

Two  
Central Administrative Tribunal  
Principal Bench, New Delhi.

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O.A.No.1258/1988

New Delhi, This the 7th Day of March 1994

Hon'ble Shri C.J. Roy, Member(J)

Hon'ble Shri P.T. Thiruvengadam, Member(A)

1. Shri VK Chandok s/o D.R. Chandok  
Aged 47 years, Chief Train Examiner  
Northern Railway, New Delhi.  
r/o No.14/19-F Krishna Nagar  
Delhi 110051.
2. Shri K.N. Sharma s/o Shri T.C. Sharma  
Chief Train Examiner, Northern Railway  
r/o 10/12 Railway Colony, Sarojini Nagar  
New Delhi 110023.
3. Shri K.K. Sharma s/o Shri Sita Ram Sharma  
Chief Train Examiner, N. Rly  
r/o C-IV/D - 2-C Janakpuri  
New Delhi 110058
4. Shri Subhash Chandra s/o Shri Kishan Dass,  
Chief Train Examiner, N. Rly  
r/o 245-C Pocket 'A'  
Mayur Vihar Phase II  
Delhi 110091
5. Shri B.D. Miglani s/o Shri Mool Chand  
Kothi No.758, Sector No.14,  
Sonepat, Haryana
6. Shri R.N. Verma, s/o Shri Chander Bhan  
Chief Train Examiner, N. Rly  
r/o 21/13, Railway Colony, Kishanganj  
Delhi.
7. Shri J.P. Srivastava s/o Sh. S.P. Srivastava  
Chief Train Examiner, N. Rly  
r/o 72/C-2 Railway Colony  
Tughlakabad, New Delhi.
8. Shri A.K. Sharma s/o Shri Shyam Sunder,  
Chief Train Examiner, N. Railway  
r/o No.17 Ramanujkunj  
Nai Basti, Ghaziabad U.P.
9. Shri Kishan Lal, s/o Sh. Munshi Ram  
Chief Train Examiner, N. Rly  
r/o No.13/B, Railway Colony  
Tughlakabad, (TUGHLAKABAD)  
New Delhi.
10. Shri Avtar Singh s/o Shri Udhamp Singh  
Chief Train Examiner, N. Rly  
r/o No.6/C, Railway Colony  
Tughlakabad  
New Delhi. ....Applicants

By Advocate Shri G D Gupta

Versus

Union of India through:

1. The General Manager, Northern Rly, Baroda House  
New Delhi.
2. The Divisional Personal Officer, N.Rly, D.R.M's office  
Chelmsford Road, New Delhi. ....respondents.

...2/-

By Advocate Shri Romesh Gautam

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ORDER

Hon'ble Shri P.T. Thiruvenkadam, Member (A)

1. As a result of re-structuring of the cadre of Train Examiners (TXRs) the number of posts in the various grades in Delhi Division of Northern Railway got increased in the higher levels with corresponding reduction in the lower levels. This re-structuring which had taken place with effect from 1.9.81 and 1.1.84 are relevant to this OA. The cadre comprises the following posts:-

- (i) Train Examiners Rs.425-700 (TXRs)
- (ii) Head Train Examiners Rs.550-750 (HTXRs)
- (iii) Chief Train Examiners Rs.700-900 (CTXRs)
- (iv) Carriage & Wagon Supdts Rs.840-1040 (CWSs)

The scales indicated above are the scales which were in existence prior to adoption of the Fourth Pay Commission scales. The issue raised in this OA relates to promotion from the post of HTXRs to CTXRs. Due to the two ~~with~~ re-structurings on 1.9.81 and on 1.1.84 21 and 50 posts were added in the cadre of CTXR in Delhi Division with corresponding reduction in lower levels. In addition in the group of CWS (Rs.840-1040) a total of 105 posts were added due to re-structuring as on 1.1.84 on an all zone basis.

2. Promotions upto and inclusive of the level of CTXRs are ordered on division basis whereas for filling up the post of CWS such promotion is ordered on all Railway basis i.e. taking the integrated seniority of all the CTXRs working in various divisions.

3. Due to certain Court cases regarding seniority filed before the Supreme Court and which cases were decided only in 1987 promotion to the post of CTXR and CWS had been considerably delayed and even the filling up of the

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additional posts(21 in number) subsequent to the re-structuring on 1.9.81 could be done only by 1987. Thus by the time promotions to the post of CTXR from the post of HTXR could be ordered the following ~~types~~ as of vacancies had to be catered for:-

- (i) Addition due to upgradation effective from 1.9.81 - 21 numbers
- (ii) Addition due to upgradation effective from 1.1.84 - 50 numbers
- (iii) Normal vacancies as on 31.12.83 - 14 numbers
- (iv) Resultant vacancies due to those working as CTXR getting promoted as CWS consequent to the re-structuring as on 1.1.84 (effect of restructuring in the grade of CWS effective from 1.9.81 is not relevant to this DA)

#### Situation

As regards ~~option~~ (iv) above CTXRs of all the divisions have to be considered on an integrated seniority basis for promotion as CWS. The applicants states that this exercise is not yet completed and at the time of argument only about 69 posts out of 105 posts for the railway as a whole have been filled up. Of these 16 CTXRs of Delhi division have got the benefit of promotion as CWS. Of the remaining 36 posts CWS to be filled effective from 1.1.84, Delhi Division will have its due share depending upon the integrated seniority list of CTXRs.

