

M.S.Usmani & Ors vs Union Of India & Ors on 14 December, 1994

Equivalent citations: 1995 SCC (2) 377, JT 1995 (1) 385, 1995 AIR SCW 830, 1995 (2) SCC 377, 1995 ALL. L. J. 460, (1995) 2 SERVLJ 4, (1995) 1 JT 385 (SC), (1995) 71 FACLR 40, (1995) 1 SERVLR 364, (1995) 29 ATC 289, (1995) 1 LAB LN 854, (1995) 2 SCT 604, 1995 SCC (L&S) 447

Author: R.M. Sahai

Bench: R.M. Sahai, N.P Singh

PETITIONER:

M.S.USMANI & ORS.

Vs.

RESPONDENT:

UNION OF INDIA & ORS.

DATE OF JUDGMENT 14/12/1994

BENCH:

SAHAI, R.M. (J)

BENCH:

SAHAI, R.M. (J)

SINGH N.P. (J)

CITATION:

1995 SCC (2) 377 JT 1995 (1) 385

1994 SCALE (5) 270

ACT:

HEADNOTE:

JUDGMENT:

1.The question of law that arises in these appeals directed against order of Central Administrative Tribunal, Lucknow Bench, is whether the appellants who were selected and appointed by a competitive examination against 10% quota reserved for graduates and were promoted even to a higher scale of pay could have been reversed subsequently, on assumption that the entire process of

selection and appointment was against the rules.

2. Facts as they emerge from the order passed by the Central Administrative Tribunal and the affidavits filed by the parties, more particularly the Railways, are narrated in brief. In 1968 the Railway Board introduced a scheme under para 123 of the Indian Railway Establishment Manual in which provision was made for recruitment of Traffic Apprentices to the extent of 25% in various supervisory posts in the Transportation Department of the Railway. In 1972 the scheme of 25% was bifurcated pursuant to the decision taken in the Departmental Council of the Ministry of Railways under the Joint Consultative Machinery Scheme and it was decided to recruit the Traffic Apprentices by two methods- 15% through agency of the Railway Service Commission and 10% from amongst the serving non-ministerial graduates of Transportation Department, through open competition to be filled on basis of Limited Departmental Competitive Examination. It further provided that the departmental examination was to be conducted strictly in order of merit by subjecting candidates to written test and viva voce. On 22nd July 1975 the Railway Board issued another letter communicating its decision that 10% of the annual vacancies in the category of Section Controllers, Station Master (SMs), and Assistant Station Masters (ASMs) grade-Rs.470-700/- and Rs.455-700/- were to be filled in through departmental competitive examination from Class-III non-Ministerial Staff who were graduates and less than 33 years of age. It was reiterated on 18th March 1976. The copy of the letter is extracted below:

"In terms of Railway Board's letter No.E(NG) 72 RRI/18 dated March,1972 circulated vide this office letter NO.220E/172 Pt. XI(Rectt) dated June,1972, 10% of the annual vacancies in the category of SM'S/ASM's/AYM'S and Section Controllers gr.Rs 250-350(As) are to be filled in through a departmental competitive examination from Class-III non-ministerial staff who are graduates and less than 33 years of age.

It has been decided that the staff selected against 10% vacancies in the transportation Deptt. referred to above will be trained in a Special Course, the syllabus for which is under compilation in this office in consultation with the Principal Zonal Training School, Chandausi. The selected staff may be booked for training courses as and when the syllabus of the case is finalized and issued by this office."

3. It is thus clear that the selection of Traffic Apprentices for placing them in various supervisory posts came to be extended to SM as well at least from 1975. The selection against 10% quota to fill up the vacancies in the category of SM/ASM/TI/ AYM and SCNL in the grade Rs. 455-700/- was initiated on 31st July 1982. The break-up of the vacancies for which the selection was held was:

"1. Station Master, Gr.Rs.455-700 (RS)- 11

2. Asstt, Station Master " " " - Nil

3. Traffic Inspector Gr. Rs. One

4. Traffic Inspector One

5. Section Controller Rs.470-750 (RS) - Three Total - Sixteen"

4.It is thus too late to claim, as has been attempted by the private respondents, that the selection against 10% reserved for graduates was not held or could not have been held for the post of SM. The letter selecting the appellants on 27th September 1983 is extracted below:

"As a result of the Section held for the above on 2.2.83, 17.4.83 & 29.6.83, the following staff found suitable for the posts shown against each have been placed on the provisional panel of 10% graduate quota in accordance with their merit position in respective categories:-

T.I S.NO. Name Designation Category earmarked

1. Shri R.C. Gupta ASH/LIJ T.I. STATION MASTER
2. Shri M.S. Usmain ASM/MLJ S.M.
3. Shri Rejendra Pd.Singh ASM/BKSA S.M.
4. Shri J.R.Mourya ASM/FD S.M.
5. Shri S.J.Singh LR/ASM/LKD S.M.
6. Shri S.S.Singh ASM/DELD S.M.
7. Shri D.K.Kharey ASM/DELD S.M.
8. Shri Gyan Prakash Srivastava ASM/LRD S.M. SECTION CONTROLLER
9. Shri Vinod Kumar THC/LKO SCNL
10. Shri Krishna Pd.(SC) THC/BSB SCNL The above staff should note that the retention of their names on the panel is subject to their work remaining satisfactory during the currency of the panel and qualifying R.29A & B courses. Mere fact that their names have been placed on the panel is no guarantee that they will be offered the post for which selected."

What is necessary to be mentioned is that this list itself indicate the designation of candidates and the category for which they were selected. For instance No. 1 was working as ASM/LIJ and was selected for T.I. Similarly Nos. 2 to 8 working as ASM were selected for SM and Nos. 9 and 10 who were THC were selected for SCNL. The appellants according to the counter affidavit of Railways were given training of one year as provided by letter No.757E/ 102-(Elb) dated 17th April 1976. They were appointed on 19th November 1984 on various posts for which they were selected. Even in the appointment letter the details were mentioned. For instance Usmani was shown as Assistant Station

Master/MNJ in existing grade and in the column of new designation and station of posting it is mentioned SM/UTR - Rs.455-700/-. The list also contained names of those ASMs who were in the Scale of Rs.425-640/- but as a consequence of selection they were placed in the scale of Rs.455-700/- as SM. Many of the appellants so selected and appointed were further promoted as SMs/TI in the scale of Rs. 5 50-750/- (revised scale Rs. 1600-2660/ -). Some of them were even selected and sent to Iraq for Iraq Rail India Technical Economic Services in 1988. The averments in the counter affidavit filed by Railways is extracted below:

"It is however stated the the first part of the panel of the aforesaid selection was declared on 27.9.83 in which one person was earmarked for the post of Traffic Inspector, seven persons were earmarked for the post of Station Master GR.RS. 455-700 (RS) and two persons were earmarked for the post of Section Controller in Gr.Rs.470-750 (RS). The 470-750 (RS). The remaining part of thee panel was announced on 12.8.87 after getting the approval of competent authority for de-

reserving the six posts of SC/ST quota.

The incumbents on the panel formed against 10% graduate quota were imparted the pre-requisite training and were posted in their respective cadres after being declared successful and were allowed to reckon the seniority from the date of joining in the cadre in terms of para 302 of IRE. The applicants were promoted to Gr.Rs. 1600-2660(RPS) by virtue of their position in the cadre of Station Master whic h was assigned to them by operation of para 302 of IREM."

5. The eligibility of the appellants, their selection and appointment as SM and further promotion as SM/Traffic Inspector cannot be disputed. Nor it can be disputed that they were given seniority in accordance with paragraph 302 of the Establishment Manual. But the Tribunal did not accept the case of the appellants as in consequence of restructuring of C & D posts the reservation of posts for gradu-

ates came to an end and seniority of the appellants after restructuring was contrary to Railway Establishment Code

302. Before proceeding further it is necessary to mention that the respondents who were impleaded before the Tribunal, at their own instance, relied vehemently on paragraph 123 of the Railway Manual and urged that the Traffic apprentices could be selected for certain posts but not for the post of SM. The claim proceeded on misapprehension as it did not take note of the letter issued in 1972, 1975 copies of which have been filled with the counter affidavit of the Railways.n The selection in 1982 as is clear from the affidavit of Railways was held for the posts earmarked for SM. The Selection and appointment of the appellants, therefore, could not be said to be against rules for this reason. Another aspect which need be clarified is about status promotion. According to respondents the appointment of appellants could be made only in the grade of Rs. 425- 640/- and they could not be promoted in thee grade of Rs.455-700/-. But that stands belied as the selection Rs.455-700/-.

6. The reason for reversion of the appellants may now be examined and whether it was well founded. In August 1983 C & D posts in the Northern Railway were restructured. It came into effect on 1.8.1983. The restructuring was done with reference to cadre strength as it existed on 1.8.1983. It provided for grant of proforma benefit from 1.8.1982 to the staff eligible for higher grade. The restructuring in the category of SM/ASM was in two groups depending upon whether existing cadres or SM/ASMs was separate or combined. It was further provided that revised percentage would be allotted depending upon whether the existing structure was combined or separate, since different practices were in vogue in different zones. In consequence of restructuring it appears all those ASMs who were working in the grade of Rs.330-560/- and were graduates and had worked earlier with appellants but had not appeared in the competitive examination or had appeared but failed stood upgraded and were placed in scale of Rs.425-700/- for ASM.

7. Till 1987 there was no dispute and the Railway and the employees both understood that those who had come by way of selection against 10% quota in September 1983 and those who came by way of restructuring were in their respective positions and there was no occasion for grievance as each was placed in the same scale of pay.

8. In 1987 the appellants were promoted in the higher grade of Rs. 1600-2660/- (Rs.550-750/-). Some of them were appointed as TIS. The appointment order of appellant No. 1 is extracted below:

"A. As the result of suitability test for the post of Traffic-Inspector in grade Rs. 1600-2660/-. The following two candidates have been found suitable and are placed on this select list in order of their seniority.

1. S/Shri M.S.Usmani, SM/LKO

2. S/Shri R.O. Jaiswai, SCNL/LKO B. Consequent on the placement of above named staff on the select list for the post of Traffic-Inspector in grade Rs. 1600-2660/-, S/Shri M.S. Usmani, SM/LKO and R.D. Jaiswal, SCNL/LKD are promoted and posted as Traffic- Inspector PBH & REL respectively in grade Rs.1600-2660/-."

9. At this stage when the appellants were selected and placed in the scale of Rs.1600-2660/- (Rs.550-750/-) another controversy arose which even though not relevant may be mentioned as it probably furnished the occasion for beginning of what ultimately led to the reversion order of the appellants. In May 1987 the Railway Board issued a circular that fresh recruits to the post of Traffic Apprentice would be placed in the scale of Rs. 1600-2660/- Whereas those who were already serving shall be in the scale of Rs.1400-2300/- (Rs.425-700/-). This resulted in discrimination between the two classes of the same employees. Therefore, many of the person affected approached the Central Administrative Tribunal and different tribunal in different States allowed their claim and directed that all those Traffic Apprentices would be entitled to be placed in the scale of Rs. 1600-2660/- with effect from 15th May 1987. The order of the Tribunal became final as the Special Leave Petitions filed against some of the orders passed by the tribunals were dismissed by this Court. When the appellants thus became entitled for scale of Rs. 1600-2660/- with effect from 15th May 1987 those ASMs who as a result of restructuring of the grade has been placed in the same scale of ASM as was

being drawn by the appellants as SM approached after four years through Railwaymen's Union and made a demand in 68th Permanent Negotiating Meeting that the post of Station Master in grade Rs. 1600-2660/- may be filled by invoking the principle of pro-rata, that is the ratio of 1,17. In other words I should be promoted from the grade of SM and 17 should be promoted from the grade of ASMS. This demand was rejected by D.R.M., Lucknow as the pro-rata principle was not applicable. The Union having failed at the divisional level raised the issue at headquarters. What is significant to be mentioned is that the Union never claimed that the selection or appointment of the appellants was illegal or irregular. It agitated for applicability of pro-rata principle for promotion to the higher post. It appears on the representation made by the Union comments were invited from the D.R.M., Lucknow who apprised the headquarters that promotion as SM through selection against 10% reserved for graduates was due from 1979. It was further pointed out that the cadre of ASM grade Rs. 1400-2300/- and SM Rs. 1600- 2660/- were separate. The respondents did not accept the claim of Union of granting promotion to the higher scale on pro-rata basis. But they held that the entire selection of the appellants in September 1983 was illegal as the restructuring having been done on 1st August 1983 the appointment of appellants in September 1984 was contrary to restructuring. It was in consequence of this decision that the appellants were reverted from the post of SM/TI grade Rs.1600-2660/- to the post of ASM grade Rs. 1400-2330/- and placed below all the ASM in panel on 1st August 1989 for the purposes of seniority.

