

(43)

Central Administrative Tribunal

Principal Bench,
New Delhi.

O.A. No. 1041 of 1988.

New Delhi, this the 25th day of February, 1994.

HON'BLE MR JUSTICE S.K.DHACN, VICE CHAIRMAN

HON'BLE MR B.N.DHUNDIYAL, MEMBER(A)

Indian Railway Traffic Service Association through
its Secretary Shri Anurag Mishra, 16-B, Sarojani Nagar,
Railway Flats, New Delhi. Applicant.

(through Mr R.K.Kamal, for the applicant)

vs.

Union of India through the Secretary, Railway Board,
Rail Bhavan, Rafi Marg, New Delhi. Respondent.

(through Mr M.Ramamurthy for respondents
with Mr S.K.Kaul).

ORDER

HON'BLE B.N.DHUNDIYAL, MEMBER(A)

In this O.A., filed by the Indian Railway Traffic Service Association, through its Joint Secretary Shri Anurag Mishra, the principles and procedures for determining the inter se seniority of the members of Group A services of the Indian Railway, for the purpose of selection to the higher posts of General Manager and equivalent have been challenged:

2. There are nine Group 'A' services:

- i) Indian Railway Service of Engineers (IRSE).
- ii) Indian Railway Traffic Service (IRTS).
- iii) Indian Railway Service of Mechanical Engr. (IRSME).
- iv) Indian Railway Service of Electrical Engineers (IRSEE).
- v) Indian Railway Service of Signal Engineers (IRSSE).

21

v) Indian Railway Service of Signal Engineers (IRSEE)

vi) Indian Railway Stores Service (IRSEE).

vii) Indian Railway Personnel Service (IRPS).

viii) Indian Railway Accounts Service (IRAS).

ix) Indian Railway Medical Service (IRMS).

Under Rule 111 of the Indian Railway Establishment Code (IREC), separate cadres are maintained for each Indian Railway and each service is comprised of six grades. All the services compete for higher jobs of General Managers and above except the IRMS.

3. The Ministry of Railways have issued a number of notifications/QMs laying down principles of determining the relative seniority of Class I officers. A Circular dated 30.11.1976 lays down eleven principles. Principles (ii) and (iv), extracted below, are relevant to the issue under consideration:

" principle(ii)-Unless otherwise stated, officers appointed to the Indian Railway Service (Cl.1) on the basis of competitive examinations, held by the Union Public Service Commission, shall count service for seniority from the date they commence earning increments in the regular scale as Assistant Officers subject to the condition that the inter se seniority of officers in each service recruited as probationers in a particular year will be regulated by their place in the order of merit.

principle(iv) In case of prolonged delay on the part of an officer in joining service after receiving orders of appointment, he is liable to entail loss in seniority. If the period of training and consequently the period of probation in the case of officers, appointed to the Indian Railway Services on the basis of the Union Public Service Commission from

time to time, is extended in any particular case due to the training not having been completed satisfactorily, the officer concerned is liable to lose in seniority. "

4. A scheme for making appointments to the posts of General Manager and equivalent was first notified on 5.9.1984(Ann:A-3). It was replaced by another scheme notified on 16.7.1986. As per the Scheme, officers belonging to the eight Group 'A' services mentioned in para 2 of this judgment, who have put in 25 years of service in Group 'A', including five years in Senior Administrative Grade, and who are less than 56 years of age are eligible for consideration for being empanelled. A panel of names is to be prepared by the selection committee in accordance with the para 4 of the Scheme. The panel as well as each proposal of appointment requires approval of the appointments Committee of the Cabinet. Para 4:1 of the Scheme reads as under:

"4.1.

A panel of names for consideration for appointment to the posts listed in Appendix-I shall be prepared by a Selection Committee ~~set~~ set up in accordance with para 5 of the Scheme. For this purpose the Selection Committee shall consider separately on merits all eligible officers of each of the Railway Service listed in Appendix-II, in the order of their seniority in the respective service and prepare a panel of officers considered suitable in all respects, for appointment to the posts of General Manager and equivalent. The Selection Committee may also recommend the specific type/types of assignments for which a particular officer mentioned in the panel may be considered suitable."

Explanation 3 to para 8 of the Scheme provides the method for reckoning the year to which a batch belongs as under:

"Explanation 3:

The year to which any particular batch

:-4:-

of 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. #

5. Para 10 of the Scheme provides relaxation of the provisions of the Scheme in the Public interest in consultation with the Department of Personnel and Training.

6. It would be seen from the reading of para 4.1 of the Scheme that for the preparation of the panel seniority of the officers in their respective services has to be taken into account. The concept of inter se seniority was introduced for the first time by the following amendments in para 4.1 and 4.4 of the Scheme by a resolution dated 30.1.1987 (Annexure A-5) :

"4.1. A panel of names for consideration for amendment to the posts listed in Appendix I shall be prepared by a Selection Committee set up in accordance with para 5 of the Scheme. For this purpose, the Selection Committee shall consider on merit eligible officers of each of the Railway Services listed in Appendix II, having regard to their inter se seniority as well as their seniority in the respective services....#

4.4 While taking action as in the preceding sub para, the Railway Board shall normally suggest the promotion of empanelled officers in order of their inter se seniority within those cleared for that particular type of assignment, except when;

(a) to (d)....."

bv

7. Introduction of the concept of inter se seniority and the provision of fixation of DITS of a batch lower than the delayed date of joining of a senior, has been challenged in this O.A. The impugned order is stated to be violative of the statutory rule 111 of I.R.E.C. framed under Article 309 of the Constitution and without formal merger of distinct cadres, the concept of inter se seniority is honest in law. Para 2:1:1 is arbitrary as it would result in depressing the seniority of whole batch if one of the seniors joins later. An officer rated as 'good' in any service may suffer in comparison with similarly rated counterparts in other services if one of his juniors rated as 'outstanding' supersedes him. Unlimited powers are reserved for fixing DITS of promotees. As the inter se seniority lists are never published, no opportunity is given to challenge it. The following reliefs have been sought:

- a) The impugned order laying down the principles and procedures for inter se seniority be set aside and quashed;
- b) All instructions issued by the respondent, on the basis of the concept of inter se seniority

SN

between the members of various Group A services on Indian Railways be declared ab initio null and void.

8. In the counter filed by the respondents, the main averments are these. The top managerial cadre of the Indian Railways consists of Chairman, Financial Commissioner(Railways) and 5 members of the Railway Board. While the Chairman is ex-officio Principal Secretary to the Government of India in the Ministry of Railways, Financial Commissioner and other members are ex-officio Secretaries to the Government of India in the Ministry of Railways. Next to the Members of the Railway Board are the General Managers of the Zonal Railways, production units etc., and Director General, Research, Designs and Standards Organisation in the scale of Rs.7300-8000. There are in all 19 such posts. Next in the rank are the Advisers, Railway Board and Additional General Managers, one on each Zonal Railways etc. in the scale of Rs.7300-7600. Only the posts upto Senior Administrative Cadre are included in various cadres and the cardinal principle in drawing up the seniority is the order of merit from Union Public Service Commission for direct recruits and as per a specified procedure for promotees. Each officer is given a DITS(Date of increment on time scale), which is subsequently used to draw up the seniority list. For determining the relative seniority of Group A officers on the Indian Railways, certain principles were laid down in the Ministry of Railway's letter dated 30.11.1976. These rules, inter alia provide that ordinarily in case of direct recruits, the seniority is fixed on the basis of merit list

but in case of prolonged delay in joining service on the part of an officer, he will be liable to entail loss in seniority. For higher appointments, seniority lists are prepared on the basis that one who has longer service has to be given preference. The posts of General Managers and equivalent on the Railways do not belong to any particular cadre/service, and are filled up by the Government on the basis of selection from amongst the very senior and experienced Senior Administrative Grade Officers of different Group-A Railway Services, excluding Indian Railway Medical Service. It requires preparation of a list from amongst the eligible Senior Administrative Officers of all Services. Such lists are prepared on the basis of comparing the date for increment on time scale of officers taking into account the individual seniority position in Senior Administrative Grade of respective services. No merger of various cadres or services is envisaged in this scheme. Such lists are prepared from time to time as and when required while filling up the posts of General Managers and equivalent. The impugned letter dated 8.7.1987 is only a reiteration of the principles laid down in the earlier letters including letter of 1976.

