

Union of India Vs. Shri Dev Raj and Others

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Court : Delhi

Decided On : Aug-13-2001

Reported in : 2001(60)DRJ734

Judge : Mr. B.A. Khan and; Ms. Sharda Aggarwal, JJ.

Appeal No. : Civil Writ Petition No. 7302/2000

Appellant : Union of India

Respondent : Shri Dev Raj and Others

Advocate for Def. : Mrs. Rani Chhabra, Adv.

Advocate for Pet/Ap. : Ms. Rekha Palli, Adv

Disposition : Petition dismissed

Judgement :

ORDER

Khan, J.

1. 20% of posts of Head Clerk/Section Supervisor (Grade-II) were to be filled up by promotion on seniority first. But later Director General P & T issued memorandum dated 15.6.1974 prescribing 1/3rd of these posts to be filled up from amongst eligible candidates by qualifying test, 2/3rd on the basis of seniority from the basic

cadre of Telegraphists/Telegraph Assistant etc.

2. Respondents took qualifying test and were promoted to the post against 1/3rd quota and were placed in Grade-II and enbloc senior in gradation list. Meanwhile, department introduced One Time bound Promotion Scheme (OTBP) on 30.11.1983 providing that employees having rendered 16 years service in the basic cadre would be placed in the next higher scale. It also stipulated that those already promoted to Grade-II like respondents would rank senior to those who would get this grade under the Scheme. Respondents who stood already promoted against supervisory posts were granted special allowance of Rs. 35 P.M. and thus ranked senior against the beneficiaries of this scheme.

3. Later petitioners introduced yet another scheme known as Biennial Cadre Review (B.C.R.) which placed 10% posts in the scale of 2000-3200 and under this officials having completed 26 years service in basic cadre were to be placed in Grade-III in the scale of 1600-2600. Since respondents ranked senior in the gradation list they were given the benefit of this Scheme against 10% posts in the scale of 2000-3200. This was challenged by others who otherwise possessed 26 years service in basic cadre in O.A. 1455/1997 before CAT without impleading respondents as parties. Tribunal allowed this O.A. by order dated 7.7.1992 holding that promotion to 10% of posts in the scale of 2000-3200 (Grade-IV) was to be made on the basis of seniority in the basic cadre subject to fulfillment of other conditions under BCR Scheme. But while doing so Tribunal saved the interests of respondents by providing as under:-

'In the above view of the matter, we direct that the promotions to 10% posts in scale 2000-3200 would have to be based on seniority in basic cadres subject to fulfillment of other conditions in the BCR viz. those who were regular employees as on 1.1.1990 and had completed 26 years of service in basic grades (including higher scales). The respondents are directed to consider applicants accordingly from dues dates with consequential benefits. The employees who may be senior to applicants in the scale of Rs. 1600-2660 and who may have already been given the scale of Rs. 2000-3200 at the cost of those senior in basic grades by any different interpretation of the BCR scheme, may in the discretion of the

respondents, instead of being reverted, the considered for promotion to scale of Rs. 2000-3500 by suitable adjustments in the number of posts by upgradation as necessary'.

4. Pursuant thereto petitioners prescribed procedure for promotion to Grade-IV against 10% posts under BCR Scheme vide letter dated 20.5.1996. They also issued letter dated 13.2.1997 with a view to protect interests of respondents, para 2 (II) whereof talked of creation of supernumerary posts for the post but despite this they issued order dated 13.2.1999 withdrawing their earlier letter dated 13.2.1997 and passed reversion orders of respondents dated 11.2.2000 which they challenged in O A 425/2000. Tribunal allowed this O.A. and quashed orders of their reversion for having been passed at their back. Hence this petition.

5. The only submission made by L/C for petitioner, Mr. Rekha Palli, was that Tribunal in O.A. 1455/1991 had granted discretion to petitioners in its order dated 7.7.1992 to deal with the situation and that they had decided to revert them in their wisdom to avoid any further administrative complications because some other basic cadre officials having 26 years service or more were wanting to replace them pursuant to Tribunal order dated 7.7.1992 which had assumed finality after its affirmation by the Hon'ble Supreme Court. No other issue was canvassed or urged. thereforee all that remained to be seen was whether CAT order supra had granted option to petitioner to revert respondents.

6. We have examined Tribunal order and this is our view does not give any license to petitioners to revert respondents to Grade-III. On the contrary its terms emphasise protection of respondents by suitable administrative action including upgradation of posts etc. Moreover, it is seen that petitioners had proposed to create supernumerary posts to remedy the situation of their own making and it is not understandable what had made them to retract and suddenly order reversion of respondents and that too without any notice to them, not to speak of affording an opportunity of hearing to them.

7. It can't be overlooked that respondents after qualifying the test in Grade-II ranked admittedly senior in the gradation list and on that strength were placed in Grade-IV under BCR Scheme. Their promotion was also regularised and this had

vested valuable rights in them to hold the higher post and scale which could not be taken away save otherwise in due course of law. Petitioners action arbitrarily by passing that course can't sustain and deserved to be set aside which Tribunal had rightly done. It may as well be that Tribunal order dated 7.7.1992 could have resulted in some administrative problems but these could otherwise be appropriately dealt with instead of reverting respondents.

8. We accordingly find no merit in this petition which is dismissed and impugned Tribunal order is affirmed. it is hoped that petitioners would revive their first proposal to create supernumerary posts to make suitable administrative adjustments so as to allow respondents to retain their present position and status.

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