

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 152/91
XXXXXX

1992

DATE OF DECISION 29.06.92

The All India Loco Running Staff Association through its Divisional Secretary, L.Mony & 2 ors. Applicant (s)

Mr. P. Sivan Pillai Advocate for the Applicant (s)

Versus

Union of India through the General Manager, Southern Railway, Madras & 3 others. Respondent (s)

Mrs. Sumathi Dandapani Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P.S. Babeeb Mohamed, Administrative Member

The Hon'ble Mr. N. Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Y*
2. To be referred to the Reporter or not? *Y*
3. Whether their Lordships wish to see the fair copy of the Judgement? *N*
4. To be circulated to all Benches of the Tribunal? *N*

JUDGEMENT

MR. N.DHARMADAN, JUDICIAL MEMBER

The applicants are challenging the policy statement contained in Annexure-A1 regarding the classification of posts on the ground that it is contrary to Rule 404 of the Indian Railway Administration and Finance Code (previously Indian Railway General Code) which lays down the general policy and guidelines of the Railway.

2. The first applicant is an Association registered under the Trade Unions Act, 1926 representing the Loco Running staff of the Indian Railways. Other applicants are Goods Drivers in the grade of Rs.1350-2200. The next promotion of Goods Driver is as Passenger Driver in the

scale of Rs.1600-2660. Originally this was a non-selection post. But in the year 1987 consequent upon the introduction of 4th Pay Commission xxxxxx the Railway Board by Annexure-A1 letter No.E(NG) I-86.PM I-II dated 12.3.1987 reclassified the post of drivers as selection and non-selection. The relevant portion of Annexure-A1 letter is extracted below:

"III. Goods Driver 'C'	330-560	Selection	1350-2200	Selection
Goods Driver 'B'	425-640	Non-Sele-	I(Goods	Driver
		ction		
Pass. Dvr. 'A'	550-700	X		1600-2660 Selection
Motormen		X		(Pass.
Pass.Driver 'A'		X	Selection	Driver -
spl. for Trains		X		All Pass.
250 Km & above	550-750	X		Trains &
				EMU Service
Pass. Driver 'A'	550-750	X	Non-sele-	1640-2900 Non-
Spl. (Super fast, 700-900)		X	ction	(Mail selection
Mail/Exp. Trains)	(SG)	X		Driver-
				Super fast
				Mail & Exp
				Trains) "

According to the applicants the new classification is contrary to Annexure-A2 and A3 Railway Board's letters. On the basis of Annexure-A1 classification, Annexure-A4 call letter was issued on 29.10.90 for holding a selection for the post of Passenger Drivers. The second applicant then filed Annexure-A5 representation praying that the process of selection may be stopped and the post of Passenger Driver may be filled by adopting the method of seniority cum suitability. The third applicant also submitted a similar representation. Pending disposal of the representations the respondents conducted written examination as part of selection process and ten Goods Drivers were selected as per Annexure-A6 letter. Aggrieved by the same the applicants have filed the present application under Section 19 of the Administrative Tribunals Act.

3. Two main contentions made by the applicants are:

- i) that the classification of Passenger Drivers post as Selection is contrary to Rule 404, Chapter IV, of Indian Railway Administration and Finance Code, and
- ii) that the Annexure-A1 is contrary to the policies adopted in Annexure-A2 and A3.

4. Regarding the first contention it is relevant to read Rule 404, Chapter IV, of Indian Railway Administration and Finance Code:

"Rule 404 - Rules have been laid down governing the grade to grade promotions of staff of all categories. Promotions to posts in the lower grades are generally made on the basis of seniority cum suitability and each alternative step on the promotion ladder being, thereafter subjected to selection on merit only"

According to the applicants this is mandatory and this rule contains a policy statement which the railways are bound to follow even after the recommendations of the 4th Pay Commission. At the initial steps in the ladder of promotion where the positions are comparatively with lower and lesser responsibilities and the standard of job performance is comparatively low, the grades are required to be classified as non-selection providing an unhindered and smooth progression in the ladder. The Railway was adopting such a policy so far and this is clear from the guidelines contained in Rule 404. According to us this rule only says that promotions to posts in the lower grade are "generally" made on the basis of seniority cum suitability and each alternative step on the promotion ladder is subject to selection on merits only. This Rule does not give a mandate as contended by the applicants that classification

of posts into selection and non-selection should be adopted as alternative steps on the promotion ladder. The policy for promotion to the post is to be adopted taking into consideration various aspects affecting the same. The respondents in the reply affidavit clearly stated that in 1983 a Commission was appointed to take a decision on the various matters including the promotion of Drivers to higher posts. The Commission contacted the representatives of the various Unions and Associations of the Railway employees and it is after long dialogue with them and the affected parties that they made certain recommendations and the Government adopted the recommendations of the Commission as a sound policy in the public interest. As per the recommendations the post of Passenger Driver has to be classified as selection post. The Railway Board has full power to issue orders of general application to all railway government servants. Pursuant to the issue of policy circular by the Railway Board three selections were conducted for the post of Passenger Driver in the scale of Rs.1600-2660. Nobody has challenged the same. They further submitted that a Passenger Driver requires to be more efficient having better standard of job performance and this is one of the reasons which weighed with the Railway for classifying the post of Passenger Driver as a selection post. In fact the first selection is from Shunters/Diesel Assistants to become Goods Driver as they are coming into the category of Drivers to handle the locomotives. The second selection is from Goods Driver to Passenger Driver which is justified due to the change in quality. If any change in policy

is required, it has to be done by the Railway Board and not at the level of General Manager, Southern Railway.

5. Having considered the contentions of the applicants in the light of the clear statement of the respondents in the reply, we are of the view that the policy statement in Annexure-A1 is neither contrary to the Rule 404 of Indian Railway Administration and Finance Code in its strict sense nor is it against the principle followed by the Railway. This new policy of converting the post of Passenger Driver to a selection post has been duly made by the Railway after accepting the recommendations of the 4th Pay Commission which has ascertained the larger interests of the Railway employees by contacting the representatives of the Unions and Associations of Railway employees. Hence we do not see any merit in the first contention raised by the applicants.

6. The applicants next contention is that Annexure-A1 is contrary to Railway Board's letters Annexure-A2 and A3. Having considered the matter, we are of the view that there is no substance in this contention as well. Annexure-A2 is a letter containing the revised classification of posts consequent on the merger of grades as a result of 4th Pay Commission's recommendations. Even in Annexure-A2 it can be seen that the appointment to the posts of Chief Commercial Clerk, (Goods, Parcel, Luggage, Booking) in the scale of Rs.1600-2660 is being made on a selection basis and the appointment to the next higher grade of Commercial Supervisor (Goods, Parcel, Luggage, Booking) in the scale of Rs.2000-3200 is also being made on a selection basis. It is also seen that two stages of consecutive selections are made applicable in the case of

Reservation Supervisors for promotion to the posts in the scale of Rs.1600-2600, which was a non-selection post earlier. There are other instances also to support the contention of the respondents that even Annexure-A2 does not support the contention of the applicants. Annexure-A3 is also a Railway Board's letter dealing with classification of posts as selection/non-selection in the Family Welfare Organisation. The statements in the Annexure-A3 regarding the classification of posts cannot be relied on for attacking the validity of the policy statement adopted by the Railway in classifying the posts of Goods Drivers and Passenger Drivers as non-selection and selection posts.

7. The applicants have relied on two decisions reported in 'Ram Krishna Dalmia vs. Justice Tendolkar, AIR 1958 SC 538' and 'Kathi Raning vs. State of Saurashtra, AIR 1952 SC 123'. We have gone through these decisions. They are not strictly applicable to the facts of this case. The decision in Ram Krishna Dalmia's case deals with the case of challenge of the notification issued by the Government of India in exercise of the powers conferred in it by Section 3 of the Commission of Enquiry Act, 1952. The contentions urged by the applicants in the instant case are not either considered or decided by the Supreme Court in that case.

8. It is well established principle of law that when the administration has laid down a policy decision dealing with promotion matters of the employees after careful consideration of relevant aspects and consultations with the representatives of the Union of employees and affected parties, it is not proper for the Court or Tribunal

to sit in judgment over the same unless it is established that the policy itself is vitiated by malafide, irrelevant and extraneous considerations. The Supreme Court in *Mallikarnuja Rao vs. State of A.P.*, AIR 1990 SC 1251 observed as follows:-

"11. This Court relying on *Narender Chand Hem Raj v. Lt. Governor, Union Territory, Himachal Pradesh* (1972) 1 SCR 940 : (AIR 1971 SC 2399) and *State of Himachal Pradesh v. A Parent of a Student of Medical College, Simla* (1985) 3 SCC 169; (AIR 1985 SC 910) held in *Asif Hameed v. State of Jammu & Kashmir*, 1989 Suppl (2) SCC 364 : (AIR 1989 SC 1989) as under (Para 19):

'When a State action is challenged, the function of the Court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the Constitution and if not, the court must strike down the action. While doing so the court must remain within its self-imposed limits. The court sits in judgment on the action of a coordinate branch of the Government. While exercising power of judicial review of administrative action, the court is not an appellate authority. The Constitution does not permit the court to direct or advise the executive in matters of policy or to sermonize qua any matter which under the Constitution lies within the sphere of legislature or executive.'

12. The Special Rules have been framed under Art. 309 of the Constitution. The power under Art. 309 of the Constitution to frame rules is the legislative power. This power under the Constitution has to be exercised by the President or the Governor of a State as the case may be. The High Courts or the Administrative Tribunals cannot issue a mandate to the State Government to legislate under Article 309 of the Constitution. The Courts cannot usurp the functions assigned to exercise its rule making power in any manner. The Courts cannot assume to itself a supervisory role over the rule making power of the executive under Article 309 of the Constitution."

9. In the light of the foregoing discussions we are of the view that there is no substance in the application and it is only to be rejected. Accordingly, we dismiss the same. There will be no order as to costs.

N. Dharmadan 29.6.92

(N.DHARMADAN)
JUDICIAL MEMBER

P.S. Habeeb 29.6.92

(P.S.HABEEB MOHAMED)
ADMINISTRATIVE MEMBER

v/-