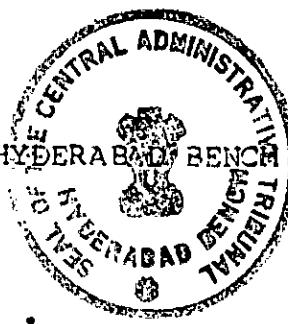


IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD



OA.1509/98
OA.1753/98 and
OA.19/99

dt. 17-2-1999

Between

1. B. Vivekananda,	(OA.1509/98)
2. K.V. Umani Krishnan	
3. B. Ramakrishna	(OA.1753/98)
4. B.V.B. Krishna Reddy	
5. J. Durga Prasad	
6. S. Kishore Kumar	
7. S.S. Varaprasad Rao	
8. Y. Nagendra Baba, and	
9. Abdul Azib Jani	

: Applicants

and

1. Divisional Railway Manager SC Rly, Vijayawada	: Respondents
2. Sri, Vijayawada	

Counsel for the applicants

: K.S. Murthy
Advocate

Counsel for the respondents

: N.R. Devaraj
SC for Railways

Ceram

Hon. Mr. Justice D.H. Nasir, Vice Chairman

Hon. Mr. H. Rajendra Prasad, Member (Admn.)

4. Based on the above pleadings, the Applicants pray for setting aside the proceedings dated 15th October, 1998, issued by Respondent-2 notifying the names of 29 candidates to face the written-test for selection to the post of Junior Loco Inspector (Annex.VIII to the OA) in which the names of the Applicants were found to be omitted.

5. In their counter-affidavit, the Respondents confirm the basic facts relating to the revision of the original Seniority List, the issuance of a Provisional (revised) Seniority List and the Upgraded seniority of the Applicants after such revision, but maintain that inasmuch as they do not possess the mandatory three-year experience as Goods Drivers - having been promoted on adhoc basis to that post only in September/ November, 1996, as already noted - they are ineligible to participate in the test. They stress the fact that this clear and categorical stipulation - the result of a policy-decision of the Railway Board arrived at a PNM meeting after consultations with the Zonal Railway Administrations - cannot under any circumstances be diluted. Mr. Devaraj, learned Senior Standing Counsel for the Railways repeatedly emphasised this point besides drawing attention to the fact that the post of Junior Loco Inspector being in the Safety category, the basic stipulations governing the selection to the post ought never to be whittled down or trifled with in any manner. The reply affidavit vaguely refers to an SLP filed by the Respondents, probably against the orders passed by this Tribunal. No details are, however, furnished nor is an indication given if any order passed by the Tribunal had been stayed by Hon. Supreme Court.

6. It is also mentioned in passing by the Respondents that the candidature of some other officials whose situation is similar to that of the Applicants - viz., who were appointed on adhoc basis as Goods Driver on or after 20th June, 1994, and

as on 30th April, 1994, was challenged by the Applicants in OA.Nos.1143/92 and 134/93, which were eventually allowed by this Tribunal. Resultantly, the said Respondent reissued a provisional Seniority List on 14th May, 1996, restoring to the Applicants their correct seniority above that of the departmentally-promoted Firemen. However, some of their erstwhile seniors in the original List, who were subsequently placed below the Applicants in the Revised Seniority List having already been promoted to Goods Driver during this interregnum, it became incumbent to consider their own promotion to the same post. It is the contention of the Applicants that in consequence of the upward revision of their seniority, they should be deemed to have been promoted too to Goods Driver from 20th June, 1994, i.e., the date of promotion of their erstwhile seniors who had later been placed below them in the Revised List, whereas they were actually promoted only during September/November, 1996. It is claimed by the Applicants that their seniority is bound to be correctly reflected in the final seniority list of Goods Drivers as and when it is published - as reportedly promised by the authorities.

3. The Applicants contend mainly that inasmuch as their position had been thus established and also recognised by the authorities, their seniority shall have to be reckoned from 20th June, 1994; that they would become eligible to be considered for promotion to Passenger Driver/Junior Loco Inspector/Crew Controller/Traction Loco Controller on that very basis; that the rejection of their candidature for the written test for promotion to Junior Loco Inspector is and therefore arbitrary; that they should be declared to have become eligible to appear for the test.

be promoted and also for further promotion when such promotion was granted to their juniors.