9. We have gone through the records of the case and heard the learned counsel for the parties, including the counsel for the interveners i.e., Indian Railway Mechanical Engineers Association. The learned counsel for the applicant/grounds given in the O.A. reiterated the averments made in the counter that the applicants came to know the basis on which the seniority lists were prepared. Citing an example, he stated that in case of officers belonging to the Indian Railway

Traffic Service of 1956 examinations, one of the members Shri D.N.Kaushal joined after a long gap of more than one year. Applying the above provisions, the DITS of the whole batch was depressed with the result that they became junior to the members of the Indian Railway Mechanical Service, who had joined service after them. There was no opportunity for them to know how this provision had affected their inter se seniority. It was argued on behalf of IRSE Association that though there are eight services eligible for the higher posts, only the IRTS has raised these objections. I.A.S. and allied services examinations allow those selected for I.R.T.S. to postpone joining the training by one year, to enable them to take another chance for selection to I.A.S/I.F.S. As long as this facility is made available there will be one or two officers in every batch who join later. This would mean that every year, the DITS of members of their batch, junior to them in the merit list, will be lowered by one year. Moreover there has been demand for quota system from the Indian Railway/Service who had complained that none of their members ever got promoted as General Managers. This is, therefore, an unresolved issue.

10. The learned Senior counsel for the respondents, Shri Ramamurthy has argued that no individual grievance has been brought out in the application and in accordance with the provisions of the Central Administrative Tribunals Act, only matters involving individual grievance or grievance of a group can be taken up for redressal. Rule 111 of the Indian Railway Establishment Code Vol.I deals with fixation of cadre of various service upto Senior Administrative grades. This rule has no relevance at all for promotion to higher grade

:-9:-

posts of General Managers or equivalent in the pay scale of Rs. 7300-8000. The principles for determining the date of increment on time scale have already been laid down in the Ministry of Railways letter dated 30.11.1976. The principles of fixing inter se seniority have been used for a long time weighing the claims of members of one service vis-a-vis another to the posts of General Managers and equivalent and other posts open to various Group A organised services of Railways. They have been circulated under the impugned letter dated 8.7.1987. These are applied uniformly to all officers of all Group A Railway Services. The seniority list of the members of various services are published from year to year and the DITS of the members are given. They thus get ample opportunity of challenging the DITS, if need be.

11. The learned counsel for the intervenors (IRSMEA) drew our attention to principle (iv) of : "principles for determining the relative seniority of Class-I Officers of All Service of Indian Railways on 30.11.1976". It is provided that in case of prolonged delay, on the part of an officer in joining service, after receiving orders of appointment, he is liable to entail losses in seniority. The learned counsel has argued that the remedy, if any, was available under this provision to the officers, who challenged their notional DITS being fixed after an officer who had joined after a gap of one year or so. It is not open to them to challenge the orders dated 30.1.87. He has also argued that appointment of the GM or the preparation of inter se seniority lists are in the domain of policy and has

JW

cited a number of judgments of the Supreme Court (*) wherein the Courts have been enjoined to refrain from interfering with the policy decisions or giving suggestions regarding the matters of policy.

12. Our attention has also been drawn to the judgments of this Tribunal in case of D. P; S. Ahuja (OA No.2497/90) decided on 10.7.1991 and Shri S. P. Sharma (OA No.709/91) decided on 13.11.1991. In case of Shri D. P. S. Ahuja, this Tribunal has taken the view that if the applicant therein had continued to be a member of the IRTS, his notional DITS would be after that of Shri D.N.Kaushal, i.e. 5.5.1958 rather than 25.10.1957 as in case of Shri D.N.Kaushal. In that case, however, the applicant, who challenged the IRTS had subsequently opted for and was absorbed in the newly created Group A service of the Personnel Service and his connections with the previous service had been severed. On the facts and in the circumstances of that case, it was held that his DITS for purposes of inter se seniority for selection for appointment to the post of General Manager or equivalent would be 25.10.1957. However, in case of Shri S. P. Sharma, it was held that the

