

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

(9)

O.A. /T.A. No. 719 of 1996 Decided on: 15.4.97

Shri M.K. Misra Applicant(s)

(By Shri S.P. Singha, Advocate)

VERSUS

Union of India & Others Respondents

(By Shri K.T.S. Tulsi along with
Shri V.S.R. Krishna Advocate)

CORAM

HON'BLE MR. S.R. ADIGE, MEMBER (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

1. To be referred to the Reporter or not? YES

2. Whether to be circulated to other Benches of the
Tribunal? NO

S.R. Adige
(S.R. ADIGE)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

O.A. No. 719 of 1996

New Delhi, dated this the 15th April, 1997

(10)

HON'BLE MR. S.R. ADIGE, MEMBER (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Shri M.K.Misra,
S/o late Shri B.P. Misra,
Adviser (Commercial),
R/o D-I/159,
Satya Marg,
Chanakyapuri,
New Delhi-110021.

... APPLICANT

By Advocate: Shri S.P. Singha

VERSUS

1. Union of India through
the Chairman,
Railway Board and ex-officio
Principal Secretary to the Govt. of India,
Ministry of Railways (Railway Board),
Raisina Road,
New Delhi-110001.
2. U.O.I. through
the Secretary to the Govt. of India,
Ministry of Personnel,
Public Grievances & Pensions,
Dept. of Personnel & Training,
North Block,
New Delhi-110001.
3. Shri V.K. Aggarwal,
General Manager,
Northern Railway,
R/o 1, S.P. Marg,
New Delhi.
4. Shri M.R. Bhaskaran,
General Manager,
Railway Electrification,
63, S.N. marg,
Allahabad.
5. Shri V.K. Agnihotri,
General Manager,
Southern Railway,
R/o 23, 'KAVERY',
Haddows Road,
Nungambakkam,
Chennai-600034.
6. Shri A.P. Murugesan,
General Manager,
Eastern Railway,
Room No.3,
Judges Court Officer Rest House,
Calcutta.

7. Shri S. Dharni,
General Manager,
Chittaranjan Locomotive Works,
8, Sunset Avenue,
Post Chittaranjan,
Distt. Bardhaman,
Pin Code: 713331.

RESPONDENTS

By Advocate: Shri K.T.S. Tulsi along with
Shri V.S.R. Krishna for
Respondents 1 & 2
None for Pvt. Respondents

JUDGMENT

HON'BLE MR. S.R. ADIGE, MEMBER (A)

Applicant has impugned paragraph 2.1.1 of the Annexure to respondents letter dated 8.7.87 (Ann. A-1) and the inter se seniority ranking of the select list of officers of 1994 batch approved for promotion as General Managers and/or their equivalent in the Indian Railways. He seeks a direction respondents to prepare a fresh select list of officers for aforesaid promotions based on the seniority in accordance with Date of Increment in Time Scale (DITS) as approved in UPSC's letter dated 18.1.83, and on that basis to quash the promotion orders of Respondents No.3, 4, 5, 6 and 7 dated 31.10.95, and promote applicant as General Manager from the date of promotion of his immediate junior on the basis of the fresh select list, with consequential benefits.

2. Applicant completed successfully in IAS & Allied Services Exam., 1961 and joined Indian Railway Traffic Service (1962 batch) on 27.7.62 and admittedly, as per para 1.2 of the impugned Annexure, his seniority was at serial No.13 amongst officers of his batch, which he continued to retain and never challenged throughout his official career.

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He held various assignments and progressed upwards in the official hierarchy. His name found mention at S1. No.28 of Respondents 1994 Select List of 34 officers found suitable for promotion as General Managers or equivalent (Ann. A-3), which include 6 IRTS officers of his own batch (Ann. A-6) as well as Respondents 3, 4, 5, 6 & 7 belonging to other Railway services who have been placed at S1. Nos. 14, 15, 17, 18 & 23 of that list. His contention is that for no fault of his own, but because of the application of impugned para 2.1.1, his position in the 1994 Select List was depressed as a result of which he was not promoted against available vacancies of General Manager and equivalent.

3. It is common ground that posts of General Manager and equivalent (Rs. 7300-7600) in Indian Railways do not belong to any cadre or service (there are 9 Group A Services in Indian Railways) but are general posts filled through selection from amongst Senior Administrative Grade officers of 8 of the 9 Group A Services (excluding I.R. Medical Service) as per Govt. of India's Scheme dated 16.7.86 as amended from time to time (Ann. R-IV to R-VI). As per this Scheme, the Selection Committee has to consider on merit, eligible officers of each of 8 Railway Services, having regard to their inter se seniority as well as their seniority in the respective services and prepare a panel. For eligibility every officer should on 1st July of the year in which selection is made, be less than 56 years; have put in not less than 25 years of continuous service in

Group A Service, and have put a minimum of 5 years in SAG. Promotions of empanelled officers are normally to be made in order of their inter se seniority, and only such empanelled officers would normally be promoted as would have at least 2 years service left while preparing the panel. The Selection Committee is required to ensure, as far as possible, that equitable opportunities are available to officers of different services; there is no undue prominence of any particular service. (s); and the difference in batch years between the junior most officers of any two service included in the panel is not ordinarily more than two.

4. The principles and procedure for determining inter se seniority of members of Group A services in the Railways is laid down in the impugned Annexure to Railway Board's letter dated 8.7.87 (Ann. A/1) which has Presidential approval. Para 2.1 of that Annexure provides that the inter se seniority as between members of any two Group A services would be determined by the DITS, but an exception is provided in impugned para 2.1.1 that in case any officer joins service earlier than his senior in the same batch, he will take a notional DITS which will be the same as that of his senior. Admittedly DITS for a Group A direct recruit is his date of joining service in Junior Scale.

5. Applicant complains that because of this impugned exception, respondents have depressed his inter se seniority by about three months on account of late joining

of his IRTS batch-mate Shri V. Ganesh (Sl. No.6 of Annexure A-4) who was admittedly senior to him, and whose DITS is 2.11.62. His contention is that Shri Ganesh's late joining cannot extinguish his own DITS, which is 27.7.62 and down grade his seniority, more so when Shri Ganesh was not even placed in the 1994 select list. He contends that impugned para 2.1.1 is arbitrary, unjust and violative of Articles 14 & 16 of the Constitution besides offending para 2.1 itself. He emphasises that the Supreme Court has held in various judgments that once an incumbent is appointed to a post according to rule, his seniority has to count from his date of appointment (in applicant's case 27.7.62). He avers that impugned para 2.1.1 militates against UPSC's letter dated 18.1.83 (Ann. A-8) advising that to resolve controversies of this nature, the DITS of late joining senior may be notionally ante dated to coincide with the DITS of his immediate junior, and asserts that although UPSC had advised that this principle be applied in all similar cases, respondents had failed to do so, which was discriminatory and malafide. It is contended that this impugned para contradicts the contents of Railway Board's circular dated 30.11.76, and by issuing the impugned letter dated 8.7.87 without consulting DP&T/UPSC the respondents have formulated the principles/procedure as an administrative instruction and not under Art. 309, in order to manipulate the instructions when it suits them.

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6. Respondents in their reply challenge the O.A. Beside pointing out that applicant does not fulfil the eligibility condition of being less than 56 years as on 1.7.95 (his date of birth is 4.2.38), and the impugned panel of 1994-95 from which 11 officers were appointed as General Managers in Oct. 1995 ^{is} being no longer valid, they deny that the exception in impugned para 2.1.1 is violative of Articles 14 & 16. They contend that it is inherent in the process of fixing seniority, being only an extension of the general principles that within the same batch the seniority would be in order of merit in the batch as existing on completion of probation, which applicant has accepted, and which he never disputed throughout his official career. They state that in SAG of IRTS, Shri R.K. Puri (DITS 12.11.62) was senior to applicant (DITS 27.7.62). Therefore while fixing inter se seniority of Shri Puri, officers of other services having DITS prior to his, including respondents 3 to 7 had to be placed above him. Accordingly IRTS officers of the batch of Shri Puri (1962 batch) and junior to him including applicant found place below Shri Puri, in terms of para 2.1.1, because relative seniority within a particular batch of a particular service cannot be altered. They state that UPSC's letter dated 18.1.83 deals with an individual case and upon further examination was not found proper because it would not only allow a late joining senior to reckon his service in the Railways when he was not even in Railway Service or was

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employed elsewhere, but would have led to a more intense feeling of injustice amongst the affected officers and generated more litigation. Respondents also deny that the impugned para 2.1.1 in any way conflicts with the contents of letter dated 30.11.76 in view of the deletion of principle (iv) therein by letter dated 23.4.91. They aver emphatically that the principles contained in impugned letter dated 8.7.87 are being applied uniformly to members of various Group A services, and contend that the impugned principle has been upheld in various CAT, Principal Bench rulings.

7. We have heard Shri Singha for the applicant and Shri Tulsi for the respondents. We have also perused the materials on record and given the matter our careful consideration.

8. ^{not} Applicant has challenged Para 1 of the Principles for determination of seniority, according to which, within the same batch, the inter se seniority would be in order of merit in the batch, as existing on completion of the period ^{1 that} of probation. It is on that basis ~~1~~ applicant who joined IRTS 1962 batch on 28.7.62 was placed at S1. No.13 of the 1962 IRTS seniority list. Those senior to him in that batch, despite having joined after him and having DITS later than his include S1. No.1 S.R. Shah; S1. No.5 Shri N.N. Vasudev; S1. No.6 Shri V. Ganesh; S1. No.8 Shri R.K. Puri; S1. No.9 Shri A.K. Mitra and S1. No. 12

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Shri B.Prasad. Applicant, by not having impugned 1962 IRTS seniority list at any stage of his official career from 1962 onwards, and thus having accepted that his seniority in his batch would be determined by his merit position and not his date of joining/ DITS cannot now claim that a different criteria viz. date of joining/ DITS should be adopted in determining his seniority vis-a-vis officers of other services because if that were done, it would make him senior to Shri S.R.Shah and Shri A.K.Mitra also of 1962 batch IRTS both of whom figure in the impugned combined 1994 select list and who joined after him, although admittedly they were senior to him in the 1962 IRTS batch. Similarly as it is not only recruitment to the IRTS but to other Group "A" Railway Services which were also made in 1962, applicant cannot legitimately claim that while the 1962 IRTS seniority should continue to be maintained, IRTS officers of that batch should be placed on bloc above officers of another Group A service of that batch, because if that were done, it would be patently violative of Articles 14 and 16 of the Constitution.

9. The next question that needs to be addressed is that whether respondents were legally competent to depart from the procedure outlined in UPSC's letter dated 18.1.83 (Annexure-A8). We note that this letter forms part of the correspondence between Railway Ministry and UPSC. Under the circumstance, if the respondent Railway Ministry for good and sufficient reasons considered it necessary as a matter of policy to evolve another procedure to resolve controversies of this nature, its legal competence to do so cannot be questioned and such a procedure cannot be assailed unless it is found arbitrary, illegal and violative

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of Articles 14 and 16. Even if the procedure outlined in that letter is considered to be advice emanating from UPSC, it is well settled that UPSC's advice is recommendatory in character. Without minimising in any respect the serious consideration which the advice of a high Constitutional authority such as UPSC deserves, it is open to respondent Ministry not to accept those recommendations, but in that event reasons for non-acceptance have to be communicated to UPSC for inclusion in their annual report to be placed before each House of Parliament under Article 323.

10. There are no materials to indicate whether this was done but even if that was not done, that by itself may not give sufficient cause for our intervention. Respondents have stated in their reply that adoption of this procedure would not only allow a late joining senior to reckon his service in Railways from a date prior to joining Railway or was employed elsewhere, but would lead to more frustration amongst senior railway officers. Shri Singha has no doubt contended that as the antedating of a late joining senior would be only notional, respondents' apprehensions are largely imaginary but in our view these apprehensions cannot be disregarded. The adoption of this procedure would result in allowing a late joining senior to count his seniority from a date even before he entered Railway service, when it is a well settled proposition of law that seniority in a service can be reckoned only from the date the employee becomes a member of that service.

11. Applicant has relied heavily on the CAT

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Hyderabad Bench judgment dated 26.4.96 in O.A.No.67/ P.S.Rao Vs. UOI & others. Shri P.S.Rao is also an IRTS 1962 batch officer whose DITS was 9.7.62, and was in fact at Serial No.27 i.e. one place above applicant in the impugned 1994 Select List. His grievance was identical with that of applicant namely allegedly illegal and arbitrary depression of his position in that list on the basis of his DITS. The Hyderabad Bench in the aforesaid judgment partly allowed the OA to the extent of directing respondents that as and when appointment of eligible officer to the post of G.M. / equivalent was considered during the currency of subsequent (i.e. 1995-96) panel, including the vacancy as on 31.1.96, they were to consider Shri P.S.Rao's DITS as 9.7.62 and reckon his seniority with reference to that date treating him within the age limit as on 1.7.95.

12. Against that judgment the UOI filed SLP No.22131/96 in the Hon'ble Supreme Court, and also meanwhile sought clarification from the Hyderabad Bench vide M.A.No.611/96, on its judgment dated 26.4.96. However, in the light of orders passed by the Hyderabad Bench on MA No.611/96 SLP No.22131/96 along with SLP No.23940/96 was allowed to be withdrawn by the Hon'ble Supreme Court vide orders dated 13.1.97.

13. Meanwhile another 1962 batch IRTS officer Shri A.K.Mitra (Sl.No.26 of impugned 1994 Select List) had approached CAT Calcutta Bench in OA 525/96. The Calcutta Bench after discussing in detail the Hyderabad Bench judgment in P.S.Rao's case (Supra) in its judgment dated 1.10.96 dismissed the O.A., holding

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that Shri Mitra was not entitled to the reliefs claimed by him. The Calcutta Bench noted that even though the Hyderabad Bench in P.S. Rao's case (Supra) had found the rule of post dating DITS of an early joining junior to be wholly illegal, vexatious, unsustainable etc., still in the ultimate analysis it did not strike down the rule and indeed made it clear that the rule of preparation of integrated seniority list of officers eligible from different services was not disturbed. To quote:

" Thus at the highest the Hyderabad Bench only decided in the facts and circumstances of that particular case that a certain date should be taken as the DITS of the applicant before it and it is by no means an authority for the general proposition that in any case the DITS of the late joining senior should be antedated to coincide with that of an early joining junior."

14. Inter alia the Calcutta Bench in para 7 of its aforesaid judgment also observed that the letter dated 18.1.83 was by no means the last word on the subject i.e. because the rule of antedating the DITS as suggested and agreed upon appeared to be manifestly unfair.

15. There is nothing to indicate that the aforesaid judgment of the Calcutta Bench, which as pointed out, has dealt extensively with the Hyderabad Bench's judgment in P.S. Rao's case (Supra) as well as other relevant rulings on this subject, has not become final and judicial propriety precludes us from taking any different view. Indeed, even on merits we find no good reason to take a different view than the one arrived at by the CAT Calcutta Bench in A.K. Mitra's case (Supra). In this connection,

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we note that the Calcutta Bench has prefaced its analysis by the following:

"In the first state we would like to state as indeed pointed out by respondents the observation of the Hon'ble Supreme Court in RBI & others Vs. C.M. Sahasramanen & others AIR 1986 SC 1830 that in Service jurisprudence there cannot be any rule which will satisfy each and every employee and its constitution had to be judged by considering whether it is fair, reasonable and does justice to the majority of the employees. The wisdom of this observation can kindly be over-emphasized and it is therefore pertinent to bear in mind that it would be futile to except any panacea for all evils.

16. With respect, we subscribe fully to the aforesaid observation.

17. In the course of his arguments, Shri Singha has referred to a number of other rulings including the Direct Recruit Class II Engineering Services Association case 1990 (24) ATC 348; A.R. Sharma Vs. Haryana State Electricity Board 1994(27) ATC 166; IRTS Association Vs. UOI SLJ 1994(3) CAT 409; S.N. Das Vs. UOI 1992 (20) ATC 600; Y.K. Gupta Vs. E-in-C 1986 ATC 69; CAT and CAT Bombay Bench's judgment dated 23.8.96 in O.A.No.184/95 M.P. Kamal Raj Vs. Railway Board. In the light of aforesaid rulings he has contended that the applicant's seniority has to be counted from the date of his appointment and officers appointed earlier have to be held senior to those appointed later.

18. We have already noticed that the applicant has at no stage ever challenged his seniority position at Sl. No.13 in the 1962 IRTS seniority list, which was prepared on the merit position of

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the 1962 batch of IRTS Direct Recruits, wherein applicant was admittedly junior to many officers of his batch who joined later than him and whose DITS was subsequent to him. In that background and also the fact that para 1.2 of the Principles and Procedure for determining the interse seniority which provides that within the same batch the interse seniority would initially be in order of merit in the batch as existing on completion of the period of probation has not been impugned, the rulings relied upon by Shri Singha do not help the applicant.

19. In the result, relying upon the ratio of the judgment of the CAT Calcutta Bench dated 1.10.96 in OA No.525/96 A.K.Mitra Vs. UOI & others, which we hold is fully applicable to the facts of the present case, the OA is dismissed. No costs.

A.Vedavalli
(DR.A.VEDAVALLI)
MEMBER(J).

S.R.Adige
(S.R.ADIGE)
MEMBER(A).

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