

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH**

Original Application No.180/00781/2014

Thursday, this the 17th day of May, 2018

C O R A M :

HON'BLE Mr. U. SARATHCHANDRAN, JUDICIAL MEMBER
HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

S.Ashok Kumar,
S/o.Sukumaran Thampi,
Sr. Ticket Examiner/Sleeper(A)/
Southern Railway/Trivandrum Central.
Residing at Saraswathy Mandiram,
Paloor Konam, Kurumkutti, Parassala P.O.,
Thiruvananthapuram – 695 502.

...Applicant

(By Advocate – Mr.T.C.Govindaswamy)

V e r s u s

1. Union of India
represented by the Secretary to the Government of India,
& Chairman, Railway Board, Ministry of Railways,
Rail Bhavan, New Delhi – 110 001.
2. The General Manager,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai – 600 003.
3. The Chief Personnel Officer,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai – 600 003.
4. The Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Thiruvananthapuram – 695 014.
5. The Divisional Finance Manager,
Southern Railway, Trivandrum Division,
Thiruvananthapuram – 695 014.

...Respondents

(By Advocate – Mr.Thomas Mathew Nellimoottil)

This Original Application having been heard on 14th May 2018, the
Tribunal on 17th May 2018 delivered the following :

ORDER

Per : HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

O.A.No.180/781/2014 is filed by Shri.S.Ashok Kumar, Senior Ticket Examiner, Southern Railway posted at Thiruvananthapuram against the decision of the respondents denying him seniority on the basis of his total length of service. The reliefs sought in the O.A are as follows :

1. Call for the records leading to the issue of A1 – Paragraph 313-A of the Indian Railway Establishment Manual Vol.I and declare that the same is arbitrary, discriminatory, irrational and also opposed to Rule 226 of the Indian Railway Establishment Code Vol.I and quash the same;
2. Call for the records leading to the issue of A2 and quash the same;
3. Call for the records leading to the issue of A5 and quash the same to the extent it states that the applicant would be placed only at the bottom seniority in the cadre of Ticket Examiners;
4. Direct the respondents to reckon the applicant's seniority in the cadre of Ticket Examiner, duly taking into consideration the entire service rendered with effect from 6.3.1996 and direct the respondents to grant the applicant all the consequential benefits arising therefrom.
5. Award costs of and incidental to this application.
6. Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case.

2. The details of the case are as follows :

The applicant was initially appointed on compassionate grounds as a Telephone Operator on 6.3.1996 on the scale of pay attached to that post ie. Rs.3050-4590. The respondents surrendered two posts of Telephone Operators and one post of Head Telephone Operator as per memorandum dated 25.3.2003, a true copy of which is available at Annexure A-3. The applicant who was working at Thiruvananthapuram had become surplus but was not redeployed to any other cadre. In the meanwhile, as per

.3.

memorandum dated 20.10.2006 (Annexure A-4) three more posts of Telephone Operators were rendered surplus. Again no redeployment or change of category was effected as a consequence to the surrender. Apprehensive about his future prospects and concerned about the inactivity on the part of the respondents, the applicant expressed his willingness to be redeployed to the cadre of Ticket Checking Staff. Accordingly he came to be transferred as a Ticket Examiner by Office Order bearing No.28/2008/(TC) dated 19.5.2008 (Annexure A-5). The applicant highlights in the O.A, the fact that on redeployment he was treated as accepted on 'bottom seniority' although no such admission/acceptance was made by him in the representation that was submitted dated 16.7.2007 (Annexure A-6).

3. The applicant is now aggrieved by denial of his entire service rendered as Telephone Operator ie. the period of 12 years between 1996 and 2008. He contends that in the Railway Organization with technological development taking place, redeployment is a regular feature. For example, in the communication sector itself initially Signallers were communicating messages through morse instruments. With the vast advancement in telecommunication system, the cadre of Signallers were rendered surplus and the incumbents went on to serve as Telephone/Telex Operators. But in all such cases, which were due to administrative reasons, the employees were granted full seniority as provided for in Rule 226 of the Indian Railway Establishment Code Vol.I. But in the applicant's case such benefit is being denied.

.4.

4. As grounds the applicant argues that he is entitled to deployment with full seniority as provided in the Indian Railway Establishment Code Vol.I, an extract of which is Annexure A-8. The conditions of his service ought to be governed in relation to the rules that were in existence on the date of issue of Annexure A-3 order and he should not be kept hostage to a proclamation issued later.

5. The reason adopted by the authorities to deny the applicant the seniority eligible to him as per Rule 226 of the Indian Railway Establishment Code is the introduction of para 313A (Annexure A1) wherein it is stated as follows :

Assignment of seniority to redeployed surplus staff : The surplus employees are not entitled for benefits of past services rendered in previous unit/department for the purpose of their seniority in the new unit/department. Such employees are to be treated as fresh entrants in the matter of their seniority, promotion etc.

6. The amendment was effected through Ministry of Railways letter dated 25.5.2004 and this was clearly subsequent to the surrender of the post involving the applicant which was as per Annexure A-3. As change of cadre on account of surrender of post in one area or the other in railway service is a continuous process made necessary by advancement in science and technology and growth of the organization, it would not be fair to deny the benefit of service rendered in the extinct cadre and from this perspective para 313A of the Indian Railway Establishment Code Vol.I is violative of the rights of categories such as the applicant's. Besides the rights enshrined in Para 226 being a statutory rule cannot be amended through the introduction of new clause.

7. In reply, the respondents have submitted that the O.A is liable to be rejected at the admission stage itself as Annexure A-5 document under challenge is dated 19.5.2008 and the O.A is barred by limitation having been filed only on 17.9.2014. It has not been accompanied by an application for condonation of delay and does not contain any explanation for the inordinate delay. It is further submitted that if the claim of the seniority of the applicant is accepted, he would occupy a much higher position at the expense of many others, none of whom have been made parties to the litigation. Annexure A-1 which is an extract of 313A (amended rule) is the correct official line governing the issue and there is no scope for interference of the same by the Tribunal. After the post rendered to the Telephone Division became surplus the applicant was accommodated as a Ticket Examiner as per his own request and he has been working in that category from 24.9.2008 onwards. As is seen from Annexure A-6 he had requested for change of category as Ticket Examiner. Once that request has been accepted he could only have been assigned 'bottom seniority' in the new cadre. Rule 226 of the Indian Railway Establishment Code Vol.I with subsequent amendment goes against the prayer of the applicant and Annexure A-2 does not suffer from any arbitrariness or contrariness to law.

8. The applicant has filed a rejoinder and the respondents, an additional reply statement wherein both contending parties have reiterated their arguments. Shri.T.C.Govindaswamy, learned counsel represented the applicant and Shri.Thomas Mathew Nellimoottil, the respondents. Both counsel were heard and documents examined.

9. There is only a limited point to be examined here. The applicant had been working in a category and in a post which was declared surplus on a particular date. As per the policy in operation at that point in time, seniority of service in the surrendered post came to be allowed to the surplus staff and this used to be taken into consideration in their redeployed category. However, by amendment effected as 313A in the Indian Railway Establishment Code Vol.I as per communication of the Ministry of Railways dated 25.5.2004, this benefit came to be removed. The applicant was at that time accredited to Staff Bank maintained at the divisional level although on ground he continued to work as a Telephone Operator. Apparently concerned about his future he requested for a category change as a Ticket Examiner as per Annexure A-6 dated 16.7.2007. This was accepted by the respondents and orders at Annexure A-5 dated 19.5.2008 came to be issued.

10. Learned counsel for the respondents have raised two procedural issues while countering the contentions in the O.A. The first one is on the question of delay as the cause had arisen in 2008 and the O.A having been filed only in 2014. The applicant has produced Annexure A-2 communication which is a letter issued by the authorities rejecting his request. Clearly he had waited for exhausting all remedies before rushing to this Tribunal. Besides his grievance is of a continuous nature and for this reason we do not see the issue of delay as a hindrance in considering his prayers. Secondly it has been pointed out by the respondents that in the event that his seniority is refixed, many others will be affected who are not impleaded in the case. While on a larger sphere this contention may

have some merit, it cannot have the effect of denying the applicant his individual rights. Hence we see no reason to dismiss the O.A for procedural lacunae.

11. In so far as the merits of the case are concerned, under Annexure A-8 document which is an extract of the Indian Railway Establishment Code Vol.I which in turn is a reproduction of RBE 106/89 relating to absorption/utilization of surplus staff, the following is indicated :

3. When re-deploying the surplus staff to other units/Deptts. which constitute a different seniority unit, the following methods can be adopted :

(i) If only a small number of staff are being rendered surplus and they have to be transferred to various units of other departments against vacancies of duly sanctioned posts, they can be suitably adjusted in those units with their full seniority and merging the seniority in the respective units.

