

(21)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 491/91

Bo. 6.99

Date of Decision:

M.D.Nikam & Ors.

Applicant.

Shri L.M.Narlikar

Advocate for
Applicant.

Versus

DRM, C.Rly., Bombay & Ors.

Respondent(s)

Shri S.C.Dhawan

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice R.G.Vaidyanatha, Vice Chairman

Hon'ble Shri. D.S.Baweja, Member (A)

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?

Bhagat
(D.S.BAWEJA)

MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

(22)

OA. NO. 491/91

Dated this the 30th day of June 1999

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri D.S.Bawej, Member (A)

1. Manohar Daulat Nikam
2. D.K.Badge
3. Jagga Nath Baburao
4. D.S.Kale
5. Ashok Shankar Thakre
6. M.V.Panekar
7. J.K.Jadhav
8. Sudakar.B
9. P.U.Bise
10. K.B.Naidu
11. S.N.Dende
12. A.G.More
13. S.S.Firgani
14. Vasant B.Sigwant
15. S.B.Karande
16. K.N.Sarang Pani
17. J.R.Kulkarni
18. H.R.Tiwari
19. K.G.Kardak
20. Manikam Antony
21. V.S.Patil
22. B.D.Sharma
23. Sayed Iqbal.A

All Goods Drivers under
Loco Foreman, Kurla,
Central Railway,
C/o. Shri Manohar Daulat Nikam
Gunpowder Road, 497/28,
Central Railway Quarters,
Mazgaon, Bombay 400 010.

... Applicants

By Advocate Shri L.M.Nerlekar

v/s.

1. Divisional Railway Manager,
Central Railway, Bombay. V.T.
2. Union of India through
General Manager, Bombay V.T.
3. Raghavendra R. Rao
4. Rajendra Kumar More
5. Prashant Tukaram Bobhate
6. Vishal Pandurang Bhosale
7. Sikanesar N.Khan
8. Kamlesh M.Pandve
9. Ralwan Singh Jaswal
10. Deepak Prabhakar Karekar
11. Ramkrishna Sampat Badgujar
12. Dinkar Sadashiv Koparkar
13. Jayant G.Nimsudkar
14. Shrikant B.Kotorwar

... Respondents

By Advocate Shri S.C.Dhawan

O R D E R

(Per: Shri D.S.Bawaja, Member (A))

This application has been filed jointly by 22 applicants who are working as Goods Drivers under Loco Foreman, Kurla, Bombay Division of Central Railway.

2. The applicants have stated their grievance as follows :- The applicants submit that in all the Indian Railways and also in the other Divisions of Central Railway, the seniority of all the Diesel as well as Electric Drivers is being kept combined. Diesel Drivers when due for promotion are being given conversion training and promoted as Electric Drivers. However, on the Mumbai Division of Central Railway, the seniority of the Diesel Drivers and Electric Drivers is being kept separate as a result though the Electric Drivers are getting promotion as Motorman and Mail and Express Drivers, but the Drivers on the diesel side have no chance for promotion as Motorman or Mail or Express Drivers. The applicants further submit that they have been representing on this issue and the matter was taken up by the respondents with both the recognised Unions. After detail discussion, it was agreed that there is a need for merger of the Diesel and Electric Drivers and it was decided that the Divisional Railway Manager, Mumbai Division will be asked to send a proposal after discussing the matter jointly with the recognised unions at the divisional level. The applicants further add that though it has been decided to merge the cadre of diesel and electric

drivers at the level of Assistant Drivers as per Headquarters letter dated 2.4.1990 but no decision has been taken to merge the cadre at the drivers' level. Feeling aggrieved by the same, the present application has been filed on 12.8.1991 seeking the relief of directing the respondents to maintain common seniority of diesel and electric drivers and to give conversion course to the Diesel Drivers working on Mumbai Division and after successful completion of the course, they should be promoted in accordance with the combined seniority list.

3. The main argument advanced by the applicants is that though the administration has decided to merge the cadre of Diesel and Electrical Drivers at the level of Assistant Drivers, but they have not merged the drivers' cadre and therefore the applicants/treated differently and discriminately. In view of this, the action of the respondents is in violation of the provisions of Articles 14 and 16 of the Constitution of India. The applicants further add that they are prejudicially affected in their chances of promotion and they are being deprived of their promotion to the post of Motorman, Mail and Express and Special 'A' Grade Drivers.

4. The respondents have opposed the application through the written statement. At the outset, the respondents have taken a plea that the present application is not maintainable for non-joinder of necessary party. The respondents have stated that the electric drivers are opposed to any common seniority

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as the promotion of the electric drivers will be adversely affected and therefore no adverse orders could be passed against them without hearing ^{them}. As regards the merits, the respondents have submitted that on the Mumbai Division the cadre of Electric and Diesel Drivers is being kept separate for the last 40 years in view of the peculiar geography of the railway track as considerable section of the track is running through ghats. Besides, it is only on Mumbai Division of Central Railway where there are electric locos operating on Central Railway suburban section, for which drivers have to be given special training to ensure safe working of the trains. In view of this, the applicants cannot compare the same with the other Division of Central Railway and other railways. The respondents admit that the decision has been taken to merge the cadre of diesel and electric drivers at the Assistant Drivers' level prospectively after detail deliberations in consultation with at various levels and also the recognised unions. It is further stated that with the merger of the cadre, that after recruitment at the Assistant Driver's level, the incumbent will be given training both for Diesel and Electric traction and over a period the cadre will get combined at the various grades above the Assistant Drivers. The respondents contend that since the working responsibility and training of the two cadres has been separate from the beginning, it is not considered feasible to maintain a common seniority at the Drivers level for the existing staff. In view of these submissions, the respondents plead that there is no discrimination and violation of Articles 14 and 16 of the Constitution.

The respondents also contend that the matter with regard to division of cadres and channel of promotion is a policy matter and is within the domain of the administration and therefore not subject to judicial interference. With these submissions, the respondents submit that the applicants have no case and the present OA. deserves to be dismissed.

5. The applicants have filed the rejoinder reply controverting the submissions of the respondents. The applicants contest the claim of the respondents that the electric locomotive are working only on Mumbai Division suburban section/stating that this situation is prevailing in all the Metropolitan cities where suburban systems are working. Similarly there are Ghat-sections on other Railways also. The applicants submit that there are no special considerations prevailing at Mumbai for maintaining separate cadre of diesel and electric drivers and the Administration is not merging the cadres under the influence of recognised unions.

6. During the pendency of the OA., a Misc. application was filed by some of the Electric Drivers with a prayer to join them as party respondents as they would be directly affected if any order is passed by the Tribunal with regard to the merger of the cadre as prayed for in the application. This application had been allowed and they have been added as respondents at Sr.3 to 14. However, these respondents have been neither represented by a counsel nor any written statement has been filed.

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7. During the hearing of the case at some stage the counsel for the respondents stated that the merger of the cadre at the drivers level is under discussion with the recognised Unions. The respondents were therefore asked to file an affidavit indicating the latest position with regard to progress made on the subject. The respondents have accordingly filed an additional affidavit bringing out result of the discussion held with the recognised unions with regard to merger of the cadre and avenue of promotion as Motorman and Mail and Express Drivers on Mumbai Division.

8. Heard the arguments of Shri L.M. Nerlekar, learned counsel for the applicants and Shri S.C. Dhawan, learned counsel for the respondents.

9. From the averments made by the applicants in the OA., it is noted that there is a separate cadre of diesel and electric drivers on Mumbai Division of Central Railway. The applicants are Diesel Drivers and they are seeking the relief of directing the respondents to merge their cadre with that of the Electric Drivers so that they can get promotion as Motorman, Mail/Express and Special 'A' Grade Drivers on the Electric Side after under-going conversion training. The applicants have alleged that they have been discriminated on three counts :- (a) The chances of promotion to Motorman and Mail and Express Drivers are not available to the Diesel Drivers. (b) The cadre of diesel and electric drivers is common on Central Railway and other Railways except Mumbai Division.

(c) The respondents have decided to merge the cadre of diesel and electric drivers at the Assistant Drivers level but have not agreed to merge the cadre at drivers level. The respondents, on the other hand, have contested the claim of the applicants stating that the cadre of diesel and electric drivers is existing separate for the last 40 years in view of the peculiar operating condition prevailing on account of difficult track geography on the Ghats Section and operation of electric locos on the suburban Section. The respondents have also contended that the merger of cadre at the entry level, i.e. Assistant Drivers' level has been decided prospectively so as to progressively achieve merger of the cadre at all level by training the Assistant Drivers both in diesel and electric from the initial stage itself. But the merger at the Drivers' level is not considered advisable by the respondents keeping in view the safe operation of trains. After careful consideration of the rival contentions, we are not persuaded to find any merit in the contentions made by the applicants. The first contention of the applicants is that their chances of promotion as Motorman and as Mail and Express Drivers are lesser to that of electric drivers is not sustainable. An employee has only a right to be considered for promotion and not for promotion. A right to be considered for promotion is a term of service but chances of promotion is not. In this connection, we refer to the law laid down by the Supreme Court in several judgements. Some of which are (a) Union of India & Ors. vs. S.L.Dutta & Anr., 1991 SCC(L&S) 406.

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(b) Director, Life Irrigation Corporation Ltd. & Ors. vs. Pravat Kiran Mohanty & Ors., 1991 SCC (L&S) 472. (c) S.P. Shivprasad Pipal vs. Union of India & Ors., 1998(2) SLR 781. In the present case, the cadre of diesel and electric drivers has been maintain separately for over 40 years as indicated by the respondents and the applicants had been recruited in the diesel cadre with this position known to them. Therefore their plea that their chances of promotion are less cannot be a ground for discrimination. Keeping in view what is held by the Hon'ble Supreme Court in the above cited judgements, the allegation of discrimination cannot be advocated on the ground that their chances of promotion are less.

