

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)

REVIEW APPLICATION No.31/87

M.V.John,
Driver, Container Service,
Cantonment Railway Station,
Southern Railway,
Bangalore - 46.
(Shri N.R.Nayak

...
... Advocate)

APPLICANT

V.

Union of India,
by the Secretary,
Railways, Rail Bhavan,
New Delhi.

The General Manager,
Southern Railways,
Park Town,
Madras.

The Divisional Railway Manager,
Bangalore City Railway Station,
Southern Railways,
Bangalore .

The Executive Engineer, (Construction),
Southern Railways,
Sakleshpur,
Hassan District.

The Divisional Commercial Inspector,
Containers Service Cantonment
Railway Station, Bangalore.

Sri Dawood,
Driver, Container Service,
Southern Railways Cantonment,
Goodshed Road,
Bangalore.

S.Anthony,
Retd, Lorry Driver,
No.286/B(Now retired),
M.G.Railway Colony,
Bangalore.

A.Narayana,
Lorry Driver(A)
C/o Inspector of Works,
Southern Railway,
Bangalore.

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RESPONDENTS

(Shri M.S.Padmarajaiah

... Advocate)

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This review 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

In this Review application, filed under Section 22(3)(f) of the Administrative Tribunals Act 1985, the applicant prays, that the order passed by us in Application No.1031 of 1986(T) on 3.3.87 be reviewed, the seniority of the applicant fixed above Respondents(R) 7 to 9 and that he be granted consequential relief.

2. Sri N.R.Nayak, learned counsel for the applicant states, that this review application is filed on new grounds, in support of his claim for promotion and regularisation of his service w.e.f. 24.8.1969, as substantiated by fresh documents. He submits, that his client was appointed as a spare jeep driver under R5 on 19.6.1969, that he was transferred to the Railway Container Service(RCS) on oral instructions from 24.8.1969 and continued as substitute driver in a regular post. According to him, R4 appointed his client as a substitute driver by his order dt.17.11.1969(Annexure A), against one of the four posts of drivers sanctioned for the RCS, subject to the conditions stipulated therein. He refers to the order dt.7.10.1982(Annexure C) issued by R3 regularising appointments/promotions of 5 drivers (among whom his client was one) in the RCS and states that his client submitted a representation thereon, on 15.10.1982, claiming seniority over R7, but to no avail.

3. Sri Naik, contends, that R3 erred in drawing up the seniority list, ignoring the fact, that the applicant had been appointed by R4 as a driver in a regular vacancy w.e.f.24.8.69;

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that R3 did not fix the seniority of the applicant, in accordance with Rule 302 of the Indian Railway Establishment Manual (Manual for short); that R3 appointed R8 and 9 as drivers in the RCS, even though they were more than 25 years of age, which was irregular and illegal; that R3 did not take into account the date on which the applicant joined service as a driver, in a regular post, as R8 and 9 had joined later..

4. At the outset, we need to make it clear that review cannot be taken recourse to, merely for hearing of arguments anew or for correction of an allegedly erroneous view taken earlier but only for correction of a patent error of fact or law.

5. Sri Venugopal, learned counsel for the respondents, submits, that the applicant has not brought to light, any patent error of the like, in the order passed by us on 3.3.87, in the main application, so as to genuinely merit review but has merely reiterated the same grounds urged by him in the main application and, therefore, the review application prima facie, is devoid of merit. Nevertheless, Sri Venugopal rebuts the contentions of Sri Naik on the score, that the applicant cannot claim seniority over the respondents concerned, merely on the basis of a fortuituous appointment as substitute drivers, because, the incumbents, who were regular employees and volunteered to work as drivers, had necessarily to be placed above those who worked in a substitute capacity.

6. Sri Venugopal submits that the appointing authority for the cadre of drivers, was the Chief Personnel Officer (CPO, for short) who by his order, had regularised the services of R8 and 9 w.e.f. 23.3.1970. By another order dt. 30.10.1984, the CPO had regularised the services of the applicant and R7 w.e.f. 24.3.1970. ^{LA} These orders, he said, had become final and were not challenged by the applicant or anyone else and they were issued by the competent authority.

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The order passed by the Divisional Personnel Officer, Bangalore Division on 7.12.1982, relied upon by the applicant, according to Sri Venugopal, was not valid, as the said officer was not competent to regularise the services of Drivers in the RMS. He averred, that the seniority list was revised on the instructions of the CPO, on a reference to him by the DRM, as a result of a spate of representations from the drivers.

7. We have examined the rival contentions carefully. We do not find any flaw in the view taken by us, that the seniority of the applicant has been determined correctly by the competent authority in accordance with the Rules in the Manual, as observed by us in our order in the main application. Out of the 6 posts of drivers, three were filled in by regular employees and the remainder by substitutes. In this connection we may refer to the following decision of the Supreme Court in ASHOK GULATI AND OTHERS APPELLANTS Vs B.N. JAIN AND OTHERS, AIR 1987 SC 424, wherein it was observed:

"It is well-settled that an ad hoc, or fortuitous appointment on a temporary or a stop-gap basis, cannot be taken into account for the purpose of seniority even if the appointee was qualified to hold the post on a regular basis. As such, temporary tenure hardly counts for seniority in any system of service jurisprudence.

The applicant has not brought to our notice, any patent error of fact or law, so as to warrant review of the order passed by us on 3.3.1987 on the main application but was merely reiterated the grounds urged by him in the main application.

8. We, therefore, reject the review application. No order as to costs.

C. S. Danabasappa
15.4.87
MEMBER (J)

[Signature] 15.4.87
MEMBER (A)