

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE

DATED THIS THE 22ND DAY OF JUNE, 1987.

Present: Hon'ble Shri Justice K.S. Puttaswamy, Vice-Chairman
and
Hon'ble Shri L.H.A. Rego, Member (A)

APPLICATION NO. 1491/86

Shaik Rahiman,
s/o Abdul Ragool,
aged 40 years,
Travel Ticket Examiner,
Southern Railways,
Bangalore City.

.... Applicant.

(Shri S.M. Babu, Advocate)

v.

1. The Divisional Personnel
Officer, Southern Railways,
Bangalore.

2. The Senior Divisional
Commercial Superintendent,
Southern Railways,
Bangalore.

3. The Chief Personnel Officer,
Southern Railways,
Madras.

.... Respondents.

(Shri A.N. Venugopal, Advocate)

This application having come up for hearing to-day,
Vice-Chairman made the following.

O R D E R

This is a transferred application and is received
from the High Court of Karnataka under Section 29 of
the Administrative Tribunals Act of 1985.

2. Prior to 16.12.1972 the applicant was working as a Class IV or a Group D employee in the Southern Railways. On 16.12.1972 the Divisional Personnel Officer, Mysore (DPO) promoted the applicant as a ticket collector in the grade of Rs.110-180 (pre-revised) on the terms and conditions set out in his order of that date (Annexure-A). Even though the said order of promotion was initially for a period of 6 months, the same is stated to have been continued ever since then till 27.8.1981, on which day he was confirmed from that date only by an order made by the DPO on 23.11.1981 (Annexure-C). In Writ Petition No.11314 of 1985 the applicant moved the High Court under Article 226 of the Constitution for a mandamus to declare that he stood confirmed from 16.12.1972 as ticket collector instead ^{of} _{from} 27.8.1981. On transfer the said writ petition has been registered as Application No.1491 of 1986.

3. Among others, the applicant has urged that he was entitled for confirmation from 16.12.1972 in terms of Railway Board's (Board) circular No.E(NG)1-70 CN 5/31 dated 2.12.1970.

4. The respondents have resisted this application. In their reply, the respondents have not pleaded that the case of the applicant was governed by the circular dated 2.12.70. But, at the hearing Sri A.N. Venugopal, learned counsel for the respondents sought leave to urge that the case of the applicant was not covered by the circular dated 2.12.1970 of the Board.

5. Sri S.K. Venkatarangaiyengar, learned senior Advocate appearing for the applicant contends that his client was entitled for confirmation from 16.12.72 in terms of the Board Circular dated 2.12.1970 and a direction to that effect be issued to the respondents.

6. Sri Venugopal contends that the case of the applicant was not governed by the circular dated 2.12.1970 of the Board.

7. The circular issued by the Board on 2.12.1970 on which the applicant relies reads thus:

"Officiating in higher grade:- When a railway servant is put to officiate in a higher grade for 5 years or more, he should be confirmed (if appointed on regular basis after due selection or suitability test) against the quota reserved for direct recruitment. This decision of the Railway Board will avoid hardship being caused to employees who are officiating for several years without being confirmed on the ground that they were excess of the promotion quota."

(THIS CIRCULAR IS COMPILED AT PAGE 97 in the Book - RAILWAY ESTABLISHMENT RULES & LABOUR LAWS - by B.S. MAINEE). "

While the applicant asserts that he was entitled for confirmation from 16.12.1972, in terms of this circular, the respondents contend that, that is not the position on various factors highlighted before us that are not necessary to notice.

8. Which of the two rival claims are correct has not so far been examined by the competent officer of the Railway Administration. The rival cases pleaded before us are not pure questions of law. The rival cases pleaded before us call for an indepth examination of all fact situations and their determination in the light of the principles enunciated by the Board. If that is so it is more proper for the competent officer to examine all the fact situations, in the first instance and decide them one way or the other. We are also of the view that such a course is in the interests of both sides and the interests of justice also. We consider it more proper that, that is examined in the first instance by Respondent-3 on whose competence to decide the same, both are agreed.

9. In order to enable the DPO to properly examine the case of the applicant vis-a-vis the case pleaded by the Railway administration, it would be proper to permit the applicant to file his representations before him with all such documents as he propose to place in support of his case within a period of one month from this day. When such representations are filed it would be proper to direct respondent-3 to examine them and pass such order as he deems fit in the circumstances within a period of 4 months from this day.

10. In the light of our above discussion, we make the following orders and directions:

- a) We leave open the question whether the case of the applicant for confirmation from 16.12.1972 is governed by the Board's circular dated 2.12.1970 to be examined and decided by the CPO, respondent-3.
- b) We permit the applicant to file his written representations on his claim before the CPO within one month from this day.
- c) We direct respondent-3 - CPO to examine the case of the applicant for confirmation or otherwise from 16.12.1972 and decide the same in accordance with law within 4 months from this day.

11. Application is disposed of in the above terms. But, in the circumstances, of the case, we direct the parties to bear their own costs.

Mrs. Bhulabhai
Vice-Chairman *22/6/73*

Member (A) *22/6/73*

np/Mrv.

REGISTERED

CENTRAL ADMINISTRATIVE
BANGALORE BENCH
@ @ @ @ @ @ @ @ @ @ @ @ @ @

TRIBUNAL

Commercial Complex (BDA),
Indiranagar,
Bangalore - 560 038

Dated : 2-7-87

APPLICATION NO 1491 /86(T)

W.P. NO 11314/85 /

Applicant

Shaik Rahiman

V/s. The Divl. Personnel Officer, S.R.Bangalore

To

1. Shaik Rahiman,
Travel Ticket Examiner,
Southern Railways,
Bangalore City.
2. Shri.S?M.Babu,
Advocate,
No.242, Kanakamandiram,
5th Main, Gandhinagar,
Bangalore-9.
3. The Divisional Personnel Officer,
Southern Railways, Bangalore.
4. The Senior Divisional Commercial
Superintendent,
Southern Railways, Bangalore.
5. The Chief Personnel Officer,
Southern Railways,
Madras.
6. Shri.A.N.Venugopal, Advocate
Room No.12, IIInd Floor,
S.S.B.Mutt Building,
Tank Bund Road,
Bangalore- 9.

Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/~~STAN~~/

~~INTERIM ORDER~~ passed by this Tribunal in the above said

application on 22nd June, 1987.

Haas
SECTION OFFICER
(JUDICIAL)

Encl : as above

dc

Issued
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17/87

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BANGALORE

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Sd —

Vice-chairman
22/6/87

Sd —

Member (A) 22.6.87

"True Copy"

np/Mrv.

Hall
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE