

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

THIS THE SIXTH DAY OF MARCH, 1987

Present: Hon'ble Shri L.H.A.Rego .. Member(A)
Hon'ble Shri Ch.Ramakrishna Rao Member(J)

APPLICATION NO.518 OF 1986 (F)

Sri S.Yates,
No.208A, Railway Quarters,
Bangalore 560 023.

(Shri N.S.Anandaramu .. Advocate)

-vs.-

1. The Union of India represented
by the Secretary, Ministry of
Railways, Rail Bhavan, New Delhi
2. The General Manager,
Southern Railway, Park Town, Madras.
3. The Divisional Railway Manager, } Bangalore Division,
4. The Divisional Personnel Officer } Southern Railway,
Bangalore City.
5. The Divisional Personnel Officer,
Mysore Division, Southern Railway,
Mysore.
6. Sri C.Robert, M.C.No.962, Fitter,
Carriage Wagon Superintendent's
Office, Southern Railway, Bangalore-
Division, Bangalore City.
7. Sri Anwar Khan, M.C.No.883, Fitter,
Carriage Wagon Superintendent's
Office, Southern Railway,
Yeshwantpur, Bangalore.
8. Sri V.R.Subramani, Fitter } Carriage Wagon Superinten-
9. Sri M.Kannan, Fitter, M.C. } dent's Office, Southern
No.974. } Railway, Bangalore Division,
Yeshwantpur, Bangalore.
10. Sri Narasimha Murthy,
(deleted vide Order dated 13-11-86)
11. Sri Gnanavelu
(deleted vide Order dated 13.11.86)

12. Sri Ranoji Rao, Fitter, Carriage Wagon Superintendent's
M.C.903, Office, Southern Railway,
Bangalore Division,
Bangalore City.
13. Sri Sathyanarayana Singh, Fitter, M.C.903
14. Sri Narayanappa, M.C.904
Deleted vide Order dated 13.11.86.
15. Sri D.Govindaswamy, Fitter,
MC 941. Carriage Wagon Superintendent's
Office, Southern Railway,
Bangalore Division, Yelahanka
16. Sri Sri M.Venkatesh, Fitter,
MC 943, Carriage Wagon Superin-
tendent's Office, Southern
Railway, Bangalore Division,
Bangalore City.
17. Sri Thyagaraj, R.,
Deleted vide Order dt.13.11.86.
18. Sri K.Chamaraj Deleted vide Order
19. Sri Syed Saleem Ahmed dated 13.11.86.
20. Sri Siddaiah,
21. Sri Zialla Khan
22. Sri Panchaksharan,
23. Sri E.M. Phillips
24. Sri M.Venkatesh, Fitter,
M.C 869, Carriage Wagon Superin-
tendent's Office, Southern Railway,
Bangalore Divn.Yeswantpur.
25. Sri N.Nanjunda Deleted vide Order
26. Sri M.Yousuff Bash Khan dated 13.11.86
27. Sri J.Ruben, Fitter, MC 873,
Carriage Wagon Superintendent's
Office, Southern Railway,
Bangalore Division, Bangalore City.
28. Sri N.Krishnaiah, Fitter, MC 900,
Carriage Wagon Superintendent's
Office, Southern Railway,
Bangalore Division,
Bangalore City.
- ... Respondents.

(Sri Sreerangaiah .. Advocate)

This application having come up for hearing today, Hon'ble
Shri L.H.A.Rego made the following:

ORDER

The applicant prays that respondents 1 to 4 be directed to consider his case for promotion to the post of Wagon Lubricant Attendant^(G/LA)/Skilled and the next higher post of Fitter, from the date his immediated^A juniors were promoted to those posts and to grant him consequential relief.

2. Initially, the applicant had impleaded 23 of his colleagues as party-respondents, over whom he had claimed seniority, but subsequently, he deleted 12 of them retaining only 11, i.e., respondents 6 to 9, 12 and 13, 15, 16, 24, 27 and 28.

