

Central Administrative Tribunal, Principal Bench

Original Application No.1418 of 1996

New Delhi, this the 11<sup>th</sup> day of April, 2000

Hon'ble Mr.V.K.Majotra, Member (A)  
Hon'ble Mr.Kuldip Singh, Member(J)

1. Shri Raj Kumar Kakkar, S/o Shri Ram Prakash Kakkar, Dy.Chief Yard Master, Northern Railway, New Delhi.
  2. Shri Rattan Kumar, S/o Shri Munshi Ram, Dy. Station Superintendent, Northern Railway, New Delhi.
- Applicants

(By Advocate Shri B.S.Mainee)

Versus

Union of India : Through


1. The General Manager, Northern Railway, Baroda House, New Delhi.
  2. The Divisional Railway Manager, Northern Railway, State Entry Road, New Delhi.
  3. Shri R.S.Dubey, Yard Master, under Station Superintendent, Northern Railway, Shakurbasti, Delhi.
- Respondents

(Respondents 1 & 2 By Advocate Shri B.S.Jain  
Respondent 3 by Advocate Mrs.Meera Chhibber)

O R D E R

By V.K.Majotra, Member(A) -

The applicants have assailed General Manager, Northern Railway, respondent no.1's order dated 19.6.1996 (Annexure-A-1) which was issued on representation of Shri R.S.Dubey, respondent 3, whereby it has been directed that Shri Dubey should be assigned seniority as Yard Master (for short 'YM') in grade Rs.1400-2300 on the basis of his length of service in the grade, as the change of category in his case was ordered on administrative grounds, and that his future promotion in grade Rs.1600-2600 and Rs.2000-3200 should be considered on retrospective basis. It was also directed that Shri Dubey should not be placed below the



applicants, who were promoted to grade Rs.1600-2600 on 9.11.1991 although they were junior to Shri Dubey in grade Rs.1400-2300.

2. Annexure-A-1 has been challenged on the ground that respondent 3 was not only junior to the applicants in grade Rs.1400-2300 but also ineligible to be appointed as Assistant Yard Master (for short 'AYM') grade Rs.1400-2300. According to the applicants they were promoted as AYM on adhoc basis vide order dated 7.8.1985 (Annexure-A-3). Subsequently, respondent 2 held a regular selection for the post of AYM and called eligible candidates for written examination and viva voce. This process was completed between 12.11.1988 and 13.2.1989. The select list of 9 candidates was declared on 27.2.1989 (Annexure-A-4). The applicants were regularised as AYM from the date they were promoted on adhoc basis vide letter dated 13.6.1991 (Annexure-A-5). Whereas the post of AYM is a selection post, the post of YM grade Rs.1600-2660 is a non-selection post to which the applicants were promoted on <sup>b</sup>9.11.1991. They were further promoted as Deputy Chief Yard Master and Dy.Station Superintendent in the grade of Rs.2000-3200 with effect from 4.10.1993 and 11.10.1993 respectively.

3. According to the applicants respondent 3 was appointed through Railway Recruitment Board as Assistant Station Master (for short 'ASM') Grade Rs.330-560 in October, 1980, which was subsequently converted into Rs.1200-2040. He was promoted as ASM in the higher grade Rs.1400-2300 from 18.8.1986, as per seniority list

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of the ASMs issued on 23.2.1989 (Annexure-A-7). The name of respondent no.3 appears at serial no.314 and date of promotion in grade Rs.425-640/ Rs.1400-2300 has been shown as 18.6.1988<sup>ll</sup>. Respondent no.3 was posted as AYM Gr.Rs.1400-2300 vide notice dated 16.8.1986<sup>ll</sup> (Annexure-A-8). He was appointed as such ~~on~~ purely temporary and adhoc basis pending passing<sup>ll</sup> selection and P-16<sup>Course</sup> and according to the applicants this does not bestow upon him any right to seek permanent absorption as AYM. Respondent 3 was continued along with other ASMs and ultimately on their request they including respondent 3 were allowed change in category and absorption in the cadre of YM Grade Rs.1400-2300. Respondent 3 and such personnel were not eligible to appear in the selection for the post of AYM Gr. Rs.1400-2300. However, special permission was sought for them to appear in the selection for the post of AYM (Annexure-A-9). However, respondent 3 without appearing in the selection for the post of AYM was given officiating promotion as YM Grade Rs.1600-2660 vide notice dated 17.11.1993. As the applicants had already been promoted in Grade Rs.1600-2660 with effect from 9.11.1991 and in Grade Rs.2000-3200 in October, 1993, the alleged wrongful absorption and promotion of respondent 3 did not affect the rights of the applicants. However, in terms of the impugned letter dated 19.6.1996 respondent 2 would take action to revise the seniority of respondent 3 over and above the applicants in grade Rs.1600-2660. The applicants have sought quashing of Annexure-A-1.

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4. Respondents 1 & 2 in their counter have contended that the OA is time barred. According to them respondent 3 was promoted as ASM in regular grade with effect from 18.8.1986. As there were large number of vacancies in the category of AYM Grade Rs.1400-2300, with the approval of respondent 1, vide his letter dated 16.3.1993 (Annexure-A-10), the category of six ASMs including respondent 3 to the post of AYM, on administrative grounds was changed. According to the official respondents since respondent 3 had been appointed as AYM in public interest along with five others, and since they were already working in grade Rs.1400-2300 on regular basis and since their work as AYM (Rs.1400-2300) since 1989 had been satisfactory, they were not subjected to selection to Grade Rs.1400-2300. On the representation of respondent 3, for the benefit of seniority with effect from 18.8.1986 i.e. the date of regular promotion in Grade Rs.1400-2300, the respondents decided to give benefit of seniority to respondent 3. The applicants became regular holder of Rs.1400-2300 on their selection. They would get the benefit of seniority in grade Rs.1400-2300 only with effect from 27.2.1989. The applicants have filed rejoinder as well.

