

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

ALLAHABAD : DATED THIS THE 17th DAY OF SEPTEMBER 1996

ORIGINAL APPLICATION NO. 6 OF 1992

CORUM : Hon'ble S. Das Gupta AM
Hon'ble Mr. T. L. Verma JM.

1. Florence Jacob wife of Late R.G. Jacob,
2. R. G. Jacob s/o R. G. Jacob.

Both residents of 31/84, Muirabad,
Allahabad ----- Applicants

C/A Sri R. K. Tewari.

VERSUS

1. Divisional Railway Manager,
Northern Railway, Allahabad.
2. Senior Divisional Personnel Officer,
Northern Railway, Allahabad.
3. Union of India through Ministry of
Railways, New Delhi.----- Respondents

C/R Sri S. N. Gaur
Sri S. K. Jaiswal.

ORDER

By Hon'ble Mr. T. L. Verma JM

This application under section 19
of the Administrative Tribunals Act, 1985 has been filed
for quashing order dated 15.11. 1990, rejecting the

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representation of the applicant and for issuing a direction to the respondents to assign correct seniority to the applicant and to consider him for promotion to the post of Chief Inspector of ticket grade Rs.2000-3200 from the date his seniors have been promoted.

2. The brief facts, giving rise to this application, are that the applicant was appointed as Ticket Collector on 22.2.1955 and was promoted as ~~xxxxxx~~ Travelling/Examiner (T.T.E. in short) on 19.8.1960. Upto 1971, cadre of Conductor was not separated. In 1971, channel of ^{promotion of} T.T.Es was trifurcated as Head Ticket Collector, Head Ticket Travelling Examiner, Special Ticket Examiner and Conductor. After the trifurcation of the promotional channel options were invited from all the ~~xxxxxx~~ Travelling Ticket Examiners, ~~xxxxxx~~ for one or the other promotional channel. The applicant ~~xxxx~~ opted for the cadre of Head T.T.E.. The further case of the applicant is that the Conductor was given grade of Rs.425-640 without selection and Head T.Cs were called for selection for being given the grade of Rs.425-640. The T.T.Es, however, were neither called for selection nor given the grade. The selection of Head T.T.E. was challenged in the court of Munsif City, Kanpur. Operation of the order of selection of Hd.TTE was stayed by Munsif in that case. After the stay was vacated, interviews for promotion to the posts of Head T.T.E. was held on 4.9.1983 and 9.10.1983, but before the result of ~~xxx~~ selection could be declared, posts were upgrade as a result of restructuring and the applicant was promoted as Hd.T.T.E./S.T.E. with effect from 1.1.1984. Seniority list of Head T.C. and Head T.T.E. was circulated in 1987 (annexure A-2). The name of the applicant is at serial no.28 of the seniority list of Head T.T.E. The grievance of the applicant is that he has been assigned wrong seniority. He, therefore, submitted

representation to the respondent no.2 on 29.5.1991, giving correct and factual aspect of the matter with a request to promote him to the next grade in view of his seniority and satisfactory report. When the representation filed ^{by him} did not evoke any response, he sent a reminder dated 3.7.1991. When he met the respondent no.2 personally, he is stated to have been informed that the representations filed by him earlier have been misplaced and he was asked to furnish copies of the same. In compliance with the ^{direction} above ~~oral~~ ^{oral} ~~in~~, applicant supplied duplicate copies of the representations filed by him earlier. The applicant, however, was not called for vivavoce test for grade Rs.2000-3200, though 35 ^{persons} were called for selection to the said grade by order dated 29.10.1991. The representation of the applicant was finally rejected by order dated 15.11.1991.

The further case of the applicant is that selection for promotion to grade Rs.2000-3200 was notified in the month of March 1990. The applicant was neither called for selection nor was given the grade irrespective of his seniority. It is stated that the applicant was Senior to Sri K.N.Srivastava in basic grade of T.T.E. in as much as he is at serial no.200, while Shri K.N.Srivastava is at serial no.207 of the seniority list (Annexure no 1). Hence this application for the reliefs mentioned above.

