

8- Annexure - A₁

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS DAY THE 27TH OF AUGUST, 1993

Present: Hon'ble Mr. V. Ramakrishnan

Member (A)

Hon'ble Mr. A. N. Vujjanaradhaya

Member (J)

APPLICATION NO. 40/1991

Shri L. Chandra Singh,
Vehicle Driver,
Office of the Divisional
Railway Manager - Works,
Southern Railway, Bangalore

Applicant

(Shri K. Subba Rao - Advocate)

v.

1. The Union of India
represented by its Secretary,
Ministry of Railways,
Rail Bhavan,
New Delhi
2. The General Manager,
Southern Railways,
Park Town,
Madras
3. The Divisional Personnel Officer,
Southern Railways,
Bangalore Division,
Bangalore
4. Shri Venkatesh Muniyappa,
Cash Van Driver,
Office of the Divisional Pay Master,
Southern Railway,
Bangalore Division,
Bangalore
5. Shri K. Narayan,
Driver,
Office of the Inspector of Works,
Southern Railway,
Bangalore-23
6. Shri K. Vishwanathan,
Driver, Office of the
Permanent Weigh Inspector,
Southern Railway,
Bangalore



7. Shri John,
Driver,
Medical Department,
Office of the Medical Officer /Divisional
Southern Railway,
Bangalore - 23

8. Shri Dawood,
Driver,
Office of the Divisional Commercial Officer,
Southern Railway,
Bangalore Division,
Bangalore

9. Shri K. Ahmed Hussain,
Road Roller Driver,
Office of the Inspector of Works,
Southern Railway,
Bangalore

Respondents

(Shri N.S. Prasad for R-1 to 3)

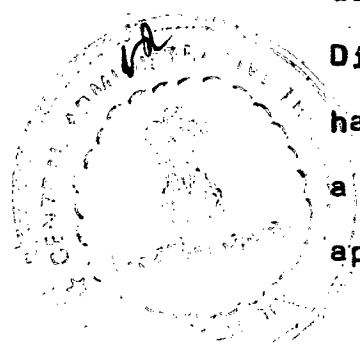
This application has come up before
this Tribunal for orders. Hon'ble Mr.V.
Ramakrishnan, Member(A) made the following:

ORDER

The applicant Shri Chandra Singh
joined service in the Railways as a Casual
Labourer w.e.f. 18.12.1960. In course of time
he became a Gangman and subsequently a Trolleyman
and later on was selected to the post of a
Jeep Driver. This was done after he was found
fit for the post of Driver by a duly constituted
Trade Test Committee and he was promoted to
officiate as Driver w.e.f. 19.3.81 as an ad hoc
measure. He was subsequently regularised as a
Driver w.e.f. 3.3.89 by order bearing the same
date of the Southern Railway authorities.

It is not in dispute that he has been continuously functioning as a Driver w.e.f. 19.3.81. The applicant is aggrieved that as per the provisional seniority list furnished by the Railways from time to time, he has been placed below Respondents 4 to 9 namely S/Shri Venkatesh Muniyappa, K. Narayan, K. Vishwanathan, John, Dawood and Ahmed Hussain who, according to him, should be ranked as juniors to him. He contends that Respondents 4 to 9 had not undergone the various tests of procedure which the applicant was obliged to take and, as such, their appointment was not regular. They had not put in requisite service in the trade test before appointment as Driver ^{and} ~~also~~ they cannot rank as senior to him.

2. The respondents Railways contend that the seniority at the level of Drivers was determined on the basis of the regular appointment. The applicant was appointed on a regular basis only w.e.f. 3.3.89 for the reason that he had to undergo a test to be organised by the Trade Test Committee before regular appointment and that there was no regular post of Driver earlier against which he could have been shown from an ^{anterior} ~~another~~ date. The official respondents have mentioned that the seniority unit of Drivers of Accounts Department to which R-4 belonged which was maintained separately was merged with the Division duly taking those posts also. As R-4 had been regularised as a Driver w.e.f. 9.9.83, a date earlier to that of regularisation of the applicant which was 3.3.89 he has been shown as



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his senior. All the respondents were duly tested before appointment as Drivers. There is no need for any period of service at lower level before a person can be appointed as Driver.

3. We have heard Shri Anandaramu for the applicant and Shri N.S. Prasad for the Railways. We also have gone through the service records of the applicant as also ⁷Shri Dawood and Shri Venkatesh Muniyappa.

4. Shri Anandaramu has contended that there is no substance in the stand of the Railways seeking to justify the late regularisation of the applicant leading to depression of his seniority. He has referred in this context to the reply of the Railways dated 29.10.90 to the application (Annexure H) where the Railways have admitted that in the case of S/Shri ^{H. Venkatesh}~~Venkatesh~~ Muniyappa, ^{DR} Dawood and John, their postings as Drivers have been regularised in terms of CPD/MAS letter dated 30.10.84. This regularisation was done w.e.f. 24.3.70. In the case of applicant, however, the benefit of such retrospective regularisation was not extended. Besides, the contention that he underwent a Trade Test only in 1989 and, as such, could be regularised only after coming out successful in such test is not tenable. The applicant had already taken the trade test by a duly constituted Trade Test Committee before his appointment as Driver w.e.f. 19.3.81. He was asked to appear in the trade test in the year 1989 which he did but it should not stand in the way of reckoning his

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service as Driver continuously for the period from March, 1981, after he had already undergone a test conducted by a duly constituted Trade Test Committee in 1980. Shri Anandaramu has also quoted a number of decisions of the Supreme Court viz: (i) 1980(4) SCC 226 Baleswar Das v. State of U.P., (ii) 1986(2) SCC 157 - Narendra Singh v. Union of India and 1983(3) 601-624 Janardhan v. Union of India. He contends that keeping in view the spirit of these decisions, the applicant cannot be denied the benefit of earlier service starting from March, 1981.

5. Shri N.S. Prasad, learned Standing Counsel for the Railways has reiterated the stand taken by the Railways in the reply statement. He submits that the authorities quoted by the learned counsel for the applicant dealt with the case of seniority between direct recruits and promotees and are not relevant while considering the present case.

6. We have gone through the service records of the applicant as also the records of Dawood and Venkatesh Muniyappa. So far as R-5, 6, 7 and 8 are concerned, we notice from the provisional seniority list published on 19.5.89 (Annexure C) that they had been functioning as Drivers from 1.9.70. A copy of the letter dated 30.10.84 from the CPD/MAS has not been made available to us but it is stated that this letter accorded sanction to regularise the appointment of some of these respondents as regular Drivers from 24.3.70. As regards R-9 Shri Ahmed Hussain,



it has been stated that he has been functioning as Driver w.e.f. 25.8.80 and he was regularised w.e.f. 28.4.83. In view of this position, so far as R-5, 6, 7, 8 and 9 are concerned, they are senior to the applicant by any reckoning whether from the date of functioning as Drivers or from the date of regularisation. As regards R-4, he was promoted as Casual Driver against a work charged from 4.9.82 which subsequently got regularised w.e.f. 9.9.83. As such, he started functioning as a Driver from a date later than that of the applicant but got regularised from an earlier date.

7. The Railways have adduced the following reasons for late regularisation of the applicant:

- i) He came out successful in the trade test held in February, 1989. The fact that the applicant was trade tested in October, 1980, and found fit before appointment on ad hoc basis in March, 1981, is not relevant as the trade test held during 1980 was merely to adjudge his suitability as Driver and not for promoting him on a regular basis.
- ii) The post of Driver against which the applicant could be appointed on regular basis was created much later.

8. We are not able to appreciate the reasons given by the Railways as above. We are informed that there is no recruitment rule governing recruitment to the post of Driver.

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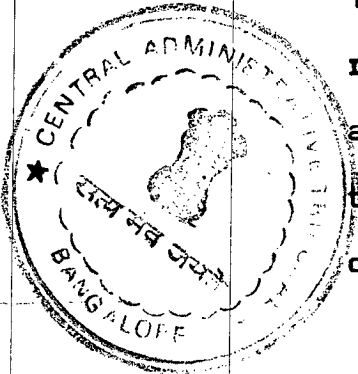
A person has to come out successful in the trade test before he is appointed as Driver if he volunteers for such a job. We find from the office order dated 15.4.81 (Annexure B) that the applicant was found fit to the post of Driver by a duly constituted Trade Test Committee and, as such, was promoted to officiate as Driver w.e.f. 19.3.81. There is nothing to indicate that there are different standards adopted by the Trade Test Committee for ad hoc appointments as distinct from regular appointments. As such, this is a distinction without any difference. As regards second point that the regular post could be created much later, we have not been informed as to the reasons for such delay. It is admitted by the Railways that "when the Bangalore Division was coming up for its formation, the services of the employees working in various units were utilised for the duties connected with the maintenance of staff cars as Drivers". When there was need for such posts which were to continue on a long term basis, we find no justification for not creating regular posts without delay as staff cars will continue to be needed on a long term basis. The applicant cannot be made to suffer for such delay on the part of the Railway Administration. We also find that the Railways had regularised some of the respondents with retrospective dates but had not done so in the case of the applicant. We also notice that in the provisional seniority list published on 19.5.88 (Annexure C)



the applicant has been shown as senior to Respondent No.4.

9. In the light of this position, and the fact that the applicant had continued to serve uninterrupted as a Driver w.e.f. 19.3.81 there is no justification to hold that his seniority should be below ~~to~~ that of Respondent No.4 who started functioning as Driver only w.e.f. 4.9.82 but got regularised w.e.f. 9.9.83. The applicant's seniority should be re-fixed in the cadre of Drivers in such a manner that he ranks above R-4 Shri Venkatesh Muniyappa who started functioning as a Driver from a date later than that of the applicant. We, however, do not find any merit in the other contention of the applicant that he should rank senior to R-5 to 9 who started functioning as Drivers from dates earlier to that of the applicant and also got regularised earlier.

10. We accordingly direct the Railways to re-fix the seniority of the applicant as stated above. This should be complied with within three months from the date of receipt of a copy of this order. No costs.



Sd/-
27/8/77
MEMBER (J)

Sd/-
MEMBER (A)

TRUE COPY

SECTION OFFICER
ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

- 16 -
Annexure - A2
SOUTHERN RAILWAY

Divisional Office,
Personnel branch,
Bangalore-560 023,
Dated: 01-03-1993.

No. B/P.671/TT/Dr./PG/Vol.1

CAO/ON/BNC, MS/SBC;
Sr.DAO/SBC, Sr.DEN/SBC, Sr.DME/KJM,
DOM/SBC, DSTE/SBC, CPM/RE/MS,
Principal, STS/SBC, DME, DOM, DEE/SBC,
AEN/BWT, S/SBC, DS/SBC,
ASTE/RE/SBC, DSTE/W/SBC,
XEN/SN/SBC, PWI/SBC, IOW/SBC, IOW/A/SBO
OS/C/SBC, AEN/BWT, IOW/DPJ,
XEN/HUP.

Sub :- Provisional seniority list of staff
car drivers/Bangalore Division as
on 1st February 1993.

= = =

The provisional seniority list published by this office earlier has been reviewed consequent on the representations received from employees and revised provisional seniority list as on 1/2/1993 is published herewith.

The seniority list in drivers category which is filled by Trade testing employees belonging to different seniority unit is to be determined according to their grade, length of service held by them in their substantive post duly maintaining the inter-se-position.

The employees volunteered for the post of drivers in scale Rs. 950-1500 in response to this office letter No.B/P.535/Drivers dated 15.9.87 were trade tested in two batches and the panels were approved on 3.3.89 and 2.5.89. However while directing them for trade test, their seniority position in the substantive post has not been taken into account, resulting in some of the juniors getting Trade Tested earlier. Subsequently the seniority list was published only based on the date of Trade Test against which date of representation have come in.

The seniority list rectifies all the anomalies as under :-

1. The dates of Trade Tests held on 3.3.89 and 2.5.89 are taken as one, conducted as continuation Trade Test and treated as one and the same Trade Test conducted on 3.3.89 for the purpose of seniority.
2. The employees in the higher grade (ie., substantive cadre) ranks senior to the employees in the lower grade irrespective of the date of appointment.

Contd....2/-
P. Ranganath

- 2 -
3. The Inter-Se-position of the employees belonging to same category of the same department has been maintained.
 4. The substitutes selected against the prescribed percentage ranks junior to all regular employees as on 3.3.1989/2.5.89.
 5. The seniority position of all drivers regularised prior to 3.3.89/2.5.89 remains unchanged.

While calling for volunteers, copies of the notification have not been endorsed to construction organisation/RE Organisation etc., there by the staff of SBC Division working at those places could not volunteer even though they were working as drivers for the past several years with lion in SBC Division. Hence some of the staff have represented for regularisation of promotion as driver. This aspect has been considered and it was decided to consider all the employees whose lion is maintained in SBC Division and working as Adhoc drivers at CN etc., prior to the date of regularisation as on 3-3-89/2-5-89. The seniority of such employees who have been regularised is also fixed as per the norms detailed above.

This may be notified to all the concerned employees. Any representations received in regard to the above fixation of seniority may be forwarded to this office within one month of publication of this revised provisional seniority list with material evidence to take further action to publish the final seniority list thereafter.

[Signature]
LPO/SBC.

Copy to:-
DS/SRES/SBC
PS/SMU/SBC,
All-India SC/ST Association/CEO, PNM Sec.

mdm/-

PROVISIONAL SENIORITY LIST OF VEHICLE DRIVER OF BANGALORE DIVISION AS ON 1.2.1993.

Sl. No.	Name S/Shri.	Date of birth.	Date of Appt.	Substantive status held prior to the promotion as driver			Date of Regulari-sation.	Present station	Re-marks
				Designation.	Grade	y.e.f.			
1	2	3	4	5	6	7	8	9	10
1.	K. Viswanathan	21.07.45	21.06.69				24.03.70	PWI/O/SEC	
2.	S. Dawood	10.02.46	15.09.69				24.03.70	G.Br/SEC	
3.	M. V. John	03.01.46	11.10.69				24.03.70	DOM/O/SEC	
4.	H. Ahmed Hussain	01.12.37	18.09.63				28.04.83	IOW/A/C/SEC	
5.	Venkatesh Muniappa	01.07.48	18.03.73				09.09.83	Sr. DAO/C/SEC	
6.	V. Jayapalan	15.08.53	18.05.72	Tinker	550-1500	25.07.86	03.03.89 02.05.89	G.Br/SEC	
7.	N. Selvaraj (SC)	01.06.42	15.09.69	Kh. Rep.	800-1150	01.08.79	03.03.89 02.05.89	MS/O/SEC	
8.	Y. Rajanna	01.02.55	20.03.76	Sr. Gang.	800-1150	01.08.82	03.03.89 02.05.89	DEE/O/SEC	
9.	G. Anand Louis (SC)	02.10.51	07.08.81	Kh. Help.	800-1150	01.01.84	03.03.89	DSTE/O/SEC	
10.	L. Chandra singh	19.12.44	28.09.67	Gangman	775-1025	18.06.70	03.03.89	AEN/IS/C/SEC	
11.	K. Rassalam	17.08.43	18.07.72	Gangman	775-1025	20.03.78	03.03.89	STS/SEC	
12.	J. Eabu	03.01.44	12.04.78	Gangman	775-1025	12.04.78	03.03.89	CAO/CN/C/SEC	
13.	B. Raghavan Nair	27.06.42	17.05.80	Gangman	775-1025	17.05.80	03.03.89	CPM/RE/C/MS	
14.	A. Chinnaraj	12.07.43	27.09.80	Gangman	775-1025	27.09.80	03.03.89	AEN/O/SEC	
15.	V. Mohan	28.03.56	20.12.75	"	"	12.01.82	03.03.89	XEN/SK/SEC	
16.	K. Abedulla Khan	01.07.38	03.02.82	"	"	03.02.82	03.03.89	CAO/CN/C/SEC	
17.	K. Balasundaram	02.01.51	20.11.73	"	"	20.02.82	03.03.89	DCM/O/SEC	
18.	B. Hameed Kunju	12.08.54	20.05.82	"	"	20.05.82	03.03.89 02.05.89	IOW/O/DPJ	

1	2	3	4	5	6	7	8	9	10
19. K. Lakshmanachari	30.05.51	17.5.84	Gangnan	775-1025	22.05.84	03.03.89	AEN/S/O/SEC		
20. K. Mohammed	02.09.53	15.11.76	"	"	21.06.85	<u>03.03.89</u> 02.05.89	XEN/O/ASST		
21. Abdul Gafoor	05.02.56	07.09.85	"	"	07.09.85	<u>03.03.89</u> 02.05.89	DSTE/W/O/SEC		
22. A. Chinnaswamy	24.11.52	15.03.76	"	"	06.12.86	<u>03.03.89</u> 02.05.89	DME/O/SEC		
23. Syed Easheer	15.04.55	22.03.76	"	"	30.09.87	<u>03.03.89</u> 02.05.89	Dy. CSE/RE /O/SEC.		
24. Venkata Rao	21.04.47	07.08.76	Khalasi	750-940	07.08.76	<u>03.03.89</u> 02.05.89	G. Br/SEC		
25. A. Ziaullahuddin	22.07.41	21.07.80	Lorry Attendant.	"	21.07.80	03.03.89	CAO/CH/O/ BNC.		
26. T. N. Shanandan Nair	22.03.43	22.07.80	-do-	"	22.07.80	03.03.89	-do-		
27. S. Rangappa	22.05.52	13.09.74	Khalasi	"	27.03.81	03.03.89	Sr. DME/O/KJM		
28. Md. Aslam	23.06.61	21.03.81	Khalasi	"		<u>03.03.89</u> 02.05.89	-do-		
29. N. Maralidharan Nair	25.04.51	16.12.81	Peon	"	12.01.82	<u>03.03.89</u>	MS/O/SEC		
30. T. Vasu (SC)	18.05.60	22.03.80	Khalasi	"	20.03.82	03.03.89	DME/C/SEC		
31. Mahadeva	16.07.48	26.11.83	Lorry Attendant.	"	26.11.83	03.03.89	CAO/CH/O/ BNC.		
32. J. Analanathan (SC)	01.06.59	29.06.83	Khalasi	"	21.06.85	03.03.89	DEE/C/SEC		
33. V. Krishnoji Rao	01.06.58	21.01.84	Khalasi	"	13.05.87	<u>03.03.89</u> 02.05.89	DOM/C/SEC		
34. R. Natarajan (SC)	01.05.55	20.02.80	Khalasi	"	04.04.88	<u>03.03.89</u> 02.05.89	DSTE/W/O/SEC		

Contd....3/-

-: 3 :-

1	2	3	4	5	6	7	8	9	10
35. K. Srinivasan	27.05.51	01.10.71	Khalasi	750-940	-	-	03.03.89 2.5.89	-	Tfd. to DEE/ TRU unit w.e. from 7.11.92.
36. T.S. Rajasekhar(SC)	20.06.57	20.11.81	Sub-Jeep Driver, A/S	-	-	-	03.03.89 2.5.89	Sr. JBN/O/ SBC.	.
37. R. Nesamani	15.05.61	20.04.80	Khalasi	-	-	-	03.03.89 2.5.89	Sr. DEE/O/SBC.	
38. Surandran Nair	10.03.56	01.01.84	Ty. Lorry Attendant	-	-	-	03.03.89 2.5.89		Tfd. to DEE/TRU w.e. from 30.12.1992.

mds/-.

copy
b. 2. 2/05

PR

12 copy

SOUTHERN RAILWAY.

No. SMC/Y/P.671.

Date: 17-10-80.

From

AME/SBC

TO

DEN/SBC.

Sub: Creation of the post of one Jeep Driver.

Ref: Your letter No. 7/E/Staff. of 30-9-80.

Sri. Chandra Singh, Trollyman has been tested for Driving Jeep. He has been found suitable. He is in possession of Driving licence issued by Assistant Regional Transport Officer, Bangalore.

Licence No. 71/79-80 of 1979
C2 V 42.

Sd/-

AME/SBC.

COPY

10/11
b. x 2/11/80

22 -

Annexure - A4

Southern Railway

Office Order No. B2/80-81 of 15-4-81

Shri L. Chandra Singh, Trolleyman, DEM's Office, SBC,
Pay Rs 238/- in scale Rs 200-250, on being found fit to the
post of Driver in scale Rs 260-400 by a duly constituted T.T.
Committee is promoted to officiate as Driver with effect from
19-3-81 purely on adhoc measure against the work charged post
sanctioned vide OSD/SBC Memorandum No. P. 191/80-81 of 12-3-81
and posted to work under OSD/SBC.

Pay of Shri L. Chandra Singh, is fixed at Rs 260/- p.m.
w.e.f. 19-3-81 in scale Rs 260-400 and will be on probation
for a period of 6 months.

Office of the
Officer, Special Duty
Bangalore

[Signature]
DPO/SBC-

No. B/P. 135/80-81 dated 15-4-1981.

Copy to: Sr. DPO/MYS DAO/MYS

DAO/SBC DEM/SBC AEM/Dn/SBC

Shri L. Chandra Singh, Driver thro' AEM/Dn/SBC

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f. 2/26

Lok)

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore-560 038.

Review Appln.No.57 of 93 in

Dated:- 28 SEP 1994

APPLICATION NUMBER: 40 of 1991.

APPLICANTS:

RESPONDENTS.

Sri.L.Chandra Singh v/s. Secretary, Ministry of Railways, NEW DELHI,
and others.

1. Sri.M.S.Anandaramu, Advocate, No.27,
Chandrashekar Complex, First Floor,
First Cross, Gandhinagar, Bangalore-9.
2. Sri.N.S.Prasad, Advocate, No.242,
Fifth Main, Gandhinagar, Bangalore-9.

Subject:- Forwarding of copies of the Orders passed by the
Central administrative Tribunal, Bangalore.

Please find enclosed herewith a copy of the ORDER/
STAY ORDER/INTERIM ORDER/, passed by this Tribunal in the above
mentioned application(s) on 08-09-94.

Issued on
29/9/94 R

for DEPUTY REGISTRAR
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL,
BANGALORE BENCH.

REVIEW APPLICATION NO. 57/ 1993

IN

ORIGINAL APPLICATION NO. 40/ 91

THURSDAY, THE 8TH DAY OF SEPTEMBER, 1994.

SHRI V. RAMAKRISHNAN ... MEMBER (A)

SHRI A.N. VUJJANARADHYA ... MEMBER (J)

Shri L. Chandra Singh,
Vehicle Driver,
Office of the Divisional
Railway Manager - Works,
Southern Railway,
Bangalore.

... Applicant

(By Advocate Shri M.S. Ananda Ramu)

Vs.

1. The Union of India,
rep. by its Secretary,
Ministry of Railways,
Rail Bhavan, New Delhi.
2. The General Manager,
Southern Railways,
Park Town, Madras.
3. The Divisional Personnel
Officer, Southern Railways,
Bangalore Division,
Bangalore.
4. Venkatesh Muniyappa,
Cash Van Driver,
Office of the Divisional Pay Master,
Southern Railway, Bangalore
Division, Bangalore.
5. K. Narayan, Driver, Office of the
Inspector of Works, Southern
Railway, Bangalore-23.
6. Vishwanathan, K., Driver,
Office of the Permanent Weigh
Inspector, Southern Railway,
Bangalore.



7. John, Driver, Medical Department,
Office of the Divisional Medical
Officer, Southern Railway,
Bangalore-23.

3. Dawood, Driver, Office of the
Divisional Commercial Officer,
Southern Railway, Bangalore
Division, Bangalore.

9. K. Ahmed Hussain, Road Roller
Driver, Office of the Inspector
of Works, Southern Railway,
Bangalore.

... Respondents

(By Advocate Shri N.S. Prasad R.1 to 3)

ORDER

Shri V. Ramakrishnan, Member (A)

The review applicant has prayed that the decision rendered by us in OA No. 40/91 needs to be reconsidered and reviewed. Specifically it is prayed that the applicants ranking in seniority should be assigned over Respondents 6 to 9 and not only over Respondent 4, as per decision in OA 40/91.

2. We have heard Shri Ananda Ramu for the applicant and Shri N.S. Prasad for the Railways.

3. Shri Ananda Ramu submits that the Respondents 6, 7 & 8 ~~who~~ joined as casual labourers and got regularised by order dated 30.10.84 retrospectively with effect from 24.3.70. As regards Respondent No.9, he was regularised by an order dated 5.10.83 with effect from 28.4.83. Shri Anandaramu contends that the order of regularisation can only have prospective effect and it would be illegal for it to take effect retrospectively. He has also cited the case of S.K. Saha vs. Prem Prakash Agarwal & Others, JT 1993 (6) SC 441. In particular, he refers to the observation of the Supreme Court as below:

...3/-

"This Court has repeatedly struck down and decried any attempt on the part of the appointing authority to give a notional seniority from a retrospective date, especially, when this process affects the seniority of those who have already entered into the service".

He also refers to the case of P. Sathyavani (Smt.) vs. Director of Census Operation & Others, ATR 1993 (1) CAT 613 where the head note reads as follows:

"That the recruitment rules mention specifically 'regular service' and such regular service can be counted only from the date of regularisation, since otherwise the regularisation will have no meaning at all in this case. Further, we have already held that the applicant must be considered senior to R-2 and R-3 and hence the applicant has regular service from 1986, whereas R-2 and R-3 had the necessary 8 years regular service in LDC cadre on 3.4.1991 for regular promotion and they can all be promoted on ad hoc basis only."

He contends that if Respondents 6 to 9 were to be regularised from the date of issue of the order, namely, 5.10.83 for Respondent No.9 and 30.10.84 for Respondents 6 to 8, the applicant who joined as a Driver in 1981 would rank senior to them.

Another ground urged by Shri Anandaramu is that the order of the respondents dated 30.10.84 as at Annexure R-2 regularising the respondents 6 to 8 with effect from 24.3.70 was done without observing the proper procedure and as such, the same is liable to be struck down. He also states that the letter dated 30.10.84 deals with the assignment of seniority of Drivers/ Container Service and regularisation and appointment. During the hearing, Shri Anandaramu, learned counsel for the applicant states that the container service was a temporary establishment. The Railways has also not produced any material to show that Respondents 6 to 9 passed the requisite trade test and were otherwise eligible for regularisation.



The learned counsel for the applicant is also critical of the Railways for having left blank certain columns in respect of Sl. No. 1 to 5 in the provisional seniority list of vehicle drivers as on 1.2.93 which was circulated by the letter dated 1.3.93 as at Annexure A-2 in the R.A. He states that the top heading in respect of column 5 & 6 as in the enclosure A-2, reads 'substantive status prior to promotion as driver' whereas in the enclosure to R.1 dated 24.11.93 it reads as 'previous'. If the substantive status had been indicated, it would show that the respondents 6 to 9 ^{had} be served only as casual labourers prior to appointment as drivers.

4. Shri N.S. Prasad for the respondents opposes the review application. He argues that if the contention of Shri Anandaramu that the order which regularises the services cannot take retrospective effect, the review applicant could have got regularised only with effect from 3.3.89 when the actual order was issued in his case and as such would rank junior to many others. He cannot contend that so far he is concerned, he should be regularised retrospectively but that the same benefit should not be extended to others.

The standing counsel also draw our attention to the case of Kailash Chandra Rajawat vs. Union of India & Another (1994) 26 ATC 737 where it was held that the period of temporary service followed by regular service is to be taken into consideration for consideration of length of service for promotion to higher post. The seniority list is prepared by the Railways to assess the eligibility of the railway officials for promotion to next cadre. Shri Prasad states that the decision of the Tribunal in OA 40/91 which had taken into account the date of continuous service as Driver for the purpose of reckoning seniority conforms to the principles laid down in the case of Kailash Chandra decided by the Supreme Court on 1.2.93.

Shri Prasad also disputes the contention of Shri Anandaramu that the regularisation of Respondents 6 to 9 was done without following the proper procedure. The order in respect of Respondents 6 to 8 were issued on 30.10.84 which in fact was referred to in the reply datament in OA 40/91 as is clear from para 6 of the judgement. The presumption in such case is that the procedure has been properly followed and it is for the applicant to rebut such presumptions. Besides, the orders now sought to be challenged in the review application were issued in 1983 and 1984. As regards any difference in the top headings in the seniority list, Shri Prasad submits that it had not made any material difference what~~so~~ever. The various seniority lists published from time to time including the one dated 19.5.88 as at Annexure 'C' in the original application, as also the list at A-2, R-1 and so on bring out the relevant particulars as required by the department for determining seniority and eligibility. Any small difference in the column does not adversely affect any railway official.

Shri Prasad also asserts that what is submitted by the review applicant are all questions of fact which have already been gone into by the Tribunal in its judgement in OA 40/91.

5. We have carefully considered this matter. We find that the issues raised in the review application have specifically been gone into in the judgement dated 27.8.93 in OA 40/91. The tenor of the judgement was that the requirement for reckoning seniority as drivers was that the persons should have passed the trade test and that posts should be available. It was also mentioned that there is nothing to indicate that there are different standards adopted by the Trade Test Committee for ad hoc appointment & distinct from regular appointment. As such, seniority should be reckoned on the basis of continuous service

as driver so long as the person concerned has passed the trade test and there are regular posts. It is obviously not tenable to suggest that the private respondents should be regularised only with effect from the date of issue of the order of regularisation and should count their seniority only from that date but the applicant should be given retrospective regularisation and his seniority should be determined from the date of his initial appointment on ad hoc basis. The applicant cannot contend that the same concession which he has sought for himself should be denied to the others. While deciding OA 40/91 we had gone through the service records to ascertain as to the dates from which the applicant as well as the private respondents have been functioning as drivers and on that basis we came to the finding that the applicant should be assigned seniority above Shri Venkatesh Muniyappa and below ^{other than Shri Venkatesh Muniyappa} Shri K. Ahmed Hussain, whereas the other private respondents who started functioning as drivers from a date earlier to the applicant and also got regularised earlier cannot be brought below the applicant. The authorities quoted by Shri Anandaramu do not support the review applicant's case. In any case, there is no error apparent on the face of of the record and the facts which had already gone into ^{from} ^{cannot} be re-opened by way of a review application. In view of this, we find no merit in this application and we dismiss it accordingly.

Sd/-

(A.N. Vujanaradhya)
Member (J)

Sd/-

(V. Ramakrishnan)
Member (A)

TRUE COPY

Se Shauhar
Section Officer 28/9
Central Administrative Tribunal
Bangalore Bench
Bangalore

