

PETITIONER:
AMAR DEO PRAKASH AND ORS. ETC. ETC.

Vs.

RESPONDENT:
UNION OF INDIA AND ORS. ETC. ETC.

DATE OF JUDGMENT 19/02/1990

BENCH:
RANGNATHAN, S.
BENCH:
RANGNATHAN, S.
SAIKIA, K.N. (J)

CITATION:
1990 AIR 1040 1990 SCR (1) 450
1990 SCC Supl. 641 JT 1990 (2) 570
1990 SCALE (1)261

ACT:

Railway Establishment Manual--Rules 202 and 321 and Railway Board Circulars dated July 29, 1983 and December 20, 1983--'Traffic Stream' and 'Control Stream' mass upgradation and restructuring of the cadres--Validity of for purposes of inter-se seniority.

HEADNOTE:

These writ petitions have been filed by Group 'C' (class III) employees of the Railways working in its Transportation (Traffic) Department. The said Department has different streams e.g. 'Control Stream' and 'Traffic Stream' and the employees working therein have different scales of pay. For purposes of their promotion to Group B posts, it was necessary to fix their inter se seniority, as only those employees from the different streams could be considered for promotion as would fall within the zone of consideration as per seniority list. As the zone of consideration is determined with reference to the number of vacancies in Group B for which selection is held, at any point of time, the position of the employee in the combined seniority list of all the streams is important. The zone of consideration of the employees for promotion is fixed in the order of the combined seniority of the employees from the different streams. The Department prior to the implementation of the recommendations of the Third Pay Commission fixed the inter se seniority of the employees of Group C employees on the basis of the grade i.e. employees working in a higher grade on a regular basis were treated senior to those working in the lower grade and the said principle worked well until the enforcement of the recommendations of the Third Pay Commission w.e.f. 1.1.1973, when higher or lower scales of pay came to be fixed in respect of certain posts which were having the same scale of pay upto 31.12.1972. This presented difficulty in fixing the inter se seniority of the employees and the Railway Board in order to resolve the difficulty issued circulars from time to time indicating how their seniority should be fixed but for some reason or the other, the dissatisfaction amongst the employees in the matter of seniority continued. Being aggrieved by the experiments which according to the petitioners only resulted in chaos

and confusion, employees of the Control Stream have filed the writ petition on the Issue of a combined seniority list published by the administration on the basis

451

of instructions on 15.6.85, as they found themselves excluded from the panel of staff to be taken into consideration for promotion to Group B. They pray that the circular dt. 6.1.84 and the follow up action taken culminating in the Selection List be set aside. The petitioner challenge the validity of two circulars issued by the Board, one on 29.7.83 and the other on 26.1.2.1983, restructuring the cadres as discriminatory as according to them they envisage 'mass upgradation' to their detriment. The question for determination is whether the principle adopted on the strength of these circulars for fixing the inter se seniority of these employees is proper.

Dismissing the writ petitions with liberty to the Petitioners to move the Central Administrative Tribunal, if so advised with fuller facts, this Court,

HELD: The inequity is not apparent. Having to deal with two different streams, differently placed, the Government has to find out an equitable solution and it has been groping towards it. One method would perhaps have been to have fixed quotas for promotion from each of the streams but that is not necessarily the only method. An alternative method is being attempted here and the principle that grades of Rs.700-900 and above should be considered together being conceded-the Department is trying to give some weightage by granting upgradation to each stream based on its total strength in order to balance the promotional chances in both the streams. It is possible that some individual cases may be affected but no answer to the question whether any class discrimination has resulted can be given unless fuller details are available and the practical impact of the latest position is placed before the Court. [463A-C]

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition (Civil) No. 11704 of 1985 etc.

(Under Article 32 of the Constitution of India).

R.P. Gupta for the Petitioners.

V.C. Mahajan, Ms. A. Subhashini, B.K. Prasad, C. Ramesh and Hemant Sharma for the Respondents.

The Judgment of the Court was delivered by RANGANATHAN, J. These two writ petitions were filed as

452

early as 1985 but they are still at the admission stage. However notices have been issued to the respondents and we have heard counsel on both sides. As both the writ petitions relate to the same subject matter, it will be convenient to dispose of them by a common order and we proceed to do so.