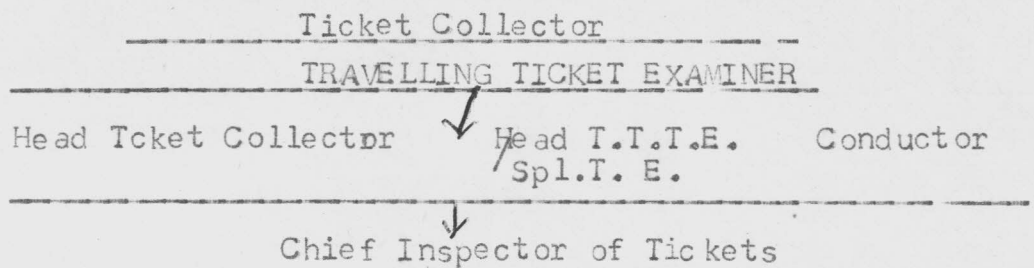
3. The respondents have appeared and ~~and~~ contested the claim of the applicant. In the counter affidavit filed on behalf of the respondents, it has been stated that the applicant had opted for the post of S.T.E. grade Rs,425-640 vide option dated 19.11.1976, so the question of calling him for selection to the post of Hd.T.C. did not arise. Selection to the said post was made from the staff who opted for advancement in that category.

4. The seniority of the incumbent on the posts in three different channels ~~xxxxxxxxxxxxxxxxxxxx~~ was taken into account for determining the interse seniority for being called for for the selection to the post of C.I.T. The contention of the applicant is that for the purpose of determining the eligibility for being considered to the post of C.I.T., seniority in the basic grade should have been reckoned, because the length of service in the grade of Head T.C. was clearly fortuitious.

5. The respondents though had appeared and filed counter affidavit, but on the date, case was taken up for hearing, none appeared for the respondents though several opportunities had been given to the respondents to resist the claim of the applicant. We, therefore, heard the learned counsel for the applicant and perused the records. The pleadings are very vague and are of little help in understanding the case of the parties. Whatever little we have been able to understand from the averments made in the application, the counter affidavit and submission: made by Sri Sudhir Agrawal ^{at the time of argument} is that for promotion to the post of C.I.T. grade Rs.2000-3200, basic grade seniority of T.T.E. should have been taken into account and not that of Head T.C., Head T.T.E, S.T.E. and Conductor.

6. The applicant died after the arguments were heard and judgement was reserved. He has been substituted by his legal heir by order dated 22.3.1996 passed in Misc. application no.531 of 1996.

7. For proper appreciation of the arguments of the learned counsel for the applicant, reference to structure of service of the TTEs is necessary. Hierarchy of the Ticket checking staff is as follows :-



Ticket Collector's first promotion is to the post of T.T.E. From the level of T.T.E., promotion channel has been trifurcated to three disciplines, namely Head T.C., Head T.T.E. and Conductor and these three categories are the feeding posts for promotion to the post of C. I. T.

8. The learned counsel for the applicant Sri Sudhir Agrawal submitted that ~~where a~~ ^{is} ~~forming~~ ^{cadre} ~~common/bifurcated~~ and trifurcated ~~categories~~ in more than one group. at some intermediate stage in the channel of promotion and ~~where~~ after one or more stage, they are again grouped together, seniority for the purpose of promotion at the stage of regrouping has to be taken not on the basis of length of service in the bifurcated ^{trifurcated} cadre/group, but on the basis of seniority at the stage where ~~after the cadre got bifurcated/d.~~ ^{trifurcated}. In support of his argument, he has relied upon the decision of the Hon'ble Supreme Court in Om Prakash Sharma and others V/s. Union of India AIR 1985 SC 1276 and others. In the case before the Apex court three departments ⁽¹⁾ namely/Divl. Electrical Engineer (Jhansi)'s office, ⁽²⁾ Assistant Electrical Engineer (Workshop and Shed) Office and ⁽³⁾ Assistant Electrical Engineer's office Jabalpur were separated from each other on the introduction of Divisionalisation in the railways. These three departments became three independent Units and in the matter of staff, each devised its separate seniority list. The department mentioned at serial no.2 above was merged with the

Office of Chief

Chief Electrical Engineer, Bombay. This merger continued till 31.7.1971. Effective from August 1979, all the 3 original departments trifurcated on 31.8.1956 were re-amalgamated in the matter of staff and common seniority list was introduced in respect of all the four cadres. Validity of the seniority list was impugned in the aforesaid case before the Supreme Court. Hon'ble Supreme Court, while allowing the appeal held that :

" Held, in the circumstances of the case that when the amalgamation took place, respondents nos.3 to 6 could not score a march over erstwhile seniors on any valid principle of seniority. This would unquestionably be denial of equality under Article 16 of the Constitution. It may be that they might have enjoyed some accelerated promotion when workshop staff was amalgamated with that of Bombay office. But when they were repatriated and re-amalgamated with original two offices and brought back on the common seniority list, they must find their original place qua the appellants. This not a case where appellants were passed over at the time of selection or denied promotion on the ground of unsuitability. In such a situation status quo ante has to be restored. Obviously respondents nos.3 to 6 will be below the appellants and any other view to the contrary would be violative of Article 16 as it would constitute denial of equality in the matter of promotion. "


The facts of the case before the Hon'ble Supreme Court and the case before us are not identical in as much as the promotional channels of TTEs were distributed in different cadres known as Head T.C., Head TTE, STE. Once a TTE exercises his option for one or the other cadre provided as a channel of promotion, he ceases to have any relation with his basic cadre for the purpose of determining the seniority vis-a-vis the TTE, who have opted for other

channels of promotion. Promotion in each cadre will depend on the availability of vacancy in that particular cadre. The chances are that the person opting for Head TC's cadre may get quicker promotion as compared to the incumbent ^{opted for} / Head TTE, STE and Conductor cadre. However, their eligibility for promotion to C.I.T. will be determined on the basis of length of service on the post which is feeder post for promotion to that post. The facts of the case relied upon by the learned counsel for the applicant, it would thus appear, are altogether different. Therefore, ^{it} / has no application to the case before us.

9. The other case relied upon by the learned counsel for the applicant is State of Andhara Pradesh V/s Dr.N.Ramachandra Rao 1990 (4) SLR 267. In this case, the respondents were originally recruited as Civil Assistant Surgeons on being selected by State Public Service Commission. The post of Assistant Civil Surgeon is equivalent to the post of Assistant Professor. These posts are inter-transferable, but post graduate degree is necessary for posting as Assistant Professor. The Civil Assistant Surgeon is posted as Tutor in the teaching side, if he has no Post graduate ~~xxxxxx~~ qualification. In the selection list prepared by State Public Service Commission respondents 1 to 12 were ranked above other respondents, but they were not considered for promotion to the category of Assistant Director or other equivalent post. Their juniors in the original cadres were appointed to such post which was challenged before Andhara Pradesh Administrative Tribunal. The Administrative Tribunal allowed the application holding that the seniority of a person in service, class category or grade shall, unless he has been reduced to a lower rank as punishment is to be determined.

determined by the date of his first appointment to such service, class, category or grade. The appeal filed by State of Andhara Pradesh before the Hon'ble Supreme court has been dismissed. The Hon'ble Supreme court has held :

" We are of the opinion that the juniors who get accelerated promotion on account of fortuitious circumstances depending upon their speciality and availability of vacancies in such speciality should not be allowed to march over their seniors for appointment to administrative posts. Any advantage gained by juniors on such fortuitious circumstances of having some speciality and promotion should not impair the rights of their seniors for promotion to posts where speciality of teaching experience is not called for. The seniority determined in order of speciality should not, therefore, be the basis for promotion to administrative posts. Any rule providing for the contrary may be vulnerable to attack on the ground of arbitrariness. "



So far as the principle of law laid down by the Hon'ble Supreme court in the aforesaid case is concerned, there is no dispute. The principle of law down in the case, however, has no application to the facts of the case. It is settled principle that seniority in a particular cadre shall be determined on the basis of length of service in the said cadre. Head TC, Head TTE, STE should be deemed to have been appointed in the respective cadre from the date of their induction on giving their option. Their seniority in the cadre to which they were appointed will, therefore, be determined from the date of their appointment on the said post. Therefore, for determining their eligibility for promotion to the post of CIT, the date of their appointment on the feeder post, has rightly been taken for determining interse seniority of the incumbents.

10. The third case relied upon by the learned counsel for the applicant is Dr. Mrs. Subroto Mazumdar and others V/s Union of India (1991) 16 ATC 520. This decision is also of no help to the applicant in as much as it relates to a rule framed, laying down uniform principle for determining the seniority among eligible candidates for the purpose of promotion and for that seniority in basic category of U.D. Assistant was considered as most reliable test.

11. As we have already observed above, normal rules for fixing the seniority in a cadre is the length of service. The applicant himself has, in para 5B averred that after 1971, post of Conductor was considered as separate post and practically it was bifurcated into a separate cadre for the convenience of the railways and seniority list of the 3 cadres were published from time to time. It would thus appear that the case of the applicant also is that trifurcation of the promotional channel of TTEs to Head TTE and Conductor ~~did not specifically create~~ separate cadres. ^{thus} the aforesaid post became feeder post for promotion to the post of C.I.T. grade Rs. 2000-3200. Length of service on the feeder post of Head T-c, TTE and Conductor was made the basis for determining the eligibility for promotion to grade Rs. 2000-3200. The learned counsel for the applicant submitted that of the 35 incumbents included in eligibility list only 5 were STEs and the remaining were either Conductor or Head T.C. This, it is said included a number of persons junior to the applicant in the seniority list of TTEs. The contention of the applicant was that seniority on basic grade should have been made the criteria for determining seniority for preparing the

eligibility list. We are unable to accept this contention of the learned counsel for the applicant. The Hon'ble Supreme Court in Dr. N.D. Mitra and another V/s Union of India and others reported in 1994(27) ATC page 733^{has} held :

" The normal rule for fixing the seniority in a cadre is the length of service. In the absence of any statutory rule or executive instruction to the contrary, inter se seniority amongst the Dy.D.G. is to be fixed on the basis of continuous length of service in the said post. There is no infirmity in fixing the seniority in this way. "

13. In the above case, the appellant on being selected by U.P.S.C., joined Geological Survey of India and was promoted as Geologist (Senior) in 1962 and to the post of Director, Geology in 1979. Dr. N.R. Gupta, respondent no.4 was appointed as Chemist (Junior) in 1961 and Chemist (Senior) in 1970 and Director (Geochron) in 1982. Sri D.B. Dimri, respondent no.5 was appointed as Geologist (junior) in 1966 and promoted as Geologist (Senior) in 1971 and Director Geology (Instrumentative) in 1980. The post of Geologist (Junior), Chemist (Junior) and Geologist (Senior) are of equal status though in different disciplines. The post of Director in the aforesaid discipline is a feeder post for promotion to the post of Dy. Director General. The upward journey within the discipline ends at the post of Dy.D.G. The post of Dy.D.G. is filled by considering Dy.D.Gs from all the disciplines. The question before the Hon'ble Supreme court was, whether seniority in the cadre of Dy.D.G. be determined on the basis of continuous length of service in the said post or on the basis

of length of service in the discipline. The Hon'ble Supreme court upheld the findings of the Tribunal that seniority should be determined on the basis of continuous length of service on the post of Dy.D.G. The ratio of the above decision of the Hon'ble Supreme court is that eligibility should be determined on the basis of length of service on the feeder post and not on the basic grade seniority. The principle of law laid down in the above case by the Hon'ble Supreme court fully applies to the facts of this case in as much as the upward journey of the T.Gs ended at the level of T.T.E. Their further promotion to different disciplines i.e. Head T.C., Head T.T.E., S.T.E. and Conductor depend upon exercise of option by the incumbents. Once the option was exercised, they become part of that cadre and cease to have any connection with their cadre of origin. The learned counsel for the applicant submitted that accrual of vacancy in different disciplines may be at different times, as a result promotion of one may not be taken up for want of vacancy, but incumbents in other two disciplines may be promoted earlier either for the reason that the vacancy has accrued or promotion is taken up expeditiously. These fortuitous circumstances, it was contended, should not be allowed to disturb the basic grade seniority of the incumbent for the purpose of deciding their eligibility for promotion to the higher post. We are unable to accept this contention. It was for the candidate to have considered the pros and cons of their promotion prospect before exercising option to join one or the other discipline. Once the option has been exercised, they cannot be allowed to plead that optees of other

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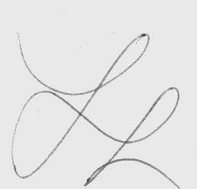
disciplines have stolen a march over them in the matter of promotion and that they have been adversely affected for that reason. The learned counsel for the applicant admitted that there is neither any rule or executive order governing the situation as the one under consideration. In absence of rule or executive instruction in that behalf, length of service on the feeder post should be considered the basis for determining the eligibility for promotion to grade Rs.2000-3200. The learned counsel ^{stated to be} for the applicant has referred to instructions ^a contained in letter dated 22.3.1984 and has submitted that the applicant should be given the benefit of the instruction contained in the said letter. Authentic ^{ated} copy of the letter has not been filed. There is, however, a copy of the letter at page 37 of the Compilation no.II. The above instructions are on the subject of seniority of Head T.C., Head T.T.E, S.T.E and Conductor. The letter reads as follows :

561-E-92-V(ETC) dt: 22.3.1984

To,

DRM, ALD, LKO, MB, FZR, DLI, JU & BKN

Subject: Fixation of seniority of
Hd.TC, HD,TTE and Conductors
Grade 425-640 (Rs) for promotion
as CIT grade 550-750

 As per existing channel of promotion in the post of Conductors, Hd.TCs, and Hd.TTEs grade 425-640 (Rs) option from the staff working as TTEs grade 330-56(RS) are called for promotion against the three categories. The post of Conductors grade 425-640 being non-selection post, while the post of Hd.TCs, and Hd.TTEs 425-640 are selection post. The question of preparing the seniority of the above mentioned three categories for the purpose of their further promotion as CIT grade 550-750(RS) has been considered by G.M., CCS has decided in consultation with both the recognised Unions, the seniority of the staff in the three categories in grade 425-640 for their further promotion as CIT grade 550-750(RS) be prepared on the basis of the length of service in grade 330-560(RS) keeping this inter-se-seniority in respective categories in grade 425-640 intact.

Sd/ AJEET SINGH
(G.M.(P))

14. The contents of letter extracted above do indicate that seniority of Head T.C., Head T.T.E and Conductors in the grade of Rs.425-640 had to be prepared on the basis of length of service in grade of Rs.330-560 for promotion to C.I.T. grade Rs.550-750. The aforesaid letter was shown to us at the time of hearing/argument. The index of the application does not indicate that the said letter was filed alongwith application. The rejoinder affidavit also does not indicate that such letter was filed alongwith rejoinder. There is, however, a reference of the said letter in para 11 of the rejoinder. This reference has been made in reply to averments made in para 10 of the counter affidavit. That apart the letter has not even been authenticated by attesting the same as true copy. In the circumstances mentioned above, we do not consider it safe to place reliance on an unauthenticated document. Be that as it may in the circumstances which we shall presently state even if the letter is treated as genuine, the same does no help the applicant.

15. From the averments made in para 10 of the counter affidavit it would appear that the seniority of Head T.C., Head T.T. and conductors was determined on the basis of length of service in grade 425-640 pursuant to the directions issued by a bench of this Tribunal in Original Application. The applicant has not denied that such a direction was issued by this Tribunal. In reply to the averments made in the counter affidavit all that have been stated in para 11 of the rejoinder affidavit is that letter No. 562-E-92-V (F T C) dated 22.03.84 issued by the General Manager, Northern Railway was not brought to the notice of the Tribunal and also that applicant was not a party

to the said application. Therefore, the judgment was not binding on him. Neither party has furnished copy of the said judgment. The details of the judgment, such as number of case and names of the parties and date of decision, have also not been given, which may have enabled us to call for record for perusal of the judgment. The admitted position, however, does not leave us in any doubt that seniority of the Head T.C., Head T.T.E. and Conductors was determined on the basis of length of their service in grade of Rs.425-640 in terms of the directions issued by the Tribunal in a case. The applicant, it is stated, was not a party to the said case which has adversely affected his seniority. The question, therefore, arises as to what remedy is available to the person whose seniority is affected in such a case. The direction to determine seniority on the basis of length of service of Head T.C., Head T.T.E. and Conductors on the basis of their length of service in grade Rs.330-560 would by implication result in the reversing the direction by the bench of this Tribunal to determine the seniority of the aforesaid categories of staff on the basis of their length of service in scale of Rs.425-640. The power to reverse the directions the directions issued by One bench of this Tribunal is not conferred on ^{another} a bench of the Tribunal, exercising concurrent jurisdiction. That being the position of law, this Bench cannot issue a direction to the respondents to determine the seniority of the applicants in scale of Rs.425-640 on the basis of their length of service in the scale of Rs.330-560, as the same may run contrary to the direction already issued by a bench of this Tribunal

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to determine their seniority on the basis of their length of service in scale of Rs.425-640. Remedy of the applicant, therefore, does not lie in filing fresh O.A. for issuance of such a direction. In our opinion, the applicant should either have filed an appeal before Hon'ble Supreme Court for setting aside the direction issued by this Tribunal in the aforesaid case or filed a petition before the bench which passed the order to review its decision on the ground that he was not a party to the case in which the direction adversely affecting his interest, were issued.

17. The General Managers of the Indian Railways, no doubt have been empowered to make rules with regard to the railway servant in group 'C' and 'D' under their control provided they are not inconsistent with any rule made by the President or the Ministry of Railways. The letter dated 22.3.84 extracted above appears to have been issued by the General Manager, Northern Railway in exercise of power conferred on him under Rule 124 of the Indian Railway Establishment Code (1985 Edition). The Chapter-3 of the Indian Railway Establishment Manual deals with the rules regulating the seniority of non-gazetted railway servant. The para 320 of the aforesaid Chapter provides that :



When a post (selection as well as non selection) is filled by considering staff of different seniority Units the total length of continuous service in the same or equivalent grade held by the employees shall be the determining factor for assigning


inter-seniority irrespective of the date of confirmation of an employee with lesser length of continuous service as compared to another unconfirmed employee with longer length of continuous service. This is subject to the provision that only non-fortuitious service should be taken into account for this purpose.

The ^{rule} position of ~~abstracted~~ above clearly indicate that the length of service on the post from which the promotion is being made should be the basis for determining the interse-seniority of the incumbent for promotion in higher grade. The instructions relied upon by the learned counsel for the applicant for determining the seniority of Head T.C., Head T.T.E. and Conductors on the basis of their length of service in scale of Rs. 330-560 are contrary to the above provision of Railway Establishment Mannual. Therefore, the aforesaid instructions cannot ^{be} held to be good.

18. In the facts and circumstances of the case discussed above, we are satisfied that this application lacks ~~of~~ merit and the same, ~~is~~ therefore, deserves to be dismissed.

19. In the result, this application fails. The parties shall bear their own costs.


Member (J)


Member (A)

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