

Central Administrative Tribunal
HYDERABAD BENCH : AT HYDERABAD

O.A. No. 294/90
 T.A.No.

Date of Decision : 2-4-91

R. Madhusudan Rao & others

Petitioner.

G. Ramachandra Rao

Advocate for the
 petitioner (s)

Versus

Union of India, per Genl. Manager,
 SC Rly., Sec'bad & others

Respondent.

Shri N.R. Devaraj, SC for Rlys.

Advocate for the
 Respondent (s)

CORAM :

THE HON'BLE MR. B.N. Jayasimha, Vice-Chairman

THE HON'BLE MR. J. Narasimha Murthy, Member (Judicial)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *rv*
2. To be referred to the Reporter or not ? *rv*
3. Whether their Lordships wish to see the fair copy of the Judgment ? *rv*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *rv*
5. Remarks of Vice Chairman on columns 1, 2, 4
 (To be submitted to Hon'ble Vice Chairman where he is not on the Bench)

B.N.J
 HVC

HJNM

69

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD**

O.A.No.294/1990

Date of decision: 2-4-1991.

Between

1. R.Madhusudan Rao
2. K.Krishna Murthy
3. Smt.T.J.Tara Bai
4. K.Purnachandra Rao
5. P.Venkataiah Somaiah

Applicants

A N D

1. Union of India per General Manager,
South Central Railway, Secunderabad
2. Chief Personnel Officer,
S.C.Rly., Secunderabad
3. Divisional Railway Manager (Personnel)
Broad Guage, S.C.Rly., Sec'bad
4. Union of India rep. by its Secretary (Est)
Ministry of Railways, Rly. Board, New Delhi. . . . Respondents

Appearance:

For the applicants : Shri G.Ramachandra Rao, Advocate

For the Respondents : Shri N.R.Devaraj, S.C. for Rlys.

CORAM

The Hon'ble Shri B.N.Jayasimha, Vice-Chairman

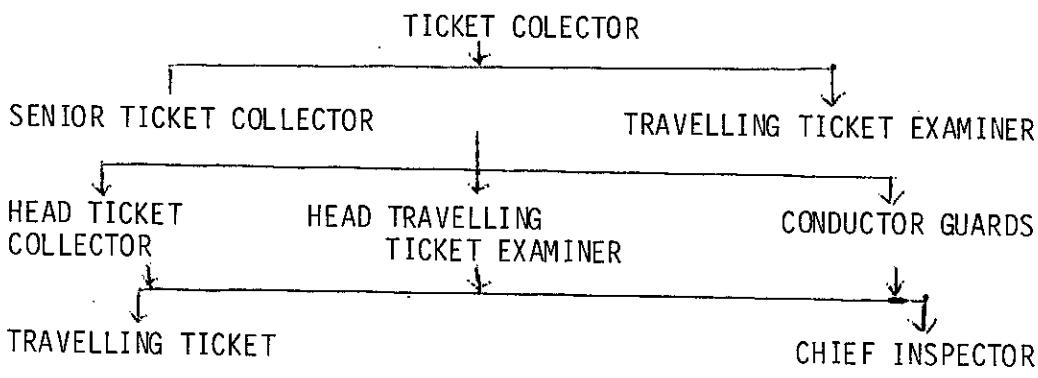
The Hon'ble Shri J.Narasimha Murthy, Member (Judicial)

J U D G M E N T
(of the Bench delivered by the Hon'ble Sri B.N.Jayasimha, V.C.)

The applicants herein who are five in number, are working as Conductors in the South Central Railway. They have filed this Application challenging the order passed by the third Respondent in his proceedings No.C/P.529/2/1400 (Office Order No.180 DRM/Gen1/89) dated 19-12-89 and No.C/P/529/2/1400 dated 8-3-1990 asking them to qualify in the selection for regularisation and for further advancement.

fnj/

2. The applicants state that they are working as conductors in the payscale of Rs.425-640 i.e. revised scale of Rs.1400-2300 in the Secunderabad Division of the South Central Railway. While working as Senior Ticket Collectors or Travelling Ticket Examiners in the scale of Rs.330-560 (i.e. revised scale of Rs.1200-2040) they were promoted to the post of Conductor Guard in the payscale of Rs.425-640 (i.e. revised scale of Rs.1400-2300) with effect from 1-1-84. They say that they were promoted against regular vacancies which arose consequent to the restructuring of Ticket checking cadre. They are all qualified and eligible for promotion to the post of Conductor Guard and their promotions were on regular basis. Respondent No.4 in his letter No.PCIII/80/UPG/19 dated 20-12-83 communicated a decision for restructuring the non-gazetted cadres in the Railways in the Commercial Ticket Checking staff and various other departments. The Railway Board stated that for purpose of restructuring the cadre strength as on 1-1-84 would be taken into account and this would include Rest Giver and Leave Giver posts. Under Note to Clause (2) of the statement indicating the restructuring of Ticket Checking Staff, it was stated that the cadre of trained conductors in the scale of Rs.425-640 would be combined with the Ticket Checking Staff in the corresponding scale only for limited purpose of determining higher grade posts in the scale of Rs.550-750 and Rs.700-900. After that the category of Trained Conductors would continue to exist as a separate category as already inexistence. Following is the avenue chart of promotion as it existed when they were promoted as Conductor Guards:



It would be seen from the above chart that promotion from the post of Senior Ticket Collector or Travelling Ticket Examiner is to the posts of Conductor Guard, Head Travelling Ticket Examiner and Head Ticket Collector in the scale of pay of Rs.425-640. All these three posts carry the same scale of pay. However the posts of Head Ticket Collector and Head Travelling Ticket Examiner are declared as selection posts and the post of Conductor Guard is not declared as selection post. As per para 212 of the Indian Railway Establishment Manual, any promotion to the non-selection post shall be on the basis of seniority-cum-suitability and all the applicants are promoted on the basis of seniority-cum-suitability on regular basis.

3. The Railway Board in its letters dated 31-1-86 and 13-7-87 decided to treat the post of Conductor Guard in the scale of Rs.425-640 also as a selection post and the said decision was communicated for the first time by the 2nd Respondent in his proceedings dated 20-10-89 revising the avenue chart of promotion.

4. While this was so, the 3rd Respondent in his proceedings dated 19-12-89 re-designated the applicants alongwith others as Head Travelling Ticket Examiners on adhoc basis. The applicants, jointly and individually made representations to the 3rd and 2nd Respondents through their representations dated 28-12-89 and 20-2-90 respectively stating that they were promoted as Conductor Guards on regular basis but not on adhoc basis and that they are holding the post of Conductor Guard from the last six years. Hence their promotion, therefore, cannot be treated as adhoc by redesignating them as Head Travelling Ticket Examiners. Their representation was rejected by the 3rd Respondent on 8-3-90 and it was also stated therein that the applicants should qualify themselves in the selection for regularisation and further advancement in the Ticket Checking Cadre. Hence they have filed this application.

BNJ

5. The Respondents in their counter say that the O.A. is not maintainable as the applicants have not exhausted the remedies available to them against the impugned letter dated 8-3-90. They have not appealed to the higher authorities against this order. They have also not challenged the order of the Railway Board dated 31-1-86 and 20-10-89 empowering the Respondents to amend the avenue chart that was in force before 20th October, 1989 and treating the posts of HTTE/HTC as selection posts. As per the avenue chart that was in force before 20th October, 1989, the post of Conductor Guard in the scale of Rs.425 -640 was an ex-cadre post to be filled on seniority-cum-suitability from among the TTEs/Sr.TCs grade of Rs.330-560 (i.e.Rs.1200-2040 revised scale) by calling for volunteers. It was also mentioned that they have to appear for selection to the post of HTTE/HTC for regularisation and further advancement. This was amended by the Railway Board vide their letter dated 31-1-86 declaring that the post of Conductor Guard shall be a selection post. The applicants appeared for selection to the post of HTTE/HTC but failed to qualify hence they are continuing to work as Conductor Guards. Restructuring of the Ticket Checking Cadre was introduced vide the Railway Board's letter dated 20-12-83 and classification of the posts as selection or non-selection was not changed and only instructions were issued in regard to procedure for filling up of the posts i.e. applying the procedure for selection or non-selection vide paras 4.1 and 4.2. According to these paras, if their next promotion post happens to be to two grades at the same time and the second post happens to be selection post, they have to go through the regular selection process i.e. written test and viva voce. In accordance with these instructions, the applicants alongwith some others were promoted as Conductor Guards. Even after amendment of the avenue chart of promotion, the category of Conductor Guard is continuing. The only change brought out is that this post has now been declared as a selection post. On this account, neither the number of posts of Conductor Guards has been reduced nor the identity of the post has been lost. On the other hand,

having regard to the nature of the duties of the Conductor Guard requiring a lot of public contact involving tact and human touch, it was decided that these posts maybe manned by senior most staff who had cleared selection. Accordingly, the senior most selected HTTE/HTCs were redesignated as Conductors and the existing conductors who had not cleared the selection were redesignated as HTTE/HTCs on adhoc basis. The applicants herein who are working as Conductor Guards and who failed to qualify in the selection for the post of HTTEs/HTCs were continued as Conductor Guards. Even as per earlier avenue chart, if the staff so promoted as Conductor Guards do not qualify in the selection for the posts of HTTE/HTC, they will continue to work as Conductor Guards without any further advancement in the cadre. In view of the changed classification of the post of Conductor Guard, they could not be continued as Conductor Guards and therefore they were redesignated as HTTEs on adhoc basis pending holding of selection. For these reasons the Respondents have opposed the application.

6. We have heard the learned counsel for the applicants Shri G.Ramachandra Rao and Shri N.R.Devaraj, the learned Standing Counsel for the Railways, on behalf of the Respondents.

7. For the facts, it is clear that the post of Conductor Guard was an ex-cadre post and it is filled by calling for volunteers on the basis of seniority-cum-fitness. For the post of Chief Ticket Inspector only the senior HTCs/Senior Travelling Ticket Examiners, etc., were eligible for consideration. ^{Promotion} And from the post of Senior Ticket Collector/Travelling Ticket Examiner to the post of HTCs, etc. was by way of selection i.e. after their qualifying themselves in an examination. The applicants

bni

6582

admittedly did not qualify in the examination for being promoted as HTCs, etc. Their claim is that since under the revised avenue chart, the post of conductor has been made a selection post, they should be deemed to have been promoted as Conductors even under the new avenue chart also and they should not be now called upon to pass the examination and they should not be redesignated as adhoc HTCs. In support of this contention, Shri Ramachandra Rao relies on the decision in P.Mahendran & Ors.Vs. State of Karnataka & Ors. (AIR 1990 SC 404) wherein the Supreme Court considered the question of prospective amendment of the rules and stated that the selection process should be completed in accordance with the law as it stood at its commencement and also held that the amended rule will not invalidate the selection already made. Opposing this, Shri Devaraj relies upon P.K.Pennamma Vs. Union of India & Ors. (ATR 1989(2) CAT 586), in which it was observed by the Ernakulam Bench of this Tribunal that the Government in public interest modify the rules and no employee can challenge them on the ground that the amendment reduces his or her chances of promotion. The question, therefore, for consideration is whether the applicants are entitled to claim their right for promotion to the post of Chief Ticket Examiner on the ground that they should be treated as regularly appointed as Conductor Guards and as per the amended avenue chart, they shall be deemed to be in the channel of promotion to the post of Chief Ticket Examiner. According to the Respondents, the reason for changing the avenue chart and making the Conductor Guard a selection post is that the Conductor Guards are required to have a lot of public contact involving tact and human touch and it should be manned by persons who have gone through a selection process. It is in public interest to do so and there is nothing illegal in declaring the post of Conductor Guards as a selection post. Consequent to

65
bws

To :

1. The General Manager, (Union of India)
South central railway, Secunderabad.
2. The Chief Personnel officer, S.C.Railway,
Secunderabad.
3. The Divisional Railway Manager (Personnel)
Broad Guage, S.C. Railway, Secunderabad.
4. The Secretary (Union of India), (Est) Ministry of Railways,
Railway Board, New Delhi.
5. One copy to Mr. G. Ramachandra Rao, Advocate, 3-4-498,
Barkatpura Chaman, Hyderabad-29.
6. One copy to Mr. N. R. Devaraj, SC for Railways, CAT., Hyderabad.
7. One spare copy.
- 8) one copy - to hon'ble Mr. J. Narsimha Murthy, M(5)CAT,
Hyd.

pvm.

1
T. D. A. M. S.
16/10/91

the new avenue chart, it is legal to redesignate the applicants who have been working for more than six years as Conductor Guards as adhoc HTCs. We do not think it is permissible to treat the applicants as adhoc HTCs and withdraw the promotion given to them as Conductors. Even under the new chart, the applicants should be given the promotion of continuing as Conductor Guards non-selection. They will continue in the said post till they pass the qualifying test prescribed for HTCs and when they qualify they would join the main stream for promotion to the post of Chief Ticket Inspector. In other words the applicants should be continued as Conductor Guards but they will not be eligible for promotion to the post of Chief Ticket Examiners unless they pass the necessary qualification test prescribed for HTCs and get selected. So far as the applicants are concerned, the Conductor Guards posts will be treated as if it is an ex-cadre post to which they were promoted but without entitling them to further promotion in the channel to the post of CTE unless they qualify in the selection process. Accordingly, the following directions are issued:

- (i) The order dated 8-3-90 declaring them as adhoc HTTEs is set aside;
- (ii) The applicants will be continued as Conductor Guards (non-selection);
- (iii) ^{nor} _{from} They will be entitled to promotion to the post of Chief Travelling Ticket Inspector unless they qualify in the selection test prescribed for promotion to the post of CTTIs, etc.

The Application is disposed of with the above directions. No order as to costs.

B.N.Jayasimha

(B.N.JAYASIMHA)
VICE-CHAIRMAN

M

(J.NARASIMHA MURTHY)
MEMBER (JUDICIAL)

Dated: the 2nd day of March, 1991.

mhb/-

DR
P. DEPUTY REGISTRAR (J)

8
TYPED BY SRI

COMPARSED BY

CHECKED BY SRI

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDRAABAD BENCH: HYDERABAD

THE HON'BLE MR. B. N. JAYASIMHA: V.C.
AND

THE HON'BLE MR. D. SURYA RAO: M(J)
AND

THE HON'BLE MR. J. NARASIMHA MURTHY: M(J)
AND

THE HON'BLE MR. R. BALASUBRAMANIAN: M(A)

DATED: 24-4-1991

ORDER/ JUDGMENT.

M.A./R.A./C.A. No.

C.A. No.

in

W.P. No.

C.A. No. 294/90

Admitted and interim directions
issued.

Allowed.

Disposed of with direction.

Dismissed.

Dismissed as withdrawn.

Dismissed for default.

M.A. Ordered/Rejected.

No order as to costs.