10. The applicants have/made a point that though the administration has decided to merge the cadre of electric and diesel traction drivers at the level of Assistant Drivers but have refused to merge the cadre at the drivers' level, that is the grade in which the applicants are working. The respondents, as indicated above, have explained the basis on which this policy decision has been taken in consultation with the recognised unions. Whether the two cadres are to be separate or to be merged is a policy matter which is within the domain of the administration. ^{for} / any action taken as a policy decision by the Government to merge the cadres, no judicial interference can be made until and unless such a decision is challenged on the ground of having been taken with malafide intention. In the present case,

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we do not find that ^{any} such allegation has been made by the applicants. As brought out by the respondents, such a decision has been taken after due deliberations at the various levels by associating the recognised unions who represent the interest of the staff. The applicants have also alleged discrimination on the ground that the common cadre of electric and diesel drivers is being maintained in all the other Division s of Central Railway as well as other Railways except Mumbai Division. This contention has no force in view of the explanation by the respondents that the cadre on Mumbai Division had been maintained separate on account of peculiar operating conditions prevailing on Mumbai Division. It is also noted that right from the beginning the cadre has been kept separate for the last 40 years. Respondents have also stated that the electric traction had been introduced on the other Divisions subsequently to Mumbai Division and the policy decision keeping the diesel and electric cadres combined has been dictated by the requirements of train operation on these Divisions. In view of the position explained by the respondents, it is our considered view that the issue under challenge in this OA, is a policy matter and no case has been made by the applicants warranting judicial interference and for giving direction to the respondents to merge the cadres as prayed for by the applicants. In this connection, we refer to some of the judgements where views have been expressed by the Hon'ble Supreme Court with regard to judicial interference on the policy matter.

The first judgement is in the case of Union of India & Ors. vs. Syed Mohd. Raza Kazmi & Ors., 1993 SCC (L&S) 95. In this case, the policy of promotion laid down by the Income Tax Department was under challenge wherein the Tax Assistants were claiming promotional avenues as Head Clerk by treating them enbloc senior to UDCs. The Hon'ble Supreme Court has held that the claim of the respondents (Petitioners) is not sustainable as it is for the Department to lay down the avenues of promotion for the various employees and in the present case, the promotion policy adopted was neither arbitrary nor discriminatory. It would be relevant to extract the following observations made by the Hon'ble Supreme Court in Para 12 of the judgement :-

"..... It is for the department to decide on policies of promotion which will be consistent with the interests of all employees belonging to various cadres. It is not for the Administrative Tribunal or for the Courts to interfere with this and to dictate the avenues of promotion which the department should provide for its various employees....."

The second judgement is in the case of State of A.P. vs. V.C. Subbarayudu & Ors., 1998 SCC (L&S) 605. In this case, the State Government had decided to take over the cadre of Divisional Accountants from the Accountant General. The respondents who were belonging to Subordinate Accounts Service (SAS) of the Accountant General Office made a plea that they are also entitled to opt for absorption under the State Government. The plea of the respondents was not accepted by the Hon'ble Supreme Court stating that it is a matter of policy for

the State Government to decide as to how to create a separate cadre in the State by absorbing the Divisional Accountants working on deputation in the State and who were under the administrative control of the Accountant General. The Hon'ble Supreme Court in Para 7 of this judgement has observed as under :-

"..... This Court cannot give any direction to the State Government to have a different policy and also absorb the SAS Accountants in its newly-constituted service. That the State Government will use the benefit of more experience officers of SAS cadre is for the State to consider. Merely on that ground plea of discrimination cannot be advanced."

11. As brought out earlier from the written statement as well as the additional affidavit filed by the respondents, it is noted that the matter with regard to merger of cadre at drivers' level is still under discussion and efforts are being made to find out avenues of promotion for diesel drivers to the higher grade of posts. The merger of the cadre at the drivers level may entail several implications and it is for the department to take a decision considering all the points and the interest of the drivers belonging to the diesel and electric traction for merger and take a policy decision. However, keeping in view what is held by the Hon'ble Supreme Court in the above cited judgements, no direction can be given to the respondents to follow certain avenue of promotion whereby the cadres of diesel and electric drivers are merged as prayed for in the OA.

12. In the result of the above, We do not find any grounds for judicial interference for directing the respondents to merge the cadres of diesel and electric drivers. The OA. is therefore devoid of merits and is accordingly dismissed. No order as to costs.

D.S. SAWEDY
(D.S. SAWEDY)

MEMBER (A)

R.G. Vaidyanatha
(R.G. Vaidyanatha) 30/6/99

VICE CHAIRMAN

mrj.