

point argued was that the amendment should have been allowed and no other point was pressed. The learned counsel for the respondent does not accept this position. In the circumstances, we have no other option but to remand the case to the High Court for disposal in accordance with law. The respondent will pay the costs to the appellant.

Appeal allowed.

ALL INDIA STATION MASTERS' & ASSISTANT
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v.

GENERAL MANAGER, CENTRAL RAILWAYS
AND OTHERS

(B. P. SINHA, C.J., P. B. GAJENDRAGADKAR,
K. SUBBA RAO, K. C. DAS GUPTA and J. C. SHAH, JJ.)

State Employment—Equality of opportunity in matters of promotion—Concept and meaning of—Constitution of India, Art. 16(1).

The Roadside Station Masters of the Central Railway challenged the constitutionality of promotion for guards to higher grade station masters' posts. The petitioners contended that the channel of promotions amounted to a denial of equal opportunity as between Roadside Station Masters and Guards in the matter of promotion and thus contravened the provisions of Art. 16(1) of the Constitution, as taking advantage of this channel of promotions, guards become station masters at a very much younger age than Roadside Station Masters and thus block the chances of higher promotion to Roadside Station Masters who reach the scale when they are much older.

The appellant contended that Roadside Station Masters and Guards really-formed one and the same class of employees.

Held, that the Roadside Station Masters belong to a wholly distinct and separate class from Guards and so there can be no question of equality of opportunity in matter of promotion as between the Roadside Station Masters and Guards.

The question of denial of equal opportunity requires serious consideration only as between the members of the same class. The concept of equal opportunity in matters of employment, does not apply to variations in provisions as between members of different classes of employees under the State. Equality of opportunity in matters of employment can be predicated only

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between persons who are either seeking the same employment, or have obtained the same employment. Equality of opportunity in matters of promotion, must mean equality as between members of the same class of employee and not equality between members of separate, independent classes. The fact that the qualifications necessary for recruitment of one post and another are approximately or even wholly the same can in no way affect the question whether they form one and the same class, or form different classes.

ORIGINAL JURISDICTION : Petition No. 126 of 1958.

Petition under Article 32 of the Constitution of India, for enforcement of Fundamental Rights.

N. C. Chatterjee and *R. V. S. Mani*, for the petitioners.

B. Sen and *R. H. Dhebar*, for the respondent.

1959. November 20. The Judgment of the Court was delivered by

Das Gupta J.

DAS GUPTA J.—The petitioners who describe themselves as Road-side Station Masters challenge in this petition under Art. 32 of the Constitution the constitutionality of the channel of promotion for Guards to higher grade Station Masters' posts as notified in the issue of the Central Railway Weekly Gazette No. 3 dated November 23, 1951. Under this Notification Guards have two lines of promotion open to them. One is that by promotion, C grade Guards may become B grade Guards on Rs. 100-185 and thereafter by further promotion A grade Guards on Rs. 150-225. The second line of promotion open to them is that by an examination described curiously enough as Slip 45 examination C grade Guards are eligible for promotion to posts of Station Masters on Rs. 150-225 scale and thereafter to all the further promotions that are open to the Station Masters, viz., higher scales of Rs. 200 to Rs. 300, Rs. 260 to Rs. 350, Rs. 300 to Rs. 400 and finally Rs. 360 to Rs. 500; B grade Guards and A grade Guards are also on passing Slip 45 examination eligible for promotion to posts of Station Masters on Rs. 200-300 pay scale and thereafter to further promotions to the higher scales in the Station Masters' line. The Road-side Station Masters on pay scale of Rs. 80 to Rs. 170

(the scale was formerly Rs. 64-170) can also reach by promotion the grade of Rs. 150-225 but only after going through an intermediate stage of Rs. 100-185. Similarly Station Masters on Rs. 100-185 scale may also reach the stage of Rs. 200-300 but only after passing through the intermediate stage of Rs. 150-225. Obviously the provisions enabling Guards to become Station Masters on the pay scale of Rs. 150-225 places the Station Masters of Rs. 80-170 scale at a disadvantage as against Guards on that pay scale and also puts the Road-side Station Masters on the pay of Rs. 100-185 pay scale at a disadvantage as against Guards on that scale of pay.

