

## Sham Sunder vs Union Of India & Ors on 15 July, 1968

**Equivalent citations: 1969 AIR 212, 1969 SCR (1) 312, 1970 (1) LBLJ 6, AIR 1969 SUPREME COURT 212, 1969 LAB. I. C. 319, 1969 (1) SCR 312, 20 FACLR 169**

**Author: R.S. Bachawat**

**Bench: R.S. Bachawat, A.N. Grover**

PETITIONER:

SHAM SUNDER

Vs.

RESPONDENT:

UNION OF INDIA & ORS.

DATE OF JUDGMENT:

15/07/1968

BENCH:

BACHAWAT, R.S.

BENCH:

BACHAWAT, R.S.

GROVER, A.N.

CITATION:

1969 AIR 212                      1969 SCR (1) 312

CITATOR INFO :

E                      1971 SC1011 (3,4)

R                      1974 SC1317 (12)

O                      1976 SC 490 (180)

R                      1981 SC1829 (32)

ACT:

Constitution of India Arts. 14 and 16-Reservation supervisors posts in Railway Penal drawn up on the basis of certain up-garding of posts-Railway Board holds irregular and deletes-Validity-if violative of Arts. 14 and 16.

HEADNOTE:

The General Manager, Northern Railway published a panel of 38 enquiry-cum-reservation clerks for selection to the posts of reservation supervisors. This panel was published after considering 152 persons, i.e., four times the number -of existing and anticipated vacancies plus 25% thereof for

unforeseen vacancies. The anticipated vacancies included 11 vacancies on account of promotions due to the upgrading of 11 posts in the next higher grade. Representations were made against the constitution of the panel, and the Railway Board decided that the panel should consist of 24 persons only to cover 18 upgraded vacancies, 1 vacancy on account of retirement and 5 vacancies representing 25% for contingencies and the field of selection should be restricted to  $24 \times 4 = 96$  and not 152 persons. So, the panel already published was ordered to be operated only in respect of the first 24 persons and the names of the remaining persons be deleted. Accordingly, the General Manager by an order implemented the decision. The petitioner, whose name was at No. 33 in the panel, published earlier filed a writ petition in this Court, challenging the orders as violating his fundamental rights.

HELD :-The petition must be dismissed.

(i) Under the general direction issued by the Railway Board in one of its letters, the General Manager was competent to amend the panel with the approval of the Railway Board [315 F-G]

Srivastava v. N.E. Railway, [1966] 3 S.C.R.61, 64, 65, followed.

(ii) The Railway Board held that until the selection was made, it could not be anticipated that 11 persons would be promoted creating 11 consequential vacancies in that grade due to promotions to the higher grade. Acting upon this view the Railway Board decided that the anticipated vacancies would be less and the panel should be amended accordingly and should be operated in respect of the first 24 persons only. The decision could not be said to be perverse nor it could be quashed or set aside. [315 A-316 B]

(iii) All the 24 persons retained in the panel were senior to, the petitioner. All of them would have been selected and included in the panel, even if 96 persons were originally called for selection. There was no force in the contention that the retention of the first 24 persons in the panel without holding a fresh selection was discriminatory or was violative of Arts. 14 and 16 of the Constitution [316-C]

(iv) It is said that panels of Class Ill selection posts of station masters on the Northern Railway and all class Ill selection posts on other Railways had been drawn up on the footing that anticipated vacancies in the selection grade include vacancies on promotion due to upgrading of posts in the next higher grade and that the Railway Board had not

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issued any direction for amendment of those panels. But those panels relate to separate classes of employees and have no bearing on the question of equal opportunity in the matter of promotion of enquiry-cum-reservation clerks on the Northern Railway [316 D-F]

All Indian Station Masters' and Assistant Station Masters'

Association v. General Manager Central Railways, [1960] 2  
S.C.R. 311, 319, followed.

JUDGMENT:

ORIGINAL JURISDICTION : Writ Petition No. 31 of 1967. Petition under Art. 32 of the Constitution of India for the enforcement of fundamental rights.

