

PETITIONER:
S.B.SARKAR AND ORS.

Vs.

RESPONDENT:
UNION OF INDIA AND ORS.

DATE OF JUDGMENT 30/04/1990

BENCH:
SAHAI, R.M. (J)
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SAHAI, R.M. (J)
MISRA RANGNATH

CITATION:
1991 AIR 27 1990 SCR (2) 813
1990 SCC (3) 168 JT 1990 (3) 361
1990 SCALE (1) 19

ACT:

Civil Services: Railways--South Eastern--Cadre of ASM/SM-- Restructuring of--Existence of separate cadres prior to 1983 and change over to combined system--Not the same thing--Authorities to grant promotional benefits to SMS who exercised option prior to 1983.

HEADNOTE:

In the South-Eastern Railway the cadre initially comprised of Assistant Station Masters at the bottom and the Station Masters at the top. Initial appointment of ASM was made in the scale of Rs.360-540. The promotional ladder bifurcated into: (i) ASM to SM, 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.

Later, re-structuring 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; which were to be adopted by the respective zones depending on the prevailing cadre pattern. 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.540-750 and Rs.700-900 respectively.

Pursuant to the re-structuring, the Chief Personal Officer issued a letter to the Divisional Manager, South Eastern Railway that it has been decided that alternative 'I' enunciated by the Board shall be followed on the said railway, and the existing system of calling for options from ASMs for the post of SMS/ASMs in the higher grade was being dispensed with seniority of staff in each grade shall be

determined on

814

the basis of non-fortuitous service rendered in such grade.

Since the aforesaid direction of the Chief Personnel Officer worked to the prejudice of numerous persons who had exercised their options to the promotional channel of Station Master, they approached the High Court/Tribunal by way of writ petitions/claim petitions but without any success.

Some of these disputes came up in appeal before this Court which were disposed of on July 30, 1987 by directing the Railway Board to consider if the Chief Personnel Officer while implementing its scheme deviated from its terms, and implemented it to the prejudice of those appellants.

The appellants-Station Masters of South/Eastern Railway aggrieved by the implementation of the scheme of re-structuring by the Chief Personnel Officer approached the Central Administrative Tribunal, which rejected their claim, as the implementation was beneficial to the majority, and further found that the alternative 'I' of the scheme meant for the combined cadre was rightly adopted as the cadre of Assistant Station Masters and Station Masters in the South-Eastern Zone was combined before 1983.

The appellants in their appeal to this Court challenged the correctness of the aforesaid findings and also claimed that the implementation of the scheme was highly unjust and inequitable. It was claimed that if alternative 'I' was adopted then it should have been given full play and the SMS should have been placed en bloc in the re-designated posts without any further process of selection.

Disposing of the appeal by directing that the respondents shall grant promotional benefit to those 204 SMS who have exercised option before 1983, this Court,

HELD: 1. It is not disputed that in the South Eastern Zone the practice of obtaining option by ASM for promotional channel was in vogue before 1983. The dispute was about the time when it was exercised. According to the appellant it was at the time of recruitment and appointment even on pain of disciplinary action whereas according to the 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 the letters dated 14th May, 1965 and 20th May, 1970, issued by the Divisional

815

Superintendent which shows 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. [818F-H; 819A]

2. 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, the letter dated 10th May, 1984 issued by Additional District Pay Commissioner to the General Manager recognises existence of separate cadre. [819F]

3. 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. [820C]

4. 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. In

alternative 'I' SM in scale of Rs.425-640 automatically stood redesignated as Deputy Station Superintendents. But the scale does not find place in alternative II. But- both the employees unions have accepted the implementation of the letter of the Chief Personnel Officer as h 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. [820F-H]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2054 of 1990.

From the Judgment and Order dated 23.1. 1987 of the Central Administrative Tribunal, Calcutta in Transfer Application No. 1263 of 1986.

A.P. Chatterjee, G.S. Chatterjee (NP) and Ms. Ratna Bhattacharya for the Appellants.

R.B. Dattar (NP), Anil Dev Singh, B.K. Prasad, C.V. Subba Rao and R.B. Misra for the Respondents.

816

A. Bhattacharya for the Intervener.

The Judgment of the Court was delivered by R.M. SAHAI, J. Special leave granted.

Station Masters of South Eastern Railways are aggrieved by implementation of the scheme of re-structuring 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.

Prior to re-structuring 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. Re-structuring 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.

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 Superin-

tendents and

817

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.

In pursuance of the re-structuring, 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 non-fortuitous 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 Appeal 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 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.

When these appeals were taken up for hearing, it transpired that total number of employees of the appellants' 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

818

the SMs could not be re-designated and 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 South Eastern 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 re-structuring 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 re-structuring 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.

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 letter dated 14th May, 1965, and 20th May, 1970, issued by the Divisional Superintendent Railway filed before Tribunal, produced along with supplementary affidavit shows that options were required to be exercised by ASMs irrespective of availability of vacancy before the target

819

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.

Options 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 of 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 'intent and contents'.

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/SMs 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

820

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 is in order and it does not imply that the entire cadre was separate."

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 Rs. 425-640 having been abolished as a consequence of restructuring is not acceptable. In alternative 'I' SM in scale of Rs. 425-640 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 theft options.

821

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 options 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.

N.V.K

Appeal disposed

of.

822