The petitioners contend that the channel of promotion in so far as it enables Guards to be promoted as Station Masters in addition to the other line of promotion open to them as Guards amounts to a denial of equal opportunity as between Road-side Station Masters and Guards in the matter of promotion and thus contravenes the provisions of Art. 16(1) of the Constitution.

It was further alleged in the petition that taking advantage of this channel of promotion, Guards become Station Masters on Rs. 150-225 at a very much younger age than Road-side Station Masters and thus block the chances of higher promotion to Road-side Station Masters who reach the Rs. 150-225 scale when they are much older. As instances of how the impugned provisions in the channel of promotion are harmful to the Road-side Station Masters, the petitioners state: that while the petitioner No. 2 even after completing 32 years of service has remained in the grade of Rs. 100-185 as Station Master, Guards of equal status and standing have reached gazetted rank within the same period of service; that whereas the petitioner No. 3 has come by promotion to the grade of Rs. 150-225 after putting in 21 years of service, Guards of his standing have risen to the grade of Rs. 360-500 by virtue of the impugned channel of promotion and several of his juniors who entered the Railway service long after him as Guards have superseded him and are working in the grade of Rs. 360-500; that while the

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petitioner No. 4 having entered into service as Telegraph Candidate and having passed all the requisite examinations prescribed for the higher grade of Station Master within a period of $2\frac{1}{2}$ years after putting in $6\frac{1}{2}$ years of service is still in the grade of Rs. 80-170, Guards of his length of service and departmental qualification are entitled for promotion as an Assistant Station Master in the grade of Rs. 150-225 within about the same length of service.

The respondents—the General Manager, Central Railways, Bombay, V.T., the Chairman Railway Board, New Delhi and the Union of India,—who contest the application contend that the channel of promotion providing these opportunities to Guards does not in any way contravene the provisions of Art. 16(1) of the Constitution. They also deny the correctness of the allegation that as a result of these opportunities Guards become Station Masters on Rs. 150-225 pay scale at a younger age than Road-side Station Masters. On the material before us it is not possible to come to a firm conclusion as regards the relative age at which Guards or Road-side Station Masters ordinarily reach the pay scale of Rs. 150-225. Assuming, however, the position to be as stated in the petition, that may only evoke some sympathy for the Road-side Station Masters, but does not in any way affect the decision of the question whether Art. 16(1) of the Constitution is contravened by this channel of promotion.

Art. 16(1) of the Constitution is in these words:—

“There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.”

The impugned provisions of the channel of promotion are in respect of promotion of persons already employed under the State and not in respect of the first employment under the State. If the “equality of opportunity” guaranteed to all citizens by Art. 16(1) does not extend to matters of promotion the petitioners’ contention that the provisions are void must fail at once. If, however, matters of promotion are

also "matters relating to employment" within the meaning of Art. 16(1) of the Constitution, the next question we have to consider is whether the impugned provisions amount to denial of equality of opportunity within the meaning of that Article.

We propose to consider the second question first, on the assumption that matters of promotion are "matters relating to employment". So multifarious are the activities of the State that employment of men for the purpose of these activities has by the very nature of things to be in different departments of the State and inside each department, in many different classes. For each such class there are separate rules fixing the number of personnel of each class, posts to which the men in that class will be appointed, questions of seniority, pay of different posts, the manner in which promotion will be effected from the lower grades of pay to the higher grades, e.g., whether on the result of periodical examination or by seniority, or by selection or on some other basis—and other cognate matters. Each such class can be reasonably considered to be a separate and in many matters independent entity with its own rules of recruitment, pay and prospects and other conditions of service which may vary considerably between one class and another. A member joins a particular class on recruitment; he leaves the class on retirement or death or dismissal, discharge, resignation or other modes of termination of service, or by joining another class of employees whether by promotion thereto or direct recruitment thereto on passing some examination or by selection in some other mode.

