

23

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.170/95

Monday, this the 22nd day of April, 1996.

C O R A M

HON'BLE MR JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN
HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

....

1. K Sivathanu Pillai, Loco Inspector (Training),
Southern Railway, Nagercoil Railway Station & Post,
Tamil Nadu.
2. P Gopinathan, Loco Inspector (Training),
Southern Railway, Office of the
Senior Divisional Mechanical Engineer,
Trivandrum--14.

....Applicants

By Advocate Shri TC Govinda Swamy.

vs

1. Union of India through the Chairman,
Railway Board (Ex-officio Principal Secretary
to the Ministry of Railways), New Delhi.
2. The General Manager, Southern Railway,
Park Town Post, Madras--3.
3. The Chief Personnel Officer,
Southern Railway, Park Town PO,
Madras--3.
4. Senior Personnel Officer, Southern Railway,
Head Quarters Office, Park Town PO,
Madras--3.
5. The Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum--14.
6. TV Jayarajan, Senior Loco Inspector,
Office of the Divisional Railway Manager,
Tiruchirappalli Division,
Tiruchirappalli.
7. JN Fernandez, Power Controller,
Southern Railway, Divisional Office,
Madurai--10.
8. V Subbarao, Loco Inspector (Fuel),
Tiruchirappalli Divisional Office,
Southern Railway, Tiruchirappalli.

....Respondents

By Advocate Shri Mathews J Nedumpara.

The application having been heard on 17th April, 1996,
the Tribunal delivered the following on 22nd April, 96.

contd.

: 2 :

O R D E RPV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

Applicants were working as Diesel Driver Instructors/Inspectors in the scale of Rs.2000-3200 from various dates in the Southern Railway. While so, Railway Board, by letter dated 25.11.92 (A4), introduced a scheme for filling up the posts of Loco Running Supervisor. Inter alia, it was decided (para 8.2) that the cadres of Loco Inspectors, Power Controllers and Crew Controllers shall stand merged with effect from 1.1.93 and that the seniority of the officials in the merged cadres would be on the basis of the date of regular entry in the respective grade, i.e. Rs.2000-3200 or Rs.2375-3500. A4 also states that the designation of the various posts of Inspectors should be gone into by the Zonal Railways, and the duties being performed should be analysed and redesignation of posts suitably made to fall in line with the duties envisaged for the proposed merged cadre (para 7.1). The letter A4 is stated to have been issued with the approval of the President and with the concurrence of the Finance Directorate of the Ministry of Railways. Following this letter, Southern Railway issued A5 instructions dated 28.12.92 which state that the categories of Diesel Driver Instructors/Inspectors, to which category applicants belong, are redesignated as Loco Inspectors and merged with the category of Loco Inspectors (Para 2.1). A5 also states (Para 5) that the existing regular incumbents of the Diesel Driver Instructors, presently classified as ex-cadre posts, who opt to come over to the new scheme, will be eligible to reckon their seniority in the combined cadre of Loco Inspectors, Crew Controllers and Power Controllers from the date of their regular entry to the post of Diesel Driver Instructors/Inspectors. A provisional seniority list for the merged cadre was accordingly issued on 18.6.93 (A6) which showed first applicant at number one position and second applicant at number five position. A6

contd.

provisional seniority list also shows party respondents 6,7 and 8 below applicants. Applicants had no grievance up to this stage.

2. According to respondent Railway, Loco Running Supervisors who were in the cadre prior to 1.1.93 (persons like party respondents) were aggrieved by their being placed below applicants in the provisional seniority list. They submitted representations similar to R4 and R5. Respondent Railway thereupon reviewed the seniority position and decided that incumbents of the ex-cadre posts like the applicants would be assigned seniority only from 1.1.93 in the cadre of Loco Running Supervisors and instructions were issued on 2.6.94 to that effect (A8), which is challenged in this application. By this process, applicants lost the service rendered by them from various dates as early as 1981 and 1983 and were considered junior to the party respondents. Respondent Railway state that applicants were also given an option either to continue in the cadre post with seniority from 1.1.93 or revert back to the parent cadre. According to respondent Railway, some of the employees who were similarly placed as applicants, have opted to revert to the parent cadre or to continue as Supervisors with seniority from 1.1.93. Since applicants had not exercised their option, they were treated as having opted to remain in the cadre of Loco Running Supervisor with seniority from 1.1.93. Following the revised seniority, party respondents were promoted to higher scale by A11 order dated 30.6.94 and certain duties were allocated to them by A12 letter dated 5.7.94. Applicants challenge these two orders. Applicants represented against A8, A11 and A12 and by letter dated 18.8.94 (A13), applicants were informed that "as per extant orders, seniority in cadre posts can be reckoned only taking into account the service rendered in that post and service rendered in ex-cadre post in identical scale of pay

