

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
BANGALORE - 560 033.

Dated: 31 MAR 1995

APPLICATION NO. 963 of 1993 and 1259 of 1994.

APPLICANTS: Sri.K.Shivananjaiah and S.Sampath Kumar,

V/S.

RESPONDENTS: The General Manager, Southern Railway,
Madras and two others.,

To

1. Sri.R.Gururajan, Advocate,
No.83/1, Fifth Cross,
First Floor, Malleswaram Circle,
Bangalore-560 003.
2. Sri.N.S.Prasad, Advocate,
NO.29, Fifth Main Road,
Gandhinagar, Bangalore-560009.

Subject:- Forwarding copies of the Orders passed by the
Central Administrative Tribunal, Bangalore-38.

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Please find enclosed herewith a copy of the Order/
Stay Order/Interim Order, passed by this Tribunal in the above
mentioned application(s) on 20-03-1995.

Issued on
31/03/95

DEPUTY REGISTRAR
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

ORIGINAL APPLICATION NOS. 963/1993
AND 1259/1994

DATED THIS THE TWENTIETH DAY OF MARCH, 1995

MR. JUSTICE P.K. SHYAMSUNDAR, VICE CHAIRMAN

MR. T.V. RAMANAN, MEMBER(A)

1. Mr. K. Shivananjaiiah
S/o. Late kalaiah
Aged about 42 years
Working as Carriage and
Wagon Fitter (Grade-III)
in the Carriage & Wagon
Superintendent Office
Southern Railway
Bangalore Division, Bangalore.
2. Mr. S. Sampath Kumar
S/o. Sri Shivanesan
Aged about 40 years
Working as Carriage and
Wagon Fitter in the
Carriage Wagon Superintendent's
Office, Southern Railway
Bangalore Division, Bangalore.

..... Applicants

(By Advocate Mr. R. Gururajan)

vs.

1. General Manager
Southern Railways
Park Town, Madras-3.
2. Divisional Railway Manager
Southern Railways
Bangalore Division
Bangalore-23.
3. Divisional personnel Officer
Southern Railways,
Bangalore Division, Bangalore.

..... Respondents

(By Mr. N.S. Prasad, Standing Counsel for the Railways)



O R D E R

Mr. T.V. Ramanan, Member(A)

Aggrieved by their non-promotion to the Artisan Staff grade of Rs 1200-1800, the applicants who are C & F Fitters Grade-III in the Southern Railway and are claimants for such promotion as a result of the restructuring of certain Group 'C' and 'D' categories of staff in the Railways have approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. The Railway Board Board (Ministry of Railways) issued a letter dated /27.1.1993 (Annexure-A1) to the General Managers of all Indian Railways and others concerned on the restructuring of certain Group 'C' & 'D' categories of staff. The Group 'C' & 'D' categories of staff to be restructured in accordance with the revised percentages stand indicated in the Annexures to the letter referred to supra. Annexure-E to that letter is about restructuring in respect of Group 'C' & 'D' staff of all Engineering Department and Workshops and it shows, inter alia, Artisan staff of various grades in pay scales varying from Rs 950-1500 to Rs 1400-2300. The restructuring of cadres was to be with reference to the sanctioned cadre strength as on 1.3.1993 and the staff to be placed in the higher grades as a result of the implementation of the orders contained in the Railway Board's said letter would draw pay in the higher grades with effect from 1.3.1993. There are instructions in respect

....3/-

of various matters concerning restructuring but what is important for the purpose of these applications is that it gives a go-bye to the normal methods for filling the vacancies in the various hierarchy of the Group 'C' & 'D' categories in the Railways. The relevant provision in this regard is contained in paragraph -4 of the letter referred to supra and it is reproduced below:

Existing Classification and fitting up of the vacancies

4. The existing classification of the posts covered by these restructuring orders as selection and non-selection as the case may be remain unchanged. However, for the purpose of implementation of these orders, if an individual Railway servant become due for promotion to a post classified as a selection post, the existing selection procedure will stand modified in such a case to the extent that the selection will be based only on scrutiny of service records and confidential reports without holding any written and or viva voce test. Similarly, for posts classified as non-selection at the time of this restructuring the same procedure as above will be followed. Naturally, under this procedure the categorisation as 'outstanding' will not figure in the panels. This modified selection procedure has been decided upon by the Ministry of Railways as a one time exception by special dispensation, in view of the numbers involved, with the objective of expediting the implementation of these orders." (emphasis ours)

Paragraph-4 reproduced above makes it clear that even for promotion to posts classified as selection posts, the existing selection procedure would stand modified to the



extent that the selection would be based only on scrutiny of service records and confidential reports without holding any written and/or viva voce test. While the matter rested at that, the Chief Personnel Officer of the Southern Railway issued a letter dated 8.3.1993 to all concerned, clarifying that for promotion in the Artisan categories on account of restructuring, a trade test had to be undergone. Accordingly, the respondents conducted the trade test, prepared a list and promoted certain persons to the higher grades as at Annexure-A2 dated 23.9.1993. The aforesaid order also shows that the applicants were not considered for promotion as they had failed in the trade test. The applicants are aggrieved with this order as according to them, due to the stipulation made in paragraph-4 of the Railway Board's letter dated 27.1.1993, they should have been promoted to the grade of Rs 1200-1800 only on scrutiny of their service records and confidential reports without being asked to undergo a trade test. In support of their contention they pointed out that for promotion in the Artisan categories, as a result of restructuring, the North Eastern Railway, in compliance with the Railway Board's letter dated 27.1.1993, had done away with the trade test but promoted the employees concerned in accordance with the instructions contained in paragraph-4 of the Railway Board's letter dated 27.1.1993. In view of this, the instructions contained in the Railway Board's letter being applicable to all Group 'C' & 'D' categories of staff in all Indian Railways cannot be interpreted differently by the Southern Railway to mete out arbitrary and discriminatory

treatment to its artisan staff including the applicants.

3. We have heard the learned counsel for the applicants and the learned Standing Counsel for the Railways.

4. The question is whether the Chief Personnel Officer could issue the letter dated 8.3.1993 stipulating that for promotions in the Artisan categories trade test is a must when the Railway Board's letter dated 27.1.1993 does not make any such stipulation. While obviously the superior authority's instructions cannot be interpreted by a sub-ordinate authority in such a fashion as to negate the instructions of the superior authority, this issue remains settled in the case of P.A. Mohanan Nair Vs. Assistant Electrical Engineer, Southern Railway, Trivandrum and Others decided by the Ernakulam Bench of this Tribunal on 1.6.1994 (1994 (2) ATJ 474). In that case also, because of the letter dated 8.3.1993 issued by the Chief Personnel Officer, Southern Railway, trade test was conducted for promotion in the Artisan categories. The Ernakulam Bench of the Tribunal has held that the Chief Personnel Officer had no jurisdiction and authority to clarify the letter dated 27.1.1993 issued by the Railway Board by issuing the letter dated 8.3.1993. The Tribunal has also held that paragraph-4 of the Railway Board's letter dated 27.1.1993 is very clear and unequivocal and as such no clarification whatsoever was necessary to understand its scope or application. Going by the letter of the Railway Board, the Tribunal has held that trade test is not a condition for getting higher grade on the basis of the scheme for restructuring of the posts in the Railways.



5. Learned Standing Counsel for the Railways, however, made a submission that the letter dated 2.8.1993 (Annexure-R1) from the Ministry of Railways addressed to the General Manager, Southern Railway Madras, states very clearly that no instructions had been issued in the Railway Board's letter dated 27.1.1993 regarding filling up of the posts of Artisan categories on account of restructuring as instructed by the Chief Personnel Officer, Southern Railway, in his letter dated 8.3.1993 was correct. The letter dated 2.8.1993 is reproduced below:-

- Sub: Implementation of the Restructuring in the cadre of Artizan staff in terms of Board's letter No.PC-III/91/CRC/1 dated 27.1.1993.

Kindly refer to Board's letter No. PC-III/91/CRC/1 dated 27.1.1993 under which the category of Artizan staff along with certain other Group 'C' & 'D' categories of staff have been restructured with effect from 1.3.1993.

In para-4 of this letter instructions have been issued regarding the method of filling up the selection and non-selection posts arising out of restructuring. However, no instructions have been issued regarding filling up of posts of Artisan category. During the discussions, the Labour Federations were of the opinion that this matter may be left to the Railway and if any instructions were sought on this issue, the Railway may be advised to follow the procedure adopted at the time of last restructuring of the Artisan category. The Board now desire that the following information may be furnished urgently by FAX in respect of the Artisan category.

- (a) the method that has been followed for filling up the upgraded posts of Artisan category as a result of restructuring, i.e., whether the posts have been filled by holding trade test or on seniority cum suitability basis. In cases where trade tests have been held the number of failures may kindly be intimated.

This may be treated as extremely urgent and the information be sent by FAX within the 7 days.

