

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS THE SEVENTEENTH DAY OF FEBRURARY, 1987

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

Hon'ble Sh.L.H.A.Rego Member(AM)

APPLICATION No.873/86(F).

K.R.Ananthnarayana,
C/o Sh.H.S.Jeis & Sh.Ranganath Jeis,
Advocates, 150/36, NHS Road,
V.J.Puram,
Bangalore - 4.
(Shri Ranganath Jeis
Vs.

... APPLICANT
... Advocate)

The Chief Electrical Engineer,
Southern Railway & Others. ... RESPONDENTS.
(Sh.H.Shanmukappa ... Advocate)

This application has come up before the court today.

Hon'ble Shri L.H.A.Rego, Member(AM) made the following :

O R D E R

The applicant prays that the impugned order dated 11.9.1980(Annexure-B-1) and the notification dated 6.12.1985 (Annexure-D-1), both issued by respondent(R)2, be declared arbitrary and illegal in so far as it affects him and that the respondents be directed to regularise his services from the date of his appointment to the post of Charge-ma-B, with consequential benefit inclusive of promotion to the next higher grades.

2. The facts in a nutshell, giving rise to this application are as follows: At the material time, the applicant was working as Electrical Inspector in the pay scale of Rs.380-560 in an ex-cadre post in the Southern Railway Workshop, in Mysore South Division, Mysore(MSS). In addition to the regular cadre posts, the Railway Workshop had only two ex-cadre posts of Electrical Inspectors, one earmarked for Train Light and the other for General Service(Electrical). While the regular cadre posts have a systematic feeder channel for promotion, the ex-cadre posts are isolated

and are created to meet administrative exigencies. These ex-cadre posts are filled in purely on an ad hoc basis, by inviting volunteers who fulfil the pre-requisites. The incumbents selected for appointment in these ex-cadre posts, retain their lien over their parent cadre posts and are promoted in the latter cadre, on preferential basis, in accordance with seniority and merit. The limited number of ex-cadre posts have no promotional avenues and therefore incumbents appointed to these posts on an ad hoc basis, can have no claim for seniority in the parent cadre, merely on parity of pay-scales.

3. The following is the hierarchical pattern of the cadre and ex-cadre posts, in the Electrical Workshop in the Southern Railway, MSS:-

A.CADRE POSTS

Sl. No.	Designation of post	Pay Scales(Rs.)
(1)	(2)	(3)
i)	Khalasi	196-232
ii)	Basic Tradesman	210-290
iii)	Electrical Fitter(EF)	260-400
iv)	Mistry II/Highly Skilled(HSK)	330-480
v)	Mistry I/HSK	380-560
vi)	Chargeman-B	425-700
vii)	Chargeman-A	550-750
viii)	Asst. Shop Superintendent(ASS)	700-900
ix)	Shop Superintendent(SS)	840-1040

B.EX-CADRE POSTS:

i)	Electrical Inspectors	Pay Scales Rs. 150-240(AS) 380-560(RS)

4. The following is a tabular statement, furnishing at a glance, a comparison of the service particulars of the applicant, vis-a-vis that of Shri B.K.Anantharama Iyengar(R-3), the principal respondent, with reference to whom, the applicant is founding his claim for promotion to the respective posts.

S.NO.	Discription of post	Dates from which held	
		Applicant	R-3
1	2	3	4
i)	Temporary Khalasi	16.11.1955	7.10.1955
ii)	Basic Tradesman	12.6.1963	2.3.1960
iii)	Electrical Fitter	1.5.1968	20.8.1966
iv)	Electrical Inspector(Ex-Cadre)	20.4.1972	20.4.1972
v)	Mistry II/HSK	-	?
vi)	Mistry I/HSK	-	10.8.1972
vii)	Chargeman B	-	13.8.1977
viii)	Chargeman-A	-	27.10.1979
ix)	ASS	-	31.10.1985

5. While working as an Electrical Fitter in a cadre post, the applicant was temporarily promoted in the ex-cadre post of Electrical Inspector with effect from 20.4.1972, in the pay scale of Rs.150-240(AS), against a vacancy, resulting from the officiating promotion of one Shri T.S.Nanjundaiah, in the cadre post of Chargeman-B, in the Electrical Shop. R-3 who was his senior, was similarly promoted with effect from the same date, against the vacancy arising from the officiating promotion of one Sri S.S.Urs, to the post of Chargeman-B in the Electrical Shop.