Basudev Prasad and M. I. Khowaja, for the petitioner. Naren De, Solicitor-General, V. A. Seyid Muhammad, R. N. Sachthey and S. P. Nayar, for the respondents. The Judgment of the Court was delivered by Bachawat, J. The petitioner is employed on the Northern Railway as an enquiry and reservation clerk in the grade of Rs. 150-240. In January 1965 several posts of enquiry-cum-reservation clerks were upgraded, 11 posts being raised to the grade of Rs. 370-475, 18 posts to the grade of Rs. 250-380 and 26 posts in the grade of Rs. 205-280. As a result of the up-grading the revised cadre of enquiry-cum-reservation clerks on the Northern Railway consisted of the following non-gazetted posts:-

Category No. of Posts Scale of pay Classification Enquiry cum reservation clerk 202  
150-240(AS) selection Assist. reservation Supervisor 32 205-280(AS) Non-selection  
Reservation Supervisor 23 250-380(AS) Selection Chief Reservation Ins-

pector 11370-475(AS) Selection The promotion of non-gazetted railway servants is governed by Chapter II of the Indian Railway Establishment Manual and the rules made by the Railway Board from time to time under r. 157 of the Railway Establishment Code. Promotion to selection posts has to be made from a panel of selected employees prepared by a selection board and approved by the competent authority. For making the selection, eligible staff up to four times the number of anticipated vacancies are called for written and viva voce tests under r. 9 (d) of Chapter 11. By letter No. E(NG) 62 PM 1/91/dated July 10, 1964 the Railway Board directed that "the number of persons to be placed on a panel should be equal to the existing and anticipated vacancies, plus 25% thereof for unforeseen vacancies. Anticipated vacancies connote only those which are likely to arise due to normal wastage during the currency of the panel. The currency of the panel for non-gazetted selection posts should be two years from the date of the approval of the same by the competent authority or till exhausted whichever is earlier." On January 22, 1965 under orders of the General Manager.- Northern Railway 152 enquiry-cum-reservation clerks were asked to appear in tests for selection to the posts of reservation supervisors in the grade of Rs. 250-380. The petitioner who ranked 113 in order of seniority was allowed to appear in the tests. As a result of the oral and written tests a panel of 38 persons was drawn up on July 7, 1965, and was published in the Railway Gazette on August 1, 1965. The petitioner was one of the selected candidates and his name was shown as No. 33 in the panel. A note at the foot of the panel intimated to the staff- concerned that "the mere fact that their names are

on the panel will not confer upon them any right for permanent absorption as a reservation supervisor." In calling 152 persons for the selection, the General Manager, Northern Railway proceeded upon the footing that 38 persons had to be placed on the panel and 4 times 38, that is to say 152 persons should be asked to appear in the tests. According to him there were 18 immediate vacancies in the posts of reservation supervisors due to upgrading, 1 anticipated vacancy due to retirement and 11 anticipated vacancies on account of promotion due to upgrading of 11 posts in the next higher grade of chief reservation inspector. The figure 38 is the total of 18 plus 1 plus 11 plus 25% thereof. The view that anticipated vacancies included 11 vacancies on account of promotion due to the upgrading of 11 posts in the next higher grade was supported by the prevailing practice in the Northern and other Railways.

The Railway Board received several complaints and representations regarding the constitution of the panel. By an order dated September 16, 1965 (annexure H) the Railway Board decided that the panel of 38 persons was irregularly drawn up and that there should be a panel of 24 persons only for promotion to the grade of Rs. 250-380 to cover 18 upgraded vacancies, 1 vacancy on account of retirement and 5 vacancies representing 25% for contingencies and the field of selection should be restricted to 24-4-96 and not 152 persons. Accordingly the panel already published should be operated only in respect of the first 24 persons and that the names of the remaining 14 persons should be deleted forthwith. The Board directed that action should be taken to form a panel for filling up 11 upgraded posts in the grade of Rs. 370-475 and thereafter a further selection should be held for filling up the resultant vacancies in the grade of Rs. 250-380. By an order dated November 3, 1965 (annexure K) the General Manager, Northern Railway implemented the decision and directed that the panel formed on July 7, 1965 was to be operated upto the first 24 persons only and that the names of the remaining 14 persons including the petitioner should be treated as deleted from the panel. By another order dated October 4, 1966 (annexure N) the General Manager, Northern Railway decided to hold a selection for filling up the resultant vacancies in the grade of Rs. 250-380. Having regard to the number resultant vacancies, the petitioner is not eligible for being called for selection under Annexure "N". In this writ petition the petitioner alleges that the orders under Annexures H; K and N have violated his fundamental rights under Articles 14 and 16 of the Constitution, and he asks for the issue of appropriate writs restraining the respondents from enforcing those orders and directing them to make promotions to posts in the grade of Rs. 250-380 in accordance with the panel published in the Gazette on August 1, 1965.

Counsel for the petitioner contended that the Railway Board or the General Manager had no power to amend the panel published on August 1, 1965. We are unable to accept this contention. The point was not taken in the petition. When the contention was raised at the hearing of the petition, the learned Solicitor-General drew our attention to the letter of the Railway Board No. E/52/PM 2-34 dated August 4, 1953. On the subject of cancellation or amendment of approved panels the Railway Board

directed by this letter "that the panels once approved should not be cancelled or amended without reference to the authority next above the one that approved the panel." There is no controversy that the Railway Board had power to issue this general direction under r. 157 of the Railway Establishment Code. In the present case the General Manager, Northern Railway was the authority approving the panel. The Railway Board was the authority next above him. Under the general direction issued by the Board in its letter dated August 4, 1953, the General Manager was competent to amend the panel with the approval of the Railway Board. In *Srivastava v. N. E. Railway*(1) the Court held that an amendment of an approved panel in accordance with a similar rule was in order. The point in controversy was whether there were 11 more anticipated vacancies in the grade of Rs. 205-380 on account of the upgrading of 11 posts in the next higher grade of Rs. 375-480. Now the selection for the 11 new posts in the grade of Rs. 375-480 had to be made from 56 eligible members of the staff comprising 23 clerks in the grade of Rs. 205-380 and 33 clerks in lower grades. The Railway Board held that until the selection was made, it could not be anticipated that 11 clerks in (1) [1966]3S.C.R.61,64,65.

the grade of Rs. 205-380 would be promoted and that there would be 11 consequential vacancies in that grade due to promotions to the higher grade. Acting upon this view the Railway Board decided that the anticipated vacancies in the grade of Rs. 205-380 due to normal wastage would be 19 and not 30 and that the panel should be amended accordingly and should be operated in respect of the first 24 persons only. We are unable to say that the decision is perverse or that it should be quashed and set aside.

All the 24 enquiry-cum-reservation clerks retained in the panel were senior to the petitioner. The junior most of them ranked 77 in order of seniority. All of them would have been selected and included in the panel, even if 96 persons were originally called for selection. There is no force in the contention that the retention of the first 24 persons in the panel without holding a fresh selection is discriminatory or is violative of Articles 14 and 16. For purposes of promotion, all the enquiry-cum-reservation clerks on the Northern Railway form one separate unit. Between members of this class there is no discrimination and no denial of equal opportunity in the matter of promotion. It is said that panels of class III selection posts of station masters in the grade of Rs. 370-475 on the Northern Railway and all class III selection posts on other Railways have been drawn up on the footing that anticipated vacancies in the selection grade include vacancies on promotions due to upgrading of posts in the next higher grade and that the Railway Board has not issued any direction for the amendment of these panels. Assuming this allegation to be true, the other panels might require revision and the matter deserves the attention of the Railway Board. But the other panels relate to separate classes of employees and have no bearing on the question of equal opportunity in the matter of promotion of enquiry-cum-reservation clerks on the Northern Railway. Equality of opportunity in matters of employment under Art. 16(1) means equality as between members of the same class of employees and not equality between members of separate, independent classes. (see *All India Station Masters' and Assistant Station Masters' Association v. General Manager Central Railways*(1)).

In the result, the petition is dismissed. There All be no Order as to costs.

Y.P.

1) [1960]2 S.C.R.311,319 Petition dismissed.