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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 709/1991. DATE OF DECISION: October 31, 1991

Shri S.P. Sharma Applicant.

V/s.

Union of India Respondents.

CORAM: Hon'ble Mr. Justice Ram Pal Singh, Vice Chairman (J).
Hon'ble Mr. P.C. Jain, Member (A).

Shri R.K. Kamal with Shri S.K. Gupta, counsel for
the applicant.

Shri Ramamurthy with Shri P.S. Mahendru, counsel for
the respondents.

P.C. JAIN, MEMBER:

The applicant, on the basis of the results of
I.A.S. etc. Examination held by the UPSC in 1956, joined
Indian Railway Traffic Service (for short, IRTS), a Group
'A' Service on 26.10.1957. When he filed this application
under Section 19 of the Administrative Tribunals Act, 1985
on 21.3.1991, he was posted as Additional General Manager,
Northern Railway, New Delhi in the scale of Rs.7300-7600,
to which grade, he was promoted on 10.4.1990. He is
aggrieved by the action of the respondents in not promoting
him to the post of General Manager. He has prayed for the
following reliefs: -

- *8.1. Instructions dated 8-7-87 (Annexure A-1) and
instructions contained in clause (i) of para
7.2 and 7.3 of the Scheme dated 16-7-1986
(Annexure A-2) be set aside and quashed.
- 8.2. The respondents be directed to promote the
applicant to the post of General Manager
with effect from the date when his junior
was promoted, with all consequential benefits.
- 8.3. Any other relief deemed fit by the Hon'ble
Tribunal in the interests of justice in this
case. "

2. There are 19 posts of General Manager and
equivalent on Indian Railways in the grade of Rs.7300-8000.

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These posts do not belong to any particular Service/Cadre. These are to be filled from officers of the following eight organised Group 'A' Railway Services: -

- (1) Indian Railway Service of Engineers (IRSE).
- (2) Indian Railway Traffic Service (IRTS).
- (3) Indian Railway Service of Mechanical Engineers (IRSME).
- (4) Indian Railway Service of Electrical Engineers (IRSEE).
- (5) Indian Railway Service of Signal Engineers (IRSSE).
- (6) Indian Railway Stores Service (IRSS).
- (7) Indian Railway Personnel Service (IRPS).
- (8) Indian Railway Accounts Service (IRAS).

3. A scheme for making appointments to the above posts was first notified by the Government of India, Ministry of Railways, on 5.9.1984, but it was replaced by another scheme by Resolution dated 16.7.1986 (Annexure A-2). This was partly modified by Resolution dated 30.1.1987 (Annexure A-3) and again by Resolution dated 25.2.88 (Annexure A-4). As per the scheme, officers belonging to the above mentioned eight Group 'A' Railway Services, who had put in 25 years of service in Group 'A', including five years in senior administrative grade, and who are less than 56 years of age, are eligible for consideration for being empanelled. It is also provided in the scheme that "Only such of the empanelled officers would normally be appointed to posts of General Managers and 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 the Selection Committee in accordance with para 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 ACC.

4. The principles and procedure for determining inter-se seniority of members of Group 'A' Services on the Railways were notified by the Railway Board, vide letter dated 8.7.87

(Annexure A-1). This was issued with the approval of the President. According to these principles and procedure, inter-se seniority within the same Service would initially be in the order of merit in the batch as existing on completion of the period of probation, and the officers belonging to any examination batch would initially be junior to the officers of the same Service belonging to an earlier examination batch. Inter-se seniority between members of any two Group 'A' Services would be determined by the Date for Increment in Time-Scale (DITS) except that -

- (i) in case any officer joins service earlier than his senior in the same Service in the same batch, he will take a notional DITS which will be the same as that of his senior;
- (ii) in case any officer is superseded on grounds of suitability by any officer of his own Service, he will, for the purpose of composite inter-se seniority, take a place just below that of his erstwhile junior who has superseded him; and
- (iii) in case an officer gets a General Manager's post open to more than one discipline later than an officer of another Service on grounds of suitability he will take his seniority below that officer.

It is also provided that the date of increment in the time scale would be the same as the date of joining service in case of direct recruits to Group 'A' Service.

5. The applicant has assailed/para 7.2 and/ 7.3 of the scheme dated 16.7.1986 as well as the instructions dated 8.7.1987 laying down the principles of inter-se seniority. Para 7.2 and 7.3 of the scheme are reproduced below: -

*7.2 For being considered every such officer should on 1st July of the year in which selection is made:

- (i) be less than 56 years of age;
- (ii) have put 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.
- (iii) have put in a minimum of 5 years' service in the Senior Administrative Grade, including service rendered in higher grade posts, if any.

