

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

DATED THIS THE 20TH DAY OF JANUARY 1987

Present: Hon'ble Shri Ch. Ramakrishna Rao - Member (J)
Hon'ble Shri P. Srinivasan - Member (A)

Application No. 316/86(T)

Shri P.A. Myageri,
Assistant Station Master,
South Central Railway,
At present working as
Section Controller, HUBLI ... Applicant

(Shri Subash Adi, Advocate)

vs.

1. Chief Personnel Officer,
South Central Railway,
Secunderabad.
2. Divisional Personnel Officer,
South Central Railway,
Hubli.
3. K.J.A. Peter,
Section Controller,
South Central Railway,
Vasco.

... Respondents

(Shri M. Sreerangaiah, Advocate)

This application has come up for hearing before
Court today. Hon'ble Member Shri P. Srinivasan made the following:

ORDER

This is a transferred application received from the
High Court of Karnataka.

2. The applicant was appointed as Assistant Station
Master (ASM) in the then Southern Railway by order dated
15-2-1963. Sometime in September 1961, the Railway Service
Commission (RSC) called for applications for posts of ASM and,
after conducting written and oral tests, selected a large
number of persons for the posts. The list of selected persons
was forwarded by the RSC to the Railway authorities for neces-
sary action. According to the standard practice, the Railway
administration divides the select panel into batches, the
first batch consisting of persons at the top of the panel
in the order of merit (as determined by the RSC), the second

P. S. Srinivasan

consisting of these next in the order of merit and so on. These batches are then sent for training in the same order (i.e. in the order of merit) at regular intervals of time. In this manner, the 19th batch of trainees started their training on 17-12-1962 for a total period of 9 months. The 21st batch started their nine month period of training from 18-2-1963: the applicant was one of the trainees of the 21st batch. Most of the respondents belonged to the 19th batch and a few belonged to earlier batches. At the end of 9 months of training, the trainees of each batch had to pass an examination. As the applicant held a diploma in English Telegraphy, the period of his training was cut short to six months and he was allowed to take the terminal examination in October 1963 itself along with the trainees of the 19th batch, which he took and passed. In 1966, the Railway administration brought out a provisional seniority list of ASMs in which all the trainees of the 19th batch were placed above the applicant who, in turn, was placed at the top of the 21st batch because he had passed the examination in October 1963 before the other members of that batch. In the final seniority list of ASMs brought out in 1971, the same relative positions of seniority were maintained. According to the applicant, his seniority should have been fixed according to the rank obtained by him in the examination which he passed in October 1963 and that persons of the 19th batch who obtained lower marks than he did in that examination should have been placed below him. For this, he relied on Rule 303 of the Indian Railway Establishment Code. His representations to the authorities in this regard were rejected.

3. Meanwhile, selection had to be made on a regular basis to the next higher post of Section Controller (SC) and the zone of selection had to be three times the number of posts available. Respondent 2, the Divisional Personnel Manager, South Central Railway, Hubli, issued what is referred to as a 'warning list' (also known as an "alert notice") of ASMs in the order of seniority falling within the said zone, by ^{his} ~~their~~ circular letter dated

P. S. [Signature]

17-10-1980. Only persons notified in the 'warning list' could sit for the examination for selection as SC. The applicant did not find his name in this 'warning list', though he had been promoted as Section Controller on an ad hoc basis from 17-9-1979. He, therefore, filed the present application on 28-10-1980 as a writ petition before the High Court of Karnataka in which the prayers are -

- (i) that the applicant should be included in the warning list in the circular letter dated 17-10-1980.
- (ii) that he be permitted to sit for the examination for the selection to the post of SC which was to be held on 31-10-1980.

4. During the pendency of these proceedings before the High Court, the High Court passed interim orders directing the respondents to permit the applicant to appear for the examination to be held in October 1980 for selection to the post of SC. A further order was passed permitting the respondents to complete the process of selection subject to the condition that the result of the petitioner be withheld and other persons selected be promoted subject to the result of the present litigation. According to this direction, the applicant sat for that examination and the result thereof so far as he was concerned was withheld and others who were selected were duly promoted. Subsequent to the selection made in October 1980, further selections on regular basis appear to have been made to posts of SC, from time to time. The applicant was not allowed to take any of the examinations held for such selection, while his juniors even according to the seniority list prepared by the respondents impugned in this application were allowed to do so and many of them have also been promoted as SC on regular basis as a result of the examination. The applicant has not so far been promoted as SC on regular basis.

5. Shri Subash Adi, learned counsel for the applicant contended that the seniority accorded to the applicant on the basis that he belonged to 21st batch and his consequent exclusion from the

P. Subash

warning list of 17-10-1980 were illegal and against the relevant rules governing the subject. He read out rule 303 of the Indian Railway Establishment Manual which is as follows:

"303. The seniority of candidates recruited through the Railway Service Commission or by any other recruiting authority should be determined as under —

- (a) Candidates who are sent for initial training to training schools will rank in seniority in the relevant grade in the order of merit obtained at the examination held at the end of the training period before being posted against working posts.
- (b) Candidates who do not have to undergo any training the seniority should be determined on the basis of the merit order assigned by the Railway Service Commission or other recruiting authority".

Where selection is made by the RSC the seniority of persons so selected on the same occasion should be in the order of merit obtained by them in the examination held at the end of the training period before being posted against working posts irrespective of the batch in which they were sent for training. The applicant had been permitted to take the examination in October 1983 along with the persons of 19th batch and he passed that examination. His seniority should, therefore, be according to the order of merit obtained by him at that examination vis-a-vis all others who took the same examination, even though they belonged to an earlier batch of trainees.

6. Shri M. Srirangaiah, learned counsel for the respondents first contended that this application had been badly delayed and should be dismissed on the ground of laches. The provisional seniority list which gave rise to the applicant's grievance was brought out in November 1966 and the seniority list which the applicant challenges and which appears at Annexure B was brought out in July 1971. The applicant came to court in October 1980 i.e., about 9 years after the 1971 list and about 14 years after

P. S. — 42

the 1966 list. He had not been diligent in pursuing his rights, whatever they were, and so the application deserved to be dismissed for laches. On merits, Shri Srirangaiah contended that the seniority of persons who joined first and were sent for training in an earlier batch had to be placed above those who joined later and were sent for training in a later batch. Rule 303(a) on which reliance is placed by Shri Adi is concerned with the relative seniority of persons sent for training at the same/and in the same batch: among them, the order of merit in the examination would determine their relative seniority. If a person was sent for initial training in a later batch like the applicant was allowed by way of a special dispensation to take the examination along with those of an earlier batch, that was a fortuitous circumstances which cannot enure to the advantage of the applicant. In the normal course, he would have been allowed to take the examination later than persons of 19th batch and in that event he could not have claimed seniority with persons of 19th batch. Merely because he was allowed to take the examination earlier he cannot claim seniority with the trainees of the 19th batch.

7. We have considered the matter carefully. We were initially inclined to dismiss this application on the ground of laches. Shri Adi, however, argued very energetically that the applicant's grievance was a continuing one and in fact the present application was against the 'warning list' which was issued on 17-10-1980; the writ petition filed on 28-10-1980 was, therefore, well in time. The respondents had not given any reply to the applicant's representations till the writ petition was filed. The reply dated 8-11-1976 given by them was not final because it said that reference had been made to the Chief Personnel Officer for further instructions. On 19-10-1980, the applicant had received another reply negating his claim for the first time and so the writ petition filed on 28-10-1980 was not delayed. We find that there is merit in this contention and, therefore,

P. L. V.

reject the objection of the respondents on the ground of laches.

8. We, however, find that on merits, the applicant's case cannot be upheld. The rule which is relied upon on behalf of the applicant speaks of "candidates who are sent for initial training to Training Schools" and not to persons empanelled for appointment by the RSC at one selection held for the purpose. Candidates "sent for initial selection", cannot include all candidates sent for selection in several batches. That would lead to the absurd result that a person sent for training in one batch and another sent for training in a later batch in the next year could both compete with each other for seniority on the basis of the marks obtained by them in the examination held at the end of their respective periods of training, because the rule itself does not say that only marks obtained in the same examination should be compared. The only reasonable interpretation of the rule, therefore, is that it should be applied to persons sent for training at one time i.e. in one batch and not to all persons recruited in one selection made by the RSC. Some persons in the list furnished by the RSC may not be sent for training for a long time because they are assigned the lowest position of merit in that list and they may be posted to working posts much later than the others. We are, therefore, of the view that the order of merit obtained in an examination should determine the relative seniority of officials sent for training in the same batch. The applicant was sent for training in the 21st batch and his seniority among members of the 21st batch would be determined according to the ^{mark} ~~marks~~ obtained by him in the examination vis-a-vis other persons of the same batch. He has been placed on top of the batch and so he cannot have any grievance. We, therefore, do not find any merit in the application and dismiss it.

9. Before parting with this application, we must refer to the unfortunate developments in this case to which reference has been made even earlier, during the pendency of this litigation ~~and as a~~ ^M ~~direct sequel thereto~~ and which have affected the applicant adversely.

P. S. 

The High Court, in its interim order, directed the respondents to permit the applicant to take the examination held in October 1980 subject to the condition that his result be withheld. He took the examination but the result has been withheld and rightly so. But there was no justification for not permitting him to take any subsequent examination for regular appointment to the post of Section Controller, even though according to his present seniority he would have fallen within the zone of selection. The result is that his juniors who were allowed to take the examination have been promoted to the post of SC on a regular basis and not he. It is stated that the respondents did not allow the applicant to sit in subsequent examinations merely because he had been allowed to sit for the October 1980 examination. This result was not intended either by the High Court or by this Tribunal. According to the respondents, the applicant was not eligible to take the examination in October 1980 and yet they allowed him to take it in obedience to the interim order of the High Court. Consistent with their stand, the respondents should have permitted the applicant to take the examination when his turn came according to his seniority, but by refusing to do this they blew hot and cold. Since the applicant was not allowed to take the subsequent examination even when he was entitled to do so according to his undisputed position of seniority we feel he should not be made to suffer on this account. If he has qualified for selection in the examination which was held in October 1980 he should be considered for regular promotion as SC from the date his immediate junior was so promoted and if found fit, he should be regularly promoted to that post from that date and paid all consequential financial benefits.

10. The application is dismissed subject to the above observation.

No order as to costs.

C. D. Anand

MEMBER (J)

P. S. ...

MEMBER (A)

207/187