

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
.....

Commercial Complex(BDA),
Indiranagar,
Bangalore- 560 038.

Dated: 17/12/87

APPLICATION NO S 2 & 24 /87 (F)

W.P.No. _____

APPLICANT

Vs

RESPONDENTS

Shri Anwar Basha

The Divisional Manager, South Central Rly,
Hubli & 2 Ors

To

1. Shri Anwar Basha
Ticket Collector
South Central Railway
Gadag
Dharwad District
2. Shri A.S. Mensinkai
Advocate
No. 1, Parakalamutt Building
Tank Bund Road
Bangalore - 560 009
3. The Divisional Manager
South Central Railway
Divisional Office
Hubli
Dist. Dharwad
4. The Divisional Personnel Officer
South Central Railways
Hubli Division
Hubli
Dist. Dharwad

5. Shri A.J. Farnandish
Ticket Collector
South Central Railway
Hospet Division
Hospet
Ballary District
6. 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/~~STAY~~/

~~INTERIM ORDER~~ passed by this Tribunal in the above said application

on 11-12-87.

R. V. Venkatesh
DEPUTY REGISTRAR

(JUDICIAL)

Encl: as above.

Folger

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH: BANGALORE

Dated the 11th day of December, 1987

Present

THE HON'BLE SHRI L.H.A. REGO .. MEMBER(A)

THE HON'BLE SHRI CH.RAMAKRISHNA RAO .. MEMBER(J)

APPLICATION NO.2 OF 1987 (F)

C/w

APPLICATION NO.24 OF 1987(F)

Anwar Basha S/o Babajan,
Major, Ticket Collector,
South Central Railway,
Gadag, Dharwad Dist.
(Karnataka State)

.. Applicant.

(By Shri A.S.Mensinkai, Advocate for applicant)

-vs.-

1. The Divisional Manager,
South Central Railway,
Divisional Office, Hubli,
Dist.Dharwad.
2. The Divisional Personnel-
Officer, South Central Railways,
Hubli Division, Hubli,
Dharwad Dist.
3. A.J.Fernandish,
Ticket Collector,
South Central Railway,
Hospet Division, Hospet,
Bellary Dist.

.. Respondents.

(By Shri K.V.Lakshmanachar, Advocate for respondents)



The

The applications coming on for hearing this day, HON'BLE SHRI L.H.A.REGO, MEMBER(A), made the following:

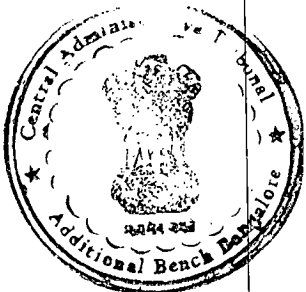
ORDER

In these two applications viz., Applications 2 and 24 of 1987 (abbreviated as A-2 and A-24 respectively, for ease of reference) filed under Section 19 of the Administrative Tribunals Act, 1985, which are inter-connected and therefore, we propose to dispose them of by a common order, the applicant prays that the impugned orders dated 30-9-1986 and 29-12-1969(Annexure-'B' in A-2 and A-24 respectively) passed by Respondent(R) 2, reverting him to his substantive post/parent post in Class IV, be set aside.

2. The following is the background to this case. The applicant entered service in Commercial Department of the South Central Railway (SCRly.for short) at Hubli as a Luggage Porter on 30-8-1974 on a monthly pay of Rs.196/- in Class III, in the pay scale of Rs.196-232(RS). He was promoted as a Ticket Collector ('TC' for short) purely on an ad hoc basis, with effect from 11-12-1981 (Annexure-A, in both applications) on condition, that this promotion would not confer on him, any claim for seniority, confirmation and continuance in this grade.

3. In the promotional cadre of TCs, one third (33 1/3%) of the posts are filled in, by inviting volunteers from Group 'D' staff, of the Commercial

Department



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Department of the SCRLy. The applicant, along with others accordingly offered himself for the post of TC, to qualify for which, he appeared both for the written test as well as the viva voce . However, he could not be empanelled for selection to the post of TC, as he was not sufficiently senior.

4. The applicant was promoted in the meanwhile on an ad hoc basis, as an interim arrangement, against the quota earmarked for the direct recruits. He was continued in this capacity till October 1986. The applicant is said to have appeared in 1982-83 and again in 1985-86 for regular selection to the grade of TC but without success.

