

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No. 2497 of 1990

Date of decision: 10.7.91

D.P.S. Ahuja

Applicant

Vs.

Union of India

Respondents

PRESENT

Shri S.C. Gupta, Sr. Counsel with Shri L.R. Goel, counsel for the applicant.

Shri P.H. Ramchandani, Sr. counsel for the respondents.

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Hon'ble Justice Shri Ram Pal Singh, Vice-Chairman.

Hon'ble Shri P.C. Jain, Member (A).

(Judgment of the Bench delivered by Hon'ble Shri P.C. Jain, Member (A).)

JUDGMENT

In this application, under Section 19 of the Aadministrative Tribunals Act, 1985, the applicant who is posted as Additional General Manager, South Eastern Railway, Calcutta, has prayed for the following reliefs:-

- i) quash the Respondent's Order no. E(O)III-90 AE/224 dated 26.10.1990 whereunder the applicant's rightful claim for assignment of proper inter se seniority position on the basis of his own Date of Increment in Time Scale i.e. 25.10.1957, has been illegally rejected by the Respondents;
- ii) quash Respondent's Order No. E(O)III-90 AE/224 dated 26.10.1990, whereunder the Respondent has also rejected the Applicant's claim to protection of his pay with reference to appointment of Applicant's juniors as General Managers;
- iii) direct the Respondent to assign to the Applicant his proper inter se seniority on the basis of 25.10.1957 as his Date of Increment in Time Scale;
- iv) direct the Respondent to consider the case of Appli-

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cant's promotion to the post of General Manager or equivalent posts on the basis of the afore-mentioned correctly assigned inter se seniority position with 25.10.1957 as his Date of Increment in Time Scale, and, further to give him such consideration from the due date i.e. the date on which his next junior was first considered, and, to give him all consequential benefits, including seniority and arrears of pay, on the said basis;

v) direct the Respondent not to exclude the Applicant's claim for appointment to the post of General Manager or other equivalent posts on the mere ground that he may now be left with less than two years to retirement at the time of his appointment thereto; and

vi) any other reliefs that this Hon'ble Tribunal may deem fit and proper on the facts and circumstances of the case.

2. The Respondents have contested the application by filing a counter reply and an additional reply to the rejoinder of the applicant. The applicant has also filed a rejoinder and additional rejoinder.

3. As the pleadings of the case are complete and both parties agreed for final disposal of the case, at the admission stage itself, we have also heard the learned counsel of the parties accordingly.

4. The relevant facts in brief are as follows:

On the basis of the L.A.S. and Allied Services Competitive Examination held by the UPSC in 1956, the applicant joined the Indian Railway Traffic Service (IRTS) on 25.10.1957. In 1974, the Government of India decided to constitute another Group 'A' organised Service by the name of Indian Railway Personnel Service (IRPS) and accordingly invited options from officers of various Railway Services vide letter dated 22.10.1974 (Annexure 'B' to the application). The applicant opted for this Service and was inducted therein in the Junior Administrative Grade. He got promotion to the Senior Administrative Grade

in 1981 and was further promoted to the post of Additional Secretary in the grade of Rs. 7300-7600 on 25.9.1988. In this application, he is primarily aggrieved by his non-appointment to the post of General Manager or equivalent post in the grade of Rs. 7300-8000.

5. At the top, the Indian Railways have the posts of Chairman, Financial Commissioner (Railways), and 5 Members of the Railway Board in the scale of Rs. 8000/- (fixed). Below the Members are General Managers of the Zonal Railways, Production Units etc. and Director General, Research, Designs & Standards Organisation in the scale of Rs. 7300-8000/-. There are 19 posts of General Manager and equivalent on Indian Railways in the above grade which are filled from officers of the following 8 organised Group 'A' Railway Services:-

- i) Indian Railway Service of Engineers (IRSE),
- ii) Indian Railway Traffic Service (IRTS),
- iii) Indian Railway Service of Mechanical Engineers (IRSME),
- iv) Indian Railway Service of Electrical Engineers (IRSEE),
- v) Indian Railway Service of Signal Engineers (IRSSE),
- vi) Indian Railway Stores Service (IRSS),
- vii) Indian Railway Personnel Service (IRPS), and
- viii) Indian Railway Accounts Service (IRAS).

