

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No.

258/1989

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~~Traxxxx~~ No.DATE OF DECISION 19.1.1990

Shri Harsuprasad V. Mishra Petitioner

Shri M.M. Sudame, Advocate for the Petitioner(s)

Versus

Divisional Commercial Superintendent, S.E. Rly, Nagpur.

Respondent

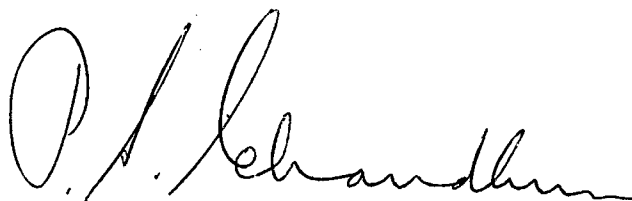
Sgt. Indira Bodade. Advocate for the Respondent(s)

CORAM

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

The Hon'ble Mr.

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


(P.S. CHAUDHURI)
MEMBER (A).

(M)

(Camp at Nagpur)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

ORIGINAL APPLICATION No.258 OF 1989.

Shri Harsuprasad V. Mishra,
R/at 228, Laxminagar,
Nagpur - 440 022.

.. Applicant

V/s.

Divisonal Commercial Superintendent,
South Eastern Railway,
Nagpur.

.. Respondent

Coram: Hon'ble Member(A), Shri P.S.Chaudhuri

Appearances:

Mr.M.M.Sudame, Advocate
for the applicant.

Mrs.Indira Bodade, learned
advocate for the respondents.

ORAL JUDGMENT:

Dated: 19.1.1990.

{Per: Shri P.S.Chaudhuri, Member(A)}

This application was filed on 7.4.1989 under Section 19 of the Administrative Tribunals Act, 1985. In it the applicant challenges the orders dt. 20.2.1989 and 10.3.1989 (Annexures I & II to the application respectively) by which he is transferred from the post of Conductor at Nagpur in the scale of pay of Rs.1,600-2,660(RPS) to the post of Head Ticket Collector in the same scale of pay at Gondia.

2. In view of this challenge, in terms of this Tribunal's Chairman's Order dt. 21.3.1988 this application comes within the jurisdiction of a Bench consisting of a Single Member. I have accordingly proceeded to hear and decide this case.

3. The relevant facts and background need to be stated in order to understand the dispute. The applicant joined the cadre of Ticket Checking Staff of South Eastern Railway on 1.1.1957. Very broadly speaking, the range of

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designations for the posts filled by this cadre of staff is categorised in three categories, viz. Ticket Checking staff who perform stationary duties at the stations at which they are posted; Travelling Ticket Examiners/Inspectors who travel on trains in order to check tickets and to perform other related duties such as manning sleeper coaches; and Train Conductors who man specified trains in order to accommodate passengers and to perform other related duties. Prior to the introduction of the revised pay scales as a result of the recommendations of IVth Pay Commission the posts in this cadre were in five scales of pay, viz.

	Rs.260	-	400
	Rs.330	-	560
	Rs.425	-	640
	Rs.550	-	750
and	Rs.700	-	9900.

Initially the posts of Train Conductors were only in the scale of Rs.425-640. The posts in this scale of pay also covered, inter alia, posts of Head Ticket Collector and Head Travelling Ticket Examiner. As a result of cadre review and restructuring of non-gazetted cadres, by an order dt. 12.6.1984 about 50% of the posts of Train Conductors were allotted the scale of Rs.550-750. With the introduction of the revised pay scales as a result

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of the recommendations of the IVth Pay Commission, the scales of pay of Rs.425-640 and Rs.550-750 were replaced by the scales of Rs.1400-2300(RPS) and Rs.1600-2660(RPS)

respectively. On 31.1.1986 the Railway Board issued instructions that the channel for filling these posts should be Head Ticket Collector to Conductor to Head Travelling Ticket Examiner. There was a proviso to these instructions which said that if this decision warranted revision of the existing avenue chart, the railways would,

no doubt, finalise the same in consultation with their recognised Unions. On 13.7.1987 the Railway Board modified these instructions and the channel became Head Ticket Collector to Head Travelling Ticket Examiner to Conductor.

In these instructions, too, there was a ~~provision to the effect~~ ^{to} ~~that~~ requesting the recognised Unions to take up this issue, along with other suggestions for change in the AVC, at the Zonal Railway level since the AVC for non-gazetted staff was normally finalised by the individual Zonal Railways taking into consideration the local factors and in consultation with their recognised Unions.

4. The applicant was promoted as a Conductor in the scale of Rs.425-6400 on 28.12.1980. Thereafter, he was promoted as Conductor in the scale of Rs.550-750 w.e.f. 1.1.1984 as a result of the restructuring. By an order dt. 27.4.1987 he was confirmed as Travelling Ticket Inspector (Conductor) in the scale of Rs.550-750/Rs.1600-2660(RPS). He was shown at Sl.No.2 in the provisional seniority list of Travelling Ticket Inspectors/Conductors/Head Ticket Collectors as on 31.12.1987 in the Nagpur Division seniority unit. He is now the seniormost in that list as Shri G.P.Kowe at Sl.No.1 in the list is no longer in service. By the impugned order dt. 20.2.1989 he was posted as Head Ticket Collector at Gondia. Being aggrieved, he filed this application on 7.4.1989.

5. On 14.4.1989 the applicant submitted that the posting of Conductors was governed by Railway Board's order dt. 31.1.1986 mentioned earlier. This was not refuted by the respondents. So an interim order was passed on that day by which the respondents were restrained from giving effect to their order dt. 22.2.1989 in so far as the applicant was

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concerned till the decision of the application. It was, however, made clear that this interim order would not stand in the way of the respondents posting the applicant as Head Travelling Ticket Examiner (or ^{its} ~~his~~ present equivalent designation). By an order dt. 26.4.1989 the respondents kept the transfer order pending till further advice. Thereafter, by an order dt. 10.5.1989 the applicant was transferred and posted as Travelling Ticket Examiner in the scale of Rs.1600-2600 (RPS) at Nagpur (NG) against an existing vacancy. No conditions were laid down in this order. There was also no proviso linking this order with this application in any way. With this order the applicant's cause for grievance as stated in the application should have abated. The applicant then filed Misc. Petition No.429/89 seeking a modification of the order dt. 14.4.1989. By an order dt. 2.8.1989 it was directed that Misc. Petition No.424/89 ^{would} also be decided at the time of the final hearing.

6. The respondents have opposed the application by filing their written statements. I have heard Mr.M.M.Sudame, learned advocate for the applicant and Ms. Indira Bodade, learned advocate for the respondents.

7. The first point urged by Mr.Sudame was that there was still one post of Conductor lying vacant against which the applicant could be accommodated. But it is not for me to decide whether a particular post should be filled and, if so, which of the ^{respondents'} ~~the~~ employees is best qualified to fill it.

8. The second point urged by Mr.Sudame was that the applicant was the seniormost person in the scale of pay of Rs.1600-2660(RPS). It was his contention that the Travelling Ticket Inspectors on any particular train have to work under the directions of the Conductor of that train and that

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therefore, the posting as Travelling Ticket Inspector will embarrass the applicant because he will have to work under his juniors who will be working as Conductors. This submission was resisted by Ms. Indira Bodade on the ground that it was not as if the Travelling Ticket Inspectors were subordinate to the Conductors. It was her submission that this point had been specifically considered by the Railway Board before issuing their letter dt. 12.6.1984 communicating their decision to upgrade 50% of the posts of Train Conductors to the scale of Rs. 550-750. This letter makes it clear that the Railway Board had considered the implications of having Train Conductors and Travelling Ticket Inspectors in the same scale of pay, but had not thought it fit to issue any directives that the seniormost man should man the post of Conductor. They had also not upgraded all the posts of Conductor - they had upgraded only about 50% of the posts. So the situation of having Conductors on a train who were junior to the Travelling Ticket Inspectors on that train was inevitable and was within the knowledge of the Railway Board and so the applicant should not have any grievance on this score. She further contended that, besides, in their letter dt. 31.1.1986 the Railway Board had pointed out that on South Eastern Railway the posts of Conductors were filled on ex-cadre basis. They also pointed out that there ~~were~~ ^{of} special attributes required ~~for~~ persons to man the post of Conductor. Against this background I am unable to see any justification for holding that either the rule or even the practice requires that only the senior-most men should man the posts of Conductor. Furthermore, the avenue chart showing the channel of promotion of Ticket Checking staff that was issued on 29.7.1976, and reiterated on 8.7.1988, clearly shows that all the posts ...6/-

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in the then scale of Rs.550-750 were equal to one another. Of course, at that time, i.e. 29.7.1976, all the posts of Conductors were in the scale of Rs.425-640 only. In spite of that, at no time subsequently did the Railway think it necessary to modify this avenue chart showing the channel of promotion.

9. Mr.Sudame's next submission was that there was no precedent for posting a Conductor as TTI. In the absence of any specific pleading to this effect it is obviously not possible to verify what is the actual position. In any case, if the proposed posting is not illegal, the fact that there is no earlier precedent cannot make it illegal.

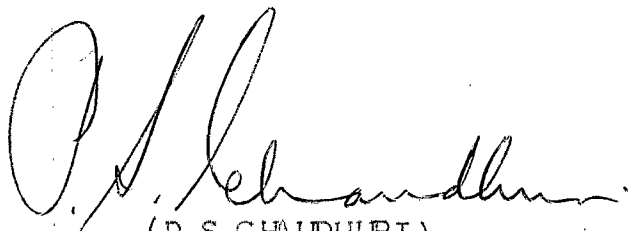
10. Mr.Sudame's final submission was that the applicant had only two years to retire and that he was liable to be put to inconvenience if his prayer was not granted. I do not see any merit in this submission. The respondents ~~had~~ ^{have} already issued an unconditional order in terms of which the applicant was posted to another post at Nagpur itself in the same scale of pay. Thereafter, at the applicant's request the competent authority had issued an order on 5.12.1989 to the effect that the applicant was transferred in the same capacity and posted at Nagpur(BG). I do not see how the applicant can have any fear that the respondents will be biassed against him and will act illegally, or even unfairly, against him. In any case, even if they do so act, the applicant is at liberty to take appropriate steps. As ~~the~~ matters stand, the orders of the respondents' are that the applicant is posted at Nagpur (BG) without any conditions.

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11. In this view of the matter, I do not see any merit in the application.

12. The application is accordingly dismissed. In the circumstances of the case, there will be no order as to costs.


(P.S. CHAUDHURI)
MEMBER (A)

Judgment dt. 19.1.90
sent to parties
on 20.4.90.

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Judgment dt. 19.1.90
served on Applicant on
dt. 26.4.90

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