5. A panel of 18 Class IV candidates held eligible for regular promotion to Class III was published on 23-9-1986 by R-2, after completing the due process of selection. Consequently, the applicant, who was appointed as TC in Class III, purely on an ad hoc basis had to be reverted to make room for the candidates regularly promoted as above. As a result, the applicant was first reverted by R2 from the post of TC in Class III to his substantive post in Class IV on 29-9-1986 (Annexure-B in A2). This order of reversion was served on him on 1-11-1986 and was given effect to from the same date.

6. However, the applicant was again promoted by R2 among others, as TC in Class III in the pay scale of

Rs.



Rs.

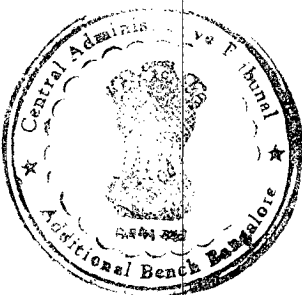
Rs.260-400(RS), on 22-10-1986, purely on an ad hoc basis, as a stop-gap arrangement, till the regular candidates joined. He was again reverted by R-2, on 29-12-1986 (Annexure-B in A-24), to accommodate the candidates regularly selected, after empanelment and undergoing the prescribed training course. The above order of reversion was served on the applicant on 15-1-1987 and took effect from that date.

7. The applicant has approached this Tribunal through two separate applications, as a sequel to the above impugned orders of reversion, alleging that while R3 who is junior to him, has been regularly appointed as TC on promotion and continued in that post, he has been reverted. R1 and 2 have filed their replies thereto, which are substantially similar. R-3 too has filed a reply.

8. Shri A.S.Mensinkai, learned Counsel for the applicant in both these applications contends, that the applicant has been reverted from the post of TC, without assigning any reason, after having served for as long as 4 years and nine months in that post, while R3 who entered service on 1-3-1975 and is therefore junior to him and besides, is not qualified (being in the Operation and not in the Commercial Department, as required) has been in flagrant discrimination, continued in that post; that R-3 nowhere appears in the pertinent

seniority

rk



Seniority List of Class III employees in the Commercial Department of the SCRly, Thus, his seniority is indeterminate and therefore, he cannot be deemed as senior to the applicant; that the applicant was directed by R2 on 7-4-1981, to attend the Promotional Course for TCs for a period of 45 days from 4-5-1981; ^{and} ~~that~~ that taking all these facts into account, his client should not have been reverted from the post of TC, in preference to R-3.

9. Shri K.V.Laxmanachar, learned Counsel for R-1 and R-2, denies that R-3 is junior to the applicant as claimed by Shri Mensinkai, as he had entered service in the SCRly on 1-3-1973 (and not on 1-3-1975 as mis-stated by Shri Mensinkai) whereas, the applicant entered service on 30-8-1974. He further clarified, that R-3 was selected for the post of TC in Class III, in the pay scale of Rs.260-400(RS), by virtue of his seniority in Class IV, as compared to the applicant and was promoted to that post, on a regular basis. He contends, that R-3 was serving in the Commercial Department of the SC Rly, at the time he was selected and promoted as TC in Class III and was thus qualified for this post. He states, that the applicant could not be appointed as a regular TC in like manner as R3, as he was not adequately senior for empanelment.

10. As regards the contention of Shri Mensinkai that R-3 did not appear in the pertinent Seniority List, and therefore his seniority was not determinate, Shri Laxmanachar concedes, that omission of R3 from the Seniority

List



List
was an inadvertent error and on enquiry by us clarified, that the Seniority List was still provisional.

11. We have carefully examined the rival contentions and the material placed before us. Though prima facie, R3 appears to be senior to the applicant by virtue of his earlier date of entry in service, namely 1-3-1973 in the S.C.Rly. as compared to 30-8-1974 of the applicant, presuming that he entered service in an identical cadre, as that of the applicant in the Commercial Department, the question of seniority needs to be determined and settled, though the well-established and recognised procedure of first circulating a provisional Seniority List to all concerned and finalising the same after affording reasonable opportunity to them, to represent their grievance if any, thereon. This does not appear to have been done in the instant case. Shri Laxmanachar produced before us a copy of the Provisional Seniority List of Class III staff, in the pay scale of Rs.196-232(RS), in the Commercial Department of the S.C.Rly. drawn up as upto 1979. He admits that the name of R-3 did not appear therein, but could not explain this omission, as also could not clarify, as to whether R3 entered service in the S.C.Rly in the same cadre, as the applicant in the Commercial Department.

