

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

PATNA BENCH : PATNA

Date of Decision:- 10.12.2001

Registration No. OA- 361 of 1996

1. Ganesh Kumar Biswas, son of late R.M.Biswas, at present posted as Senior Ticket Collector, Samastipur.
2. Ram Sanjeewan Rai, Son of late Sri Jag Bahadur Rai, at present posted as Senior Ticket Collector, Samastipur.
3. Gulab Singh, son of late Nanak Singh, at present posted as Senior Ticket Collector, Samastipur.
4. Om Prakash Narain Gupta, son of Sri Charitar Prasad, at present posted as Senior Ticket Collector, Samastipur.
5. Uma Shankar Upadhyay, son of Late Satanand Upadhyay, at present posted as Senior Ticket Collector, Samastipur.
6. Gulab Thakur, son of late Nand Lal Thakur, at present posted as Senior Ticket Collector, Samastipur.
7. Ram Paravesh Mistry, son of Late Jagdish Prasad, at present posted as Senior Ticket Collector, Samastipur.
8. Kailash Bihari Rajak, son of Sri Ram Raji Rajak, at present posted as Senior Ticket Collector, Samastipur.
9. Gulam Rabbani, son of Late Md. Yunus at present posted as Senior Ticket Collector, Samastipur.
10. Ashutosh Kumar Singh, son of Late Rameshwar Singh, at present posted as Senior Ticket Collector, Samastipur.

11. Laxmi Narayan Paswan, Son of Mathuri Paswan,
at present posted at Rosra as Senior T.C.

12. Vinal Kumar Gupta, Son of Late Prem Lal,
at present posted as Senior T.C. Raxaul.

..... Applicants

- By Shri Amit Srivastava, Advocate

Versus

1. Union of India through General Manager, North
Eastern Railways, Gorakhpur.

2. General Manager, North Eastern Railways,
Gorakhpur.

3. Chief Personnel Officer, North Eastern
Railway, Gorakhpur.

4. Divisional Railways Manager,
North Eastern Railways, Samastipur Division,
Samastipur.

5. Divisional Railways Manager (P), North Eastern
Railways, Samastipur Division, Samastipur.

... Respondents

By Shri P.K.Verma, Advocate

Coram:- Hon'ble Shri Lakshman Jha, Member (Judicial)

Hon'ble Shri L. Hmingliana, Member (Administrative)

ORDER

Hon'ble Shri Lakshman Jha, Member (J):-

1. The applicant has prayed for setting aside the Notification No.254 dated 16.2.96 and Notification No.E.254 dated 5.7.96, contained in Annexures-A-1 and A-2 respectively, whereby the juniors to the applicants have been allowed to appear in the written test for selection to

the post of Travelling Train Ticket Examiner, Grade A, and the result of their written test had been published. Further prayer has also been made for direction to the respondents to prepare a combined seniority list of Ticket Collectors and Travelling Ticket Examiners on the basis of their entry into the service by treating 1.1.1984 as cut-off date in the Samastipur Division as is said to have been followed in other Divisions of North Eastern Railway and to fill up the superior posts on the basis of the combined seniority list as to give proper effect to the restructuring scheme on the line it has been so implemented in the other Divisions of N.E. Railway.

2. ~~The~~ applicants were initially appointed as Ticket Collectors on the dates as mentioned in the notifications as at Annexure-A-3 series, in the pay scale of Rs. 260-400/-, revised Rs. 950-1500. According to old AVC, they had two separate channels of promotion. The Ticket Collectors, who opted to work in the TTE side, were designated as "leave reserve Ticket Collectors" (LRTC) and their next avenue of promotion by seniority was in the pay scale of Rs. 350-550/-, revised Rs. 1200-2050, and then as TTE Grade 'A' in the pay scale of Rs. 425-560 (old), revised Rs. 1400-2300 by selection. Those Ticket Collectors, who did not give options, their next promotional avenues were to the grade of Sr. Ticket Collectors in the pay scale of Rs. 330-560/- (old), revised Rs. 1200-2040/-, and then as Head Ticket Collectors in the scale of Rs. 425-650 (old), revised Rs. 1400-2300/- by selection. The next promotion to the grade of Divisional Ticket Inspectors

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on the T.C. side and the Divisional Travelling Ticket Collector on the TTE side were on the basis of merger of the posts and through a combined seniority list on the basis of selection.

3. It is stated that the General Manager of North Eastern Railway after considering the view of the Union, and also, in the light of Railway Board's letter dated 25.8.84, brought changes in the avenue of the aforesaid promotions of the Ticket Collectors and the Travelling Ticket Commissioner in the following manners:-

(i) With effect from 1.12.84, there was to be a combined cadre of TC & TTE. All the new entrants and those working on the initial post of TC would be utilised for TTE, out of them, those who are working in the train would be seniors and the juniors at the stations;

(ii) Those T.Cs. i.e. working in the initial grade, who had given their options to avail either TC or TTE channel, have not been promoted following such options, would be of no use and their options shall be cancelled;

(iii) Those who availed their options i.e. being promoted to the subsequent higher grade, shall not be disturbed and for them the old AVC will continue. However, there would be no merger at the intermediate point of Rs.550-750 and ^{RS.700-900/-} \angle

and those promoted in the different channels shall get subsequent promotions by treating two channels completely independent for them only till they are exhausted;

- (iv) The combined cadre scheme was to be implemented from 1.12.84, meaning thereby that all those, who have availed of any promotion in any channel prior to this date, would be treated independently in their respective channel.

(vide Annexure-A-4).

Subsequently a supplementary circular was issued on 17.5.85, according to which, in place of 1.12.84, the cut-off date as 31.12.83, was introduced i.e. all those, who had availed the options and promoted to the higher grade in their respective channels would continue to get further promotion by treating their channels to be independent. Secondly, according to the supplementary order the combined cadres of TC and TTE was to come into effect from 1.1.84, and not on 1.12.84, and the combined seniority had to be made from the date itself of both TC and TTE and resultant promotions given on the said seniority. Thus, 1.1.84 becoming the new cut-off date from which the combined seniority of TCS and TTES was to be prepared for all future promotions. It is stated that the Railway Administration accepted and acted upon this cut-off date as the Railway Administration itself took the stand in its W.S. filed in OA-170/1989 as at Annexure-A-6. The Divisional Railway Manager, Varanasi issued order

No.971 dated 30.4.90 (Annexure-A-7) which shows that the combined seniority list was made effective from 1.1.84. The Divisional Railway Manager (P), Sonapur, also issued Office Order No.160 dated 12.1.90, which would show that the combined cadre scheme was implemented with effect from 1.1.84. However, the Samastipur Divisional, North Eastern Railway, did not implement the new scheme of combined seniority list with effect from 1.1.84, nor cancelled the options of those who had ^{not} been promoted till 31.12.83. The applicants were never asked for exercising options before introduction of the new AVC with effect from 1.1.84. They had been working as Ticket Collector, as on 31.12.83, and had not been promoted to any higher rank before 1.1.84. Therefore, they became subject to the new Scheme and entitled for placement in the combined seniority list.

4. It is stated that the applicant, along with others, were promoted to the next higher rank of Senior Ticket Collector after 1.1.84, in consequence of restructuring of Group 'C' of the commercial department, vide Annexures-A-9, A-9a, A-9b & A-9c. The candidates, who had been declared successful in the written examination, vide Annexure-A-2, are juniors to the applicant, as Ticket Collectors. The combined seniority list of Ticket Collector, as on 1.4.87, would show that those who have been declared successful in the written test vide Annexure-A-2, are very much junior to the applicants as

~~vide~~ Annexure-A-11. The Respondents - Department in place of a combined seniority list, maintained a separate list for Senior Ticket Collectors and TTEs as on 10.4.90, vide Annexure-A-12. The applicant filed representation vide Annexure-A-13 series, but of no avail. In the meantime, the impugned notifications were issued and the applicant took up the matter by filing a representation vide Annexure-A-14. It is stated that in view of the cadre having become combined with effect from 1.1.84, the applicants have right to be considered for promotion to the rank of TTE Grade A, and only those who have been promoted on 31.12.83, are to be treated as a separate class. The only Samastipur Division has taken 31.12.84, as the cut-off date for treating separately the AVC for Senior T.C. and TTE resulting in the applicants being debarred from participating in the selection test for promotion to the rank of TTE Grade A. Hence the O.A.

5. The Respondents Railway have filed written statement resisting the claim of the applicants on the ground of limitation as well as on merit. It is stated that the OA is hit by law of limitation as the cause of action arose in the year 1985, i.e. 10 years back. Similar written tests, as has been impugned for selection to the promotions to the grade of TTE Grade A, had earlier taken place in 1987, 1989, 1990 and 1992 without any objection. Therefore, the OA is barred by limitation.

6. On merit, it is admitted that there were two channels of promotions to the post of the Ticket Collectors upto the grade of Rs. 425-500, Revised Rs. 1400-2300. At the grade of Rs. 425-640, both the cadre merged into one combined cadre for promotion to the post of Chief Ticket Collectors or Senior Travelling Inspectors in the grade of Rs. 550-750, revised Rs. 1,600-2660, and then as Chief TTI/CIT in the grade of Rs. 700-900/-, revised Rs. 2000-3200. There was no direct appointment as TTE and the T.Cs. were required to give options for appointment as TTE with their avenues of promotions as stated above. The applicants never opted for TTE grade and, therefore, they were given promotion in the grade of Sr. T.C. scale Rs. 330-540/- in their own cadre. However, with effect from 1.12.84, the G.M. (P), N.E. Railway, issued letter dated 20.11.84, whereby a common cadre for the TC and TTEs was required to be prepared in the case of new entrants as well as of those working in the initial grade of Rs. 260-400 on the T.C. side. The seniority for those, who have already been promoted in accordance with old AVC were maintained in their cadre/advancement upto the grade of Rs. 700-900/- i.e. there was no merger for them at any intermediate grade. The aforesaid letter of the G.M. was further supplemented by another letter issued by G.M. (P) dated 17.5.1985 (Annexure-A-5 and by G.M. (P),

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N.E.Railway, Gorakhpur's letter dated 24.9.92, (Annexure-R-1). It is stated that at present the Rules, instructions as contained in Annexure-R-1, is applicable for conducting the selection test for the posts of TTEs Grade A, scale Rs.1400-2300/- from amongst eligible TTE grade, scale Rs.1200-2040 and not from amongst Sr. TC grade (Rs.1200-2040). The applicants were promoted as Sr. T.C. with effect from 1.1.84, i.e. before 30.11.84, and, therefore, they are not covered by the instructions/rules for combined cadre as per the new AVCS which is enforceable with effect from 1.12.84, and not from 1.1.84 vide Annexure-R-2. Thus, the TCs, who were promoted to the grade of Sr. T.C. in T.C. Group on or before 30.11.84, would have separate cadre for T.C. from the lowest to the highest grade. However, the supplementary directions dated 17.5.85 for promotion were required to be effected from 1.1.84 on the cadre position as on 31.12.83 as was also clarified by the General Manager (P), N.E.Railway, Gorakhpur's letter dated 24.9.92 (Annexure-R-2).

7. It is further stated that the Samastipur Division of the N.E.Railway correctly implemented the letter of the G.M. dated 21.11.84, (Annexure-A-4) the supplementary letter dated 17.5.85 (Annexure-A-5) and letter dated 24.9.92 (Annexure-R-1) with effect from 1.12.84, from which date, the combined seniority list is enforceable. The Samastipur Division has no concern with the other Divisions. Thus, it is said that the applicants were promoted to the posts of

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Sr. T.C. prior to 30.11.84, and they are to be under separate cadre of T.C., and, therefore, are not entitled for promotion to the grade of TTE Grade A. The applicants were promoted as Sr. T.C., along with others, under restructure of cadres vide annexures-9a, 9b and 9c with effect from 1.1.84 (except Gulal Thakur who was promoted to Sr. T.C. from 4.4.84 on the basis of cadre policy of TC as on 31.12.83. So, the applicant would be promoted to the grade of Head T.C. by selection according to old AVC. The seniority list dated 1.4.87, is not a combined seniority list of TTE and TC rather a combined seniority list of TC was published as on 1.4.90. The demand of the applicant to publish a combined seniority list of TC & TTE is not correct as per revised AVC. The written test of the eligible TTEs for promotion to the grade of TTEs Grade A has already been held on 23.3.96, and 6.4.96 and viva voce test was held on 27.7.96, and 26.7.96. There is nothing left except the publication of the result.

8. Heard Shri Amit Srivastava, counsel for the applicants and Shri P.K.Verma, counsel for the respondents and perused the record carefully.

9. The only point for consideration is as to whether the revised AVC for promotions to the posts of TTEs grade A (Scale Rs .1400-2300)

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is applicable on the basis of the combined seniority list of the Ticket Collectors and TTEs with effect from 1.1.84 or 1.12.84, in respect of the applicants.

10. It is admitted position that the applicants were initially appointed as Ticket Collectors in the pay scale of Rs. 260-400 (Revised Rs. 950-1500). It is also admitted that they did not opt to work in the TTE side and there were two channels of promotions. The TCs who opted for TTE side were next promoted to the scale of Rs. 330-550 (Revised Rs. 1200-2050) and then 'A' TTE Grade in the scale of Rs. 425-650 (Revised Rs. 1400-2300) by selection. The Railway Administration took a policy decision of doing away with the aforesaid 2 channels of promotion of the TC and to form a combined cadre for their advancement on the basis of seniority vide circular letter dated 20/21.11.1984 as at Annexure-A-4. The relevant part is extracted as below:-

At the present moment upto the scale of Rs. 425-640, the TTEs cadre and the TCs cadre are separate. The merger is taking place at Rs. 550-750 grade and thereafter Rs. 700-900 grade is a selection post for the combined cadre.

For the Commercial purposes, the work of the Ticket Collectors and the TTEs are same in content. So, both the cadres will henceforth be a combined cadre. All the new entrants and those who are now working on the initial grade of

RS. 260-400 on the T.C. side and LR T.C. side, will be utilised henceforth to TTEs side on the basis of seniority ~~i.e. the seniors~~ will work on the line, and juniors at stationary posts. The options so far taken from people to work as TTEs and not yet promoted, should also be cancelled and they will all be put on a ~~common~~ Pool."

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It further says/ order to protect the interest of people who have already been promoted from the initial grade to the higher grades on the basis of separate avenue of promotion. The avenues of the TC's cadre and TTEs cadre from grades Rs.330-560 right upto 700-900 will be independent for promotion and there will be no merge of the two cadres at any intermediate point i.e. Rs. 550-750 or Rs.700-800 over a period of time, the existing incumbents of a separate cadre will run out of the system and the combines cadre will get stabilised at each level of promotion.

In principle the combined cadre scheme as described above will be brought into effect from 1.12.84.

Board can also be informed that on this we Railway/ have decided on a combined cadre and we are implementing it from 1.12.84.

In view of the aforesaid said GM's decision we have informed the Railway Board that we will act as per GM's decision from 1.12.84."

11. Thus, according to this policy decision the category of Ticket Collectors and TTEs were required to be combined into a single cadre to be effective from 1.12.84. It was considered that this combined cadre could ~~help~~ in equalising the chances of promotion of the TCs. However, subsequently, the Railway Administration brought a supplementary order regarding the AVC of Ticket Checking staff vide letter dated 17.5.1985, as at Annexure-A-5 in the following manners:-

"The Group in which TCs and TTEs were working on 31.12.83 would be the deciding factor in regard to their further advancement. They would continue in the category in which they are working but would be adjusted in their own category in future vacancies."

Thus, according to this supplementary order of the Railway Administration, ~~31.12.83~~ was the date fixed for deciding in regard to their further advancement. It appears from Annexure-R-1, which is circular letter dated 24.9.92 that the Railway Administration came with further clarification regarding the AVC of Ticket and checking cadre, according to ~~this~~ also, the position, obtaining of the staff as ~~and~~ on 31.12.83, were required to be maintained for their further advancement in higher grade.

11. The relevant part of the circular (Annexure-R-1) is as follows:-

... "So, with a view to implement the revised AVC, it was decided that the position

of the staff as obtaining on 31.12.83, i.e. those who have opted for TTE cadre and those who are maintaining their original cadre as TC, should be maintained for the purpose of their further advancement to higher grade posts received as a result of restructuring applicable from 1.1.84. It means that the staff who ~~had opted~~ for the category of TTE on the basis of position obtaining on 31.12.83 will seek advancement in the category of TTE and those retaining their original cadre of TC will seek advancement in the category of TC. The higher grade posts in scale Rs.1200-2040 and above would be filled up in the above manner and such staff who will not get promotion in any of the category i.e. TTE or Sr. TC etc. and continue to remain as TC upto 30.11.84 will seek their further advancement along with the new entrants in the combined cadre of TTE & TC brought into force w.e.f. 1.12.84."

12. From the aforesaid circular letter of the Respondents Railway Department it appears that the policy of combined cadre for promotion of the T.C. and TTE was introduced on the position as it was obtaining on 31.12.83, i.e. to say, the TCs who could not be promoted on this date to any higher grade were to seek their advancement as per the revised AVC.

13. The learned counsel for the applicants contended that the applicants were promoted to the grade of Sr. T.C. in the scale of Rs. 330-550 (Revised Rs.1200-2050) under restructuring scheme itself with

effect from 1.1.84 vide Office Orders dated 5.7.87, 7.7.1984 and 12.6.84 as at Annexures-9, 9A, 9B and 9C respectively. Therefore, they are entitled to avail all the new avenue of promotion on the basis of combined cadre position as on 1.1.84. He further contended that 1.1.84 is the date which has been taken as the date for implementing the combined seniority list of TCS & TTEs for promotion to the higher grade ~~in~~ other Divisions, i.e. Sonapur Division and Varanasi Division of the N.E. Railway. This position is not denied by the Respondents Railway in their counter. It is simply stated in this connection that the Samastipur Division is not concerned with the order of the other Divisions. The contention of the learned counsel for the applicants appears quite sound and reasonable.

14. In the next place, the learned counsel for the applicants contended that the applicants are seniors to those who have been allowed to appear in the impugned selection test in the initial cadre of the T.C. They are in the same pay scale of Rs. 330-550/- (Revised Rs. 1200-2050) and, therefore, in conformity with the policy decision of combined cadre, the applicant, should be allowed to participate in the selection test for promotion to the grade of TTE Grade A, otherwise their future avenue of promotion ~~would~~ ^{remain} sealed, and the juniors would always sit over their heads and thereby, the policy of combined cadre decision ~~will~~ be frustrated. It is also against the principle of natural justice and service jurisprudence.

The contention of the learned counsel for the applicants appears weighty and acceptable.

15. The learned counsel for the Respondents Railway seriously challenged the maintainability of the OA on the ground of limitation. He contended that the original policy decision was required to be implemented with effect from 1.12.84, and subsequent to that selection tests for promotion to the grade of TTEs Grade A, was held in the years 1987, 1989, 1990 and 1992, without any objection from any corner. The promotions on the basis of the combined cadre of seniority as on 1.12.84, are being made on the basis of the revised AVC. The settled position would be unsettled if the cut-off date - 1.1.84 for the combined cadre policy is required to be implemented.

16. The learned counsel for the applicants in reply submitted that in the aforesaid selection tests, the incumbents, who participated were not junior to the applicants. They (the applicants) had not cause of action. In the impugned selection test, the juniors to the applicants have, admittedly, been allowed to appear for promotion to the grade of TTEs Grade A, on the basis of old separate AVC which is detrimental to the interest of the applicants, and is also against the policy decision of combined cadre. The applicants would have continued wrong, and the result of the selection test has not seen the light of the day as yet. We feel persuaded to accept the contention of the learned counsel for the applicants on this score also, and are of opinion that

the OA is not hit by limitation in the facts and circumstances of the case.

17. In view of the aforesaid discussions of the factual position and in the interest of substantial justice, equity and fair play, we hereby dispose of this OA with the following directions to the respondents:-

(i) The Respondents shall prepare a combined seniority list of the T.C.s and TTEs on the basis of the position as obtaining on 31.12.83, and fill up the superior posts on the basis of such combined seniority list treating 1.1.84 as cut-off date;

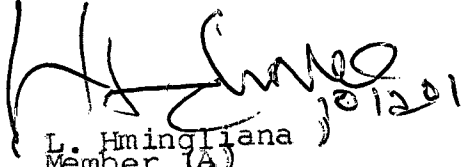
(ii) The applicants, if within the consideration zone as per their seniority on the basis of such combined seniority list, would be allowed to take selection test for promotion to the posts of TTEs Grade A as absentees;

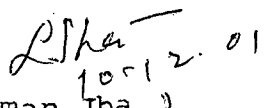
(iii) The penal for promotion to the grade of TTEs Grade A against the vacancies would be prepared on the basis of the selection test of the applicants, along with the incumbents who have already taken selection test, vide the impugned notifications as at Annexures-A-1 & A-2;

(iv) The above exercises shall be carried out within four months from the date of communication of this order.

17. The OA is, accordingly, disposed of with the directions as above. No costs.

SKS


L. Hminglana
Member (A)


(Lakshman Jha)
Member (J)