

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~NEW DELHI~~
NEW BOMBAY BENCH

O.A. No. 198

T.A. No. 235 of 1987

DATE OF DECISION 1.11.1988

Shri Suresh M. Godbole Petitioner

Shri S.V.Gole Advocate for the Petitioner(s)

Versus

Union of India & Others. Respondent

Shri S.K.Sanyal Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.B.Mujumdar, Member(J)

The Hon'ble Mr. P.S.Chaudhuri, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement? *X*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CIRCUIT SITTINGS AT NAGPUR

Tr. Application No. 235 of 1987

1. Shri Suresh Monohar Godbole,
Residing at C/o Shri A.S. Pathak,
'Diwakar Prakash', Shradhanandpeth,
Nagpur-22.
2. Shri Vishwanath Krishnamurti Iyer,
Residing at Railway Quarter,
M.S.R.B. II, 519-A, Ajni,
Nagpur.

.. Applicants

V/s.

1. The Union of India, through
General Manager,
Central Railway,
Bombay V.T.
2. Divisional Railway Manager,
Central Railway,
Nagpur.
3. Chief Personal Officer (T. & C),
Office of the General Manager,
Central Railway,
Bombay V.T.

.. Respondents

Coram: Hon'ble Member (J), Shri M.B. Mujumdar
Hon'ble Member (A), Shri P.S. Chaudhuri

Appearance:

1. Shri S.V. Gole
advocate
for the applicants
2. Shri S.K. Sanyal
advocate
for the respondents.


ORAL JUDGMENT:-

{Per: Shri M.B. Mujumdar, Member (J)}

Dated: 1.11.1988

Writ Petition No. 640 of 1982 filed in the
Nagpur Bench of the Bombay High Court is transferred to
this Tribunal under Section 29 of The Administrative
Tribunals Act, 1985 and here it is numbered as Transferred
Application No. 235 of 1987.

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2. The relevant facts for the purpose of this judgment are these: In 1970 and 1971 the applicants were promoted as Drivers Grade 'C'. By an order dt. 4.10.1978 they were promoted as Power Controllers. In 1981 they submitted applications for posting them as Drivers in equivalent grade i.e. Driver Gr. 'A' Special. The Divisional Railway Manager (Personnel), Nagpur sent separate but similar replies to the applicants on 30.9.1981 which read as follows:-

".....Reference to your application cited above, it is stated that your request for transfer to running side can be entertained provided you produce a declaration that you will not claim protection of seniority in the higher grade, in case your juniors have already been promoted to the higher grade. You will be promoted in the 1st vacancy and your rank will be junior to all those who have already promoted earlier and you will abide by the administrative decision to fix up your pay in the post to which you would be reverted.

Please note that you are regularly promoted as P00R from 4.10.78 as such, the period of promotion is more than one year and after a period of 1 year normally your request can not be accepted.

However, if you press for it, you will be posted as Driver 'C' (not driver A spl.) without protection of seniority and if you agree to this you should give the declaration as mentioned above.."

3. The applicants' grievance is regarding the last para of the reply. According to them the scale of Power Controller then was Rs. 330-425 and the scale of Driver Grade 'A' then was ~~also~~ the same and hence they should have been allowed to go back as Driver Grade 'A'. After making a number of representations they filed the present Writ Petition on 22.3.1982. Their main prayer is for quashing the reply dated 30.9.1981 quoted above and

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consequently for allowing them to return to their present cadre of Drivers in the equivalent posts in operation now, viz., Driver Grade 'A' Special.

4. The respondents have resisted the application by filing their reply. We have heard Mr.S.V.Gole, learned advocate for the applicants and Mr.S.K.Sanyal, learned advocate for the respondents.

5. Mr.Gole contended that the avenue of promotions for Drivers and Power Controllers indicated in para 129 of the Indian Railway Establishment Manual showed that Driver Grade 'C', Driver Grade 'B' and Driver Grade 'A' were all eligible for promotion to the higher post of the Power Controller. It was his contention that in terms of para 219 of the said Manual, a Railway Servant selected for a higher grade selection post, viz., in this case Power Controller, without having been selected in the intermediate grade selection post, viz. in this case Driver Grade 'A', should be treated as having been automatically selected for the latter post. It was his contention that the intermediate grade selection post for which the applicants should be treated as automatically selected was that of Driver Grade 'B' and Driver Grade 'A' and now also Driver Grade 'A' Special. Hence, according to him, the applicants should have been allowed to be reverted to the post of Driver Grade 'A' Special, which is created in 1976 and which is a higher post than Driver Grade 'A'. But in our opinion, the applicants contention is not sound and is not consistent with para 219 of the Indian Railway Establishment Manual.

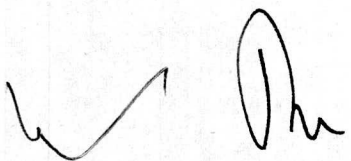
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6. The first point is that the basic avenue of promotion that has been delineated in para 219 is that of Drivers. The avenue of promotion via Power Controllers is an auxiliary and alternate avenue albeit confined only to Drivers. It is not as if selection of Power Controllers has to be made from amongst Drivers Grade 'A' only and that Drivers Grade 'C' have to move through the avenue of Drivers Grade 'B' and Drivers Grade 'A' before they can be considered for selection as Power Controllers. For this auxiliary channel(viz. Power Controllers) Drivers in all the three grades, viz. Grades 'A', 'B' and 'C', can all compete and selection will be made from amongst them all. Thus, whilst selection of a Driver Grade 'C' directly as a Driver Grade 'A' would have entitled that Driver Grade 'C' for automatic selection in the intermediate grade of Driver Grade 'B', selection of a Driver Grade 'C' as a Power Controller does not result in his automatic selection in the grades of Driver Grade 'B' and Driver Grade 'A'.

7. Secondly, the instructions given in the letter of Chief Personnel Officer (Transportation) dated 2.2.1962 are more relevant and useful in this case. According to instruction No.1 in that letter when an employee desires to go back to the former post to suit his own convenience, his request for going back to the parent cadre within a period of one year may be agreed to without loss of seniority in his original cadre. This instruction does not help the applicants before us because the applicants were appointed as Power Controllers in 1978 and it was only in 1981 that they submitted applications

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for going back to the running line. It is instruction No.2 in that letter that is, however, relevant in this case and it reads as under:-

"....Request from staff to be sent back their parent cadre after one year will not ordinarily be entertained. If the employee presses for the acceptance of his request, this may be done but the employee should not be given the protection of seniority in the higher cadre. He should be promoted in the first vacancy but should be considered junior to all who had been promoted earlier to him...."

8. We find that the last paragraph in the reply of the respondents dated 30.9.1981 is fully consistent with the above instruction. We may point out that the applicants had no grievance regarding the earlier contents of the said reply. Their objection is to the last paragraph which says that if they pressed for going back to their parent cadre then they will be posted as Driver Grade 'C' and not as Driver Grade 'A' Special, without protection of seniority. We do not find anything wrong in the above direction.

9. Mr.Gole, learned advocate for the applicants also relied on a judgment of the Madras Bench of this Tribunal in R.Janardhanan V. Union of India and Others, A.T.R. 1986 C.A.T. 134. It is held in that case that when an employee has gone on transfer to another cadre temporarily it was his inalienable right to ask for reversion to his substantive post. It is true that the applicants have not been confirmed as Power Controllers. But the ratio of that judgment will not

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help the applicants before us because the applicants were not transferred temporarily as Power Controllers. They were so transferred as a result of their own option to appear for a selection for this auxiliary avenue of promotion.

10. In result we find no merit in the application and hence dismiss it with no order as to costs.



(P.S. Chaudhuri)
Member(A)



(M.B. Mujumdar)
Member(J)