

PETITIONER:
S.K. CHAKRABORTHY AND ORS.

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT 11/07/1988

BENCH:
MUKHARJI, SABYASACHI (J)
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MUKHARJI, SABYASACHI (J)
SHARMA, L.M. (J)

CITATION:
1988 AIR 1645 1988 SCR Supl. (1) 425
1988 SCC (3) 575 JT 1988 (3) 76
1988 SCALE (2) 31
CITATOR INFO :
R 1991 SC2080 (9)

ACT:
Civil Services; Indian Railway Establishment Code, Vol. I
Rule 158-Production Control Organisation, Kharagpur-
Memorandum No. 476-13-10065 dated 4-5/10/1979 directing
that Railway Board's circular No E(NG) 59-SRG-22 dated
22.4.1963 declaring all posts in PCO ex-cadre be
implemented-Effect of Railway Board's circular No.
E(NG) 1-79-PMT-242 (DC/JCM) dated 13.9.1984 excepting PCO,
Integral Coach Factory-Whether discriminatory.

Constitution of India, 1950: Article 14-Class
disposition forbidden-Reasonable classification for the
purpose of disposition permissible-Twin tests of
classification founded on intelligible differentia-To have a
rational nexus to object sought to be achieved.

HEADNOTE:

Rule 158 of the Indian Railway Establishment Code, Vol. I, empowers the General Managers to make rules with regard to the non-gazetted railway servants provided they are not inconsistent with any rules made by the President or the Railway Board. The Railway Board brought out a circular dated 22.4.1963 laying down the rules for determination of seniority of workshop staff employed in the Production Control organisation and declaring all posts therein as ex-cadre. Due to the stiff opposition of organised labour the said circular could not be implemented in the Kharagpur workshop. The Superintendent, however, after discussing the question with the organised labour issued a memorandum on 21.7.1973 stating that all posts in the PCO would be cadre posts. Subsequently, by a circular dated 9.7.1978 the Railway Board declared that the staff from shop-floors posted in the PCO would receive special pay of 10% of their pay but this would not be available to the staff who were permanently absorbed in the PCO or directly recruited in the PCO. Upon this, representations were made by the labour to the Railway Board for implementing its circular dated 22.4.1963 so that the staff of the PCO would be eligible for the special pay. In pursuance of the meetings held with the labour, the memorandum dated 4-5/10/1979 was issued which

declared that the Railway Board's circular of 1963 would be implemented in the PCO and that all posts would be treated as ex-cadre posts. By another circular issued on 426

13.9.1984 the Railway Board allowed the PCO at the Integral Coach Factory, Southern Railway, to continue on cadre basis.

Aggrieved by the said circular, the petitioners, who at the relet time were all employees of PCO at Kharagpur, carried the matter before the Central Administrative Tribunal and contended; (i) that their posts could not be declared as ex-cadre because vested rights which had accrued in their favour could not be affected, and (ii) they could not be treated differently from those of the Integral Coach Factory. This was hostile discrimination and amounted to violation of their rights. The Tribunal rejected both the contentions.

Dismissing the special leave petition,

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HELD: 1. Administrative re-organisation is permissible and as a result of the same rights may be affected but the vested rights could not be taken away. In the instant case inasmuch as the memorandum dated 21st July, 1973 inconsistent with the circular issued by the Railway Board in 1963 no right vested in the petitioners and hence no question of affecting vested rights arise. [429C-D]

T.R. Kapur & Ors. v. State of Haryana & Ors. [1986] JT 1092 referred to.

2.1 Article 14 of the Constitution forbids class disposition but permits reasonable classification for the purpose of disposition which classification must satisfy the twin tests of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the disposition. [430A-B]

D.S. Nakara & Ors. v. Union of India, [1983] 2 SCR 165, referred to.