3. The facts in brief, leading to this application are ' as follows:-

The applicant was appointed by the Divisional Mechanical Engineer, Mysore Railway Division, under his letter dated 8.5.1974 (Annexure-A) during the period of the general strike of the Railways, as a Substitute Khalasi in the Loco-shed in the newly created Bangalore Railway Division ('SBC' for short) in the pay scale of Rs. 196-232. Accordingly, he reported for duty on 9.5.1974, after undergoing necessary medical examination which he completed successfully.

4. Thereafter, the Divisional Personnel Officer, Mysore ('DPO' for short) - the 5th respondent - transferred the applicant on 15.11.1974 (Annexure-B) along with others, to the Carriage Wagon Depot (C&W) SBC (MG), against an existing vacancy,

La

as a temporary Khalasi on the same pay scale which he drew in his previous post of Khalasi, where too, he was appointed on a temporary capacity. The 11 respondents referred to in para-2 above, were said to have been appointed during the period from 13.5.1974 and 6.3.1977, some of them during the Railway strike period. The applicant states that they were appointed after him in the same capacity as Substitute Khalasis.

5. The letter dated 11.6.1985 (Annexure-D) from the 5th respondent, reveals that the applicant was empanelled for regular absorption as a Khalasi, for the period ending 31.12.1976, based on the total service put in by him on the crucial date of drawal of the panel, duly maintaining his relative seniority according to his length of service. It further reveals, that the 11 respondents, referred to in para-2 above, were appointed as direct recruits either on 'loyal' or 'compassionate' grounds as indicated below:

Respondent No.	Name	Staff No.	Date of appointment.	Grounds on which appointed.
6	C. Robert	962	6-3-1977	Compassionate.
7	Anwar Khan	883	20-10-1976	-do-
8	V.R. Subramani	926	31-1-1975	Loyal.
9	M. Kannan	974	9-8-1975	-do- -do-
12	Ranoji Rao	903	30-10-1974	-do-
13	Sathyanarayana Singh		14-11-1974	-do-
15	D. Govinda Swamy	941	19-5-1974	Compassionate
16	M. Venkatesh	943	1-10-1974	-do-
24	M. Venkatesh	864	13-5-1974	-do-
27	J. Ruben	873	26-9-1974	Loyal.
28.N.	Krishnaiah	900	5-9-1974	-do-

18

6. In the above letter dated 11.6.1985 (Annexure-D), it was mentioned, that the applicant was empanelled in his turn in C & W, for the period ending 31-12-1976 and that he became regular, from the date of approval of the panel, i.e., from 10-10-1977 and that he was assigned seniority in the cadre of Khalasi, in the pay scale of Rs. 196-232, based on his position in the panel. It was further mentioned, that the applicant could not claim seniority over the respondents in question, as they were directly appointed.

7. The applicant refers specifically to the order of appointment dated 30.7.1974 (Annexure-E) of Sri M. Venkatesh, by the DPO Mysore, to show that he was appointed as a Substitute Khalasi, similarly like the applicant. He therefore contends, that Shri Venkatesh and others, who were similarly appointed as Substitute Khalasis like him, but later than he, should have been empanelled subsequent to him, he being senior to them.

8. Originally, the areas which now fall in SBC, were a part of Mysore Division (MYS). SBC was formed in 1980 and the 11 respondents were allotted to the SBC.

9. The Divisional Railway Manager, Mysore, is said to have promoted on 30.5.1983, about 121 WLAs/Skilled, to the posts of Fitters, in the pay scale of Rs. 260-300 retrospectively, with effect from 1.3.1978. The above 11 respondents, were so

promoted along with others on 6.7.1983, by the Divisional Railway Manager, Mysore. On coming to know about the same, the applicant submitted a representation to the 4th respondent on 4.11.1983, requesting him to consider his case for promotion as Fitter, as he was senior to the above 11 respondents. These ^{was} ~~were~~ followed by his representation on 23.12.1983, 10.9.1984 and 28.2.1985. He was given a reply by the 5th respondent on 11.6.1985 (Annexure-D), according to the details furnished in paras 5 and 6 supra. The applicant contends, that the reply given to him by the 5th respondent as above, was illegal and unreasonable, as the respondents who were appointed subsequently as Substitute Khalasis like him, were juniors to him. He therefore submitted a further representation on 4.11.1985 to the 3rd respondent for redress, stating that he had not secured promotion for the last 11 years, even though his juniors were promoted earlier than him. As his grievance was not redressed, the applicant has filed the present application, before this Tribunal.

10. We have given careful thought to the rival contentions and have examined the relevant record/material placed before us. At the outset, the learned counsel for the respondents contended that the application was barred ^{by} ~~of~~ limitation, on which ground alone, the application was

liable to be rejected. We have examined this contention. Learned counsel for the applicant, submits, that his client desired to seek redress from the channels available to him in the Railways and that his representation dated 4.11.1985, addressed to the 3rd respondent, in the context of the facts mentioned in para-9 supra was unanswered, as a result of which, he had to take recourse to this Tribunal. We find this contention reasonable and therefore reject the contention of the counsel for the respondents in regard to limitation, as the application fulfils the condition laid down in this respect, in Section 21 of the Administrative Tribunals Act, 1985 (as amended).

11. The counsel for the applicant pleaded, that the promotion of the above 11 respondents was contrary to the Recruitment Rules, as embodied in Chapters I and II of the Indian Railway Establishment Manual ('Manual' for short), and was violative of the Equality clause, under Articles 14 and 16 of the Constitution of India, as the applicant was similarly circumstanced, as these 11 respondents. The promotion of the respondents out of turn, on the grounds of 'compassion' and 'Loyalty', according to him, was capricious and arbitrary and not in consonance with the Recruitment Rules.

LB

12. The Counsel for the respondents countered the above argument, laying emphasis on the fact, that the above 11 respondents were appointed as direct recruits, on consideration of grounds of "Compassion" and "loyalty", as based on the instructions issued by the Railway Board, compiled in the form of a booklet captioned as "Railway Board's Guidelines on appointments relating to compassionate grounds", were placed before us by the Counsel for the respondents.

13. Learned Counsel for the respondents invited our attention, to Rules 123 and 124 under Chapter-I "General", of the Indian Railway Establishment Code (Vol.I, V Edn.1985) ('Code' for short) on the subject: of "Power to Frame Rules", which read as follows:

"POWER TO FRAME RULES"

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.

14. In the light of the above Rules, he asserted, that the Railway Board and the General Manager of the Railways, had full power to make rules in regard to Railway servants in Groups C & D under their control, provided, they were not inconsistent with any of the rules made by the President or the Union Ministry of Railways. According to him, Khalasis, fall within the category of Group-D railway servants and the Railway Board was competent to frame rules, in regard to appointments in this category, on grounds of "compassion" and "loyalty", as these rules were in keeping with rules made with the

La

rules framed by the Railway Board by virtue of the power vested in it, under Rules 123 & 124 ibid.

15. Rule 217 of the Code in regard to recruitment of Groups C & D staff, states that the rules for the recruitment of non-gazetted railway servants are contained in the Manual. Rule 219 ibid spells out the general conditions for recruitment inter alia.

16. Para (xiii), sub-section IV, Section B of Chapter I of the Manual, relating to recruitment of casual labour, substitutes and temporary hands, stipulates the following:

- "(a) Substitutes, casual and temporary workmen will have prior claim over others to permanent recruitment.
The percentages of reservation for scheduled castes and scheduled tribes should be observed in recruitment to temporary or permanent vacancies.
- (b) Substitutes, casual and temporary workmen who acquire temporary status as a result of having worked on other than Projects for more than 6 months or other casual labour with more than 6 months service should be considered for regular employment without having to go through Employment Exchanges. Such of the workmen as join service before attaining the age of 25 years may be allowed relaxation of maximum age limit prescribed for class IV posts to the extent of their total service which may be either continuous or in broken periods.
- (c) A register should be maintained by all Divisions or Districts concerned to indicate the names of casual labour, substitutes and temporary workmen who have rendered 6 months service either continuous or in broken periods, for the purpose of future employment as casual workmen and also as regular employees, provided they are eligible for regular employment. The names should be recorded strictly in the order of their taking up casual appointment at the initial stage and for the purpose of empanelment for regular class IV posts, they should, as far as possible, be selected in the order maintained in the aforesaid registers. In showing preference to casual labour over other outsiders due consideration and weightage should be given to the knowledge and experience gained by them. Other conditions being equal, total length of service as casual labour, either continuous or in broken periods, irrespective of whether they have attained the temporary status or not, should be taken into account so as to ensure that casual labour who are senior by virtue of longer service are not left out."

17. It would be seen, that among other things, it is clearly spelt out in the above para (xiii) of sub-section iv, Section B Chapter I of the Manual, that ceteris paribus, the total length of service as casual labourers either continuous or in broken periods, regardless whether they have attained the temporary status or not, should be taken into account, so as to ensure, that casual labourers who are senior by virtue of longer service are not left out. In the instant case, it is not denied by the Counsel for the respondents, that the applicant was appointed as a Substitute Khalasi, on 8-5-1974 and that he resumed duty in this post on 9-5-1974 i.e., earlier than the 11 respondents. Out of these 11 respondents, 4 were appointed as Substitute Khalasis, between 1975 to 1977 and 4 were appointed in the latter half of 1974 i.e., distinctly later than the applicant.

18. While assuming that the Railway Board had derived authority to frame rules under Rule 123 of the Code, by way of general application to Group-D railway servants under their control, in the instant case, in regard to their appointment on the special criteria^{la} of "compassion" and/or "loyalty", these rules certainly, could not be repugnant to the rules framed under the Code, as reflected in the Manual. Para (xiii) ibid of the Manual, lays down explicitly, that it should be ensured that casual labourers, who are senior by virtue of length of service regardless of their status, are not overlooked for their career advancement. The Railway Board ~~booklet~~, on guidelines relating to appointment on "compassionate" grounds, shown to us by the Counsel for the respondents, does not reveal that such

la

appointments could be made, ignoring the seniority of others, regardless of length of service, and if at all such a stipulation exists in the said guidelines, it would be clearly violative of the rules/instructions in the Code and the Manual, being inconsistent with the rules made by the President and /or the Union Ministry of Railways. The Counsel for the respondents could not show to us to the guidelines, drawn up in regard to appointments to be made on grounds of "loyalty". Should these guidelines too, similarly overlook length of service put in by an incumbent, by virtue of which he has a claim for seniority, they would be, by the same token, violative of the rules/instructions in the Code and/or the Manual.

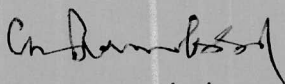
19. At the most, the 11 respondents could have been shown preference at the time of their initial appointment as Substitute Khalasis on special grounds of "compassion" and "loyalty", according to the rules/instructions drawn up by the Railway Board. But once these respondents were given such preferential appointment as Khalasis, on the above consideration, they could not steal a march, for subsequent regularisation in this post and /or for promotion over others, who had a longer length of service in the post in question and were suitable to be considered for regularisation and for promotion. We notice that in the case of the applicant, the 11 respondents though appointed later (some even after two years) in the identical post as Substitute Khalasis, as in the case of the applicant

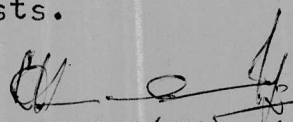
(though on grounds of "compassion" and/or "loyalty") were considered out of turn, irrespective of their length of service for regular appointment as Khalasis and subsequently for promotion as WLA/Skilled and later as Fitters, in the pay scale of Rs.260-300 on 6-7-1983. We are of the view that this is clearly in violation of the Rules of Recruitment.

20. In the result, we make the following order:

- (i) We direct the respondents to assign deemed dates of promotion to the applicant, to the posts of Wagon Lubricant Attendant/Skilled and Fitter, from the dates his immediate junior (with reference to his length of service in the post of Substitute Khalasi) was promoted to these posts and re-determine his seniority and re-fix his pay accordingly.
- (ii) Since, however, the applicant has not shouldered responsibility in these higher posts, he shall not be entitled to arrears of salary, till the date he is actually promoted to the post of Fitter according to his seniority, redetermined as above.
- (iii) This order be given effect to within a period of one month from the date of its receipt.

21. The application is allowed in the above terms but we make no order as to costs.


MEMBER (J)


MEMBER (AM) 6.2.87