

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

**Original Application Nos. 516/2014 & MA 544/17, 184/2015, 1840/2015 with
MA 217 & 218 of 2017, 1841/2015, 1842/2015, 1843/2015, 1844/2015 &
1298/2014 with MA 310/2017**

Reserved on : 10.10.2018

Order pronounced on : 23.10.2018

O.A.No.020 /516 of 2014 & MA 544/2017

Between:

1. Sri Avdesh Kumar, aged 34 years,
S/o. Birendra Mandal, Working as Station Master, NDD,
S.C. Railway, Nidadavolu (R.S.), West Godavari.
2. Sri Brahmaanda Parmanik, aged years,
S/o. Harihara Paramanil,
Working as Station Master, YLM, S.C. Railway,
Yellamanchili (RS), Visakhapatnam.
3. Sri Ganeswar Nayak, aged 41 years,
S/o. late Giridhari Nayak,
Working as Station Master, HVM, S.C. Railway,
Hasmavaram (RS), E.G. District.
4. Sri Krishna Mohan Prasad, 36 years,
S/o. Thakur Prasad,
Working as Station Master, KVZ (RS), SC Railway,
Kavali Dist., Nellore.
5. Sri K. Nagmuni, 40 yrs., S/o. K. Chennaiah,
Working as Station Master, UPD (RS) SC Railway,
Ulapadu (RS), Nellore District.

...Applicants

And

Union of India rep. its

1. Chairman, Railway Board,
Ministry of Railway, Rail Bhavan, New Delhi.
2. The General Manager,
South Central Railway, Secunderabad.
3. The Sr. Divisional Personnel Officer,
South Central Railway, Vijayawada Division,
Vijayawada, Krishna District.
4. G.P. Kumar, working as SM/ Eluru,
Eluru RS, SC Railway, West Godavari District.

5. B. Siviah, working as SM/VDE,
(RS), S.C. Railway, Vedayapalem, Nellore Dist.,

...Respondents

Counsel for the Applicants ... Mr. G.S. Rao

Counsel for the Respondents ... Mr. D. Madhava Reddy, SC for Railways

O.A.No.021 /184 of 2015

Between:

1. Manoj Kumar Yadav, S/o. Sri Hiralal Yadav,
Aged about 32 years, Occupation: Commercial Supervisor,
Adilabad Railway Station, South Central Railway,
Nanded Division, Maharashtra, R/o. Rly. Q. No. 302/A,
Railway Colony, Adilabad – 504 001.
2. Prakash Harun, S/o. Sri Vijay Biswass,
Aged about 32 years, Occupation: Sr. Commercial Inspector/
Commercial Supervisor, Parbhani Station,
South Central Railway, Nanded Division, Maharashtra,
R/o. Rly. Q. R.B.265/1, Parbhani, Maharashtra.
3. Ashuthosh Kumar Verma, S/o. Sri Sashinath Verma,
Aged about 38 years, Occupation: Commercial Supervisor,
Parbhani Station, Nanded Division, South Central Railway,
Maharashtra, R/o. Rly. Q. R.B.379/01, Parbhani.
4. Manoj Kumar, S/o. Sri Kishori Ram,
Aged about 33 years, Occupation: Commercial Supervisor,
Aurangabad Station, South Central Railway, Nanded Division,
R/o. Rly. Q. No.73/E, Railway Colony, Aurangabad, Maharashtra.

...Applicants

And

Union of India rep. its

1. The Secretary, Railway Board,
Rail Bhavan, New Delhi.
2. The General Manager,
South Central Railway, Rail Nilayam, Secunderabad.
3. The Senior Divisional Personnel Officer,
South Central Railway, Nanded Division,
Nanded, Maharashtra.
4. B.P. Narasimhulu, S/o. Not known,
Aged about 57 years, Occupation: Chief Commercial Clerk,
Mudkhed Station, South Central Railways,
Nanded Division, Mudkhed 431 806.

...Respondents

Counsel for the Applicants ... Mr. K. Siva Reddy
 Counsel for the Respondents ... Mrs. Vijaya Sagi, SC for Railways

O.A.No.020 /1840 to 1844 of 2015

Between:

1. A. Padma Reddy, S/o. A. Subba Reddy,
 Aged about 46 years, Occupation: Station Superintendent,
 Pirangapuram RS, S.C. Railway,
 Guntur Division, R/o. Flat No. 7, Kanchana Towers,
 Pattabhipuram, Guntur.
 (Applicant in OA No.1840/2015)
2. A. Leela Krishna, S/o. Nageswara Rao,
 Aged about 47 years, Station Superintendent,
 Paracharla RS, S.C. Railway,
 Guntur Division, R/o. Door No. 1-31-16/E,
 3rd Lane, SVN Colony, Guntur.
 (Applicant in OA No.1841/2015)
3. P. Sudhakara Babu, S/o. P. Lingaiah,
 Aged about 43 years, Occupation: Station Superintendent,
 Sriramnagar RS, S.C. Railway, Guntur Division,
 Flat No. 107, Venkatasai towers, Hyderabad Road, Nalgonda Dist.
 (Applicant in OA No.1842/2015)
4. P.V. Ramana Rao, S/o. P. Venkoba Rao,
 Aged about 42 years, Occupation: Station Superintendent,
 Chalama RS, SC Railway, R/o. Nandyal, Kurnool Dist.
 (Applicant in OA No.1843/2015)
5. D. Rajasekhar, S/o. D. Thata Rao, aged about 43 years,
 Occupation: Station Master, Kurichedu Station,
 SC Railway, Guntur Division, Prakasam Dist.
 (Applicant in OA No.1844/2015)

And

Union of India rep. its

1. The Secretary, Railway Board,
 Rail Bhavan, New Delhi.
 2. The General Manager,
 South Central Railway, Rail Nilayam, Secunderabad.
 3. The Senior Divisional Personnel Officer,
 South Central Railway, Guntur Division, Guntur.
 4. A.S.R. Anjaeyulu, S/o. Not known,
 Aged about 46 years, Occupation: Station Superintendent,
 Narasaraopet RS, S. C. Railway, Guntur District.
- ...Respondents

Counsel for the Applicants ... Mr. K. Siva Reddy
 Counsel for the Respondents ... Mrs. Vijaya Sagi, SC for Railways

O.A.No.020 /1298 of 2014

Between:

1. Jitendranath Baral, S/o. Jogindranath Baral,
 Aged about 39 years, occupation: Station Master
 II, Nanded Station, South Central Railways,
 Nanded Division, Maharashtra.
2. Uday Shankar, S/o. Karyanand Sharma,
 Aged about 41 years, Occupation: Station Master II
 Chudawa Station, South Central Railways,
 Nanded Division, Maharashtra.
3. Mukesh Kumar Meena, S/o. Mool Chand Meena,
 Aged about 33 years, Occupation: Traffic Inspector
 Adilabad Station, Nanded Division, South Central Railways,
 Nanded, Maharashtra.

..Applicants

And

Union of India rep. its

1. The Secretary, Railway Board,
 Rail Bhavan, New Delhi.
2. The General Manager,
 South Central Railway, Rail Nilayam, Secunderabad.
3. The Senior Divisional Personnel Officer,
 South Central Railway, Nanded Division, Nanded, Maharashtra.
4. Amrut Kishan Bhangе, S/o. Not known,
 Aged about 48 years, Occupation: Assistant Station Master I,
 Nanded Division, South Central Railway, Nanded.
5. P. Venkat Ramana, S/o. Not known,
 Aged about 51 years, Occupation: Assistant Station Master I,
 Nanded Division, South Central Railway, Nanded.
6. Kumar Rajeev Ranjan, S/o. Not known,
 Aged about 51 years, Occupation: Assistant Station Master I,
 Nanded Division, South Central Railway, Nanded.
7. Ajay Kumar Shukla, S/o. Sri Ram Chandra Shukla,
 Aged about 43 years, Occupation: Safety Counselor (Operating)
 O/o. The Senior Divisional Safety Officer, South Central Railway,
 Nanded Division, Nanded.

