

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No.219/94.

Date of Decision : 17/9/97.

1. K.Poornachandra Rao
2. L.Tirupathaiah
3. K.Krishna Murthy
4. Z.Rahim
5. B.Mari Prasad Rao
6. Smt.T.J.Tara Bai

.. Applicants.

Vs

1. The Union of India, rep.by
its General Manager, SC Rly,
Rail Nilayam, Sec'bad.
2. The Chief Personnel Officer,
SC Rly, Rail Nilayam,
Sec'bad.
3. The Rly.Board rep. by its
Secretary (Establishment), Min.of
Railways, Rail Bhavan,
New Delhi-110 001.

.. Respondents.



Counsel for the applicants : Mr.G.Ramachandra Rao
Counsel for the respondents : Mr.N.R.Devaraj, Sr.CGSC.

CORAM:-

THE HON'BLE SHRI R.RANGARAJAN : MEMBER (ADMN.)

THE HON'BLE SHRI B.S.JAI PARAMESHWAR : MEMBER (JUDL.)

ORDER

ORAL ORDER (PER HON'BLE SHRI R.RANGARAJAN : MEMBER (ADMN.))

Heard Sri G.Ramachandra Rao, learned counsel for the applicants and Sri N.R.Devaraj, learned counsel for the respondents.

2. There are 6 applicants in this OA. Out of six applicants, No.2,3 and 6 ^{who} was reported to have retired from service on superannuation.

3. Before the case is analysed, a short resume of the cadre structure of the Ticket Checking Staff needs to be explained.

4. The cadre of Ticket Checking Staff consists of Ticket Collector which is the entrance category in the ticket checking cadre. Ticket Collectors are promoted to Sr. Ticket Collector (Sr.T.C.) and Travelling Ticket Examiner (T.T.E.). The seniority unit of Sr.T.C and T.T.E. are a combined one and they are posted to collect the ticket in the stations designating them as Sr.T.C. and to check the tickets in the train designating them as T.T.E. Both the Sr.T.C. and T.T.E. are promoted as Head Ticket collector (Head T.C.) and as Head Travelling Ticket Examiner (Head T.T.E.). The posts of Head T.C. and Head T.T.E. are filled by means of selection from the lower category of Sr.T.C. and T.T.E. and the seniority list of both these two categories namely Head T.C. and Head T.T.E. are a combined one on the basis of their panel position. Those Sr.T.Cs and TTEs who are not able to pass the selection for HEAD TC and Head TTE are promoted on seniority-com-suitability basis as conductor guards which is an ex-cadre post. Their seniority position is still maintained even after they become conductor guards in the combined seniority list of Sr.TC and TTE. Conductor guards do not have any further chance of promotion unless they are posted as Head TC and Head TTE on the basis of selection by interpolating their names in the seniority list of Head TC and Head TTE on the basis of their panel position in the selection. Head TCs and Head TTEs can further progress to the position of Travelling Ticket Inspector and Chief Ticket Inspector whereas conductor ^{Guard} cannot aspire to get into that category. The TCs are in the scale of pay of Rs. 260-400/- (Rs.950-1500/-), Sr.TCs and TTEs are in the grade of Rs.330-560/- (Rs.1200-2040/-), Head TCs and Head TTEs are in the grade of Rs.425-640/- (Rs.1400-2300/-), Conductor Guards are also

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in the same grade of Rs.425-640/-(Rs.1400-2300/-) and the highest category of TTI and CTTIs are in the grade of Rs.550-750/-(Rs.1600-2660/-) and above.


5. The applicants in this OA were promoted to the post of Conductor Guards w.e.f., 1-1-84 as per the order No.OP/529/2/1/Pt.III dated 23-06-84 (Annexure-I to the OA). They state that they were promoted as Conductor Guards on the basis of the cadre review orders, of the Railway Board's letter No.PC III/80/UPG/19 dated 20-12-83 (Annexure-2 to the OA). They submit that seniors in the grade of Sr.T.C. and T.T.E. were promoted to the post of Head T.T.Cs and Head T.T.Es on the basis of their seniority and the applicants who were juniors were posted as Conductor Guards. But it is a fact that they had not appeared for the selection to get themselves regularised as Head T.Cs and Head T.T.Es after their posting as Conductors on the basis of the restructuring orders.

6. The mode of filling up of conductors in the grade of Rs.425-640/- was under the consideration of the Railway Board for some time keeping in view the need to man these posts of conductor guards by smart persons, as a lot of public contact involving human touch and tact is required for this cadre of staff. It was decided that the posts of conductors in the grade of Rs.425-640/- had to be filled by the staff who had cleared the selection for promotion to the grade of Rs.425-640/-. The above decision was also necessitated ^{to} ~~who~~ have uniformity in the cadre in all zonal Railways. Hence the decision of bringing the category of Conductors as selection posts to be posted on the basis of selection held for Head TCs, Head TTEs from the lower category of Sr.TCs and TTEs necessitated the change ⁱⁿ ~~the~~ the avenue chart of the Ticket Checking cadre classifying the Conductor Guards posts as selection posts. The above policy decision was issued by the order No.E(NG)F-84-PM3-15 dated 31-01-86 (Annexure-3 to the OA). It was further directed by the Board in that order

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that where the revision of the existing avenue chart was warranted, the concerned zonal Railways should finalise the same in consultation with their recognised Unions. The S.C.Railway where the applicants are working had revised the avenue charts by proceedings No.P(C)529/TC dated 20-10-89 (Annexure-4). In that proceedings, it was informed that the avenue chart was revised in view of the Rly.Board's letter dated 31-1-86 which was reiterated in the Board's letter No.E(NG)1/84-PM-3-15 dated 15-02-88. Thereafter the Secunderabad Division of S.C.Railway have also issued internal order No.C/P/529/2/1400 dated 19-12-89 (Annexure-5 to the OA).

7. Some of the conductors were earlier selected on the basis of seniority cum suitability basis and by the revision of the avenue chart some conductor guards were posted on the basis of selection and their seniority was included in the combined seniority list of Head T.Cs and Head T.T.Es. Thus, the above position resulted in two separate group of conductors with separate seniority unit, one seniority unit of conductors selected on the basis of seniority cum suitability and the other seniority unit of conductors selected on the basis of selection along with Head TCs and Head TTEs. The above position had created anomalous situation for further promotion etc. Hence, R-2 issued instruction by ^{the} impugned proceedings No.P(C)529/TC dated 12-12-91 (Annexure-6 to the OA) placing the conductor Guards posted on the basis of seniority cum suitability below all the Head TCs and Head TTEs who were working as such on 20-10-89. Thus the applicants in the OA were interpolated in the seniority list of Head TCs and Head TTEs of Secunderabad Division placing them below the Head TCs and Head TTEs who were working as such on 20-10-89. ^{Thus} the applicants had entered the cadre of Head TCs and Head TTEs on 20-10-89 by proceedings No.CP/608/2/Ticket Checking dated 1-1-92 (Annexure-7 to the OA). But amongst the interpolated



conductors, their inter se seniority was maintained.

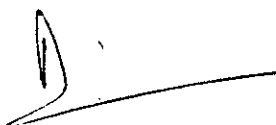
8. Aggrieved by the above interpolation the applicants herein submitted a representations to R-2 dated 2-8-93 (Annexure-8 to the OA) to show their seniority below that of Head TCs and Head TTEs who were working as such on or earlier to 31-1-86 when the proceedings of the Board was issued for revision of avenue chart instead of placing them below Head TCs and Head TTEs who were working as such as 20-10-89. That representation was followed by a reminder dated 13-10-93.

9. In our order dated 20-02-97 we had suggested to the learned counsel for the applicant to modify their relief portion challenging the local letter issued by the Railways in continuation of the Rly. Board's letter dated 31-1-86 including amendment to the pleadings if necessary. We also suggested to the counsel to implead necessary parties if considered essential. Liberty was also given to the respondents to file additional reply on the basis of the amended relief. The applicants have amended their prayer. But there was no addition to the impleaded respondents and the respondents remained the same.

10. As per the amended prayer, the applicants are praying for setting aside the impugned proceedings No.P(C)529/TC dated 12-12-91 (Annexure-6 to the OA) on the file of R-2 in so far the order is detrimental to the applicants in placing them below the Head TCs and Head TTEs as on 20-10-89 and for a consequential direction to place them below Head TCs and Head TTEs as on 31-1-86 with all consequential benefits including promotion to the next higher post and publish the seniority list accordingly before making promotions to the next higher grade.

11. The contentions of the applicants for the above prayer are as follows:-

1) The Railway Board issued order for revising the avenue chart of Ticket Checking cadre way back on 31-1-86. But



the said decision of placing them below the Head TCs and Head TTEs as on 20-10-89 was taken on 12-12-91 and the same was issued by the division on 1-1-92. Thus the Rly.Board's letter was sought to be implemented after a very long period thereby causing prejudice to the interest of the applicants in their seniority position. If a decision had been taken immediately after the issue of the Board's letter dated 31-1-86, they would have been placed in the seniority list below that of Head TCs and Head TTEs as on 31-1-86 instead of, placing them below that of Head TCs and Head TTEs who were selected after the issue of the Board's letter and on or before 20-10-89. Thus their seniority has been considerably brought down putting them to a disadvantage^{position} ~~consideration~~ for higher promotional posts such as TTI and CTTI. The decision to place them in the seniority list below Head TCs and Head TTEs as on 20-10-89 is arbitrary, unfair, unjust and contrary to equity, justice and fair play.

2) As they were promoted on seniority cum suitability basis against regular vacancies earlier to 31-1-86 they have to be treated as having placed in the seniority list as on 31-1-86 is legal and placing them in the seniority list after 31-1-86 is illegal as the Zonal Railway failed to take expeditious action to implement the Board's order. The above contention is also substantiated by them by submitting that they were promoted against restructured posts as was done in the case of others who were promoted as Head TCs and Head TTEs against the restructured cadre.

12. A reply has been filed in this OA. The respondents once again in their reply elaborated the structure of the Ticket Checking cadre. The posts of conductors are ex-cadre posts and 37 conductors who were holding that post as on 20-10-89 were deemed to have been ~~ex~~empted from written examination for the post of Head TC/Head TTE and they were deemed to have ^{been} qualified

2

in the selection post of Head TC/Head TTE and were placed below all regularly selected Head TC/Head TTE in the scale of pay of Rs.1400-2300/- as on 20-10-89. If the request of the applicants are accepted to place them in the seniority list as on 31-1-86, it will have far reaching implication as ^{the} Head TCs and Head TTEs who were regularly selected would be affected and there will be repercussion even in the higher grades namely TTI and CTTI since the promotions to the higher grades were ordered based on seniority of Head TC and Head TTE. The applicants were initially promoted as Conductor in the scale of Rs.425-640/Rs.1400-2300/- on the basis of restructuring. The posts of Conductors though treated as ex-cadre ^{posts} were taken into account for the limited purpose of calculating higher grade post namely TTI and CTTI. Hence there were no increase in the cadre of Conductors after restructuring except for increase in the number of posts in the higher grades as per revised percentage. Thus the applicants would not have got into the cadre of Head TC and Head TTE as a result of restructuring as they were junior. The decision of R-2 in the letter dated 12-12-91 ^{was} ~~was~~ implemented immediately by issuing the combined seniority ^{list dated 1.1.92} placing the applicants below that of the Head TCs and Head TTEs with effect from 20-10-89 ~~by~~ ~~issuing the combined seniority list dated 1-1-92.~~ The applicants' representation was received which is under examination. But the reminder is not received. Though the Railway Board issued instruction on 31-1-86, the avenue chart had to be finalised by the local Railway in consultation with the recognised unions as per the directions of the Railway Board contained in their letter dated 31-1-86. One of the recognised unions of the Railway namely the S.C.Railway Mazdoor Union stated that it would discuss the revised avenue of promotion and request ^{to} ^s ~~requestd~~ to suspend the implementation of the revised avenue as per ^{the} Board's letter dated 31-1-86 till such a time a final

decision is communication^{ed} by the Railway Board. The Railway Board had finally reiterated their initial instruction in their letter dated 15-2-89. Hence the revised avenue of promotion of Ticket Checking cadre was published for implementation on 20-10-89 by R-2's letter dated 12-12-91 which was implemented by the Division by letter dated 1-1-92. Thus there is no delay on the part of the Zonal Railway to implement the instructions of the Railway Board dated 31-1-86. In the result the respondents request for the dismissal of the OA as having no merit.

13. The Railway Board issued instruction on 31-1-86. The final decision to place the applicants below the Head TCs and Head TTEs as on 20-10-89 was issued by R-2 on 12-12-91. Accordingly, the revised seniority was issued by the division on 1-1-92. ~~Where~~^{While} there was undue delay in implementing the orders of the Railway Board by the Zonal Railway which had caused the lowering of the seniority of the applicants herein? It is also to be considered whether placing the applicants below Head TCs and Head TTEs as on 31-1-86 will cause serious repercussion to the staff of the Ticket Checking cadre and also to Railways.

14. Before the ~~cadre~~^{case} is analysed on merits the question of limitation raised by the respondents' counsel has to be answered. The learned counsel for the respondents submitted that the Board's letter was issued on 31-1-86 and the decision was also taken by R-2 on 12-12-91. This OA was filed on 14-2-94 about 2½ years after the instructions^{were} issued. Hence there is bar to consider this issue due to limitation.

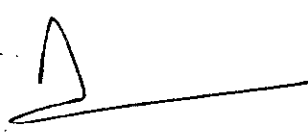
15. We find that such a stand was not taken by the respondents at the time of admission of this OA. Even in their reply no such ~~contention was~~^{specific} ~~raised~~^{has been}. The learned counsel for the respondents submit that a legal point can be raised at the time of arguing which is provided under the law of limitation.

16. The above question was considered. In the Full Bench Judgement in OA.13/89 decided on 11-7-91 (Dhiru Mohan Vs. UOI and Others) it was held that "as the Administrative Tribunal is a

1

special law and provides specific limitation the Limitation Act cannot be invoked for deciding the question of limitation under this ACT". Similar view was ^{also} expressed in the judgement reported in 1989 (1) SLJ (CAT) 1 (G.K.Shenava and Others Vs. UOI and Others). Section 21 of the A.T.Act prescribes ^e limitation for application under this Act. Hence the law laid down under that section has to be followed. The seniority of the applicants was informed to them by the Secunderabad Division in their letter dated 1-1-92. But still the seniority list was not issued on that basis. Normally an employee comes to know his seniority position from the seniority list. The applicants lodged a complaint against that assigned seniority by their representation dated 2-8-93. This representation has been admitted and it is stated that the same was under consideration. The respondents could have rejected that representation as time barred. But in para 3(vii) to the reply it is stated that ~~this~~ ^{their} representation dated 2-8-93 is under examination. When no reply was given ^{they} he approached this Tribunal by filing this OA on 14-2-94. Under these circumstances it will be in-appropriate to dismiss the OA on the ground of limitation. Hence we proceed to examine the issue on merits.

17. The Railway Board's letter for revision of the avenue chart was issued on 31-1-86 (Annexure-3 to the OA) and that was sought to be implemented by the order of R-2 by letter No.P(C)529/TC dated 12-12-91 (Annexure-6 to the OA) wherein the seniority position of the applicants had to be fixed below Head TCs and Head TTEs as on 20-10-89. The order of R-2 was issued after a lapse of about 5 years. Whether such an undue delay can be accepted for the reasons given in the reply is a point for consideration. The main reason given for the delay is that a local recognised union, namely the S.C.Railway Mazdoor union requested for suspension of the Railway Board's letter of 31-1-86



till the union discussed the revised avenue of promotion at Board's level. That request was accepted. The Board's letter dated 31-1-86 was issued keeping in view to man the conductor guard posts by smart persons as a lot of public contact involving human touch and tact is required for this cadre of the staff. The revised avenue chart dated 31-1-86 was necessitated to improve the image of the Railways among it's customers in the public utility service. The public service has to be kept above the interest of all including that of the employees as the survival of the Railway organisation centres around the patronage by it's customers namely the public here. Hence instruction issued to help the public cannot be indefinitely delayed. Hence it is our considered view that the Zonal Railway had unnecessarily delayed the implementation of the Railway Board's instruction. Had the instructions of the Railway Board been implemented in time, there is a possibility that this litigation would not have ^{probably arisen} ~~risen~~.

18. Further, the Railway Board's instruction ^{would have been} ~~would have been~~ ~~had to~~ ~~be~~ issued in consultation with the recognised union at the Board's apex level. The local unions at the local Zonal Railway level are affiliates to the central unions at the Board's level. Hence, when the local union wanted the suspension of the Board's letter dated 31-1-86 they could have ^e ~~have~~ been informed to get the Board's order ^{suspended} ~~through~~ their central union, instead of suspending the same. That possibility was not thought of. Further, when the unions requested for the suspension of the Board's order dated 31-1-86, the Railway instead of suspending that order meant for helping the public and to improve it's image among the public could have implemented the order of the Railway Board dated 31-1-86 provisionally subject to the condition that the revised avenue chart issued on the basis of the Board's letter dated 31-1-86 and promotions granted on the basis of revised avenue chart

~~will~~^{would} be reviewed if the earlier order of the Board ~~is~~^{was} reversed due to the request of the union. If such a stand had been taken, the present litigation could have been avoided. It is also seen from the reply that the Railway Board reiterated their instructions dated 31-1-86 by later letter dated 15-2-89. But that was sought to be implemented by R-2 by his letter dated 12-12-91. Thus there was ^{again} a delay at that stage also.

19. The applicants were posted as Conductor Guards earlier to 31-1-86. Hence their case has to be treated on a different footing compared to the Conductor Guards posted on the basis of seniority cum suitability after 31-1-86 as they are aware of Railway Board's letter dated 31-1-86. Hence in our opinion relief has to be granted to the conductor guards posted earlier to 31-1-86 as the ~~avenue~~^{avenue} chart for the Ticket Checking cadre was issued only on 31-1-86 and there was delay on the part of the zonal Railway to implement those instructions.

20. The respondents in their reply submit that the applicants who were promoted as Conductor Guards earlier to 31-1-86 on the basis of the restructuring of cadre cannot claim any privilege as they were juniors and the strength of the conductor guards remained the same after restructuring and the strength of the conductor guards cadre was taken into account only for the purposes of revising the cadre strength in the higher grades of TTI and CTTI on percentage -- consider this point relevant for the present issue. Whether the strength of the Conductor Guards remained same or not is not a relevant issue for determining the avenue chart.

21. A very valid contention has been raised by the respondents in their reply. The respondents submit that if the applicants herein were given the seniority below that of Head TCs and Head TTE as on 31-1-86, that would affect some of the Head TCs and Head TTEs. That is why in our order dated 20-2-97 we

suggested to the learned counsel for the applicants to implead the affected private parties. But that was not done. However even now, the respondents can issue a provisional seniority list placing the applicants herein below ^atht of the Head TCs/Head TTEs as on 31-1-86 and finalise the same subsequently following the extent ¹rules.

22. The next point for consideration is whether it will have serious repercussions in granting subsequential reliefs by way of promotion to the higher grade etc. Even in this OA out of the 6 applicants, 3 ^{have}~~had~~ already retired. Thus if an order is given to place all the conductor Guards posted as such earlier to 31-1-86 to place them below ^atht of Head TCs/Head TTEs as on 31-1-86, then the Conductor Guards as per the seniority who had served after 31-1-86 may claim consequential promotion on par with their juniors in that seniority list even if they had ~~retired~~ ^{relieved} by now. Such a situation cannot be allowed to be crept in as the records will not be avail~~able~~ and none can ~~be~~ given any financial benefits if they had not discharged the duties and ~~higher posts~~. Hence the seniority list should contain only the ^{names} ~~juniors~~ of the Conductor Guards who are in service as on the date of the issue of this judgement and were promoted as Conductor Guards earlier to 31-1-86 ^{and had are being} ~~as having been~~ placed in the seniority list below ^atht of Head TCs/Head TTEs as on 31-1-86. The Conductor Guards selected on seniority cum suitability basis after 31-1-86 should be given the seniority below that of Head TCs and Head TTEs as on 20-10-89 in terms of letter of R-2 dated 12-12-91 for reasons given supra. The said provisional seniority list should be issued and finalised in accordance with the law.

23. The claims of the Conductor Guards in the final seniority list to be issued as above promoted to that cadre earlier to 31-1-86 for higher promotion on the basis of seniority

on par with the juniors in that seniority list have to be considered in accordance with the law. If on the basis of that consideration they were promoted to the higher grade from an earlier notinal date, their pay has to be fixed notionally on par with their juniors. Such a notional promotion can be given only if there is a vacancy available now. If there are no vacancies, then they should be considered for notional promotion in the first available higher grade vacancy which arises in the near future. If any promotion is given on the basis of above, then, they are entitled for actual pay and allowances in that grade on the basis of their notional pay fixation from the date they actually shoulder the higher responsibilities in that higher grade. The above direction will solve the repercussions mentioned in the reply.

23. In the result, the following direction is given:-

1) Conductor Guards promoted to that grade earlier to 31-1-86 and in service on the date of issue of this judgement should provisionally be placed in the provisional seniority list to be issued in pursuance of this order below that of Head TCs/Head TTEs as on 31-1-86. All the condutor Guards promoted to that grade on seniority cum suitability basis after 31-1-86 should be placed below Head TCs/Head TTEs as on 20-10-89 in the provisional seniority list. The said provisional seniority list to be issued has to be finalised in accordance with the law.

2) If any of the Conductor Guards, promoted to that cadre earlier to 31-1-86 and is in service as on the date of the issue of this judgement, claim ^{for} promotion as per the final seniority list to the higher grade on par with their juniors, ^{then} their cases ^{are} to be considered ~~for promotion~~ in accordance with the law on par with their juniors in that final seniority list. If found eligible in the first instance for promotion to the

higher grade, then they should be promoted notionally on par with their juniors if there is an existing vacancy. If there is no existing vacancy in the higher grade, then, their cases should be considered in the next vacancy that arises in the near future. When promoted, their seniority and pay should be fixed notionally on par with their juniors. But they are entitled for actual pay and allowances only from the date they shoulder the higher responsibilities on the basis of their notional fixation of pay in the higher grade.

24. Time for compliance of direction (1) above is 6 months from the date of receipt of this judgement.

25. The OA is ordered accordingly. No costs.

प्रमाणित प्रति
CERTIFIED TO BE TRUE COPY

Rusli Dama
न्यायालय अधिकारी
COURT OFFICER
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
हैदराबाद ब्याचपाठ
HYDERABAD BENCH

केस संख्या	CASE NUMBER	0A219/94
निर्णय का तारीख	Date of Judgement	17/9/97
प्रति तय्यार किया गया दिन	Copy Made Has y on	23/9/97
न्यायालय अधिकारी (शु. वि.क.) Section Officer (J)		