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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO.641/1988

Date of Decision: 1.5.1992.

Indian Railway Traffic Service Association ...Applicants

Versus

Union of India

...Respondents

Coram:

The Hon'ble Mr. T.S. Oberoi, Member (J)

The Hon'ble Mr. I.K. Rasgotra, Member (A)

For the applicants : Sh. S.C. Gupta with Sh. R.K. Kamal,
Counsel.

For the respondents : Sh. M.S. Ramamurthy with Sh. P.S.
Mahendru, 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)

T.S. Oberoi
(T.S. Oberoi)
Member (J)

May 1, 1992.

28

(37)

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CORAM:-

THE HON'BLE MR.T.S. OBEROI, MEMBER (J)

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

FOR THE APPLICANTS SHRI S.C. GUPTA WITH SHRI R.K. KAMAL,
COUNSEL.

FOR THE RESPONDENTS SHRI M.S. RAMAMURTHY WITH SHRI P.S.
MAHENDRU, COUNSEL.

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

The principal question raised in this Original Application, filed under Section 19 of the Administrative Tribunals Act, 1985 by Indian Railway Traffic Service Association through its Joint Secretary Shri Anurag Mishra is whether the provision regarding "holding of more than 6 posts of General Manager and equivalent by officers belonging to one service" which is ordinarily construed "predominance" of that service can be amended to be substituted by "holding of more than 37.5% posts of General Manager and equivalent on the plea that pre-dominant factor of 6 was determined with reference to the number of posts of General Manager/equivalent being 16.

2. The necessary facts of the case are that the posts of the General Manager and equivalent of Indian Railways in Rs.7300-8000 are not encadred posts and are filled up by a

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28 (98)

rigorous process of selection from the following 8 services, in accordance with the criteria, as laid down in the Government of India, Ministry of Railways Resolution notified on 5.9.1984 and substituted/amended from time to

- time. "1. Indian Railway Service of Engineering (IRSE)
2. Indian Railway Traffic Service (IRTS)
3. Indian Railway Service of Mechanical Engineers (IRSME)
4. Indian Railway Service of Electrical Engineers (IRSEE)
5. Indian Railway Personnel Service (IRPS)
6. Indian Railway Service of Signal Engineers (IRSSE)
7. Indian Railway Stores Service (IRSS)
8. Indian Railway Accounts Service (IRAS)

There is only one post in this grade on each Zonal Railway/Production Unit etc. The guidelines and procedure for making appointments to the posts of General Manager and equivalent were notified by the Government of India, initially on 5.9.1984. The said scheme was substituted and notified under Government of India Resolution No.E(O)-III-84 PM6/132 dated 16.7.1986. The July 1986 scheme was amended vide Resolution dated 30.1.1987 and lastly vide Resolution No.E(O)III-88 PM/34 dated 26.2.1988. The last amendment dated 26.2.1988 is the cause of action in the O.A. before us, filed under Section 19 of the Administrative Tribunals Act, 1985.

3. The scheme has essentially remained unchanged and retained its content and original character upto and including the amendment dated 30.1.1987. The objective of the scheme ^{is} to lay down clear guidelines for selection of officers who are eligible from amongst the various Railway services for appointment to the posts of General Manager and equivalent in the Indian Railways so as to ensure equitable opportunities for the officers of various

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services and to see that these posts are manned by persons of proven ability and competence, having due regard to the specific requirement of each post for the smooth and efficient running of the Railway system. For this purpose a high powered Selection Committee considers all eligible officers in the order of seniority on merits to assess the suitability in all respects based on the record of their service and experience and special requirements of the post(s) for which selection is to be made. The Selection Committee is also required to give due consideration to the performance of the eligible officers as Divisional Railway Managers and as Principal Heads of Departments in the railways. Paragraph 8 of the Scheme which we are here-in concerned, with lays down:-

"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 vacancy 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

2

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. (emphasis supplied)

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."

4. It is with the objective of ensuring equitable distribution of the posts of General Manager and equivalent among the various Services consistent with efficiency of administration that provision vide Explanation-1 above was made to the effect that holding of more than six posts of General Managers and equivalent by officers belonging to any one service would ordinarily be construed as undue predominance. Ordinarily, therefore, not more than six officers from one particular service are allowed to hold more than six posts of General Manager and equivalent at a time.

