

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1861/2004

and

OA 1982/2004

MA 1691/2004

New Delhi, this the 7th day of March, 2006

Hon'ble Shri V.K. Majotra, Vice-Chairman (A)
Hon'ble Shri Mukesh Kumar Gupta, Member (J)

OA 1861/2004

V.K. Saxena
Chief Welfare Inspector
Under the Divisional Railway Manager
Northern Railway, Moradabad.

...Applicant

OA 1982/2004

1. Rajan Ahluwalia
Welfare Inspector
2. G.P. Chauhan
Welfare Inspector
3. A.P. Gaur
Chief welfare Inspector
4. Virendra Kumar
Senior Welfare Inspector
5. Arunakar Verma
Senior Welfare Inspector
6. B.P. Nigam
Chief Welfare Inspector
7. D.N. Chaubey
Senior Welfare Inspector
8. Bijendra Kumar
Welfare Inspector
9. Ather Hussain
Senior Welfare Inspector
10. S.R.Tyagi
Chief Welfare Inspector

...Applicants

All working under the Divisional Railway Manager
Northern Railway, Moradabad.

(By Advocate Shri G.D. Bhandari in both OAs)

VERSUS

Union of India through

1. The General Manager
Northern Railway
Baroda House, New Delhi.
2. The Divisional Railway Manager
Northern Railway, Moradabad.
3. The Secretary, Railway Board
Rail Bhawan, New Delhi.

... Respondents

(By Advocate Shri R.L. Dhawan in both OAs)

ORDER

Hon'ble Shri Mukesh Kumar Gupta, Member (J)

Since the issue raised in aforesaid OAs is similar, arises out of similar facts and the relief claimed are common in nature, the same would stand dispose of by the present common order.

2. MA 1691/2004 in OA 1982/2004 for joining together is allowed.
3. For sake of convenience, facts as stated in OA 1861/2004 would be delineated. The challenge is made to Railway Board's Communication dated 9.10.2003 on the subject of "restructuring of certain group C & D cadres". Further challenge is made to combined seniority list dated 1.6.2004 with consequential benefits.

Vide the aforesaid policy decision, the Railways with a view to strengthen & rationalize the staffing pattern, had undertaken review of various cadres of group 'C' & 'D' staff in consultation with the staff side, and with the approval of the President issued the said communication, requiring implementation of the restructuring cadres based on instructions issued thereunder, which were directed to be "strictly and carefully adhered to". Vide para 10 of the said Circular, the concept of "Multi-skilling" was introduced by merging different categories, as mentioned thereunder. Thereafter, a revised % of posts were required to be implemented in the unified cadre based on integrated seniority list. The duties, responsibilities and functions being performed by employees of respective cadres were to be combined in a phased manner. The categories indicated therein were also to be "merged by integrating the seniority of the employees working in respective grades with reference to length of non-fortuitous service in the relevant grade keeping the inter-se seniority in the respective group intact". Para 10.2 provided that: "Personnel, Welfare and HOER Inspectors should be merged and a unified cadre of Personnel Inspectors introduced. After merger, 50% of the posts in the entry grade of the combined cadre viz. Rs.5000-8000 should be filled from amongst the optee Sr. Clerks of

Personnel Department in the grade of Rs.4500-7000 with three years of service in the grade and the remaining 50% of the posts should be filled as per instructions contained in Railway Board's letter No. E (NG) I/2002/PM4/I dated 12.7.02.

4. Para 11 deals with the introduction of direct recruitment. As per para 11.2: "20% of the posts in the grade of Rs.6500-10,500 in the category of Personnel Inspectors shall be filled by direct recruitment from amongst the candidates possessing Bachelor Degree with Postgraduate Diploma in Personnel Management, labour laws etc. as mentioned in Board's letter No. E(NG) I/2002/PM4/I dated 12.7.2002. The remaining 80% of the posts shall continue to be filled by promotion of staff from lower grade of Rs.5500-9000 as per the procedure in force."

5. Pursuant to aforesaid policy decision, the respondents merged three distinct cadres and issued combined seniority list of Welfare Inspectors, Personnel Inspectors and HOER Inspectors vide communication dated 1.6.2004. The grievance is that impugned policy dated 9.10.2003 adversely affects their promotional avenues and the seniority earned by incumbent of the cadre being the condition of service cannot be altered to their disadvantages resulting in reducing/eliminating promotional chances of cadre. For merging 2 cadres, the pre-requisites that the method of recruitment, eligibility conditions, qualifications are similar/identical in the two cadres which are absent in the facts of the case in hand. The cadre of Welfare Inspectors has different eligibility conditions than the conditions prescribed in the category of Personnel Inspectors. Further, the impugned orders blocked the applicants' advancement in their service career and have left bleak chances of promotion. It was further contended that impugned merger order ought to have laid down the guidelines for fixing seniority so that applicants could have placed their case effectively and a grave injustice has been done. The said decision confers unwarranted favour to a small cadre of Personnel Inspectors. The impugned order of integrated seniority is an attempt to pre-empt a decision on the issue by the Railway Board, who is seized of the anomalous situation on the representation made by the Union as well as the applicants. It is, therefore, contended that the impugned action is violative of Articles 14, 16 & 21 of the Constitution of India. Their representations made to the concerned Divisional Railway Manager, Moradabad, which were forwarded to General Manager and in turn further forwarded to Railway Board, remained unattended.

6. Shri G.D. Bhandari, learned counsel appearing for the applicants vehemently contended that the comparative statement of the Welfare/Personnel Inspectors would indicate that at different stages in the matter of selection, posting and seniority, they were to be treated at different levels.

7. The respondents contested the claim laid by filing a detailed reply stating that the Ministry of Railways have a well established machinery called

Cadre Restructuring Committee consisting of representatives of both the recognized Labour Federation, i.e., All India Railwaymen Federation and National Federation of Indian Railwaymen, who represent the entire groups of group 'C' & 'D' staff. The review of various cadres has been carried out in consultation and in agreement with the said Unions. The Cadre Restructuring is an important mechanism of manpower management and rationalization of cadres with an objective to introduce multi-skilling, which has now a days emerged as an important device. While undertaking cadre restructuring exercise, changing functional requirements arising due to modernization, computerization and technical upgradation were also kept in view and a policy decision dated 9.10.1993 had been taken with the approval of the President. Relying upon judgment in **Balco Employees Union (Regd.) v. Union of India & Ors.** (2002) 2 SCC 333), **Narmada Bachao Andolan v. Union of India & Ors.** (2000) 10 SCC 664, **Sumangala Naganath v. Union of India & Ors.** 1999 SCC (L&S) 1318, it was contended that it is neither within the domain of the courts nor the scope of judicial review to embark upon the enquiry as to whether a public policy is wise or otherwise. The courts in exercise of their jurisdiction will not transgress into the field of policy decision. The cadre restructuring exercise for reviewing percentage distribution for different grades available in a cadre is carried out with objectives to achieve an efficiency in the administration besides betterment of promotional prospectus, and any comparison/parity between different cadres by any category of staff is superficial and unjustified. The Government as a matter of policy decided to merge categories of Personnel Inspectors, Welfare Inspectors and HOER Inspectors keeping in view the functional, operational and administrative requirements. Though the applicants have challenged the validity of seniority list dated 1.6.2004 but have not impleaded the persons borne on the said seniority list, likely to be affected by the order passed by this Tribunal. The said persons are necessary parties and their non-joinder is fatal. It is further contended that the respondents have promoted Shri Makhan Singh to the next higher post of chief Personnel Inspector in the grade of Rs.7450-11500 who has not been impleaded as a party in the present proceedings. On merits, it was contended that Moradabad Division, where the applicants are working, the duties of Welfare/Personnel Inspectors were merged long back in December 1996 and the Inspector had been allotted a "Beat" in which they were required to perform the duties of both of Welfare Inspectors and Personnel Inspectors, which fact has been suppressed by the applicants for reasons best known to them. The applicants are guilty of suppression of material & did not deserve any relief, contended Shri R.L. Dhawan, learned counsel appearing for respondents.

8. The applicants controverted the plea raised by the respondents by filing detailed rejoinder contending that in view of the law laid down by the Hon'ble Supreme Court in **PGI of Medical Education & Research, Chandigarh v. Raj Kumar** (2001) 2 SCC 54, **Association of Industrial Electricity Users v.**

State of A.P. & Ors. (AIR 2002 SC 1361) and Anil Rattan Sarkar & Ors. v. Hirak Gosh & Ors. (2002 (2) SCALE 525) has held that finding of fact based on misappreciation of evidence is an error of law and can be corrected under judicial review and further that the Court can interfere with the policy decision when the power has been exercised arbitrarily or is bad in law and it can be demonstrated that the policy is, on the face of it, arbitrary or illegal or contrary to the Act as well as where fairness is lacking.

