

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH: BANGALORE

DATED THE 20 TH DAY OF FEBRUARY 1987.

PRESENT:

THE HON'BLE MR. JUSTICE K.S. PUTTASWAMY .. VICE CHAIRMAN

THE HON'BLE MR. L.H.A. REGO .. MEMBER

APPLICATION NOs. 424 to 427, 1013 to 1015

And 1079 OF 1986.

APPLICATIONS 424 TO 427 OF 1986:

1. Sri T.V.V. Raman, 55 years,
Head Travelling Ticket Examiner,
South Central Railway, at present
attached to Hubli, Dist. Dharwad.
2. Sri S.H. Nirgatti, 54 years
working as Head Travelling Ticket-
Examiner, S.C. Railway, Belgaum
Hubli Division, Hubli
3. Sri N.V.V. Subramanyam, 54 years
Head Travelling Ticket Examiner,
S.C. Railway, Hubli Division, Hubli.
4. Sri G.S. Raju, 55 years,
Head Travelling Ticket Examiner
(Train Conductor), Miraj, Dist. Sangli. Applicants

(By Shri R.U. Goulay, Advocate for the applicants)

Vs.

1. The Chief Personnel Officer
South Central Railways,
Rail Nilayam, Secunderabad, A.P.
2. Divisional Railway Manager,
South Central Railway, Hubli Division,
Hubli, Dist. Dharwad.

Respondents
(contd...)

3. Divisional Personnel Officer
S.C.Railways, Hubli, Dist.Dharwad.

4. J.E.Padmanabhan, 51 years,
Service, R/o Belgaum. .. Respondents.

(Sri M.S.Padmarajaiah, Senior Central Govt. Standing Counsel
for respondents 1 to 3)

APPLICATIONS:1013 to 1015/86:

1. Sri T.C.Sahadevan,
53 years,
Head Travelling Ticket Examiner,
Hubli S.C.Railways, Hubli
Dist.Dharwad.

2. Sri V.N.Rajapurohit,
Major, Head T.T.E.
S.C.Railways, Hubli.

3. Shri R.Chandran,
Major, Head T.T.E.
S.C.Railways, Hubli. .. Applicants

(Sri.R.U.Goulay, Advocate for the applicants)

-vs.-

1. The Chief Personnel Officer,
S.C.Railways, Rail Nilayam,
Secunderabad, A.P.

2. The Divisional Railway Manager
S.C.Railway Hubli, Divn.Hubli

3. The Divisional Personnel Officer,
S.C.Railways, Hubli, Dist.Dharwad Respondents.

(By Sri M.Srirangaiah, Advocate for respondents)

APPLICATION NO.1079 of 1986:

Sri J.E.Padmanabhan, Major,
Service, Belgaum. .. Applicant

(By Sri S.R.Bannurmuth, Advocate for the applicant)

-vs.-

-Vs.-

1. The Union of India by its Secretary
for Railways, New Delhi.
 2. The General Manager,
South Central Railway,
Secunderabad, A.P.
 3. The Divisional Railway Manager,
South Central Railway,
Hubli Division, Hubli. Respondents.
- (By Sri M.Sreerangaiah, Advocate for the respts.)

These Applications coming on for hearing this
day, Hon'ble Shri L.H.A.Rego, Member, made the following:

ORDER

There are in all eight applications transferred
to this Bench by the High Court of Judicature, Karnataka,
under Section 29 of the Administrative Tribunals Act, 1985
('Act' for short), wherein the main prayer is as follows:

I. Application Nos. 424 to 427 & 1013 to 1015 of 1986(T):

- (i) That the order dated 20-10-1983 passed by the
Divisional Railway Manager, Hubli ('DRM' for
short) cancelling the Gradation List published
under his letter dated 17-6-1983 and replacing it
by the Gradation List published under his letter
dated 20-12-1982 be quashed;
- (ii) That the respondents be directed to give effect
to the Gradation List published by the DRM under
his above letter dated 17-6-1983; and

(iii)

of their declining promotion did not arise; that the promotion of the second applicant was ad hoc and fortuitous in nature and therefore did not confer on him the benefit of seniority and a right to continue to hold the ad hoc post of promotion, and with this in view, the applicant was not desirous of accepting ad hoc promotion; that under these circumstances, persons whose willingness was sought and who were not promoted on ad hoc basis, were given an impression, that their seniority would not be affected in the future; that the instructions contained in Railway Board letter dated 21-1-1965, relating to loss of seniority, apply to only regular and not ad hoc promotions; that the 1983 CGL, could not have been challenged without notice to the applicants, whose seniority was affected and as such, its arbitrary cancellation is illegal, offending the principles of natural justice; that all the applicants in these applications, are now working as Head TTEs and are liable to be reverted, if the 1982 CGL is given effect to.

16. The contentions urged by the Counsel for the applicants in Applications Nos. 1013 to 1015 of 1986, are that ad hoc promotions would not count for seniority and any other advantage in service, for continuation and as such, should not affect the career of a senior, who declined such promotion; that the first applicant declined promotion on

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these grounds; that the second applicant could not avail of the ad hoc promotion, as he was not relieved within 30 days; that the third applicant requested for time to give his reply, about accepting the ad hoc promotion and therefore, his seniority could not have been affected. The Counsel reiterated the other contentions enumerated above, in regard to Applications Nos.424 to 427 of 1986.

17. The main ground urged by the Counsel for the applicant in Application No.1079 of 1986 is, that the promotion of juniors ad hoc, without finalising the CGL, affecting his service interests, is irregular and is opposed to principles of natural justice.

18. In the course of the hearing, Counsel for the applicants, in Applications Nos.424 to 427 and 1013 to 1015 of 1986(T) focussed his attack, primarily on the following grounds:

- (i) That the merger of the two cadres, namely, that of the Ticket Collecting (Station Staff) and Ticket Collecting (Line Staff), had in actuality not taken effect on 1-1-1965 and that these two channels operated distinctly apart.
- (ii) That the 1983 CGL, was cancelled summarily and the 1982 CGL restored, without giving adequate opportunity to the employees to submit their representations as was afforded when the 1982 and 1983 CGLs, were earlier provisionally drawn up.

(iii)

(iii) That the instructions contained in the letter dated 22-1-1965 from the Railway Board to the effect, that if an employee refused promotion to a higher post, he would^{be} considered ineligible for promotion for a period of one year and that he would consequently forfeit his seniority to that extent (as amplified in para-11 supra), would apply only to promotion to regular and not ad hoc vacancies and that in the case of the applicants, the vacancies offered on promotion, from the grade of ITE 'B' to that of STC, were not regular but ad hoc and therefore, the applicants would not be covered by the instructions issued by the Railway Board in their aforementioned letter dated 22-1-1965. Consequently, the applicants could not lose their seniority, when they declined ad hoc promotion, in the vacancies of STC offered by the DRM.

19. The learned Counsel for the respondents, emphatically repudiated these principal contentions one by one. According to him, the merger of both the cadres, namely, that of the Ticket Collecting and Ticket Checking staff, was complete and effective from 1-1-1965, as promotions were alternated from Station to Line duty, in the successive grades, as depicted in the Chart at 'B' in para-6 supra, so as to improve administrative efficiency, lest the incumbents strike deep roots in a particular cadre, with concomitant adverse effect

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of vested interest, as was noticed prior to 1-1-1965. The word "merger" was expressly used by the Railway Board, in its principal letter dated 30-7-1966, by which this amalgamation of the two cadres was brought about with effect from 1-1-1965 and the concerned Railway Officials had invariably referred to this expression, while issuing orders subsequently, relating to promotion and other service matters of the railway employees and of the applicants in particular. We have verified the factual position from the material placed before us, by the Counsel for the respondents and are satisfied, that the merger of the above two cadres had taken place de facto, with effect from 1-1-1965 and that the applicants came within its purview. We, therefore, negative the contention of the Counsel for the applicants (Shri Goulay) that merger of these two cadres had not taken place.

20. As regards the next contention, that the 1982 CGL, was cancelled summarily and that the 1983 CGL was restored, without affording a reasonable opportunity to the applicants, we have heard both sides. The Counsel for the respondents, could not convince us, as to how this was done, without giving due opportunity to the employees and particularly to the applicants in this case, to submit their representations within a specified period. The gradation list, has a crucial role to play in the service

career

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career of an employee, on which it can have far-reaching effect, if drawn up or revised with arbitrariness or caprice. It is apparent that in the case before us, the 1983 CGL was revoked and the 1982 CGL restored almost peremptorily, without giving reasonable opportunity to the employees to submit their representations, which is clearly violative of natural justice.

21. On our earlier finding, the order made by the DRM on 17-6-1983 superseding the earlier provisional gradation list published on 20-12-1982 (the 1982 CGL) normally calls for our interference. But, such a course is not called for, for the reason that the earlier gradation list published on 20-12-1982 was only a 'provisional' one, and in fact, ceased to exist, when it was superseded by the 1983 CGL, even though this CGL was provisional. In view of this, the right course to be adopted would be to direct the DRM, to draw at a Combined Gradation List as on 1-1-1965 and on such other dates as considered necessary by the Railway Administration taking into account our foregoing observations, circulate the same to all the employees concerned and give them adequate opportunity to submit their representations before finalising these gradation lists.

22. The last contention of Shri Goulay, that the instructions of the Railway Board in their aforementioned letter

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dated 20-1-1965, regarding loss of seniority if the promotion offered was not availed of, applied only to regular and not ad hoc vacancies, does not accord with facts. In fact, the said letter of the Railway Board makes no such distinction. Besides, the communications addressed by the DRM, while offering the post of promotion to the applicants from the grade of TTE 'B' to that of STC were categorical in stipulating that the applicants would be liable to be considered ineligible, for promotion for one year, if they declined the offer of promotion made, with resultant loss of seniority. The promotion offered cannot be said to be ad hoc and it was not treated as such, in the communications addressed by the DRM to the applicants. The applicants were aware that the promotion to the grade of STC, would be subject to their passing the departmental test, within a period of 3 months from the date of promotion. The contention of Shri Goulay therefore, that the promotion offered was purely on an ad hoc basis and that the instructions contained in the aforementioned letter dated 22-1-1965 of the Railway Board, regarding loss of seniority, in the event of the offer of promotion having been declined, did not apply to the applicants is clearly ill-founded. In fact, it has not been shown to us that the applicants had submitted this as their grievance, in their written representation if any, addressed by them to the concerned Railway authorities earlier. Besides, the Counsel could not adduce any concrete evidence

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evidence to show that the applicants were given to understand, as contended by them, that their seniority would not be affected in future if the promotion offered to them was declined.

23. We will even assume that the submission of Sri Goulay, that the promotions given to the applicants other than the applicant in A.No.1079 of 1986 were only ad hoc, is correct. But, that does not make any difference in the legal effect, in regard to those applicants declining promotion for the period specified in the order of promotion and to the seniority of those who accepted promotion in their place and worked in that capacity from the date of their promotion. When a civil servant declines his promotion, for whatever reason that may be, with which we are hardly concerned, he cannot turn round and contend on any legal principle, that he has not foregone his seniority and the promotees who had been promoted in his place, in the cadre, in which he declined promotion, should still be treated as his junior. We see no merit in this contention of Sri Goulay and therefore, we reject the same.