5. According to the paragraph 3 of the Scheme the posts covered are listed in Appendix-I annexed to the scheme. As the entire controversy is founded on the Explanation-1 under paragraph 8 and Appendix-I of the scheme we reproduce hereunder the Appendix-I annexed to the Scheme:-

"Appendix-I

(Ref. para 3 of the scheme)

List of posts of General Managers

21

<u>S.No.</u>	<u>Name of post</u>	<u>No. of posts.</u>
1.	General Managers (Open Line)	9
2.	General Manager, Integral Coach Factory, Perambur.	1
3.	General Manager, Chittranjan Locomotive Works, Chittaranjan	1
4.	General Manager, Diesel Locomotive Works, Varanasi.	1
5.	General Manager, Wheel & Axle Plant, Bangalore.	1
6.	General Manager, North-east Frontier Rly. (Construction), Guwahati.	1
7.	General Manager, Metro-Railway, Calcutta	1
8.	Director General, Research, Designs and Standards Organisation, Lucknow.	1
9.	<u>Any other post that may be created after the publication of the Scheme in the scale of pay equivalent to the scale of General Managers unless such post (or posts) is specifically excluded from the Scheme.</u> (emphasis supplied)"	

6. Shri S.C. Gupta, the learned Senior Counsel who appeared for the applicants dwelt at length on the genesis of the scheme and explained that the intent of the scheme is crystal clear from the language that embodies the scheme. It covered all the posts of General Managers, as enlisted in Appendix-I right from 1984 when the scheme was first introduced. The 1984 scheme besides enumerating the 16 existing posts of the General Manager under srl. No.1-8 also listed srl. No.9 to include "any other post that may be created after the publication of the scheme in the scale of pay equivalent to the scale of General Managers unless such post (or posts) is specifically excluded from the scheme. The Appendix-I to the scheme of 1984 remained

2

unaltered in the July, 1986 scheme and the amended scheme of 30.1.1987. The learned counsel, therefore, submitted that holding of more than six posts, of General Managers/-equivalent by the officers belonging to any one service constituted undue predominance with reference to 16 posts enumerated in the Appendix-I plus any other post of the General Manager/equivalent, that may be created after the publication of the scheme. The Appendix I annexed to the scheme is an integral part of the Scheme and srl. No.9 which lists 'any other post' is an integral part of Appendix-I. The conversion of pre-dominant factor of taking total number of posts as 16 to 37.5% is, therefore, irrational, illegal and prejudicial to the claims and rights of the applicants. This conversion of 6 into 37.5% in fact frustrates the very objective of scheme which is to ensure equitable opportunities for various services consistent with efficiency.

7. Shri M.S. Ramamurthy, learned counsel for the respondents raised a few preliminary objections which we do not intend to dwell upon. The learned counsel submitted that the need for amending the scheme arose as three more posts of General Managers/equivalent were created and were added in the Appendix-I vide amendment dated 26.2.1988. They are:-

"8. General Manager, Railway Electrification,
Allahabad

9. Officer on Special Duty, Rail Coach Factory
Kapurthala

10. Principal, Railway Staff College, Vadodara."

He further added that substitution of figure 6 by percentage of 37.5% does not affect any particular officer and, therefore, the applicants have no cause of action. The learned counsel asserted that srl. No.9 of Appendix-I does not refer to Explanation-I under paragraph-8 of the scheme and maintained that holding of more than six posts was to be construed as undue predominance out of 16 posts which

are separately listed at srl. Nos.1-8 of the Appendix-I of the scheme. He further submitted that if there is increase or decrease in the number of posts of General Managers or equivalent the pre-dominant factor of six cannot remain static. The conversion of 6 out of 16 posts to percentage of 37.5 is meant to cater to the needs of changing situation consequent to the increase of number of posts. In support of his view, the learned counsel drew our attention to **AIR 1986 SC 1830 Reserve Bank of India Vs. C.N. Sahasranaman** and pointedly referred us to paragraph 58 & 61 and submitted that the scheme in question has the acceptance of the majority of the employees as none other than the Indian Railway Traffic Service Officers Association has come before the Tribunal. The inference is that other seven services are satisfied with the Scheme. The learned counsel further asserted that the scheme is fair, reasonable and does justice to the majority of the employees and, therefore, "fortune of some individuals is not the touch stone."

He next referred to **AIR 1982 SC 917 V.T. Khanzode V. Reserve Bank of India** and relying on paragraph 40 of the **V.T. Khanzode** (supra) case submitted that no scheme governing service matters can be foolproof and some section or the other of the employees is bound to feel aggrieved on the score of its expectations being falsified or remaining to be fulfilled. He further maintained that the scheme can never be closed or static and such adjustments as are considered necessary sequel to the growing demands of new situations have to be made from time to time.

8. Shri S.C. Gupta, learned counsel for the applicants in reply reiterated that amendment made in 1988 is violative of the objectives of the scheme and is consequently illegal. The conversion of 6 to 37.5% out

of the 16 posts is violative of the objectives of the totality of the scheme and is only a device adopted to frustrate the very objective of the scheme, i.e., to ensure equitable opportunities for the members of the various services. He further pointed out that the provisions in the scheme for selecting personnel for holding equivalent post to that of General Manager in any case debars some of the services for consideration to that post, as weightage is being given to the Mechanical department for the post of General Managers in the production units and to the Engineering Services for the posts on Construction of Electrification Projects. In essence, therefore, there are only 9 posts of the zonal Railways which are available to all the 8 services and if encroachment is allowed to be made by such devices as conversion of the pre-dominant factor of 6 to percentage of 37.5, it would affect prejudicially and adversely the chances of promotion of the services other than IRSME and IRSE etc.

9. Regarding the preliminary objection raised regarding the reliefs claimed by the learned counsel for the respondents Shri S.C. Gupta, Senior counsel for the applicants submitted that reliefs claimed are within the frame-work of the scheme and affirmed that he was not asking for a quota of the posts to be earmarked on the basis of the strength of the cadre of each of the 8 services. The learned counsel, therefore, submitted that he is not pressing for distribution of the posts of General Manager and equivalent in accordance with Rule 111 of Indian Railway Establishment Code Volume-I. The learned counsel also questioned the relevance of judicial pronouncements cited by ^{Shri} Ramamurthy, learned Senior counsel for the respondents and submitted that mere fact of other service Association etc. not being in Court does not necessarily mean that they were satisfied or happy with the

amendment made in 1988.

10. In the course of the hearing some of the documents indicating the justification for converting pre-dominant factor from 6 to 37.5% were shown to us. We, therefore, directed the respondents to file a complete set of these documents for the perusal of the Court by 23.3.92. These records have since been filed.

11. We have heard the learned counsel for both the parties and gone through the record carefully. We have also perused the relevant record filed by the respondents culminating in the issue of the impugned amendment. We are of the opinion that the pre-dominant factor of 6 was determined not only with reference to the 16 posts which were enumerated in the Appendix I but also took into account "any other post that may be created after the publication of the scheme in the scale of pay equivalent to the scale of General Manager unless such post (or posts) is specifically excluded from the scheme."

The Srl. No.9 of Appendix I, annexed to the original scheme covers the three additional posts as created subsequently, as they are not specifically excluded from the scheme. The pre-dominant factor of 6 was not fixed with reference to 16 posts but with reference to $16 + x$ where x signifies any other post that may be created after the publication of the scheme in future. It has to be kept in view that there are 8 claimant services for the post of General Manager or equivalent and additional posts of General Manager/equivalent are created but rarely. It is nobody's case that such a large number of posts of General Manager or equivalent can be created on the Indian Railways in the foreseeable future as would make the pre-dominant factor of 6 redundant. In these circumstances, we do not see any merit in the conversion of pre-dominant factor of 6

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36

to 37.5% which act of the respondents is inconsistent with the intent, objective and the vision of improving the overall efficiency for the smooth running of the Railways. We would also like to dispel the impression that the pre-dominant factor of 6 is synonymous with the minimum number that officers of a particular service can hold at a time. The objective of the scheme is to provide equitable opportunities for the members of the various services and to ensure that these posts are manned by men of proven ability and competence, after assessing their suitability on merits based on the records of service, experience and any other special requirement of the posts for which the selection is to be made. The essence of the scheme is suitability, based on merit including performance in the vital posts of Divisional Railway Manager and principal Heads of Department in the Railways. In our opinion, it was above considerations that led to the determination of introduction of the pre-dominant factor 6 with a view to ensure that the merit and performance are placed on the highest pedestal in the interest of the smooth functioning of the Railways than possible partisan interests.

In the facts and circumstances of the case, we are of the view that the premise for substituting/amending the pre-dominant factor of 6 by percentage of 37.5 on the ground of maintaining status quo in the relationship of pre-dominant factor with individually enumerated number of posts of General Manager at srl. No.1 to 8 in Appendix-I is contrary to the provisions and objective of the scheme. The amendment of the scheme vide Resolution dated 16.2.1988 would serve the interest of one or two of the eight services listed in Appendix II at the cost of remaining services. The amendment is, therefore, bound to affect the interests of applicants prejudicially. Accordingly the

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38

amendment made vide Resolution No.F(O)III/88-PM/34 dated 26.2.1988 is set aside and quashed to the extent it replaces the pre-dominant factor of 6, appearing in Explanation-I below paragraph-8 of the scheme by the figure of 37.5. Vide interim order dated 29.8.1988, we had directed that any promotions made to the posts on the basis of the impugned instructions "will be subject to the outcome of this Application and the promotee should be informed accordingly." The interim order dated 29.8.1988 is made absolute with the above observations.

Before we part with the case it may be mentioned that Railway Services have been restructured by successive cadre reviews in the recent past and General Managers even in units other than the Zonal Railways are supported, more often than not, ^{by} very highly experienced and highly qualified technical officers. The revision of the scheme whenever it is again undertaken, if the circumstances warrant, may also take this factor into consideration while determining the pre-dominant factor.

The O.A. is disposed of as above.

There will be no order as to costs.

I.K. Rasgotra
(I.K. RASGOTRA)

MEMBER(A)

T.S. Oberoi 1.5.92
(T.S. OBEROI)

MEMBER(J)

May 1, 1992.