

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS THE SEVENTEENTH DAY OF DECEMBER, 1986

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

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

APPLICATION NOS. 822 to 826 and 956 of 1986(T)

1. Vasanth Dattatray Keri
major, Guard 'C',
South Central Railway,
Belgaum. (As in Application 822/86)
2. D.R.Waval, Major,
Guard 'C', Miraj Railway
Station at Miraj,
District Sangli. (As in application 823/86)
3. P.Arunakumar, Major,
Guard 'C', Miraj Railway
Station at Miraj,
District Sangli. (As in Application 824/86)
4. N.Narayan Rao, Major,
Guard 'C', Miraj Railway
Station at Miraj,
District Sangli. (As in Application 825/86)
5. V.B.Gayake, Major,
Guard 'C', Miraj Railway
Station at Miraj,
District Sangli. (As in Application 826/86)
6. H.R.Pathan, Major,
Guard 'C', South Central Railway,
Hubli Division, Hubli,
District Dharwar. (As in Application 956/86)

(Shri R.U.Goulay ... Advocate for Applicants)

Vs.

1. The Divisional Railway Manager,
South Central Railway,
Hubli Division, Hubli.
 2. The General Manager,
South Central Railway,
Secunderabad, A.P.
 3. The Railway Board, by its Chairman,
Railway Bhavan, New Delhi ... Respondents)
- (Shri M.Sreerangaiah ... Advocate for Respondents)

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

APPLICATION NOS. 822 to 826 and 956 of 1986(T)
(Respectively corresponding to WP Nos.22517/81,
22596 to 22599/81 and WP 31377/82).

These are in all 6 (six) writ petitions, transferred by the High Court of Judicature, Karnataka Under Section 29 of the Administrative Tribunals Act, 1985(Act) to this Bench and renumbered as applications. The main prayer in the first five applications is, that the impugned order dated 1.10.1981, reverting the applicants from the post of Guard 'C', to which they were temporarily promoted to the post held by them earlier in their parent cadre, be quashed with consequential benefit. In the remaining sixth application, the main prayer is to direct the respondents to engage Guards 'C' in Hubli Division, between Hospet to Guntakal Section to and fro and prohibit Guards 'C' from Guntakal Division, from replacing the former in this Section and to grant the applicants consequential benefit. Since all these six applications are alike on facts and law, we propose to dispose them of, by a common order.

2. The Divisional Office Personnel Branch, Hubli(DOPB) had on 28.12.1978 invited volunteers from among the categories of railway staff (according to the percentage stipulated against each category as below) for filling up of vacancies in the posts of Guard 'C' in the pay scale of Rs.330-530.

S.No.	Category of post	Percentage Stipulated
1	2	3
i)	Brakesman	25.0
ii)	Yard Staff	15.0
iii)	Train Clerks and Offg. Sr. Train Clerks.	31.1
iv)	Ticket Collectors/Commercial Clerks (in the pay scale of Rs.260-400(RS)).	6.7

NB:- The percentage for direct recruitment to this post of Guard 'C' by the Railway Commission ^{was} ~~is~~ 22.2%.


3. The following relevant terms and conditions were specified in the aforesaid communication, for qualification for the post of Guard 'C':

- i) The volunteers should be medically fit in Group A-2.
- ii) They should be considered according to seniority in their cadre/grade as based on the roster.
- iii) Their mere willingness to work as Guard 'C', would not entitle them to an immediate posting.
- iv) Having once exercised their option to work as Guard 'C' they would seek promotion only in the channel prescribed for the traffic running staff.
- v) They would not be entitled for promotion in their parent cadre.
- vi) They would have to acquit themselves successfully in the prescribed training course.

