

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS THE 22ND DAY OF APRIL, 1987

Present: Hon'ble Shri Ch.Ramakrishna Rao..Member(J)

Hon'ble Shri P.Srinivasan ..Member(A)

APPLICATION NO.657/86

B.V.Venkoba Rao,
S/o B.V.Venkatkrishnaiah,
residing at No.331,
Alood Venkatrao Raod,
Bangalore-560002.

Applicant

(Shri M.S.Purushpthama Rao, Advocate)

VS

1. The Divisional Railway
Manager, South Central
Railway, Hubli.
2. The General Manager,
South Central Railway,
Secundrabad(A.P)
3. The Indian Railway Board,
Rail Bhavan,
New Delhi.
by its Chairman.
4. The union of India,
by its Secretary to
Government, Government
of India, Ministry of
Railways, Rail Bhavan,
New Delhi.

Respondents.

(Shri H.S.Lingaraj, Advocate)

This application has come up before the Court today.

Hon'ble Shri P.Srinivasan, Member(A) made the following:

ORDER

In this application filed under Section 19 of the
Administrative Tribunals Act, 1985 the applicant who was
working in the South Central Railway at Ghataprabha as a
Station Master in the scale of Rs.455-700 till he retired

P. Srinivasan

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on 30.4.1984 complains that he had not been given the benefits due to him as a result of the re-structuring of cadres in the railways ordered by the Railway Board in its letter dated 29.7.1983.

2. By its letter dated 29.7.1983 the Railway Board brought about a change of structure in the various cadres in the Railways. The result of this re-structuring was that the number of posts in the grade of Rs.455-700 were reduced and correspondingly the number of posts in the higher cadres were increased and thereby the number of persons working in the grade of Rs.455-700 became surplus to the sanctioned strength in that grade. The persons who were seniors in that grade were to be fitted up in the next higher grade of Rs.550-750 and, depending on their seniority, even in the still higher grade of Rs.700-900. The promotions to the cadre of Rs.550-750 were purely on the basis of seniority but the promotions to the next higher grade of Rs.700-900 were by selection on merit. For selection to the grade of Rs.700-900 aspirants had to pass a selection test consisting of written test and an interview. The re-structuring was to take effect from 1.8.1982 but the benefit of higher pay, if any, as a result thereof was made available only from 1.8.1983. Immediately after the letter of the Railway Board dated 29-7-1983, the applicant was automatically fixed in the grade of Rs.550-750 on the basis of seniority with effect from 1-8-1982 but with monetary benefits from 1.8.1983. He was sufficiently senior for being considered for the next higher grade of



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Rs.700-900 also with effect from 1.8.1982, but as mentioned earlier a process of selection had to be gone through for this purpose. The written test for promotion to that grade was held on 24.2.1985 and the viva voce test on 3.3.1985. Since the applicant had retired on 30.4.1984 itself he could not take either the written examination or appear for the viva voce and so he could not be fixed in the grade of Rs.700-900 from 1.8.1982 with monetary benefit from 1.8.1983, which others like him, who continued in service, got by passing the two tests. The applicant's grievance is that he had been denied the higher scale for no fault of his because the process of selection for the post of 700-900 was undertaken after he retired from service. Since the re-structuring had come into effect from 1.8.1982 and posts in the grade of 700-900 were available from that date long before the applicant retired, he should have been fixed up in the grade of 700-900 from 1.8.1982 like others and given the benefits of higher pay from 1.8.1983.

3. Sri M.S.Purushothama Rao, learned counsel for the applicant contended that the applicant should not suffer because the selection test was held after he retired. In fact, the Railway Board had issued instructions on 29.7.1983 itself in connection with the aforesaid re-structuring in which it was clarified in para 3.2 that the selection procedures for posts classified as selection posts would stand modified to the extent that the selection will be based only on scrutiny of service records without holding any written and/or viva voce tests. If this method had

P. S. Rao

been adopted the respondents could have considered the case of the applicant for promotion to the grade of Rs.700-900 with reference to his service records without obliging him to take a written test and interview which in any case he could not do, because they were held after he had retired. He, therefore, urges that the respondents should be directed to consider the case of the applicant for promotion to the grade of 700-900 with effect from 1.8.1982 with monetary benefits from 1.8.1983 on the basis of his service records.

4. Sri H.S.Lingaraj, learned counsel for the respondents stoutly opposes the contentions of Sri Purushothama Rao. The promotion to the post in the grade 700-900 was on the basis of selection and any candidate aspiring for such promotion had necessarily to pass the written test and the viva voce test prescribed for the purpose. Because the establishment of the Railways is very large, the necessary tests for such promotion could not be held till ^{February} ~~November~~, 1985 as lists of eligible candidates had to be drawn up and arrangements had to be made to hold the test. The Railway Board's letter ordering re-structuring was issued on 29.7.1983 and the written test was held on 24.2.1985 and the delay cannot be considered unreasonable. It was unfortunate that the applicant had retired by the time the tests were conducted. He also pointed out that the instructions contained in the Railway Board's letter dated 29.7.1983 relied upon by Sri Purushothama Rao had been modified by a subsequent letter of the Board dated 23.12.1983. In this subsequent letter it was stated that where as a result of re-structuring a person became eligible for promotion

P. S. Lingaraj

to two successive posts on the same date, the instructions as to making promotions with reference to the service records would be applicable only for the first promotion and not for the promotion to the next higher grade which would be regulated by the usual rules namely passing of requisite tests. Sri Lingaraj also drew our attention to the letter of the Railway Board dated 25.3.1986 in which it was further clarified that no benefits under the cadre restructuring would be applicable to retired railway employees. He, therefore, pleaded that the application should be dismissed.

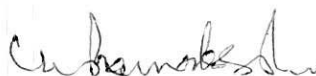
5. Having considered the rival contentions, we feel that it was indeed unfair on the part of the respondents not to have considered the case of the applicant for promotion to the grade of 700-900 as a result of restructuring to which he was normally eligible. We do agree that some delay was inevitable in holding the requisite written examination and viva voce in a vast organisation like the Railways. At the same time, it was not the applicant's fault that he could not take the selection test for promotion before he retired. The re-structuring was ordered by letter dated 29.7.1983 when the applicant was in service and it was to take effect from a still earlier date that is 1.8.1982 for pro-forma promotion and from 1.8.1983 for monetary benefits. The applicant naturally expected that he, being a senior official in the grade of Rs.455-700, would be considered for promotion to the two immediately higher grades of Rs.550-750 and 700-900 as a result of re-structuring. Hopes in him would have been further aroused by the letter of the Railway




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Board dated 29.7.1983 (Annexure-R1 to the reply) wherein the normal selection process was modified to that of selection by scrutiny of service records for the purpose of promotion resulting from re-structuring. It was grossly unfair on the part of the respondents to modify the instructions ^{later} ~~letter~~ by its letter dated 23.12.1983 which denied him all opportunities of promotion to which he could legitimately lay claim. We, therefore, feel that since the applicant could not be put through the routine selection test because these tests were held after he retired, his case for promotion to the grade of 700-900 should have been considered in terms of para 3.2. of the Railway Board's letter dated 29.7.1983. We, direct the respondents to consider the case of the applicant for promotion to the said grade of 700-900 on the basis of scrutiny of his service records as contemplated in para 3.2 of the said letter dated 29.7.1983 and if found fit, give him the promotion with effect from 1.8.1982 and allow him the monetary benefits flowing therefrom from 1.8.1983 as was given to other similarly placed persons. The respondents will do this so as expeditiously as possible, but not later than 4 months from the date of receipt of this order.

6. In the result, the applicant^{-tion} is allowed to the extent indicated above. Parties to bear their own costs.


MEMBER(J) 22.4.87


MEMBER(A)

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

APPLICATION No.

657/86(F)~~(WP.No.)~~COMMERCIAL COMPLEX, (BDA)
INDIRANAGAR,
BANGALORE-560 038.DATED: **6 MAY 1987**APPLICANT

Vs

RESPONDENTSB.V. Venkoba Rao
TOThe Divisional Railway Manager
South Central Railway
Hubli.1. Sh. B.V. Venkoba Rao,
S/o B.V. Venkat Krishnanah,
No 331, Allood Venkat Rao Road,
Bangalore - 2.2. Sh. P.S. Purnashothama Rao,
Advocate,
497, Avenue Road,
Bangalore - 2.3. The Divisional Railway Manager
South Central Railway
Hubli.4. The General
Manager,
South Central
Railway
Secundrabad5. The Chairman
Railway Board
New Delhi6. The Secretary
Ministry of Railways
Raul Bhawan,
New Delhi.SUBJECT: SENDING COPIES OF ORDER PASSED BY THE
BENCH IN APPLICATION NO. 657/86 (F)

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Please find enclosed herewith the copy of the Order
passed by this Tribunal in the above said Application on22-4-87

ENCL: As above.

(X) 7. Sh. H.S. Lingaraj
Advocate
S/o Sh. H.S. Sharmagappa
Advocate
R50, HMTMSHU, III Main
Maha Lakshmi Layout
Bangalore - 86.DEPUTY REGISTRAR
(JUDICIAL)

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
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Commercial Complex(BDA),
Indiranagar,
Bangalore - 560 038

Dated : 31/8/87

REVIEW APPLICATION NOS 104, 107 & 108 /87()
IN APPLICATION NOS. 657, 1671 & 1670/86(F)

W.P. NO _____

Applicant
Divisional Railway Manager
South Central Railway, Hubli
& 3 Ors

V/s Shri B.V. Venkoba Rao & 2 Ors

To

1. The Divisional Railway Manager
South Central Railway
Hubli
Dharwad District
2. The General Manager
South Central Railway
Rail Nilayam
Secunderabad (A.P.)
3. The Chairman
Railway Board
Rail Bhavan
New Delhi - 110 001

4. The Secretary
Ministry of Railways
Rail Bhavan
New Delhi - 110 001

5. Shri M. Sreerangaiah
Railway Advocate
3, S.F. Buildings, 10th Cro
Cubbonpet Main Road
Bangalore - 560 002

Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/~~XXXX~~
~~XXXXXXXXXXXX~~ passed by this Tribunal in the above said Review
application on 21-8-87.

Encl : as above

B.V. Venkoba Rao
Deputy Registrar
SECTION OFFICER
(JUDICIAL)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS THE 21ST AUGUST, 1987

Present: Hon'ble Justice Shri K.S. Puttaswamy Vice-Chairman
Hon'ble Shri P. Srinivasan Member (A)

R.A. Nos. 104, 107 and 108 of 1987

1. The Divisional Railway Manager,
South Central Railway,
Hubli.
2. The General Manager,
South Central Railway,
Secunderabad (A.P.)
3. The Railway Board,
represented by its Chairman,
Rail Bhavan, New Delhi.
4. The Union of India,
represented by the Secretary,
Ministry of Railways, Rail Bhavan,
New Delhi.

Applicants

(Shri M. Sreerangaiah...Advocate)

Shri B.V. Venkoba Rao, son of
B.V. Venkatkrishnaiah, major,
residing at No.331,
Aloor Venkatrao Road,
Bangalore-560 002 and also
care of M.S. Purushothama Rao,
No. 497, Avenue Road,
BANGALORE - 560 002.

House
2. A.R. Joshi, No.316, Dharwani/
II Cross, S.P.M.Road,
Belgaum.

3. B.B.Gujjar, No.281,
Chidambarnagar,
Anagool Road, Belgaum

Respondents

This application has come up for hearing before
this Tribunal to-day, Hon'ble Justice Shri K.S.
Puttaswamy, Vice-Chairman made the following :

O R D E R

These are applications made by the applicants
under Section 22(3)(F) of the Administrative Tribunal
Act for review of the orders made in A.Nos. 657/87,
1671/86 and 1670/86. The applicants herein were
respondents in those applications.



2. In making these applications for review, there is delay and therefore the applicants have filed applications for condonation of delay.

3. We are satisfied that the facts and circumstances stated by the applicants constitute a sufficient ground for condonation of delay in making the applications. We, therefore, allow the applications for condonation of delay and condone the delay in making applications in all these cases.

4. The main judgement of this Tribunal has been rendered in A.No. 657/86, which is the subject matter of review in R.A. No.104/87. In the other two cases this judgement has been only followed.

5. On a detailed examination, this Tribunal in Venkoba Rao's case (A.No. 657/86) has held that the applicant was entitled for consideration of his case for promotion to the higher grade for the detailed reasons set out in its order. Shri M. Sreerangaiah, learned counsel for the applicants, really asks us to re-examine that order as if we are a court of appeal and come to a different conclusion, which is impermissible in a review. In this view, the review application No. 104/87 is liable to be rejected.

6. When once we hold that R.A. No. 104/87 is liable to be rejected, the other two R.A. Nos. 107 and 108 of 1987 are also liable to be rejected.

7. In the light of the above discussion, we hold that all these review applications are



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liable to be rejected. We, therefore, reject these R.A's at the admission stage without notices to respondents.

Sd/-

(K.S. PUTTASWAMY)
VICE-CHAIRMAN

Sd/-

(P.SRINIVASAN)
MEMBER (A)



True Copy

B. V. Venkatesh
DEPUTY REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE
31/8