"7.3 Only such of the empanelled officers would normally be appointed to posts of General Managers and equivalent as will be able to serve for at least two years on such or higher post(s)."

The applicant has assailed the above provisions on the following grounds: -

- (a) Clause (i) of para 7.2 is arbitrary and fixes a time limit without nexus to the object.
- (b) Para 7.3 nullifies the very basis of the select panel already prepared and approved.
- (c) Para 7.3 gives unguided powers to Executive to make discrimination under the garb of the term "normally" and act arbitrarily.
- (d) Clause (i) of para 7.2 and para 7.3 are ultra-vires of the Constitution of India, because mere "administrative instructions" cannot be allowed to affect the fundamental rights of candidates to be considered and included in the panel and appointed to the post of General Manager on the basis of equality. These instructions are violative of Articles 14 and 16 of the Constitution.

The applicant has also cited some cases in which the Railway Board are said to have used unguided powers to appoint persons as General Manager when they had less than two years before superannuation.

6. The Railway Board's instructions dated 8-7-1987, laying down the principles and procedure for determining inter-se seniority have been challenged on the following grounds: -

- (a) Without formal merger of distinct cadres of various Group 'A' Services having independent Recruitment Rules, any inter-se seniority between their members is illegal.
- (b) The principles of fixation of notional dates of increments in Time Scale are vague, irrational, arbitrary and subject to whims of the Railway Board.

(c) The instructions are void because no inter-se seniority list in pursuance of these instructions has ever been published or notified by the Railway Board, even with a view to make sub-para 3 of para effective for making appeals. The right to appeal has been made totally infructuous in actual operation of these instructions.

(d) The distinction between actual "DITS" and notional "DITS" is highly arbitrary and irrational, particularly when notional "DITS" for any officer has never been notified or published by the Railway Board.

7. Respondents have filed their return and contested the application. The applicant also filed a rejoinder thereto. Both parties agree that the case may be disposed of finally at the admission stage itself. We have carefully perused the material on the record and also heard the learned counsel for the parties.

8. Before we take up consideration of rival contentions of the parties, it may be stated that, according to the reply filed by the respondents, in the panel for appointment for the post of General Manager and equivalent for 1989-90, the applicant was duly considered, but he could not be appointed because due to his low panel position his turn did not come for appointment, and in fact, a number of officers who were senior to him on the panel were also not appointed. It is also stated that the validity of panel is only one year and the officers, though borne on the panel but not appointed during the currency of the panel cannot claim promotion after the panel ceases to be valid. It is clear from the material on record that the applicant was not included in the panel for the year 1990-91. Respondents have also raised two preliminary objections, viz., (1) challenge to the legality of Railway Board's instructions dated 8.7.87 and to para 7.2 and 7.3 of Resolution dated 16.7.86 is not maintainable at this stage, as it is hopelessly

barred by limitation under Section 21 of the Administrative Tribunals Act, 1985; and (2) the O.A. is not maintainable for non-joinder of necessary parties, not exhausting departmental remedies and various other grounds taken by them in their reply dated 17.5.1991 filed in response to the notice on Interim Relief.

9. As the applicant has not sought any relief against any other officer as such, the contention of the respondents that the application is bad for non-joinder of necessary parties cannot be upheld. The applicant has prayed neither for being given a seniority over somebody else, nor has he prayed for quashing the promotion of any person to the post of General Manager or equivalent thereto. As regards the plea of limitation, admittedly, the scheme was notified in 1986 and the principles and procedure for determining inter-se seniority of members of Group 'A' Services on the Railways were laid down on 8.7.1987, but a cause of action can be deemed to have accrued to the applicant only when right to sue accrued. It was held by the Hon'ble Supreme Court in the case of "THE STATE OF PUNJAB & ORS. Vs. GURDEV SINGH ASHOK KUMAR (Judgements Today 1991 S.C. 465)" as below:

"The words "right to sue" ordinarily means the right to seek relief by means of legal proceedings. Generally, the right to sue accrues only when the cause of action arises, that is, the right to prosecute to obtain relief by legal means. The suit must be instituted when the right asserted in the suit is infringed or when there is a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted...."