In the first place the statement made in the letter reproduced above that no instructions have been issued regarding filling up of the posts in the "Artisan Category" in the letter dated 27.1.1993 does not seem to be correct at all. The preamble to the letter dated 27.1.1993 reads as follows:

" The Ministry of Railways have had under review cadres of certain groups of C&W Staff in consultation with the Staff side of the Committee of the Departmental Council of the JCM (Rlys.) for some time. The Ministry of Railways with the approval of the President have decided that the Group C&D categories of staff as indicated in the Annexure (Department wise) to this letter be restructured in accordance with the revised percentages indicated therein. While implementing these orders the following detailed instructions should be strictly and carefully adhered to:- "

From the above, it is clear that Annexure-E to the said letter relating to the Artisan categories is part of the letter and paragraph-4 of the aforesaid letter does apply to the Artisan categories as much as it applies to the other categories mentioned in that Annexure or in the other relevant Annexures to that letter. The letter dated 27.1.1993 issued by the Railway Board does not anywhere mention that the instructions contained in paragraph-4 would not apply to the Artisan categories or that separate instructions would issue as regards those categories. Even otherwise, the letter dated 2.8.1993 does not state that trade test is a must for promotions in the Artisan categories on restructuring. It only states the views expressed by certain labour federations that the different railways, if they should seek instructions regarding filling up of the vacancies in the Artisan categories, should be told to follow the procedure adopted



by them at the time of last restructuring of the Artisan categories. The letter also seeks to collect information as to the method followed by the Southern Railway for filling up the upgraded posts of Artisan categories as a result of restructuring etc. Thus, the letter dated 2.8.1993 is not conclusive and it is of no avail to the respondents. If any policy as proposed by the labour federations is to be adopted, then it should come as an amendment to the Railway Board's letter dated 27.1.1993 and such an amendment cannot be retrospective because the instructions contained in the said letter as they stand today do not provide for any trade test at all for promotions in the Artisan categories.

6. Learned Counsel for the respondents further argued that under Rule 124 of the Indian Railway Establishment Code, the General Manager of the Southern Railway has full powers to make rules with regard to Railway Servants Group 'C' and 'D' under his control and if the Southern Railway provided for a trade test for filling up the higher posts as a result of restructuring in the Artisan categories that could not be found fault with. We do not agree with the submission because as stated in Rule 124 itself, the General Managers have full powers to make rules with regard to Railway Servant in Group 'C' and 'D' under their control provided they are not inconsistent with any made by the President or the Ministry of Railways.

In any case, learned Standing Counsel for the respondents

...9/-



have not produced any rule made by the General Manager, Southern Railway that for promotion in the Artisan categories on restructuring in the light of the instructions contained in the letter of the Railway Board dated 27.1.1993 a trade test shall be necessary. Be that as it may, it is clear that the instructions issued by the Chief Personnel Officer of the Southern Railway insisting on trade test for promotion in Artisan categories cannot override the instructions contained in paragraph-4 of the Railway Board's letter dated 27.1.1993 which do not provide for any trade test for the Artisan categories. Prima facie, the instructions contained in paragraph-4 of the Railway Board's letter dated 27.1.1993 appear to be an one time exception on account of restructuring of the Group 'C' & 'D' categories of the Railway staff.

7. The plea taken by the learned Standing Counsel for the respondents that the applicants were estopped from raising the contention that no trade test be conducted for granting higher scale since they had already sat for the examination without raising any objection and failed does not impress us for the reason that such trade test is not contemplated in the Railway Board's letter dated 27.1.1993. The principle of estoppel does not apply in a case where authorities act without jurisdiction.

8. To conclude, we abide by the decision of the Ernakulam Bench of this Tribunal and hold that no trade test for considering the case of the applicants

for being given the higher scale ~~is~~ warranted and the the applicants are eligible for consideration for the higher grade on the basis of restructuring strictly in accordance with the Railway Board's letter referred to supra on scrutiny of their service records and confidential reports.

9. In the result, we accept this application and direct the respondents to consider the applicant accordingly for the higher grade. We direct that this shall be done within a period of 3 months from the date of receipt of a copy of this order. In the event of being found fit to get the higher grade, the applicants shall be entitled to all consequential benefits due to them in accordance with law. There will be no order as to costs.

Scr
(T.V. RAMANAN)
MEMBER (A)

Scr
(P.K. SHYAMSUNDAR)
VICE CHAIRMAN



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[Signature]
31/3/95
Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore