

9

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO.1142/89

DATE OF DECISION:29.05.1992.

CHHAJU RAM

...APPLICANT

VERSUS

UNION OF INDIA & OTHERS

...RESPONDENTS

CORAM:-

THE HON'BLE MR. P.K. KARTHA, VICE-CHAIRMAN (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT

SHRI K.N.R. PILLAI, COUNSEL.

FOR THE RESPONDENTS

SHRI SHYAM MOORJANI, COUNSEL.

1. Whether Reporters of Local Papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *yes*

I.K. Rasgotra
(I.K. RASGOTRA)
MEMBER(A)

P.K. Kartha
(P.K. KARTHA)
VICE-CHAIRMAN

May 29, 1992.

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(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR. I.K. RASGOTRA, MEMBER (A))

Shri Chhaju Ram belongs to the cadre of ticket check-
ing staff of the Delhi Division of the Northern Railway,
which category has the following channel of promotion:-

Ticket Collector Rs.110-180 (AS)

	By option Travelling Ticket Examiner Rs.130-212 (AS).	
Sr. Ticket Collector Rs.150-240	Sr. TTE Rs.150-240(AS)	
Head TC Rs.250-380(AS) Rs.425-640(RS)	Conductor Rs.250-380(AS) Rs.425-640(RS)	Supervisor STE Rs.250-380(AS) Rs.425-640(RS)
T.T. Inspector	Rs.550-750(RS)	
Chief Inspector of Tickets Rs.700-900(RS)		

2

The applicant was recruited as Ticket Collector on 23.1.1956 in the pay scale of Rs.110-180 (Rs.260-400 RS) and had the option to move over to the line of TTE (Rs.130-212 RS). He did not do so and preferred promotion as Senior Ticket Collector in the grade of Rs.150-240 (AS). The Third Central Pay Commission merged the scale of Rs.130-212 for TTE with the next higher scale of Rs.150-240 to form the revised scale of Rs.330-560 w.e.f. 1.1.1973. This development, however, did not affect the applicant, as the promotion to the next higher post in Rs.425-640 was by selection.

In the cadre of ticket checking staff of the Delhi Division, however, there was no regular promotion from the period November, 1979 to 1.12.1983 because of the operation of a stay order issued by the Delhi High Court in C.W.P. No.1227/79 filed by one of the TTEs. The said stay was vacated on 1.12.1983. Before the stay was enforced the applicant had been called for selection as Head Ticket Collector (Rs.425-640). He passed the written test as is evident from Annexure A-1 (p.15 of the paperbook). The said notice of 2.2.1980 declaring the result of the written test held on 14.11.1988, 13.8.1979 and 21.10.1979 also directed the applicant among others to appear for the viva voce on 25.2.1980. While the viva voce was conducted on the said date the panel for promotion could not be issued on account of the stay order of the Delhi High Court. The applicant was, therefore, promoted on adhoc basis as Head Ticket Collector vide order dated October, 1990 (p.16 of the p.book). According to the applicant the promotions were for all practical purposes on regular basis as seniors and eligible persons had all been considered. In the meantime, the Railway Board issued the orders regarding cadre restructuring which resulted in the increase of the posts in higher grade of Chief Inspector Tickets (Rs.700-900) Junior Inspector Tickets (Rs.550-750), Conductor Rs.425-640. While the vacancies which had arisen during the period 1979 to 1983 were not filled up, the vacancies arising from the restructuring scheme w.e.f. 1.1.1984 were filled up by the

f

12

respondents. This gave rise to a representation and consequently it was decided by the General Manager vide order dated 28.7.1985 (p.17 of the paper book) that:-

"It has been decided that the staff of all above mentioned three categories viz. Hd.TCRs, STEs and Conductors grade Rs.425-640 who work on adhoc basis against regular vacancies during the period 1979 to 31.12.83 pending finalisation of the selection/suitability test through viva-voce may be regularised from the date of their completing 18 months adhoc service against regular posts for the purpose of their seniority for promotion to the next higher grade."

The applicant contends that he had been put to work on adhoc basis as Head Ticket Collector Rs.425-640 from 28.11.1980 and, therefore, in accordance with the order of the General Manager he was entitled to be regularised w.e.f. 27.5.1982 on completion of 18 months adhoc service. The Divisional Railway Manager, however, did not implement the orders of the General Manager correctly and vide order dated 17.2.1986 treated ticket checking staff viz. TCR, STE, Conductors grade Rs.330-560 who had continuously worked in the grade of Rs.425-640 on adhoc basis during ^{the} period 1979 to 31.12.83 pending finalisation of selection/suitability test and had completed 18 months adhoc service as regularised w.e.f. 31.12.83 for the purpose of their seniority for promotion to grade Rs.550-750. In the meantime, the General Manager (P) on 21.3.1984 also issued the orders regarding fixing of seniority in such cases, the relevant extract of which reads as under:-

"The question of preparing the seniority of the above mentioned three categories for the purpose of their further promotion as C.I.T. Gr.550-750/RS has been considered and CCS has decided in consultation with both the recognised unions that the seniority of the staff in three categories in Gr.425-640/RS at the time of their promotion as CIT Gr.550-750 be prepared on the basis of their length of service in grade 330-560

keeping their inter-se seniority in grade 425-640 intact in their respective categories."

Aggrieved by the denial of 'ad hoc' promotion from 27.5.1982 for the purpose of seniority as per the order of the General Manager (P) dated 21.3.1984, the applicant has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985.

2. By way of relief the applicant has prayed that the order of the General Manager (P) dated 21.3.1984, containing the CCS's instructions be quashed as violative of statutory rules for fixation of seniority. He has further prayed for quashing the seniority list accompanying in Annexure A-4 and for directing the first respondent to determine the seniority of the applicant vis-a-vis others based on the length of continuous officiating service in grade Rs.425-640 as per paragraph 321 of the Indian Railway Establishment Code after treating the applicant as regularised in the grade of Rs.425-640 on completion of 18 months service on 27.5.1982 in accordance with General Manager's order dated 28.7.1985 and consequently to revise the applicant's position in the promotion list of Grade Rs.550-750 and the panel of Grade Rs.700-900 with consequential benefits.

3. In support of the case of the applicant Shri K.N.R. Pillai, learned counsel for the applicant relied on the decision of the Principal Bench in **O.P. Gupta Vs. Union of India & Ors. OA 1271/87 decided on 16.5.1988** and in **RA No. 70/88 in OA 1271/88 decided on 28.3.1989**. The applicant herein too was promoted on ad hoc basis and claimed benefit of reckoning his seniority on completion of 18 months ad hoc service in terms of General Manager order dated 29.7.1983 and relied on the judgement of the Supreme Court in **Narender Chadha Vs. Union of India 1983 SC 638**. After considering the matter the Tribunal ordered that Shri O.P. Gupta the applicant in OA

2

1271/87 should be deemed to have been regularised as Conductor from 24.2.1983, i.e., the date of his completing 18 months adhoc service in the grade with consequential benefit of seniority and further promotion and that he should be considered for further promotion from the date his immediate junior was promoted on the basis of length of service, if considered fit.

4. The facts of the case generally are not disputed by the respondents in their counter-affidavit. They, however, contend that the rules framed by the Railway Board and particularly provisions made in paragraph 321 of the Indian Railway Establishment Manual (IREM) have ^{not} been disregarded or over-ruled by the respondents. They also refute the suggestion that longer period of adhoc promotion of the applicant, ignoring his seniors should be considered in his case for conferring benefit of seniority on him. The applicant has not been regularly selected, as he had only passed the written test and no panel had been formed, as the viva voce test could not be held. The applicant, therefore, has no claim for getting the benefit of ^{on adhoc basis} seniority on account of his having worked for a longer period, as such adhoc officiation cannot be reckoned as non-fortuitous service.

5. The applicant has filed a rejoinder.

6. We have heard the learned counsel for the applicant Shri K.N.R. Pillai and Shri Shyam Moorjani, learned counsel for the respondents. The lowest grade of the ticket checking staff viz. Ticket Collector (Rs.260-400) forms the feeder grade for Ticket Collectors (Rs.330-560) and TTE (Rs.330-560) which posts are non-selection and are filled by seniority-cum-suitability on review of service records and confidential reports. Thereafter they are promoted to the Head TCR (Rs.425-640) or Supervisor/STE (Rs.425-640) by selection in accordance with their option. The third category of Conductors in grade Rs.425-640 although is ^{is} a non-selection post and filled by the method of seniority-cum-suitability in accordance with the

15

option. The rules prescribe a written and oral test before such an appointment is made. The next higher post of Junior Inspector Tickets (Rs.550-750) where the three categories converge is a non-selection post filled by seniority-cum-suitability and finally the Chief Inspector Tickets (Rs.700-900) is a selection post. While the seniority unit upto the grade of Rs.425-640 is the division, the seniority unit in the grade of Rs.550-750 and above is the Railway. Even here according to the note appearing in General Manager, Northern Railway's letter dated 3.1.1986 it is stated that "the seniority of staff for the purpose of promotion to grade 550-750 is to be prepared based on the length of service in grade 330-560 from amongst the staff working in 425-640 on regular basis after selection/suitability keeping their inter-se-seniority intact in their respective categories in grade 425-640."

The applicant has tried to garner support for his case for antedating seniority based on the provisions made in paragraph 321 of IREM Vol.I. The said paragraph appears as 320 in the revised Edition-1989 of IREM, Volume-I. The same is reproduced below:-

"320.RELATIVE SENIORITY OF EMPLOYEES IN AN INTERMEDIATE GRADE BELONGING TO DIFFERENT SENIORITY UNITS APPEARING FOR A SELECTION/NON-SELECTION POST IN HIGHER GRADE.

When a post (selection as well as non-selection) is filled by considering staff of different seniority units, the total length of continuous service in the same or equivalent grade held by the employees shall be the determining factor for assigning inter-seniority irrespective of the date of confirmation of an employee with lesser length of continuous service as compared to another unconfirmed employee with longer length of continuous service. This is subject to the proviso that only non-fortuitous service should be taken into account for this purpose.

2

16

Note:- Non-fortuitous service means the service rendered after the date of regular promotion after due process."

It will be clear from the above that the service to be counted for purpose of seniority etc. has to be non-fortuitous service which has been defined to be the service rendered "after the date of regular promotion after due process." It is nobody's case that the applicant was promoted on a regular basis.

The decision in **O.P. Gupta** (supra) is also of no assistance to the applicant, as the facts of the case are distinguishable. First the order of the Tribunal dated 10.5.1988 in **O.P. Gupta** (supra) is ex-parte, as the respondents had neither filed counter-affidavit nor had they entered appearance. They filed a Review Application subsequently to get the matter reopened but the same was rejected by the Tribunal vide order dated 28.3.1989. Subsequently, in **The Direct Recruit Class-II Eng. Officers' Ass. V. State of Maharashtra - JT 1990 (2) SC 264** their Lordships have declared the law on the subject in Clauses A & B in paragraph 47 of the said judgement dated 2.5.1990 as under:-

"(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the

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17

rules, the period of officiating service will be counted."

It is not the case of the applicant that he was appointed according to the rules. His case is covered under the corollary of Clause A, as his initial appointment was made only on adhoc basis. He is, therefore, not entitled to reckoning adhoc service for the purpose of seniority. Admittedly, however, the applicant continued in the post till he was regularised in accordance with a special dispensation granted to persons who had continued to officiate on adhoc basis during the period 1979 to 1983 in view of an interim stay order passed by the Delhi High Court and keeping in view the special circumstances which arose consequent to restructuring of cadres in the Railways w.e.f. 1.1.1984. His longer continuous officiation cannot, therefore, bestow on him the benefit of seniority counting non-fortuitous service to the prejudice of his seniors. Following the ratio in the judgement of the Supreme Court mentioned above, we hold that the rule laid down by the General Manager vide letter dated 23.3.1984 to assign seniority to the three categories in grade Rs.425-640 at the time of promotion as CIT in grade Rs.550-750 on the basis of length of service in grade Rs.330-560 keeping their inter-seniority, as laid down does not conflict with any statutory instructions issued by the Railway Board. In fact this position had been made clear in the January 1986 letter of the General Manager, Northern Railway vide note below the revised channel of promotion as referred to above.

In the circumstances of the case, we do not see any merit in the Application and the same is dismissed.

There will be no order as to costs.


(I.K. RASGOTRA)
MEMBER(A)


(P.K. KARTHA)
VICE-CHAIRMAN