When applied to their own case, the Applicants assert that they should be deemed to have been promoted to Goods Driver on 20th June, 1994.

(c) State Bank of India, etc. vs. Kashinath Kher & Ors.
(AIR 1996 SC 1328)

Where it was held that the applicants therein were entitled to promotion, if otherwise suitable, as and when they fulfilled the eligibility condition though the seniority in the promoted cadre had to be maintained intact.

Deriving support from this judgement the Applicants argue that they should be allowed to take the test, and if successful at it, should be empanelled and promoted to Junior Loco Inspector or similar service as Goods Driver.

(d) V.K.S. Sagaran Vs. UOI & Ors. [1988(6) SLR 436] and
(e) M. Nageswar Rao Vs. UOI & Ors. [1991(4)SLR 245].

Which laid down that where the shortfall in the required service/experience was due basically to an administrative lapse or failure, the candidate(s) who suffer such deficiency should not be made to suffer further on that very account.

The Applicants argue that it was the incorrect fixation of their original seniority in the Fireman cadre, ^{an error} which had had to be corrected by judicial review and consequent direction, that contributed to the present situation where they are now facing a deficiency of the required service experience; and further that inasmuch as the deficiency was the direct result of an administrative lapse, the same should not be permitted to further jeopardise their service interests by rejecting their candidature for the promotional test under discussion.

had not completed three years of service on the crucial date - was not accepted for the subject examination, although they had been so appointed prior to these Applicants. No names of such similarly-situated candidates have, however, been given.

7. The stand of the Applicants and that taken by the Respondents can therefore be summed up as under :

The Applicants : (i) Inasmuch as they have been placed above some of the candidates who now figure below them in the Provisional (Revised) Seniority List but have been permitted to take the test, there is no warrant for not allowing them (the Applicants) also to appear for the test.

(ii) Since their own seniority in the Goods Driver cadre is bound ultimately to be taken back and fixed at 20th June, 1994, to be in consonance with the promotion granted to their erstwhile seniors who later became their juniors in the Fireman category, they are deemed to have been promoted in 1994 itself which would give them the requisite three-year service as Goods Driver. No final seniority list has been issued yet.

The Respondents : Since the Applicants do not possess the prime requisites of eligibility for being allowed to take the test, i.e., three years of regular service in the driving cadre, they are ineligible to be considered or permitted to appear for the written competition for such promotion.

8. The Applicants rely on the following judicial precedents and departmental circulars in support of their contentions:

- Narayan Yeshwant Gore Vs. UOI & Others - [1995(4)SCC470]; and
- The State of Punjab & Ors. Vs. Ravinder Kumar - 1991(3) SLR 260.

Which held that the applicants therein were eligible to

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ii) Service for this purpose shall be the service actually rendered on regular basis. Service rendered on adhoc basis shall, however, be taken into account for this purpose if it is followed by regularisation without break.

iii) The condition regarding minimum service to be fulfilled at the time of actual promotion in the same manner as in the case of "Safety Categories" as laid down in this Ministry's letter No.E.(NG)I-75-PMI/44 dated 26-5-1984.

iv) Wherever longer length of service in the lower grade motion in any particular category, the same will continue to hold good.

9.A. Mr. K.S. Murthy, learned counsel for the Applicants submitted further that :

(i) There was nothing inviolably sacrosanct about the three-year service stipulation laid down by the Railway Board because that decision - even if taken after consulting all the Railways and discussing at PNM - had in effect clearly reduced the earlier condition of five years of service which at one time was regarded the minimum requisite.

(ii) A comparable condition of a minimum of two-years service in the immediate lower grade laid down in IREM 215, had been waived in the case of these very applicants while promoting them from Shunter to Goods Driver in the same year in 1986 though both these posts too were in safety category;

(iii) Para 2 of Board's letter No.E(NG)I-75/PM-1-44 dated 31st May,1982, filed earlier during the hearing on 25th January, 1999, by the learned Standing Counsel for the Respondents states that in the Safety categories, the staff will be required to put in a minimum of only two years of service in each grade before promotion to higher grade;

(iv) In the impugned list of 29 employees who were alerted to be in readiness to appear for the written test in question,

(f) Para 215 of IREM and sub para (a) thereunder, which are as follows :

"Selection post shall be filled by a positive act of Selection made with the help of Selection Boards from amongst the staff eligible for selection. The positive act of selection may consist of a written test and/or viva-voce test; in every case viva-voce being a must. The staff in the immediate lower grade with a minimum of two years service in that grade will only be eligible for promotion. The service for this purpose will include service if any, rendered on adhoc basis followed by regular service without break. The condition of two years service should stand fulfilled at the time of actual promotion and not necessarily at the stage of consideration."

- (b)...
- (c)...
- (d)...
- (e)...

(Railway Board's letter No.E(N) I-85-PM 1-168 dt.3-9-1976)

The Applicants point out that as per the Board's letter ~~.....~~, it is evident that two years of service is ~~only~~ quite essential for a promotion but not for consideration of such promotion - and by implication, in the limited context of the present case, for allowing a candidate to appear at the relevant promotional-test. It is also clear that the condition regarding the length of service should be reckoned at the point of actual promotion and not necessarily at the stage of consideration.

(g) Railway Board Letter No.E(NG)1-85-PM1-13(RRC) dated 19th February, 1987 (Estt. Serial Circular No.31/87- Circular Letter No.P(R)605/IV dated 12th March, 1987)

Which communicated the Ministry's acceptance of the Recommendations 139 and 141 in Part IX of the report of the Railway Reforms Committee. The Ministry had decided that :

- i) The minimum period of service for eligibility for promotion within Group 'C' shall be two years in the immediate lower grade irrespective of whether the employee belong to reserved community or not.

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given anxious consideration to the facts and circumstances of the case.

11. On a perusal of Para-215 of IREM we are persuaded that the two-year stipulation therein applies for actual promotion of an official and does not necessarily prevent consideration for such promotion, which, when applied to the circumstances of this case, would mean that the stipulation of service length in the lower grade / post should indeed apply to the actual act of Applicants' promotion. It does not explicitly or overtly prevent their being 'considered' for promotion, which, again in the perimeter of facts of this case, means that the said condition does not in any way make it impermissible to allow the Applicants to appear at a selection test.

It is also clear from a bare reading of the same para that the condition of service in the Lower grade shall have to be reckoned at the point of their promotion and not at a point preceding the promotion.

The judgement in Kashinath Kher case (Para 8(c)) lends support to this view. So does the decision of the Board at (iv) as communicated in Establishment Serial Circular No. 31/87.

It is therefore held that it would be enough if the Applicants complete three-years of service as Goods Drivers at the time of their actual promotion—if they succeed in the relevant examination—and it is not necessary to insist on their completing three-years of such service at the time of applying for such promotion.

12. Allied to the position explained above and deriving from it, a conclusion is inescapable that a candidate should be allowed to compete for a promotional post even if he does not fulfil the condition, important though it is, relating to

the officials at Nos.12 (S. Rami Reddy), 16 (M.V. Ramana), 20 (M. Krupanandam), 25 (D. Tirupathaiah) and 28 (B. Ananda Rao) were all juniors who do not satisfy the three-year service requirement but were nevertheless permitted to appear at the test; and

(v) One S.K. Patrudu who does not possess even an year's experience as Goods Driver had been promoted as Junior Loco Inspector.

B. The Response of Mr. Devaraj, learned Standing Counsel for the Respondents, to the above submissions was as under :

(i) A decision taken by the highest Policy-making body in the Railway Administration cannot be questioned. If the Board decided to reduce the Five-year requirement of service to one of three years, such decision can be safely assumed to have been taken after due deliberation and considering all the related aspects of the issue and it certainly is not open to the Applicants to call such decision - which was discussed and deliberated upon at different levels - in question;

ii) In promoting the Applicants from Shunters to Goods Drivers within a single year, the Respondents were only complying with the directions of this Tribunal in the OAs earlier filed by these Applicants, and those promotions were mere consequence of the orders passed by the Tribunal. Furthermore, IREM-215 pertains to promotions in general and does not apply to promotions in the Safety category.