In the case before us, the cause of action will be deemed to have accrued when the applicant was not promoted to the post of General Manager or equivalent, but allegedly his junior was so promoted. As the applicant's name admittedly was included in the panel for 1989-90, the validity of which panel expired on 30.6.1990, the O.A. having been filed on 21.3.1991 cannot be said to be barred by limitation in accordance with the provisions of Section 21 of the

Administrative Tribunals Act, 1985. Moreover, the principles and procedure for determining inter-se seniority, as notified by the Railway Board in their letter dated 8.7.1987, as also the scheme for making appointments to posts of General Managers and Equivalent in the Railways, being in the nature of standing instructions, can be challenged at any point of time and no limitation is applicable as such in this regard; the limitation would be applicable with reference to the specific grievance of the applicant when the right to sue accrues to him.

8. The preliminary objection of the respondents regarding non-availment of departmental remedies by the applicant before filing this O.A. also cannot be sustained on the facts and circumstances of this case. In para 6 of the O.A., the applicant has stated that there are no service rules providing for departmental remedies against the instructions which are illegal and ultra-vires of the Constitution; but he had met the Chairman, Railway Board, personally in July, 1990 to explain his grievances and infringement of his fundamental rights, but no remedial action has been taken by the respondents. The respondents, in their reply, have stated only that it is not correct that no departmental remedies are available, but they have not specified the remedies which were available to the applicant. The fact that the applicant met the Chairman, Railway Board, has not been specifically denied.

9. Admittedly, there are Recruitment Rules for appointment to various posts included in the cadre of each of the eight Group 'A' Services under the Railways, but neither party has shown any statutory rules notified under Article 309 of the Constitution in regard to the appointment to the post of General Manager and equivalent, which undisputedly do not belong to the cadre of any particular Service. Obviously, these posts were filled in without any specific

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instructions having been issued, and for the first time, Government of India, Department of Railways, notified a scheme by Resolution dated 5.9.1984. This was replaced by Resolution dated 16.7.1986 (Annexure A-2). It is stated in the Resolution that "The objective of the Scheme is to lay down clear guidelines for selection of officers from amongst the various Railway services for appointment to posts of General Managers and equivalent in the Indian Railways, so as to provide equitable opportunities for the members of the various services and to ensure that these posts are manned by persons of proven ability and competence, having due regard to the specific requirement of each post, for the smooth and efficient running of the Railway system." It was also ordered that a copy of the Resolution be circulated among the members of various Group 'A' Railway Services and the Resolution be published in the Gazette of India for general information. Thus the knowledge of the scheme cannot be disputed. Para 7 of the scheme deals with the 'Eligibility Criteria'. It broadly provides that officers belonging to the eight Group 'A' Railway Services, which have already been listed above, will be eligible for consideration by the Selection Committee and that for being considered every such officer should on 1st July of the year in which selection is made, be less than 56 years of age; should have put in not less than 25 years of regular continuous service, including period of probation, if any, listed in a Group 'A' Service; and should have put in a minimum of five years service in the Senior Administrative Grade including service rendered in higher posts, if any. Para 7.3 provides that only such of the empanelled officers would normally be appointed to posts of General Managers and equivalent as will be able to serve for at least two years on such or higher post(s). The applicant has assailed clause (i) of para 7.2 and 7.3. As he has not challenged the provision

about the minimum service of 25 years in the listed Group 'A' Service, his challenge is basically confined to the provision that the officer should be less than 56 years of age as on 1st July of the year in which the selection is made and that he should be able to serve for higher post at least two years on his appointment to such a post or a / In their reply, the respondents have stated that there is nothing ultra-virus, unjustified or illegal in the contents of provisions made by the Government in its wisdom in these paragraphs. It is also stated that the posts of General Manager are pivotal posts in Railway management and the General Manager is the top-man in Railway Zone or Unit. Smooth transportation of goods worth million of tonnes from one point to another and safety of thousands of passengers is his responsibility. The post of General Manager is not included in any Service or Cadre and, as such, no officer has any claim to this post. Having regard to the importance and the nature of the post, the Government is said to be within its right to prescribe a minimum reasonable tenure for working in this post so that the incumbent is motivated enough to plan, formulate and execute the functions of the post efficiently, smoothly and on a continuous basis. It is further stated that since the posts of Members of Railway Board which are in still higher grade of Rs.8,000 (fixed) are filled up from amongst the General Managers of Zonal Railways, it is all the more necessary that there should be a minimum tenure for the incumbents of this post and that this post cannot be made a dumping ground for officers who are very near to their retirement. In his rejoinder, the applicant has not specifically rebutted the above contentions of the respondents, but has stated that it is unfortunate that the respondents themselves

have not been complying these instructions with a view to favour some particular individuals.