It is clear that as between the members of the same class the question whether conditions of service are the same or not may well arise. If they are not, the question of denial of equal opportunity will require serious consideration in such cases. Does the concept of equal opportunity in matters of employment apply, however, to variations in provisions as between members of different classes of employees under the State? In our opinion, the answer must be in the

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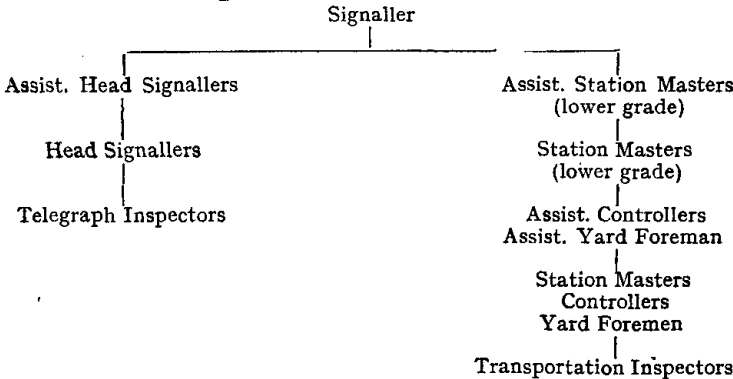
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negative. The concept of equality can have no existence except with reference to matters which are common as between individuals, between whom equality is predicated. Equality of opportunity in matters of employment can be predicated only as between persons, who are either seeking the same employment, or have obtained the same employment. It will, for example, plainly make no sense to say that because for employment as professors of colleges, a higher University degree is required than for employment as teachers of schools, equality of opportunity is being denied. Similarly it is meaningless to say that unless persons who have obtained employment as school teachers, have the same chances of promotion as persons who have obtained employment as teachers in colleges, equality of opportunity is denied. There is, in our opinion, no escape from the conclusion that equality of opportunity in matters of promotion, must mean equality as between members of the same class of employees, and not equality between members of separate, independent classes.

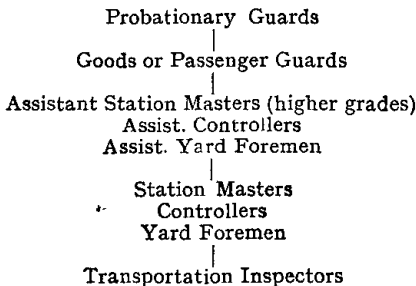
The Petitioners' Counsel did not seriously challenge the correctness of the above proposition. They contended however that Road-side Station Masters and Guards really form one and the same class of employees. In our opinion, there is no substance in this contention. It has to be noticed first that Appendix II of the Indian Railway Establishment Code (Vol. I) which prescribe rules for the recruitment and training of subordinate staff of Indian Railways classify the subordinate staff governed by the rules into 7 branches: (1) Transportation (Traffic); (2) Commercial; (3) Transportation (Power); (4) Civil Engineering; (5) Store department Staff; (6) Office clerks and (7) Medical. Each branch again has been divided into groups. The first branch, i.e., the Transportation (Traffic) is shown as having 3 groups: (i) Station Masters, (ii) Guards, (iii) Outdoor Clerical Staff. Rule 2, the definition section defines a "group" to mean a series of classes which form a normal channel of promotion. Rule 8 shows the classes of posts

included in the Station Masters' group and the normal channels of their promotion which are as follows :—

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Rule 9 lays down the qualifications necessary for the recruitment to this "group". Rule 10 says that the recruitment will be initially made as students and further provides that the recruits may be (a) persons to be trained in telegraphy in railway telegraph training schools and (b) persons who have completed a training in telegraphy in recognized private telegraph training schools. Note 2 of this Rule provides that recruits in either category will on the satisfactory completion of their training, be eligible for appointment as signallers and will remain on probation for one year after such appointment. Provisions for training appear in Rule 11. Rule 12 provides for Refresher and Promotion Courses. Rules 13 to 17 are in respect of Guards. Rule 13 states the classes included in this group and the normal channels of their promotion thus :—



Rule 14 lays down the qualifications necessary for recruitment in this line. Rule 15 provides that the

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recruitment will normally be to the lower grade of Guards. Rule 16 provides that during the one year period of probation recruits will undergo training for a period to be fixed by the administration. Rule 17 provides for the periodical refresher courses at stated intervals and promotion courses as necessary may be prescribed.

In deciding the question whether Road-side Station Masters and Guards belong to one and the same class of employees or not, we must not be misled by the words "groups" or "classes of posts" used in the above rules. The crux of the question is the nature of the differentiation between Road-side Station Masters and Guards in recruitment, prospects and promotion. We find that Road-side Station Masters and Guards are recruited separately, trained separately and the several classes of posts which are ordinarily open to them are also distinct and separate. The only point of contact between them is provided by the rule that Guards may become Station Masters by passing the Slip 45 examination. If after becoming Station Masters these Guards could continue also as Guards there might be some scope for suggesting that the two classes have coalesced. It is not disputed however that Guards once they become Station Masters cease to be Guards and continue as Station Masters. The fact that the qualifications necessary for recruitment as Guards or Station Masters are approximately or even wholly the same can in no way affect the question whether they form one and the same class, or form different classes. As on the admitted facts the Road-side Station Masters and Guards are, as already stated, recruited separately and trained separately and have separate avenues of promotion, the conclusion is irresistible that they form two distinct and separate classes as between whom there is no scope for predicating equality or inequality of opportunity in matters of promotion.

In view of this conclusion it is unnecessary for the purpose of the present case to decide the other question: whether matters of promotion are included in the words "matters relating to employment" in

Article 16(1) of the Constitution. For even assuming that they are so included, the present application must be rejected on the simple ground that the petitioners belong to a wholly distinct and separate class from Guards and so there can be no question of equality of opportunity in matters of promotion as between the petitioners and Guards.

The learned Counsel for the petitioners stated before us that this channel of promotion for Guards is peculiar to the Central Railways, and is not now to be found in the other Zones of Indian Railways. If that be the position, the matter may well deserve the attention of the Government; but this has nothing to do with the merits of the petition before us.

For the reasons mentioned above, we dismiss the application, but in view of all the circumstances, we order that parties will bear their own costs.

Petition dismissed.

FEROZ DIN AND OTHERS

v.

THE STATE OF WEST BENGAL

(S. K. DAS, A. K. SARKAR and M. HIDAYATULLAH, JJ.)

Industrial Dispute—Strike—Notice of discharge—Whether amounts to lock-out—Sanction to prosecute—Facts constituting the offence not shown on the face—Conviction on such sanction if bad—Industrial Disputes Act, 1947 (14 of 1947), ss. 27, 24, 2(1).

A company dismissed from its service four of the appellants, for taking part and instigating others to join, in an illegal slow-down strike in the Hot Mill Section of its works, which were a public utility service. On such dismissal the slow-down strike however gained strength. The company thereupon issued a notice dated April 8, 1953, to the workers of the Hot Mill that unless they voluntarily recorded their willingness to operate the plant to its normal capacity, before 2 p.m. of April 10, they would be considered to be no longer employed by the company. As a result forty workers recorded their willingness, but the rest did not make any response at all. The company then issued a second notice dated April 25, stating, *inter alia*, that the workers who did not record their willingness to work the plant to its normal capacity in terms of the previous notice dated April 8, had been considered to be no longer in service and their formal discharge

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