contd.

will not count for seniority". Respondent Railway also stated that the ex-cadre posts of Diesel Driver Instructor and the posts of Loco Running Supervisor were filled up by separate selection processes with different syllabus for the written tests and, therefore, the request of applicants to give them seniority with effect from the date they entered the grade of Rs.2000-3200 on a regular basis could not be accepted. Applicants challenge A13 letter.

3. Applicants have advanced three main grounds challenging the impugned orders. According to them, A4 orders having been issued by the Railway Board in exercise of its powers under para 123 of Indian Railway Establishment Code Vol I (IREC), the Southern Railway has no powers to depart from the provisions of A4, vary it and issue orders A8. Applicants contend that the powers of General Managers to issue orders are limited to those instances in para 124 of IREC.

4. The second ground advanced by applicants is that they cannot revert to the running cadre since such reversion would amount to a reduction in rank and it cannot be done except as a punishment after duly following legal provisions. Applicants have a further ground that their seniority has been adversely affected by the impugned order A8 without giving them notice.

5. Paragraphs 123 and 124 of IREC state:

"123. The Railway Board have full powers to make rules of general application to Group C & Group D railway servants under their control.

124. The General Managers of Indian Railways have full powers to make rules with regard to Railway servants in Group C & D under their

control provided they are not inconsistent with any made by the President or the Ministry of Railways."

[Emphasis added]

6. Learned counsel for applicants referred to BS Vadera vs Union of India and others, AIR 1969 SC 118, to show that the IREC has been issued by the President in exercise of his powers under the proviso to Article 309 of the Constitution of India and that under Rule 157, the President has permitted Railway Board to make rules of general application to non-gazetted railway servants under their control. The Apex Court in the above case has stated that the rules which are embodied in the Schemes framed by the Board are within the powers conferred under rule 157 and in the absence of any Act having been passed by the appropriate Legislature on the said matter, the rules framed by the Railway Board will have full effect (para 25). It is also stated that the rules framed by an appropriate authority must be in force unless they are impeached on ground of breach of Part III or any of the Constitutional provisions (para 24). Rule 157 referred to in the case cited is the same as the present Para 123 except that the words "non-gazetted railway servants" have been replaced by "Group C and Group D railway servants". It is clear from pleadings that A4 has the status of a rule of general application issued under para 123 of IREC and, therefore, they have to be enforced. According to para 124 of IREC, General Managers can make rules with regard to railway servants in Group C and D categories only to the extent that they are not inconsistent with any rule made by the President or the Ministry of Railways. We may, therefore, examine whether the impugned order A8, is consistent with A4.

contd.

7. According to respondent Railway, A8 was issued on the basis (as seen from A13) that:

"As per extant orders the seniority in cadre post can be reckoned only taking into account the service rendered in that post and service rendered in an ex-cadre post in an identical scale of pay will not count for seniority."

It is, however, seen from A4 that it over-rides the extant instructions. Para 10 of A4 states:

"All other relevant extant instructions which have not been modified by the above provisions would continue to apply."

[Emphasis added]

The question of seniority in the merged cadre is one of the matters in A4 and according to A4, the seniority in the merged cadre will be on the basis of date of regular entry in the grade of Rs.2000-3200. This provision would, therefore, have over-riding effect over the general provisions on which A13 relies. Therefore, impugned orders A8 to the extent that seniority is fixed not with reference to the date of regular entry in the grade of Rs.2000-3200, but on the basis of entry into the cadre on 1.1.93 is inconsistent with A4 issued by the Railway Board. According to para 124 of IREC, the impugned order is, therefore, without jurisdiction and is liable to be quashed. It is pertinent to notice that in the reply statement of respondent Railway, they have stated:

"The seniority list notified on 18.6.93....(was) taking into account the service rendered by them

contd.

in the ex-cadre posts prior to 1.1.93 as per
the principles of seniority notified on 28.12.92."

[Emphasis added]

In other words, respondent Railway states that the provisional seniority list A6 is the one which is in accordance with A4 orders. This amounts to saying that A8 is not in accordance with A4 order. It is further stated in the reply that the service rendered by persons in a former post in a different cadre cannot be counted for seniority in a different post with different duty list to which post he is appointed from a later date. This is clearly incorrect, since the orders issued in pursuance of A5 instructions state that the categories of Diesel Driver Instructors/Inspectors are redesignated as Loco Inspectors and merged with the cadre of Loco Inspectors. It is, therefore, clear that this is not a new appointment to a post as contended by the respondent Railway. Applicants had not specifically referred to paragraphs 123 and 124 of IREC in their pleadings, though they had made statements that the impugned order A8 is ultra vires of A4. Respondent Railway had not referred to this aspect in their reply statement. Hence, we specifically asked learned counsel for Railways to make his stand known on this question of law. Learned counsel for Railways stated that he had no answer to this contention. In the light of the discussion, it is clear that the impugned orders A8 and A13 cannot be sustained.

8. The second contention of applicants that the option given by A8 of reversion to running cadre would imply a reduction in rank, has also not been answered specifically in the reply statement. Accordingly, learned counsel for Railways was specifically asked by us whether he had any reply to this contention on a point of law. Learned counsel had no answer.

contd.

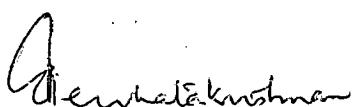
9. The third contention of applicants that their seniority was adversely affected without due notice to them has also not been met in the reply statement.

10. Learned counsel for applicants also cited Tej Narain Tiwary vs State of Bihar and others, 1993 SCC (L&S) 869, to show that when an ex-cadre post is amalgamated with a cadre post, the benefit of past service is admissible. In this case, since such a benefit has already been given by the orders of the Railway Board (A4), it is not necessary to rely on this decision of the Supreme Court.

11. In the light of the discussion, it is clear that the impugned orders A8 and A13 and consequential orders of promotion A11 and A12 cannot be sustained. We accordingly quash A8, A11, A12 and A13.

12. Application is allowed. No costs.

Dated the 22nd April, 1996.


PV VENKATAKRISHNAN
ADMINISTRATIVE MEMBER


CHETTUR SANKARAN NAIR (J)
VICE CHAIRMAN

LIST OF ANNEXURES

1. Annexure A4: A true copy of the Railway Board decision communicated un No. E(P&A)11/83 Ra.10(IV) of 25.11.92 dealing with the question of enca encaderisation and filling up the vacancies of Loco Inspectors, power Controllers, crew Controllers etc.
2. Annexure A5: A true copy of the chief personnel officer (3rd respondent) letter No. P(S) 529/IV/LRS/93 dated 28.12.92, communicating the Annexure A4.
3. Annexure A6: A true copy of the seniority list of Loco Running Supervisors published by the 3rd respondent under No:P(S)612/IV/LRS Vol.2 of 18.6.93.
4. Annexure A8: A true copy of the letter No:P(S) 612/IV/LRS/Vol.2 of 2.6.94 issued by the third respondent revising the principle of assigning interse seniority.
5. Annexure A11: A true copy of the order No:P(S)535/IV/LRS/11 dated 30.6.94 issued by the fourth respondent promoting the applicants' juniors.
6. Annexure A12: A true copy of the letter No.P(S)535/IV/LRS/11 of 5.7.94 issued by the fourth respondent directing the juniors-respondent 7 & 8 to perform the duties of Loco Inspector(Training)
7. Annexure A13: A true copy of the letter No. P(S)612/IV/LRS/ Vol.2 of 18.8.94 issued by the 3rd respondent, rejecting the claim of the applicants.

.....