

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

M.A. No. 185 of 1996

O.A. No. 525 of 1996

Present : Hon'ble Mr. Justice A.K. Chatterjee, Vice-Chairman
Hon'ble Mr. M.S. Mukherjee, Administrative Member

ASHIM KUMAR MITRA

-vs-

UNION OF INDIA & OTHERS

For applicant : Mr. B.N. Sen, Sr. Counsel
Mr. J. Majumdar, counsel
Mr. T.N. Bandopadhyay, counsel
Mr. S. Bhattacharjee, counsel

For respondents : Mr. K.T.S. Tulsi, Addl. Solicitor General
Mr. P.K. Arora, counsel

For Pvt. respondents 5, 6, 7 : Mr. C. Samaddar, counsel

28.8.1996 &
Heard on : 10.9.1996

- Judgment on : 17.10.1996

J U D G M E N T

A.K. Chatterjee, VC

This O.A. has been filed by Shri Ashim Kr. Mitra, presently Additional General Manager of South Eastern Railway, inter alia, to quash paragraph 2.1.1 of Railway Ministry's letter dated 8.7.87, Annexure A/3 to the application, which contains certain provision for determination of inter se seniority of officers of Group-A services of the Railway and various consequential directions upon the respondents, such as to rectify the integrated seniority list as well as panel for appointment to the post of General Manager and equivalent, to consider the petitioner's appointment in the Open Line post of General Manager or equivalent with retrospective effect etc. etc. in the circumstances as under.

2. Stripped of unnecessary details, according to the Scheme sanctioned by the Government of India on 16.7.36 and as amended on 30.1.37 and 26.2.33 for appointment to the posts of General Manager and equivalent in the Railways, a panel of officers for consideration for appointment to the said post is listed in detail in Appendix-I to the Scheme is prepared by a Selection Committee, the composition of which is also prescribed in the Scheme itself. For preparing the panel, the Selection Committee has to be considered on merit, ^{all} of eligible officers of I.R.T.S. and seven other organised services listed in Appendix-II to the Scheme having regard to the inter se seniority as well as the seniority in the respective services and their suitability in all respect. In this proceeding, we are concerned mainly with the principles, ^{and} procedure for determination of inter se seniority as between the members of any two Group-A services as laid down in the letter of Govt. of India, Ministry of Railways dated 8.7.87 with the approval of the President of India. In para-2.1 of this letter, it is stated that the inter se seniority as between officers of any two Group-A services would be determined by the Date for Increment in Time Scale, DITS for short. So far there is no controversy. However, one of the exceptions to this Rule is to be found in para-2.1.1, which provides that in case any officer joins service earlier than his senior in the same service and in the same batch, he will be assigned a notional DITS which will be the same as his late joining senior. Thus, the petitioner had joined IRTS on ^{28.} 28.7.62, while one of his seniors in the same service and of the same batch, Shri V. Ganesh had joined later on 2.11.1962 and by the operation of para 2.1.1 referred to above, his (petitioner's) DITS was depressed or post-dated to 2.11.62, which is regarded as his notional DITS, with the result that the integrated seniority list was prepared having regard to this date and

he was placed below several officers of other services including the private respondents 5 to 7, all of IRSE ~~and~~ who had joined the Railways between 4.3.62 and 19.9.62 after the petitioner had actually joined on 28.7.62. In 1994, a selection for the posts of General Manager and equivalent was held and in the panel approved by the Appointment Committee of the Cabinet, Annexure - A/5 to the application, the petitioner's name has been placed against Srl.No.26 on the basis of his notional DITS determined in accordance with the impugned paragraph 2.1.1 referred to above, though atleast 13 officers placed above him, against Srl.No.13 to 25, had joined service after the petitioner. He contends that the principle of depressing or post-dating the DITS of an early joining junior like him to coincide ^{with} ~~to~~ that of ^a late joining senior, is arbitrary and operates harshly and as such should be struck down and instead integrated seniority list should be prepared by ante-dating the DITS of a late joining senior so as to coincide with that of an early joining junior. If this principle was followed, the petitioner's position in the inter se seniority list would be elevated with corresponding improvement of his position in the panel from 26 to 13 with no officer below him having earlier DITS. As this panel was operated upto Srl.No.23, the petitioner would have been appointed to a post of General Manager or equivalent for which he was found suitable, if he was assigned the position at Srl.No.13. He has pointed out that Shri V.Ganesh, who was his senior in the IRTS was not found eligible for empanelment as he was age-barred on the relevant date.

3. The petitioner has filed a Misc. Application with no prayer for any other or further relief and ^{has} ~~as~~ pointed out, some decisions of the Hyderabad and Principal Bench of this Tribunal, which, according to him, support his case of which notice will be taken in good time.

4. The official and the private respondents have filed separate counters. Bone of their contention is that no service rule can satisfy all the employees and that the inter se seniority between the officers of two or more services is determined primarily on the basis of DITS and the explanation contained in para- 2.1.1 is inherrent in the process of fixing inter se seniority. Adoption of principle of ante-dating ^{the} DITS of a late joining senior, according to the respondents, would imply that his services in the railway would be counted from a date when he was not in the service of railway at all. Further ante-dating the DITS of a late joining senior would lead to an anomolous position which has been specifically noted in the letter dt.8.7.37 by way of note 2 thereto. It was stated that in fact one Sri R.K. Puri, another senior to the petitioner in IRTS had jointed even later than Sri Ganesh on 12.11.62. Thus the petitioner was assigned notional DITS as 12.11.62 and at the time of preparation of inter se seniority of officers of all concerned Group-A services, who had joined service prior to Shri Puri had to be placed above him, even though they might have joined after the actual date of joining of petitioner, who being junior to Sri Puri cannot be placed above him under any circumstances. The argument on behalf of the respondents regarding the decisions cited will be noted hereinafter.

5. We have heard the Ld. Counsel for all the parties and perused the entire records before us.

6. In the first place, we would like to state as indeed pointed out on behalf of the respondents, the observation of the Hon'ble Supreme Court in Reserve Bank of India & Ors. vs. C.M. Sahasramaman & Ors., A.I.R. 1986 SC 1830 that in service jurisprudence, there cannot be any rule, which will satisfy each and

every employee and its constitutionality has to be judged by considering whether it is fair, reasonable and does justice to the majority of the employees. The wisdom of this observation can hardly be over-emphasised and it is, therefore, pertinent to bear in mind that it would be futile to ^{expect} ~~accept~~ any panacea for all evils. Now the soundness of the principle ^{of} ante-dating the DITS of a late joining senior in determining the inter se seniority, as urged on behalf of the petitioner may be considered. It has not been disputed even on behalf of the petitioner that within the same service, the initial ^{position} ~~post~~ has to be fixed in order of merit according to the result of the examination on the basis of which selection is made. Thus, Sri R.K. Puri undoubtedly senior to the petitioner in the merit list has to be placed above him, even though the petitioner had joined the service on 28.7.62, while Shri Puri had joined on 12.11.62. In such circumstances, if at the time of preparation of inter se seniority of officers of 8 organised services, the DITS of Shri Puri is ante-dated to 28.7.62, then in the panel, Annexure A/5 to the application he would be placed against Srl.No.13 and a host of officers would be placed below him despite the fact that all of them had joined the service before 12.11.62, when Shri Puri had first joined the railway service. Thus, as a result of post-dating or depressing the DITS, only the petitioner is put to some disadvantage but if the principle of ante-dating the DITS was adopted, a large number of officers would suffer the same disadvantage, though only the petitioner would be spared. Therefore, if the fairness of the rule is tested not by the touchstone of fortune of an individual but by the consideration whether it is beneficial and does justice to the majority, then the impugned principle cannot be assailed and the principle of ante-dating the DITS, as

suggested by the petitioner cannot be said to be more fair or rational. The framers of the rule~~xx~~ of depressing the DITS appear to have been well aware of its ^{necessity} ~~interest~~, which has been made clear in Note-2 in the letter dt.3.7.87. It has been laid down therein that the provision of the para-2.1.1. ^{the} was necessary to avoid ~~a~~ ^{the} conundrum of 'A' is senior to 'B', 'B' is senior to 'C', but 'C' is senior to 'A'. Thus, if 'B' stands for Shri Puri and 'C' for the petitioner and 'A', an officer of some other Group-A service, who had joined service after the petitioner but before Shri Puri, then 'A' must rank above 'B' and 'B' being senior to 'C' in their own service, must be placed above 'C', but unless the DITS of 'C' is depressed to match with that of 'B', 'C' would become senior to 'A'. This process would also enable the petitioner to claim a better position than what he ^{had} occupied in his own service, which is absolutely outrageous.

7. The petitioner has pointed out that his batch-mate in the same service Sri P.S. Rao, who is next below ^{and} ~~him~~ had joined the service on 9.7.62 ~~and~~ had filed an application before the Hyderabad Bench of this Tribunal being O.A. No.67 of 1996 as he was also aggrieved by depressing his DITS to coincide with that of Sri Puri i.e. 12.11.62. This O.A. was disposed of by ^{the} Hyderabad Bench on 26.4.96, which was also the date on which the present O.A. has been filed by the petitioner and as such a copy of the judgment of the Hyderabad Bench has been filed by him with a Misc. Application on 25.6.96 registered as M.A. 185 of 1996. The Hyderabad Bench ^{has} found that pushing down of DITS of Sri P.S. Rao from 9.7.62 to 12.11.62 was unsustainable and the rule under which it was done appeared to be wholly illegal, unreasonable and vexatious offending ^{all} ~~of~~ ^{the} ~~the~~ cannon of justice, equity and good conscience and also basic ^{rule} ~~principle~~ of seniority and as such clearly

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arbitrary. In coming to this decision, the Ld. Bench pointed out that the rationale behind the rule was not shown and had also relied upon certain correspondences, which passed between the Ministry of Railways and the U.P.S.C. showing that the latter had agreed with the suggestion of the Ministry that the DITS of a late joining senior should be ante-dated to coincide with that of an early joining junior. The record reveals that ^{the} ~~this~~ correspondences passed between the Ministry and the U.P.S.C. in 1982 and 1983. Regarding the decision of Hyderabad Bench, which was said to be under challenge in the Supreme Court, the contention of the respondents is that the Bench had no occasion to consider the rationale as indicated in Note-2 to the letter dated 8.7.87 as it was not brought to the attention of the Ld. Members constituting the Bench. Regarding the correspondences between the Ministry and the U.P.S.C., it was pointed out by the Ld. Counsel for the respondents that it was started as a representation was made by a particular officer to the then Minister-in-charge. At any rate, this dialogue between the Ministry and the UPSC no doubt shows that the suggestion of the Ministry and the approval of the U.P.S.C. was not the rule prevailing at that time as in that case, there would not be any occasion for an officer to put in a representation or for the Ministry to start a correspondence with the U.P.S.C. However, what is more important is that neither the Ministry nor the U.P.S.C. may have the last word on the subject, particularly because the rule of ante-dating the DITS as suggested and agreed upon appeared to be manifestly unfair. Further even though the Hyderabad Bench had found that the rule of post-dating the DITS of an early joining junior was wholly illegal, vexatious, unsustainable etc. etc., still in the ultimate analysis it did not ^{strike} ~~strike~~ down the rule and indeed made it clear

that the rule of preparation of integrated seniority list of officers eligible from different services was not disturbed and all that was held was that the DITS of the applicant Sri P.S. Rao should be taken as 9th July, 1962 and his seniority should be reckoned with reference to this date at the time of preparation of 1995 panel. In fact, the vires of paragraph 2.1.1. of the letter dt.8.7.87 was not challenged before the Hyderabad Bench, which was also pointed out by the Madras Bench in the case of Rajan Kutty vs. Union of India & Ors. - O.A. 552 of 1996. In that case, the Madras Bench had also observed that since the instruction regarding inter se seniority was not challenged before the Hyderabad Bench and as the rule was not struck down, the benefit of that judgment could not be extended to the applicant before it. Thus, at the highest, the Hyderabad Bench only decided in the facts and circumstances of that particular case that a certain date should be regarded as the DITS of the applicant before it and it is by no means an authority for any general proposition that in every case, the DITS of the late joining senior should be ante-dated to coincide with that of an early joining junior. It is also pertinent to note that the judgment of the Hyderabad Bench did not disturb the 1994 panel and, therefore, the petitioner cannot claim any benefit out of it. It is even possible to go further and say that even if the present petitioner had made the application before the Hyderabad Bench, he would not get any relief more than what was given to Sri P.S. Rao, but even such relief would be of no benefit to the present petitioner as he is ineligible for empanelment in 1995 having crossed the age of 56 years on the relevant date. It is true that Shri P.S. Rao had filed a Review Application and also a Misc. Application before the Hyderabad Bench, which were said to be still pending but the

undoubted position is that as on date, the Hyderabad Decision did not confer any benefit upon Sri P.S. Rao in respect of 1994 panel.

8. The petitioner has also relied upon the decision of the Principal Bench in Samar Singh vs. Union of India & Ors. - O.A. 539/94, which appeared to us to be wholly beside the point. Sri Samar Singh is an officer of 1962 batch of the I.A.S. and he had brought the said O.A. as he was not empanelled in 1993 for appointment to the post of Secretary/Special Secretary, while some of his juniors were empanelled. The preparation of the panel was challenged on several grounds and it was found by the Tribunal that there was nothing to indicate in the minutes of the Selection Committee or in the file relating to empanelment that there has been an application of mind to the merit of Sri Samar Singh and the suitability for appointment to the post of Secretary and equivalent and thus the omission of his name in the panel was unsustainable and as such declared to be void. Thus, in this case, the assignment of seniority position to Sri Samar Singh or the ~~principle~~ ^{principle} of such assignment was not under challenge, but an order was made in his favour as his merits were ^{not} properly considered by the Selection Committee.

9. The petitioner has also referred to the judgment of the Principal Bench delivered on 25.2.94 in I.R.F.S. Officers Association vs. U.O.I. registered as O.A. 1041/88, whereby the respondents were directed to reconsider the provision of para-2.1.1 of the letter dt. 8.7.87 within six months, which, however, was not done and thus the respondents were said to be guilty of contempt of court. However, it does not appear that any contempt rule was ever issued. The respondents have pointed out that in the said O.A., the principle for determination of inter se seniority as embodied in para-2.1.1 was challenged with a prayer to quash the same. The

Tribunal, by its order dt.25.2.94 did not quash the said paragraph but observed that it should be read together with principle(iv) of Ministry of Railways letter dt.30.11.76, which appeared to be conflicting and directed the respondents to reconsider this rule to eliminate any possibility of mis-interpretation in future by defining the scope of para-2.1.1 and principle(iv) of 1976 letter, which laid down a rule of loss of seniority in case of prolonged delay on the part of an officer in joining service after receiving the order of appointment without ^{specifying} the delay. ^{This principle (iv) was however deleted} ~~was already admitted~~ by the letter of the Ministry of Railways dt.23.4.91 and it was submitted on behalf of the present respondents that through inadvertence, it was not brought to the notice of the Tribunal. In such circumstances, the decision of the Tribunal in IRTS officers' Association vs. U.O.I. ^(supra) far from supporting the case of the petitioner rather shows that previously a competent Bench had turned down a prayer to quash para- 2.1.1. of the impugned letter.

10. In the application, the petitioner also taken a ground that since the integrated seniority list was not published, he was denied the right of lodging any complaint against possible error in the list, which, in turn, had prejudiced him. Now, even though the integrated seniority list was not published, still the principle and procedure for determining such seniority as contained in the letter dt.8.7.87 was given wide publicity and a copy of the letter was circulated among the members of various Group-A railway services and copy was also endorsed to the Federation of Railway Officers Association. In fact, the petitioner himself has referred to the case filed by IRTS Officers Association soon after the letter was issued challenging the para-2.1.1 thereof and thus, he was aware of the contents of the letter. The

petitioner can also be safely credited with the knowledge of seniority list of his own service and had ^{enough} ~~some~~ opportunity to find out the seniority list of other Group-A services, which are no doubt published documents in print. Thus, he himself could easily work out his position in the inter se seniority list only if he wished to do so. Moreover, the petitioner has urged that the 1994 panel in which he was assigned the position at Srl.No.26 was operated till ^{serial no.} 23 when several appointments to the post of General Manager were made in October, 1995. ^{and} It was at that time, some officers, who, according to the petitioner, should have been regarded as junior to him, were appointed to the posts of General Manager or equivalent. Therefore, evidently, the petitioner came to know at least in October, 1995 that in the integrated seniority list, he was assigned position lower than that, which, according to him, should have been assigned, but still the instant application has been filed by him only in April, 1996. Thus, when the petitioner had ^{enough opportunity} ~~never thought~~ to approach the Tribunal much earlier, ^{but did not do so,} he cannot be heard to say that he was prejudiced due to denial to him of his right to lodge a complaint in time on account of non-publication of the inter se seniority list.

11. The respondents have brought to our notice an application filed by one Sri S.P. Sharma, an officer of the IRTS of 1957 Batch before the Principal Bench being O.A. 709/91, wherein he had assailed, inter alia, the instructions contained in the letter dt.8.7.87 laying down the principle for determination of inter se seniority and made a prayer to quash the same. This O.A. was dismissed on 31.10.91 as devoid of any merit. This was disclosed by the respondents in their counter and all that the petitioner had to say about it is to be found in the rejoinder filed by him, wherein he only asserted a denial, which is totally unintelligible.

12. The respondents have referred to a chain of authorities of the Supreme Court to show that in cases involving policy matters as in the present application, the Tribunal ought not to interfere. We do not consider it necessary to dwell on this contention in any detail as there is no doubt that even in policy matters interference is permitted if it is vitiated by arbitrariness, which was precisely the contention of the petitioner. However, as on an objective consideration, we are unable to discover any arbitrariness in the impugned rule and indeed find it based on good reason, no interference by way of striking down the para-2.1.1 of the letter dt.8.7.87, as urged by the petitioner is called for.

13. While arguing all the time in favour of ante-dating the DITS of a late joining senior, Mr. Sen, Ld. Counsel for the petitioner has finally urged that his main grievance was that he was tied to Sri R.K. Puri, although he was not cleared by the Selection Committee as he failed to satisfy the suitability criteria as he had never worked as a Divisional Railway Manager. Mr. Sen has even conceded that if Sri Puri was also selected, the position of the petitioner would be different and his argument would be difficult. Thus, the ultimate stand taken by the petitioner seems to be that his DITS should have been restored to 28.7.62 as Sri Puri was found ineligible for empanelment. We find it difficult to accept this argument at least in the facts and circumstances of the present case. In the first place, in the application itself, the petitioner had raised no such contention and restricted his case only to the supposed unreasonableness of para 2.1.1 of the letter dt.8.7.87, while the contention now under consideration is in substance an argument that para-2.1.1 should not be attracted unless the conundrum referred to in Note-2 actually arises. No such case having been made out in the

application, the respondents had no opportunity to state their reply in this regard and thus it must be held that the present case has not been contested on this footing. It is only in the rejoinder filed by the petitioner to the reply of the private respondents that the petitioner has made out a case that since Sri Puri was not cleared by the Selection Committee, he should lose seniority in terms of the provision contained in para-2.1.2 of the letter dt.8.7.87 compared to that of the applicant. This does not exactly follow from para-2.1.2, which lays down that in case any officer is superseded on ground of suitability by any officer of his own service, he will take a place, which is below that of his erstwhile junior, who has superseded him. This para, therefore, does not provide for restoration of DITS to the officer superseding a senior. At any rate, in the absence of an opportunity to the respondents to contest this position, it would be wrong to uphold the petitioner's contention. It may, however, be pointed out that a similar contention was raised before the Madras Bench in the case of M. Rajan Kutty vs. U.O.I & Ors. - O.A. No.552/96. In that case, it was urged on behalf of the applicant that the concept of notional DITS was an exception to the general approach which should be construed strictly and would come into picture only at the time of integrating the seniority of officers belonging to various services and when the conundrum mentioned in Note-2 of the letter in question arises. This contention was rejected as the instructions in para 2.1.1 become relevant only at the stage for determining the inter se seniority and the consideration of suitability for empanelment comes at a later stage before the Selection Committee. There was no dispute that according to the eligibility criteria, Sri Puri along with officers of other railway services were considered for empanelment for the post of General Manager and equivalent when the

inter se seniority list was already prepared. Therefore, even if subsequently Sri Puri did not satisfy the suitability criteria there could not be any question of restoring the DITS to the petitioner as it might adversely affect the position of officers from other services in the integrated seniority list. We, therefore, do not find any merit in the contention under consideration.

14. For reasons indicated above, the petitioner is not entitled to the relief claimed by him and the application is accordingly dismissed. The MA also does not call for any order and accordingly dismissed. Parties to bear their own costs.

M. S. Mukherjee
17/10/86
(M. S. Mukherjee)
MEMBER (A)

A. K. Chatterjee
17.10.86
(A. K. Chatterjee)
VICE CHAIRMAN