4. The six applicants offered themselves for the post of Guard 'C' accordingly. Except the applicant, namely, Shri V.D. Kavi, who held the post of Commercial Clerk(CC) prior to his temporary promotion as Guard 'C', in the pay scale of Rs.330-530 on 20.9.1979, the others were, Senior Train Clerks(STCs), before they were accordingly promoted to the same post. Applicants Sarvashri Waval, Arunakumar, Narayana Rao and Gayake, were tem-

temporarily promoted as Guards 'C' on 27.8.1980, while Shri. Pathan was so promoted on 20.6.1978/30.1.1979. All of them had passed the prescribed test before being promoted as above as Guards 'C'. In the order of promotion, it was clearly stipulated, that the promotion was on purely on a temporary basis and was subject to revision, pending finalisation of the writ petition filed in the High Court of Andhra Pradesh. The order of promotion was issued by the DOPB. On 1.10.1981 however, consequent on review of the physical requirements, as based on the prescribed yardstick, train engine hours etc, the six applicants who were temporarily promoted and posted as Guards 'C', were reverted by the same office, to the post held by them earlier, in their parent cadre, they being the juniormost. Aggrieved thereon, they filed these applications.

5. Contesting their above reversion, the applicants allege, that they were required to work continuously upto 15 hours, in excess of the prescribed minimum of 10 hours and were thus denied the facility of relievers on completion of 8 to 10 hours of duty, which resulted in arbitrary reduction of posts in the cadre of Guards 'C' to their detriment; that the position in regard to movement of trains and working hours of the applicants has remained unchanged, even after the decision taken by the railways, to enhance the work hours beyond ten at a time; that the posts of Guards 'C' are borne on the Divisional cadre; that while Guards 'C' from the Guntakal Division have intruded in Hubli Division in the Hospet-Guntakal metre gauge section, Guards 'C' in other Divisions do not operate outside the territorial limits of their respective Divisions; that in the computation of work hours, they have been invidiously discriminated against, as compared to the running staff such as : Drivers, Firemen, and Diesel Assistants, who are allowed to operate in the trains



-5-

right from start to destination of the train; that as a result, they have been deprived of overtime allowance; that this is violative of Articles 14 and 16 of the Constitution of India; that the DOPB, is not competent to curtail the strength of Guards 'C', as these posts are allocated by the headquarters of the South Central Railway(SCR) at Secunderabad; that staff viz Station Masters, Asstt. Station Masters, Signalling and Engineering Staff, Shunting Jamadars, Point Porters and Train Examiner Staff, whose role is supplementary and complementary to that of the running staff, is assigned the usual 8 working hours and not more, and their cadre strength has not been reduced; that the direct recruits who joined service much later than they, have been continued as Guards 'C', while they have been reverted, which is violative of Articles 14 and 16 ibid; that their reversion is in violation of the quota rules and of the maximum percentage stipulated against each category of post in the feeder cadre, as indicated in para 2 supra.

6. The respondents have filed a detailed statement of objections before the High Court in respect of WP No.31377 of 1982(Application No.956 of 1986). In the case of other writ petitions, their counsel has filed a memo for disposal on 1.7.85, stating that the petitioners have since been promoted as Guards 'C' and, therefore, the writ petitions may be dismissed as infructuous.

7. The counsel for the respondents contends that Application No.956/1986 is not maintainable, as the applicant is seeking relief also on behalf of all the employees of Hubli Division, who are similarly circumstanced whom he cannot represent; that the applicant cannot direct the respondents to act in a particular manner, in operational activity of the railways on behalf of others, as the operational system of the zonal railway has to be regulated in consultation with the Railway Board and the sister railway zones; that the applicant was promoted


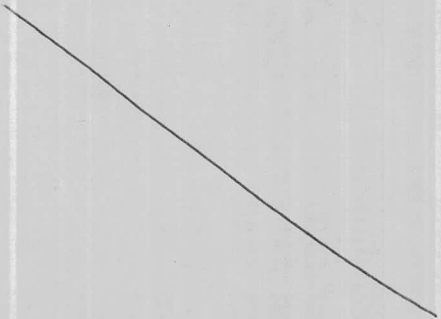
61

as Guard 'C' only on an officiating basis and not in a substantive capacity and his continuance depended on the availability of posts, some of which were declared surplus; that the requirement of the posts of Guards 'C', was reviewed on prescribed yardsticks, inclusive of the train engine hours, which revealed, that certain posts were surplus; that these posts were accordingly surrendered, resulting in reversion of the junior-most incumbents, among whom the applicant was one; that such reversion does not amount to a penalty, under the Railway Servants Discipline and Appeal Rules and does not therefore attract the provisions of Article 311(2) of the Constitution of India; that prior to formation of the SCR zone, on 2.10.1966, the Hospet-Guntakal M.G. Section, was within the territorial jurisdiction of Guntakal Division of the Southern Railway (SR) and the MG goods trains between Hospet and Guntakal, were being manned by the staff of Guntakal Division; that on the formation of the South Central Railway Zone on 2.10.1966 when both Guntakal and Hubli Divisions were under the SR, MG goods trains between not only Guntakal and Hospet but also between Hubli and Hospet, were manned by the running staff of Guntakal Division, although the section between Hospet and Hubli was under Hubli Division; that this arrangement was allowed to continue, in order to safeguard the interests of the concerned staff, even after the SCR zone came into being and Hubli Division was included within it; that the matter regarding taking over of train operations, from the SR, on the formation of the new SCR zone, was discussed with the recognised trade unions of the railways, in the permanent Negotiating Machinery meetings, on 4.9.1975 and 30.6.1977 and the Unions were informed that the issue of altering the status quo, in regard to running of train

64

services on the Hubli-Guntakal Section, by the running staff controlled by Guntakal Division, was a matter of policy to be decided by the Railway Board; that from the point of view of operational efficiency, the sections worked by the running staff of a Division, cannot be made to coincide with the territorial jurisdiction of their controlling Divisions; that the running staff based at Guntakal, was operating trains on the Guntakal-Hubli section, even prior to the formation of the SCR zone; that the applicant has not acquired any right under the rules or law, to hold the post of Guard 'C', on a permanent basis, as he was promoted to this post from that of Senior Trains Clerk (STC) only, on an officiating basis; that a similar situation prevails in other Railway Divisions and zonal railways, where running staff of one Division or zonal railway, operate trains on sections falling within the territorial jurisdiction of another railway division/zonal railway. Therefore, administrative interest ^{is} paramount and it cannot be compartmentalised to suit the needs of a particular section of staff.

8. The counsel for the respondents further contends, that the strength of Guards 'C', required under the administrative control of Hubli Division, was determined initially with reference to the workload then existing and the applicant was promoted to this post in an officiating capacity. This strength of Guards 'C' had to be later curtailed, after taking into account, factors such as: change in traffic pattern and the quantum of traffic in Hubli Division. This necessitated reversion of a number of persons including the applicant. The counsel brings to our notice, that the situation regarding the manning



of goods trains on the Guntakal-Hospet section by the running staff including Guards 'C' of Guntakal Division was the same, both when the applicant were promoted to officiate as Guards 'C' and later reverted as STC. The manning of trains on the Guntakal-Hospet Section, by Guards 'C' of Guntakal Division had a bearing on the promotion of the applicants as Guards 'C' and later on their reversion as STC. According to the counsel for the respondents, the counsel for the applicants has not revealed the fact, that the engine crew and Guards of Guntakal Division, operate passenger trains on the Guntakal-Hospet-Hubli Section but has only referred to the metre gauge goods trains being worked on this section.

9. The counsel for the respondents submits, that the Ministry of Railways had taken a policy decision on 3.4.1981 with regard to the hours of work for the running staff of the Indian Railways. Pursuant to this decision, which was circulated to all the General Managers of the Indian Railways, the 10 hours working rule came to be implemented in supersession of the earlier orders. This decision is said to conform to the hours of employment regulations. According to these regulations, a railway servant, whose employment is continuous, is not to be employed for more than 54 hours a week in a month, on an average. The running staff is to be made to rest each month, for at least 4 periods of not less than 30 consecutive hours each or for at least 5 periods of not less than 22 consecutive hours each. According to rules, the running duty at a stretch ordinarily should not exceed 10 hours. Consistent with these regulations, the Ministry of Railways took a policy decision as above, to regulate the hours of work of the running staff. This was done, in order to improve operational efficiency of the trains and to

benefit the public by minimising the running time. Besides dieselisation of the trains imparted greater speed to them ^{trains}, which facilitated regulation of work hours as above.

10. The counsel for the respondents refuted the contention of the applicants, that the running staff was made to work continuously from start to destination, regardless of the normal hours of work. He stated, that hours of work would not exceed 10 hours, except in unforeseen circumstances like accidents, breaches etc. when the running staff, is suitably compensated by way of overtime and rest. We have no reason to disbelieve this assertion of the respondents.

11. As the logistics of the railway traffic pattern and apportionment of the running staff in respective grades between the concerned Railway Divisions and its concomitant effect on the reduction of staff were not clear to us, we had desired that a senior responsible railway official, conversant with the subject, appear before us and explain to us the salient aspects and present a comprehensive note on the subject. We must express our dissatisfaction, in that a low functionary such as a Railway Inspector of Hubli Division appeared before us on 3.12.1986, who presented an extremely cursory note barely running into a page and could not enlighten us on the subject, which, undoubtedly, has several ramifications. We need hardly bring to the notice of the railway authorities concerned, that this ill-reflects on the care and attention paid by them, to important matters of the like, relating to the railways, coming before the Tribunal for decision and they should guard against recurrence.

12. We cannot be oblivious of the fact, that railway traffic pattern, the movement of trains and the apportionment of the

68

running staff is not necessarily circumscribed by territorial boundaries of a railway division and/or a zonal railway. This has a historical and contemporaneous precedent and background too. It is the overall operational efficiency of the railway system, that is paramount in the matter, on the logistics and technicalities of which, it is not for this Tribunal to sit in judgement. A technical matter of the like is best left to the judgement of the railway experts.

13. It is clear from the foregoing, that curtailment in the strength of Guards 'C' in Hubli Division, was necessitated by a policy decision by the Ministry of Railways, to improve the overall operational efficiency of the trains with due regard to change in circumstances. The applicants cannot dictate to the railway administration, as to the manner in which the trains should be run and between what sections and as to how the running staff should be apportioned. We are convinced that the railway administration has done this on a scientific basis, with due regard to the interests of the running staff as also the public.

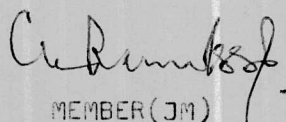
14. The applicants were appointed as Guards 'C' purely on an officiating basis in 1979 and had to be reverted in 1981, consequent to review of the situation by the railways, taking duly into account relevant factors as explained earlier. Where a person is appointed to higher post in an officiating capacity, he does not acquire any legal right (vide STATE OF MYSORE V. NARAYANAPPA 166 SC CA.1420/66J) 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 (vide STATE OF BOMBAY V ABRAHAM A. 1962 SC 794).

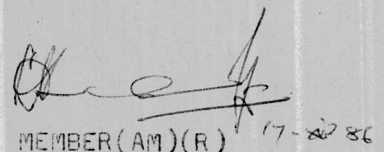
6

15. The posts of Guards 'C', are said to be borne on the Divisional Cadre. The applicants have not pin-pointed, as to whether in the case of their reversion to their original posts any of their juniors who were appointed by promotion to the posts of Guards 'C' have been continued in the Hubli Railway Division in these posts in preference to them. They have referred to the direct recruits having been continued as Guards 'C'. They cannot compare themselves to direct recruits which is a cadre apart and for which 22.2% of the posts among Guards 'C' are reserved. The applicants have also not pointed out, as to whether persons directly recruited to the posts of Guard 'C' after their promotion to this post, have been continued in preference to them.

16. The counsel for the respondents is seen to have filed a memo for disposal on 1.7.1985 before the High Court of Judicature, Karnataka, that the applicants are since promoted as Guards 'C' and therefore, the writ petitions may be dismissed as having become infructuous. The counsel reiterates the same before us.

17. In the light of the facts and circumstances discussed above, we find there is not merit in the applications, and we therefore dismiss the same. No order as to costs.


MEMBER(JM)


MEMBER(AM)(R) 17-2-86

A N.