different from them in the entire non-gazetted cadre'. And then ASM and SM had to combine again to work as Deputy Station Superintendent/ SM. In respect of automatic re-designation, the explanation is that eight different scales of pay existing before restructuring were reduced to six and designation of ASM in the scale of Rs. 455-700 and SM in scale of Rs. 425-640/-, were abolished and the post belonging to six revised designations have been distributed on the prescribed percentage basis. It is further stated that incumbents of the existing grades were promoted according to their positions of seniority against the posts, which were available on percentage basis distribution. Therefore, the contention of the petitioners that the Station Masters should be automatically designated as Deputy Station Superintendent was not correct. According to the Chief Personnel Officer the appellants along with others in accordance with their seniority were required to be subjected to the procedure of selection/suitability test as per procedure envisaged in the restructuring scheme. The affidavit also attaches a letter from the Railway Board addressed to the General Manager, reiterating that the implementation of the scheme by the Chief Personnel Officer was as intended by the Board.

7. Facts as they ultimately emerge do not appear to have been adequately indicated in the affidavit of the senior officer even when the aspects were pointedly indicated by this Court. It is not disputed that in the South Eastern Zone the practice of option by ASM for promotional channel was in vogue before 1983. Dispute is about the time when it was exercised. According to appellant it was at the time of recruitment and appointment even on pain of disciplinary action. And option once exercised was irrevocable. Whereas according to officials it used to be offered when vacancy arose according to seniority. Unfortunately it was accepted by the Tribunal as well without any foundation in the record by shutting its eyes to various letters which clinch the issue in favour of the appellants, for instance the letters dated 14th May, 1965, and 20th May, 1970, issued by the Divisional Superintendent, Railway filed before Tribunal, produced along with supplementary affidavit show that options were required to be exercised by ASMs irrespective of availability of vacancy before the target date and if it was not exercised then they were liable to disciplinary action. And options, for or against could not be changed when once exercised. Where it was not exercised on or before the date it was deemed to have been opted for ASM to SM. No effort was made to meet these letters; yet an affidavit was filed that option was exercised when vacancy arose.

8. Option was thus exercised by appellants at the stage of appointment and recruitment. But it appears to have resulted in dissatisfaction because even though the pay scales were identical those who became SM were entrusted with supervisory control and administrative responsibility. For this the ASM recruited in the same batch must have been unhappy. And the SM must, also, have had the grievance as promotion in higher scale was obviously delayed because the post of SM must have been fewer in number as compared to ASM. Therefore, it was rightly abolished and was hailed by the two unions of employees. But what happened to those who due to irrevocable option exercised prior to 1983 had been waiting for moving up and due to abolition and option and implementation of the alternative 'I' lost the opportunity while ASMs junior to them availed it? No provision for them was made. Even in this Court despite repeated directions, the Chief Personnel Officer or the Administration instead of resolving it have taken an uncharitable stand by asserting that those who opted for promotional channel of SM having enjoyed benefit of day duty and supervisory control on their own volition cannot be compared with ASMs whose working conditions were different. That is a person who worked with greater responsibility and under strain must suffer. What is surprising is that such unreasonable stand is supported even by the Board by relying on 'intents and contents'.

9. Even the claim of the Administration that cadre of ASM/ SM was combined cadre in South-East Railway was not substantiated by any document, letter or order. On the other hand, from letter dated 10th May, 1984 issued by Additional District Pay Commissioner to General Manager recognises existence of separate cadre: -

"It is evident from the details furnished in the enclosure to your above quoted letter that your Railway had a separate cadre for ASMs/ S Ms and a decision had been reached prior to the issue of the restructuring orders No. PC.III/80/UPG/19 dated 29-7-83 to switch over to a combined cadre, except where in respect of any cadre or cadres avenues of advancement have been prescribed by this Ministry, laying down avenues of promotion in respect of non-gazetted Railway staff is within the competence of the General Managers of the zonal railways. Since the matter has been processed on your railway in consultation and agreement of the two recognised Trade Unions in the permanent Negotiating Machinery, the action by your Railway to switch over to a combined percentages scheme is within your powers."

Existence of separate cadres prior to 1983 and changing over to a combined system is not the same

thing as claiming that the cadre which existed prior to 1983 was a combined cadre. Explanation in the affidavit while replying to the issue as to whether the cadre of ASM and SM was common or a different cadre is given thus: -

"The Railway Board's letter dated 10-8-84 refers to only merging these two grades which should not mean that the cadre was separate. In other words, the Railway Board's said letter means that the action of the Railway to combine the two grades also in order and it does not imply that the entire cadre was separate."

10. It cannot be accepted either as correct or satisfactory. Cadres of ASM/SM before 1983 was separate and different. With abolition of option it has become one. The letter of the Railway Board required revised percentages prescribed for the category depending on whether the existing cadre structure was a combined one or a structured one. Since the cadre in South-Eastern Railway was a separate one, the Chief Personnel Officer deviated from the scheme by applying alternative 'I' which was to be adopted by a zone where combined cadre existed. And if alternative 'I' was adopted then the SMs should have been automatically designated, as Deputy Station Superintendents and they should not have been subjected to the selection procedure. The explanation in the affidavit of Chief Personnel Officer that the grade of Rs. 425-640 having been abolished as a consequence of restructuring is not acceptable. In alternative 'I' SM in scale of Rs. 425-60 automatically stood redesignated as Deputy Station Superintendent. But the scale does not find place in alternative 'II'. But both the employees unions have accepted the implementation of the letter of Chief Personnel Officer, as it is beneficial to a majority of the employees. Therefore, it may not be disturbed. At the same time all those 204 employees who had opted before 1983 must be entitled to the benefit which would have been available to them on their options.

11. In the result this appeal is disposed of by directing that the respondent authorities shall grant promotional benefit to those 204 SMs-who had exercised option before 1983 in the same manner as it would have been if option had not been abolished in accordance with the earlier procedure provided they fulfilled the other requirements. While doing so those who had been promoted shall not be disturbed as directed by this Court on 30th July, 1987. Further if as a result of this exercise posts in higher grade fall short, the respondents shall create adequate number of additional posts to overcome the difficulty. The respondents are further directed to complete all this exercise within six months. Persons promoted in pursuance of this order shall be entitled to all consequential benefits from the due dates. Appellants shall be entitled to consolidated costs which are assessed at Rs. 5,000 to be payable by respondent No. 2.

Order accordingly.

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