4. Posts of CTXRs are to be filled by a process of selection comprising written test and vivo voce. But at the time of issue of instructions regarding re-structuring a simple procedure of modified selection consisting only of scrutiny of service records has been specified. This modified selection is to be extended not only for filling up the additional posts created due to re-structuring (inclusive of chain vacancies), but also for filling up the normal vacancies which were existing as on 31.12.83. In the case of Delhi Division such modified selection for the category of CTXR had to cater for 21 + 50 + 14 + chain

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vacancies, as mentioned as items (1), (ii), (iii) and (iv), in para 3. As regards chain vacancies the share of Delhi division is 16 numbers against the 69 promotions to the post of CWS made on all railway basis and there would be a further share against the 39 remaining posts to be filled against the upgraded posts of CWS on all railway basis. Out of these, except for the 14 vacancies which have arisen in normal course, for the remaining vacancies due to upgradation including chain vacancies arrears are to be paid from 1.9.81 / 1.1.84 as per relevant instructions of Railway Board.

5. Delhi Division had issued promotion orders for 21 persons effective from 1.9.81 and 50 persons effective from 1.1.84. A further group of 16 persons was also given the benefit of upgradation from 1.1.84 since 16 resultant vacancies had arisen in Delhi Division in the grade of CTXR consequent to that many number of CTXRs of Delhi Division getting promoted as CWS against the upgraded posts. Over and above the 87 persons (21+50+16) Delhi Division had initially sanctioned promotions for another 19 persons with effect from 1.1.84. Subsequently by a letter dated 24.6.88 (Annexure I) orders were passed for re-fixation so that the pay as CTXR would be only followed from the actual date of promotion ~~not from 1.1.84~~ for these persons. Being affected by this order, 10 applicants have filed this OA praying for the setting aside of the impugned order dated 24.6.88. Further the applicants have also sought a relief that they should be deemed to have been promoted to the scale of Rs.700-900 effective from 1.1.84 with all consequential benefits.

6. During arguments, the learned counsel fairly conceded that the benefits of arrears can be claimed only against the upgraded posts or the resultant vacancies arising thereof from. For the normal vacancies of 14 posts which were also being filled up by modified selection the

issue of arrears from 1.1.84 can not arise since the instructions of Railway Board dated 1.5.84 (Annexure -III) clearly bring out that the benefit of fixation from 1.1.84 should be given against all vacancies which arose from re-structuring including the chain/resultant vacancies.

7. The next issue that is to be considered is from the select list made as per modified selection the catering for upgraded vacancies as well as normal vacancies, who are the candidates <sup>to be</sup> given the benefit of being fitted against re-structured vacancies with the attendant benefit of arrears from 1.1.84. and who are <sup>the</sup> candidates to be fitted against the normal vacancies. In the latter case i.e. those promoted against normal vacancies, the standing instructions are that the promotion should be effective only prospectively after the promoted employees take charge of the higher posts. The learned counsel for the applicants argued that the senior most candidates in the combined select list should be fixed against the 14 senior most candidates in the select list of normal vacancies as they would have been considered for such vacancies which arose even before 1.1.84. Reliance was placed on 1990(3) SCC 157 (NT Devin Kitty and others Versus Karnataka Public Service Commission). It is argued that vacancies which occurred prior to 1.1.84 should be filled by the selection rules applicable prior to the instructions regarding modified selection, which instructions were issued in the context of upgradation.

8. We are unable to agree with the above contention for a number of reasons. In the citations referred it has been mentioned that the statutory rules or Govt order is prospective in nature unless it is expressly or by necessary implication made to have retrospective effect. Where proceedings were initiated by selection by advertisement the selection should normally be regulated by the then existing rules and Government orders and any amendment of

these pending the selection should not affect the validity of the selection, unless the amended rules or the Govt orders issued in exercise of the statutory power either by express provision or by necessary ~~intendment~~ indicate that amended rules shall be applicable to the pending selection.

9. It is not the case where the selection had commenced for filling up the normal vacancies as on 1.1.84 even before instructions regarding re-structuring had been issued vide Railway Board's letter dated 1.5.84. Apart from this, Railway Board's instructions provide for modified selection specifically with reference to the vacancies that existed on 1.1.84. Thus, these ~~vacancies~~ <sup>Instructions</sup> expressly and by necessary implications have retrospective effect with regard to the method of selection even for the normal vacancies as on 1.1.84.

10. It is also inconceivable that senior in the select list would get promoted from a later date whereas the juniors from the same list would get promotion and arrears from an earlier date. Again even if the selections for vacancies prior to 1.1.84 had been held as per normal rules which provide for consideration of a field of eligibility of three times the number of vacancies it can not be stated as to which particular candidate would find place in the selection panel.

11. For the above reasons, we do not find any flaw in the approach behind the impugned instructions dated 24.6.88 (Annexure-I). However, we note that this letter of 24.6.88 has not taken into account the remaining 36 posts (as part of upgradation) in the category of CWS to be filled from the CTXR group. When this process gets completed on all zone basis certain number of CTXRs of Delhi division would also get the benefit to that extent

the limitation of 87 numbers mentioned in para 4 of impugned order dated 24.6.88 will have to be suitably increased. There will also be a suitable impact with regard to the candidates mentioned in para 5. In the circumstances of the case, the only relief that could be given is the impugned order dated 24.6.88(Annexure-I) may be suitably modified by the respondents after completing the process of filling up of the remaining upgraded posts of CWS. Interim order already passed on 15.7.88 stands vacated. No costs.

*P. J. Thiru*

(P.T. THIRUVENGADAM)  
Member (A)

*verso*  
(C.J. ROY) 17/3/94  
Member (J)

LCP