10. On these facts and in the circumstances of the case two questions arise for adjudication one, whether selection and appointment of the appellants in pursuance of examination held in 1983 could be said to be illegal or against the rules in view of restructuring of grade C & D staff and second, whether even if it was so could the appellants be reverted even though they had moved higher in the hierarchy and had been promoted to higher scale of SM or TIs. It was submitted by the learned counsel for appellants that the appellants having been selected and appointed as Station Masters through a competitive examination in which others either did not appear or failed they could not have been reverted to post below the post in which they had been regularized. It was urged that even though the appellants had been selected for the post of SM in the grade of Rs. 455-700/- (revised scale

- Rs.1400-2330/-) but they having been appointed in the higher grade of Rs.470-759/- (revised scale Rs. 1600-2660/-) after suitability test the Railways were not justified in either reverting them or setting aside selection after a lapse of nearly six years. It was urged that even if for any reason the appellants were reverted from the higher post they could not be pushed down below the ASMs and their placement below all the ASMs promoted as a result of restructuring was arbitrary. This according to appellant has resulted even in disturbing the original seniority of the appellants as ASM prior to selection which was contrary to the rules. It was urged that the respondents wrongly construed the restructuring circular as what was provided therein was that a panel of non-selection post would lapse in consequence of restructuring. But this could not apply to the selection of SMs which was a selection post both before and after restructuring. It was also urged that in any case the appellants having moved up higher in hierarchy the setting aside of their selection and appointment which was otherwise in accordance with law only because of the restructuring G.O. relating to grade C & D, railways was unfair.

11. Restructuring was done to upgrade certain percentage of posts in each grade of ASM and SM. The percentage was to be worked out on the cadre in each category as it existed on 1st August 1983. This upgradation had nothing to do with 10% graduate quota. But some difficulty does arise as paragraph 3 of the restructuring order provided that vacancies arising after July 1983 would be filled in accordance with the procedure provided in the circular. This gave rise to arguable issue whether the vacancies for which selection was held in 1982 and all processes of selection had been completed in June 1983 except the declaration of panel could be said to be available on 31st July 1983. Much was said and could be said on behalf of the appellants but it is not necessary to express any opinion on various issues touching upon the applicability of the circular to the vacancies other than those arose out of restructuring. Nor it is necessary to express any opinion on the clarification issued in August 1984 regarding 10% graduate quota and whether it could be confined to only those who had been sent for training prior to 1.8.1983 or it could be extended even to those who had been selected prior to this date as the appeal is liable to succeed on other ground.

12. The reversion order issued by the Railways appears not only to be unjust but vitiated by error of law. It was passed without affording any opportunity of hearing to the appellants. The appellants had been selected through a competitive merit examination. Their selection was not challenged. They had been regularized and been promoted to even higher grade on basis of suitability test. Reverting such persons after a lapse of six year from the date of their selection, five years from the date of their appointment, and two years from the date of their promotion in the higher scale, was not warranted. The ap-

pellants having been regularized as SMs and promoted further as TIs it was not open either for Railways to re-open the selection held earlier or for other employees to agitate that the selection held in 1982 was vitiated as the panel was announced after the cadre had been restructured.

13. Therefore, without deciding the large issue and not as precedent we are of opinion that the appeals are liable to succeed. The order passed by the Tribunal is set aside and the order issued by the Railway in 1989 reverting the appellants is quashed. They shall be entitled to continue in their respective posts and shall also be entitled to consequential benefits.

14. No Costs.