24. Shri Goulay pleaded, that the incumbents in the grade of TCs, who were junior to the applicants in the grade of TTE 'B' had stolen a march over the applicants, by availing of the offer of promotion to the grade of STCs declined by the applicants. The counsel for the respondents

admitted

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admitted, that the respondents who were promoted as STCs in the vacancies declined by the applicants, were junior to them but they became senior to the applicants, on account of default on the part of the latter, to avail of promotion in these vacancies, and in view of the instructions contained in the above letter dated 22-1-1965 from the Railway Board, regarding loss of seniority.

25. The question regarding seniority of the incumbents in the grade of TTE 'B' vis-a-vis the TCs, has been resolved by the High Court of Judicature, Karnataka, in a writ petition filed earlier before it, when it directed that the petitioners who had been appointed to or were promoted earlier to the grade of TTE 'B', be placed over the TCs as on the date of merger. This decision was confirmed in appeal, by a Division Bench of that High Court in THE CHAIRMAN, RAILWAY BOARD & ORS. -vs.- T.THAMMANNA & ORS (Writ Appeal No.545 of 1980) decided on 4/5-6-1980. This Bench has concurred with that decision in Application No.326 of 1986.

26. Shri Goulay, then urged that the grades of TTE 'B', STC and TTE 'A' were identical, as they carried the same scale of pay and therefore, the question of promotion from the grade of TTE 'B' to STC would not arise. In fact, this contention is far too belated and has not been advanced in the application, on which grounds alone, it would not merit consideration. Nevertheless, we would point out, that the grade of TTE 'B'

carried

carried a distinctly lower pay-scale of Rs.130-212, as compared to the pay-scale of Rs.150-240 of the other two grades viz., STC and TTE 'A', as on the date the opportunity of promotion to the grade of STC was offered to the applicants. In fact, the pay-scales for these three grades were revised with effect from 1-1-1973, pursuant to the recommendations of the IIIrd Pay Commission, to an identical pay-scale of Rs.330-560. Till then, the pay-scales were disparate in these grades and therefore, it could not be said that the grade of TTE 'B' was identical with that of STC. This is borne out by the following view taken by the Allahabad High Court in Civil Appeal No.1020 of 1966, dated 25-4-1969:

"All officials working in the same scale of pay in a department, although holding posts with different designations, shall be deemed to be holding posts in the same grade, because their rank in the same department, will be the same and equal to one another."

27. The Supreme Court concurred with this view of the Allahabad High Court in appeal, in H.N.S.BHATNAGAR -vs.- S.N.DIKSHIT & ANR.(AIR 1970 S.C. 40 (P.57 C 11)).

28. In view of the foregoing, the contentions raised by Shri Goulay fail, except in regard to cancellation

of

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of the 1983 CGL and restoration of the 1982 CGL, without affording reasonable opportunity to the applicants.

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

- (1) We declare that merger of the cadres of Ticket Collectors and Travelling Ticket Examiners actually took place, with effect from 1-1-1965, in terms of the orders made by the Railway Board in that behalf.
- (2) We direct the respondents to draw up a Gradation List of the above merged or combined cadres, in terms of the orders of the Railway Board, as on 1-1-1965 and on such other further dates as considered necessary by the Railway Administration and finalise the same in accordance with law and with the observation made by us in this order, after giving due opportunity to all concerned, to file their representations/objections.
- (3) We also direct the respondents to draw up a provisional combined gradation list, as on 1-1-1987, in order to project the up-to-date position regarding seniority, afford necessary opportunity to the applicants and others, to

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file their representation/objections as they propose to file, within the time to be fixed by the DRM and finalise this gradation list in accordance with law and the observations made in this order, with all such expedition as is possible in the circumstances of the case and in any event within a period of six months from the date of receipt of the order of this Tribunal.

30. Applications are disposed of in the above terms. But, in the circumstances of the case, we direct the parties to bear their own costs.

31. Let this order be communicated to the parties within 15 days from this day.

Ms. Pullaiah
VICE CHAIRMAN. 20/2/97

[Signature]
MEMBER (AM)(R) 20.2.97