

Rama Kant Chaturvedi and Others

Vs

Divisional Superintendent, Northern Railway, Moradabad and Others

Vs

Jagadish Chandra and Others

Vs

Divisional Superintendent Northern Railway, Moradabad and Others

Vs

S. B. Upadhyaya and Others

Vs

Divisional Superintendent, Northern Railway, Moradabad and Others

Civil Appeals Nos. 1669, 2463 and 2464 of 1972

(R. S. Pathak, O. Chinnappa Reddy JJ)

18.11.1980

JUDGMENT

CHINNAPPA REDDY, J. –

These three appeals raise common questions. Pursuant to a decision to progressively dieselise rail transport, the Railway Board, with the approval of the President, decided upon the method of recruitment, training, scales of pay and allowances of the staff employed upon diesel locomotives. In the case of running staff, the post to which initial recruitment was to be made was that of Diesel Cleaner. Diesel Cleaners were to have middle school educational standard, but a proportion of the posts were proposed to be reserved for matriculates with a view to train them as skilled fitters and drivers. Cleaners who were matriculates and medically fit were first to be promoted as Drivers' Assistants after passing the prescribed suitability test. Thereafter the promotions were to the posts of Shunter, Diesel Driver (C), Diesel Driver (B) and Diesel Driver (A) in that order. These promotions were to be made by selection. As dieselisation was to be introduced soon and as it was not possible to appoint cleaners straight away as drivers, it was proposed to draw upon the staff of the "Steam running side" to operate diesel locomotives by providing suitable training to them. It may be useful to extract here the note appended to the Railway Board's letter dated February 3, 1958 in regard to the drawing up of the staff of the steam running side to operate diesel trains. The note is as follows :

Note :- Immediately there will be diesel operation only on goods trains and since the services are to be operated shortly and initial recruitment cannot be made to the cleaner's category in the first instance the intention is that staff on the steam running

side should be drafted on to diesel operation by providing suitable training in operation diesel locos. Steam staff so observed as Drivers grade 'C' will be given three advance increments after normal fixation in the grade 'C' of drivers or over their pay in 'C' grade pay on this basis of three advance increments will be drawn by the staff only for so long as they work as diesel drivers and on their reversion to the steam side their pay too would be fixed as though they had not been allowed the benefit of these advance increments.

So far as Driver's Assistants and Shunters are concerned, staff should also be drawn from the steam side in the first instance. If is, however, necessary to absorb on the diesel side only matriculates or, if non-matriculates, those whose literacy standard is comparable with that of matriculates.

On April 18, 1966 the Railway Administration issued another Circular in which it was mentioned that the staff eligible for the posts of Drivers' Assistants were those employed in lower grades of Firemen of the steam side and trained for working in the posts of Driver's Assistants on the diesel side, subject to the condition that no non-matriculate shall be considered for such posts without the approval of the Headquarters. It was also provided that directly recruited cleaners on the diesel side who were matriculates were also eligible along with Firemen on the steam side who had, received the prescribed training, for appointment as Drivers' Assistants on the diesel side on the basis of a combined seniority list. The inter seniority of each was to be maintained separately. This letter gave a clear indication that the seniority of Drivers' Assistants was to be reckoned on the basis of their appointment as Drivers' Assistants, whatever their original seniority might have been as Firemen. Earlier, on August 25, 1965, the General manager, Northern Railway, had clarified the position as follows :

As a result of combination of seniority there may be cases where some persons subsequently junior to others may be officiating in higher grades, such junior persons will not be reverted to make rooms for persons, senior to them.

The senior persons will be considered for promotions in higher grade against future vacancies, subject to their fulfilling any other conditions that might have been or might be laid down.

The seniority of D.S.L. side is separate unit vide Railway Board's letter No. E (SI) 57 Rs. 6 dated February 3, 1958.

2. Thereafter on August 5, 1966 applications were invited from Firemen Grades 'B' and 'C' who were matriculates and who were desirous of taking Diesel Drivers' Assistants training. The present appellants who were matriculates and who were employed as Firemen Grade 'C' on the steam side submitted their applications and on passing the prescribed test and completion of necessary training, were appointed as Drivers' Assistants on the diesel side on various dates between 1968 and 1970 on an officiating basis. Subsequently on January 21, 1969 the prescription of minimum educational qualification as Matriculation was relaxed and it was said that steam staff who were otherwise considered suitable were not to be debarred from being appointed on the diesel side solely on the ground of educational qualification. After the relaxation of minimum educational qualification, there was a large influx of staff from the steam side to the diesel side. Many Firemen who were senior to the appellants on the steam side were inducted into the diesel side.

3. The question of confirmation of the staff inducted into the diesel side from the steam side came up for consideration and it was decided that those employed 'to officiate in a regular manner', by

virtue of their seniority cum suitability or position in the panel against permanent vacancies should be considered for confirmation after one year's service provided they fulfilled other conditions for confirmation, vide Board's letter No. E (NG) 168-CN-5/2 dated August 3, 1968 and letter No. E(NG) 169-CN 5/31 dated February 19, 1970. The period of one year was later changed to two years. Along with the question of confirmation arose the question of reversion of some of the surplus staff to the steam side from where they were drawn. The Railway Administration issued instructions that the juniormost Firemen Grade 'C' officiating as Diesel Driver Assistant should be reverted in order to accommodate the senior staff. Pursuant to these instructions the appellants all of whom were drawn from the category of Firemen Grade 'C' who had been appointed as officiating Drivers' Assistants were reverted back to the steam side as Firemen Grade 'C' in order to make way for Firemen Grades 'A' and 'B' who were appointed as Drivers' Assistants on the diesel side long after the appointment of the appellants as Drivers' Assistants on the diesel side. Those drawn from the steam side Firemen Grades 'A' and 'B' were not and could not be appointed earlier than the appellants as Drivers' Assistants on the diesel side for the simple reason that at time only matriculates were being considered for appointment as Drivers' Assistants and these persons did not possess that minimum qualification. It was only as a result of the relaxation of the minimum educational qualification that they became eligible to be appointment. The appellants filed writ petitions in the High Court of Allahabad questioning the reversion and claiming that they were entitled to be confirmed as Drivers' Assistants on the diesel side and to all consequential benefits. The writ petitions were dismissed by a learned single Judge of the High Court and appeals preferred under the letters patent were also dismissed. The present appeals have been filed after obtaining special leave of this Court.

4. From the facts narrated above it is clear that the diesel side running staff was constituted and treated as a separate unit distinct from the steam side running staff. Recruitment and avenues of promotion were also different. Direct recruitment to the running staff on the diesel side was to be made to the lowest post of Diesel Cleaner and thereafter, promotions were to be made successively to the posts of Driver' Assistants, Shunters, Diesel Drivers (C), Diesel Drivers (B) and Diesel (A). As the Diesel Unit was being constituted for the first time and as considerable time might elapse before Diesel Cleaners could be promoted as Shunters and Drivers' Assistants it was decided to draft Firemen on the steam side, possessing the minimum educational qualification of matriculation, to the diesel side as Drivers, Assistants after giving them the requisite training. That was done. Firemen Grade 'C' who were of lower category than Firemen Grade 'B' and Firemen Grade 'A' but who happened to possess the minimum educational qualification which many of the Firemen Grades 'A' and 'B' did not possess were fortunate enough to be drawn into the diesel unit earlier than some of Firemen Grades 'A' and 'B' who came in later as a result as a result of the relaxation of the rule prescribing minimum educational qualification. Of course, all the initial appointments were on an officiating basis. But merely because the appointments were on an officiating basis, we do not see how those who were drafted into the diesel unit earlier would lose the benefit of their continuous service on the diesel side merely because others who were senior to them on the steam side came in or chose to come in at a later stage. If seniors on the steam side did not come in earlier it was because they were barred from coming in by the requirement of a minimum educational qualification. The subsequent relaxation of the rule cannot enable them to take a 'frog leap' over the heads of those who had come into the diesel side earlier. The seniority on the steam side is of no relevance in determining seniority on the diesel side when they are appointed on the diesel side on different days. We may refer to A. K. Subraman v. Union of India ((1975) 1 SCC 319, 333 : 1975 SCC (L&S) 36, 50 : (1975) 2 SCR 979, 994), where the fifth proposition was stated as : [SCC p. 333 : SCC (L&S) p. 50, para 29]

Once the Assistant Engineers are regularly appointed to officiate as Executive Engineers within their quota they will be entitled to consideration in their own rights as Class I Officers to further promotions. Their "birth marks" in their earlier service will be of no relevance once they are regularly officiating in the grade of Executive Engineer within their quota.

5. Similarly in *N. K. Chauhan v. State of Gujarat* ((1977) 1 SCC 308, 325 : 1977 SCC (L&S) 127, 143 : (1977) 1 SCR 1037, 1053), it was stated (at page 1053) [SCC p. 325 : SCC (L&S) p. 143, para 32] :

Seniority will depend on the length of continuous officiating service and cannot be upset by later arrivals from the open market save to the extent to which any excess promotees may have to be pushed down as indicated earlier.

6. On behalf of the respondents the submission of Shri Dhebar, learned counsel, was that it was never the intention of the Railway Administration to absorb on the diesel side, staff from the steam side. They were only drafted to meet a temporary situation and it was always intended that they should go back. Firemen Grade 'C' could therefore, claim no rights whatever on the diesel side and the Railway Administration was justified in reverting to the steam side those who were juniormost on the steam side and performing to retain the seniors. We are unable to accept the submission of Shri Dhebar. We do not think that there is any justification for holding that the staff drafted from the steam side into the diesel side was always meant to be reverted back to the steam side. The very fact that Firemen Grades 'A' and 'B' are now being retained clearly indicates that such was not the intention of the Railway Administration. The Firemen Grade 'C' were drafted in to diesel side because they possessed the requisite minimum educational qualification; and they were given special training before they were appointed as Drivers' Assistants on an officiating basis. We do not think it was intended that they should be reverted to the steam side after sometime. The various orders and letters of the Railway Board which have been placed before us give no indication that it was never the intention of the Railway Administration to absorb and retain them permanently on the diesel side. In our view there is no answer to the claim of the appellants that they cannot be reverted while their juniors on the diesel side (though senior on the steam side) are retained. We allow the appeals, quash the orders of reversion and direct respondents one to four to consider the claims of the appellants to confirmation of the 'diesel side' in the light of this judgment and to give to the appellants all consequential benefits. There is no order regarding costs.

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