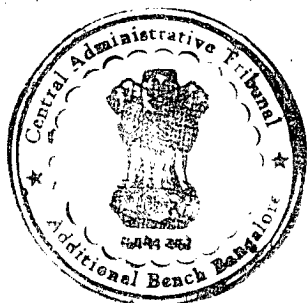


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12. Where

12. Where a person is appointed to a higher post in an officiating capacity, he does not acquire any legal right [(1966) SC (CA 1420/1966) STATE OF MYSORE Vs. NARAYANAPPA] to hold that post, for any period whatsoever and accordingly, there is no reduction in rank, within the meaning of Article 311(2), if he is merely reverted to his substantive post (1958 SC 36 - PARSHOTTAM DINGRA v. UNION OF INDIA). In this case, however, though the applicant was reverted from an ad hoc promotion to the post of TC, his Counsel contends, that R-3 who was junior to his client and who was not qualified for promotion as TC (as he was working in the Operation and not in the Commercial Department as was the requirement) could not have been regularly promoted as TC and continued in that post, while his client was reverted to his substantive post.

13. In the Provisional Seniority List of Class IV employees in the Commercial Department of the SC Rly, drawn up as u upto 1979, a copy of which is produced by Shri Laxmanachar, we notice, that the name of R-3 is conspicuously missing therein. It therefore raises a doubt, as to whether R-3 entered service in the Commercial Department of SC Rly. an the same post as the applicant and if not, on what basis, he was deemed senior to the applicant and considered eligible for regular appointment to the post of TC, if service in the Commercial Department is regarded as an essential pre-requisite.



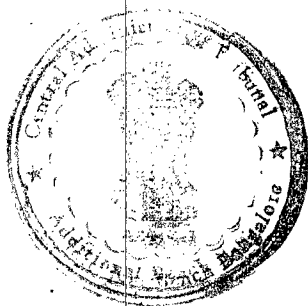
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14. In our view the first pre-requisite to help resolve this tangle, is to determine finally and at the earliest, the relative seniority of R-3 vis-a-vis the applicant, in the Seniority List of Class III staff, in the pay scale of Rs.196-232(RS) in the Commercial Department of the SC Rly, which was the feeder cadre for the promotional post of TC. That done, other - criteria such as: successful completion of the tests, training course etc., prescribed for the post of TC, would need to be examined, for the purpose of empanelment and subsequent promotion to the post of TC. From the pleadings of R-1 and R-2, we notice, that the only impediment to the applicant not having been considered for empanelment and promotion to the post of TC, is that he was not sufficiently senior in the feeder cadre of Class III, in the pay scale of Rs.196-232(RS) in the Commercial Department of the SC Rly. The question of seniority of the applicant vis-a-vis R-3, is inexplicit, for the reasons aforementioned.

15. In the light of the foregoing, we make the following order:

- (i) We direct R-1 and R-2, to determine the seniority of the applicant at the relevant time, vis-a-vis R-3 in the Class III cadre, in the pay scale of Rs.196-232(RS) in the Commercial Department of the SC Rly. by finalising the Seniority List in that cadre at the earliest, as prescribed by the relevant rules and procedure.

(ii)



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- (ii) Having so determined the relative seniority of R3, vis-a-vis the applicant, their eligibility for empanelment in the cadre of TC in Class III, in the pay scale of Rs.260-400(RS) on a regular basis, with reference to the date from which R3 was regularly promoted in that cadre, be decided, according to the rules prevalent.
- (iii) If, as a result, the applicant is deemed to be senior to R3, his empanelment and subsequent promotion to the cadre of TC, on a regular basis, be regulated in the manner, as was done in the case of R3 (whom he would substitute) and the impugned orders dated 30-9-1986 and 29-12-1986 (Annexure-B in A-2 and A-24 respectively) will stand quashed to that extent, in so far as they relate to the applicant and R-3.
- (iv) In consequence, the pay of the applicant would be notionally fixed to date, in the post of TC in Class III, granting him the increments due. This however, would not entitle the applicant to arrears of pay in the said post, for the period during which, he did not actually perform duty and shoulder higher responsibility in this post.

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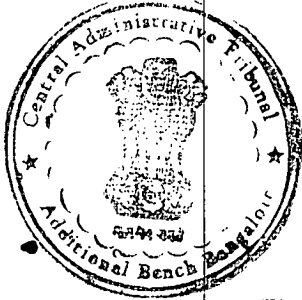
(v)



(v) The promotion of R3 as TC in Class-III, in that event, for the period during which, the applicant should have been promoted as TC in his place, should be treated as ad hoc and fortuitous.

(vi) This order be complied with, within a period of 3 months from the date of receipt.

(vii) The application is disposed of in these terms. No order as to costs.




sd/-

11.12.87
(Ch. RAMAKRISHNA RAO)
MEMBER (J).

sd/-

11.12.87
(L.H.A. REGO)
MEMBER (A)

- True COPY -


DEPUTY REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

kms:

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 28 DEC 1988

APPLICATION NO. 1790 /88(F)

W.P. NO. /

Applicant(s)

Shri A.J. Fernandes

To

Respondent(s)

V/s The Divisional Railway Manager, South Central Ry,
Hubli & another

1. Shri A.J. Fernandes
Train Ticket Examiner
Office of the Chief Ticket Inspector
South Central Railway
Miraj

2. Shri M. Narayanaswamy
Advocate
844 (Upstairs)
V Block, Rajajinagar
Bangalore - 560 010

3. The Divisional Railway Manager
South Central Railway
Hubli Division
Hubli

4. The Divisional Personnel Officer
South Central Railway
Hubli Division
Hubli

5. Shri K.V. Lakshmanachar
Railway 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/~~SKAY/INTERIM ORDER~~
passed by this Tribunal in the above said application(x) on 16-12-88.

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SECTION OFFICER
~~DEPUTY REGISTRAR~~
(JUDICIAL)

Handwritten signature
Encl : As above

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

Dated the 16th day of December, 1988

Present

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

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

APPLICATION NO.1790 OF 1988(F)

A.J.Fernandes

S/o John,

33 years,

Train Ticket Examiner,

working under Chief Ticket Inspector,

Miraj, South Central Railway,

Hubli Division, Miraj.

.. Applicant.

(By Shri M.Narayaneswamy, Adv. for the applicant)

-vs.-

1. The Divisional Railway Manager,
Hubli Division, South Central-
Railway, Hubli.

2. The Divisional Personnel Officer,
Divisional Office(Personnel Branch),
Hubli Division, South Central-
Railway, Hubli.

.. Respondents.

(Shri K.V.Lakshmanacher, Adv.for respts.)

This application coming on for hearing
this day, HON'BLE VICE CHAIRMAN made the follow-
ing:

O r d e r

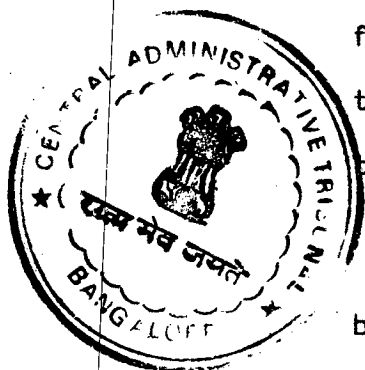


ORDER

In this application made under Sec.19 of the Administrative Tribunals Act, 1985(Act), the applicant has challenged Letter No.H/P/531/III/TCs dated 22-8-1988 (Annexure-D).

2. Shri M.Narayaneswamy, learned Counsel for the applicant does not dispute that on the very terms of the impugned Letter, the applicant is entitled to show cause and that as a matter of fact, he had done that and the authority is still to make a final order on the same. If that is so, then this application ^{is} really ~~of~~ premature.

3. We find that aggrieved by the order made by this Tribunal in Applications Nos.2 and 24 of 1987 (Annexure-C), the applicant has presented ⁴ Special Leave Petitions to Appeal(Civil) Nos.11670-71/88 before the Supreme Court, which had also stayed the operation of the order of this Tribunal, on 21-11-1988. On this view also, this application does not survive. On any view of the matter, this application is liable to be rejected. We, therefore, reject this application. But, in the circumstances of the case, we direct the parties to bear their own costs.



TRUE COPY

[Signature]
SECTION OFFICER *28/12*
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

Sd/-

(K.S.PUTTASWAMY) *[Signature]*
VICE CHAIRMAN.

Sd/-

(L.H.A.REGO) *16.12.98*
MEMBER(A).