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Central Administrative Tribunal
Principal Bench, New Delhi

OA No. 2563/96

New Delhi, this the 7th day of March, 1997

Hon'ble Dr. Jose P. Verghese, Vice-Chairman(J)
Hon'ble Shri S.P. Biswas, Member (A)

Shri S.A.A.Zaidi,
Additional General Manager,
Northern Railway,
Baroda House,
New Delhi.Applicant
(By Shri B.S.Mainee, Advocate)

Versus

1. The Chairman,
Railway Board,
Ministry of Railways,
Rail Bhawan, Rafi Marg,
New Delhi.
2. The Cabinet Secretary,
Government of India,
Rashtrapati Bhawan,
New Delhi.
3. The Secretary,
Ministry of Railways,
Railway Board,
Rail Bhawan, Rafi Marg,
New Delhi. ...Respondents
(By Shri KTS Tulsi, ASG alongwith Shri Vikas Mehta
and Shri VSR Krishna, Advocates)

O R D E R

By Hon'ble Dr. Jose P. Verghese, Vice-Chairman(J)

The applicant in this case is aggrieved by non-selection of the petitioner to the post of General Manager or equivalent while an officer junior to him had been promoted as indicated in Annexure - III, ignoring his seniority only on the ground that the applicant has less than two years of service remaining before superannuation.

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2. The case of the applicant is that he was first appointed to the Indian Railways on 29.07.1963 and after obtaining due promotions in the hierarchy, he was finally promoted and appointed in the Senior Administrative Grade w.e.f. 04.08.1987. After having worked as Secretary, Railway Board, the applicant was promoted and posted as Additional General Manager, Northern Railway on 10.04.1996, and thereafter with effect from 05.09.1996, the applicant was also given current charge of the post of General Manager, Northern Railway when the said post fell vacant due to promotion and transfer of Shri V.K. Aggarwal, as Member, Railway Board.

3. Presently the applicant is working as Additional General Manager, Northern Railway, after the regular posting of Shri Shanti Narain as General Manager Northern Railway. It is also pertinent to note that the said post of General Manager, Northern Railway has now fallen vacant w.e.f. 31.01.1997, pursuant to Shri Shanti Narain's promotion as the Member (Traffic), Railway Board.

4. The submission of the applicant is that there were eleven vacancies in the cadre of General Managers when Annexure A-III panel was prepared. The name of the applicant is at serial No. 26 as he was found eligible for promotion but he was not promoted and appointed since he was having less than two years of service left with before superannuation. The applicant also alleged, that when the respondents filled up

eleven posts of General Managers and equivalent on 29.11.1996, they proceeded to appoint one officer junior to the applicant, even though he was not left with two years service from the date of appointment. The contention of the applicant is that the date to be reckoned for the purpose of calculation of the residual service is from the date of appointment. The person at serial No. 28 is admittedly not having two years of residual service from the date of appointment for the purpose of appointment to the post of General Manager.

5. This court had passed interim orders to consider the petitioner provisionally for a future vacancy when necessity arises before appointing any eligible candidates on an ad hoc basis. The respondents were alleged to have violated these directions and the petitioner in an application/ ^{brought} three specific violations brought to the notice of the Court. It was under these circumstances this Court proceeded to pass the following order:

"We see force in the contention of the learned counsel appearing on behalf of the applicant and direct the respondents that no appointment whatsoever shall be made against the said vacancy being adhoc to look after the duty etc. without reference to this court and without considering the name of the applicant and before a reasoned order passed. It is made clear that order passed after considering the applicant shall be produced before this court before any kind of appointment is made against said vacancy or any posting against the said vacancy, fallen vacant on 31.1.1997."

6. After the receipt of the said order, the respondents made an application for modification of the above interim orders. It is this miscellaneous petition that has now come up for hearing today.

7. While arguing on this interim application, the learned counsel for the respondents stressed that there is no prima-facie case which warranted issuance of the said interim order, and he proceeded to argue the case on merit. It was noticed that the matter already stood "admitted", obviously on a prima-facie finding that there is prima facie case in favour of the petitioner. It is under these circumstances, that the learned counsel for the parties agreed that the matter can be disposed of on the basis of arguments now advanced at length.

8. The claim of the applicant is that since the above referred officer junior to the applicant is similarly placed as that of the applicant and both the applicant as well his junior had less than two years of residual service before retirement, the respondents proceeded to relax the rule of two years of residual service, only in the case of his junior, denying him the same consideration. This he alleges is a discrimination and an arbitrary exercise of powers to relax under the rules and the same has been alleged to be a violation of his fundamental right under Article 14 & 16 of the Constitution of India. The power to relax is available to the respondents under the rules

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but the said power has been discriminatively exercised thereby offering undue favours to his junior and the same is alleged to be nothing but a discrimination.

9. Admittedly the petitioner has been placed in the select panel as he was found eligible, according to rules, but his appointment has been withheld only because he does not have two years of residual service. This position was not contested by the learned counsel appearing on behalf of the respondents.

10. The main ground raised by the petitioner is that the petitioner was eligible to be considered for the post of General Manager or equivalent post under a Scheme formulated by the respondents. Admittedly the guidelines are in the nature of policy decision. This scheme was circulated in terms of Resolution No. E(III-84 PM 6/132 dated 16.7.1986, by the Secretary Railway Board and Ex-Officio Additional Secretary to the Govt. of India. The said Scheme has laid down the guidelines for selection of officers from amongst the various railway services for appointment to the posts of General Manager and equivalent in the Indian Railways so as to provide equitable opportunities for the members of the various services and to ensure that these posts are manned by person of proven ability and competence, with due regard to the specific requirement of each post and for the smooth and efficient running of the railway system.

11. Para 7.2 of the Scheme gives the eligibility criteria which is reproduced herebelow:-

"(i) be less than 56 years of age;

(ii) have put in not less than 25 years' of regular continuous service including period of probation, if any, in a Group 'A' Service listed in Appendix-II.

(iii) be holding a level-I or equivalent or higher post; and

(iv) have put in a minimum of five years service in the senior administrative Grade (i.e. Level-II and Level-I combined) including service rendered in higher posts, if any."

12. From among the eligible officers under the Scheme a panel was to be drawn up for considering the candidates for the post of General Manager or equivalent. It is pertinent to mention here that the eligibility of each officer to be empanelled, shall be with reference to a cut off date i.e. 1st July of the recruitment year.

13. The proceedings of the selection Committee is also regulated by para 9 of the scheme, even though the cut off date for the purpose of considering the eligibility for empanelment is 1st July, the Confidential reports to be made available for consideration of the candidates is that of March ending of that year, and the selection Committee is to meet

once a year after 1st April of that year. Normally the Selection Committee is to meet once a year but they may meet at the intervals of less than one year if circumstances so required.

14. It is also pertinent to mention that the Selection Committee which is to meet at any time after 1st April of that year will draw up a panel which is valid for a period of one year i.e. from 1st July of that year to 30th June of the next year.

15. Para 9 of the Scheme also provides that the Selection Committee which draws up a panel, consisting of such number of names as may be necessary for appointment to the existing and anticipated vacancies in the post of General Manager and equivalent, during the period from 1st July of the year to the 30th June of the next year.

16. The relevant paras of the Scheme are reproduced herebelow:-

"7. Eligibility Criteria:

7.1 Officers belonging to the Railway Services listed in Appendix-II will be eligible for consideration by the Selection Committee.

7.2 For being considered every such officer should on 1st July of the year in which selection is made:

"(i) be less than 56 years of age;

(ii) have put in not less than 25 years' of regular continuous service including period of probation, if any, in a Group 'A' Service listed in Appendix-II.

(iii) be holding a level-I or equivalent or higher post; and-

(iv) have put in a minimum of five years service in the senior administrative Grade (i.e. Level-II and Level-I combined) including service rendered in higher posts, if any."

7.3 Only such of the empanelled officers would normally be appointed to posts of General Managers and equivalent as well as will be able to serve for at least two years on such or higher posts (s).

8. In preparing a panel of names for consideration for appointments to the posts of General Managers and equivalent, the Selection Committee shall as far as may be practicable ensure that -

(i) Equitable opportunities are available to the members of the various services listed in Appendix-II, consistent with the experience and specific requirements of the vacancies in the posts of General Managers and equivalent for which the panel is being made;

(ii) There is no undue predominance of any of the Railway Services listed in Appendix-II amongst the holders of the posts of General Managers and equivalent; and

(iii) An officer of the appropriate service with adequate experience in the post of General manager and equivalent would become available for consideration for appointment against a future vacancies in the corresponding functional post of Member of the Railway Board.

