

Nirmal Chandra Bhattacharjee and Others

Vs

Union of India and Others

Civil Appeal No. 3961 of 1987

(R. M. Sahai, M. H. Kania JJ)

19.09.1990

JUDGMENT

R. M. SAHAI, J. -

1. This appeal by grant of special leave is directed against order of Central Administrative Tribunal, Guwahati Branch. The question that arises for consideration is more of equity and fair play than law. Therefore we proceed to exercise our jurisdiction under Article 136 read with Article 142 of the Constitution to do justice between the parties.

2. Both appellants and respondents 5 to 9 were working in class 'D' of N.F. Railways in pay scale of Rs 200-240. Next class above it according to Railway Board circular dated May 31, 1976 was 'C', with posts carrying scale of pay with a maximum of Rs 290 but less than Rs 900.33 1/2 per cent of posts in this class were to be filled by promotion from class 'D'. One of such posts was the post of Ticket Collector. It was a class 'III' post as compared to post held by appellants and respondents which were class 'IV' posts. Selection by promotion for various categories was held in 1982. Since promotion to the post of Ticket Collector had not been held it was processed in pursuance of notice dated May 22, 1983 in respect of existing vacancies. Written test was held in October 1983 and viva voce in February 1984 and those successful were appointed. Appellants are successful candidates. Respondents are those who despite having appeared could not get through. They therefore challenged selection in which they failed by taking resort to restructuring order issued by Railways on August 1, 1983. They claimed that since on August 1, 1983 incumbents of class 'D' to the extent of 65 per cent were placed in higher scale appellants became members of class 'C', therefore they could not avail of benefit of 33 1/2 per cent promotional quota reserved for class 'D'. The Tribunal while rejecting claim of the respondents that there could not be promotion from class 'C' to class 'C' accepted their claim, that appellants, having ceased to be of class 'D', could not be promoted to class 'C' against 33 1/2 per cent reserved for class 'D'. It further held that time of test, interview and selection were material and not occurrence of vacancy.

3. Technically the Tribunal appears to be correct in its view that once in consequence of restructuring the appellants were placed in class 'C' they could not be selected against class 'C' posts reserved for class 'D'. But practically it results in such glaring injustice that the benefit which the petitioners got in consequence of restructuring made them worse off by depriving them of their chance of promotion to higher scale. The effect of the Tribunal's order has resulted in pushing down the appellants from class 'III' post and in some cases even from still higher post as they had been granted second promotion as well to the post which they held in 1983. The hardship which stares in the face is that the appellants as a result of restructuring on which they had no control were placed in class 'C' but thereby they lost the chance of moving on the promotional ladder had they chosen to

remain in class 'D'. In other words by upgradation and restructuring of posts the appellants became worse off than what they would have been if they would have continued in class 'D'. Putting it differently the appellants who by virtue of restructuring came in class 'C' could not be promoted to the post of Ticket Collector which is in class 'III'. Whereas the respondents who had been rejected in the selection along with the appellants and could not come in 65 per cent quota of the 'D' class when it was restructured, have chance of being promoted against 33 1/2 per cent in class 'C' to the post of Ticket Collector and then further on. By this process the juniors and those who could not be selected, are likely to become senior and better placed than those who were placed in class 'C'. That indeed would be very unfair. No rule or order which is meant to benefit employees should normally be construed in such a manner as to work hardship and injustice specially when its operation is automatic and if any injustice arises then the primary duty of the courts is to resolve it in such a manner that it may avoid any loss to one without giving undue advantage to other.

4. Due to restructuring in 1983 and consequent increase of pay the appellants were placed in class 'C'. But then designation did not change. That is they continued to be pointsmen and cabinmen. The promotional channel also did not change. That is for moving up they had to be promoted as Ticket Collector and thereafter to higher posts even though pay scale of appellants and Ticket Collectors became identical after restructuring. That is why despite restructuring pointsmen and cabinmen were treated as class 'IV' employees and the post of Ticket Collector as class 'III'. It is clear from the interview letter sent to appellants which is extracted below :

"The date for the viva voce test for the selection of Ticket Collector in scale 260-400 against 33 1/3 per cent promotion quota from class IV to class III post has been fixed on March 14, 1984 and March 15, 1984 at 10.00 hrs. in this office.

The following outdoor class IV staff who have qualified themselves in the written examination held on October 23, 1983 at LMG, are therefore advised to appear in this office on the due date and time for viva voce test."

For this reason also it shall be unjust to appellants as the department itself has been treating the as class 'IV' employees. Paragraph '12' of the restructuring order provides, "Any of the categories of 'C' and 'D' posts covered by this scheme even though post in higher scales of pay have been introduced as a result of restructuring the basic function, duties and responsibilities attached to these posts at present will continue to which may be added such other duties and responsibilities." Therefore the intention obviously was that despite restructuring the appellants continued to be what they were before it.

5. One of the principles of service is that any rule does not work to prejudice of an employee who was in service prior to that date. Admittedly the vacancies against which appellants were promoted had occurred prior to restructuring of these posts. It is further not disputed that various other posts to which class 'IV' employees could be promoted were filled prior to August 1, 1983. The selection process in respect of Ticket Collectors had also started prior to August 1, 1983. If the department would have proceeded with the selection well within time and would have completed it before August 1, 1983 then the appellants would have become Ticket Collectors without any difficulty. The mistake or delay on the part of the department, therefore, should not be permitted to recoil on the appellants. Paragraph '31' of the restructuring order itself provides that vacancies in various grades of posts covered in different categories existing on July 31, 1983 would be filled in accordance with the procedure which was in vogue before August 1, 1983.

6. A word about Railways. All this litigation and hart-burning could have been avoided if the department would have issued clarificatory letter that even though due to restructuring 65 per cent of class 'D' employees automatically moved in class 'C' but shall be entitled for consideration against 33 1/2 per cent reserved in class 'C' from class 'D' as their status and designation did not change. Truly speaking selection proceeded on the basis. That was their guarded stand in counter-affidavit as well. But in this Court they have taken contrary stand and have supported respondents who were petitioners before Tribunal. It is undesirable on the part of official bodies to take such stand on policy matters. However, we were saved predicament of sending for the officer, who swore affidavit in this Court, to explain the circumstances in which he deviated from earlier stand and if it was on instruction of Railways, due to fair and reasonable attitude adopted both by Sri Datar and Sri Subba Rao the learned counsel for Union of India and Railways.

7. In the result this appeal is disposed of by directing that the appellants' promotion to the post of Ticket Collector shall be deemed to have been validly made. They shall be restored to their position from which they had been reverted in consequence of the order passed by Tribunal and shall be entitled to consequential benefits. Parties shall bear their own costs.

</html