10. It is well settled that Article 14 of the Constitution prohibits class legislation, but it does not prevent reasonable classification. The reasonable classification has to fulfil a two-fold criteria; firstly, it should be intelligible and secondly, it should have a rational nexus with the object sought to be achieved. Judged on these basis, the provisions cannot be said to violate the two-fold criteria laid down in various judgments of the Apex Court for testing the provisions in terms of the provisions of Article 14 of the Constitution. The respondents have clearly stated the reason behind these provisions and these in themselves cannot be held to be arbitrary. The contention of the applicant that clause (i) of para 7.2, which provides that for being considered every such officer should on 1st July of the year in which selection is made "be less than 56 years of age" is arbitrary and fixing of time-limit without nexus to the object, cannot be sustained. The other contention of the applicant that para 7.3 of the Scheme which provides that "Only such of the empanelled officers would normally be appointed to posts of General Managers and equivalent as will be able to serve for at least two years on such or higher post(s)", nullifies the very basis of the select panel already prepared and approved, and as such cannot be sustained on the same ground. If the object is to provide a minimum tenure of two years, the mere fact that depending on the position of an officer in the panel who is left with less than two years of service, is not actually promoted does not deviate from the desirability or the necessity of preparing the panel on the basis of the eligibility criteria on the relevant date. The word "normally" used in para 7.3 cannot be said to be providing unguided powers to Executive if the entire scheme is read and appreciated as a whole. Para 4.1 of the scheme

provides that "The Selection Committee may also recommend the specific type/types of assignments for which a particular officer mentioned in the panel may be considered suitable". Para 4.3 of the scheme provides that "On every occasion on which appointment is required to be made to any particular vacancy/vacancies amongst the posts of General Managers and equivalent listed in Appendix-I, the Railway Board shall, keeping in mind the specific requirement(s), if any, of the post(s) to be filled up, process the case for obtaining the approval of the Appointments Committee of the Cabinet for appointment of person/persons included in the Select List, to such post/posts." This para of the scheme emphasises the specific requirements. Similarly, para 6, inter-alia, provides that "The Selection Committee will assess the suitability in all respects of officers belonging to the Group 'A' Services listed in Appendix-II on merits, based on the record of their service and experience and any special requirements of the post(s) for which selection is to be made." Again para 4.4, which was added by the amending Resolution dated 30.1.1987 provides for four eventualities when the promotion of empanelled officers may not be made in the order of their inter-se seniority within those cleared for that particular type of assignment. Para 10 of the scheme provides that any of the above mentioned provisions of the scheme, may, if considered expedient in the public interest, be relaxed to the extent necessary, in consultation with the Department of Personnel & Training and that any such relaxation shall be specifically brought to the notice of the Appointments Committee of the Cabinet while recommending appointments. Thus the entire reading of the scheme clearly shows that it does not suffer from the vice of unguided powers to the Executive to act arbitrarily. The contention of the applicant that clause

(i) of para 7.2 and para 7.3 are ultra-vires of the Constitution because mere administrative instructions cannot be allowed to affect the fundamental rights of the candidate is also without any legal force, because, as we have already stated above, the above provisions are based on a reasonable classification and, as such, in our view, there is no violation of Article 14 and 16 of the Constitution. The mere fact that some appointments have been made where on the date of appointment, the officer concerned was left with service of less than two years, would not make the provisions as illegal or ultra-vires of the Constitution.

11. As regards the challenge to the principles and procedure for determining inter-se seniority issued by the Railway Board on 8-7-1987 (Annexure A-1), the contention of the applicant that without formal merger of distinct cadres of various Group 'A' Services having independent Recruitment Rules, any inter-se seniority between the members is illegal, cannot be upheld for the reason that admittedly the posts of General Manager or the equivalent are not included in any cadre of these eight Group 'A' Services. The objective of the scheme, as already reproduced above, was to lay down clear guidelines for selection of officers from amongst the various Railway Services for appointment to posts of General Manager and equivalent, with a view to providing equitable opportunities to the members of various Services. In such a situation, it is inherent that some method for determining inter-se seniority is followed if equitable opportunities are to be provided. It is not necessary to merge all the Group 'A' Services into a single cadre. The other contention that distinction between actual "DITS" and notional "DITS" is arbitrary and irrational, as notional "DITS" for any officer has never been notified or published by the Railway Board, can also not be upheld.

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It may be mentioned here that seniority list of officers (Senior Scale/Junior Scale) of the seven of the eight Group 'A' listed Services was notified by the Railway Board on 21.7.1978. This has been referred to by the respondents in their return and a copy of the same was also made available to us at the bar. The eighth Service, i.e., IRPS, is not included herein because it was in the process of formation at that time. In this seniority list, D.N. Kaushal's date of increment in the Time Scale was shown as 5.5.58, and the applicant's date of increment in the Time Scale was shown as 25.10.57, the applicant was shown much junior to Shri D.N. Kausahl; the difference was of 13 positions. It is also seen from this list that one A.K. Bhaduri, whose date of increment was 28.4.58, one Shri Sushil Kumar, whose date of increment was 24.4.58 and one Shri Satyendra Kumar, whose date of increment was 18.4.58, were all shown senior to the applicant. Both Shri D.N. Kaushal and the applicant belong to the same Service, i.e., I.R.T.S. It was not shown to us that the applicant had ever challenged the said seniority list in which persons belonging to the same Service and having later DITS than that of the applicant were shown senior to him. The applicant is, therefore, estopped at this stage from taking up the plea that he should be considered senior in view of his DITS being 25.10.57. In view of this, his notional DITS has to be taken to be 5.5.58 i.e., of D.N. Kaushal, belonging to his Service, who was senior to him in the merit list of the Service. Shri A.N. Shukla and Shri M.K. Rao whom the applicant claims to be his juniors inasmuch as their DITS was 22.3.1958, cannot be said to be junior to the applicant as his DITS, for purposes of selection for C.I.C.

appointment to the post of General Manager and equivalent is controlled by DITS of Shri Kaushal and this being 5.5.58, Shri A.N. Shukla cannot be said to be junior to the applicant. Shri Shukla also belongs to the 1956 Examination Batch.

12. In the case of D.P.S. Ahuja Vs. Union of India (O.A. 2497/1990) decided by us on 10.7.1991 also, we had taken the view that if the applicant therein had continued to be a member of IITS, his notional DITS would be 5.5.1958, even though he had joined on 25.10.1957. In that case, however, the applicant had opted for and was absorbed in the newly created Group 'A' IRPS and his connections with the previous Service had been severed; as such, on the facts and circumstances of that case, we had held that his DITS for purposes of inter-se seniority for selection for appointment to the post of General Manager or equivalent would be 25.10.1957. In this case, the applicant continued to be member of IITS, which he initially joined and within that Service, officers who joined subsequent to the joining of the applicant, were shown senior to him in the seniority list issued on 21.7.1978, which he does not appear to have challenged. Thus, his DITS for purposes of selection for appointment to the post of General Manager and equivalent has to be considered with reference to the DITS of Shri D.N. Kaushal, which was 5.5.1958.

13. In his rejoinder, the applicant referred to the Railway Board's letter dated 30.11.1976 (Annexure R-1 to the Rejoinder) on the subject of Principles for determining the relative seniority of Class I Officers on the Indian Railways, and contended that these principles are applicable to him and that the same were amended by the Railway Board only by their letter dated 23.4.91 (Annexure R-2 to the Réjoinder). The letter dated 23.4.91 also refers to the instructions dated 16.2.1980 which have not been filed by the applicant. In view of what is stated by us in paras

11 and 12, we are of the view that for purposes of consideration for appointment to the post of General Manager and equivalent, the applicant cannot claim to be in a better position than what he was in his own Service. We, however, leave open the broad question of legality of the principles and procedure for determining inter-se seniority issued by the Railway Board on 8.7.87 (Annexure A-1).

14. The applicant has also raised the plea of discrimination inasmuch as some officers who were left with less than two years of service were appointed to the post of General Manager and equivalent while he was denied the same on that ground. As discussed in the earlier paras, the vires of the relevant clauses of the scheme relating to eligibility for consideration for empanelment and posting is being upheld by us. Moreover, the question of discrimination arises only among those who are equally placed. In the cases cited by the applicant, the officers were appointed to the post on the basis of the panel in which their names had been included. In the case of the applicant, he could not be promoted on the basis of inclusion of his name in the panel for the year 1989-90 due to his low panel position and his turn did not come for appointment. His name was, however, not included in the panel for the year 1990-91 and, as such, he was not similarly placed with the persons with respect to whom discrimination is alleged. The plea of discrimination has, therefore, no force.

15. In the light of the foregoing discussion, we are of the view that the O.A. is devoid of any merit and the same is accordingly dismissed, leaving the parties to bear their own costs.

(See 31/10/91)
(P.C. JAIN)
Member(A)

(See 31/10/91)
(RAM PAL SINGH)
Vice Chairman(J)