9. We have heard the learned counsel of the parties and perused the pleadings carefully.

The first and foremost question which needs determination is whether the Circular dated 9.10.2003 is a policy decision of the Ministry of Railways (Railway Board). If it is a policy decision, law is well settled as noticed in **Balco Employees Union** case (*supra*), that Court cannot struck down the policy decision of the Government merely because a different policy would have been fairer or more scientific or more logical. We may note at the outset that Shri G.D. Bhandari, learned counsel appearing for the applicants has not questioned that the decision taken vide impugned Circular dated 9.10.2003 is in the realm of a "Policy Decision". When such are the undisputed facts, we need not go in to this issue further.

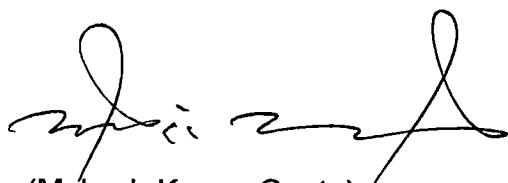
Shri R.L. Dhawan, learned counsel appearing for the respondents relying upon the judgment of Calcutta Bench in TA 1840/1986 – **Somnath Mukhopadhyaya & Ors. v. UOI & Ors.** decided on 30.11.1991 contended that change in promotional policy cannot be challenged before the Court on the ground of affecting or reducing promotional avenues. Merely because the rule affects the chances of promotion could not be regarded as varying conditions of service. A right to be considered for promotion is a term of service but mere chances of promotions are not. Our attention was drawn on the settled law on this aspect by the Apex Court in **Mohd. Shujat Ali & Ors. v. UOI & Ors.** (AIR 1974 SC 1631), **State of Maharashtra & Anr. v. Chanderkant Anant Kulkarni & Ors.** (AIR 1981 SC 1990) **K. Jagdeesan v. UOI** (1990 Lab. IC 839) and **Union of India & Ors. v. S.L. Dutta & Anr.** (AIR 1991 SC 363).

10. As noticed hereinabove, the applicants' specific ground raised in the pleadings is that seniority earned "is a condition of service and cannot be altered to their disadvantages resulting in reducing/eliminating promotional chances of a cadre". This aspect was also emphasized during the course of oral hearing. In other words, applicants' apprehension is that by merger of Personnel Inspectors with the Welfare Inspectors, their chances for promotion would be reduced. It is not the case of the applicants that they will have no promotional avenues at all. In other words, though they continued to have their promotional chances, but it will become bleak. In view of the law noticed hereinabove, we find no justification in the said contention raised and as such it cannot be countenanced. It is undisputed fact that the power to merge two or more cadres vests with the

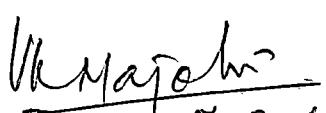
executive government & the policy decision taken by the executive government is beyond the pale of the judicial review except in two circumstances where there has been an arbitrary exercise of power or the power exercised is not in conformity with the law. Except in the circumstances enumerated, the Courts/Tribunals cannot interfere with the policy decision of the government. We are, therefore, of the view that the impugned decision vide Circular dated 9.10.2003 cannot be assailed.

Shri R.L. Dhawan, learned counsel appearing for the respondents has also drawn our attention to judgment dated 12.8.2005 of the Madras Bench of the Tribunal in OA 644/2000 – T. Karunakar Reddy & ors. v. UOI & Ors. whereby the action taken by the respondents (Railways) consequent upon the cadre restructuring had been challenged. The said OA was dismissed holding that it was beyond the scope of this Tribunal to engage itself in determining the substance of the policy decision pertaining to restructuring. The said Bench had noticed in specific in specific that the Railway Board's instructions dated 9.10.2003 had the approval of recognized Labour Federations and based on such Circular/Policy Decision, the steps were taken to fill certain posts in respect of categories of Yard Masters, Station Masters and Traffic Inspectors. We may note that the said Railway policy decision dated 9.10.2003 had not been challenged in the said OA as noticed in para 3 of the said judgment.

11. Taking ~~an~~ over view of the matter, we find no justification in the challenge made to the Railway Board Circular dated 9.10.2003. The integrated seniority dated 1.6.2004 being consequential in nature of the aforesaid policy also requires no interference by this Tribunal. Accordingly OAs fail and are dismissed. No costs.



(Mukesh Kumar Gupta)
Member (J)



V.K. Majotra
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(V.K. Majotra)
Vice-Chairman (A)

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