

The Railway Board and Others

Vs

P. R. Subramaniam and Others

Civil Appeal No. 2189 of 1977

(N. L. Untwalia, P. S. Kailasam JJ )

29.11.1977

JUDGMENT

UNTWALIA, J. -

1. This is an appeal by special leave. The appellants are the Railway Board and some officers of the Southern Railway concerned with the passing of the impugned orders. Respondents 1 to 9 were clerks in the Southern Railway in Grade II. They were all promoted eventually to Accounts Clerks, Grade I. In the seniority list, however, respondents 3 to 9 were shown as senior to respondents 1 and 2. Hence the latter challenged the order Ex. P-4 dated March 6, 1972 by filing a writ petition in the Kerala High Court. The petition was dismissed by a learned single Judge, but their appeal was allowed by the Division Bench. Hence the railway administration has filed the present appeal. Mr. U. R. Lalit appeared for the appellants and Mr. S. Balakrishnan contested the appeal on behalf of respondent 1. No other respondent appeared.

2. For getting promotion from Grade II to Grade I, the respondents had to pass a departmental examination known as Appendix II-A Examination. In Grade II, respondent 1 having been appointed earlier was senior to respondents 2 to 9 and respondent 2 junior to respondent 3 but senior to respondents 4 to 9. Respondents 3 to 5 had passed Appendix II-A examination before April 1, 1956. Respondent 6 passed it in April 1956. Respondent 2 and 7 to 9 passed the said examination in November 1956 and respondent 1 passed it lastly in May, 1957.

3. In the Indian Railway Establishment Code, Volume I are the Rules framed by the President of India under Article 309 of the Constitution. Contained in the said Code is the well-known Rule 157 which authorises the Railway Board, as permissible under Article 309, to have "full powers to make rules of general application to non-gazetted railway servants under their control". The Railway Board have been framing rules in exercise of this power from time to time. No special procedure or method is prescribed for the making of such rules by the Railway Board. But they have been treated as rules having the force of rules framed under Article 309 pursuant to the delegated power to the Railway Board if they are of general application to non-gazetted railway servants or to a class of them.

4. Eventually all the respondents were confirmed in Grade I with effect from April 1, 1956. But the difference in their inter se seniority was brought about because respondents 3 to 9 were confirmed in permanent posts while respondents 1 and 2 were confirmed in supernumerary posts. Respondents 1 and 2 claimed on the basis of Rule 20(b) contained in the Indian Railway Establishment Manual, Volume I that irrespective of the dates of their passing the department examination, their seniority in Grade II had to be reflected in Grade I when they were confirmed in that Grade from a date with

effect from which respondents 3 to 9 had also been confirmed. On the other hand the case of the appellants as also some of the contesting respondents in the High Court has been that the aforesaid Rule 20(b) contained in the Railway Establishment Manual is of no universal application and was subject to the rules and orders which were issued by the Railway Board from time to time. According to such rules and orders, those who were confirmed in supernumerary posts and later in permanent posts had to rank junior to those who were confirmed earlier in permanent posts. The learned single Judge accepted the stand taken on behalf of the appellants but the Division Bench rejected it.

5. It is not necessary for us to repeat all that has been said in the judgments of the High Court but a brief resume of facts would show that the view taken by the learned single Judge was correct and the Division Bench was not right in taking a contrary view.

6. Ex. R-2 was a circular letter of the Railway Board dated March 7, 1957 issued to the General Managers of all Indian Railways and other authorities. The subject in this letter was "upgrading of posts". After reviewing their earlier decisions the Railway Board decided to make certain changes in the distribution of posts in the higher grades. As a provisional measure, since the final implementation of the orders was to take time, it was decided as mentioned in paragraph 13 of this circular to upgrade certain posts of clerks of the Accounts Departments. Certain temporary posts were upgraded and thus clerks of Grade II could succeed in getting promotions to Grade I. A few days later another circular letter Ex. R-3 dated March 13, 1957 was issued by the Railway Board to the General Managers mentioning therein that the orders contained in the earlier letter had the approval of the President and clarifying certain other matters in relation to the upgrading of the posts. We may now refer to the other circular letter dated March 18, 1959 Ex. R-5 in which it is stated that the senior clerks in Grade II who had qualified to be promoted to Grade I by passing Appendix II-A examination later than April 1, 1956. Should be confirmed in Grade I after creating for them supernumerary posts from the said date. The meaning of supernumerary posts as mentioned in the judgments of the High Court is to create shadow posts for giving benefits of pay etc., to the promoted clerks although as a matter of fact permanent posts were not available from that date for confirmation of such senior persons.

7. Then came the office order Ex. P-3 dated May 4, 1959 which prima facie showed that the respondents were deemed to have been promoted of officiate as Clerks. Grade I against the upgraded posts, permanent or temporary, as per the decision communicated in the circular dated March 7, 1957. Respondents 1 and 2 were included in the list of such promoted clerks. But a difficulty arose as to their confirmation in permanent posts as no such posts were available for them from April 1, 1956. The decision of the Railway Board was communicated in their letter Ex. R-6 dated November 25, 1959 according to which they were to be confirmed after creation of supernumerary posts in lieu of the then existing temporary posts which were to be set off against permanent vacancies arising subsequently. The fact that the respondents 1 and 2 were confirmed against such supernumerary posts is not in dispute. This is also clear from the office order dated May 5, 1960 Ex. R-8. Then came the decision of the Railway Board contained in Ex. R-9, their letter dated March 2, 1962. This letter embodies rules of general application to a particular class of non-gazetted railway servants. It has been rightly contended on behalf of the appellants that they had the force of a rule made under Rule 157. After tracing the past history it was stated in this letter :

The aforesaid concession given to senior staff who had qualified in later examination did not, however, mean that the relative seniority, in the list of Clerks Grade II,

would regulate the seniority as Clerks Grade I of all those confirmed as clerks Grade I (including those confirmed against supernumerary posts) namely those who qualified for promotion to that Grade by passing the Appendix II - Examination prior to April 1, 1956 and who were available for such promotion on April 1, 1956, and those who qualified subsequently by passing the examination between April 1956 and December 1957. Thus though some staff who were not eligible for promotion and confirmation were "deemed" to have been promoted as clerks Grade I. w.e.f. April 1, 1956 and confirmed even by creating supernumerary posts, seniority as Clerks Grade I is to be fixed according to the principle that the persons who qualified prior to April 1, 1956 and were available on April 1, 1956 were to be considered first and other senior clerks qualifying upto December 31, 1957 were to be considered as and when they qualified. This is in accordance with the fundamental principle that a vacancy, officiating or permanent, can only be filled by the senior-most person actually qualified at the time the vacancy occurs.

8. The competition is between Rule 20(b) referred to above and the rule contained in Ex. R-9. Which of the two will prevail ? Rule 20(b) reads as follows :

The seniority of Accounts Clerks, Grade I and Stock Verifiers is to be determined with reference to their substantive or basic seniority in Grade II irrespective of the dates they qualify for promotion as clerks Grade I by passing the examination prescribed for the purpose.

The Prefatory Note to the Indian Railway Establishment Manual which contains the above rule says :

It must be noted that the provisions of this Manual do not supersede the rules contained in any of the Indian Railway Codes and in case of conflict the latter should prevail. This Manual may not be referred to as the final authority and a reference should always be made to the original orders on the subject.

It would thus be seen that those who were confirmed in Grade I against permanent posts in accordance with the decision contained in Ex. R-9 must rank senior to those who were absorbed against permanent posts later although they were confirmed in supernumerary posts created in Grade I w.e.f. April 1, 1956. There was nothing wrong in it. It is undisputed that respondents 3 to 9 had been confirmed due to one reason or the other against permanent posts earlier than respondents 1 and 2. In our judgment, the decision contained in Ex. R-9 which had the force of a rule made under Rule 157 did override Rule 20(b) contained in the Manual. Respondents 1 and 2, therefore, were not entitled to get any relief for the quashing of the impugned order Ext. P-4 dated March 6, 1972. Their writ petition was rightly dismissed by the single Judge and wrongly allowed by the Division Bench.

9. For the reasons stated above, we allow this appeal, set aside the order of the Division Bench and restore that of the single Judge. We shall make no order as to costs.

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