

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

DATED THIS THE FIFTH DECEMBER 1986

Present:

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

Hon'ble Shri P. Srinivasan ... Member (A)

APPLICATION NO. 827/86(T)

Shri D. Bettaiah,
Head Clerk, Office of the
Chief Engineer (Construction),
Southern Railway,
BANGALORE-560002. ... Applicant

vs (Shri A.C. Rajasekhar, Advocate)

1. The Divisional Personnel Officer
(Personnel Branch), Southern Railway
Divisional Office, Mysore
 2. The Chief Engineer (Construction),
Southern Railway,
Bangalore-560002.
 3. Shri D. Gopalan,
Head Clerk, C.E(D), Construction,
Southern Railway,
Bangalore-560002. ... Respondents
- (Shri A.N. Venugopal, Advocate)

The application has come up before this Court
today for hearing. Member(J) made the following:

ORDER

This is a transferred application from the High Court of Karnataka. The applicant is currently working as Head Clerk, Southern Railway, in the office of the Chief Engineer (Construction) at Bangalore. He was appointed as Junior Clerk against Scheduled Caste quota on 8-9-1960, confirmed in that post from 1-1-1966, promoted as Senior Clerk in October 1972, and confirmed in that post with effect from 14-3-1979. The promotion to the post of Senior Clerk was also in the Scheduled Caste quota. Thereafter, he officiated in three different spells as Head Clerk i.e. 10-12-1973 to 1-9-1976, 10-1-1977 to 2-1-1979 and again from 7-9-1979 to 1-10-1981. All these appointments as Head Clerk were on ad hoc officiating basis. The last term, when he was appointed as Head Clerk with effect from 7-9-1979, was abruptly brought

to an end with effect from 1-10-1981 by an order dated 16-10-1981 issued by the Chief Engineer (Construction) i.e. respondent 2. In this order, it was stated that a certain Shri O.Gopalan (R3) had to be continued in the post of Head Clerk on ad hoc basis and so the applicant, who was working as Head Clerk on ad hoc basis, had to be reverted. The applicant is aggrieved with this order at Annexure D.

2. Shri A.C.Rajasekhar, learned counsel for the applicant contends that the reversion of the applicant by the impugned order was illegal. He had worked as Head Clerk up to the date of that order for nearly seven years in three spells. On the other hand, Shri Gopalan had joined service as Junior Clerk much later than the applicant i.e. on 8-7-1976. He had been given rapid promotion as Senior Clerk on 16-11-1976 itself and was confirmed in that post from that date itself. Shri Gopalan's recruitment as Junior Clerk and promotion to the post of Senior Clerk were against Scheduled Tribe vacancies. Thereafter Shri Gopalan had been promoted as Head Clerk on an ad hoc basis on 1-8-1978, again against a Scheduled Tribe vacancy. On 12-9-1981 (Annexure C) the Divisional Personnel Officer, Mysore, passed an order in which he stated that 'PULAYAN' community in Kerala State to which Shri Gopalan belonged had originally been classified as a Scheduled Tribe but had been re-classified as a Scheduled Caste as per Scheduled Castes and Scheduled Tribes (Amendment) Act, 1976, which came into effect on 27-7-1977. Since Shri Gopalan had been promoted as Head Clerk in a Scheduled Tribe vacancy, and since after 27-7-1977, he could no longer be treated as belonging to Scheduled Tribe, the Divisional Personnel Officer, Mysore, ordered cancellation of his appointment as Head Clerk resulting in his reversion to the post of Senior Clerk. We need not notice the rest of the order here. Soon thereafter, i.e. on 16-10-1981, the impugned order was passed by which it was decided to continue Shri Gopalan as Head Clerk in an ad hoc

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capacity and revert the applicant. According to Shri Rajasekhar, since Shri Gopalan had got the advantage of being treated as a Scheduled Tribe candidate and had got illegal promotions on this basis, both as Senior Clerk and as Head Clerk, it was he who should have been reverted and not the applicant.

3. Shri A.N.Venugopal, learned counsel for respondents 1 and 2 states that the reversion order was perfectly in order. Upto 27-7-1977, the Pulayan community was treated by law to be a Scheduled Tribe and so whatever had happened upto that date in respect of Shri Gopalan, a person belonging to ST - Pulayan community - was valid. Only after 27-7-1977, he could not be given the benefit of belonging to ST. Therefore, the appointment of Shri Gopalan as Junior Clerk against a Scheduled Tribe vacancy on 8-7-1976, his promotion and confirmation as Senior Clerk with effect from 16-11-1976 as an ST candidate could not be called in question because at that time, Pulayan community was declared by law to be an ST. The applicant, on the other hand, though promoted as Senior Clerk earlier, was confirmed in that position only on 14-3-1979. Thus as Senior Clerk, Shri Gopalan was senior to the applicant. Indeed, when the order dated 12-9-1981 (Annexure C) was passed, all that was done was to cancel the appointment of Shri Gopalan as Head Clerk against the ST quota. At that time, there was also a vacancy of a Head Clerk which was open to an SC candidate and this post was being held by the applicant. Since, as stated earlier, Shri Gopalan was clearly senior to the applicant by virtue of his earlier confirmation as a Senior Clerk, which is the feeder cadre for promotion to the post of Head Clerk, he had to be continued in the ad hoc vacancy and the applicant had to be reverted. Since this was not reversion by way of punishment, it did not constitute any reduction in rank and so the question of giving the applicant an opportunity of being heard under Article 311 of the Constitution did not arise.

Ans

4. Replying to Shri Venugopal, Shri Rajasekhar contends that Shri Gopalan respondent 3 was promoted as Head Clerk with effect from 1-8-1978 and that too illegally against an ST vacancy to which he was not entitled. Shri Gopalan had worked as Head Clerk only from 1-8-1978 while the applicant had worked in several spells as Head Clerk from 1973 onwards. Therefore, by virtue of longer continuous officiation in the post of Head Clerk, the applicant should have been retained and respondent 3 reverted.

5. When the matter was heard, both counsel informed us that the applicant had since been promoted as Head Clerk on regular basis from 1-1-1984. Therefore the conflict centres round only this - whether during the period 1-10-1981 to 31-12-1983 the applicant was rightly denied appointment as Head Clerk on ad hoc basis by giving preference to R3 thus depriving him of additional pay and allowance which he would have got.


6. We have considered the matter carefully in the light of the submissions made by counsel on both sides. Shri Gopalan no doubt joined service long after the applicant. But he entered as an ST candidate. He was promoted as Senior Clerk on 16-11-1976 and confirmed from that date again as ST candidate. At that time, the caste to which he belonged was classified as ST. That being so, his promotion and confirmation as Senior Clerk have to be held as valid whatever may have happened later. Thus he has to be treated as senior to the applicant because of his earlier confirmation as Senior Clerk, the applicant having been confirmed only on 14-3-1979. Therefore, when considering appointment to the post of Head Clerk whether on ad hoc basis or on regular basis in 1981, Shri Gopalan had a better claim. As stated earlier, with effect from 21-7-1977, he could no longer be treated as belonging to ST as his community was thereafter classified as belonging to SC.

CWJ

Therefore, equally with the applicant, he was entitled to an SC vacancy and being senior in the feeder cadre, he was naturally given preference. The fact that the applicant was acting as Head Clerk for longer period earlier cannot help him because they were ad hoc appointments on the clear stipulation that there would be no right to confirmation or seniority. It may seem unfortunate that a person who joined service much later was retained while the applicant was reverted. But that was the result of Shri Gopalan being initially treated as an ST candidate, something that we cannot at this stage upset. That being so, we will have to uphold the action by the respondents in continuing Shri Gopalan and reverting the applicant.

7. In the result, the application is dismissed. There will be no order as to costs.


(Ch. Ramakrishna Rao)
Member (J)


(P. Srinivasan) 5/12/86
Member (A)