...Respondents

Counsel for the Applicants ... Mr. K. Siva Reddy
 Counsel for the Respondents ... Mrs. Vijaya Sagi, SC for Railways
 Mr. K.R.K.V. Prasad, Advocate for R-7

CORAM:

Hon'ble Mr. B.V. Sudhakar ... Member (Admn.)
Hon'ble Mr. Swarup Kumar Mishra ... Member (Judl.)

COMMON ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.)}

The OAs are filed challenging the revision of seniority based on the Sl. Circular 107/2012 dt 26.9.2012 issued by the respondents. The issue and the respondents being one and the same a common order is being issued.

2. Brief facts of the case are that the applicants were selected as Dy Station Supdt/ Traffic Apprentice/Commercial Apprentice in the scale of Pay of Rs.5500-9000 and sent for Training. After training they were posted as Station Masters II/TI/Commercial inspectors in PB 9300-34800 with Grade Pay of Rs.4200 in different divisions coming under 2nd respondent. The Respondents issued the seniority list for the said scale of Pay correctly showing the seniority of the applicants. With the implementation of the 6th pay commission the grades of Rs 5000-8000 and Rs 5500-9000 were merged into PB of Rs 9300-34800 with Grade Pay of Rs 4200. As per Sl. Circular 107/2012 clause (i) and (ii) the seniority of employees who joined between 1.1.2006 and 4.9.2008 would be protected as per the pre-revised scale of pay and clause (iii) states that those who join on or after 5.9.2008 with the merged scale in PB 9300-34800 with Grade Pay of Rs 4200 will be assigned a seniority below those who were in position as on 4.9.2008. Accordingly the seniority was revised and the applicants were placed below those who were drawing lower scale of pay of Rs 5000-8000 prior

to the merger of scales by the 6th CPC. Hence the grievance and therefore the OAs.

3. The contention of the applicants is that the Sl Circular 107/2012 is self contradictory in that the clauses i and ii state that those who were drawing higher scale of pay shall rank senior and clause iii takes a contrary stand of placing of employees who drew higher scale in pre-revised pay to those who had a lower pre-revised scale of pay. Rules prevailing at time of notification of vacancies should be applied. Merger of the pay scales in 6th CPC has nothing to do with seniority. Further before revising the seniority no notice was issued in case of applicants in OA 1298 /2014. For fixing seniority the provisions of para 301 of IREM have to be followed and that for each scale separate seniority list has to be maintained. Circulars cannot have retrospective effect. The applicants raised objections against the revised seniority list and the same are yet to be resolved. Private respondents were impleaded on a representative capacity as their interests would be adversely affected, if the OA were to be allowed.

4. The respondents contend that the seniority was revised based on clause iii of the sl circular 107/2012 dt 26.09.2012. While confirming that the applicants were put on training in the scale of Rs 5500-9000, the respondents claim that the applicants were absorbed only after training for around two years. The argument of the respondents is that the applicants joined after the 6th CPC recommendations were accepted and accordingly those who were in position as on 4.9.2008 shall rank senior to the applicants who joined later with the revised 6th CPC scale. Rules on the subject have been clearly followed and that there is no bias towards anyone.

5. Heard the learned counsel and perused the documents on record.

6. The learned counsel for the applicants argued that applying clause (iii) of the cited circular with retrospective effect is illegal and that the 6th CPC has no relevance to seniority. The learned counsel for the respondents argued with equal force that rules have to be followed and accordingly implemented as ordained in circular 107/2012.

7. Details were examined in depth. The issue hinges on the following aspects which call for a decisive analysis to arrive at a considered and a valued conclusion.

1. Can a circular have a retrospective effect?

Generally any circular or directive cannot have a retrospective effect particularly in service matters since it will upset the settled position leading to complications in regard to seniority, promotions etc and hence should not be resorted. If orders are issued based on changes in policy, which does happen, applying norms laid in the new policy with retrospective effect will lead to the entire administration going hay wire. Therefore, it is well laid law that any statute, amendment, rule, order will have prospective effect and not retrospective effect unless it is otherwise specified with sound reasoning and the necessity to do so. Honourable Supreme Court while dealing with a railway matter has observed in *Union of India v. V.D. Dubey*, (2010) 2 SCC 225, as under, declaring that an Amendment will have only prospective effect.

13. The scope of the proviso to Rule 2423-A of Railway Establishment Manual, Vol. II came up for consideration before this Court in *Railway Board v. D. Francis Paul* (1996) 10 SCC 134 and this Court held that **amendment cannot have retrospective effect in respect of a person already in service but would be prospective; it would be applicable only to those candidates appointed after the date of the amendment introducing the proviso.** Therefore the provision which states that

the concession be admissible only if the recruitment rule provides so, would operate only prospectively.

Another observation pertinent to the issue on hand of the Honourable Supreme Court is in regard to retrospective amendment of statutory rules adversely affecting pension in *Chairman, Railway Board and ors vs C.R. Rangadhamaiah and ors* in CA 4174-82 of 1995 where in it was held that:

“Retrospective amendment of statutory rules, adversely affecting pension of employees who already stood retired on the date of notification, held, invalid.”

In the present case the applicants joined the respondent organisation prior to issue of the sl. Circular 107/2012 dt 26.9.2012. Therefore applying circular of 2012 to those who joined the respondents organisation earlier to 2012 is illegal and hence lacks validity. The argument of the respondents that the applicants were absorbed after training is not logical as the applicants were placed in the scale of Rs 5500-9000 when they were put on roll for training.

2. Can a circular be arbitrary and discriminative?

It cannot because such a circular goes against Art 14 of the constitution. The fixing of the cut off date of 5.9.2008 vide circular 107/2012 has no rational basis. It places employees in a higher scale of pay below those drawing lower scale of pay hitherto. Such fixation is irrational and unreasonable. Those who are in a higher scale of pay would be supervising those with the lower scale of pay. This principle is being torpedoed by bringing in a cut off date without properly placing those with higher scale of pay at a higher pedestal and hence is discriminative and arbitrary in all its essence. Honourable Supreme Court has observed

27. In *Ramana Dayaram Shetty v. International Airport Authority of India* (1979) 3 SCC 489 again this Court observed that a discriminatory

action of the Government is liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory.

Circular 107/2012 is envisaging fixation of common seniority based on two principles which are tangentially opposite as seen from clause i and clause ii differing from clause iii. Therefore, the said circular is not only illogical but discriminative. Further, the same respondents taking a stand that date of appointment shall be considered for fixing seniority in OA 184/2015 and asserting that it will be date of joining in OA 1298/2014 is highly discriminative. The respondents are not uniform in their actions. Such a stand is not expected of a model employer like the respondents organisation.

Interestingly the Secunderabad division has implemented the principle of placing employees with higher scale of pay Rs.5500-9000 as senior to those drawing Rs.5000-8000 but surprisingly other divisions not doing so, though they also come under the same Railway Ministry, smacks of discriminative action. The reason, they do the same work and being similarly placed the benefits extended to one group has to naturally flow to the others who are on the same plane. Honourble Supreme Court has observed so in ***G.C.Ghosh vs Union of India*** reported in ***1992 (19) ATC 94*** as under:

“In the light of the command of Articles 14 and 16 of the Constitution of India the same treatment is required to be accorded to the petitioners regardless of the fact that they are serving the Eastern Railway unless it is shown that there is some distinguishing feature, for according a different treatment. ..”

3. Can statutory rules be changed after they are set?

No rule can be changed once it has been set by a statute unless it is amended. As on the date of notifications two grades existed in the pre revised

scales of pay of Rs 5000-8000 and Rs 5500- 9000 which had separate seniority lists drawn up. Para 301/302 of IREM indicate the principles laid down for fixing the seniority. As per these provisions date of appointment to a given grade has to be considered for fixing seniority. Changing the same would require the amendment of the statutory provision of IREM stated. Statutory rules are backed by art 309 of the constitution and hence cannot be overruled by an executive instruction vide sl. Circular 107/2012. In fact Honourable Supreme Court has laid down that there shall be separate seniority list for each grade in ***Union of India and others vs V.K. Krishnan and others*** in CA 2532 of 2010 as under:

“ As stated herein above, seniority list for employees working in different grades should be different and there cannot be any common seniority list for all the employees in one particular group”

In the present case the rules prescribed separate seniority for each grade. To bring in inter se seniority by combining two grades requires amendment of the statutory rule which was not done and hence the circular 107/2012 stands invalid.

4. Can conditions laid in a notification be changed to ones disadvantage?

Honourable Supreme Court has clearly spelt out that once a notification has been issued with certain terms and conditions, one has to adhere to the same and cannot change it after the entire process has commenced or is over. In the case in question the applicants were appointed to the scale of Rs.5500-9000 and their seniority list was drawn accordingly in the said grade. Respondents having done so, no change can be brought about defiling its character by ushering in a common seniority list without a rational and justifiable reasons. The observation of the Honourable Supreme court in this regard, given hereunder, will put the matter in question to rest. The observation of Honourable Supreme Court in ***K.***

Manju Sree vs State of Andhra Pradesh & anr reported in **2008 (3) SCC 512**,

comes to the rescue of the applicants where in it was stated that

“32. In Maharashtra SRTC Vs. Rajendra Bhimrao Mandve, this Court observed that, “the rules of the game, meaning thereby, that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced”. In this case the position is much more serious. Here, not only the rules of the game were changed, but they were changed after the game had been played and the results of the game were being awaited. That is unacceptable and impermissible.”

Further, the Honourable Ernakulam bench of this Tribunal, Honourable High Court of Uttarakhand and Honourable Supreme Court in OA 180/2015 dt 15.2.2016, W.P (5/B) No. 582/2016 dt 10.3.2017 and in AIR 1983 SC 852 respectively have held that the date of notification has to be taken into account while considering the case of the applicants and the consequences of delay on the part of the respondents cannot be attributed to the applicants and could not put them to disadvantage. The applicants in the present OA had a different seniority as per the notification prior to 2012 and changing it by the executive order vide circular 107/2012 is irregular. The Hyderabad bench in OA 569/2013 dt 30.9.2015 has held that the date of vacancy has to be taken in fixing the seniority and merger of the post has no relevancy.

5. Can there be outright classification of employees without serving the very purpose for which the classification has been done?

The circular 107/2012 was issued when the 6th CPC was implemented wherein merger of scales discussed above was effected. The employees were classified into two groups of those who joined on or before 4.9.2008 and those after. The 6th CPC was dealing with the pay scales and the Circular with seniority which are totally disjointed. The circular could have dealt with the

scales pertaining to the 6th CPC but not with seniority. This sort of classification which do not further the objective for which the classification was brought about would not hold good as per Honourable Supreme Court observation in Nakara case in AIR 1983 SC 130 (Constitutional Bench) where in it was held that

“ The fundamental Principle is that Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have rational nexus to the object sought to be achieved by the statute in question. ”

Honourable Principal bench of this Tribunal has held a similar view in OA 1165/2011 dt 21.4.2014 quoting the Honourable Supreme Court judgment cited. Further the circular 107/2012 by its very controversial content is making seniors junior and vice versa. This is impermissible by an arbitrary action. Seniority is a right and it decides the onward march of the employee in the organisation. It provides security to the employee specifying that he stands at a particular position lawfully. Any change made without reason will not only make him insecure but would demoralise him which will lead to undesirable consequences of quarrels at work place, low productivity, bitterness, unwarranted expenditure in litigation and so on. Therefore a settled seniority principle cannot be unsettled by issue of an executive instruction like Circular 107/2012 as has been observed by Honourable Supreme Court in the case of H.S. Vanikani and ors vs State of Gujarat and ors reported in (2010) 4 SCC 301 as under:

“25. Seniority is a civil right which has an important and vital role to play in one’s service career. Future promotion of a Government Servant depends either on strict seniority or on the basis of seniority–cum–merit or merit–cum–seniority etc. Seniority once settled is decisive in the upward march in one’s chosen work or calling and gives certainty and assurance and boosts the morale to do quality work. It instils confidence, spreads harmony and commands respect among colleagues which is a paramount factor

for good and sound administration. If the settled seniority at the instance of one's junior in service is unsettled, it may generate bitterness, resentment, hostility among the Government servants and the enthusiasm to do quality work might be lost. Such a situation may drive the parties to approach the administration for resolution of that acrimonious and poignant situation, which may consume lot of time and energy. The decision either way may drive the parties to litigative wilderness to the advantage of legal professionals both private and Government, driving the parties to acute penury. It is well known that salary they earn, may not match the litigation expenses and professional fees and may at time drive the parties to other sources of money making including corruption. Public money is also being spent by the Government to defend their otherwise untenable stand. Further it also consumes lot of judicial time from the lowest court to the highest resulting in constant bitterness among the parties at the cost of sound administration affecting public interest. Courts are repeating the ratio that the seniority once settled, shall not be unsettled but the men in power often violate that ratio for extraneous reasons, which, at time calls for departmental action. Legal principles have been reiterated by this Court in Union of India and anr vs S.K Goel and ors (2007) 14 SCC 641, T.R Kapoor v State of Haryana (1989) 4 SCC 71, Bimlesh Tanwar V State of Haryana, (2003) 5 SCC 604."

The decision of the Supreme Court in the case of K.R.Mudgal and others vs R.P. Singh and ors reported in AIR 1986 SC 2086 is also to the same effect.

The respondents for an extraneous reason of merging of scales has upset the seniority and thus the action of the respondents does not lie in the realm of logic. In fact in OA 1298 of 2014 show cause notice was not issued to the applicants before revising the seniority. Statutory rule was given a pass over by an executive order. A cut off date which has no relevance to the seniority was unnecessarily brought in to unsettle a settled matter of seniority. The learned counsel for the respondents have banked on the judgment of the Honourable Supreme Court in S.B.I and ors vs Yogender Kumar Srivastava and ors dt. 1.5.1987 to further their point of view. However, the Honourable Supreme Court citation quoted by the Respondents is based on a specific agreement between the Bank management and the officers association. In the present case there being

no such agreement between the Respondents organisation and the applicants or their respective unions, the said citation does not apply to the case in question. The cut off date of 4.9.2008 has been unilaterally imposed by the respondents whereas it is not the case in the cited citation and hence the case law quoted does not come to the rescue of the respondents.

8. Therefore based on each parameter discussed above the controversial Circular 107/2012 does not hold ground. It is against the provisions of IREM (Indian Railway Establishment Manual), discriminative and arbitrary in nature, lacks uniformity and is in serious violation of the laws laid down by Honourable Supreme Court in regard to seniority as discussed supra. The applicants made out a successful case. Therefore clause (iii) of the Railway Board Circular (RBE No.107/2012 dt 26.9.2012) is quashed and orders issued so far based on the said clause (iii) will stand invalid. Consequently the respondents are directed to consider:

- i) Restoring the original seniority of the applicants consequent to quashing clause iii of the Railway Board Circular RBE No. 107/2012 dt.26.9.2012, with consequential benefits thereof.
- ii) Order issued to be implemented within 3 months of receipt of the same

9. In the result, the OAs are allowed. Consequently, pending MAs stand disposed of. No order to costs.

(SWARUP KUMAR MISHRA)
MEMBER (JUDL.)

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 23rd day of October, 2018

evr