

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS THE 15th DAY OF APRIL 1987

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

Hon'ble Shri L.H.A.Rego Member(A)

APPLICATION Nos.1914-1920/86(T)

B.Venkateshware Rao,
Guard'B', Bangalore Cantonment
Railway Station,
Bangalore - 46.

K.P.Joseph, Guard'B',
Byappanahalli Railway Station,
Bangalore - 46.

N.Ulaganathan,
Guard'C', Bangalore Cantonment
Railway Station,
Bangalore - 46.

B.S.Jayaprakash,
Guard'C', Byappanahalli
Railway Station,
Bangalore.

B.C.Srinivasamurthy,
Guard'C', Yeshvantapur
Railway Station,
Bangalore.

K.Srinivasan,
Guard 'A', Yelahanka
Railway Station,
Bangalore.

D.Gunasheela,
Guard'B', Yeshvantapur
Railway Station,
Bangalore.

... APPLICANTS

(Shri S.K.Joshi ... Advocate)

v.

The Divisional Railway Manager,
Southern Railway,
Mysore.

The Additional Chief Personnel Officer,
Southern Railway, Park Town,
Madras - 3.

The Chief Personnel Officer,
Southern Railway, Park Town,
Madras - 3.

The Divisional Railway Manager,
Southern Railway,
Bangalore - 23.

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Shri Gavaiah,
Guard 'B', Yeshwantpur
Railway Station,
Bangalore.

...

RESPONDENTS

(Shri A.N.Venugopal

... Advocate)

This application has come up before the Court
today. Hon'ble Shri L.H.A.Rego, Member(A) made the following :

O R D E R

These are applications transferred under Section 29
of the Administrative Tribunals Act 1985 by the High Court of
Judicature, Karnataka, wherein it is prayed that the communication
dt.30.4.1985 by Respondent(R3) addressed to R4(Annexure-F) and
the Revised Seniority List of Guards 'C' as on 1.4.1981 in composite,
Mysore Division issued by R4 on 22.5.1985(Annexure-G) be quashed.

2. The salient facts giving rise to these applications
are as follows. The seven applicants were working as Guards in
various grades in the Southern Railway at the time they filed
these applications. Their relevant service particulars are as
follows as furnished by the respondents

Appli- cant No.	Name	Date of Birth	Details of first appointment Date	Date of appointment Post as Guard C	Post held at the time of filing the WP	
1	2	3	4	5	6	7
1.	B.Venkateswara Rao	9.4.45	3.4.66	TNC	6.3.79	Guard 'B'
2.	K.P.Joseph	6.1.44	1.4.66	-do-	9.4.80	-do-
3.	N.Ulaganathan	10.4.48	11.2.69	-do-	10.9.80	Guard 'C'
4.	B.S.Jayaprakash	12.6.48	6.3.71	-do-	4.7.81	-do-
5.	B.C.Srinivasamurthy	13.10.54	5.2.75	-do-	27.6.82	-do-
6.	K.Srinivasan	27.12.36	23.10.61	CC	22.8.79	Guard 'A'
7.	D.Gunasheelan	17.9.36	21.12.60	-do-	27.9.80	Guard 'B'

NB : TNC means Trains Clerk
CC means Commercial Clerk

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3. Applicants (A) 1 to 6 state, that they were regularised in the post of Guards 'C' on 6.3.1979, 2.4.1980, 10.9.1980, 4.6.1981, 27.6.1982, 22.8.1979 respectively. Applicant 7 however, is silent on this point. They refer to the Revised Seniority List of Guards 'C' as on 1.4.1981, at Annexure 'A' in this respect.

4. R5(Shri Gavaiah), is said to have been appointed as a Class IV employee in the then Mysore Division of the Southern Railway and promoted as Assistant Guard in the payscale of Rs.105/-135/225-308 and later as Guard 'C' on an ad hoc basis, on 28.10.1978. His promotion to the post of Guard 'C' was regularised on the same date viz.28.10.1978.

5. The applicants refer to the orders issued by R-3 on 13.3.1982(Annexure B) and 16.11.1979 (Annexure-C), stipulating the percentage quota for direct recruitment and promotion (categorywise) to the post of Guard 'C' and the manner in which the 40-point roster should be adhered to. The applicants allege, that the respondents deputed Brakemen and Asstt.Guards, for training in excess of the above percentage quota, allotted to the various categories and promoted them as Guards 'C' in violation of rules and regulations, treating the promotion as ad hoc, to the detriment of the career prospects of the applicants.

6. According to the applicants, R-5 was promoted as Guard 'C' on an ad hoc basis, against the quota earmarked for direct recruits, on condition that he would be reverted no sooner than a direct recruit becomes available. They refer to the instructions given by R3 to R4 on 30.4.1985 (Annexure F) on certain clarification, elicited by the latter and in particular, invite attention to para 2 of that communication, which for ease of

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solution to the problem of seniority agitated by the staff in a series of representations. Accordingly, RSL of Guards 'C' as on 1.4.1981 was revised on 22.5.85 as at Annexure G, though it did not strictly conform to the principles enunciated in Annexures B&C. This RSL was circulated to all concerned inviting their objections thereto, if any, before finalising the same. R5 was promoted as Guard 'C' on an ad hoc basis on 28.10.78 and was regularised in that post on the same date. Sri Venugopal, ^{as} pointed out, that the applicants did not represent in time against the same, but as late as on 1985 i.e., after a lapse of nearly 7 years. He, therefore, asserted that the representation of the applicants in this regard, was clearly hit by laches and was therefore not maintainable.

12. We have given careful thought to the pleadings of both sides. It is apparent, that the applicants did not stir themselves in time, when the promotion of R5 was regularised in the post of Guard 'C' on 28.10.78. The applicants are, therefore, hit by laches, in agitating this matter far too belatedly i.e., after a period of 7 years.

13. Sri Venugopal submitted, that the seniority list at Annexure-G, was revised on the instructions issued by R3 on 30.4.85, taking into account the special circumstances of the case, as a one-time measure. He assured, that this seniority list would be updated in future, strictly in accordance with the principles enunciated in Annexures B and C, in so far as they are relevant and applicable at the material time. He also submitted, that if the seniority list at Annexure G, was to be quashed at this stage as prayed for by the applicants, quite a number of employees would be adversely affected, apart from R5 and therefore, it would be unfair to quash the seniority list, without impleading the persons, who would be affected and without affording them an opportunity to plead their case before us.

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14. Taking into account all the circumstances of the case, we are of the view that the applications should fail. However, we hope and trust that the respondents would ensure that in future, the seniority list would be updated strictly in accordance with the principles ^{as laid} ~~set~~ down in Annexures B&C, in so far as they are relevant and applicable at the material time.

15. In the result, the applications are dismissed, subject to our above observation. No order as to costs.

Chandramouli
MEMBER(J) 15-4-87

Abdul
MEMBER(A) 15-4-87

AN.

3. Applicants (A) 1 to 6 state, that they were regularised in the post of Guards 'C' on 6.3.1979, 2.4.1980, 10.9.1980, 4.6.1981, 27.6.1982, 22.8.1979 respectively. Applicant 7 however, is silent on this point. They refer to the Revised Seniority List of Guards 'C' as on 1.4.1981, at Annexure 'A' in this respect.

4. R5(Shri Gavaiah), is said to have been appointed as a Class IV employee in the then Mysore Division of the Southern Railway and promoted as Assistant Guard in the payscale of Rs.105/-135/225-308 and later as Guard 'C' on an ad hoc basis, on 28.10.1978. His promotion to the post of Guard 'C' was regularised on the same date viz.28.10.1978.

5. The applicants refer to the orders issued by R-3 on 13.3.1982(Annexure B) and 16.11.1979 (Annexure-C), stipulating the percentage quota for direct recruitment and promotion (categorywise) to the post of Guard 'C' and the manner in which the 40-point roster should be adhered to. The applicants allege, that the respondents deputed Brakesmen and Asstt.Guards, for training in excess of the above percentage quota, allotted to the various categories and promoted them as Guards 'C' in violation of rules and regulations, treating the promotion as ad hoc, to the detriment of the career prospects of the applicants.

6. According to the applicants, R-5 was promoted as Guard 'C' on an ad hoc basis, against the quota earmarked for direct recruits, on condition that he would be reverted no sooner than a direct recruit becomes available. They refer to the instructions given by R3 to R4 on 30.4.1985 (Annexure F) on certain clarification, elicited by the latter and in particular, invite attention to para 2 of that communication, which for ease of

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reference is reproduced below:

"The cyclic roster in this instance is to be followed to arrive at the vacancies to be filled up from the different categories, but it does not follow that seniority should also be based in that order, unless of course promotions were made accordingly as they arise. It is seen from your seniority list that staff who have been promoted several years later have been placed seniors to those who are already officiating on the plea of following the cyclic roster, is not in accordance with any establishment rules or procedure. In fact your attention is drawn to Rule 302 of the IREM in terms of which unless specifically stated otherwise, the seniority among the incumbents of the post in a grade is governed by the date of appointment to the grade."

7. The applicants refer to the Revised Seniority List of Guards 'C' as on 1.4.1981 in the composite Mysore Division issued by R4 on 22.5.1985 (Annexure G) wherein they state, that as compared to R5, who appears at S1.No.39 they are placed far below.

8. Aggrieved by this Revised Seniority List (RSL) and the instructions issued by R3 to R4 on 30.4.1985 (Annexure F), the applicants filed a writ petition in the High Court of Judicature, Karnataka, in 1985, which has since been transferred to this Bench and is now before us for consideration.

9. Shri N.K.Joshi, learned counsel for the applicants, urged mainly, that the RSL of Guards 'C' issued by R4 on 22.5.1985 (Annexure-G) was against law and equity; that R3 has misinterpreted the provisions of Rule 302 of the Indian Railway Establishment Manual (IREM for short); that regularisation of ad hoc promotions made between 1972 to 1983, deviating from the percentage of posts allocated to each category and from the roster pattern, as indicated in Annexures B&C, was illegal and detrimental to the career of the applicants; that ad hoc promotion of R-5, could not have been regularised to the disadvantage of the applicants, in violation of the

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instructions contained in Annexures B&C particularly, when eligible candidates were available from respective categories to be considered for promotion, in accordance with the instructions in the said annexures; that Annexures F and G, adversely affect the career of the applicants leading to violation of Articles 14 and 16 of the Constitution; that the RSL as on 1.4.1981, in respect of Guards 'C' at Annexure 'A', is valid and therefore needs to be adopted for the purpose of promotions; that R3 has erred in directing R-1, to draw up a seniority list on the basis of ad hoc promotions, granted in violation of the instructions contained in Annexures B&C.

10. Shri Venugopal learned counsel for R1 to 4, in ^{de} refuting the above contentions, submitted that owing to administrative exigency, arising out of acute dearth of incumbents in certain categories, Assistant Guards were deputed for training in excess of the percentage quota allotted to them for promotion as Guards 'C' and were promoted to the post on an ad hoc basis; that these ad hoc promotions were later regularised, in accordance with the instructions issued by R3, through his letters dated 13.3.1972 and 16.11.1979 (Annexures B&C respectively); that as the seniority list was not drawn up, taking into account the date of entry into the cadre, there was a spate of representations from the staff, requesting for issue of a correct seniority list, on account of which, R3 took a decision on 30.4.1985 (Annexure F) to revise the Seniority list, on the basis of the date of entry into the cadre of Guards 'C', without disturbing the seniority inter se, in each category of staff, directing that the cyclic roster be followed only for the purpose of assessing the quota for each category.

11. Sri Venugopal submitted that R3 took a decision on 30.4.1985 (Annexure F) as a one-time measure, to find an equitable

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REGISTERED

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

Dated : 11/9/87

REVIEW APPLICATION NO 105 & 106 /87()
in A.No.1914 to 20/86(T)
~~XXXXXX~~ /

Applicant

N.Ulaganathan & anr. Vs. Divisional Railway Manager, S.Rly,
Mysore & ors.

To

1. Shri N.Ulaganathan, Guard 'C'
Bangalore Contonment,
Railway Station, Bangalore.
2. Shri K.Srinivasan, Guard 'A'
Yelahanka Railway Station,
Bangalore.
3. Shri M.R. Achar, Advocate,
No.1074-1075,
Banasankari I Stage,
Bangalore-50.

Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER ~~XXXXXX~~

~~ORDER~~ passed by this Tribunal in the above said Review
application on 24-8-1987.

R.Venkatesh
DEPUTY REGISTRAR
~~SECRETARIAL~~
(JUDICIAL)

Encl : as above

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE

DATED THIS THE 24TH 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. 105 & 106/1987

1. N. Ulaganathan, Guard 'C',
Bangalore Cantonment
Railway Station, Bangalore.

2. K. Srinivasan, Guard 'A',
Yelahanka Railway Station,
Bangalore.

.... Applicants.

(Shri M.R. Achar, Advocate)

v,

1. The Divisional Railway Manager,
Southern Railways, Mysore.

2. The Addl. Chief Personnel Officer,
Southern Railway, Park Town,
Madras.

3. The Chief Personnel Officer,
Southern Railway, Park Town,
Madras.

4. The Divisional Railway Manager,
Southern Railway, Bangalore.

5. Sri Gavaian, Guard 'B',
Yeshwanthpur Railway Station,
Bangalore.

.... Respondents.

These applications having come up for hearing to-day,
Vice-Chairman made the following:

O R D E R

In these applications made under Section 22(3)(f) of
the Administrative Tribunals Act, 1985, the applicants in

Application Nos.1916 and 1919/86(T) have sought for a review of a common order made on 15.4.1987 by a Division Bench of this Tribunal dismissing their and the other connected applications. In making these applications there is a delay of 94 days. In I.A. No.1 the applicants have sought for condonation of the said delay. In I.A. No.1 the applicants have stated that they were unaware of the order made by this Tribunal and they came to know of the same only when Respondent 5 was further promoted to a higher cadre.

2. Shri M.R. Achar, learned counsel for the applicants, contends that every one of the facts and circumstances stated by the applicants constitute a sufficient ground for condoning the delay and the delay be therefore condoned and the applications for review be admitted as the order made was patently erroneous.

3. We are of the view that every one of the facts and circumstances stated in the application, even if they are true, which we very much doubt, do not constitute a sufficient ground for condoning the delay. In this view I.A. No.1 is liable to be rejected.

4. When once we hold that I.A. No.1 is liable to be rejected the main applications for review are also liable to be rejected without examining the merits. But we do not propose to do so and proceed to examine whether the order made by this Tribunal discloses any patent error as passionately pleaded by Shri Achar.

5. In its order the Tribunal has held that the challenge of the applicants to the higher seniority granted to Respondent 5, was liable to be rejected on grounds of delay and laches and also on the ground that any interference by this Tribunal would really upset the applicant. We are of the view that both these grounds on which the Tribunal had dismissed the applications do not disclose a patent error to justify a review. At the highest the view taken on both the aspects may be erroneous. But that will not justify us to examine them as if we are a court of appeal and come to a different conclusion. In reality and in substance Shri Achar is asking us to examine the order made by this Tribunal as if we are a court of appeal and come to a different conclusion which we cannot do.

6. On the foregoing discussion we reject I.A. No.1 and main Review Applications without notice to the respondents.

Sd/-
Vice-Chairman
24/8/87

Sd/-
Member (A)

-True Copy-

bsv/Mrv.

R. Venkateshwaran
DEPUTY REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE