

Mitrangshu Roy Choudhary

Vs

Union of India

Civil Appeal No. 3210 of 1996

(S.S. Mohammed Quadri, S.N. Phukan JJ)

15.04.1999

JUDGMENT

S.N. Phukan, J

1. The present appeal is directed against the order of the Central Administrative Tribunal, Guwahati Bench in Original Application No. 23 of 1991. By the impugned judgment the Tribunal rejected the Original Application of the appellants for appointment to Group C posts instead of Group D posts under Divisional Railway Manager, Lumding, Assam. We may state here that earlier Group C post was designated as Class III Post and Group D as Class IV post.

2. The facts of the case are as follows :-

All the five appellants were sponsored by the Employment Exchange for recruitment of Trade Apprentices in Carriage & Wagon Department of N.F. Railway in Lumding Division along with others. They were selected as Trade Apprentices under Apprentice Act, 1961 and successfully completed training in System Technical School, New Bonagaigaon under the N.F. Railways. The appellants were interviewed against 25% vacancies of Fitter in Group C category for Lumding Loco Repairing Shop and were selected against the vacancies. They also joined as Fitter Grade III but on 7.6.1990 the appointments were cancelled and instead they were appointed to the post of Carriage Khalasi which is a Group D post. Their appeal being rejected, they approached the Administrative Tribunal where their prayer was rejected by the impugned judgment. We may state here that by the impugned judgment, the Administrative Tribunal also disposed of Original Application filed by 20 applicants. They also completed training as Apprentices but instead of appointing them in Group D post, they were appointed in Group C post. Their prayer for appointment in Group D post was also rejected but they are not before us.

3. According to respondents, the present appellants have no legal right as they have accepted appointment offered to them in Group D post. They are stopped from making any grievance against the same. As the Railway Administration has acted consistently with the then prevailing policy, the decision could not be interfered with by the Tribunal. It has further been pleaded on behalf of the respondents before the Tribunal that as the appointment of the appellants by the initial order of appointment was found to be erroneous in view of the policy decision that these posts will be filled up by promotion, the appointments were cancelled and instead of leaving the appellants high and dry, Railways have given them alternative appointment in Group D post which they have accepted.

4. We have heard Mr. Shahid Rizvi for the appellants and Ms. Rekha Pandey for the respondents.
5. In view of the contentions raised by the Bar, the question for determination by this Court is whether there was violation of Articles 14 and 16 of the Constitution on the ground of arbitrariness and discrimination as according to the appellants, the appointments were cancelled without giving them any opportunity of being heard. It has also been urged that as the appellants were Trade Apprentices under the Apprentice Act, 1961 (for short The Act) and they successfully completed the training as Fitter and were selected for appointment for the posts, the cancellation order is in violation of the Act.
6. According to Rule 159 of the Rules for Recruitment and Training of Group C and Group D and Workshop Staff, out of the vacancy in the category of Skilled Artisans Group C, 25% of the posts have to be filled up by selection from course completed 'Act Apprentices', ITI passed candidates and Matriculates from the open market; serving employees who were course completed 'Act Apprentices' or ITI qualified could be considered against this quota allowing age relaxation as applicable to service employees. Thus we find that for 25% of the posts, the three categories were to be considered for selection, namely,
- (1) 25% by selection from course complete Act Apprentices
 - (2) ITI passed candidates and Marticulates from the open market
 - (3) Serving employees who were course completed Act Apprentices or ITI qualified.
7. From the said Rule, it appears that 50% posts are to be filled up by promotion of the staff in lower grade as per prescribed procedure. Thus it is clear that the present appellants are qualified to be recruited for the above post. But the first question is whether they have got a right to be selected only because they are sent for training under the Act.

We quote below Section 22 of the Act :-

"22. *Offer and acceptance of employment.* -

- (1) It shall not be obligatory on the part of the employer to offer any employment to any apprentice who has completed the period of his apprenticeship training in his establishment nor shall it be obligatory on the part of the apprentice to accept an employment under the employer.
- (2) Notwithstanding anything in sub-section (1), where there is a condition in a contract of apprenticeship that the apprentice shall, after the successful completion of the apprenticeship training, serve the employer, the employer shall, on such completion, be bound to offer suitable employment to the apprentice, and the apprentice shall be bound to serve the employer in that capacity for such period and on such remuneration as may be specified in the contract :

Provided that where such period or remuneration is not, in the opinion of the Apprenticeship Adviser, reasonable, he may revise such period or remuneration so as to make it reasonable, and the period or remuneration so revised shall be deemed to be the period or remuneration agreed to between the apprentice and the employer."

8. There is no dispute at the Bar that there was no guarantee or promise for employment while sending the present appellants to undergo the apprenticeship course. Therefore, the appellants do not have the right to be appointed under the Act in view of the specific legal provision under Section 22 of the Act.

9. In view of the settled position of law though under Rule 159 of the Rules of Recruitment and Training, 25% of the posts are to be selected from the course completed Apprentices like the appellants, the appellants and similarly situated persons cannot claim appointment as a matter of right for this post. Railway may consider their cases for selection which was done in the present case.

10. The appointment letters to all the appellants were issued on 28.5.1990 and by letter dated 7.9.1990 i.e. less than one month the appellants were informed that in view of the decision at the Headquarter level by the Railway Administration after discussion with both the Unions on 27.11.1989 it was decided that the course completed Apprentices are to be absorbed only in Group D category and therefore, the earlier letter of appointment was cancelled and the appellants were given fresh appointments in Group D post.

11. From the appointment letters dated 28.5.1990 vide clause 2 of the letter, the appellants were informed that if their services would be terminated, they shall be entitled to a notice of 11 days or pay in lieu of. Thus this letter clearly shows that the appellants were appointed purely on temporary basis and their services could be terminated by giving 11 days notice or pay in lieu thereof. In view of the nature of appointment, the above clause of the letter dated 7.6.1990 cannot be said to be violative of Articles 14 and 16 of the Constitution and at best the appellants would be entitled to get 11 days' notice or pay in lieu thereof.

12. Respondent-Railways have stated that the appointment letters were issued due to *bona fide* mistake as the decisions taken on 27.11.1989 by the administration were not within the knowledge of Divisional Personnel Officer of the Railway, Lumding, who issued appointment letters. There is no allegations that the letter dated 7.6.1990 was issued with *mala fide* intention. In fact, Railways have clearly stated in the counter before the Tribunal that instead of leaving the appellants high and dry, they were offered appointments in Group D category in view of the decision arrived at between the Administration and the Unions.

13. In the Lumding Division of N.F. Railways, there was stagnation of the existing employees in Group D category and there was surplus staff, as a result, closure of Steam Lumding Loco Shed. Therefore, the matter was discussed between the Administration and the Unions and it was decided that there will be no direct entry to Group C post and all the vacant posts will be filled up by promotion from Group D post. This policy decision was reasonable one and it was taken to keep industrial peace, which fact was taken note of by the Tribunal.

14. It is urged on behalf of the appellants that the above policy was communicated by the Railway Board subsequent to the appointments of the appellants, therefore, it is not applicable in case of the appellants. We are unable to accept the contention as the decision was taken in the meeting held on 27.11.1989 i.e. prior to letters of appointment issued to the appellants on 28.5.1990. For the reasons stated, we hold that action of the respondents is not arbitrary or discriminatory and, therefore, not violative of Articles 14 and 16 of the Constitution.

15. In the result, the appeal is dismissed. But in the facts and circumstances of the case, parties are

to be bear their own costs.