2.2 The circular of 1984 of the Railway Board was issued pursuant to the negotiations with the staff in the Departmental Council of Ministry of Railways. The existing arrangement in the PCO of Integral Coach Factory was not disturbed because the recognised Unions there did not want it to be so disturbed; whereas in the PCO of Kharagpur the recognised Unions had already agreed that the Railway Board's circular dated 22.4.1963 would be implemented and that all posts in that PCO would be treated as ex-cadre. [429F-G]

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2.3 The Railway Board is fully competent to bring about necessary changes in the staff pattern of the various units under its control for the purpose of streamlining the organisation and improving the efficiency of the administration. There was, therefore, a good ground for this differentiation which has a rational nexus with the object of streamlining the organisation. This differentiation cannot be condemned as violative of the rule of equality. It does not amount to hostile discrimination. [429G-H]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Special Leave Petition (Civil) No. 3584 of 1987.

From the Judgment and order dated 8.12.1986 of the

Central Administrative Tribunal, Calcutta in T.A. No. 1143 of 1986.

Mrs. C. Markandeya for the Petitioners. (Not present)

B. Datta, Additional Solicitor General, C.V. Subba Rao and A.K. Srivastava for the Respondents.

The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, J. This is an application for leave to appeal under Article 136 of the Constitution, directed against the judgment and order of the Central Administrative Tribunal, Calcutta Bench (Justice Ashamukul Pal and Mr B. Mukhopadhyay) dated 8th December, 1986. The Tribunal had dismissed the challenge made by the petitioners herein to the memorandum of 1979 declaring that the posts in Production Control Organisation (for short PCO) in Kharagpur would be treated as ex cadre.

There are 75 applicants in this case. At the relevant time they all were employees of the PCO at Kharagpur Railway Workshop of South Eastern Railway. The petitioners contend that these posts could not be declared as ex cadre posts because vested rights of the petitioners could not have been affected. Secondly, it was contended that they were treated differently from the employees of the Integral Coach Factory on the Southern Railway and those of PCO there continued to hold the cadre posts. This is hostile discrimination and amounts to violation of the fundamental rights of the petitioners. The Tribunal by its impugned order rejected both the contentions.

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The PCO was in existence from the time of the B.N. Railway. The staff of the PCO were either directly recruited or drafted from different shops of the workshop. In 1958 the PCO was considerably expanded. After considering the question the Railway Board brought out a Circular dated 22.4.1963 laying down the rules for determination of seniority of workshop staff employed in the PCO. It was laid down in the Circular that all posts in the PCO should be treated as ex-cadre posts. This is Annexure 'B' to the writ application which was ultimately disposed of by the Tribunal. The Circular, however, could not be implemented in the Kharagpur workshop on account of the stiff opposition of organised labour. In the premises the local authorities could not implement the Circular of 1963. The question was discussed with the organised labour in a meeting held on 4th June, 1973 and in pursuance of the decision taken in that meeting the memorandum dated 21st July, 1973 which is also Annexure 'B' was issued by the Superintendent. It was evidently stated that all posts in PCO would be cadre posts.

It may, however, be reiterated that this was in violation of the order of 1963. Another memorandum was issued by the same authority on 15th December, 1973 which not only declared all posts in PCO to be cadre posts but also laid down that an option would be given to the persons already working in the PCO to revert to the shops. It appears that the question of having incentive schemes for the staff of the PCO was under consideration of the Railway Board and by a Circular dated 9.7.1978 the Railway Board declared that the staff from shop-floors posted in the PCO would receive special pay of 10% of their pay but this would not be available to the staff who were permanently absorbed in the PCO or directly recruited in the PCO. It appears that this brought a change in the attitude of the labour and representations were made to the Railway Board for implementing its Circular dated 22.4.1963 so that the staff of the PCO would be eligible for the special pay. Joint meetings were held with the labour on 4th and 22nd

September, 1979 and in pursuance of the decisions taken in these meetings the memorandum dated 4-5/10/79 at Annexure (I) was issued which declared that the Railway Board's Circular of 1963 would be implemented in the PCO and that all posts would be treated as ex-cadre posts. This was impugned before the Tribunal.

It was contended that the vested rights which accrued in favour of the petitioners by the operation of the memoranda dated 21st July and 15th December, 1973 were affected by declaring that the posts in PCO would be on cadre basis. These were issued, it appears, in viola-
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tion of the clear directives of 1963 of the Railway Board. Hence, these Circulars were in violation of Rule 158 of the Indian Railway Establishment Code, Vol. I, which lays down that the General Managers of the Indian Railways have full powers to make rules with regard to non-gazetted railway servants under their control provided they are not inconsistent with any rules made by the President or the Railway Board.

It, however, appears that the memorandum dated 21st July, 1973 was clearly inconsistent with the Circular issued by the Railway Board in 1963 for the former stipulated that all posts in the PCO would be cadre posts. Both these memoranda were issued as a result of the meeting with the workers. In that view of the matter, in our opinion, it cannot be contended that vested rights have been affected. Administrative re-organisation is permissible and as a result of the same rights may be affected but the vested rights could not be taken away. See in this connection the observations of this Court in *T. R. Kapur & Ors. v. State of Haryana & Ors.*, [1986] JT 1092. Here, however, in as much as the memorandum dated 21st July, 1973 was inconsistent with the Circular issued by the Railway Board, no right vested in the petitioners and, hence, no question of affecting vested rights arises.

The second ground was that there was discrimination against the petitioners referred to the Railway Board's Circular dated 13th September, 1984 which made an exception for the Integral Coach Factory at the Southern Railway and allowed the PCO to continue on cadre basis. It was submitted that this was a case of discrimination. It appears that the impugned Circular of 1984 of the Railway Board was issued pursuant to the negotiations with the staff in the Departmental Council of Ministry of Railways. The existing arrangement in the PCO of Integral Coach Factory was not disturbed because the recognised Unions there did not want it to be so disturbed; whereas in the PCO of Kharagpur the recognised Unions had already agreed, as appears from the impugned memorandum at Annexure 'I' that the Railway Board's Circular dated 22.4.1963 would be implemented in the Kharagpur, PCO and that all posts in the PCO would be treated as ex-cadre posts. The Railway Board is fully competent to bring about unnecessary changes in the staff pattern of the various units under its control for the purpose of streamlining the organisation and improving the efficiency of the administration. Hence, there was a good ground for this differentiation which has a rational nexus with the object of streamlining the organisation. This differentiation cannot be condemned as violative of the rule of equality. It does not amount to hostile discrimina-
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tion. Article 14 of the Constitution forbids class disposition but permits reasonable classification for the purpose of disposition which classification must satisfy the

twin tests of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the disposition.

See D. S. Nakara & others v. Union of India, [1983] 2 S.C.R. 165 at 179.

Further, the Tribunal modified certain portions of the impugned memorandum and directed that the provisions should be made for those who opt to continue in the PCO at Kharagpur after the issue of the Circular dated 13.9.1984 so that they may be given an opportunity to exercise their option in this regard and be provided with avenue for promotion within the PCO. Previously, in 1963 such option was provided and it was stipulated that employees permanently absorbed in the PCO or directly recruited in the PCO who did not exercise option in favour of transfer, they would be considered for promotion along with others to higher grade posts in the PCO only. In our opinion, it was done to help the petitioners.

In the aforesaid view of the matter, the Tribunal was right in rejecting the contentions urged on behalf of the petitioners. The challenge to the Tribunal's order, therefore, cannot be entertained.

Before concluding it is worthwhile to note that none appeared for the petitioners when the matter was called on. The matter was called twice. We have disposed of the matter on perusing the order of the Tribunal and also upon considering the submissions made by the respondents. The application, therefore, fails and dismissed. No order as to cost

P.S.S. Petition dismissed.

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