(8)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

1.	Mr. Anthony N.Dias	.. Applicant in O.A.518/91
2.	Mr.A.H.Patkar	.. Applicant in O.A.76/92
3.	Mr.K.R.Vyas	.. Applicant in O.A.81/92
4.	Mr.A.K.Ansari	.. Applicant in O.A.82/92
5.	Mr.Jayesh Kumar Bhatty	.. Applicant in O.A.83/92
6.	Mr.S.M.Gamre	.. Applicant in O.A.85/92
7.	Mr.Abdul Sayed Khan	.. Applicant in O.A.86/92
8.	Mr.Rajiv R.K.Turbhekar	.. Applicant in O.A.87/92
9.	Mr.Q.S.G.Rabbani	.. Applicant in O.A.90/92
10.	Mr.Rajesh Bhaskar	.. Applicant in O.A.91/92
11.	Mr.R.E.D'Souza	.. Applicant in O.A.102/92
12.	Mr.Ashutosh Sharma	.. Applicant in O.A.103/92
13.	Mr.P.S.Naidu	.. Applicant in O.A.104/92
14.	Mr.S.M.Syle	.. Applicant in O.A.105/92
15.	Mr.C.Shabhikumar	.. Applicant in O.A.106/92
16.	Mr.S.D.Saikhede	.. Applicant in O.A.107/92
17.	Mr.R.Ramchandran	.. Applicant in O.A.108/92
18.	Mr.S.V.Vernekar	.. Applicant in O.A.109/92
19.	Mr.V.B.patel	.. Applicant in O.A.110/92
20.	Mr.Jagdish Sharma	.. Applicant in O.A.111/92
21.	Mr.R.L.James	.. Applicant in O.A.112/92
22.	Mr.B.K.Tiwari	.. Applicant in O.A.151/92
23.	Mr.Alok Mathur	.. Applicant in O.A.152/92
24.	Mr.S.P.Shukla	.. Applicant in O.A.153/92
25.	Mr.R.P.Tripathi	.. Applicant in O.A.154/92
26.	Mr.Vivek Srivastava	.. Applicant in O.A.155/92
27.	Mr.S.Kamran	.. Applicant in O.A.173/92
28.	Mr.S.S.Vinodkumar	.. Applicant in O.A.174/92
29.	Mr.Kumar Mahendra	.. Applicant in O.A.175/92
30.	Mr.B.K.Agarwal	.. Applicant in O.A.181/92
31.	Mr.Raghunath P.K.	.. Applicant in O.A.182/92
32.	Mr.R.C.Ojha	.. Applicant in O.A.183/92

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-versus-

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1. Union of India
through
Secretary,
Railway Board,
Ministry of Railways,
Rail Bhavan,
New Delhi - 110 001.

2. Divisional Railway Manager,
Central Railway,
Bombay V.T.
Bombay- 400 001.

3. Chief Personnel Officer,
Central Railway,
Bombay V.T.,
Bombay 400 001.

4. General Manager,
Central Railway,
Bombay V.T.
Bombay.

5. Chairman,
Railway Recruitment Board
(Commission for
Central/Western Railways,
HQ Bombay,
Bombay Central
Bombay - 400 008.

6. Shri K.S.Jaiswal,
Asstt.Driver in
N/E Ghat, Igatpuri
through
S.L.I. Igatpuri.

7. Shri V.K.Mall,
Asstt.Driver in
N/E Ghat, Igatpuri
through
S.L.I. Igatpuri .. Respondents

Coram: Hon'ble Shri Justice S.K.Dhaon,
Vice-Chairman.

Hon'ble Ms.Usha Savara, Member(A)

Appearances:

1. Mr.G.D.Samant
with
Mr.S.P.Kulkarni
Advocate for the
Applicants.

2. Mr.J.G.Sawant
Counsel for the
Respondents.

JUDGMENT: Date: 29/1/93
(Per S.K.Dhaon, Vice-Chairman)

The applicants in this bunch were on or before 25-7-1990 employed as Diesel Assistants

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in the Diesel cadre in the Central Railway at Bombay. On that day an office memorandum as approved by the competent authority was issued. This memorandum provided, inter-alia, that upon the non-happening of certain events all Diesel Assistants will be deemed to have opted for Electric Running Cadre and the seniority of the Diesel Assistants joining the Electric Running cadre will be placed below the existing Assistant Driver(Elect.) The legality of some of the provisions of the aforesaid office memorandum and particularly the provisions relating to the seniority aforementioned is being impugned in the present application.

2. It is an admitted position that the promotional avenue of a Diesel Assistant is extended to the post of Driver of a passenger train in the grade of Rs.1600-2660 whereas the promotional avenue of a Driver in the Electric Running Cadre extends to the post of a Driver of a Mail or Express Train in the grade of Rs.1640-2900. It also appears to be an admitted position that the Railway Recruitment Board holds the selection for the recruitment to the cadres of Apprentice Fireman 'A'(Diesel Cadre) and Trainee Assistt. Driver(Elec.Running cadre). After selection the Board considers the suitability of the selected candidates to be included in either of the two cadres. It is also an admitted position that the contents and quality of the training given to the members of the two cadres are different.

3. In the reply filed on behalf of the respondents the material averments are these: By the aforesaid office memorandum sanction of the competent authority for combining the two cadres of Loco Running staff for Electrical and Diesel Traction was communicated. The Electric Traction on Bombay Division was introduced in 1925 and since then there has been separate running cadre of Electric Traction and Diesel Traction. The recruitment for these cadres have also been independant depending upon the vacancies in each cadre. The reason for having different cadres of seniority in the Bombay Division is on account of peculiar geography of the railway track in the Bombay Division. Considerable section of the track runs through ghats. Besides, it is only in the Bombay Division of the Central Railway where there are Elect.Locos operated on suburban section. Since 1925 the Bombay Division is electrified and since then the electric multiple units are working. There are seven types of EMU rakes and six types of loco in addition to steam/ Diesel locos, Electric locos are utilised for through goods traffic and Mail/Express trains. Steam/Diesel Engines are mainly utilised for yard shuntings. The other divisions were not electfified till about 8 to 10 years back and some of them are still not electrified yet. As such, steam/Diesel locos on other divisions are utilised for through goods traffic and Mail/Express trains. The important facts are summarised thus in the reply:

(1) the proposal to combine the two cadres took a concrete

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shape on account of the specific demand of the Diesel Running staff expressed through recognised union;

(2) separate cadre has been in existence since the introduction of Electric Traction on Bombay Division in 1925;

(3) technically it was not convenient for the administration to follow the merger. The staff had to be trained both on Diesel and Electric Traction, while the present need is for more specialisation and familiarity on a particular type of locomotive;

(4) Since the merger is on the request of the Diesel Assistant Drivers and not on the initiative of administration, the Diesel Assistant Drivers have to be placed below the Assistant Electric Drivers on merger of the cadre as per the existing rule;

(5) In case the merger was affecting the seniority of the Diesel Assistants they were free to remain in their cadre and seek further promotion on their own cadre;

(6) The merger of cadre is with the agreement of the two recognised unions. Any change in the condition of the merger will disturb the seniority of the Assistant Electric Driver which had never been the intention of the administtation.

4. We may now read the impugned office memorandum. It will be profitable to extract all the six paragprahs of the same.

1. All Diesel Assistants will be deemed to have opted for Electric Running Cadre unless he gives specific refusal for this change he desires to remain the Diesel cadre. The option if any, should be exercised before 31-7-90.

2. All Diesel Assistants will be drafted for training on DC Traction. The Sr.DEE(O) will finalise the training programme.

3. All Diesel Assistants joining Electric Running Cadre are essentially to qualify the training course applicable for Assistant Drivers(Elect.)

4. Seniority of the Diesel Assistant joining the Electric Running cadre will be placed below the existing Assistant Driver(Elect.)Interse seniority of the Diesel Assistant will not be affected provided they successfully complete the training on the Elect. Traction.

(5) The combined cadre will be from a prospective date i.e. from the date of completion of training by the Diesel Assistant on DC Traction;

(6) Those Diesel Assistant who fail to qualify the training course for Assistant Driver (Elect.) will continue to seek promotion on the Diesel Cadre as per the existing channel of promotion.

5. The first feature of the memorandum is that the Diesel Assistants have not been compelled to opt for Elect.Running Cadre. They have been given an option. It is made clear that if they do not want to opt for the other cadre they shall continue to be member of the original cadre. The other feature is that inspite of exercise of option by the Diesel Assistants for Elec.Running cadre they will not become members of the said cadre unless they are drafted for training on DC traction, they qualify the training course applicable for Assistant Driver(Elect.) and even the interse seniority of Diesel Assistants will not be affected provided they successfully complete the training on the electric traction. It is also clarified that those Diesel Assistants who fail to qualify in training will be entitled to promotion in the Diesel cadre as per the existing channel of promotion. In substance, the thrust is that the condition precedent for acquiring the membership of the Elect.Running Cadre by a Diesel Assistant is the successful completion of the training on the electric traction and qualifying in the training course.

6. It is also evident that by the impugned office memorandum a package was offered to the Diesel Assistants and they were given complete freedom either to accept or reject the same. However, it was not open to them to accept one part of the offer and reject the other part. This was so because it was clear that all the six conditions have to be accpted. Indeed the applicants did not exercise the option of refusing to become the members of Elect.Running Cadre and all of them are, at the moment, in that cadre on account of package offered and accepted by them by the impugned office memorandum. It is to be remembered that the applicants could have continued to be in the Diesel cadre and availed of such promotional chances as available to the members of the said cadre.

7. We may immediately deal with the contention of the learned counsel for the applicants that for determining the seniority of the applicants in the Elec.Running cadre the length of service rendered by them in the Diesel cadre should be taken into account. To put it differently, the contention is that those appointed to the Elect. Running cadre subsequent to the appointment of the applicants to the Diesel cadre should be treated as juniors to the applicants. This contention cannot be accepted for more than one reason. First, the question of taking into account the length of service for determining the seniority arises only when two sets of employees are in the same cadre from the very beginning. Here the applicants could not by any stretch of imagination be deemed to be a member of the Elect.Running Cadre

on any date anterior to 25-7-1990. In fact, the scheme of the office memorandum, as emphasised above, is that a Diesel Assistant would be entitled to be treated as a member of the Elect.Running cadre only upon the successful completion of training on the electrical traction and qualifying in the same. Secondly, as already indicated, the quality and contents of the training given to the Diesel Assistants and to the Assistant Drivers Elect. being different, unequals would be made equals if the contention advanced on behalf of the applicants is accepted. This would be violative of articles 14 and 16 of the Constitution and will be a clear infraction of the fundamental rights guaranteed to the members of the Elec.Running cadre. Thirdly, we do not find any element of arbitrariness or irrationality in the contents of paragraph 4 of the package which provides that the Diesel Assistants joining the Electric Running Cadre will be placed below the existing Assistant Driver(Elect.)for the purpose of seniority.

8. Learned counsel next urged that except in the Bombay Division in all other divisions all along the Diesel cadre and Elect.Running cadre were the same. Therefore, the impugned office memorandum is discriminatory insofar as it segregates the Bombay Division from other Divisions. We have already referred to the reply filed on behalf of the respondents wherein it has been stated that in the Bombay Division the Elect.Running cadre is in existence since 1925 and since then two different cadres are in existence. Necessary facts

have been given in the reply to indicate that in the Bombay Division the two cadres had been separately created on account of the geographical considerations. It is well settled that such a consideration can form a valid basis of a rational classification. See R.K.Dalmia and Others. vs. Shri Justice Tendolkar & Ors.(AIR 1958 SC 538).

9. Reliance is placed by the counsel for the applicant on the notification issued by the Railway Recruitment Board and on its basis he argued that the same held out a promise to those who joined as Diesel Assistants would be entitled to be considered in the promotional avenues available to Assistant Drivers(Elect.) We have read the same and we find that the argument is rather misplaced. The advertisement clearly provides that Apprentice(Diesel) etc. will have to undergo a training for two years and in the first year they will get an emolument of Rs.225/- p.m. and in the second year the emoluments will be Rs.230/- + DA as per rules whereas for Trainee Asstt.Driver (Elect.) the period of training is 18 months with a stipend of Rs.290+DA as per rules. We may note that the notification of the Recruitment Board is an omnibus one as it relates to numerous categories. We do not find any promise either express or implied as contended by the counsel for the applicants. On the other hand, the notification strengthens the case of the respondents that there were two cadres and members of the same were treated differently from the very inception. Reliance is then placed on the so called scheme for the selection of Apprentices Fireman 'A' and Trainee Asstt.Drivers (Elec.). The said scheme clearly provides that:

...

"The above career prospects have been assessed on the basis of the present cadre position and existing system and do not constitute any commitment or assurance from the Railway Administration. It should be clearly understood that your promotions will depend upon the job performance, successful completion of various training courses and merit order on selections/examinations and also on the availability of vacant posts."

10. The last contention advanced is that, in any view of the matter, the scheme as contained in the package should be deemed to have come into force from 18-8-1988. Emphasis is laid on contents of para 4 of the reply filed on behalf of the respondents wherein it is mentioned that on that date a decision was taken to combine the seniority for future entrants and the existing Diesel Asstts. who wished to join the Elect. cadre be placed below the existing Asstt.Driver(Elec.) In our opinion, the learned counsel reads a portion of paragraph 4 of the reply in isolation of succeeding paragraphs wherein it is clearly mentioned that a final decision was taken by the authorities concerned in July,1990. To the reply we find a letter dt. 3-7-90 of the General Secretary National Railway Mazdoor Union(Ex.R-1) which goes to show that on that day the Union informed the Divisional Railway Manager, Central Railway, Bombay V.T. that it accepted the proposals contained in para 1 to 6 as contained in the impugned office memorandum. It is thus evident that the proposal materialised only in July,1990 although the idea was mooted earlier.

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11. Before parting with this case we may refer to an interesting feature. The prayer made in these applications is that sub-paras (i), (iv)(first sentence) of the impugned office memorandum may be quashed. If we turn to paragraph 1 we find that in that paragraph alone the decision to combine the two cadres is taken. Even assuming that the first paragraph is severable from the rest of the paragraphs(it is not so), the very soul of the package would disappear and the applicants will be thrown back to their original cadre namely the Diesel cadre. We have already stated that the applicants had accepted the package insofar as they did not exercise the option of rejecting the deal offered and they are in fact, at the moment, members of the Elect. Running cadre. In these circumstances the applicants cannot be allowed to approbate and reprobate.

12. We do not find any substance in these applications. They are dismissed, but without any order as to costs.

19494 to 19578 SLP Dismissed on 28/10/94