iii) No response

iv) -do-

v) -do-

10. We have carefully noted the arguments of the rival counsels, closely examined the record produced, and have

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Goods Driver, and that to on adhoc basis, only in September/November, 1996. The Applicants allege that such unconscionable delay was due entirely to the fact that the authorities were awaiting the outcome of the deliberations and Recommendations of the V Pay Commission. This appears only to be a surmise and there is nothing on record to show that the Applicants' promotion to Goods Driver was linked to the recommendations of the Pay Commission. Be that as it may, there decidedly occurred a delay firstly of nearly six months in assigning the correct seniority to the Applicants in Fireman cadre, and after that a further interval ^{of six months} before they were promoted to Goods Driver. In a delay-riddled situation such as this it could indeed be argued with some justification that the non-possession of the three-year experience as Goods Driver by the Applicants in this case was due, firstly, to incorrect fixation of their seniority initially, and, secondly, on account of their delayed promotion based on their revised seniority - twin circumstances of administrative ^{lapse and} inaction which remain unexplained and unaccounted for. It is argued by the Applicants that but for such avoidable tardiness on the part of the authorities they could well have earned to their credit the requisite three-years hands-on experience as Goods Driver on the crucial date and could have been eligible thereby to appear at the written-test for the proposed JLI Examination scheduled for November, 1998. We perceive some force in this argument.

The Respondents do not counter this ^{contention}. They merely state that even if a revised final seniority list is issued in future, the Applicants would still fall short of the required three-year experience. This bald assertion -

length of service in the lower grade/scale/post. The service rendered in such grade shall of course include adhoc service, if any, if it is followed by a regular service without break. This is in consonance with sub para (ii) of Establishment Serial Circular No. 31/87.

13. It is seen that the Applicants, though promoted as Goods Drivers on an adhoc basis in November, 1996, claim a deeming seniority in the same cadre from June, 1994. There cannot perhaps be much room for disagreement on this claim since it is based on a straight fact that some employees who had earlier been shown senior to the Applicants had later become their juniors but had already been promoted as Goods Driver in June, 1994. This question, though raised as an ancillary ground of support of the main - - - - - grievance in this OA, is relevant nonetheless to the overall facts of the case.

The judgement in Narayan Yashwant Gore [Para-8(a)] and Ravinder Kumar case [Para 8(b)] cited on behalf of the Applicants would be relevant to this aspect of case and support the Applicant's claim.

14. As regards the grievance of the Applicants that their promotion to Goods Driver was inordinately delayed even after their initial seniority in the grade of Fireman had been determined and pronounced upon by this Tribunal, the factual position is as under :

OAs 1143/92 and 134/93 were disposed of by the Tribunal on 16-11-1995 and 19.12.95 respectively. As a result of this, a (provisional) Revised Seniority List reflecting the correct position of seniority was issued only on 14.5.96, viz., after a lapse of ^{months} ~~nearly six~~ thereafter. A (Final) Seniority List has not, however, been issued yet. The Applicants were promoted as

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He appeared to suggest that the safety dimension of the trains would be seriously jeopardised if Goods Drivers are promoted to JLI before earning a three-year experience in the earlier job. We entirely agree with this proposition although it was rather unnecessary to expend so much of effort on just trying to prove that the post of JLI is in the safety category. It is crystal-clear that the post is without doubt in safety category and the fact needs no reiteration or additional proof. The question here is not whether the post is in safety class but whether a promotion to it needs a three-year experience in the lower-grade /post prior to such promotion. And we are led to conclude that such experience would be the pre-requisite at the time of their actual promotion and not during the run-up to such promotion - a conclusion which derives support by the department's own circulars and instructions and the case-law cited on behalf of the Applicants. An argument was advanced by the learned Standing Counsel that the stipulation to the effect 'the staff in the immediate lower grade with a minimum of two years service in that grade will only be eligible for promotion' in para-215 of IREM is meant to cover promotions in general and the same does not apply to promotions in the safety category. We do not see such clear distinction and hold the view that, in essence, this stipulation has to be regarded as a mandatory instruction applicable to promotion to all posts.

17. In the light of the preceding discussion, we hold that the Applicants should be allowed to compete for the post of JLI regardless of whether or not they possess the three-year experience as Goods Driver. We also rule that the Applicants, even if successful at the written-test and later in the viva-voce, should not be promoted to JLI unless

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which appears to be at variance with facts and possibilities of the case and the logic of the overall situation - does not explain how precisely they would fall short of the requirement, specially viewed against the fact that their erstwhile seniors who later became their juniors did earn the three-year service, as required, to become eligible to be called to face the selection-test.

15. Under the circumstances we have to hold that it was the incorrect assignment of seniority of the Applicants, initially, and later the delayed promotion granted to them, which have resulted in their present avoidable plight of not being able to fulfil the requirement of three years of service as Goods Drivers. This kind of contingency is covered by the judgement of Jabalpur Bench of this Tribunal in the case - V.K.K. Sagaram, and of this Bench in the case of M. Nageswara Rao [para-8(d) & (e) above].