6. The posts of General Managers and equivalent do not belong to any particular service/cadre. For the first time in 1984, by resolution dated 5.9.1984, Government of India, Ministry of Railways, notified a scheme for making appointments to the post of General Managers and equivalent in the Indian Railways (R-1 to the counter reply). It is not necessary to discuss the scheme as the same was replaced by another scheme by another resolution dated 16.7.86 (R-II to the counter reply). This was partly modified by resolution dated 30.1.87 and again by resolution dated 26.2.1988. As per the norms laid down in the scheme, officers belonging to 8 Group 'A' Railway Services, as mentioned above, who are less than 56 years of age and have put in 25

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years' service in Group 'A', including 5 years in Senior Administrative Grade, are eligible for consideration for being empanelled for appointment to the grade of General Manager and equivalent. It has also been provided that only such of the empanelled officers would normally be appointed to posts of General Managers or equivalent as will be able to serve for at least two years on such or higher post(s). A panel of names is to be prepared by a Selection Committee in accordance with para 5 of the Scheme. The Selection Committee shall consider eligible officers having regard to their inter se seniority as well as their seniority in the respective Services and prepare a panel of officers considered suitable for appointment to the posts of General Managers and equivalent (emphasis supplied). The Selection Committee can also recommend the specific type/types of assignments for which a particular officer mentioned in the panel may be considered suitable. The Railway Board is expected to normally suggest the promotion of empanelled officers in order of their inter se seniority within those cleared for that particular type of assignment except as provided in para 4.4 of the Scheme. The panel recommended by the Selection Committee requires the approval of the Appointments Committee of the Cabinet (ACC) and thereafter each proposal for appointment also requires the approval of the A.C.C.

7. The principles and procedure for determining inter se seniority of members of Group 'A' Services on the Railways were notified vide letter dated 8.7.1987 (Annexure R-6 to the counter reply). The procedure laid down therein is said to have the approval of the President. According to these orders, the inter se seniority as applicable to any Member of Group 'A' Service would, *inter alia*, be determined by the Date for Increment in Time Scale (DITS) except that in case any officer joins service earlier than his senior in the same service in the same batch, he will get a notional DITS which will be the same as that of his senior.

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8. Note 1 below para 2 stipulates that the Date for Increment in Time Scale would be the same as the Date of Joining Service in case of direct recruits to Group 'A' Services and for others it would be the Date for Increment in Time Scale in Group Service as determined as per rules/orders laid down from time to time. Para 1 provides that officers belonging to any examination batch would initially be junior to the officers of the same Service belonging to an earlier examination batch and within the same batch, the inter se seniority would initially be in order of merit in the batch as existing on completion of the period of probation.

9. Para 3 (which incidentally is the last para of these orders) stipulates as follows:

Current seniority

Irrespective of the provisions of paras 1.0 and 2.0 above, which relate to the basic inter se seniority of officers in the context of further promotion to higher posts, any officer holding a position in a grade higher than that held by any other officer would have, at that given time, a current seniority and status higher than that of the latter officer.

These orders are also stated to have the approval of the President. In the absence of any statutory orders, these orders shall, therefore, have a statutory effect.

10. The case of the applicant is that his Date for Increment in Time Scale in IRPS is shown as 25.10.1957 and he is the senior-most officer in that Service. In spite of this, it is contended that persons with lower DITS in other Services have been promoted to the post of General Manager and equivalent. The case of the respondents on this point is that in the merit list, his rank was 32 amongst 48 officers who were recommended for appointment to the Junior Scale of IRTS by the UPSC. It is further stated that even though he joined on 25.10.1957, yet his DITS is controlled by his senior in the merit list in the IRTS, namely, Shri DN Kaushal, whose DITS was 5.5.1958 and, therefore, the

applicant was assigned position in the eligibility list for consideration for empanelment as General Manager and equivalent on this basis i.e. 5.5.1958 in accordance with the principles for determining inter se seniority position. In this regard, the applicant's contention is that having severed his connection from IRTS, after he opted for the new Service i.e. IRPS, and having been irrevocably absorbed therein, his DITS for purposes of empanelment for the post of General Manager and equivalent cannot legally be determined within reference to his DITS in IRTS. He relies on the orders issued by the Government of India on 22.10.74 inviting options from officers for induction into IRPS. Para 4 thereof stipulates that Class I officers belonging to established Railway Services who opt for being appointed to the Service will have their seniority determined on the basis of Date for Increment in the Time Scale and that Class I officers of the same batch directly recruited to established Services will, as at present, continue to maintain their inter se seniority, in case they elect to be appointed to the new Service. Para 6 provides that officers who are selected for appointment to the new Service will have their liens in their existing Services/posts terminated and will be provided lien against posts in the new Service. Para 7 provides that options once exercised will not be allowed to be withdrawn. The applicant has, therefore, argued that after having opted and being absorbed in the IRPS, his DITS in the IRTS cannot have any relevance with his DITS in the IRPS. Respondents, on the other hand, have pleaded that as minimum service of 25 years in Group 'A' Service is essential for being eligible for consideration for empanelment to the post of General Manager and equivalent, and as the applicant did not put in 25 years of service in IRPS and as his service in IRTS has necessarily to be taken into account for determining his eligibility and if that is done, his DITS in IRTS cannot be ignored.

11. We have carefully considered the rival contentions of the parties and we find that reading the Scheme under which options for the new Service IRPS were invited alongwith the principles laid down for determination of the inter se seniority, the contention of the applicant has substantial force and his case for empanelment for the post of General Manager and equivalent has to be considered on the basis of his DITS in the IRPS. His DITS in the IRTS, which he irrevocably quitted on absorption in the IRPS, cannot be ^{him} tagged on to to after his relations with the IRTS were irrevocably severed. The mere fact that his service in the IRTS is being taken into account for computing the period of 25 years' service for purposes of eligibility is not a sufficient ground for taking his DITS in IRTS into account after his absorption in the IRPS for the simple reason that under the scheme what is required is putting in not less than 25 years of regular continuous service; including period of probation, if any, in a Group 'A' Service, listed in Appendix-II (In Appendix-II all the ^{above} Group 'A' Services mentioned are listed.). Moreover, by doing, as the respondents have done, the applicant became junior to all officers of other Group 'A' Services who had joined their Services ^{after 25.10.57} upto 5.5.1958. Such a course of action would have been justified if the applicant had continued in the IRTS, but cannot be justified in the facts and circumstances of this case where the applicant ceased to be a member of the IRTS.

12. In support of his contention, the applicant has also relied on para 3 (already reproduced above) of the orders laying down the principles and procedure for determining inter se seniority of members of Group 'A' Services on the Railways. A perusal of the said para shows that it relates to 'current seniority'. The term 'current seniority' is not normally used in administrative parlance. Further, provisions of paras 1 and 2 of these orders are relevant for determining inter se seniority for purpose of empanelment for the post of General Manager and equivalent

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In fact, para 3 itself makes it quite clear. One may take a view that the orders on current seniority should not have been made a part of these orders and that the approval of the President may also probably not be necessary for this purpose. However, the fact remains that as per the Scheme which governs selection for the post of General Manager and equivalent, it is the inter se seniority and not the current seniority which is relevant. We, therefore, cannot uphold the contention of the applicant that para 3 of the Annexure to the order dated 8.7.87 laying down principles and procedure for determining inter se seniority also strengthens his case.

13. Having come to the conclusion that the case of the applicant should have been considered taking his DITS as 25.10.1957, we may now examine the merits of his case for promotion to the post of General manager or equivalent. Respondents in their reply have categorically stated that "in the panel for appointment to the post of General Manager and equivalent for 1989-90, he was duly considered but was not found suitable for inclusion in the panel on the basis of performance." It is well settled that a Government servant has only a right to be considered for promotion and not to promotion as such. The applicant having been considered for the panel for 1989-90 and not found suitable can legally have no grievance. As regards the panel for 1990-91, the respondents in their reply to the rejoinder have stated that "it has not been denied in the reply filed by the Respondents that he was not empanelled in the panel of 1990-91." Their case, however, is that as the applicant has less than 2 years service left, he is no more entitled for appointment to the post of General Manager, as per the provisions of the Scheme for appointment to such posts. The additional rejoinder filed by the applicant to the above reply, points out that in the very near past, the following 5 officers were promoted as General Manager who had less than 2 years:

<u>Name</u>	<u>Date of Promotion as GM</u>	<u>Date of Retirement</u>
1. Shri M.A. Cherian	14.4.1988	31.10.1989
2. Shri S.M. Vaish	14.04.1989	31.07.1991
3. Shri R. Balasubramanian	18.09.1989	31.05.1991
4. Shri S. Bhattacharya	01.09.1990	31.07.1992
5. Shri M.C. Das	01.02.1990	30.10.1992

14. The learned counsel for the respondents produced before us a statement attempting to explain the above 5 appointments. For facility of appreciation of contentions of the respondents, this statement is being reproduced below:

<u>S.No.</u>	<u>Name, Service & Designation S/Shri.</u>	<u>D.O.Birth</u>	<u>D.O. Vacancy</u>	<u>D.O. Posting on GM/equivalent posts</u>	<u>Remarks</u>
(1)	(2)	(3)	(4)	(5)	(6)
1.	S.M. Vaish (IRSE), GM/NR	23.07.33 31.07.91	31.07.89(AN) 10.05.89	14.08.89	The proposal for appointment of Shri Vaish as GM, Northern Railway w.e.f. 31.7.89 was sent to ACC on 10.5.89 when he had over 26 months to retire. However, ACC's approval to the proposal was delayed and was received on 14.9.89.
2.	S. Bhattacharya (IRSME), GM/CLW	25.07.34 31.07.92	01.08.90 12.07.90	06.09.90	Shri VK Fondek, GM/CLW had applied for 1 month leave from 1.8.90 prior to his retirement on 31.8.90. The vacancy vice Shri Fondek thus became available from 1.8.90, on which date Shri Bhattacharya had full 2 years tenure.
3.	M.C. Das (SC) (IRSME), GM/ICF and GM/WAP	26.11.34 30.11.92	28.11.90 28.11.90	21.12.90	Shri BT Bhide, GM/ICF had applied to avail leave/closed holidays for a period of 34 days from 28.11.90 and had also expressed his desire to extend his leave further. Shri NAPS Rao, GM/WAP was due to superannuate on 31.1.91, Shri MC Das who was the seniormost, Scheduled Caste officer cleared for posting as GM/PU available on the panel and also had 2 years tenure on 30.11.90, was recommended to ACC for appointment as looking after GM/PU from 28.11.90 itself and thereafter on regular basis from 31.1.91.
4.	M.A. Cherian (IRSME), GM/SCR	07.10.31 31.10.89	31.08.87(AN) 29.02.88	14.04.88	For the Panel year 1987-88, 1 Main Panel and 2 Supplementary Panels for GM/equivalent posts were submitted to ACC on 29.6.87. In one of the Supplementary Panels, ACC raised certain points and the Selection Committee had to meet again on 9.9.87 to make revised recommendations which were finally approved by ACC on 14.1.88. This resulted in delay in submission of the proposals for posting GM/equivalent posts in that year. The proposal for posting of Shri Cherian as GM/SC

(1)	(2)	(3)	(4)	(5)	(6)
				Railway was sent to ACC for approval on 29.2.88 and ACC's approval was received on 14.4.88.	
5. R. Balasubra- manian (IRSE) GM/Metro RLY., Calcutta.	20.05.33 31.05.91	30.06.89 10.05.89	14.09.89	Shri Cherian had over 2 years tenure on the date of occurrence of vacancy and the delay in his posting was mainly on account of the delayed approval received from the ACC.	

15. In the course of oral arguments, we requested the learned Sr. counsel for the respondents to clarify if any criteria had been fixed by the respondents for computing the period of two years left for service. We also observed that theoretically it could be either the date of vacancy or the date of sending the proposal for the approval of the A.C.C. or the date of receipt of approval of the A.C.C. or the date of issuing orders of appointment on promotion or the date of actually taking over charge of the higher post. We did not get any ^{clear} reply to the clarification sought by us. The learned Sr. counsel for the respondents, however, observed that normally it should be the date of appointment. We have already reproduced above the relevant provisions of the scheme, in para 7.3, according to which only such of the empanelled officers would normally be appointed as would be able to serve for at least two years on the higher post(s). This provision also shows that the period of two years referred to therein is for service and not for anything else. Service can be deemed to commence only from the date a person takes charge of the post. The statement furnished by the learned Sr. counsel for the respondents which has already been reproduced above shows that none of the 5 officers had two years left to serve in the post of G.M. or equivalent or higher post from the date they were posted

to the post of GM or equivalent post. Thus, the action of the respondents has to be held to be both arbitrary and discriminatory. It is well settled that the doctrine of equality as enshrined in Articles 14 and 16 (1) of the Constitution and the mandate for the observance of principles of natural justice, require that the actions of the executive have not only to fulfil the test of observance of principles of natural justice but should also be fair. Therefore, denial of promotion even after empanelment in the panel for the year 1990-91 to the applicant on the ground that he has less than two years to serve cannot be upheld. Para 9 of the scheme for making appointments to the post of General Manager and equivalent ranks on the Railways stipulates that the Selection Committee will draw up a panel for appointment to the existing and anticipated vacancies in the post of General Manager and equivalent during the period from 1st July of the year to the 30th June of the next year and that the panel so drawn up by the Selection Committee shall be valid for the vacancies arising during that period. There is nothing before us to show that after the applicant was empanelled for the year 1990-91 and if he had been appointed to a post which became available on or after 1st July, 1990, the applicant would have been left with less than two years before superannuation, if he had been appointed to such a post according to his position in the panel. He, therefore, cannot be denied that benefit on account of the action of the respondents which itself cannot be upheld as discussed above, on the ground that he is now left with service of less than two years.

16. The respondents have also raised the following preliminary objections:

i) The applicant having challenged the appointment of S/Shri AN Shukla, MK Rao, BT Bhide, M.V. Srinivasan and S.H. Babu, they were the necessary parties, but the applicant has not done so and as such the application is liable to be dismissed for the reason of non-joinder of necessary parties.

(ii) The applicant has not mentioned in his O.A. the fact that the inter se seniority principles as circulated under letter dated 8.7.1987 are under challenge in the CAT under O.A. No.

1041/88, which is still pending before the Court and there is an interim order that all appointments made will be subject to the final outcome of this application.

17. The applicant's reply in this regard is that he is not claiming any relief against the officers mentioned above and as such they were not necessary parties. We agree with this contention of the applicant and the preliminary objection cannot be upheld. Further, the issue raised in this O.A. is specifically different from the issue said to have been raised in O.A. 1014/88 and as such the pendency of that O.A. is not very relevant for adjudication of the issue in this case. We have discussed the case of the parties to this case on the basis of the principles of inter se seniority as they exist and on which respondents have also relied upon.

18. In the light of the foregoing discussion, the reply of the Railway Board in their letter dated 26.10.90 (Annexure 'L' to the O.A.) to the representation of the applicant in so far as it relates to assignment of the inter se seniority position to the applicant is hereby quashed and the respondents are directed to assign to the applicant the inter se seniority on the basis of his DITS as 25.10.1957. The respondents are also directed to consider the applicant for appointment to the post of GM or equivalent on the basis of his position in the panel for the year 1990-91 for such post and also to allow him the pay in the grade of Rs. 7300-8000 from the date his junior in the panel for the year 1990-91 was appointed to such a post. These directions should be complied with within a period of two months from the date of receipt of these orders. We leave the parties to bear their own costs.

P.C. Jain
(P.C. JAIN)

MEMBER (A)

Ram Pal Singh
(RAM PAL SINGH)

VICE-CHAIRMAN

Pronounced by me to-day in the open court.

Ram Pal Singh
(RAM PAL SINGH)
VICE-CHAIRMAN (J)
16.7.1991