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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.421 of 1990

DATE OF ORDER : 12th DECEMBER, 1990

BETWEEN:

Mr. B.H.Venkateswarlu ..

Applicant

AND

1. The Chief Personnel Officer,
South Central Railway,
Secunderabad.
2. The Senior Divisional Personnel Officer,
South Central Railway,
Vijayawada.
3. Railway Board, represented by
its ~~Ex~~ Joint Director, Establishment/N,
Railway Board, New Delhi.
4. Mr. Ch.Venkaiah, Deputy Chief Controller,
Vijayawada.
5. Mr. P.V.Krishna Rao,
Deputy Chief Controller,
Vijayawada.
6. Mr. D.Sambamurthy,
Deputy Chief Controller,
Vijayawada.
7. Mr.G.V.Seshaiah,
Deputy Chief Controller,
o/o Central Chief Operating Superintendent,
Secunderabad.
8. Mr.V.A.Rama Rao,
Deputy Chief Controller,
o/o Instructor, Zonal Training School,
S.C.Railway,
Secunderabad.

Respondents ..

FOR APPLICANTS : Mr. J.M.Naidu, Advocate

FOR RESPONDENTS : Mr. N.R.Devaraj, SC for Railways'

CORAM: Hon'ble Shri J.Narasimha Murthy, Member (Judl.)
Hon'ble Shri R.Balasubramanian, Member (Admn.)

JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE
SHRI J.NARASIMHA MURTHY, MEMBER (JUDL.)

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This is a petition filed for a relief to call for the records relating to proceedings No.B/P.535/VI/Z dated 30.4.1990 of the 2nd respondent promoting the Respondents 4 to 6 on adhoc basis to the post of Chief Controllers in the Grade of Rs.2375-3500 (RSRP) which is based on his own panel letter No.B/P.608/VI/5/Vol.VI, dated 3.9.1981 and declare the same as illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India by quashing the same, and also consequently to declare that the applicant is senior to the Respondents 4 to 8 and direct the respondents 1 and 2 to promote the applicant on adhoc basis to the post of Chief Controller in Grade Rs.2375-3500. The facts of the case are briefly as follows:-

The applicant while working as Assistant Station Master in the grade of Rs.425-640 (Revised Scale), the 2nd respondent had invited applications for filling up the posts of Section Controllers in the pay scale of Rs.470-750 (R.S.) in Vijayawada Division of South Central Railway. The applicant submitted an application and ^{he} was selected along with the Respondents 4 to 6 who belonged to the Category of Guards-C in the Grade Rs.330-530 (R.S.). A panel of selected candidates was published on 3.9.1981 showing the respondents 4 to 8 as seniors to the applicant. The applicant states that for filling up one post of Section Controller in the Central Control, Chief Operating Superintendent's Office, Secunderabad, applications from volunteers were called for and the applicant and Respondent No.7 who belonged to Guards-C Category applied for the same. The applicant who claims to be the senior-most amongst the selected Section Controllers was transferred and posted to officiate as Section Controller, Central Control, Chief Operating Superintendent's Office, Secunderabad against the existing vacancy

vide Order dated 9.11.1982, which was served on the applicant on 19.11.1982. Vide an order dated 26.11.1982, the 2nd respondent has directed the Chief Controller, Vijayawada to relieve the applicant for taking up the new assignment. To the surprise of the applicant, the 2nd respondent on the advise of the 1st respondent later on cancelled the order. It appears that on a representation made by the Respondent No.7, the 1st respondent passed an order dated 17.12.1982, without giving any notice to the applicant, posting the Respondent No.7 as Section Comtroller, Central Control, Secunderabad. ✓

2. The applicant and 7 others have filed Writ Petition No.39/1983 in the Hon'ble High Court of Andhra Pradesh praying to issue an order or direction, directing the Respondents No.1 and 2 i.e., Chief Personnel Officer, South Central Railway, Secunderabad and the Senior Divisional Personnel Officer, Vijayawada to treat the petitioners therein as seniors to the Respondents 3 to 10 therein who came from the category of Guards-C and to direct the respondents 1 and 2 therein to implement the order dated 9.11.1982. The Writ Petition was transferred to this Tribunal and numbered as T.A.No.178/1986, and was disposed of with the same the same direction to prepare a fresh seniority list of selected candidates listed in the letter dated 3.9.1981. The Tribunal further directed the respondent No.3 herein to issue specific instructions for fixing interse seniority of the officials in the cadre of Section Controllers in the pay scale of Rs.470-750 (R.S.) recruited from four different sources as instructions contained in the Railway Board's Circular dated 15.6.1979 does not deal with the interse seniority of the persons selected to higher posts and it merely provides an equation for consideration of promotion of officials working in running post vis-a-vis officials working in stationary posts.

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3. The applicant states that the South Central Railway consists of five Divisions viz., 1) Hyderabad 2) Secunderabad (3) Guntakal (4) Hubli and (5) Vijayawada. In the Guntakal Division of South Central Railway, Guards-C category who were selected as Section Controllers were placed below the Assistant Station Master's category vide letter dated 3.6.1981 issued by the DRM(P), Guntakal and a similar practice was also followed in the Secunderabad Division. In Hubli Division, Shri P.A. Myagari, Shri C. Sanjeevi and Shri M. Ramachander Kurup filed O.A. Nos. 1181, 1182 and 1183 of 1988 respectively in the Central Administrative Tribunal, Bangalore Bench seeking relief to direct the DRM to place them above the Guards-C category on the ground that they were seniors to Guard-C category with due regard to the higher scales of pay allowed to Assistant Station Masters over Guards-C category. The Bangalore Bench allowed the O.A. on the ground that the Assistant Station Masters were drawing higher scales of pay than those allowed to Guards-C category which is not in dispute and as is well known, higher scales of pay allowed to the cadres higher in status only. For the above reasons, the Tribunal had drawn an inference and declared that the Assistant Station Masters were seniors to the Guards-C category drawing lower scales of pay. The Judgment of the Bangalore Bench decision was implemented by the Respondents therein. The Respondent No. 2 in the above O.A. is the Respondent No. 1 in this application. It is stated that it is not open to the Respondent No. 1 ~~to~~ herein to use different yardstick in one division and another yardstick in other division.

4. The applicant states that the Respondent No.2 has promoted the Respondents 4 to 6 without revising the seniority list on adhoc basis. Even an adhoc promotion creates a right and the respondents 1 and 2 cannot exercise the power arbitrarily depriving the rights of the seniors. It is stated that the action of the 2nd respondent in promoting the Respondents 4 to 6 to the post of Chief Controller in the Grade of Rs.2375-3500 (RSRP) on adhoc basis is illegal and violative of Articles 14 and 16 of the Constitution of India. It is stated that the Respondents No.7 and 8 are going to be promoted on adhoc basis by the respondents 1 and 2 based on the panel letter dated 3.9.1981 and hence the rights of the applicant may be deprived. The applicant states that the 3rd respondent herein even after receiving the judgment of the Tribunal in T.A.No.178 of 1986 has issued the same instructions as contained in Board's letter dated 15.6.1979 which was already declared by the Tribunal that the letter dated 15.6.1979 does not deal with the interse seniority. It appears that the 3rd respondent herein issued instructions to the General Manager, Secunderabad to prepare integrated seniority list in terms of the instructions contained in Circular dated 15.6.1979 through which the grade of running staff are treated as equal to the indicated higher grades given to the stationary staff. The applicant states that even otherwise the issuance of circular dated 15.6.1979 is only prospective effect but not retrospective and the same will not apply in this case as the applicant was working as Assistant Station Master prior to 15.6.1979 in the pay scale of Rs.425-640 (R.S.). It is thus clear that the applicant is senior to Guards-C category.

5. The respondents filed a counter. The contents of the counter are briefly as follows:-

Volunteers were called for fill^{ing}up the vacancies of Section Controllers in the pay scale of Rs.455-750 (RS) from the categories of Guard 'A', 'B', 'C', Station Masters/Asstt. Station Masters and Yard Masters/Assistant Yard Masters vide ~~this~~ letter dated 19.8.1980. The applicant was working as Assistant Station Master in the pay scale of Rs.425-640. He had applied for the post of Section Controller in response to the notification. The applicant along with 64 employees of different categories has been called for the written test held on 22.3.1981 and 7.4.1981 vide letters dated 7.3.1981 and 26.3.1981. As a result of the written test held on 22.3.1981 and 7.4.1981 and Viva-voce on 3.7.1981 and 7.8.1981, 23 employees including the applicant and the respondents 4 to 8 were placed in the panel published vide Memorandum dated 3.9.1981. The seniority of the staff belonging to different categories selected to the post of Section Controllers was fixed. The Railway Board equated the grades of running staff to that of stationary categories after adding 30% of pay in lieu of running allowance on promotion. Selections are as detailed below:-

Category	Actual scale	Scale of Stationary Category to be treated as equivalent after adding 30%
Guard 'A' Spl.	Rs. 425-640	
Guard 'A'	Rs. 425-600	Rs. 550-750
Guard 'B'	Rs. 330-560	Rs. 455-700
Guard 'C'	Rs. 330-530	Rs. 425-640

6. The applicant while working as Section Controller, Vijayawada in the pay scale of Rs.470-750 was issued orders of transfer to Central Control, COPS/O /SC as Section Controller

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(SCOR) on his present pay and scale vide R.R CPO letter dated 9.11.1982 communicated vide order dated 26.11.1982. In supersession of CPO/SC Office Order dated 9.11.1982 above, Mr. G.Venkata Seshaiah, SCOR/BZA in the pay scale of Rs. 470-750 (Respondent No.7) was issued orders of transfer on his present pay and scale and posted as SCOR, Central Control, COPS, Secunderabad based on the panel position published on 3.9.1981 vide Office Order issued under letter dated 17.12.82. The applicant and 7 other Section Controllers filed a writ petition No.39/83 in the High Court of Andhra Pradesh and the writ petition was transferred to this Tribunal and numbered as T.A.No.178/1986. While disposing of the case, the Tribunal has passed orders as below:-

"(a) We also direct the Railway Board to issue specific instructions for fixing interse seniority of officials in the cadre of Section Controllers in scale Rs.470-750 (RS) recruited from four different sources as provided in the rules.

(b) The respondents are required to prepare a fresh seniority list of the selected candidates listed in the letter dated 3.9.1981 within a period of two months from the date of the receipt of this order."

Based on the directions given to the Railway Board by the Tribunal, the Railway Board have given clarification orders to their letter dated 15.6.1979 vide their letter dated 19.5.1989 regarding fixation of interse seniority of Section Controller selected from running and non-running categories as under:-

"The integrated seniority list is to be prepared in terms of instructions contained in Board's letter No.E(NG)/I-78/PM.I/305 dated 15.6.1979 read with para 321 of IREM. As the grade of running staff are treated as equal to the indicated higher grades

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given to the stationary staff, by adding the pay element of running allowance, in terms of Board's letter dated 15.6.1979, the running staff will get the benefit of this equivalence for the purpose of preparation of integrated seniority list also. Thus non-fortuitous service rendered by a Guard 'C' (as running staff) in scale Rs.330-530/RS will be treated as equivalent to non-fortuitous service rendered in scale Rs.425-640 (RS) by an ASM (as stationery staff). In other words, Guard Grade 'C' (Rs.330-530/RS) treated as equivalent to Rs.425-640/RS) and ASM (Rs.425-640/RS) will be assigned positions in the integrated seniority list on the basis of length of non-fortuitous service in their respective grades viz., Rs.330-530/RS as Guard 'C' and Rs.425-640/RS as ASMs. The position thus assigned will determine their relative seniority on being selected to the post of Section Controllers and promoted to that post."

Hence, the Guards Grade-C scales were fixed at Rs.425-640 on par with the Assistant Station Masters. Originally, the pay scale of Guard Grade-C was Rs.330-560. Based on the seniority in the cadre of SCORs/Deputy CHCs, the respondent No.7 has been promoted purely on adhoc basis as Chief Traffic Controller in grade Rs.2375-3500 (RSRP). The respondent No.8 has not been promoted so far to the grade of CHC in the pay scale of Rs.2375-3500 (RSRP). The applicant is junior to the respondents 7 and 8. In Secunderabad, Hyderabad and Guntakal divisions, the respondents treated the employees drawing higher pay scales as seniors and the persons who are drawing lesser pay scales as juniors whereas in Hubli division Guards Grade-III are treated as seniors to Assistant Station Masters who are drawing more pay scales than the Guards Grade-III. Then, the Assistant Station Masters filed a case before the Bangalore Bench of the Central Administrative

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Tribunal. The Bangalore Bench upheld the petitioners contention stating that the Assistant Station Masters ~~XXXXXX~~ are seniors to the Guards Grade 'C'.

6. The applicant Mr. B.H.Venkateswarlu, Dy.CHC/BZA was not the applicant before the Bangalore in O.A.Nos.1181, 1182 and 1183 of 1988. Hence the judgment given by the Central Admve. Tribunal, Bangalore Bench is not applicable to the applicant. The applicant is not senior enough to be considered for adhoc promotion as CHC in the pay scale Rs.2375-3500. The service particulars of the applicant and the respondents 4 to 8 are as follows:-

S.No.	Name & Designation	Scale	DOB	Date of initial appointment	Date of entry into the present grade
<u>S/shri</u>					
1.	Ch.Venkaiah, Guard 'C'	330-530	1.7.43	1.2.66	28.6.68
2.	P.V.Krishna Rao, "	"	15.12.37	19.2.64	6.9.69
3.	D.Sambamurthy, "	"	24.12.42	11.9.63	1.2.72
4.	G.V.Seshaiah, "	"	31.5.46	2.6.66	18.11.73
5.	V.A.Rama Rao, "	"	1.7.37	28.11.58	<u>6.12.71</u> <u>9.11.74</u>
6.	B.H.Venkateswarlu, ASM	425-640	11.9.39	17.12.62	5.4.78

Hence, the promotion of the respondents 4 to 6 to the posts of Traffic Controllers in the grade Rs.2375-3500 was purely on adhoc basis as they are seniors to the applicant. The applicant is also junior in the seniority to the respondents 7 and 8.

7. With regard to the fixation of interse seniority of Section Controllers selected from running and non-running categories, it is stated that the integrated seniority is to

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be prepared in terms of the instructions contained in Board's letter dated 15.6.1979. As the grades of running staff are treated as equal to the indicated higher grades given to the stationary staff, by adding the pay element of running allowance, in terms of Board's letter dated 15.6.1979, the running staff will get the benefit of this equivalence for the purpose of preparation of integrated seniority list also. Thus, non-fortuitous service rendered by a Guard 'C' as running staff in scale Rs.330-530 (RS) will be treated as equivalent to non-fortuitous service rendered in scale Rs.425-640 (RS) by an Assistant Station Master (as stationary staff). The Railway Board's order issued by their letter dated 15.6.1979 related for fixation of interse seniority of both the running and non-running staff on their promotion to higher grades like SCOR but not for fixation of seniority both for running and non-running staff with reference to their date of promotion/entry into their respective substantive grade viz., as Guard 'C' in scale Rs.330-560 and as Assistant Station Master in scale Rs.425-640. Thus it is very clear that the instructions issued by the Railway Board vide their letter dated 15.6.1979 are applied prospectively but not retrospectively as contended by the applicant. As such, the seniority of the applicant was assigned based on his non-fortuitous service in scale Rs.425-640 with that of the non-fortuitous service of the Guard 'C' in scale Rs.330-530. The same issue regarding relative seniority of running staff vs. non-running staff and the order of Railway Board in their letter dated 15.6.1979 was^a/subject matter of the T.A.No.178/1986 before this Tribunal and the Tribunal itself passed orders seeking clarification from the Railway Board. For the above reasons, it is clear that the applicant has not made out any case in support of the reliefs claimed by him and the application is liable to be dismissed.

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8. The learned counsel for the applicant, Shri J.M.Naidu and the learned counsel for the Railways Shri N.R.Devaraj argued the matter.

9. It is seen that after the judgment of this Tribunal in T.A.No.178/86 the Railway Board had issued instructions on 19.5.1989 about the manner in which the integrated seniority list was to be prepared.

10. The applicant before us has prayed that the proceedings dated 30.4.1990 by which the respondents No.4, 5 and 6 had been promoted over the claims of the applicant be quashed since that memo is based on the panel No.B/P.608/VI/5/Vol.VI dated 3.9.1981. Since it is not the prayer of the applicant that the Railway Board's memo of 19.5.1989 should be struck down, we are not going into the order of 19.5.1989 of the Railway Board. We find that within the South Central Railway itself the criteria for fixing seniority between Guards promoted as Section Controllers and Assistant Station Masters promoted as Section Controllers are different in different divisions. In any case, after ^{the} receipt of the judgment of the Bangalore Bench, in the Hubli division, the Assistant Station Masters promoted as Section Controllers are treated senior to Guards promoted as Section Controllers. It has been stated in the counter affidavit that the Railways are going in for an SLP in the Hon'ble Supreme Court against the judgment of the Bangalore Bench. At this stage, we do not see any reason to differ from the judgment of the Bangalore Bench and applying the judgment of the Bangalore Bench in their O.As No.1181 to 83/89 we direct the respondents to follow the same principle that was ordered to be followed by the Bangalore Bench. We direct the respondents to revise the seniority list of Section Contro-

To

1. The Chief Personnel Officer,
South Central Railway, Secunderabad.
2. The Senior Divisional Personnel Officer,
South Central Railway, Vijayawada.
3. Railway Board, represented by
its Joint Director, Establishment/N,
Railway Board, New Delhi.
4. Mr. Ch. Venkaiah, Deputy Chief Controller,
Vijayawada.
5. Mr. P. V. Krishna Rao,
Deputy Chief Controller,
Vijayawada.
6. Mr. D. Sambamurthy,
Deputy Chief Controller,
Vijayawada.
7. Mr. G. V. Seshaih,
Deputy Chief Controller,
o/o Central Chief Operating Superintendent,
Secunderabad.
8. Mr. V. A. Rama Rao,
Deputy Chief Controller,
o/o Instructor, Zonal Training School,
SC. Railway, Secunderabad.
9. One copy to Mr. J. M. Naidu, Advocate,
H. No. 18-11, Kamalanager, Near Dilsukhnagar,
Hyderabad.
10. One copy to Mr. N. R. Devaraj, SC for Railways.
11. One copy to The Hon'ble Mr. R. Balasubramanian,
Member (Admn.), C.A.T., Hyderabad Bench,
Hyderabad.
12. One Spare Copy✓

srr/

21/6/84
18/8/84

18/8/84

(7)

llers accordingly and declare that the applicant is senior to the Respondents 4 to 8 and promote the applicant on adhoc basis to the post of Chief Controller in grade Rs.2375-3500. The respondents are directed to implement the order within a period of three months from the date of receipt of the order.

9. The application is accordingly disposed of. There is no order as to costs.

MS

(J. NARASIMHAMURTHY)
Member (Judl.)

R. Balasubramanian

(R. BALASUBRAMANIAN)
Member (Admn.)

Dated: 12th December, 1990.

Deputy Registrar (J)
Deputy Registrar (J)

checked
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P.S.
CHECKED BY
TYPED BY

APPROVED BY
COMPARED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT 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 MURTY : M(J)
AND

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

DATE: 24-9- 12/12/90

ORDER / JUDGEMENT:

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

in

T.A. No.

W.P. No.

O.A. No. 421/1990

Admitted and Interim directions
issued.

Allowed.

Dismissed for default.

Dismissed as withdrawn.

Dismissed.

Disposed of with direction.

M.A. Ordered/Rejected.

No order as to costs.