Provided, however, that in making recommendations in accordance with (i), (ii) and (iii) above, the Selection Committee shall, as far as may be practicable, ensure that the difference in batch years between the junior most officers of any two services included in the panel, is not ordinarily more than two.

Explanation-1: For the purpose of (i) above, holding of more than 6 posts of General Managers and equivalent by officers belonging to any one service would ordinarily be construed as undue predominance.

Explanation 2: Batch for the purpose of this paragraph will mean persons recruited to any particular service through the same competitive examination.

Explanation 3: The year to which any particular batch of a service belongs (viz Batch year) will be determined by the earliest date on which any person selected for appointment to the Service through the same competitive examination, joins

9. Periodicity of meeting of Selection Committee and currency of panels

The selection Committee shall normally meet once a year at a suitable time after 1st April, as soon as the reports for the year ending March of that year are available for consideration. They may meet at intervals of less than a year, if the circumstances so required. They will draw up a panel, consisting of such number of names as may be necessary for appointment to the existing and anticipated vacancies in the posts of General Manager and equivalent during the period from 1st July of the year to the 30th June of the next year. The panel drawn up by the Selection Committee shall be valid for vacancies arising during the period 1st July of that year upto 30th June of the next year.

10. Relaxation

Any of the above mentioned provisions of the Scheme, may, if considered expedient in the public interest, be relaxed to the extent necessary, in consultation with the department of Personnel & Training. Any such relaxation shall be specifically brought to the notice of the Appointments Committee of the Cabinet while recommending the appointments."

17. Shri B.S. Mainee, learned counsel appearing on behalf of the petitioner submitted that according to para 7.3 of the Scheme, the requirement of two years tenure is to be calculated from the date of appointment and the date of occurrence of vacancy has no relevance anywhere in the Scheme. What is required is to have at least two years of "service" prior to super-annuation. It is pertinent to mention that this restriction can also be relaxed under para 10 of the Scheme. For this contention he relied upon the finding of this court in D.P.Ahuja's case reported in [SLJ 1992 (1) CAT 51] in which it was held: -

"The learned senior counsel for the respondents, however, observed that normally it should be date of appointment. We have already reproduced above the relevant provisions of the Scheme in para 7.3 according to which only such of the empanelled officers would normally be appointed as would be able to serve for at least two years on the higher post(s). Thus, provisions also shows that the period of two years referred to therein is for service and not for anything else. Service can be deemed to commence only from the date of person takes charge of the post. The statement furnished by the learned senior counsel for the respondents which has already been reproduced above shows that none of the 5 officers had two years left to serve in the post of General Manager or equivalent or higher post from the date they were posted to the post of GM or equivalent post. Thus, the action of the respondents has to be held to be both arbitrary and discriminatory. It is well settled that the doctrine of equality as enshrined in Articles 14 and 16(1) of the Constitution and the mandate for the observance of principles of natural justice, require that the actions of the executive have not only to fulfill the test of observance of principles of natural justice but should also be

fair. Therefore, denial of promotion even after empanelment in the panel for the year 1990-91 to the applicant on the ground that he has less than two years to serve cannot be upheld."

18. On the other hand the respondents' case was that the cut off date for the purpose of calculation of the residual service, should be counted from the date of occurrence of vacancy and it is on this basis that the junior officer of the applicant have been found eligible for appointment and as such there is no discrimination. The respondents further submitted that the criteria of determining the cutoff date under para 7.3 of the Scheme as that of the occurrence of vacancy is said to be in terms of the decision arrived at in the case of A.P.S. Sinha vs. Union of India, decided on 29th September, 1995 by the Allahabad Bench of this Tribunal. To substantiate his contention he cited para 30 therein and the same is reproduced herebelow:-

" 30. It has been pleaded that according to the applicant since the orders are finally issued in July, 1994, the candidate whose 56th birth date falls in June should be eliminated. It has been pleaded in the counter-affidavit that extending this perverse logic the decision would be that had the orders for appointment been issued four days later all those including the applicant whose 56th birth date falls in July should be culminated. The word "normally" used in para 7.3 has not to be interpreted in a pedantic manner but in a pragmatic manner. The requirement of residual service of two years to be from a firm date such as concurrence of vacancy to which the candidate is pin pointed or, date of submission of proposal and not a flexible date on which the approval is finally received. It needs to be appreciated that scheme for appointment of General Manager framed in the year 1986 the date of pin-pointing the vacancy of empanelled candidate and date of submission of proposal to the competent

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Authority would be relevant from the point of residual service of two years linking it with the actual date of approval which is processing time and of other nature would have serious implications particularly because the candidate has no control over such administrative delays and processing period. When the A.C.C. was aware of the residual service period of the candidates whose appointment was approved and extension of the panel period was granted, we are persuaded to hold that the appointments of Respondents 3 and 4 do not call for interference."

19. The learned counsel for the respondents also submitted that since there seems to be a conflict between the decisions of various Benches of this Tribunal namely between two earlier decisions of the Principal Bench and Bombay Bench on one side and the decision of the Allahabad Bench on the other, it should have been a fit case for referring it to a Larger bench in order to avoid conflict of decisions. A recent decision on the same issue delivered by the Principal Bench on 29th October, 1996 in OA No. 2122/95 in the matter of Shri B.S. Aggarwal vs. Chairman, Railway Board and another was brought to our notice wherein a similar plea was raised that since there is a conflict of decisions, it may be referred to a Larger bench. This court in the said decision has gone at length into the three decisions, namely that of the Bombay Bench and Principal bench of one side vis-a-vis that of the Allahabad bench and came to the conclusion that it is not necessary to refer the matter to a Larger Bench.

20. We are in respectful agreement with this finding of the Court and in the circumstances that there is no conflict, as alleged, we also do not propose to refer this case to a larger Bench for the same reasons as stated in the aforesaid decision. To quote:

"10. We have carefully considered the points raised by Shri Tulsi but are unable to agree with either of his contentions. Firstly we do not find that there is a conflict between the judgements of the Principal Bench and Bombay Bench of this Tribunal on the one hand and that of Allahabad Bench on the other.

11. The issues before the Allahabad Bench and the Bombay Bench were different. The plea raised before the Allahabad Bench in OA - 1698/94 was that the orders of appointment of Respondents No. 3 & 4 therein should be quashed as on the date of their appointment they had less than two years of service. The Additional Solicitor General on behalf of the respondents No. 1 & 2 had submitted that respondents No. 3 & 4 had more than two years service left on the date when the approval to the panel was received and also when the proposal for their appointment to the post of General Manager was processed. The Division Bench observed that the requirement of residual service on two years had to be from a firm date such as occurrence of vacancy to which the candidate is pinpointed and date of submission of proposal and not a flexible date on which the approval is finally received. When the proposal in respect of more than two years residual service. Allahabad Bench thus held that the actual date of approval of appointment need not be the material and the firm date from which the residual service has to be counted. On the other hand, the issue before the Principal Bench and the Bombay Bench was one of discrimination, and it was held that if relaxation had been given in respect of some of the officers of the condition of residual service of two years from the date of appointment, then this relaxation had to be applied uniformly

to all other officers also. On that basis, the relief sought for by the applicants in these OAs had been granted. The orders of the Allahabad Bench and Bombay bench if read carefully, would show no difference or dichotomy in their approach. What Allahabad Bench laid down was that the applicant's residual service should be from a firm date and what Bombay Bench decided was that once relaxation is granted to the requirement of two years residual service, it should be made equally applicable. The Allahabad judgement does not as Shri Tulsi would have us believe, allow the respondents to interpret para 7.3 as they will and choose a 'firm date' as they would. Such a date has to be determined and made known. We go so far as to say that it has to have some rational and objective relationship with the purpose and content of the provision. If the purpose and objective of para 7.3 is that there should be some continuity at the decision and policy making levels, and being a matter of public interest, this is the public policy, then an interpretation which would patently defeat this public policy would be clearly erroneous and bereft of any rationality. The date of occurrence of a vacancy is a guideline for the Government to ensure that this date should determine all advance planning and action so that selections are made in good time and public purpose is served by ensuring that crucial posts do not remain fallow and unfilled even for a day. The respondents cannot deflect their failure, to do so at the expense of public interest, by filling up posts at a later date by the stratagem of appointing officers who may have even a year's service or less, at the time of appointment, we are in respectful agreement with the Allahabad Bench in OA No. 1698/95 that there would be a firm date but would add that the plain language of para 7.3 allows for no other interpretation but that this firm date should be the date of appointment. Any other date would be a relaxation of this Rule and such action would open the case to an allegation of discrimination in terms of D.P.S. Ahuja and M.P. Kamal Raj (supra)."