5. The learned counsel of the parties were heard and the material on record was perused carefully.

6. We propose to first deal with the objection of the respondents that the application is time barred, raising the plea that the cause of action, if any, had arisen when respondent 3 was appointed as AYM on adhoc

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basis on 16.8.1989 and subsequently regularised on 17.11.1993. The learned counsel for the applicants stated that the cause of action has arisen in favour of the applicants on 19.6.1996 when by Annexure-A-1 respondent 1 has issued directions to the DRM that respondent 3 should be assigned seniority as YM in Grade Rs.1400-2300 on the basis of length of service in the grade and his future promotions in Grades Rs.1600-2600 and Rs.2000-3200 should be considered on retrospective basis and further that respondent 3 should not be placed below the applicants who were promoted in Grade Rs.1600-2600 on 9.11.1991. We are inclined to accept the averments of the applicant and are of the view that the OA is not hit by vice of limitation.

7. The learned counsel for the applicants has contended that respondent 3 was not only junior to the applicants in Grade Rs.1400-2300 but also ineligible to be appointed as AYM Grade Rs.1400-2300. According to the learned counsel for the applicants respondent 3 was posted on adhoc basis as AYM 1400-2300 on a purely temporary basis and pending passing selection and P-16 ~~course~~ such posting/appointment would not bestow upon them any right to seek permanent absorption as AYM or ~~claiming~~ the benefit of seniority over their seniors. He has referred to Annexure-A-8 dated 16.8.1989 in this behalf. As per Annexure-A-5 dated 13.6.1991 the applicants Raj Kumar Kakkar and Rattan Kumar were shown to have been working as AYM 1400-2300 on adhoc basis with effect from 25.11.85 and 11.11.85 respectively and on passing the selection for the post of AYM and also

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passing P-16, their adhoc promotion was regularised. According to the learned counsel for the applicants on regularisation, the seniority of the applicants has to be reckoned with effect from 25.11.1985 and 11.11.1985 respectively, since when they have been working as AYM in Grade Rs.1400-2300 such seniority was reflected in the seniority list dated 5.7.1995 (Annexure-A-6). On the other hand the category of respondent 3 among five others was changed on his own request and he was not eligible for being appointed as AYM under the rules.

8. Paras 211(3) and 311 of the Indian Railway Establishment Manual, Volume-1 (Revised Edition-1989) read as under :-

211(3) 'Selection Posts' are posts, grades or classes which have been declared as such by the Railway Board and to which promotion are made on the basis of a positive act of selection as per procedure in force for filling up the selection posts.

311. Transfer in the interest of administration.- Seniority of railway servants on transfer from one cadre to another in the interests of the administration is regulated by the date of promotion/ date of appointment to the grade as the case may be.

9. The post of AYM is a selection post. Under para 211 promotion to this post can be made on the basis of a positive act of selection as per procedure. According to the learned counsel for the applicants respondent 3 has not undergone the selection process for appointment/ promotion to the post of AYM. He was transferred from one cadre to the cadre of AYM and his seniority has to be regulated by the date of promotion/ date of appointment to the grade of AYM under para 311.

10. The learned counsel for the respondents have

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stressed that the category of respondent 3 was changed on administrative grounds and he had undergone P-16 course. Therefore, objections regarding his eligibility and absorption to the changed category should not arise. As per Annexure-A-10 dated 16.3.1993 the change of category in the case of respondent 3 was allowed on administrative grounds as one time exception as a special case. However, other terms and conditions applicable for change of category adjudging their suitability and medical classification had to be applied before their regularisation. *contained in* notice dated 16.8.1989 (Annexure A-8). Respondent 3 was appointed as AYM Gr.Rs.1400-2300 on purely temporary and adhoc basis pending passing selection and P-16 course. Even if respondent 3 had passed P-16 course, it was imperative that before regularisation he should have passed the selection and his suitability and medical classification should have been adjudged before regularisation. The change of category on administrative grounds does not exempt respondent 3 from the conditions pre-requisite imposed upon him by Annexure-A-8, Annexure-A-10 etc. He cannot be regularised/ absorbed and given seniority over the applicants without clearing the prescribed selection and other conditions as per Annexure-A-8 and A-10.

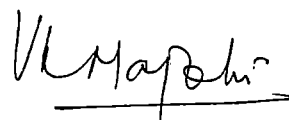
11. From the above discussion, it is concluded that respondent 3 has not yet cleared the selection process for AYM despite the fact that he had cleared the P-16 course. He is still to be treated on a temporary and adhoc basis pending passing selection and his

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suitability and medical classification have to be adjudged for change of category. The seniority of the applicants Raj Kumar Kakkar and Rattan Kumar as AYM in the grade of Rs.1400-2300 will be treated as 25.11.85 and 11.11.85 respectively when they were appointed as such on adhoc basis and later regularised with effect from 27.2.1989. Respondent 3 will not be allowed to be treated as senior to the applicants in the grade of Rs.1400-2300 or Rs.1600-2660 as per Annexure A-6 dated 5.7.1995 as he has not cleared the selection process and his suitability thereafter has not been adjudged.

12. In the result, the OA is allowed. The impugned order Annexure-A-1 dated 19.6.1996 is quashed. No order as to costs.

  
(Kuldip Singh)  
Member (J)

  
(V.K. Majotra)  
Member (A)

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