We accordingly hold that it would be iniquitous to deny the Applicants the opportunity to compete for the post along with others (including some officials who are admittedly their juniors) on the ground of non-possession of the requisite experience in the lower grade / post which is anyway attributable in some ways to the inaction, or incorrect action, of the authorities themselves.

16. The learned Standing Counsel went to considerable pain to stress the 'safety' categorisation of the post of Junior Loco Inspector, and then produced for our perusal -

- (a) The Board's Letter No.E.(P&A)II-83/RS/10(IV) dated 16th May, 1996,
- (b) Para 3050 of Manual of AC Traction Maintenance and Organization,
- (c) Para 1206 of Operation Manual, and
- (d) Item 21 of Annexure 'A' to Board's Letter No.E(NG)I-75/PM-1-44 dated 31st May, 1982.

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and also be a fair advance warning to the juniors. On their eventual promotion, the applicants should be assigned their due seniority as per their placement in the panel; their pay shall be regulated, in the usual way and as per normal rules, from the date they assume higher responsibilities of the promoted post. It is also made clear that the Applicants shall not in future be entitled to demand a stepping-up or refixation of their pay on par with their juniors.

19. In the result, the following directions are issued :

- (a) The applicants shall be permitted to appear at the written-test and, if successful in it, shall be called to face the viva-voce;
- (b) If they come out successful in the written-test as well as viva-voce, they shall be empanelled for being promoted to the post of Junior Loco Inspectors (JLIs).
- (c) They shall be imparted necessary training in their turn even before completion of three years ^{of} service in their present grade and post.
- (d) Their promotion, if otherwise eligible in all other respects, shall be given only on completion of three years actual experience as Goods Drivers. The panel of successful candidates shall continue unaltered until the applicants are actually promoted.
- (e) The pay of the applicants in the JLI grade shall be fixed with reference to their date of ^{actual} assumption of responsibilities of the post.
- (f) The applicants on promotion shall not claim, nor be entitled to, step-up of pay in the JLI cadre on the ground of parity of pay with ^{ping} any juniors, who may have been promoted regularly as

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they complete three years of service in their present grade / post of Goods Driver. Such promotion assumes ^{hisi} ~~becomes~~ importance and necessary because we do not have the remotest intention of diluting this prime requisite laid down by the Board as a matter of well-considered policy.

If the Applicants succeed in the competitive examination and are thereby empanelled for promotion, they should be allowed to wait in the empanelled list till ^{requisite minimum} post / grade, before being promoted to JLI.

18. Should the Applicant come to be so empanelled for promotion before completion of three-year experience as Goods Driver, we foresee a possibility that some posts of JLIs notified may have to be left unfilled to accommodate them on promotion after they gain the required minimum service in their present post. This may not be conducive to operational efficiency of the Railways in the Division. If, therefore, the Respondents feel the necessity of filling ^{all of} up the notified vacant posts urgently, they shall be free to promote on adhoc basis other successful candidates who may have completed the qualifying service in the lower grade / post but who are shown juniors to these Applicants in the provisional Revised Seniority List issued on 14th May, 1996. Such junior officials shall, however, be clearly cautioned that they are liable to be reverted from JLI post, to which they ~~are~~ ^{so} promoted on an adhoc basis, on promotion being granted to their seniors (the Applicants) on completion of their three-year service as Goods Driver. A clause to this effect should be incorporated in the relevant order issued to any junior official who may be promoted to meet the immediate operational requirements. Such a measure will protect the interest of the seniors

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junior Loc~~e~~ Inspectors on the result of the same competitive tests.

20. Thus the OA is disposed of. No costs.

प्रमाणित प्रति
 OA 1509798 ^PY 5-1
 क्रम संख्या OA 1509798 ^PY 5-1
 CASE NUMBER OA 1509798
 नियम का दर्ता DATE OF JUDGEMENT 17.2.99
 प्रति तयार किया गया प्रति COPY MADE READY ON 23.2.99
 COPY MADE READY ON 23.2.99

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Section Officer/Court Officer
 केंद्रीय नियानक अधिकारी
 Central Administrative Tribunal
 हैदराबाद बायपीडी
 HYDERABAD BENCH.