

Virender Kumar, General Manager, Northern Railways, New Delhi

Vs

Avinash Chandra Chadha and Others

Civil Appeal No. 2013 of 1990

(L. M. Sharma, P. B. Sawant JJ)

25.04.1990

JUDGMENT

SAWANT, J. -

1. Leave granted.

2. The appeal is filed by the General Manager, Northern Railways against the decision dated September 14, 1988 of the Central Administrative Tribunal, New Delhi.

3. In order to appreciate the grievance of the appellant-railways against the impugned order, it is necessary to state the relevant facts in brief. Respondent-employees who are Traffic Apprentices belonged to Class III Service which has four grades, and four grades carry different pay scales as follow :

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(i) Grade I Rs. 250-380(ii) Grade II Rs. 335-425(iii) Grade III Rs. 370-475(iv) Grade IV Rs. 450-575

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The promotion to the alternative grade in the said four grades is by selection. However, the appointments to all the four grades is by promotion. Above Class III posts, are Class II and Class I posts. Class I posts are in Junior Scale grade, Senior Scale grade, Junior Administrative Grade and Senior Administrative Grade. The entire Class II service is filled by promotion by selection from Class III service. In Class I service, 60 per cent posts are filled by direct recruitment and 40 per cent by promotion from Class II service. The recruitment as well as promotion to Class I is through the Union Public Service Commission ('UPSC' for short). All these posts are available as a promotion avenue to the incumbents of Class III posts. Class III service in the Traffic and Transportation Department consists not only of Traffic Apprentices but also of other categories. However, the promotion to Class II post is not made exclusively from Class III service of Traffic and Transportation Department. The incumbents of Class III service in Commercial Department are also entitled to be considered for promotion to Class II posts. Hence, a combined seniority list of Class III service both in the Traffic and Transportation Department as well as the Commercial Department, is prepared. The promotions to further posts, viz. to Class I posts and to the posts of Junior Administrative Grade are thereafter made from the incumbents of the Class II posts.

4. It has further to be noted that the appointments to the posts of Traffic Apprentices is by direct recruitment to the extent of 25 per cent of the annual vacancies in the posts of Section Controllers who are in the grade of Rs. 200-300 (PS) and in other posts in the same cadre in the Yard and Station categories. This was according to the scheme prepared by the Railway Board for improving control organizations on the railways. The Traffic Apprentices thus directly recruited are, on completion of the training, first absorbed as Assistant Movement Inspectors etc. in the grade of Rs. 150-225 and are eligible for promotion to the grade of Rs. 200-300 (PS)/Rs. 250-380 (AS) in the normal manner after selection as Section Controllers, Station Masters, Assistant Station Masters, Yard Masters etc. Provided they complete at least one year's service in the grade of Rs. 150-225. Such promotions are, however, to be considered against 25 per cent of the annual vacancies. The Railway Board had further clarified the position that 25 per cent of the annual vacancies. The Railway Board had further clarified the position that 25 per cent of the total annual vacancies in the grade of Rs. 200-300 (PS)/Rs. 250-380 (AS) were to be earmarked for Traffic Apprentices, and if during any particular year it was not found possible to utilize this quota fully on account of sufficient number of Traffic Apprentices, and if during any particular year it was not found possible to utilise this quota fully on account of sufficient number of Tariff Apprentices being not eligible for promotion (owing to their not having completed one year's service in the grade of Rs. 150-225), the deficit was to be carried forward to the next selection. By their further letter of December 18, 1963, the Railway Board directed that with immediate effect, the Traffic Apprentices on successful completion of the three years' training, should be straightway brought on the scale of Rs. 200-300 (PS)/Rs. 250-380 (AS) instead of being first absorbed in the scale of Rs. 150-225 (PS)/Rs. 205-270 (AS) as prevalent then.

5. Thus, it would be clear that Traffic Apprentices were to be directly recruited to fill vacancies to the extent of 25 per cent of the vacancies and the posts of Section Controllers etc. After recruitment, they were to be imparted three years' special training and thereafter they were required to serve for one year in the grade of Rs. 150-225/Rs. 205-270 after which they were considered for selection to the grade of Rs. 200-300 (PS)/Rs. 250-380 (AS). From 1963, they were to be straightway absorbed in the grade of Rs. 200-300/Rs. 250-380 after completion of their training period of three years, but without having to qualify through Selection Board first and without the condition of one year's service. The Traffic Apprentices were thus to fill vacancies to the extent of 25 per cent. This quota had to be carried forward in case of shortfall in any particular year, and the remaining 75 per cent of the vacancies were earmarked for promotion to other departmental officials who were called rankers. After both the sources of recruitment merged in the scale of Rs. 200-300/Rs. 250-380, a single unified cadre known as "Relieving Transportation Assistants" stood constituted.

6. It appears that the respondents' grievance in the writ petition filed before the Delhi High Court was that their seniority in the cadre of Relieving Transportation Assistants was not correctly fixed according to the quota rule of 25 : 75, either because the quota rule was not observed properly or the unfilled vacancies in the 25 per cent quota reserved from them were not carried forward from 1954 onward. Hence, they wanted their seniority list as Traffic Apprentices to be recast according to quota and rota rule, and the seniority list which was prepared allegedly contrary to the said rule, quashed. The learned Single Judge had rejected the petition on the ground that they had approached the court too late and, therefore, their petition suffered from laches. The Division Bench in Letters Patent Appeal No. 220 of 1972 did not agree with the learned Single Judge and decided the matter on merits, and gave the findings that the Northern Railways had for the first time communicated by their letter of December 26, 1967 to all the Divisional Superintendents that it was decided that the seniority of Traffic Apprentices appointed prior to December 18, 1963 would be determined from the date of their promotion to the grade of Rs. 250-380 and not according to their quota again the

vacancies which occurred from April 1, 1954 onwards, the date from which the direct recruitment of the Traffic Apprentices was permitted. The court held that according to the correct interpretation of the various letters of the railway administration, Traffic Apprentices were to be seasoned seniority, vis-a-vis rankers (promotes) according to their roster position, taking into account the positions reserved for them, viz. 25 per cent of the actual annual vacancies with effect from April 1, 1954 carried forward in subsequent years. The court also held that the railway administration subsequently modified its instructions contained in their letter of December 26, 1967 and issued another letter on April 19, 1968 stating that the Traffic Apprentices would be deemed to have been promoted from the dates they were eligible provided vacancies were available in the particular year for their absorption and that their interests would be protected by giving benefit of pro forma fixation of pay etc. A further letter of December 18, 1968 thereafter followed from the headquarters of the Northern Railways in which it was made clear that the seniority had to be fixed with reference to the dates from which the Traffic Apprentices would have been promoted in the grade of Rs. 250-380 had the quota of the vacancies from 1954 onwards always been calculated correctly, i.e. the vacancies from 1954 onwards should always have been taken into account to work out 25 per cent quota for the Traffic Apprentices. On these findings, the Division Bench stated as follows :

"We may state here that all the Rankers who are likely to be affected by the decision in this case are party respondents. No right of any innocent third party is involved in the case. We are also not quashing any rule, executive instruction or letter of the railway administration or any seniority list issued by the earlier than February 1971. The Supreme Court has not laid down any rigid rule of limitation in entertaining a writ petition under Article 32 or Article 226 of the Constitution of India. The Supreme Court was pleased to observe that it will almost always be proper for the court to hold that it is unreasonably delayed if the writ petition is filed beyond the period of limitation prescribed for a similar civil action. Thus, if there are any exceptional facts and circumstances even the delay beyond the period of limitation prescribed for a similar civil action. Thus, if there are any exceptional facts and circumstances even the delay beyond the period of limitation prescribed for a civil action for the remedy may be reasonable or justified and the writ petition may still be entertained. The court may, however, be reluctant to entertain such writ petitions but that does not mean that the court has no jurisdiction. If we are right in holding that the cause of action arose in February 1971, or even earlier in April 1968, then there is no question of any delay. But if we are not, even then on the facts and circumstances of the case, as discussed above, we have not been able to persuade ourselves to agree with the learned Single Judge that the writ petition is enormously delayed. By issuing the writ of mandamus in this case, we are only setting at rest the uncertainty and disparity which is prevailing in the various divisions of the Northern Railway in the matter of fixation of inter se seniority of traffic Apprentices and Rankers. The railway administration have themselves admitted that in Allahabad division of Northern Railway, seniority has been granted Traffic apprentices according to their quota against the vacancies which occurred from April 1, 1954 onwards. In case of commercial apprentices who are similarly situated seniority has been assigned vis-a-vis remain according to their quota on the basis of their roster positions 1, 5, 9 etc. There is no reason why the appellants should be deprived of what is legally due to them even if they have approached this court after some delay.

For the reasons stated above, the letters patent appeal is accepted, the judgment of the learned Single Judge on question No. 1 is set aside and reversed and we hold that the

writ petition was not belated and was not liable to dismissal on the ground of laches. The finding on question No. 2, having been upheld by us, the appellants, are entitled to the grant of writ of mandamus directing respondents 1 to 3 to fix the seniority of Traffic Apprentices, in the light of the observations made by the learned Single Judge and as upheld by us. The seniority list, Annexure E attached to the writ petition is quashed. The respondent railway administration shall draw the seniority list within 3 months from today and proceed to make confirmations and/or further promotions in the higher grades in accordance with the law, rules and orders in force from time to time. In the circumstances of the case we leave the parties to bear their own costs."

The decision of the Division Bench is of July 30, 1975. Against this decision the railways preferred a special leave petition which was dismissed. Thereafter, the railways prepared a fresh seniority list in 1976. It appears that this seniority list took care of the grievances only of the employees who were parties to the petition. Against the said seniority list, therefore, some of the traffic Apprentices filed a writ petition being Writ Petition No. 948 of 1976 challenging the seniority. That writ petition was transferred to the Tribunal and numbered as T. A. No. 246 of 1985. It appears that in the meanwhile in 1983, the railways, in compliance with the judgments delivered by the High Courts of Allahabad and Punjab and Haryana prepared a fresh seniority list, and the Tribunal disposed of the transfer petition (T.A. No. 246 of 1985) by order dated June 25, 1986. By this order, the Tribunal observed that the application before the Tribunal was to direct the respondent railways (the appellants herein) to quash the impugned seniority list, i.e. the seniority list of 1976 and to prepare a fresh seniority list and to make the confirmations and promotions in accordance with the fresh seniority list. The Tribunal observed that that relief had already been granted by the Delhi High Court in LPA No. 220 of 1972 by its decision which is already referred to above. Hence, no fresh directions were necessary. The Tribunal also found that a fresh seniority list had been prepared in 1983 in pursuance of the directions given by the High Court. It appears further that since the seniority list was not prepared within three months as directed by the High Court and according to respondent 8 in that application before the Tribunal, the seniority list was also not in conformity with the other directions contained in the High Court judgment, a contempt petition was filed before the High Court and the same was pending before it. The Tribunal, therefore, stated that it expressed no opinion as regards the validity or otherwise of the seniority list prepared in pursuance of the High Court's directions. The Tribunal also made it clear that unless otherwise ordered by the competent authority or the High Court, as the case may be, the seniority list prepared in pursuance of the directions of the High Court shall be acted upon and :

"... the confirmations and promotions made on the basis of that list within a period of four months from the date of the receipt of this order. Further, promotions shall be made strictly in accordance with the list prepared in 1983 in pursuance of the directions of the High Court in LPA No. 220 of 1972."

7. It appears, therefore, that the railways had prepared a seniority list of 1983 in pursuance of the directions of the Delhi High Court in LPA No. 220 of 1972 decided on July 30, 1975. The grievance of the petitioners in T.A. No. 246 of 1985 (Writ Petition No. 948 of 1976) was against the seniority list of 1976 and since that seniority list was superseded by 1983 list which the Tribunal observed was in pursuance of the High Court's directions, nothing survived in the grievance of the applicants there (viz. Chadha and others in that application).

8. It further appears that according to the statement made on behalf of the appellant-railways, the railways had already worked out the promotions up to and inclusive of Class II posts by February

14, 1988. However, the applicants, Chadha and others in T. A. No. 246 of 1985 filed a contempt petition being C.C.P. No. 17 of 1987 before the Tribunal making grievance that full effect had not been given to the judgment dated June 25, 1986 of the Tribunal in T.A. No. 246 of 1985. On that application, the Tribunal passed the impugned order of September 14, 1988, which is the subject matter of the present appeal. The Tribunal has observed that the full consequences of the judgment of the Tribunal were spelt out by the General Manager of the railways in his letter of July 30, 1982 forwarded to the Railway Board. The Tribunal then set out the said consequences as contained in General Manager's letter and observed that the General Manager had correctly appreciated the consequences of the directions of the High Court and of the Tribunal. The Tribunal then stated that, however, in implementing the order, the railways did not give effect to the said judgments. The Tribunal then directed that the seniority list prepared on the basis of the panels of 1972-73 and 1978-79 for promotion to Class II posts should be revised. We are not concerned here with the said directions. However, the Tribunal observed further that the railways' contention that the earlier direction of the Tribunal did not entitle the petitioners, i.e. Chadha and others to be considered for promotion to Class II or Class I or Junior Administrative Grade was not correct and the same was contrary to its order as well as to the implications of the said order spelt out by the General Manager himself. The Tribunal then went on to observe as follows :

"..... When the Tribunal had directed not only confirmation and promotion be made in accordance with the revised seniority list but also directed further promotions to be made on that basis, it was the duty of the respondent not only to give promotion in Class III but also to give further promotion to Class II, Class I and Junior Administrative Grade. Of course, these promotions have to be given in accordance with the rules with effect from the date when the juniors were given promotion. The petitioners should have also been considered and promoted to Class II, Class I or Junior Administrative Grade just as their juniors were considered and promoted. Further inclusion in the panel of 1978-79 cannot, therefore, be insisted upon since they have already qualified.

4. After the above clarification, we do not think that there would be any further difficulty in implementing the order and in granting promotion to Shri Chadha and Shri Sandhu in respect of whom alone this petition is pressed.

5. It is stated that although the implications were correctly understood by the General Manager, even where the orders were implemented to a certain extent, no arrears have been paid. It is hereby clarified that on such promotion, they would also be entitled to payment of arrears. The order of the Tribunal in T-246/85 (sic) as further clarified hereinabove shall be implemented accordingly and compliance reported to the Tribunal within six weeks from today."

9. The Tribunal also kept the matter before it on October 31, 1988, and the special leave petition giving rise to the present appeal was filed against the said decision of the Tribunal.

10. Two additional facts need be stated. The combined seniority list which was prepared in 1983 of Class III posts for promotion to Class II posts was finalised in March 1987 and was made the basis of the postponed selection to Class II service as per orders of the Tribunal and panel was issued on March 13, 1987. Thereafter on the basis of orders passed by the Tribunal on December 9, 1987, the Traffic Apprentices who became eligible for promotion in the first batch after revision of seniority were considered by a Review Departmental Promotion Committee and interpolated in the Class II

panels of 1972-73 and 1975-76. As a result, the seniority of the personnel from the Commercial Department was affected since direct recreate - Traffic Apprentices from the Traffic and Transportation Department were given seniority according to the quota and rota rule from 1954 onwards. Hence, M/s. A. Commercial Department approached the Tribunal by their application Nos. 360 of 1988 and 936 of 1989 respectively, challenging the new seniority list, and also on the ground that they were not parties to the earlier proceedings.

11. It further appears that three of the respondents, Chadha, Sandhu and Malik filed an application before the Tribunal making a grievance that they were not given their due promotion. That application is also pending before the Tribunal.

