

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD

\*\*\*

O.A. No. 46  
T.A. No.

1937.

DATE OF DECISION 4.7.88

K. C. Tewari

Petitioner

Sri S.C. Bansdhan

Advocate for the Petitioner(s)

Versus

Am. M. R. Jayaram

Respondent

Smt A. V. Singhania

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. D.S. Munshi, J.M.

The Hon'ble Mr. G.S. Sharma, J.M.

- ✓ 1. Whether Reporters of local papers may be allowed to see the Judgement ?
- ✗ 2. To be referred to the Reporter or not ?
- ✓ 3. Whether their Lordships wish to see the fair copy of the Judgement ?
- ✗ 4. Whether to be circulated to other Benches ?

\*\*\*

Dinesh/

TC  
AP  
Reserved

Central Administrative Tribunal, Allahabad.

Registration O.A.No. 46 of 1987

Sri Krishna Chandra Tewari ...

Applicant

Vs.

General Manager, Northern Railway and 2 others ... Respondents.

Hon.D.S.Misra,AM  
Hon.G.S.Sharma,JM

(By Hon. G.S.Sharma, JM)

This petition u/s.19 of the Administrative Tribunals Act XIII of 1985 has been filed by the applicant for a declaration that the status of Sr.Ticket Collector/Ticket Collector Incharge is equal in all respects with the Travelling Ticket Examiner and for a further declaration that for the promotion on the higher post, the seniority list has to be prepared on the basis of continuous length of service of the applicant and for a direction to the respondent nos. 2 and 3 that in view of the upgradation the applicant has to be placed in the grade of Rs.425-640 and the order dated 2.5.1985 issued by the respondent no1 giving adhoc promotion in the said grade ignoring the seniority of the applicant is invalid and illegal.

2. The applicant was appointed as Ticket Collector (for short TC) by order dated 19.4.1971 and was posted at Hapur Junction in the Northern Railway. He was promoted as TC Incharge in the higher grade of Rs.330-560 by order dated 9.4.1979 and was ordered to be posted as Travelling Ticket Examiner (for short TTE) under order dated 16.4.1979 which he declined as a result of which he was debarr ed for further promotion for one year. He was allowed

ABD

.2.

by the respondents to continue to work as TC Incharge now known as Sr.TC. The applicant was further given the posting as TTE in 1980,1982 and lastly under order dated 24.3.1986 but each time he expressed his inability to work as TTE and preferred to work on the stationary post of Sr. TC. These offers were denied by the applicant treating them as offers for promotional post and every time, the respondents accommodated him and allowed him to work as Sr. TC but stopped his promotion for a year from the dates of his refusal under the Railway Board's letter no. 940-E/O-III (E iv) dated 17.2.1965.

3. Under Railway Board's letter dated 6.8.1974 the cadre of Ticket Collector Incharge/~~Sr.~~ Ticket Collector was created by merging two different scales of pay and was granted the revised pay scale of Rs.330-560. The TCs TTEs, Conductors and Inspectors (Tkt) form a common cadre and the same is known as Ticket Checking Staff. The pay scale of the Sr. TC and ~~Sr.~~ TTE is the same and the posting of Sr. TC or ~~Sr.~~ TTE depends on option. The post of ~~Sr.~~ TTE does not appear to be beneficial so far as the pay scale is concerned. However, according to the channel of promotion, as revised vide letter dated 19.5.1975 of the General Manager- respondent no.1 for the further promotion as Head TC, Conductor or Supervisor, a Sr. TC has to accept the post and work as ~~Sr.~~ TTE and there could be no promotion of Sr. TC without working as ~~Sr.~~ TTE. This channel of promotion was further revised under letter dated 23.3.1988 of the respondent no.1 and even according to this revised channel, a Sr. TC has to serve as Sr. Travelling Ticket Examiner, now re-

~~ABC~~

designated as Sr. Ticket Examiner, and only thereafter there can be promotion as Head TC, Head TE or Conductor.

4. Under the letter dated 20.12.1983 of the Rail-

way Board, there was a restructuring ~~of~~ a number of services under the railway including the cadre of Ticket Checking Staff. Due to this restructuring, there was upgradation of some posts as formerly there were 53.9% posts in the grade of Rs.330-560 and ~~15.4%~~ posts in the grade of Rs.425-640 but w.e.f. 1.1.1984 the posts in the grade of Rs.330-560 were reduced to 37% and the posts in the grade of Rs.425-640 were increased to 29%. These upgraded posts were to be given on the basis of the cadre strength as it stood on 1.1.1984 and only such members of the Ticket Checking Staff were treated ~~as~~ senior who were working as ~~an~~ TTE in the grade of Rs.330-560 over the Sr.TCs working in the said grade who had refused to accept the promotion as ~~an~~ TTE and keeping this principle in view, the respondent no.1 vide his impugned letter dated 2.5.1985 ordered that the Sr. TCs grade Rs.330-560 who lost their seniority by tendering refusal for the post of TTE will not rank senior to those promoted earlier according to their turn and a combined seniority of the staff will be prepared from amongst the staff working in the grade of Rs.425-640 on regular basis after selection/suitability test. Pending such selection, vide letter dated 5.9.1986 the Sr. Divisional Personnel Officer- respondent no.3 made adhoc promotions promoting some persons junior to the applicant who had not refused their posting as ~~an~~ TTE.

AB  
19

5. Aggrieved by this order, the present petition had been filed by the applicant on 20.1.1987 with the allegation that the posts of Sr.TC and ~~Ex.~~ TTE are equivalent in all respects and the posting as ~~Ex.~~ TTE could never be treated as a promotion and disregarding the seniority of the applicant on the ground that he had refused his posting as ~~Ex.~~ TTE is illegal and against the rules and in any case, even without working as ~~Ex.~~ TTE, the applicant is entitled to the benefit of the upgradation on the basis of his seniority. According to him, the benefit of upgradation has to be given equitably and proportionately to both the caders of TTE and TC and the denial of the same to the applicant is arbitrary, discriminatory and violative of Art.16 of the Constitution. It is further alleged that on upgradation, the promotion has to be made on the basis of service record and not on the basis of selection and the persons junior to the applicant could not be given the appointment on adhoc basis to the higher posts.

6. The respondents have contested the case and in the reply on their behalf <sup>filed</sup> ~~filed~~ by the Asstt. Personnel Officer Northern Railway, Moradabad, it has been stated that the petition is not within time and is liable to be dismissed on this ground alone. According to the channel of promotion it was obligatory for all to undergo the prescribed channel of promotion up to the rank of TTE grade Rs.330-560, and the allegation to the contrary is not correct. It is not correct to say that as both the posts carried equal pay, <sup>applicant</sup> he could not be required to work as TTE. The restructuring was made without affecting the channel of promotion and as the applicant refused the further promotion as TTE in the channel of promotion of the Ticket Checking Staff, his juniors became seniors to him and his grievance to the contrary

AB 10  
B

is not justified. There is no merit in the case of the applicant and he is not entitled to any relief.

7. In the rejoinder filed by the applicant, it was stated that his petition is within time. He reiterated that the posting on the post of TTE does not amount to promotion and he is entitled to the advantage of the upgradation according to his seniority. The respondents have been treating the post of TTE and TC equivalent and this was admitted by them in the reply filed in O.A. 437 of 1986 Anokhey Lal Vs. Union of India before this Bench and the inter se seniority of the applicant cannot be affected by his not accepting the post of TTE.

8. The point arising for determination in this petition relates to the policy of the railway administration in the matter of restructuring of a cadre and it is not a ~~simple~~ <sup>such</sup> matter in which the interest of the applicant alone is involved. We have, therefore, given a very anxious consideration to the points arising in this case so that there may not be any hardship to any section of the staff. According to annexure 1 to the reply, the channel of promotion ~~commonly~~ <sup>commonly</sup> known as ABC of the Ticket Checking Staff issued by the headquarters office of the Northern Railway, New Delhi on 6.7.1966 provided a common cadre ~~to~~ of Ticket Checking Staff consisting of TCs, TTEs and Conductors. According to this ABC the posts of TC were of 3 grades and from the lower grade of TC, the promotion was made to the higher grade of the TC. Thereafter there was the post of TTE of the same grade i.e. of the senior grade of TC. Thereafter, there was a post of TC of the third grade i.e. the highest grade prescribed for TCs and then there was again the post of TTE of the <sup>same</sup> ~~grade~~ prescribed for the grade of TCs. Thereafter, there was a post of Conductor which was of a higher grade. This ABC thus provided that for

~~AB~~ (11)

becoming Conductor, one had to go from the post of TTE.

9. The ~~ABC~~ of the Ticket Checking Staff was revised in accordance with the recommendations of the Third Pay Commission and the revised ~~ABC~~, copy annexure 2 to the reply issued by the Northern Railway on 19.5.1975 shows that one grade of TCs and TTEs both was abolished. Under this ~~ABC~~, the lowest post is of TC in the scale of Rs. 260-400 and then there is the higher post of TC in the grade of Rs.330-560. The higher grade is to be given on the basis of seniority-cum-suitability. From the higher grade of Rs. 330-560 of the TC, the posting is made as TTE in the same grade of Rs.330-560 on the basis of seniority-cum-suitability and thereafter the official has an option to choose whether he wants to become Head TCR, Conductor or Supervisor/STE. Almost the same ~~ABC~~ has been maintained after its revision vide notification dated 23.3.1988 on the basis of the recommendations of the IVth Pay Commission. It is, however, not relevant for the purpose of this case as the cause of action to the applicant arose before the ~~ABC~~ issued on 23.3.88.

10. The contention of the applicant is that under all the 3 ~~ABCs~~ discussed above, the higher post of TC and the post of TTE are of the same grade and as one had no pecuniary advantage to work as TTE, he could refuse to work on that post when offered and that refusal should not be considered to his disadvantage for further promotion. In the instant case, it is not in dispute that from the very beginning of his service, the applicant is working on the post of TC. First of all he was given an opportunity on 20.4.1979 to work as TTE but he refused to work on that post vide his letter dated

AB (P2)  
~~AB~~

.7.

14.7.1980 annexure 6 to the reply stating that under his present circumstances, he be permitted not to work as TTE and his refusal to work on the post of TTE be accepted. The applicant was thereafter undisputedly given 3 more opportunities to work on the post of TTE but each time, he declined to accept the offer and requested for being allowed to work on the stationary post of TC knowing full well that he was denying a post which was a promotion post for getting higher promotion in the cadre of Ticket Checking Staff which is evident from his letters dated 9.5.79, 14.7.80, 24.4.82 and 29.3.86, annexures III, VI, VIII and X to the <sup>reply</sup> ~~position~~.

11. The circular letter no.940 E/O-III(E iv) dated 17.2.1965, copy annexure V to the petition relates to the effect of the refusal of promotion and states that the employee not willing to accept promotion on transfer should give the same in writing and on the acceptance of his refusal he shall not be eligible for promotion to that post for a period of one year. This letter further states that the employee who refuses his promotion will take his seniority from the date of his promotion and all the persons promoted earlier will rank senior to him in respect of his position in the panel. Applying this circular letter on the first refusal dated 9.5.1979 of the applicant, he was informed by the Divisional Personnel Officer Moradabad vide his letter dated 31.5.79, copy annexure IV to the reply that his request dated 9.5.79 refusing cadre promotion as TTE has been accepted and he was debarred for a period of one year. The receipt of this letter has not been disputed by the applicant and it is, thus, evident

AB  
CB

that atleast on receiving this letter, the applicant knew in 1979 itself that the post of TTE though carrying the same pay scale as that of the Sr.TC was a promotion post and consequence of his refusal was that he could not be offered this post for a year and all persons junior to him who were to be promoted during this period of one year were to rank senior to him. On his second refusal, the DPO Moradabad vide his letter dated 24.7.1980, copy annexure VII to the ~~reply & petition~~ again informed him that on his request he was again debarred for promotion for a year i.e. upto 14.7.1981 and he will rank junior to the persons promoted before him. A similar letter was issued to the applicant on 6.5.1982, copy annexure IX to the reply. However, on the last refusal dated 29.3.1986 of the applicant and 6 other persons, the DPO Moradabad had sent a circular letter to the Station Superintendents of 6 Stations in respect of the applicant and 6 others <sup>stating</sup> ~~^~~ who had refused their posting as TTE that the said persons be informed that on their refusal to accept the posting, they shall be debarred for further promotion for a year and persons promoted earlier than them shall rank senior to them and they were given one more opportunity to consider over the matter and if they were still willing to refuse the offer they were required to submit their refusal within 10 days. There is nothing on record to suggest whether the contents of this letter containing the warning as well as an additional opportunity for refusal <sup>ever</sup> ~~was~~ brought to the notice of the applicant by the Station Superintendent Hapur or not but no copy of the refusal of a date subsequent to this order has been filed by the respondents on the record. We, therefore, infer

~~AS~~ (14)

that the applicant could not have advantage of making the second refusal.

12. It appears to us that the applicant and other senior TCs who were refusing to accept the posting of TTE under the full belief and knowledge that though the post of TTE was a promotion post but as it carried the same pay scales and benefits, they did not like to work ~~or atleast see future prospects~~ on that post. The position ~~was~~, however, changed on the cadre review and restructuring of non-gazetted cadres under Railway Board's letter dated 20.12.1983, annexure III. It appears from this letter that formerly the percentage of the existing grades of Rs.260-400, 330-560, 425-640 and 550-750 was 29.2, 53.9, 15.4 and 1 ~~per cent~~ respectively and on review, the percentage was revised as 20, 37, 29 and 9 respectively. The posts of Sr. TC and TTE ~~were~~ in the grade of Rs.330-560. The percentage of this grade was reduced from 53.9 to 37 and the percentage of the next higher grade of Rs.425-640 was increased from 15.4 to 29 and ~~that~~ with a view to implement this restructuring, the DRM Moradabad vide his order dated 5.9.1986, copy annexure VI promoted 71 TTEs working in the grade of Rs.330-560 to the grade of Rs.425-640 on adhoc basis merely on the basis of their service record and before doing so, he had issued an order on 2.5.85, copy annexure IV laying down the principle of seniority. It was stated in this order that the Sr.TCs, grade 330-560 who lost their seniority by tendering refusal for the post of TTE grade 330-560 will not rank senior to those promoted earlier according to their turn. On finding that there ~~was been~~ a general upgradation to certain extent in the cadre of TTE under this restructuring,

AB (B)  
10

the applicant seems to have realised his mistake in ~~his~~ refusing the posting of TTE and he rushed to the Tribunal with this petition for quashing this order dated 2.5.1985 and for claiming promotion on the basis of his continuous seniority in the grade of Rs.330-560 alleging that the post of Sr. TC and TTE are equal in all respects.

13. After a careful consideration of the contentions raised on behalf of the parties before us in this respect we hold that though the post of Sr. TC and TTE were carrying the same pay scales of Rs.330-560, they were not equal in all respects. From the point of view of monetory benefits, the post of TTE may not be beneficial but for getting further promotion, it was necessary to work on this post and in that respect, it was being treated as a promotion post by all concerned in the railway administration including the applicant and his grievance that the persons junior to him who were promoted as TTE after his refusal could not rank senior to him, is not genuine and justified. As is evident from the above discussions, the applicant was making repeated refusals from 1979 onwards knowing full well that he was refusing a promotion post and the juniors promoted after his refusal had to rank senior to him. He is, therefore, estopped from challenging the impugned orders dated 2.5.1985 and 5.9.1986. His claim for treating the post of Sr.TC and TTE equal in all respects is also clearly barred by limitation provided by S.21 of the Act XIII of 1985.

14. The applicant raised a new point in his replication. It was pleaded that the Railway Board vide its circular letter dated 20.12.1983 upgraded certain number of posts from the grade of Rs.330-560 to the grade of Rs.425-

~~AB~~ (16)  
~~TK~~

640 but the respondents did not give any benefit of the said upgradation to the TC, Incharge ~~although~~ though the applicant by virtue of his seniority is entitled to the same. It has been further alleged that there is a quota in the grade of Rs.330-560 for the post of TC Incharge and TTE. In our opinion, this contention too does not appear to have much weight. There has been no increase in the percentage ~~of~~ for the posts in the grade of Rs.330-560. On the other hand, the percentage was reduced from 53.9 to 37 and as such, the posts in the grade of Rs.330-560 were considerably reduced and the consequent increase was made in the percentage ~~of~~ for the posts in grade of Rs. 425-640. So the grade in which the applicant is working remains unaffected as there was no upgradation in that grade. The question of upgradation arose only in the grade of Rs.425-640 on the increase in the percentage and in order to fill up the additional posts, promotions were made from the grade of Rs.330-560 on the basis of seniority, as discussed above. In this way, there appears to be no force in the contention of the applicant.

15. *As deserved above,*  
*He further finds* that it is a matter of general policy and the applicant may not be the lone person who has been adversely affected by the general upgradation on restructuring. In case the railway administration feels that in view of the cadre review and restructuring it was necessary to give a warning ~~and~~ as well as an additional opportunity to the Sr. TCs refusing the posts ~~as~~ <sup>before</sup> TTE after receipt of the orders of cadre review, as was done by the DPO Moradabad vide his letter dated 4.6.1986, copy annexure 11 to the reply, and such opportunity could not be had by such persons, ~~their~~ <sup>Further,</sup> cases may be reexamined sympathetically. <sup>As</sup> the persons treated senior to the applicant on his making the repeated refusals have not

~~ABD~~  
12

-12-

been impleaded as parties to this petition, we will not like to interfere with the orders sought to be quashed by the applicant.

16. The petition is disposed of accordingly without any order as to costs.

*Sharma*

MEMBER(J)

*Sharma*  
4/7/88

MEMBER(A)

Dated: July 4, 1099  
kkb