12. This position has been overturned by the amendment at 313A relating to assignment of seniority to redeployed surplus staff. As is noted in the discussion above, it is clearly seen that until this amendment came about in 25.5.2004, the conditions set out in RBE 106/89 were applicable to all redeployed staff. The impugned order at Annexure A-3 having been issued on 25.3.2003 in relation to the applicant, clearly precedes the amendment and this would make the applicant eligible for benefits under the earlier dispensation. The very same issue had been the subject matter before the Chandigarh Bench of this Tribunal in O.A1350-HR-2011 which was decided on 3.1.2013. In the final order passed, more or less the exact situation had been considered and a view taken as follows :-

11.In this case the applicants were declared surplus and were re-deployed in the Clerical Cadre vide orders dated 27.2.2004 which re-deployment was changed to the cadre of TTE. In other words the re-deployment of the applicant stood effectively complete in February, 2004 much before the issuance of the instructions dated 25.5.2004 (Annexure R-8) which provides seniority from the date of re-deployment in the new cadre and washes off the seniority in respect of service of parent cadre. It is not in dispute that prior thereto instructions dated 21.4.1989 held the field as per which when only a small number of staff is being rendered surplus and they have to be absorbed in various units of other departments against vacancies of duly sanctioned posts, they can be suitably adjusted in those units with their full seniority and their seniority merged in the respective units. Thus, in this case simply because the applicants joined the new cadre of TTE after 25.5.2004 would not mean that they would be governed by instructions dated 25.5.2004 as they stood re-deployed much prior thereto and as such their case would be governed by the instructions dated 21.4.1989. The non-acceptance of re-deployment by the applicants in the clerical cadre and choosing of TTE cadre for the purpose would not be taken as an estoppel against them as one is entitled to have the best of the choice available to him and we do not find that the applicants have done anything wrong in changing their choice to a new cadre which request was in fact accepted by the respondents.

13. One contention raised by the respondents is the fact that the applicant had been redeployed at his own request and the 'bottom seniority' rule was applied accordingly. But the applicant had chosen to approach the respondents seeking a change of category only after the category he was part of had been declared surplus. He was clearly concerned about his future and cannot be faulted on that score. Having considered the arguments of both sides and examined all the documents we conclude that the O.A has merit on its side. The relief sought in the O.A is allowed to the specific extent that the applicant's seniority in the cadre of Ticket Examiner will be refixed duly taking into consideration the entire service rendered with effect from 6.3.1996. He will be eligible for all consequential benefits arising there from. However, we do not see para 313A of the Indian Railway Establishment Code Vol.I as bad in law as the Railway establishment is empowered to take policy decisions relating to personnel management from time to time. However as the declaration of surplus of the

.9.

category to which the applicant belongs took place before the amendment brought out by 313A provision, the applicant has every right to be considered under the rules which were in existence then.

14. The O.A is disposed of as above. No costs.

(Dated this the 17th day of May 2018)

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

(U.SARATHCHANDRAN)
JUDICIAL MEMBER

asp

List of Annexures in O.A.No.180/00781/2014

- 1. Annexure A-1** – True copy of Para 313A of the Indian Railway Establishment Manual, Vol.I.
 - 2. Annexure A-2** – True copy of Letter bearing No.V/P.612/III/TC/Vol.IV dated 9.12.2013 issued by the 4th respondent.
 - 3. Annexure A-3** – True copy of Memorandum bearing No.V/P.135 S&T.Temp.San Vol.4 dated 25.3.2013, issued from the office of the 5th respondent.
 - 4. Annexure A-4** – True copy of Memorandum bearing No.V/P.135/Creation/S&T dated 20.10.2006 issued from the office of the 5th respondent.
 - 5. Annexure A-5** – True copy of Office Order bearing No.28/2008/(TC) dated 19.5.2008, a true copy of which issued by the 4th respondent.
 - 6. Annexure A-6** – True copy of representation dated 16.7.2007 submitted to the 4th respondent.
 - 7. Annexure A-7** – True extract of Rule 226 of the Indian Railway Establishment Code Vol.I.
 - 8. Annexure A-8** – True copy of Railway Board Order bearing RBE No.106/89 dated 21.4.1989.
 - 9. Annexure A-9** – True copy of representation dated 25.10.2013 addressed to the 4th respondent.
 - 10. Annexure R-1** – True copy of the application dated 14.3.2008 submitted by the applicant.
-