6. R-3 who was senior to the applicant was promoted as Chargeman-B, in the Train Lighting Section and earned two more stages of promotion, as indicated in para-4 supra, on the basis of seniority and merit.

7. The ex-cadre post of Electrical Inspector in the pay scale of Rs.380-560(RS), in which the applicant was temporarily appointed, was upgraded to that of Chargeman 'B' in the pay scale of Rs.425-700 with effect from 1.8.1970. The applicant was not sufficiently senior, to be considered for regular appointment in this upgraded post and therefore, he was continued in this post purely on an ad hoc basis. The applicant contends, that he has been working continuously in this upgraded ex-cadre post of Charge-

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man-B, since 1973 and that he was even accorded the revised pay-scale for this post and granted increments in that scale, as and when they became due. Even then, he alleges, that his appointment in this post, in spite of his long officiation was not regularised, whereby, he was denied his legitimate opportunity of promotion to the higher grades, whereas R-3 who was appointed together with him as Khalasi in 1955, barely a month earlier than him, has stolen a march over ^{while he has} him and stagnated many rungs lower.

8. On the contrary, the applicant submits, that R-2 had by his notifications dated 3.12.1985 and 6.12.1985 (Annexures D and D1 respectively), invited applications from eligible candidates, to fill in 3 posts of Charge man 'B' in the Electrical Shop, 2 of which were ex-cadre posts, one each in the Inspection and Programme Wings of the Production Centres Organisation (PCO) and the third one, was a cadre post in the General Services. The applicant states, that he has been officiating in the ex-cadre post of Charge man-B, in the Inspection Wing of the PCO, for the last nearly 14 years and if this post is now filled in, in pursuance of the above notifications by R-2, he would be liable for reversion.

9. The applicant cites the case of one Sri S.G.Urs, who was regularised in the cadre of Charge man-B, with retrospective effect, with consequential benefit and restored seniority over his juniors, as a result of his representation (Annexure-E). He submits, that his case is similar to that of Sri Urs and therefore pleads, that he should be given preforma promotion, in the post of Charge man 'B', from the date his junior was promoted, as otherwise, this would be discriminatory and violative of Articles 14 and 16(1), of the Constitution of India.

10. The applicant states that he addressed a series of representations (Annexure 'F' is one such, according to him) to the

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respondents concerned, to consider his case for promotion to the next grade of Chargeeman 'A', to which R3 and Shri S.S.Urs similarly circumstanced as he, had been promoted, but instead of granting his request, he is on the contrary facing a threat of reversion, after having officiated for as long as nearly 14 years, in an ex-cadre post of Chargeeman 'B'. As the respondents paid no heed to his representations, the applicant was constrained to approach this Tribunal for redress.

11. The learned Counsel for the applicant contends, that his client should have been regularised in the post of Chargeeman 'B' long ago, having officiated therein for as long as nearly 14 years. He vaguely referred to a Supreme Court decision of 1981, page 41, in support of his contention, that officiating or ad hoc promotion cannot continue indefinitely for long, without regularisation. The Counsel could not cite specifically the name of the parties in this case and the exact verdict of the Supreme Court. Counsel also reiterated the invidious and discriminatory treatment meted out to his client as compared to R3 and Sri S.S.Urs, who he affirmed were similarly circumstanced, as his client. This he said, was violative of the equality principle enshrined in Articles 14 and 16(1) of the Constitution and was therefore illegal. Instead of treating his client on par with R3 and Shri S.S.Urs, in affording him an opportunity to advance in his career, the Counsel alleged, that his client was being threatened of reversion, leading to a situation where he was slipping from the frying pan into the fire, for no fault of his !

12. Learned Counsel for the respondents sought to refute each of the above contentions. He submitted, that even though R3 and the applicant entered service in the Southern Railway, as a Temporary Khalasi in 1985, with a gap of barely a month, the former was senior

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to him and he was promoted as Chargeman-B in the Train Lighting Section in a cadre post in the Shop/Floor on 27.10.1979, in the grade of Rs.550-750, when the applicant was only a Skilled Electrical Fitter, in the grade of Rs.260-400. R3 progressed further as ASS on 31.10.1985 in the grade of Rs.700-900, by virtue of his seniority and merit and finally superannuated from service with effect from 31.10.1985. Counsel for the respondents affirmed, that no person junior to the applicant had superseded him.

13. According to Counsel for the respondents, the applicant was promoted to the ex-cadre post of Electrical Inspector, with effect from 20.4.1973 in the grade of Rs.380-560. This post was upgraded to that of Electrical Chargeman-B, in the grade of Rs.425-700 with effect from 1.8.1970 and his seniors like Sri S.S.URs and R3 were fitted against this upgraded post. The applicant was fitted against this post with effect from 2.6.1973 and granted increments as and when they became due. Counsel for the respondents however maintained, that the applicant was not selected for this upgraded post of Chargeman-B but was continued in it, purely as an ad hoc measure, which did not confer over-riding seniority on him in a cadre post.

14. Counsel for the respondent pointed out, that the applicant remained silent over the matter throughout, as long back as since 1974, when R3 who was senior to him, was promoted as Chargeman-B, on an ad hoc basis thrice, from 23.12.1974 to 1.2.1975, from 2.7.1975 to 22.8.1975 and from 2.12.1976 to 8.1.1977 and on regular basis on 13.8.1977. Strange enough, he said, the applicant had bestirred himself after well over a decade.

15. Counsel for the respondent averred, that the post in question namely that of Chargeman-B, was an ex-cadre one, and according to Rules, no incumbent could hold that post permanently, unless he came within the zone of consideration (i.e., two grades below) and was selected by the Staff Selection Board for that post. He referred to the Office Order dated 5.11.1981 of R-2 (Annexure RII), which

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clearly mentions, that the incumbents concerned, were being fitted against the upgraded posts in question, purely as an ad hoc measure and that these posts would be filled in by regular selection at a later date. Counsel for the respondents stressed that the applicant was well aware of the same.

16. Selection for the ex-cadre post of Chargeeman-B held by the applicant on an ad hoc basis, ^{took place} ~~was held~~ on 6.5.1986, before which, applications were invited from the eligible incumbents in the Electrical Shop of MSS by R2, on 3.12.1985 and 6.12.1985 (Annexures D and D-1 respectively) but for reasons best known to the applicant, he did not apply for this post.

17. Counsel for the respondents pointed out, that none of the juniors or even immediate seniors to the applicant, have been promoted to the cadre post of Chargeeman-B in the Shop Floor. He said, that R-3 and others referred to in Annexure-E, were far senior to the applicant.

18. We have examined carefully the rival contentions as also the material placed before us. It is clear, that the applicant was appointed to the upgraded ex-cadre post of Chargeeman-B, purely on an ad hoc basis, until a regular incumbent was selected for this post according to Rules, by the Staff Selection Board. The Counsel for the respondents affirmed, that the applicant has not been superseded by any of his juniors. When a person is appointed to a higher post in an officiating capacity and that too, outside his parent cadre, he does not acquire any legal right to hold that post, for any period whatsoever and accordingly there is no "reduction in rank" within the meaning of Article 311(2) of the Constitution, if he is merely reverted to his substantive post. See: (i) STATE OF MYSORE v. NARAYANAPPA (1966) S.C. C.A.1420/66; and (ii) PARSHOTTAM DHINGRA v. UNION OF INDIA 1958 S.C.367. In the instant case, the applicant

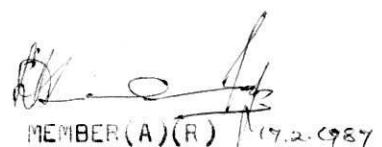
has not been superseded by his juniors and he was holding the post in question, as an ad hoc measure. He also did not avail of the opportunity to apply for the post in question, on a regular basis, even though applications were invited by R2. Besides, the applicant has agitated in the matter after well over a decade. We therefore find no merit in the claim of the applicant, for considering his claim for promotion to the upgraded ex-cadre post of Chargeeman-B and for the higher posts, out of turn. Even though the Counsel for the applicant has vaguely referred to a ruling of the Supreme Court reported in AIR 1981 SC 41 without specifically mentioning the names of the parties therein, in support of his case, we tried to look into this ruling, but could not find anything which was alike on facts of the case on hand and therefore, this ruling can scarcely come to the aid of the applicant.

19. Nevertheless, we would like to observe, that the applicant has been knocking at the doors of the respondents for regularisation and for promotion in the post concerned, after having officiating in the post of Chargeeman-B, outside his cadre, for well over a decade, which reveals the extent of stagnation in the cadre in question. We hope and trust that the respondents would give due attention to clear this stagnation and provide the requisite incentive to its employees to perform their best in service.

20. Subject to our above observations, we dismiss this application as without merit. In the circumstance of the case, we direct the parties to bear their own costs.



MEMBER (J)



17.2.1987

MEMBER (A)(R)

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REGISTERED

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

Dated : 24/8/87

REVIEW APPLICATION NO 103 /86()
IN APPLICATION NO. 873/86(F)

W.P. NO _____

Applicant

Shri K.R. Ananthanarayana V/s The Chief Electrical Engineer,
Southern Railway & 3 Ors

To

1. Shri K.R. Ananthanarayana
Chargeman 'B'
Southern Railway Workshop
Mysore
2. Shri S. Ranganatha Joshi
Advocate
36, 'Vagdevi'
Shankarapuram
Bangalore - 560 004

Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/~~XXXXXX~~/
~~XXXXXX~~ ORDER passed by this Tribunal in the above said Review
application on 20-8-87.

R. Venkateshwar
DEPUTY REGISTRAR
SECTION OFFICER
(JUDICIAL)

Encl : as above

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE

DATED THIS THE 20TH DAY OF AUGUST, 1987

Present: Hon'ble Shri Justice K.S. Puttaswamy, Vice-Chairman
and

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

REVIEW APPLICATION NO. 103/1987

Shri K.R. Anantanarayana,
Chargeman 'B',
Southern Railway Workshop,
Mysore.

.... Applicant.

(Shri S. Ranganatha Jois, Advocate)

v.

1. The Chief Electrical Engineer,
Southern Railway, Park Town,
Madras.

2. The Works Manager,
Southern Railway Workshop,
Mysore South,
Mysore.

3. The Chairman,
Indian Railway Board,
New Delhi.

4. Shri B.K. Anantarama Iyengar,
EF/ASS, O/o the Works Manager,
Southern Railway, Mysore.

.... Respondents.

This Review Application having come up for hearing to-day,
Vice-Chairman made the following:

ORDER

In this application made under Section 22(3)(f) of the
Administrative Tribunals Act, 1985, the applicant has sought
for a review of the order made on 17.2.1987 dismissing his
Application No. 873/86.



2. In Application No.373/86 the applicant had challenged an order of reversion made against him.

3. The order was made by this Tribunal on 17.2.1987 but this application is made ~~before~~ before this Tribunal on 27.7.1987 without an application for condonation of delay. Hence this application is liable to be rejected as barred by time without examining the merits. But we do not propose to do so and proceed to examine the merits also.

4. Every one of the grounds urged by Shri S. Ranjanath Jos, learned counsel for the applicant for review reveal that the applicant is really asking us to reexamine the order made by this Tribunal as if we are a court of appeal and come to a different conclusion which is impermissible in law. In this view also, this application is liable to be rejected.

5. In the light of our above discussion we hold that this application is liable to be rejected. We, therefore, reject this application at the admission stage without notice to the respondents.



Vice-Chairman

Sd/- —

Member (A)

bsv/Mrv.

B. Venkatesh Rao
DEPUTY REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE
24/8/