(*) AIR 1991 SC 363 (Union of India vs. S.L.Dutta & another)
AIR 1982 SC 1964 (Wing Commander, J Kumar vs. Union of India & another).
AIR 1985 SC 551 (K.Nagraj & Ors vs. State of Andhra Pradesh & others).
AIR 1989 SC 1899 (Asif Ahameed & Ors vs. State of J.K. and others)

:-11:-

applicant continued to be a member of the IRTS which he initially joined and within that service officers who joined subsequent to the joining of the applicant, were shown senior to him in the seniority list issued on 21.7.1978, which he has not challenged. Thus, his DITS for the purposes of selection for appointment the post of General Manager and equivalent has to be considered with reference to the DITS of Shri D.N.Kaushal, which was 5.5.1958. The Tribunal, however, left open the broad question of legality of the principles and procedure for determining inter se seniority issued by the Railway Board on 8.7.1987.

13. The question whether in the absence of any individual grievance this Tribunal can adjudicate in this case has to be answered in affirmative in view of the judgment of the Hon'ble Supreme Court in J.P.Chopra vs. Union of India & ors, 1(1987) ATLT 237(S.C.), wherein the following observations were made:

" It accordingly follows that the Administrative Tribunal being a substitute of the High Court had the necessary jurisdiction, power and authority to adjudicate upon all disputes relating to service matters including the powers to deal with all questions pertaining to the Constitution validity or otherwise of such laws as offending Article 14 and 16(1) of the Constitution."

14. We next come to the question whether the Scheme for promotion to the posts of General Managers or equivalent gives arbitrary powers to the Ministry or whether non-publication of the inter se seniority list vitiates the selection.

It is well settled that the service rules can be as much amended, as they can be made, under the proviso to Article 309. While exercising power of a judicial review of an administrative action, the Court is not an ^{acting as} appellate authority and provided the authorities do not transgress their constitutional limits or statutory powers, the Courts shall not interfere in the matters of policy. Thus, the impugned amendment cannot be faulted on these grounds. Moreover, the posts of General Managers are not included in the cadre of any service. There is considerable force in the argument of the learned counsel for the respondents that as the DITS of officers are published from time to time, they can be challenged. It is these lists which form the basis of inter se lists at the time of selection of higher posts and if these are challenged at a belated stage, there would be considerable delay in filling up the higher posts. The impugned amendments cannot be challenged on these grounds also.

15. It cannot, however, be said that the respondents had applied the provision of these schemes correctly in case of D.K.Kaushal. Para 2:1:1 of the amended scheme of 1987 has to be read together as the principle (iv) of the Circular of 1976. The former provides for a situation where similar delays in joining of a service are ignored and the latter provides for a situation where such delay is 'prolonged'. As per principle (iv), Shri Kaushal should have lost his seniority and should have been placed at the bottom in his batch according to the date of joining. However, the respondents, presumably exercising the powers of relaxation allowed under para 10 of the Scheme retained his seniority in the batch. We have seen that

Explanation 3 to para 8 of the 1984 Scheme protects the interests of a batch in such cases by providing that 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. Thus, in this case, both the principle (iv) of the Scheme of 1974 and the above explanation of the 1984 Scheme were ignored.

16. Even though we hold that the provisions of para 2:1:1 of the schedule may have been wrongly applied in Kaushik's case, we refrain from quashing the relevant orders as no specific prayer to this effect has been made. We would, however, direct the respondents to have this rule reconsidered in consultation with the Ministry of Personnel to eliminate any possibility of misinterpretation in future, by defining the scope of para 2:1:1 of the 1987 rules and principle (iv) of the 1976 guidelines more precisely in the light of above observations. This exercise shall be carried out within six months from the date of communication of this order.

17. The Q.A. is disposed of with the above directions. There will be no order as to costs.

/sds/

B.N.Dhondiyal
(B.N.Dhondiyal)
Member (A#)

S.K.Dhaon
(S.K.Dhaon)
Vice Chairman