

(13)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 732 & 726 198 6.
T.A. No.

DATE OF DECISION 28.5.1987.

Shri V.M. Mahajan (OA 732/86) & **Petitioner s**
Shri K.K. Asthana (OA 726/86)
Shri R.R. Sharma (OA 750/86)

Shri M.K. Dua (OA 732/86) & **Advocate for the Petitioner(s)**
Shri Umesh Mishra (OA 726/86/750/86)

Versus

Union of India & Others **Respondent**

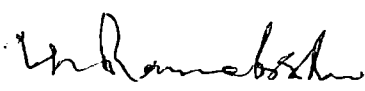
Shri K.N.R. Pillai for all the **Advocate for the Respondent(s)**
cases.


CORAM :

The Hon'ble Mr. S.P. Mukerji, Administrative Member.

The Hon'ble Mr. Ch. Ramakrishna Rao, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes.
2. To be referred to the Reporter or not ? Yes.
3. Whether their Lordships wish to see the fair copy of the Judgement ? No.


(Ch. Ramakrishna Rao)
Judicial Member


(S.P. Mukerji)
Administrative Member

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI

(14)

Regn. No. OA-732/86

Date: 28.5.1987.

Shri V.M. Mahajan

.... Petitioner

Versus

Union of India & Others

.... Respondents

For Petitioner

.... Shri M.K. Dua,
Advocate.

For Respondents

.... Shri K.N.R. Pillai,
Advocate.

AND

Regn. No. OA-726/86 & OA-750/86

Shri K.K. Asthana &
Shri R.R. Sharma

.... Petitioners

For Petitioners

.... Shri Umesh Mishra,
Advocate.

For Respondents

.... Shri K.N.R. Pillai,
Advocate.

CORAM: Hon'ble Shri S.P. Mukerji, Administrative Member.
Hon'ble Shri Ch. Ramakrishna Rao, Judicial Member.

JUDGEMENT

(Delivered by Shri S.P. Mukerji)

Since common questions of facts and law and common relief are involved in the aforesaid three cases, they are being disposed of by a common judgement as follows. The applicant in the first case was empanelled as Loco Foreman/ Maintenance Inspector in the scale of Rs.840-1040 with effect from 9.10.1980 and was promoted as such with effect from 13.12.1981. His next grade of promotion is as Assistant Mechanical Engineer Class II in the scale of Rs.650-1200. The applicant in the second case, Shri K.K. Asthana, was regularly promoted as Foreman(Diesel) in the scale of Rs.840-1040 with effect from 3.10.1979 and was promoted further as Assistant Mechanical Engineer in the scale of Rs.650-1200 in an ad hoc capacity

.....2.

with effect from 28.4.1982. The common grievance in these two applications flows from the Railway Board's impugned order, dated 5.3.1983 (Annexure I to the petition in the first case) in which it has been laid down that for the purpose of consideration for promotion to Class II Grade, an integrated seniority list of officers in Group 'C' will be prepared based on the length of service not exclusively in the scale of Rs.840-1040 but total service in the scale of Rs.700-900 and above. As a result of the impugned order, the position of the applicant in the integrated seniority list has been depressed because of the induction of officers with longer length of service right from Rs.700-900 scale at places in the seniority list above them so much so that for the promotion examination of 1986, they were ^{even} not called for written test whereas those who were junior to them and even working in the lower scale of Rs.700-900, were called for the test.

2. The applicants' case is that having been promoted to the higher Grade 'C' scale of Rs.840-1040, they should be placed en block in the integrated seniority list above those who are in the scale of Rs.700-900. By the impugned order, their juniors and even those who had not been promoted to the scale of Rs.840-1040, have been placed above them on the basis of their longer period of service in the scale of Rs.700-900 and accordingly, the applicants have been depressed in the seniority list. The applicants have prayed that the impugned order, dated 5.3.1983 should be declared as illegal and discriminatory and violative of Articles 14 and 16 of the Constitution of India and that the applicants should be called for promotion test based on

their higher seniority being in the scale of Rs.840-1040. Vide the Tribunal's orders, dated 19.9.1986, the respondents were restrained from holding the test on 20.9.1986 but later in the public interest, the said order was vacated with the direction that the selection made will be on a provisional basis and will be subject to the outcome of these applications.

3. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. For the purpose of appreciating the issue involved, it may be stated that there are three main-streams of promotion in Grade 'C' cadre, namely, Maintenance Supervisors (Steam), Running Supervisor (Steam Operation) and Maintenance Supervisor (Diesel). The respondents have stated that the fourth stream of Boiler Maker Supervisors is also there. Though these three streams have their own independent ^{vertical} line of promotion within the stream, for purposes of promotion to Grade 'B' post of Assistant Mechanical Engineer, they ^{in all the streams} are to be considered simultaneously. The various pay-scales in the three streams can be tabulated as follows:-

| Maintenance Supervisors (Steam) | Running Supervisors (Steam Operation) | Maintenance Supervisors (Diesel) |
|--|--|----------------------------------|
| Chargeman Fitter Rs.425-700 | Drivers Grade 'A' /A(Spl.) Rs.550-700 & Rs.550-750 | Chargeman Diesel Rs.425-700 |
| Chargeman Fitter Rs.550-750 | Asstt. Loco Foreman/Power Controller Rs.550-750 | Chargeman Diesel Rs.550-750 |
| Asstt. Locl Foreman Rs.550-750 | Jr. Fuel Inspector/ Jr. Loco Inspector/ Power Controller Rs.700-900 | Foreman Diesel Rs.700-900 |
| Loco Foreman/ XXXXXXXXXXXX XXXXXXXXXXXX Rs.700-900 | | Foreman Diesel Rs.840-1040 |

Loco Foreman/
Maintenance
Inspector

Rs.840-1040

Sr. Fuel
Inspector/
Sr. Loco
Inspector/
Staff
Inspector/
Chief Power
Controller

Rs.840-1040

Normally, for promotion as AME, the highest grade in Grade 'C' channel of Rs.840-1040, should have been considered. ^{According to the respondents} But since in certain streams the highest scale ends at 700-900 and the promotion prospects for promotion to the scale of Rs.840-1040 ^{are} were not uniform in all the streams, the Railway Board ^{by} the impugned order thought fit to merge for purposes of promotion as AME all the scales of and above the scale of Rs.700-900. This has created an anomaly in as much as officials in the scale of Rs.700-900 by virtue of their longer service, have secured places in the seniority list above those in other streams who are working in the scale of Rs.840-1040. It is against this anomaly that these two applications have been filed.

4. Since the integrated seniority list is being prepared for the purpose of consideration for promotion as AME, we went into the recruitment rules for filling up these posts and our attention was drawn to para. 202 of Chapter II of Indian Railway Service Manual which gives the condition of eligibility for Class II posts as follows:-

"Conditions for eligibility.

202. (a) For selection to Class II posts in Civil Engineering, Transportation (Power) and Mechanical Engineering, Transportation (Traffic) and Commercial, Signal and Telecommunication, Electric and Stores Departments.

(i) only permanent staff will be eligible.

- (ii) All staff in grade Rs.335-425 and above provided they have rendered a minimum of 3 years non-fortuitous service after reaching the stage of Rs.335/- either in those grades or in a lower grade."

5. The above will show that all staff in the grade of Rs.335-425 and above with a minimum of three years of non-fortuitous service are eligible to be considered. The learned counsel for the parties admitted that on the basis of the Third Pay Commission's recommendations the scale of Rs.335-425 was replaced by the scale of Rs.550-750. Accordingly, we feel that for purposes of drawing up an integrated 'seniority-cum-consideration' list for promotion as AME, in accordance with the recruitment rules, all officials who are in the scale of Rs.550-750 (corresponding to the pre-revised scale of Rs.335-425) with three years of service as per the recruitment rules, should be included. By preparing the 'seniority-cum-consideration' list on the basis of length of service in Rs.700-900 scale and above, as per the impugned order, the Railway Board has unwittingly excluded out of consideration 'en bloc' those who are working in the scale of Rs.550-750 and are according to the statutory rules eligible to be considered. The impugned order, therefore, is violative of the Recruitment Rules which are statutory.

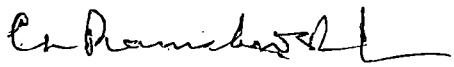
6. The modality of drawing an integrated seniority list of officers of merged grades in the same stream may not be difficult. Officers belonging to a higher grade can be placed en bloc above officers in a lower grade even though the length of service of an officer in the higher grade may be less than the officer in the lower grade, whom the former had superseded. The process of drawing up such a seniority list of officers belonging to different streams becomes infinitely difficult because the chances of

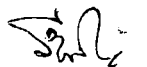
promotion from one grade to another are bound to be different and in certain streams the highest grade (Rs.840-1040) may not be there at all. Thus placing officers in the higher grade en bloc above those in the lower grade may be logical but not equitable. The Supreme Court was faced with a similar situation in Mohd. Usman Vs. State of A.P., A.I.R. 1971(2) SLR 584(SC) where for promotion to the posts of Sub-Registrar (II) both UDC and LDC were eligible but the cadres of UDC/LDC being on a districtwise basis and chances of promotion for LDC to UDC post being different, the Supreme Court instead of placing UDCs en bloc above LDCs on a State-wise basis chose the lesser evil of treating unequals as equals and upheld a seniority list based on the total length of service as UDC and LDC. In the instant case, therefore, the Railway Board's order of preparing integrated seniority list based on total length of service in Rs.700-900 and Rs.840-1040 grades would be more equitable than placing those in the higher scale en bloc above those in the lower scale as the chances of promotion vary from stream to stream and as in some streams the higher scale posts are either non-existent or disproportionally few and far between. The only exception that can be taken against this formula is that this totally excludes those who are in the scale of Rs.550-700 even though they are in accordance with the Recruitment Rules, are eligible for consideration after 3 years of service. When the arguments were heard by the earlier Bench with late Shri H.P. Bagchi, all those parties generally agreed to the proposal of drawing the integrated seniority list based on the length of

service from the grade of Rs.550-750 (old scale Rs.335-425). Before the judgement could be delivered Shri Bagchi passed away and the arguments were heard again at which stage some reservations were expressed about counting service from the lowest grade. The reservation was mainly based on the argument that a superseded officer in a lower scale in one stream may be rendered senior to an officer in the higher scale in another stream by virtue of his length of service. Even ^{if} the grade of Rs.550-750 is not included, this difficulty will persist between superseded officers in the scale of Rs.700-900 in one stream with longer period of service and officers in the higher scale with lesser length of service. This problem has been to some extent met by the Railway Board's instructions (E(GP)/81/2/87 of 28.5.1983) to maintain inter se seniority within the same stream and further instruction (E(GP)/81/2/87 of 6.1.1984) by assigning notionally benefit of longer service of superseded officers to the superseding officers, for purposes of counting seniority with officers of other streams. These instructions will be equally valid if officers in the pay-scale of Rs.550-750 are also included.

7. We, therefore, allow the three petitions and set aside the impugned order, dated 5.3.1983 insofar as the integrated seniority ^{- cum -} consideration list for the three streams of Maintenance Supervisors (T), Running Supervisors (Steam Operation) and Maintenance Supervisors (Diesel) are concerned and direct that the integrated seniority list should be drawn up on the basis of the principles and instructions already issued by the Railways with the

only modification that it should include officers who have completed three years of non-fortuitous service after reaching the stage of Rs.335 in accordance with the recruitment rules and service thereafter in the scale of Rs.550-750 (old scale Rs.335-425) should count for the integrated seniority subject to inter se seniority within the same stream being kept in tact and benefits of notional length of service being given to superseding officers or Scheduled Caste/Scheduled Tribe officers as per extant instructions being available to them. Continuous officiation even on an ad hoc but non-fortuitous basis followed by regular appointment would also count for such seniority in accordance with the established principles of fixing seniority on the basis of length of service. The integrated seniority list should be prepared on these lines within two months and finalised after giving opportunity for objections within two months thereafter. Only those who come within the zone of consideration, should be examined and tested for promotion. Those who fall within the zone of consideration but have not been subjected to any test or examination, should be allowed to appear in a supplementary examination/test and a panel prepared on the basis of the original examination and the supplementary examination/tests out of those candidates who fall within the zone of consideration in accordance with the integrated seniority list so prepared. There will be no order as to costs. A copy of this order may be placed on all the three files.


(Ch. Ramakrishna Rao) 28.5.87
Judicial Member

 28.5.87
(S.P. Mukerji)
Administrative Member