

S. Krishnamurthy

Vs

The General Manager, Southern Railway

Civil Appeal No. 596 of 1975

(V.R. Krishna Iyer, N.L. Untwalia JJ)

03.02.1976

JUDGMENT

KRIAHNA IYER J. -

1. An unfortunate administrative error, which was discovered long after, has led to an avoidable writ petition, writ appeal and an appeal to this Court necessarily involving a considerable period of litigation and considerable expense. We have heard both sides at great length and have followed the points of the petitioner which appealed to the learned single Judge of the High Court and of the respondent which appealed to the Division Bench which upturned the judgment of the learned single Judge. We tentatively indicated what stuck us as the correct and just conclusion Counsel on both sides feel that the conclusion we have reached and which will be presently set down is manifestly fair in the circumstances of the case.

2. The appellant joined the Southern Railway as a clerk way back in October 1948 and was confirmed as train clerk on April 1, 1949. He worked his way up and became a wagon chaser in an ex-cadre post. Therefore, he was entitled to become Assistant Yard Master but, for reasons which we need not go into, he continued as wagon chaser. The promotion post for Assistant Yard Master is that of traffic inspector. Unfortunately, the appellant was not considered for that post although other similarly situated like him were absorbed as traffic inspectors. The railway administration discovered the injustice and set right the error of not treating the appellant as an Assistant Yard Master by its order dated November 10, 1965; but by this time others had been absorbed as traffic inspectors and the appellant was not. His representation proving unsuccessful, he moved the High Court under Articles 226 for the relief of being treated as traffic inspector with effect from January 1, 1959 when those others similarly situated were so absorbed. The conflicting fortunes of the case have already been indicated and all that we need say is that in the light of the order of the railway administration dated November 10, 1965, there has been an injustice inflicted on the appellant.

3. On the strength of the policy decision taken on December 31, 1958 the appellant was eligible to be absorbed as traffic inspector like his confreres but was not. Moreover he had actually worked as Assistant Yard Master for some time. In the circumstances, he was entitled to be taken into the cadre of traffic inspector. We cannot put the clock back for all purposes and treat him as having been notionally appointed as traffic inspector with effect from January 1, 1959. All that we can do, in conformity with his right and in the justice of the case, is to direct the respondent to appoint him as a traffic inspector from the date on which he came to the High Court with his writ petition, viz., December 20, 1967. Those who were promoted earlier might be adversely affected if we direct the appellants appointment as traffic inspector with effect from an earlier date. We desist from doing so. However, we categorically direct that the railway administration shall appoint the appellant as traffic

inspector with effect from December 20, 1967.

4. The next question that arises is regarding his fitment for the purpose of salary. Undoubtedly, he would have been a traffic inspector much earlier had the railway not committed the mistake which it discovered subsequently. It is, therefore, reasonable that the appellant should be fitted into the scale of pay at a point where full notional seniority which he would have been entitled to had the right thing been done at the right time, is recognised. Plainly put, he will be drawing a salary on December 20, 1967 on the basis of a notional appointment as traffic inspector as on January 1, 1959. This will govern the salary part of his service from December 20, 1967.

5. Yet another point that arises is as to what is to happen regarding his arrears of salary from December 20, 1967 and for post-writ-petition period. We make it clear that while seniority is being notionally extended to him from January 1, 1959, the appellant will not be entitled to any salary qua traffic inspector prior to December 20, 1967. However, he will be entitled to salary on the terms indicated above from December 20, 1967 as traffic inspector; that is to say, he will be eligible to draw the difference between what he has drawn and what he will be entitled to on the basis we have earlier indicated in this judgment.

6. The appellant has a future and hopefully looks forward for promotion. It is, in our view, right and reasonable that for purposes of promotion, seniority will be reckoned from December 20, 1967 but for qualifying period, if there is such a condition for promotion, his notional services from January 1, 1959 will be considered. Of course, we need hardly say that this order will not affect adversely the seniority of those who have been appointed as traffic inspectors prior to December 20, 1967. In the situation arising in the case, the respondent will pay the costs of the appellant in the Court. The appeal is allowed on the above lines.

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