21. Apart from that, the present application does not raise any issue as to the interpretation of para 7.3 of the Scheme as rightly pointed out by the counsel for the respondents since that was not the relief asked by the applicant, nor has he challenged the vires of the said rule; in the circumstances we are not inclined to go into that issue either. At the most what can be the said is that this issue has come incidently before the court for the purpose of understanding the extent of discrimination. We also find that the ratio of the previous judgements is that the para 7.3 is to be understood to determine the cut off date for the purpose of calculation of the residual service of two years, is from the date of appointment. The said date of appointment would have been, in the normal circumstances, between 1st of April to 1st of July since the vacancies to be considered, both existing and anticipated for the purpose of preparation of a select panel, the cut off date already given by the guidelines is 1st of July. Under the guidelines the DPC is to meet normally on 1st of April of every year and it is also permissible for the DPC to meet more than once in a given year. That indicates, that the meeting of the DPC in the normal circumstances shall be 1st of April to 1st of July. This gives us an unquestionable indication from the policy statement, reflected in the Scheme that the date of appointment in the normal circumstances would be sometimes before 1st of July; if there is any delay, in holding the DPC, the incumbent from the eligible officers whose names are in the select list, cannot be said to be the one

responsible for such delay, but that delay is in the hands of the respondents themselves. Under para 10 of the Scheme, respondents have the power to remedy their own lapses. In view of the matter we are not intending to create a fresh controversy as to what would be the cut-off date under para 7.3 of the Scheme. We are clear in our minds that the cut off date has to be the date of appointment and that the date of appointment should have been some time between 1st April to 1st of July; if there is any delay in appointment, the para 7.3 of the Scheme removes the rigour of the cut-off date, by the term "normally". Further the power to relax under para 10 enables the respondents to exercise the said power of relaxation in a non-arbitrary manner and even in this case they seem to have exercised the same in favour of the officer junior to the petitioner only. In such circumstances the inevitable conclusion is that there is a discrimination against the petitioner.

22. In the light of the above discussion, we have come to the conclusion that the applicant is entitled to have the relaxation of the requirement of two years of residual service under para 7.3 of the Scheme since in case of Mr. Khanna who is junior to the petitioner, the respondents have given the benefit of the said relaxation, which was within the powers available to the respondents under para 10 of the same Scheme.

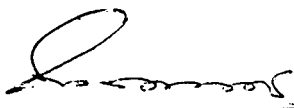
23. It was admitted on behalf of the respondents that the applicant is found eligible in accordance with para 7.2 of the Scheme and he is in the panel alongwith other officers and since he is already in the select list, he has been considered to be eligible for promotion. He could not be promoted only because of the wrong interpretation given to para 7.3 by respondents themselves. There was no other reason admittedly, that the applicant was not appointed to the post.

24. Learned counsel for the respondents has rightly submitted that this Tribunal cannot sit in review of the policy matter. We are in full agreement with him. The policy guidelines, according to us, would stand the interpretation so far given by various Benches of this Tribunal and finally in the case of Aggarwal as referred above. Learned counsel for the respondents made an attempt to state that he would adopt a liberal interpretation to para 7.3 as he was permitted to do so as per the decision of the Allahabad Bench and adopt the criteria that the two years residual service shall be from the date of occurrence of the vacancy. This infact is deference^{was} to the existing policy guidelines which/always acted upon by the respondents by calculating residual service of two years from the date of appointment. In case the respondents wanted to differ from the said policy and adopt a new policy they were totally free to do so and

they have authority to do so even to modify the existing policy and the court will not normally interfere. But the respondents are bound to follow a fair procedure of making such deviation from an established policy even if by way of modification, sufficiently public so that the affected persons may have the knowledge of the same thereby avoided unnecessary litigation. It is not enough that the policy makers depart, even partially from the existing policy on the ground of a liberal interpretation and keep it to themselves without making it public. The procedure which was considered necessary to issue a proper Notification or Resolution to bring up this modified policy by way of liberal interpretation, is admittedly still under process.

25. We, therefore, allow this application with a direction that the applicant will be deemed to have been appointed as General manager ^{or equivalent} w.e.f. 29.11.1996 when an officer junior to him in the same panel were promoted and appointed. The applicant will also be entitled to all consequential benefits.

26. In the circumstances this OA is allowed and there will be no orders as to cost.


(S.P. Biswas)
Member (A)


(Dr. Jose P. Verghese)
Vice-Chairman (J)

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