

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1195/1996

New Delhi, this 3rd day of October, 1996

Hon'ble Shri A.V. Haridasan, Vice-Chairman(J)
Hon'ble Shri K. Ramamoorthy, Member(A)

Shri S.R. Shah
s/o late Shri S.N. Shah
D-I/103, Rabindra Nagar
New Delhi-110-00 .. Applicant
(By Shri S.P. Singha, Advocate)

vs.

Union of India, through

1. Chairman
Railway Board
Raisina Road, New Delhi
2. Secretary
Min. of Personnel, PG & Pension
North Block, New Delhi
3. Shri R.C. Sharma
General Manager
SE Railway, Garden Reach
Calcutta
4. Shri K.M. Rao
General Manager
SE Railway, Rail Nilayam
Secunderabad
5. Shri V.K. Aggarwal
General Manager
Northern Railway, New Delhi
6. Shri V.K. Agnihotri
General Manager
Southern Railway, Madras
7. Shri A.P. Murugesan
General Manager
Eastern Railway, Calcutta
8. Shri M.R. Bhaskaran
General Manager
Railway Electricity
Allahabad
9. Shri S. Dharani
General Manager
Chittaranjan Locomotive Works
Chittaranjan .. Respondents
(Shri K.T.S. Tulsi, Sr. Counsel and
Shri V.S.R. Krishna, Advocate)

ORDER

Hon'ble Shri K. Ramamoorthy, Member(A)

By way of this application, the applicant seeks
the relief to quash the Scheme for appointment to the
post of General Managers and equivalent in the Indian
Railways, in the pay scale of Rs.7300-8000.

2. In the application filed on 30.5.96, he has raised the point that para 6 of the Scheme should be treated as ultra-vires and unconstitutional. By way of amendment application dated 11.7.96, he seeks further relief that para 4.1 of the Scheme also needs to be struck down on the ground that it is ultra-vires, discriminatory and violative of Articles 14 and 16 of the Constitution of India.

3. The facts of the case are as follows. The applicant is a Member of the Indian Railway Traffic Service (IRTS in short) and has been recruited through the Civil Services Examination. Though the post of General Manager is outside the cadre, the appointment to the post is generally through selection from amongst eight services which form Managerial Cadre and the IRTS is one of the 8 services. The Department has formulated a Scheme vide a Resolution dated 16.7.86 for making appointments to the post of General Manager and equivalent in the Indian Railways. This particular Scheme contains the following provisions which are challenged by the applicant,

Para 4.1: "The Selection Committee may also recommend the specific type/types of assignments for which a particular officer mentioned in the panel may be considered suitable"

Para 6: "In judging the suitability of the officers, the Selection Committee will give due consideration to their performance, as Divisional Railway Managers and as Principal Heads of Department in the Railways"

4. It is the contention of the applicant that in view of these provisions, he has suffered in the selection process held by the DPC under the Scheme on 21.9.94, for vacancies which occurred between July, 94 and June, 95.

The applicant has therein been shortlisted for the post of Principal of Railway Staff College but not for the post of General Manager. According to the applicant, this had happened because of the two provisions in the Scheme reproduced above.

5. The learned counsel for the applicant during his argument further stated that the Scheme as such should not be considered as a valid Scheme inasmuch as no consultation took place with the UPSC in the formulation of the Scheme. Moreover, it is also contrary to the provisions of Central Staffing Scheme, relating to similar high level appointments. The learned counsel for the applicant, in particular, drew the attention of the Tribunal to the fact that in 1984, the Scheme provided for only a declaration by the Selection Committee as to the posts for which selected candidate could be found to be more suitable, whereas in the present Scheme, the provision has been amended to stipulate particular post to which a person could be selected and to recommend specific assignment for a particular officer. This amendment puts a restriction which forms the basis for the objection of the applicant. More serious objection to the scheme is contained in the provision in para 6 of the Scheme where the Selection Committee is given a specific direction to give "due consideration to their performance, as Divisional Railway Managers and as Principal Heads of Departments in the Railways". This provision acted against the interest of the present applicant who in spite of his long and meritorious managerial service has not had to work either as DRM or as Principal Head of Department, having chosen to go on deputation to Union Government as Joint Secretary or in

some other similar assignment. This having happened because of exigency of service, the applicant could not be put to any disadvantage in the selection as General Manager. On this ground, therefore, this provision in the scheme also should be struck down as it is discriminatory.

6. On a specific query from the Tribunal, the learned counsel for the applicant reiterated the fact that his objection was basically to the Scheme and not to the proceedings of the Selection Committee as such, which has drawn up the selection panel as per the Scheme.

7. The learned counsel for the respondents opposed the application at the admission stage itself. According to him, the Scheme had been in operation since 1986 and cannot be stated to have been specifically formulated to harm the interests in respect of the applicant. No specific malafides has been alleged in the application.

8. As regards the specific objection raised by the applicant, the learned counsel stated that the Scheme does not suffer from any infirmities whatsoever. There was no statutory stipulation to consult the UPSC and therefore non-consultation with UPSC cannot come in the way of the legality of the Scheme. Similarly, the fact that it differs from the Central Staffing Scheme cannot also be held as a valid objection since schemes are drawn taking into account specific requirement of a particular department and particular jobs.

9. As regards para 4.1 of the Scheme, the provision as such cannot be faulted since the requirement of a particular post, though in the same grade, could differ from the requirement of other post and it was open to the Department to duly utilise the talent and strengths of a particular officer for manning a particular post. The provision in 4.1 regarding "considered suitable in all respects" refers to suitability for a particular post in question and the fact that an officer is not considered suitable in all respect for all the post cannot come in the way of being considered suitable for a particular post. This provision therefore by itself cannot be considered to be discriminatory. As regards the other provision in para 6, the learned counsel for the respondents contended that the Railways being a large organisation with multifarious needs and having managerial skills with different specificities as represented by each Managerial cadre referred to in the Scheme, it was certainly within the province of the respondent department to stipulate additional weightage for particularly experienced men in particular disciplines. The fact that the provision has been made for due weightage for the post of DRM/Principal Head of Department cannot therefore be faulted as being irregular or abnormal.

10. The learned counsel for the respondents relied on a catena of judgements to reinforce his arguments that a policy decision cannot be faulted if the right to promotion is not denied. He relied on the apex court judgement in S.L.Dutta & Ors. Vs. UOI & Ors. 1991 SCC (505) wherein it has been held that "A right to be considered for promotion is a term of service, chances

of promotion are not. Hence the fact that there was reduction in the chances of promotion did not tantamount to a change in the conditions of service". He also relied on the judgement in V.K. Kaul Vs. UOI JT 1991(5)SC 21 holding that "being bypassed for appointment to the post outside the cadre cannot be held to be malafide or violative of Article 14 & 16 of the Constitution". He also relied on the judgements of Madras and Hyderabad Benches of this Tribunal in OA 552/96 and OA 67/96 decided on 2.9.96 and 21.8.96, respectively, which inter alia upheld the validity of para 4.1 of the Scheme.

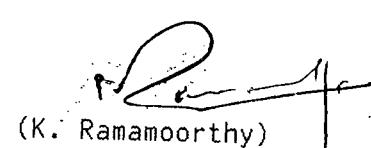
11. The learned counsel for the respondents also made available the proceedings of the DPC for perusal of the Tribunal so that the Tribunal satisfies itself as to the bona fide of the selection proceedings. Since the objection of the applicant is only to the Scheme itself, detailed perusal of the DPC was not necessary for the Tribunal. However, the proceedings also have been generally gone through by this Tribunal. Even on a perusal of the proceedings, we find that not only has the case of the applicant been duly considered by the DPC but the fact that the applicant has obtained "outstanding" records in the ACR for March, 1992 and March, 1993 and "very good" record in March, 91 has also been specifically listed. It is also evident from the proceedings that the applicant's name was not only considered but was also included in the panel though for some other assignment.

12. After hearing the learned counsel for the parties, it is clear that the challenge of the applicant to the Scheme formulated in 1986 cannot be upheld for the reason

that the two provisions in the scheme as challenged by the applicant are not arbitrary or discriminatory so long as all the candidates are considered by the same standards with reference to a particular post by the Selection Board. We uphold the contention of the counsel for the respondents that diminution in promotion prospects because a particular job experience is found to be useful by the respondent department, cannot by itself be a cause for challenge especially when the post in question is not of the cadre. Therefore, no *prima facie* case has been established to claim that paras 4.1 and 6 are *ultra vires* or arbitrary and violative of Articles 14 and 16 of the Constitution and therefore the question of even admitting the application does not arise. Hence admission is refused.

13. Before disposing of the application as above, reference needs to be made to one plea made by the counsel for the applicant that selection for a post for which there was no vacancy, or for which a vacancy is not likely to arise within the life of the select list was a cruel joke on an otherwise meritorious officer, particularly when the respondent department has stated that the applicant's name will not be considered in future DPC, because of the age factor of 56 years. In such a case, the department could consider the question as to whether atleast for particular assignments the provision of considering name already in panel in spite of age factor could be made, as similar provision exists for promotion to all-India services, which also prescribe age limit.

14. With the above observation, the application is dismissed at the admission stage itself leaving the parties to bear their own costs.



(K. Ramamoorthy)
Member(A)



(A.V. Haridasan)
Vice-Chairman(J)

/gtv/