

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~NEW XXXXXXXX~~ HYDERABAD

O.A. No. 425 of 1987

198

~~XXXXXX~~DATE OF DECISION 7.9.1988M. G. Sundaram and others PetitionerP. Krishna Reddy Advocate for the Petitioner(s)

Versus

Chairman,
Railway Board and others RespondentP. Venkatarama Reddy, SC for Rlys. Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. B.N. Jayasimha, Vice Chairman

The Hon'ble Mr. D. Surya Rao, Member (Judl.)

1. Whether Reporters of local papers may be allowed to see the Judgement?
 2. To be referred to the Reporter or not?
 3. Whether their Lordships wish to see the fair copy of the Judgement?
 4. Whether it needs to be circulated to other Benches of the Tribunal?
- ND

MGIPRRND-12 CAT/86-3-12-86-15,000


BNJ
VC
DSR
M(J)

"Judgement" -

The applicants herein are working as Running Supervisors in the Electric Traction Wing of South Central Railway. They are questioning the action of the respondents in fixing the seniority of Electric Loco Traction/Running Supervisors on the basis of seniority of members of the running staff (Drivers) and not on the basis of the date of their selection or inclusion as Running Supervisors. The order sought to be impugned is condition (e) of the Avenue of Promotion Chart issued vide Order No.P.529/Mech/Traction dated 11-10-1985 issued by the Personnel Branch of S.C.Rly., Secunderabad and the Seniority list issued consequent thereto, by an Order dated 19-6-1987. The case of all the applicants is that they were/working Diesel Drivers in the South Central Railway, and applicants 1-3 were selected as Running Supervisors in 1979, and the applicants 4-5 in the year 1982 and they have all been working as running supervisors in the Electric Traction after transfer to Electric Traction Wing. The respondents ^{4 to 13} ~~4-5~~ were never selected as running supervisors till the year 1986. The applicants 1-3 who were initially selected as running supervisors in the scale Rs.550-750 were subsequently promoted to the scale Rs.700-900 and latter to the scale of Rs.840-1040.

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20/8/87

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The applicants 3 and 4 were promoted from the scale Rs.550-750 to the scale Rs.700-900 as running supervisors. The applicants contend that before introduction of the Electric Traction, ^{the} ~~they are also~~ used to be supervisory staff in various cadres in the Steam and Diesel sections. All the drivers who were working in the Diesel and Steam sections after necessary training were converted into Diesel category and they were also absorbed as supervisory staff in the Diesel establishment. Subsequent to 1981, the electric traction also came into existence and the supervisory staff belong to either steam or diesel sections were given necessary training and absorbed as supervisors in the Electric Traction. Even during the days of diesel and steam tractions, selection was held for supervisory running staff in the steam as well as diesel wings and the applicants 1-3 were selected as supervisors in the year 1979 in the diesel section and the applicants 4-5 ~~x~~ were selected in the year 1982 in the diesel section. In respect of persons selected in respective batches, their seniority was worked out on the basis of the length of service they have put in as running staff. As far as the selections/earlier batches ⁱⁿ are concerned, they are always treated as seniors, to the staff selected in the latter batches. The same ~~me~~ ~~x~~ system

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continues in the diesel and steam loco sections even now. It is contended that ~~xxx~~ surprisingly by the impugned orders, their seniority is now sought to be fixed on the basis of the seniority of the candidates ^{absorption as supervisors to the} as drivers insofar as electric traction wing is concerned. As a result, the candidates selected in the ~~xxxx~~ 1986 batch would become senior to the applicants ^{as supervisors} who were selected much earlier in 1971 and 1973. The applicants ^{further} ~~however~~ contend that respondents 4-13 who were also ^{working} ~~selected~~ as drivers, ^{and} some of them ^{whom} ~~xxxx~~ ~~to have been informed~~ were never selected earlier to 1986 ~~and they~~ are now sought to be made seniors to the applicants by the impugned order. Respondent No.6 herein who had been selected as supervisor sought voluntary transfer as driver in view of better emoluments and he is now seeking to come back and gain seniority over the applicants. The applicants also state that the Avenue Chart issued by the second respondent on 11-10-1985 cannot purport to give seniority to the persons who have come in the latter batches over the persons who were selected in the earlier batches. It is also contended that as a result of the impugned orders, the seniority of the persons selected in earlier batches ~~xx~~ and working as supervisors in the Electric Traction wing would be disturbed.

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2. On behalf of respondents 1-3 (Railways), a counter has been filed stating that the assignment of seniority in Electric Traction Loco Supervisory Cadre (Grade Rs.550-750) ~~xx~~ is based upon the avenue chart issued on 11-10-1985 and that the said avenue chart does not violate any constitutional provisions or rules framed by the Railway Board. It is stated that fixing of seniority based upon the relative seniority in the running cadre is meant to render justice to a large section of employees and to remove anomalies that would have otherwise arisen if the seniority with reference to the date of entry into the loco supervisory cadre of steam/diesel side were to be taken into account. It is stated further that the applicants having exercised their option to come ~~xxx~~ over to the Electric Traction as per the Avenue of promotion Chart for Electric Traction running supervisory cadre which was framed for the first time on 11-10-1985 and to abide by the principles enunciated therein, it is not open to them ^{to} challenge the said principles or the assignment of seniority based upon the avenue chart. It is also stated that all through the applicants

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6/5/85

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were working in the Electric Traction on ad hoc basis without regular selection, but for the special dispensation given to them by the avenue chart dated 11-10-1985, they do not have any status in the Electric traction supervisory cadre and their ad hoc service in an organisation in which even the service conditions were not fully laid down, does not give them any better status. It is stated that if they had not opted to the electric traction cadre in terms of their option given in November, 1985, they should have been called for a selection along with the respondent-employees. The applicants having thus got an advantage in getting regularisation of service as electric traction supervisors in the grade of Rs. 550-750 without undergoing the process of selection just as the respondents, cannot now turn round and say that the conditions in the avenue chart insofar as they are seemingly disadvantageous to them should be ignored or discarded. It is stated in the counter that for these reasons, the applicants are estopped from questioning the avenue chart or the seniority list. The factual information given by the applicants in regard to their date of appointment and their dates of transfer to the electric traction wing are not denied in the counter. The respondents state in the counter that the necessity of changing the normal procedure for reckoning seniority arose for the following reasons :

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7/5/86

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(i) The loco ~~x~~ running supervisory staff regularly selected in the scale Rs.550-750(RS) and above in steam/diesel cadre who opted for electric traction have been exempted from appearing for the ~~xx~~ selection in the lowest grade of Locomotive running supervisory staff in the Electric Traction Organisation. The seniority of such staff vis-a-vis those selected in the first selection held in the Electric Traction had to be fixed. As the Loco Supervisory staff selected in the Steam/Diesel traction who are exempted from appearing for the first selection in the Electric Traction consisted of employees from all Divisions and Headquarters, if the normal procedure of reckoning seniority is adopted, it was leading to anomalies in that such of the staff who were selected earlier in one Division was gaining seniority over those who were selected later in one Division though the latter had entered much earlier to the former as a Driver 'C'. It was, therefore, decided that this fortuitous circumstance should not be taken into account. ✓

(ii) Electric Traction is a new cadre and the staff who were drafted to work in Electric Traction originally on ad hoc basis cannot have a substantive status in the new cadre unless they get through the process of regular entry into the cadre, as per the approved avenue of promotion and they should not steal a march over their seniors in Running Cadre by virtue of their ad hoc service in a cadre at formative stages. ✓

(iii) The drafting of staff initially to the Electric Traction to fill up the posts of Loco Supervisors was purely confined to the staff of Vijayawada Division alone, where it was first introduced on this Railway and this did not provide an equitable opportunity for other staff of S.C. Railway, as the Electric Traction has to be progressively introduced on the other Divisions also as per the policy of the Ministry of Railways. ✓

(iv) Among the staff initially posted to work as traction supervisors, there were some who did not go through formal process of selection for Loco Supervisory posts even in Steam/Diesel cadre.

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17/12/72

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(v) After initial formation of the Traction cadre during 1981, some of the screened regular Loco Supervisors posted to Electric Traction on ad hoc basis reverted back to their parent cadre and to fill up this gap, some more Running Staff had to be inducted into Electric Traction on ad hoc basis without undergoing any formal selection as Loco Running Supervisors. All this had to be done in the exigencies of ensuring that the train services are maintained uninterruptedly. Whatever position the staff held on ad hoc basis on Electric Traction are purely fortuitous which they cannot claim as a matter of right especially because of their substantive position is in a different cadre."

It is stated in the counter that ~~xxx~~ with a view to protecting the interest of staff and to avoid the above anomalies, clauses (a) and (b) have been added to give them the benefit of not subjecting them to any other selection on Electric Traction and that they automatically got selected for the Electric Traction. It is also stated in the counter that a provision has been made for ~~brn msfr got~~ the applicants and others similarly placed, that is, those who are already working in the Electric Traction and who are aggrieved by the present impugned order, to go back to their parent cadre. This right of option to go back to the parent cadre was found to be an equitable solution. It is for these reasons that the respondents ** 1-3 pray that the application may be dismissed.

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3. On behalf of respondents 4-11, a counter has been filed separately ~~xx~~ disputing the contentions raised by the applicants. Their main contention is that they are senior to the applicants in the cadre of running staff (Drivers) and when a new cadre is constituted and people are being asked to exercise their option, the seniority in the ^{Mechanical} running cadre alone should be considered in fixing the seniority in the supervisory cadre. These respondents also contest the claim of the petitioners that they have been regularly selected to the Electric Traction and that there was no selection held for formation of a panel in the Electric Traction Supervisors other than that was conducted on 8-7-1986. They also state that the applicants, if they are aggrieved by the seniority in the Electric Traction, are entitled to go back to the respective running supervisory cadres by virtue of the option given to them under the proceedings dated 8-10-1986. The petitioners have deliberately chosen not to make a mention about the distinction between two cadres, one of the Mechanical ^{Electric} running supervisors and the other/Traction Running Supervisors. All of them are from the common feeder posts of Driver 'C' and are entitled for promotion in respective departments. Having taken a line of deviation

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from the scale of Rs.550-750 in the Mechanical

Running Branch prior to the inception of the

Electric Traction, their claim to constitute with

these respondents as a single class cannot be

~~entertained~~ entertained as it causes discrimination

within the class. For these reasons, the

principle that employees selected in earlier

panels will be considered senior to those borne

on the subsequent panel has no application, in

the present case. It is for these reasons, the

✓ ~~(Railways)~~ [✓] Respondents ¹¹ 4-7 oppose the application

of the applicants herein.

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11/11/51 J.A.

4 (5) We have heard the learned counsel for the applicant, Sri P.Kfishna Reddy, the learned standing counsel for the Railways, Shri P.Venkatarama Reddy, and the learned counsel for the Respondents 4-11, Shri P.L.N.Murthy. From the averments in the affidavit and the counter-affidavit and the arguments advanced, the following facts emerge :

In South Central Railway, there are three modes of traction, viz., Steam Traction, Diesel Traction and Electric Traction. Each system of traction requires Drivers as well as Running Supervisors. Drivers comprise of the following grades : (old scales): Driver 'C' ; Rs.330-560, Driver 'B': Rs.450-640, Driver 'A' Rs.550-700 and Driver 'A' Special: Rs.550-750 and Rs.700-900. Running Supervisors comprises three grades, viz., Rs.550-750, Rs.700-900 and Rs.840-1040. The post of running supervisors could be filled in steam and diesel traction side from among drivers who volunteered and who had to undergo selection at the stage of Running Supervisor in the grade of Rs.550-750, i.e., Drivers are eligible only to get inducted as supervisors in the grade Rs.550-750. Due to running allowance being granted to Drivers resulting in Drivers getting overall larger emoluments, quite often Senior Drivers did not opt for the posts of Supervisors. If later in life they did not opt and get selected, then their seniority as loco-supervisors would

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depend on the date of entry into this category or grade. As a result, a Junior Driver who opted earlier and got selected as a running supervisor got seniority over the Senior Driver in the category of supervisors. A junior thus would be eligible for promotion to the higher scales upto Rs.840-1040 in preference to his senior in the category of Drivers. This was inevitable and ^{as} the senior drivers could have no cause for complaint as it was on his own volition ~~because he did not pass the test~~ that he remained ~~a~~ as a Driver, obviously because the overall emoluments of a Driver was more than that of a supervisor ^{because he did not pass the test}. It is to be noted that once Supervisors reached the scale of Rs.840-1040, the next promotion was as a Group 'B' officer from ^o zonal seniority list of all supervisors in this scale depending upon the date of entry into the grade irrespective of which system of traction he was working in. Thus the position regarding seniority of supervisors had become crystalised insofar as Diesel and Steam traction systems were concerned. In the year 1975, Electric Traction was introduced only in the Vijayawada Division of S.C. Railway. No formal rules or cadre was formed for the Electric Traction System from 1975

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to 1986. However, Drivers, Supervisors etc. from the Steam and Diesel side were appointed on ad hoc basis after undergoing conversion training. The applicants were among those who were already working as regular supervisors in the Diesel and Steam traction sides who volunteered for ad hoc appointment on the Electric Traction side. They progressed to the higher scales, viz. from Rs.550-750 to Rs.700-900 and Rs.840-1040 in their parent traction units though they were working in the Electric Traction Side. In the year 1985 by the impugned memo., dated 11-10-1985, an avenue of promotion chart was introduced for running supervisors on the Electric Traction System. This avenue chart provides for induction into the grade of Supervisors at the level of Rs.550-750 only, as in the case of diesel and steam traction systems from the category of Drivers. as per However, the note issued to the Memorandum, the seniority is to be determined under para 2(e). Para 2 of the Notes below the Avenue Chart issued under the impugned memo. dated 11-10-1985 reads as follows :-

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14/5/86

"2. For the first selection to be held as per the avenue chart, the following categories of staff will be considered :-

(a) All Running Staff who are eligible for promotion to the Supervisory posts in Gr.Rs.550-750 (RS) on voluntary basis in Electric Traction as provided in the avenue chart. ✓

(b) All Running Staff already working as Loco Supervisors in the Electric Traction Supervisory cadre in Grade Rs.550-750(RS) and above on ad hoc basis should volunteer for the first selection.

(c) Such of these Loco Running Supervisors of Steam/Diesel Traction empanelled for the Supervisory Cadre and working in Grade Rs.550-750(RS) and above in Steam/Diesel and those empanelled and who wish to work in Electric Traction should exercise their one time option. They will not be subjected to another selection on the Electric Traction. They will be deemed to have been automatically empanelled in the Electric Traction Running Supervisory Cadre. But they should undergo conversion training and pass the prescribed tests thereof before they are posted on the Electric traction. Foot-plate training of 3 months is compulsory in both Diesel and Electric traction if they have not been trained as a Driver in that traction. ✓

(d) For the purpose of 2(a) above, Drivers who have put in a minimum of 5 years service in driving will be eligible to apply. The volunteers should have successfully undergone conversion training. However, these Loco Supervisory Staff who are empanelled in the Electric Traction Running Supervisory Cadre in Grade Rs.550-750(RS) and do not have Foot-plate training, will have to undergo 3 months Foot-plate training separately before their empanelment is made final. While their panel seniority will be maintained, their panel position will be provisional till they fulfil this requirement.

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(e) The seniority of the staff mentioned at item (a) to (d) above, that is, those who are empanelled as a result of the first selection in the Electric Traction Running Supervisory Cadre and those who are exempted from appearing in the selection, will be based on their original running seniority. ✓

(f) The Loco Running Supervisors regularly selected in the Steam/Diesel Cadre who are already working in the Electric Traction running supervisory cadre who are exempted from appearing for the selection in scale Rs.550-750 (RS) in Traction side will be allowed to seek transfer to Steam/Diesel Supervisory cadre provided they give their willingness in writing immediately before selection."

The applicants' grievance is that under para (e) above, the Drivers who had not opted for the post of Supervisors in the relevant stream or had not passed the selection tests in those streams, are now being given seniority over the applicants. What clause (e) gives is that even though a steam or diesel driver had not passed the examination or not opted for the post of supervisor and consequently lost his seniority against the supervisors working in the steam/diesel side, would now get the seniority in the supervisory cadre on the Electric Traction side. Not only does he get seniority in the Electric Traction side, but also goes up in the common seniority list prepared on the zonal basis and gains a place above the applicants for the purpose of promotion to Group 'B', which right was not available to him till

the above avenue chart was brought into force. In other words, promotions and seniority which accrued to the applicants in their respective streams and consequently in the common seniority list are set at naught by the clause (e) of the Note to Avenue Chart. There is considerable force in the arguments on behalf of the applicants that settled seniority is being disturbed by the introduction of this new avenue chart. Another leg of the argument of the learned counsel for the applicants is that according to para 302 of the Indian Railway Establishment Manual (second edition), seniority is to be reckoned from the date of entry into a particular cadre or grade. Admittedly, the applicants' entry into the grade of supervisors was much earlier to the respondents. It was, therefore, argued that clause (e) of the Note under the Avenue Chart is not in accordance with Para 302 of the Indian Railway Establishment Manual which reads as follows:-

"Seniority in initial recruitment grades:

302. Unless specifically stated otherwise, the seniority among the incumbents of a post in a grade is governed by the date of appointment to the grade. The grant of pay higher than the initial pay should not, as a rule, confer on a railway servant seniority above those who are already appointed against regular posts. In categories of posts partially filled by direct recruitment and partially by promotion, criterion for determination of seniority should be the date of promotion in the case of a promotee and date of joining the

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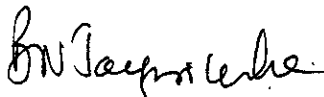
working post in the case of a direct recruit, subject to maintenance of inter-se seniority of promotees and direct recruits among themselves. When the dates of entry into a grade of promoted railway servants and direct recruits are the same, they should be put in alternate positions, the promotees being senior to the first direct recruits maintaining inter-se seniority of each group."

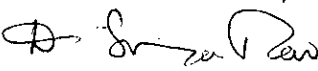
It was argued on behalf of the respondents that all previous appointments to the Electric Traction wing was only on an ad-hoc basis and that since a new cadre is being formed in the Electric Traction for the first time pursuant to the impugned Avenue Chart, para 302 would not apply in this case. We are unable to agree with this view. Despite this being a new cadre, it has the effect of unsettling the seniority of the supervisors insofar as their seniority for consideration for promotion for Group 'B' post is concerned. In view of the foregoing, clause (e) of para 2 of the Note under Avenue Chart dated 11-10-1985 has to be struck down. It is accordingly struck down. It is for the Department to issue ^a suitable amendment ^{to} ~~either in whole~~ ^{in part or whole} ~~or in part to~~ the impugned Avenue Chart keeping in view the observations made by us above, protecting, however, the seniority of the persons who are working as Supervisors in the Steam and Diesel streams. Consequently, the seniority list prepared in accordance with the impugned Avenue Chart would also have to be revised.

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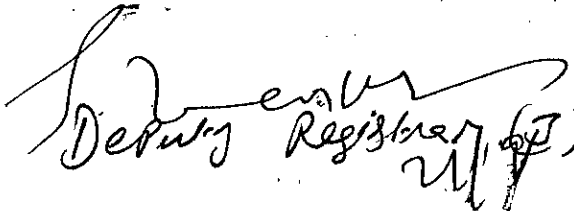
With these observations, the application is partly
allowed to the extent indicated above. There will be
no order as to costs.

Dictated in the open court.


(B.N. JAYASIMHA)
Vice Chairman


(D. SURYA RAO)
Member (Judl.)

Dated: 7th September, 1988.


Deputy Registrar (J)

RSR/vsn