

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 17-12-87

APPLICATION NOS. 755 to 760 & 920 to 963/87(F)

Applicants

Shri D. Satyanarayana Rao & 49 Ors

V/s

Respondents

The Divisional Railway Manager, Southern
Railway, Mysore Division & 6 Ors

To

1. Shri D. Satyanarayana Rao
2. Shri S. Varada Rajan
3. Shri A.V. Yathiraju Naidu
4. Shri S. Gopinathan Nair
5. Shri C.R. Narasimha Murthy
6. Shri S. Narayanamurthy
7. Shri D. Planappa
8. Shri Vishwanatha Joshi
9. Shri B.S. Panchkashahari
10. Shri M.J. Comez
11. Shri R. Ramagopalan
12. Shri K.V. Varadachar
13. Shri M.S. Rajeshkar
14. Shri K. Gopal
15. Shri Y. Muniappa
16. Shri C. Ningappa
17. Shri Mallikarjuniah
18. Shri A. Venkatesh
19. Shri T. Gundappa
20. Shri Todnoy Arnold

21. Shri D.A. Ramachandra Rao
22. Shri V. Subbanachar
23. Shri K. Satyanarayana Rao
24. Shri M. Ramachandrapa
25. Shri A.R. Gangadharaiiah
26. Shri V. Ramamurthy
27. Shri V. Nagaraju
28. Shri N. Venkateshan
29. Shri Giriraju
30. Shri Abdul Majid
31. Shri S. Nanjundaswamiah
32. Shri B. Gundappa
33. Shri M. Balaji Rao
34. Shri A.K. Rangappa
35. Shri C.K. Suresh
36. Shri K.G. Raghavendra Rao
37. Shri K.V. Ananda Rao
38. Shri K. Sundra Poojari
39. Shri Shivalingsiah
40. Shri R. Laxminarayana Singh

ofc

41. Shri R.S. Ramachandra Rao
42. Shri C. Krishna Gowda
43. Shri R. Satyananda
44. Shri S. Narasimhaiah
45. Shri M.J. Shantharaj
46. Shri R. Gopalakrishnan
47. Shri J. Pathnakumar
48. Shri B.N. Tippeswamy
49. Shri N. Papaiah
50. Shri B.R. Venkatasubramanya
(Sl Nos. 1 to 50 - Commercial Clerks,
Southern Railways
Mysore Division
Mysore)
51. Shri M. Raghavendra Achar
Advocate
1074-1075, Banashankari I Stage
Bangalore - 560 050
52. The Divisional Railway Manager
Southern Railways
Mysore Division
Mysore
53. The Divisional Personnel Officer
Southern Railways
Mysore Division
Mysore
54. Shri N. Srikentamurthy
55. Shri S.K. Sridharanurthy
56. Shri D.T. Laemi
57. Shri M.K. Narayana Pillai
58. Shri P.V. Govindaraja Setty
(Sl Nos. 54 to 58 - Commercial Clerks
Southern Railways
Mysore Division
Mysore)
59. Shri K.V. Lakshmanachar
Advocate
No. 4, 5th Block
Briand Square Police Quarters
Mysore Road
Bangalore - 560 002

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER passed by this Tribunal in the
above said applications on 24-11-87

1 to 51 & 57

Received
52
18/12/87
SECTION OFFICER
(JUDICIAL)

Encl : As above

RECEIVED 59 Copies 18/12/87

Diary No. 1549/CB/87

Date: 18.12.87

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

DATED THIS THE 24TH DAY OF NOVEMBER, 1987.

PRESENT:

Hon'ble Mr. Justice K.S. Puttaswamy, Vice-Chairman.

And:

Hon'ble Mr. L.H.A. Rego,

Member(A).

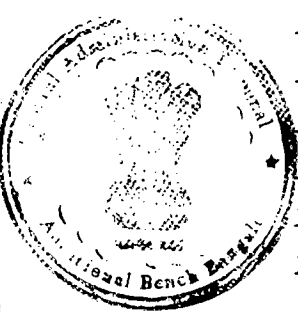
APPLICATIONS NUMBERS 755 TO 760 AND 920 TO 963 OF 1987.

1. D. Satyanarayana Rao,
S/o Sri D. Srinivasa Rao,
Aged about 56 years,
CCC Gr. II.
2. S. Varada Rajan,
S/o Sri S. Srinivasan,
Aged about 56 years, CCC Gr. II.
3. A.V. Yathiraju Naidu,
S/o Sri M. Venkateshalu Naidu,
Aged about 56 years, CCC.
4. S. Gopinathan Nair,
S/o Sri N. Shankaranarayan Pillai,
Aged about 57 years, CCC.
5. C.R. Narasimha Murthy,
S/o late Sri C.S. Rajagopal Iyengar,
Aged about 57 years, CCC Gr. II.
6. S. Narayanamurthy,
S/o late Shankarappa, Aged about
56 years, CCC Gr. II.

.. Applicants in
A.Nos. 755 TO 760 OF 1987.

7. D. Planiappan,
8. Vishwanatha Joshi,
9. B.S. Panchkashahari,
10. M.J. Comez,
11. R. Ramagopalan,
12. K.V. Varadachar,
13. M.S. Rajeshekar,
14. K. Gopal,
15. Y. Muniappa,
16. C. Ningappa,
17. Mallikarjunaiah,
18. A. Venkatesh,
19. T. Gundappa,

.. Applicants
(Contd..)



20. Todnoy Arnold,
21. D.A.Ramachandra Rao,
22. V.Subbannachar,
23. K.Satyanarayana Rao,
24. M.Ramachandrappa,
25. A.R.Gangadharaiah,
26. V.Ramamurthy,
27. V.Nagaraju,
28. N.Venkateshan,
29. Giriraju,
30. Abdul Majid,
31. S.Nanjundaswamiah,
32. B.Gundappa,
33. M.Balaji Rao,
34. A.K.Rangappa,
35. C.K.Suresh,
36. K.G.Raghavendra Rao,
37. K.V.Ananda Rao,
38. K.Sundra Poojari,
39. Shivalingaiah,
40. R.Laxminarayana Singh,
41. R.S.Ramachandra Rao,
42. C.Krishna Gowda,
43. R.Satyananda,
44. S.Narasimhaiah,
45. M.J.Shantharaj,
46. R.Gopalakrishnan,
47. J.Pathnakumar,
48. B.N.Tippeswamy,
49. M.Papaiah,
50. B.R.enkatasubramanya,

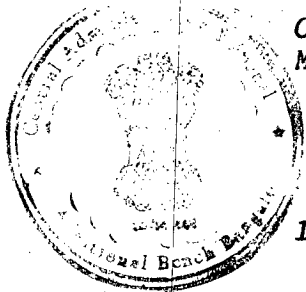
... Applicants
in A.Nos. 920 to 963/87.

All are working as Commercial
Clerks in Southern Railways,
Mysore Division, Mysore.

(By Sri M.Raghavendrachar, Advocate)

v.

1. Divisional Railway Manager,
Southern Railways, Mysore
Division, Mysore.



2. Divisional Personnel Officer,
Southern Railways, Mysore
Division, Mysore.
3. N.Srikantamurthy,
4. S.K.Sridharamurthy,
5. D.T.Laemi,
6. M.K.Narayana Pillai,
7. P.V.Govindaraja Setty,

(All working as Commercial Clerks in
Southern Railways, Mysore
Division, Mysore)

.. Respondents.

(By Sri K.V.Laxmanachar, Advocate)

--

These application having come up for hearing
this day, Vice-Chairman made the following:

O R D E R

These applications are made by the applicants
under Section 19 of the Administrative Tribunals Act,-
1985 ('Act').

2. Prior to 31-12-1983, the 50 applicants, respon-
dents 3 to 7 and several others who are not parties
were working as Commercial Clerks ('CCs') in the Mysore
Division of the Southern Railway. On that date, all
of them were holding one or the other grade of the
cadre of CCs, carrying the then time scale of pay,
allowed to their respective grades.

3. As on 31-12-1983, the cadre of CCs in the
Railways consisted of six grades as detailed hereunder:

(a) Commercial Clerks
Gr.Rs.260-430(RS)

.. Recruitment Grade.

(b) Senior Commercial Clerks
Gr.Rs.330-560(RS)

.. Non-Selection.

(c) Head Commercial Clerk
Gr.Rs.425-640(RS)

.. Non-Selection.

(d) Chief Commercial Clerk
Gr.III Rs.455-700(RS)

.. Selection.

(e) Chief Commercial Clerk
Gr.II Rs.550-750 (RS)

.. Non-Selection.

(f) Chief Commercial Clerks
Gr.I Rs.700-900 (RS)

.. Selection.

In these grades, the initial grade carrying the time scale of pay of Rs.260-430 was the recruitment grade. In the other five, three were non-selection grades and the other two were selection grades. As on 31-12-1983, the number of posts in the several grades of CCs were limited.

4. Evidently, on the demands made by the staff and all other relevant factors, the Railway Board ('Board'), on 20-12-1983, decided to re-structure the cadre of CCs and increase the number of posts in various grades and provide better avenues of promotion in the cadre of CCs and conveyed the same to all the General Managers in its letter No.PC/III/80/-UPG/19 dated 20-12-1983 (Annexure-II) spelling out in detail, the terms and conditions of such re-structure, the increase in posts, in the various grades and the date from which the same should be given effect to by the Railway Administration. The applicants are not aggrieved by this circular.

5. On an examination of the said circular of the Board and in the purported implementation of the same, the competent authority of Mysore division had

made various ad hoc and regular promotions in the cadre. In that process, some of the applicants and respondents 4 to 7, have been promoted from lower grades to higher grades on an ad hoc basis. In that process, the Railway administration also conducted an examination which was later cancelled. On 1-9-1987, the Railway administration had again taken steps to hold an examination for the post of Chief Commercial clerks Grade-II, carrying the time scale of pay of Rs.1600-2660 (pre-revised Rs.550-750). Aggrieved by the same, the applicants have approached this Tribunal, challenging the same on diverse grounds and seeking diverse reliefs.

6. In justification of the orders made and/or action taken from time to time, respondents 1 and 2 have filed their reply. Respondent-4 has filed a separate reply, supporting the applicants and respondents 1 and 2 in some respects.

7. Shri M.Raghavendrachar (Sri Achar), learned Advocate, has appeared for the applicants. Sri K.V.-Laxmanachar (Sri Laxman) one of the Standing Counsel for the Railways, has appeared for respondents 1 and 2. Respondents 4 to 6 have appeared in person and argued their cases. All other respondents who have been duly served have remained absent and are unrepresented.

8. Sri Achar contends, that respondents 1 and 2 were bound to consider the cases of the applicants

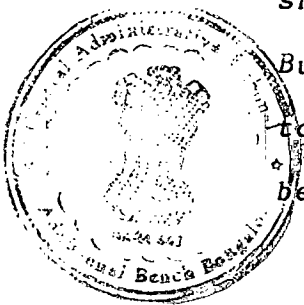
for regular promotion as on 1-1-1984, in the first instance, for all the sanctioned posts, as directed by the Board, in its Circular dated 20-12-1983 and grant them all such consequential benefits, to which they were entitled, as on that date first and then regulate all further promotions on that basis thereafter.

9. Sri Laxman in refuting the contention of Sri Achar and supporting the orders and action of respondents 1 and 2 urges, that the claim for retrospective promotions from 1-1-1984 was barred by time and cannot be granted, even if the same was well-founded. In the very nature of things, it is first necessary to examine this plea of limitation, urged by Sri Laxman and then the merits, if that becomes necessary.

10. A plea touching on bar of limitation, which necessarily involves investigation of facts must be properly raised in the pleadings. In their reply, respondents 1 and 2 have not urged that these applications or any of the claims made by the applicants were barred by time and cannot be adjudicated under Section 19 of the Act. In the absence of a plea, we should ordinarily decline to examine this objection.

But, we do not propose to be technical and propose to examine the same on merits, as if the same had been raised by respondents 1 and 2 in their reply.

11. Among the applicants, some promoted on ad hoc basis, and some not so far promoted, are only



seeking a direction to respondents 1 and 2, to examine their claims for regular promotion as on 1-1-1984 as directed by the Board, which is undoubtedly binding on them and extend to them all such benefits to which they are entitled, in accordance with law. We are of the view, that this claim is still a subsisting claim and is a continuing one also. The period of limitation for enforcement of such a claim had arisen even on the day, the applicants approached this Tribunal. If that is so, then it is difficult to hold that the claim of the applicants is barred by time under Section 21 of the Act. For these reasons, we see no merit in this contention of Sri Laxman and we reject the same. With this it is now necessary to examine the merits, which we now proceed to do.

12. In its circular, the Board had sanctioned the restructuring of the cadre of CCs and had increased the number of posts in various grades of that cadre from 1-1-1984. In more than one part of the circular, the Board had impressed on the Railway administration, to expeditiously examine the cases of the personnel working in different divisions and effect promotions on and from 1-1-1984.

13. Every one of the authorities in all the Divisions of the Railways including those working in Mysore Division was bound to examine the cases of all eligible officials, in terms of the Board circular and other rules and orders in force, and effect regular promotions from 1-1-1984 to the number of posts sanctioned

in that circular. There cannot be any doubt on the same.

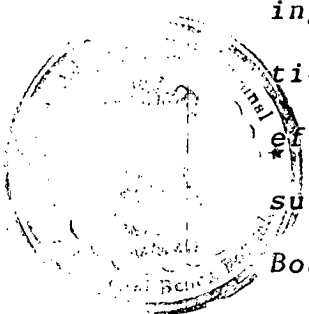
14. While the applicants contend that the Board's order had not been implemented in its entirety, in particular, their claim for regular promotion from 1-1-1984, respondents 1 and 2 contend to the contrary and Sri Laxman urges acceptance of the same as correct.

15. We find that in the case of some applicants regular promotions have been given and in the case of many or atleast some, only ad hoc promotions had been given. If that is so, then atleast in the case of the latter, there has not been a full and complete implementation of the Board's order dated 20-12-1983. In this view, there is no alternative for us, other than to direct respondents 1 and 2 to implement the same in their case also, from 1-1-1984.

16. While regulating retrospective promotions, the law as it stood as on 1-1-1984 should only be applied. We have no doubt respondents 1 and 2 will do so.

17. We are also of the view that only on completing regular promotions as on 1-1-1984, further promotions arising in the cadre thereafter, have to be effected, with due regard to the law in force on each such occasion. This also necessarily flows from the Board's circular dated 20-12-1983.

18. On what we have so far expressed, Sri Achar




states, that the challenge of the applicants to the departmental examination held on 11-10-1987, need not be examined and the same be rejected as not pressed by them. We, accordingly reject the same as not pressed by the applicants.

19. Sri Laxman urges, that we should deny monetary benefits to such of those who are promoted retrospectively from 1-1-1984, on the ground, that they had not actually shouldered the responsibilities of the higher posts. Shri Achar opposes the same and urges extension of all consequential and monetary benefits flowing from the same.

20. In more than one case, we have generally denied monetary benefits to those, who do not actually shoulder responsibilities of public office. We seen no reason to depart from that salutary principle. But, this cannot come in the way of proper fixation of pay and other benefits flowing from such retrospective promotions.

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

- 
- (a) We dismiss these applications in so far as they challenge Notification No.Y/P.608/II/CCC. Gr.II dated 1-9-1987 of the Divisional Personnel Officer, Mysore (Annexure-D) as not pressed by the applicants.
 - (b) We direct respondents 1 and 2, to consider the cases of the applicants, respondents 3 to 7 and such other eligible officers for promotion to

the respective grades of Commercial Clerks as on 1-1-1984, as directed by the Board, in its Circular dated 20-12-1983, in the Rules, and in the orders that were in force as on that day, and promote all such eligible and suitable persons to the respective grades to which they were entitled as on 1-1-1984, in the first instance and then regulate all other promotions arising thereafter from time to time on that basis, denying all monetary benefits, if any, that they may become entitled to, till they are actually promoted and shoulder higher responsibilities. But, in all other respects the same should be given effect to by respondents 1 and 2.

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

Sd _____
VICE-CHAIRMAN

Sd _____
MEMBER(A) 24.11.87

np/
True copy =
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE