

(8)

Central Administrative Tribunal
Principal Bench, New Delhi.

O.A. No.1752 of 1988

15th day of December, 1993.

Shri J.P. Sharma, Member (J)

Shri P.T. Thiruvengadam, Member (A)

1. Shri Inder Raj Arora,
Head T.T.E., Railway Station,
New Delhi.
2. Shri Mool Chand Sharma,
S/o Shri Vasdeo Sharma
3. Shri Vajender Singh Jain,
S/o Shri Mahender Singh
4. Smt. Labh Kaur,
Wife of Shri Bishan Singh

(All Head T.T.Es/Head Ticket Collectors,
Railway Station, New Delhi.).

Applicants

By Advocate: None

Versus

1. Union of India through
General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. Divisional Railway Manager,
Northern Railway,
New Delhi.

Respondents

By Advocate Shri B.K. Aggarwal

O R D E R

Shri P.T. Thiruvengadam

The applicants were appointed as Ticket Collectors and were promoted to the next higher grade of Senior Ticket Collector during July to September, 1971. While they were continuing in the posts of Senior Ticket Collector, Railway

Board vide their letter dated 1.5.1984, conveyed the orders of cadre review and restructuring, by which the number of posts in higher grades were increased. The posts in the level higher to that of the Senior Ticket Collectors/Sr.TTEs (Sr.Ticket Collectors and Sr. TTEs are in the same grade), are designated as Head Collector/Head T.T.E./Conductor. With the increase in the number of posts at this level, promotion orders against upgraded posts were issued in 1986. The case of the applicants is that a number of juniors to them were given the benefit of upgradation, ignoring them. Specifically, the cases of 8 employees who had been promoted to the grade of Rs.330-560 (Sr. TTE) much later to the promotion of the applicants to the same grade (as Sr. Ticket Collector), has been referred to. These 8 employees were promoted during varying periods between 1972 and 1977 as Sr. TTEs, whereas the applicants had been promoted in 1971 itself as Senior TCs, which is an equivalent grade. It is the case of the applicants that they brought this to the notice of Sr. Divisional Personnel Officer who was convinced and promised to undo the wrongs done to them. The posts added in the process of restructuring, were filled by a simple process of modified selection under which no written examination and viva-voce tests were held and the staff were promoted in accordance with the seniority and on scrutiny of service records. The applicants missed this opportunity for a relatively easy selection to the higher posts of Head Ticket Collector/Head T.T.E. Subsequently, selection for

the posts of Head Ticket Collector/Head T.T.E./Conductor was initiated by the respondents some time in April, 1988 but the applicants were not called for the selection. They were under the impression that they will be getting accommodated against the upgraded posts in pursuance to their representations to the Senior D.P.O., but they were called for the supplementary test by a letter dated May, 1988. The applicants represented against being called ~~called~~ for selection for the posts of Head TTE/Head Ticket Collector/Conductor but simultaneously appeared in the said selection test in which they qualified in the examination, at the time of filing the O.A.

2. Separately, Respondent No.2 had initiated a suitability test for the posts above the posts of Head TTE/Head T.C./Conductor and the applicants again represented that they should also be subjected to this suitability test in view of the stand that they should have been fitted against the upgraded posts w.e.f. 1.1.1984.

3. This O.A. has been filed, seeking the following reliefs:-

(i) The impugned order be quashed and the respondents be directed to promote the applicants against the upgraded posts w.e.f. 1.1.1984 the date from which the juniors to them have already been promoted, without any examination.

(ii) To direct the respondents to hold the suitability test for the post of next higher grade of Rs.550-750 only after the applicants had been given their due seniority and are promoted against the upgraded posts.

4. The main ground of the applicants is that eight of their juniors who had been promoted to the posts of Sr. T.T.E. after 1971, ^{the applicants had already been} when they were promoted to the equivalent posts of Ticket Collector, had been given the benefit of upgradation. In the reply filed on behalf of the respondents, it has been stated that juniors to the applicants, as per their options, have not been promoted to the higher grade of Head T.T.E., etc. (Grade: Rs.1400-2300). It was also added that the applicants had opted earlier for the cadre of HTTE and HTCR/Conductor and according to their options, they were not sufficiently senior to be included in the list of upgraded posts in the cadre. At this stage, the learned counsel for the respondents was directed to produce the records regarding any option exercised by the applicants and also with regard to their inter se seniority vis-a-vis the alleged 8 juniors who had been given the benefit of upgradation in preference to the applicants. Despite adequate opportunity having been given, the respondents have not produced any records and we have been compelled to go through whatever material and records are available with us.

5. The main point to be gone into is the relative seniority between the applicants and the alleged eight juniors in the grade of Sr. T.C./Sr.TTE. It is not disputed that the 8 alleged juniors had joined service in the lower grade as Ticket Collector earlier to the applicants. It was also conceded by both sides that these 8 candidates had joined prior to July, 1962, after which the fresh entrants had been denied

option for seeking promotion either as Sr. Ticket Collector or as Senior Travelling Ticket Examiner. Thus, the applicants who had joined after this date, got promoted as Sr. TCs, whereas the other 8 candidates preferred to wait for vacancies of Sr. TTEs and got promoted at a later date compared to the applicants. It is to be noted that both the posts of Sr. T.C. and Sr. TTE are in the same grade and the current practice is that after promotion to the posts of Sr. T.C., the employees are laterally shifted as Sr. TTEs. However, for pre-July, 1962 recruits, the benefit of option to take the promotion directly as Sr. TTE had been available. The next point to be considered is for further promotion to the next level of Head T.C./Head TTE/Conductor, what should be the guidelines with regard to inter se seniority between Sr.TCs and Sr. TTEs.

6. Before considering the above point, we note from Annexure A-11 (Annexure attached by the applicant) that for the purpose of promotion to the grade of Rs.550-750 (Northern Railway's letter dated 11.10.1985) seniority in the grade of Rs.330-560 is to be reckoned, ignoring the date of promotion to the intermediate grade of Rs.425-640. This letter had been issued since as per the extant practice, employees in the grade of Rs.330-560 could opt for anyone of the three types of posts available in the grade of Rs.425-640, namely, posts of Head T.C. or Head TTE or Conductor. This position has also been ^{confirmed} ~~conveyed~~ by the respondents with a rider that for promotion to the grade of Rs.550-750, the combined seniority is based on length of service in the grade of Rs.330-560, keeping inter se seniority in the grade of Rs.425-640 ~~in tact~~.

7. A similar decision had been taken for determination of seniority of staff promoted as Sr. TTEs or Sr. Ticket Collectors in the then existing grades of Rs.80-160 (PS) and Rs.100-185 (PS) for further promotion to the higher grade posts in 200-300(PS)/250-380(AS), Northern Railway, it was decided with the approval of Board that the seniority of the staff in question should be determined on the basis of the original seniority in the grade of Rs.60-130(PS)/110-180 (AS). This could be seen from the Railway Board's letter dated 23.8.1963.

8. In view of the above and with the undisputed position that the 8 alleged juniors had joined as Ticket Collectors in the recruitment grade prior to all the applicants, for the purpose of promotion to the grade above that of Sr. TTEs/Sr.TCs, the consideration given to the earlier recruits cannot be held to be illegal. Since the O.A. has been filed mainly on the ground that the applicants should have been promoted as Head TTEs/Head TCs/Conductors w.e.f. 1.1.84 in preference to the above 8 alleged junior candidates, The O.A. cannot be sustained.

9. Apart from the merits, the O.A. was challenged by the respondents on the issue of limitation. It was argued that the only representation against the promotion of the applicants at the time of implementing the upgradation orders was made on 5.3.1986 and that also only by S/Shri Mool Chand Sharma and V.S. Jain. No representation was made by the other two applicants. The respondents denied further representations, including the representations ^{he receipt of any} said to have been made by the applicants on 5.3.1988. In the reply affidavit, even the averments of the applicants that they had brought

to the notice of Senior Divisional Personnel Officer about the mistake in not promoting the applicants against the upgraded posts while their juniors were promoted, has been denied. Since the O.A. was filed only on 12.9.1988, the application should be held to be time-barred, ^{as per the respondents}. The learned counsel for the applicants argued that the cause of action arose ^{when} and action was initiated for filling up vacancies in the grade of Rs.550-750, for which viva-voce was fixed on 9.3.1988. Also, a provisional seniority list of TTEs was issued in January, 1988. We are not convinced by the arguments advanced with regard to the delay in filing the O.A. The respondents have only acknowledged the receipt of the representation dated 5.3.1986 on the subject of not considering the applicants for the upgraded posts. Since the O.A. has been filed with the main prayer to consider the applicants for promotion against the upgraded posts w.e.f. 1.1.1984 and only on 12.9.88, the O.A. is to be held as time-barred.

10. In the facts and circumstances of the case, the O.A. is dismissed. No costs.

P. T. Thiruvengadam

(P.T. Thiruvengadam)
Member(A)

J. P. Sharma

(J.P. Sharma)
Member(J)