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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

O.A. No.1465/1987.

Date of Decision: January 11, 1990.

Shri Bal Krishan & Ors. ...

Applicants

Vs.

Union of India & Ors

Respondents.

Coram:

Hon'ble Mr. B.C. Mathur, Vice-Chairman (A).

Hon'ble Mr. J.P. Sharma, Member (J).

For the applicant ...

Shri R.K.Kamal, counsel.

For the respondents ...

Shri B.K.Aggarwal, counsel.

For the interveners ...

Shri B.S. Mainee, counsel.

(Judgment of the Bench delivered by Hon'ble
Mr. J.P. Sharma, Member (J)).

This application under Section 19 of the Administrative Tribunals Act, 1985 was moved by the applicants jointly on 9.10.1987 and admitted for hearing on 16.10.1987 with the prayer that the respondents, Union of India, through the General Manager, Northern Railway and Divisional Railway Manager, Northern Railway, be directed to give relief to the applicants by implementing the gradation scheme dated 20.12.1983, enclosed as Annexure-I to the application, on the subject, cadre review and restructuring of non-gazetted cadres including that of ticket checking staff wherein the Railway Board under the Ministry of Railways, on 20.12.1983, issued directions vide Circular letter No. PCIII/80/UPG/19 to complete the restructuring process, posting of staff in due course of selection within three months from the date of issue of these instructions in the

aforesaid letter and for compliance to be reported and further, it has been prayed that full advantage of the percentage of upgraded posts as prescribed for the ticket checking staff on the basis of combined seniority in the said scale of Rs.260-400 with full monetary and other consequential benefits with effect from 1.1.1984 be given. Secondly, the discriminatory practice of making promotion on the basis of option in the scale of Rs.425-640 while implementing the upgradation scheme be quashed and promotions made on that basis be struck down and, thirdly, the respondents be directed to promote the applicants from the dates when their juniors in the combined seniority list were promoted to the scale of Rs.425-640 with all monetary and other consequential benefits. The applicants enclosed Annexure-I, the directions of the Railway Board dated 20.12.1983 to the General Managers, All India Railway etc. which discloses that ticket checking staff have been placed in one cadre with five grades in its various scales of pay including that of the cadre of Conductor in the scale of Rs.425-640. The cadre of Train Conductors in the scale of Rs.425-640 is to be combined with Ticket Checking staff in the corresponding scale only for the limited purpose of determining higher grade posts in the scales of Rs.550-750 and Rs.700-900 after which the category of Train Conductors will continue to exist as a separate category as at present.

2. In letter No.E(NG)I-84-PM3-15 dated 31.1.1986 addressed to the General Managers, All Indian Railways, the Railway Board clarified that the cadre of ticket checking staff comprising

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of Ticket Collectors and Ticket Train Examiners (T.T.Es) in most of the Railways is combined from lower grade to the highest grade except in Northern Railway where the cadre got separated in grade of Rs.425-640 and the posts of Head T.C, Supervisors/STEs and Conductors are operated separately. It has been mentioned that in the Northern Railway the posts are filled up on the basis of seniority amongst volunteering TTEs. According to this letter, it has since been decided that the posts of Conductors in grade Rs.425-640 may be filled by the staff who have cleared the selection for promotion to grade Rs.425-640. This is the practice already in vogue in the Southern Railway. In Northern Railway, where the posts in grade Rs.425-640 are operated separately in respect of Conductors, Head T.Cs, and Supervisor/STEs, they may either fill the posts of Conductors in grade Rs.425-640 by calling options from amongst Head TCs and Supervisors/STEs or follow the practice of combined cadre from the lowest to the highest grade and deploy the staff in grade Rs.425-640.

3. Annexure-3, is the copy of the letter dated 26.9.1986 regarding channel of promotion of the Ticket Checking staff including Conductors. On the directions of the ^{Railway} Board, the channel of promotion of Ticket Checking staff has been changed a bit shown in the Annexure attached to this letter showing therein that the Ticket Collectors who are promoted as Ticket Collectors from Grade Rs.260-400, were as ^{Head} Ticket Collectors grade Rs.330-560 (RS) on the basis of service records and also to T.T.E. grade Rs.330-560. After this, a common panel of the

three categories of Head T.Cs, Supervisors/STEs and Conductors are promoted as a selection post in the grade of Rs.425-640 and after review of records and viva voce, the next promotion in the grade of Rs.550-700 of Junior Inspector and for Chief Inspector by selection from the above in the grade of Rs.700-900. The ticket checking staff made representations vide Annexures A-4 and A-5 on 29th January, 1987 and 1st April, 1987.

4. The respondents Railway authorities, filed the counter affidavit in which it is stated that on the existing classification shown by the applicants, the posts covered by the restructuring orders remained unchanged as selection and non-selection posts. If an individual railway servant becomes due for promotion only one grade above the grade of the post held by him and such a grade is classified as selection post then the existing selection procedure will move in such a case to the extent that the selection will be based only on scrutiny of service records without holding any written or viva voce test. Further, the ticket checking staff was to be merged on the basis of their option exercised by them as per the channel of promotion under the instructions contained in General Manager (P), Northern Railway, New Delhi's letter No.561-E/92-V/EIC, dated 19.5.1975, the photo-copy of which is at R-I. Further, it is said that no promotion in Grade Rs.425-640 in the category of ticket checking staff after the receipt of instructions dated 26.9.1986 has been made and the ticket checking staff working in the grade of Rs.330-560 has to be promoted in the grade of Rs.425-640 as per instructions

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of the Railway Board. Since in the line of channel of promotion of ticket checking staff 1975 and options exercised by them, none of the relief as prayed for is available to the applicants.

5. The interveners have also filed their counter affidavit in which it is said that the application is time barred even if the order of 26.9.1986 is taken into consideration, the present petition having been filed on 9.10.1987; that the application is misconceived and the applicants have materially concealed the facts in accordance with the Railway Establishment Code Vol.I. The General Managers of the Indian Railways have full powers under Rules 157 and 158 to make rules with regard to Railway servants under Group 'C' and 'D' under their control and as such the question of discrimination does not arise at all.

6. The rules framed by the Railway Board are applicable from prospective effect and not retrospectively. The promotion made and the seniority assigned in accordance with the rules prevailing prior to 26.9.1986, cannot be disturbed because all the promotions were made and the seniority assigned in accordance with the then prevailing rules. That the whole of the Ticket Checking staff has not been impleaded as party and the application is bad as about 70 Ticket Checking staff shall be affected to be condemned without being impleaded as party in the event of the application being allowed. As a matter of fact, it is contended that the Railway Board has said in the letter annexed to the application that the Northern Railway may either fill the post of Conductors in the Grade of Rs.425-640 by calling options

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from the Head Ticket Collectors and Supervisors/STEs or following the practice of combined cadre from the lower to highest grade and in pursuance of that the Northern Railway has slightly modified the channel of promotion whereby the post in grade Rs.425-640 will be filled as a result of selection and a common panel of three categories of Hd.TCRs, Supervisors/STEs and Conductors. Grade of Rs.425-640 will be formed giving a go-by to the provisions of option. The upgradation which order was issued by the Railway Board and which had to take effect from 1.1.1984 cannot be implemented in accordance with the modified channel of promotion. The upgradation effective from 1.1.1984 has to be implemented in accordance with the option of the staff as per the then existing rules when the vacancies have taken place. It is emphatically pressed by the learned counsel for the interveners that all the concerned ticket-checking staff was given option for their further advancement and none was forced to give a particular option. Option once exercised by the staff including the applicants with open eyes make them to stick to that option and are estopped from challenging the same. The option once exercised by the staff would be final and irrevocable.

7. The applicants filed a rejoinder against the counter affidavit filed by the interveners almost, inter alia contending the same points as raised in their application. It is said that the promotion of ticket checking staff was changed under General Manager, Northern Railway's letter dated 26.9.1986 circulated on 20.10.1986, wherein the option element was altogether eliminated for promotion purposes. It is said that since the

option element was eliminated in the said order, the seniority of the applicants cannot be adversely affected. Rejoinder has also been filed by the applicants to the counter affidavit of respondents No.1 and 2, Railways. It is said that the letter dated 19.5.1975 providing option is null and void and violative of Articles 14 and 16 of the Constitution. It is further contended that there is discrimination when different channels of promotion are provided in different Railways under the Union of India. Reliance has been placed by the learned counsel for the applicants on 1987-SCC (L&S) page 76, ABID HUSSAIN Vs. UNION OF INDIA which was a matter pertaining to the payment to Conductor Guards of Air Condition Coach. However, as regards the authority cited by the learned counsel for the applicants, it is seen that the same is different because the Conductor Guards itself is a separate category and that is also within the powers given under Circular Annexure A-1 to the application.

8. We have heard the learned counsel and perused the records.

9. The point in this case is that originally all ticket checking staff entered service in the lowest grade of Rs.260-400 and it is same for T.Cs and T.TEs upto Rs.330-560. At this stage, according to the instructions issued ^{on 19.5.1975} ^{Northern Railway,} by the General Manager, they have to exercise an option whether they want to be in the line of Head Ticket Collectors or Supervisors/STEs. They again merged in the higher scale starting from Rs.425-640. It appears during arguments that the majority of the ticket checking staff opted the line of Travelling Ticket Examiners and the junior persons generally opted for remaining as ticket checking staff at the stations. This meant that the promotional avenues for Ticket Checkers became more

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for the next higher grade of Ticket Collectors while the promotional avenues for Travelling Ticket Examiners became less because of their large numbers. The grievance of the applicants is that those who opted for the post of T.T.Es remained in the junior scale while their juniors who were on the station ticket checking staff got the higher grade on their next promotion to the grade of Rs.425-640 and this has permanently affected them as the cadre becomes one in the next higher grade. There is no dispute regarding the position upto 31.12.1983 and the learned counsel for the applicants also does not want any change in the position as existed on that date. His contention is that vacancies existing on 31.12.1983 and 1.1.1984 should have been filled up according to the modification based on restructuring and 43% of the posts should have gone according to the original seniority and not on the basis of options obtained from both categories of employees in the Northern Railway. As the promotional avenues have increased considerably after the restructuring with effect from 1.1.1984, the conditions prevailing earlier would not be of relevance and the options given earlier were obtained under different circumstances.

10. The learned counsel for the applicants has cited the case of AMAR SINGH AND OTHERS Vs. U.O.I. & ORS -OA 1131/1986 decided by the Principal Bench on 12.9.1989. It deals with the benefit of upgradation from the post of Personnel Inspector to that of Chief Personnel Inspector flowing out of cadre review

and restructuring of Group 'C' and 'D' staff scheme.

The Railway Board had decided that the benefit of fixation from 1.1.1984 should be given against all vacancies arising out of restructuring. The Tribunal in that case has held "that the benefit of restructuring flowing from the policy of restructuring introduced vide Annexure-2, in the matter of promotion from the post of PI (Grade 500-750) to the post of CPI (Grade 700-900) is to be accorded on the basis of combined seniority of the cadre of CPI as it existed on 1.1.1984 and not on the basis of the group seniority in the divisions which came into existence as a result of decentralisation of the posts of CPIs." Here, we find that the question is not one of decentralisation but uniform rules for the entire staff in the Northern Railway. The learned counsel for the applicants also cited the case of ABID HUSSAIN (supra) where it has been said that conditions have to be same on all Railways and discrimination between two Railways should not be there. The contention of the learned counsel is that giving of options only in the case of Northern Railway is a discriminatory act. In this case, it has to be considered that the Railway Board has not said anywhere that option is not to be given and liberty has been given to the General Manager, Northern Railway in this matter. According to the rules, the General Manager of a Railway is competent to frame rules for all Class 'C' and 'D' staff in a Railway and, therefore, as long as the rules are same for all staff within a Railway, it would not amount to any discrimination as these are within the purview of the power of a General Manager.

In any case, the employees including the applicants had accepted this position all along. Obviously, a large number of ticket checking staff opted for the Travelling Ticket Examiners as that would be more beneficial to them due to higher income because of Travelling Allowance etc. Having exercised that option, they would naturally become junior to the checking staff who chose the line of Head Ticket Collectors whose job was perhaps less remunerative as no travelling was involved. Having got promotion in two different lines, the percentage on the basis of restructuring will have to be under various cadres specified in the order of the Railway Board and one cannot go back to the original seniority in the lower scale.

10. The applicants in their application have not given any comparative statement to show as to how they are graded junior to other ticket checkers nor they have shown any such fact in this application which gives an impression that any arbitrary procedure was adopted in drawing the promotional list of ticket checkers and T.T.Es and for that the petition is vague. The procedure which was prevailing since 1975, cannot now be undone and only after 31.12.1983, the vacancies are to be allocated in the percentage for various grades for increasing promotional avenues. Nothing has been said in the application as to how many vacancies were existing on 31.12.1983 and only in para 3 of the application at page 3, rough figure has been given as 1000. If that is taken to be correct, then already 317 persons have been shown beneficiaries who have been promoted. The applicants also did not summon any records to appreciate the reasoning being advanced by them.

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Against this the respondents No.1 and 2 as well as the interveners have categorically stated in their counter affidavit about the application of the changed position for promotional avenues through a combined panel of ticket checkers, T.T.Es and Train Conductors.

11. In view of the above, the applicants could not substantiate that there has been any arbitrary preparation of a list of promotion or there has been arbitrary promotion or that any of their Fundamental Rights of equality had in any way been infringed or the equity have been in their favour.

12. The equality of opportunity need not be confused with absolute equality as such. What is guaranteed is equality of opportunity and nothing else. Article 16 of the Constitution of India does not prohibit the prescription of reasonable rules for selection to any employment or appointment to any office. The administrative instructions are made to supplement the rules. Such instructions may confer, abridge or take away rights but not in any arbitrary or unreasonable manner. This has to be judged in the light of the Rules governing the terms and conditions of service. These instructions issued by the Government must provide for equal treatment and the executive agency is bound by its own standards.

13. It is not in dispute that the General Manager of a Railway did not have full powers to frame rules regarding promotion of its employees and that the promotions have been done according to the rules framed by him. Once the applicants have given their options for promotion to the next higher grade and persons have been promoted to that grade on the

basis of such options according to the vacancies based on restructuring of the cadre, it would not amount to any discrimination within the Northern Railway that the options were obtained under different conditions. The restructuring only increases the posts in higher categories and promotions have been made by the Northern Railway according to the instructions then prevailing. The instructions issued by the Railway Board on 31.12.1983 to be effective from 1.1.1984 would not undo the earlier position arrived at in the matter of promotion and seniority. It appears somewhat unfortunate that senior persons who joined as ticket checking staff earlier should become junior to persons who opted for the ticket checkers line but this would be the position even earlier. It is, of course, seen that the number of vacancies in the senior positions have been increased and based on these considerations, the Northern Railway have discontinued the method of option for the next promotion from 1986. In our opinion, we see no reason to interfere with the orders of the General Manager, Northern Railway, which were according to the existing practice and rules and not discriminatory between the members of the ticket checking staff of the entire Railway. We find no justification in interfering with the authority conferred on the General Manager to make rules for Grade 'C' and Grade 'D' staff as long as they^{are} not contrary to the rules and instructions issued by the Railway Board. The Railway Board^{have} not prevented the Northern Railway from the practice

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of options prevailing in that Railway. In the circumstances,
the application is dismissed. There will be no order as to
costs.

J.P. Sharma
(J.P. SHARMA)
MEMBER (J)
11.1.1990.

B.C. Mathur
(B.C. MATHUR) 11.1.90
VICE-CHAIRMAN (A)
11.1.1990.