

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1398 1987
T.A. No.

DATE OF DECISION 5.5.1989

Shri Inderjit Singh & another ~~Petitioner~~ Applicants

Shri B.S. Maine ~~Advocate for the Petitioner(s)~~ Applicants

Versus

Union of India & another Respondents

Shri S.N. Sikka, ~~Advocate for the Respondent(s)~~ Respondent's

CORAM :

The Hon'ble Mr. Justice Amitav Banerji, Chairman

The Hon'ble Mr. Kaushal Kumar, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓ *yes*
2. To be referred to the Reporter or not? *NO*
3. Whether their Lordships wish to see the fair copy of the Judgement? *NO*
4. Whether to be circulated to all the Benches? *NO*

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(KAUSHAL KUMAR)
MEMBER

AMITAV
(AMITAV BANERJI)
CHAIRMAN

**CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI.**

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O.A.No.1398 of 1987.

Date of decision: 5.5.1989

Inderjit Singh and another.

Applicants.

vs.

Union of India & another.

Respondents.

CORAM:

Hon'ble Mr. Justice Amitav Banerji Chairman.

Hon'ble Mr. Kaushal Kumar. Member (A)

For the applicants Shri B.S.Mainee, counsel.
For the respondents Shri S.N.Sikka, counsel.

(JUDGMENT

Pronounced by Hon'ble Mr. Justice
Amitav Banerji.)

The applicants have approached this Tribunal by making an application under Section 19 of the Administrative Tribunals Act, 1985 praying for a declaration that the instructions of the Railway Board Dated 19/31-12--1985 (Annexure-A1) as illegal, unconstitutional and inoperative, and to direct the respondents to maintain 40% quota of the entire Class I Cadre at all times in Signal and Tele-Communications Department from the officers in Class II Service and to direct the respondents to promote the applicants to Senior Scale against the posts which had arisen in the past but had been kept unfilled by the Respondents and lastly to direct the respondents to give notional promotion to the applicants with retrospective effect from the dates when the posts/vacancies in Senior Scale had arisen in the past but were not filled up .

The above O.A., was filed before the Principal Bench on 5--10--1987.

The above D.A., was filed before the Principal Bench
on 5--10--1987. A.Y.

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The pleadings were complete by the middle of 1988. The respondents filed a M.P.No.2449/88 for referring the matter to a larger Bench. In the M.P., it was stated in that O.A-20/86 filed by the applicants before the Calcutta Bench of the Central Administrative Tribunal the question of Ad-hoc promotions has been decided in the matter of South Eastern Class II Officers Association Vs. Union Of India and others on 21--4--1986. A similar matter had also come up before the Hyderabad Bench of the Tribunal in O.A.6/86 in N.Rama Rao and others Vs. Union of India and others and that too had been decided on 17--9--1986. In these two cases, the Division Benches of the Tribunal had upheld the Railway Board's Order No.E-(GP)/85/1-48 d/19/31-12-1985 regulating the promotion of Group B Officers to the senior scale on adhoc basis. However, in O.A.279/86 M.S.Subramanian V. Union of India and others the New Bombay Bench of the Tribunal by its judgment dated 19--6--1987 had struck down the validity of the aforesaid orders of the Railway Board.

It was stated that a similar matter was pending before the Guwahati Bench of the Tribunal G.C.No.98/86 North-East Frontier Railway, Class II Officers' Association and others V. Union of India and others. There was yet another case G.C.No.172/86 filed by Jai Prakash Gupta against Union of India and others. It was stated that the three benches had considered the matter and there were divergent views and it would, therefore, befit to refer the case to a larger Bench.

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It was not necessary to do so for in the meantime a Full Bench at Guwahati presided over by the Hon'ble Vice-Chairman, Shri Justice D. Pathak decided the question agreeing with the view taken by the Hyderabad Bench holding that the impugned Circular does not suffer from any infirmity. Consequently, the Application was dismissed without any order as to costs and the case G.C. 172/86 was ordered to be placed before a Division Bench for giving a decision on the remaining issues in the light of the aforesaid decision.

When the matter came up before the Hon'ble Chairman on 17.3.1989, he observed that the question raised in O.A. No. 1398/87 had already been considered by the Full Bench of the Guwahati Bench of the Central Administrative Tribunal on 17.12.1989. Therefore the case was ordered to be listed for final disposal before Court No.1 on 24.4.1989. On 25.4.1989 the matter was taken up.

The learned counsel for the parties very fairly made no arguments on the validity or otherwise of the impugned circular dated 19/31-12-1985. The decision of the Full Bench of Guwahati Bench of the Tribunal completely covers the reliefs prayed for in this O.A. The circular of the Railway Board dated 19/31-12-1985 having been held not to suffer from any infirmity by the Larger Bench, it should be applicable and consequently this O.A. must fail on this ground alone.

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Mr. B.S. Mainee, learned counsel for the Applicants, however, argued that the applicants were Class II Officers (Group B) and they are the senior most of their class and they are also eligible to be promoted. The respondents had issued directions that directly recruited Junior Scale Class I Officers and Class II Officers after becoming eligible for promotion to senior scale on completion of the prescribed length of qualifying service in their respective grades, should be treated on par. But this received a jolt from paragraph 3.1 of the Circular No. 19/31-12-1985. However, it was claimed that the applicants who were Group 'B' Officers and had rendered not less than three years service in Group 'B' and have been adjudged suitable by a Committee of HODS for appointment against senior scale vacancies should be considered for adhoc appointment. But this was not being done. The vacancies in the Senior Scale were deliberately kept unfilled till such time as directly recruited Class I Officers became eligible. A meeting with the Secretary, Ministry of Railways was held wherein it was decided that vacancies in Senior Scale shall be filled up by considering officers who were eligible and available for such consideration as on the date of the occurrence of the vacancy. But even that had not been complied with by the above directions of the Railway Board.

Learned counsel stated that as many as six vacancies of Senior Scale Officers had occurred in 1986 but these have not been filled up inspite of the fact that Class I Officers with three years' qualifying non-fortuitous service were available at the time when the vacancies had taken place but no directly recruited Class I eligible Officer was available for promotion.

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It was stated that although the applicants and other Class II officers were awaiting promotion even after having the requisite qualifying service, yet they have been constantly ignored inspite of the availability of the Senior Scale posts.

On these facts, the learned counsel wanted a direction to be issued to the respondents to promote the applicants to Senior Scale against the posts which had become vacant prior to the circular dated 31.12.1985 and which have been kept unfilled.

Mr. S.N. Sikka, learned counsel for the respondents (Railway Board) raised two objections as regards the maintainability of O.A. The first plea was that the application was barred by limitation under Section 21 of the Act. The impugned order is dated 31.12.1985 whereas the O.A. was filed on 5.10.1987. The limitation having expired on 31.12.1986, and the filing of O.A. subsequently is barred by time. Apart from the above, it was urged that a vacancy does not arise until the Board decides to fill it up. The second objection was that although direct recruits have not been impleaded they are mentioned in para 6.25 of the O.A. and consequently no order could be passed against them without their being impleaded as party. It was stated that as per Rule 209(c) of the Railway Establishment Code Vol.I, appointments to the post of

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Senior Scale shall be made by promotion in order to save the rejection of officers who have put in not less than five years service in the junior scale. As per Rule 209(b) of the Railway Establishment Code, Volume I, appointments to the post in the junior Scale shall be made by selection from amongst Group 'B' officers of the Department concerned with not less than 3 years non-fortuitous service in the Grade. As such, Group B officers, as a matter of right, cannot claim the right to senior scale inspite of their being inducted into Group 'A' in term of Rule 209(b). It was further urged that when only Group 'A' officers with the minimum requisite service are not available, then Group 'B' officers are to be considered for purely ad-hoc appointment to senior scale post subject to the replacement by Group 'A' officers as and when they become available.

Mr. B.S. Maine in reply has stated that the OA is not belated. The circular dated 31.12.1985 was quashed by the Bombay Bench in 1987. Inspite of the aforesaid order, the respondents did not promote the applicants against the vacancies which had arisen in 1986 in accordance with the Railway Board instructions in existence prior to the issue of the impugned circular. Consequently, the application was not

belatedly filed. In reply to the second objection, it is stated that directly recruited Group 'A' officers were neither proper nor necessary parties in the above OA because the 6 vacancies referred to by the applicant arose in 1986 and they ought to have been filled up by promoting officers who were eligible and available when at the time the vacancies had arisen since there was no Group 'A' officer who was eligible or available to be promoted to fill up the said vacancies. Hence, there was no need to implead Group 'A' officers. It was also stated that the plea of the respondent-Railways that the Senior Scale posts belong to Group 'A' cadre only was not correct. Even according to the circular dated 31.12.1985, Group 'B' officers were entitled to be promoted to Senior Scale. There was a quota fixed for Group 'B' officers for Class I posts and that was 40%. They were entitled to be promoted at least to fill up vacancies to make up 40% quota. It was stated that the respondents have never given Class I status to Group 'B' officer by posting in the junior scale although there is a quota of 40% in their favour. Group 'A' status is given to Group 'B' officers only after they are promoted in the Senior Scale. Mr. Mainee, therefore, pleaded that Group 'A' status be given to the

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extent of 40% to Group 'B' officers while they are working in the junior scale. That would fulfil their demand. He, therefore, pleaded that although the circular dated 31.12.1985 has been upheld by the Full Bench of the Tribunal, this Bench may give a direction to the respondents to give 40% quota in Class I to the promotees (Group 'B') in accordance with the extant rules.

Having heard the learned counsel for the parties, we are satisfied that the present O.A. is not barred by limitation. We are also satisfied that the OA is not barred for non-impleadment of persons mentioned in para 6.25 of the OA. We are of the view that no arguments can be heard to assail the circular dated 31.12.1985 which has been upheld by the Full Bench of the Tribunal at Guwahati. That order will prevail and this OA has to be dismissed on this ground alone.

However, we feel that something can be said about the 6 vacancies which took place in the Senior Scale in 1986. The impugned circular would no doubt prevail but if the 40% quota for Group 'B' officers in Class I posts remains unfilled, eligible officers from Group 'B' may be promoted provided they have not less than three years non-fortuitous service in the grade and are otherwise eligible. The reservation of 40% posts in Class 'I' for Group 'B' officers

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is more or less admitted. (This has been referred to in the order passed by the Hyderabad Bench of the Tribunal in OA 6/86 dated 17th September, 1986.)

In view of the above, while dismissing the OA, we direct the respondent-Railways to consider the Group 'B' officers who are otherwise eligible to fill up their 40% quota in the Senior Scale. There will be no order as to costs.


(Kaushal Kumar)
Member (A)


(Amitav Banerji)
Chairman