12. It also appears that the Departmental Promotion Committee prepared two fresh panels - the first panel was for promotions to the posts which were vacant between 1972-73 and 1975-76 and the second for the vacant posts for the year 1978-79. In the second panel, K. N. Saxena stands selected.

13. In this appeal, we are concerned with two limited issues, viz. (i) whether in the context of the history of the litigation and the decisions and directions of the High Court and the Central Administrative Tribunal, the respondents should be given promotions in all posts above Class II service as a logical corollary to their new ranking in the revised seniority list of 1983, and (ii) whether on such promotions being given, they should be paid emoluments of such higher posts with retrospective effect. We have stated that we are concerned with the promotions of the respondents in the posts above Class II service because, as stated earlier, the appellants-railways have already worked out their promotions in Class II service. There is, therefore, no dispute with regard to the respondents promotion in Class II service. However, the dispute still survives with regard to their entitlement to the emoluments in Class II service with retrospective date.

14. As regards the promotion to posts above Class II service, we find that initially when the petitioners approached the court, their grievance was with regard to their seniority in and promotions to the grades in Class III service. The High Court had also in its direction said nothing about the promotions to Class II service. However, as stated earlier, the appellants have worked out the promotions to Class II service on the basis of the new seniority list of Class III service of the year 1983. The respondents, therefore, have gained substantially since, as stated earlier, the promotions to Class II and above were not the subject matter of the writ petition before the High Court. We are afraid the Tribunal has gone beyond the scope of the original petition while dealing with the contempt petition. The respondents, therefore, are not entitled to claim in these proceedings as a matter of right promotions to any higher posts. We, however, do not desire to make any observations which will come in their way if the UPSC is inclined to look into the matter. In that case that UPSC may constitute Review Departmental Promotional Committees and give them pro forma promotions and seniority in the promotional posts from the relevant years, if they are otherwise eligible to the same. We say nothing more on the subject.

15. As regards the emoluments of higher posts with retrospective effect, we find the High Court had categorically denied the same to the respondents even on the basis of their claim to higher grades in Class III posts. Further, even the entitlement of the respondents to the higher grades in Class III posts as per the directions of the High Court was on the basis of the quota and rota rule which in itself is both inequitable and irrational. Time and again, the rule has been criticised on account of the absurd result to which it leads, viz. the deemed appointments have to be given to the concerned employees even from the dates when they were not in service and probably when they were still in their schools and colleges. We are informed across the bar that this is the situation even with respect

to some of the respondents herein. The quota and rota rule had to be worked out in the present case from the year 1954 as per the direction of the High Court and the Tribunal. There is, therefore, neither equity nor justice in favour of the respondents to award them emoluments of the higher posts with retrospective effect. It is for this reason that we are of the view that the decisions of this Court such as in P. S. Mahal v. Union of India ((1984) 4 SCC 545 : 1985 SCC (L&S) 61 : (1984) 3 SCR 847) directing the payment of higher emoluments with retrospective effect on account of the deemed promotions of earlier dates will not be applicable to the facts of the present case and have to be distinguished.

16. It is true that the appellant-railways had failed to give correct effect to the decision dated July 30, 1975 of the High Court in L.P.A. No. 220 of 1972, and had kept the matter hanging till this day for no fault of the respondents. The High Court by its said decision had directed the appellant-railways to prepare a seniority list within three months from the date of the decision, and also to proceed to make further promotions in the higher grades in accordance with law, rules and orders in force from time to time. But it is equally true that during all these years the higher posts were not vacant and were manned by others and the appellant-railways had paid the incumbents concerned the emoluments of the said posts. The respondents have not actually worked in the said posts and, therefore, on the principle of "no work no pay" they will not be entitled to the higher salary. Hence, we give no directions in this behalf and leave it to the appellant to give such relief as they may deem fit.

17. The directions given above would be subject to the petitions which are already pending before the Central Administrative Tribunal, New Delhi. The appeal is allowed accordingly with no order as to costs.

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