

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C.) No.5664/2008**

% **Date of Decision: 09.02.2010**

Union of India Petitioner
Through Mr.C.Mukund, Advocate

Versus

R.B. Srivastava Respondent
Through Mr.Jayant Bhushan, Sr.Advocate with
Ms.Meenu Mainee, Advocate

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

- | | | |
|----|--|-----|
| 1. | <i>Whether reporters of Local papers may be allowed to see the judgment?</i> | YES |
| 2. | <i>To be referred to the reporter or not?</i> | NO |
| 3. | <i>Whether the judgment should be reported in the Digest?</i> | NO |

ANIL KUMAR, J.

*

W.P.(C) No.5664/2008

Rule D.B.

List in the category of "Regular Matters" at its turn.

CM No.10819/2008

The petitioner UOI through Secretary, Railway Board has sought stay of impugned order dated 12th March, 2008 passed in OA No. 893/2005 whereby the petitioners have been directed to extend the

respondent benefits given in another decision of the Tribunal being OA No. 945/1994, R. Khosla Vs. Union of India & Ors. and re-assign the respondent's seniority along with the batch-mates of 1970 batch on completion of four years apprenticeship and to grant all consequential benefits.

According to the petitioners, as per Railway Board instructions dated 12th December, 1962 and 10th April, 1970, it was mandatory for SCRA to pass either Part-I and Part-II of CEI (London) or Section A & B of AMIE (India) Examination within the said period of four years and the apprentices were also required to pass semester examinations conducted by the Indian Railway Institute of Mechanical and Electrical Engineering, Jamalpur.

Petitioners' contention is that the apprentices were to be appointed as probationers only on their passing in full either both the parts of the AMIE (London) or Sections A & B of AMIE (India) Examination. Further plea of the petitioners is that the respondent cleared part I and five out of six papers of CEI (London) Examination at the time of passing out from Jamalpur and remaining one paper of part II of CEI (London) Examination was cleared on 7th February, 1977.

Since the respondent had not cleared the examination even within the extended period as permissible, he was not entitled to be

continued as an apprentice and consequently not entitled to benefit of seniority from the date of completion of apprenticeship after four years and therefore, the respondent cannot be equated with the candidates who have cleared the examination within the period permissible under the rules.

According to the petitioner, in the circumstances, the order of the Tribunal suffers from apparent error in applying the decision of Allahabad Bench of the Tribunal in case of other officers, as there is reasonable classification between batches of 1969-71 and in the circumstances according to the learned counsel for the petitioner, there is a good prima-facie case in favor of the petitioners. It is also contended that the rule has already been issued in the writ petition and in the circumstances, in order to avoid multiplicity of proceedings, it will be just and appropriate to confirm the stay order already granted by this Court.

The plea of the petitioner is contested by the respondent contending, inter-alia, that the Tribunal has rightly held with the reasoning given in R. Khosla's case and the seniority claimed by the respondent could not be denied to him, as the respondent had qualified Part-I of CEI (London) and also passed five out of six papers of CEI (London) at the time of passing out from Jamalpur and even remaining one paper of Part-II was qualified on 7th February, 1977. In the

circumstances, it is contended that there is no prima-facie case in favor of the petitioners and the petitioners are not entitled for any interim order in their favor.

In the writ petition, the Rule has already been issued and the matter is to be decided after hearing the pleas and contentions of the parties. By the order dated 12th March, 2008, the respondent was directed to be given the benefit of the earlier case in OA No. 945/94, R. Khosla Vs. UOI & Ors and re-assign his seniority along with his batch mates of 1970 batch on completion of four years of apprenticeship.

In case, the order impugned by the petitioners is not stayed, the respondent will have to be given the relief granted pursuant to the impugned order and his seniority will also be re-assigned and the consequential benefit will also be payable to him. However, in case, the order impugned by the petitioners is set aside then, reverting the seniority of the respondent and withdrawing all the benefits given to him under R. Khosla's case will create complicity which may lead to multiplicity of proceedings.

In case, the order is stayed and later on the writ petition is dismissed, the respondent shall be entitled for all the benefits which are granted pursuant to order dated 12th March, 2008 in OA No. 893/2005. In the circumstances, the balance of convenience is in favor of the

petitioners as inconvenience caused to the petitioners shall be much more, in case the operation of impugned order dated 12th March, 2008 in OA 893/2005 is not stayed.

By an interim order dated 6th August, 2008, the operation of the order passed by the Tribunal has already been stayed. The respondent though have filed the reply to the writ petition, however, the reply to the application for interim stay has not been filed.

In the totality of facts and circumstances, it will be just and appropriate and in the interest of justice and to avoid multiplicity of proceedings to stay operation of order dated 12th March, 2008 passed in OA No. 893/2008 and confirm the order dated 6th August, 2008 during the pendency of the writ petition. Therefore, the impugned order dated 12th March, 2008 is stayed and the order dated 6th August, 2008 passed in the present petition is confirmed during the pendency of the present petition. The application is disposed of in terms hereof.

ANIL KUMAR, J.

February 9, 2010
'rs'

MOOL CHAND GARG, J.