The controversy in these writ petitions is as to the proper principle for determination of seniority in the Transportation (Traffic) Department of the Indian Railways. Though the petitioners in Writ Petition No. 11704 of 1985 belong to the Central Railways, the principle to be determined will have application over all nine Railways in the country and is being agitated in Writ Petition No. 12802 of 1985 by the All India Train Controller's Association. The officials with whom we are concerned in these writ petitions occupy Group C (Class III) posts in the above department. The question of their inter se seniority has become material for their promotion to Group B (Class II) posts which really

form the lowest rung of the management cadre. 75% of the vacancies arising in Group B (Class II) posts in each department are filled in by promotion on selection from among Group C (Class III) employees of the department on the basis of seniority-cum-merit. The difficulty in determination of the inter se seniority arises because there are different streams of eligible Group C (Class III) employees, occupying posts with different scales of pay, who have to be considered for selection to Group B posts. As only those employees from the different streams can be considered as fall within the zone of consideration as per seniority and as the zone of consideration is determined with reference to the number of vacancies in Group B for which the selection is held at any point of time, the position of an employee in the combined seniority list of all the streams assumes great importance.

We are concerned with the selections for appointment to three Group B posts in the Operating Branch of the Traffic and Transportation Department. These are: Assistant Operating Superintendent, Assistant Traffic Superintendent and Station Superintendent. The four Group C streams which have the avenue of promotion to the above group B posts are: (1) The Control Stream, which consists of the Chief Controller, the Deputy Chief Controller and the Section Controller; (2) The Traffic Stream, which comprises of the Station Master, the Yard Master, Traffic Inspector and Signaller; (3) The Ministerial Stream, consisting of office staff and (4) The Running Stream, consisting of Guards. We are here concerned only with the question of inter se seniority between the employees in the Control

453
Stream and those in the Traffic Stream.

As mentioned earlier, there are several grades and scales of pay prevailing in each of these streams. It will be helpful to tabulate them here for convenient reference:

Control Stream

Post	Pre 1931	Scale of Pay		
		I Pay Commission	II Pay Commission	III Pay Commission
Chief Controller	360-500	450-575	450-575	8501040/1200
Deputy Chief Controller	400-500	300-400	370-475	700-900
Section Con- troller Grade I	300-350	260-350	335-425)	470-750
Grade II	200-300	200-300	270-380)	

Traffic Stream

Post	Pre 1931	Scale of Pay		
		I Pay Commission	II Pay Commission	III Pay Commission
Station Supdt./120-165/)				
Jn. S.M./CYM/80-160/)		300-400	450-575	700-900
TI (Higher) 200-300)				
Stn. Master (Higher)				
Dy. Supdt. 80-160		300-400	370-475	550-750
/YM/TI (Lower)				
SM (Lower) 60-65		80-170	130-225	330-560
Grade and others 80-120		100-185 150-225 200-300 260-350	205-330 250-380 335-425	425-640 455-700 550-750

The zone of consideration of the employees for promotion is fixed in the order of the combined seniority of the employees from the

454

different streams. In each of the streams, seniority depends on the grade. Normally, employees working in a higher grade on a regular basis are senior to those working in the lower grade. To illustrate, the highest Group C grade was Rs.450-575 followed by the grades Rs.370-475, Rs.335-485, Rs.335-425 and so on. (We are referring here to the old pay scales which have since been revised). The employees working in the grade Rs.450-575 were therefore placed on the top followed by those in the grades of Rs.370-475, Rs.335-485 and Rs.335-425. This principle for determination of inter se seniority worked very well till 31.12.72 as the higher scales of pay in both the streams was the same. According to the department, it became difficult to follow this principle when, consequent on the acceptance and implementation of the recommendations of the Third Pay Commission with effect from 1.1.1973, higher or lower scales of pay came to be fixed in respect of certain posts which were having the same scale of pay upto 31.12.1972. For example, the scale of pay of Rs.450-575 held by Station Masters and Traffic Inspectors in the Traffic Stream upto 31.12.72 was upgraded to the scale Rs.700-900 with effect from 1.1.73. On the other hand, in the case of Chief Controllers of the Control Stream, the same scale of Rs.450-575 was replaced by a scale of Rs.840-1040/1200. Similarly, in the case of Station Masters and Inspectors in the grade of Rs.370-475 in the Traffic Stream, the replacement was by the scale of Rs.550-750 while in the case of Deputy Chief Controllers on the scale Rs.370-475, the replacement scale was Rs.700-900. Thus the Control Stream gained an upper hand in the matter of seniority and, consequently, of promotions.

In an attempt to restore some balance and parity between the employees of the different streams, the Railway Board issued certain instructions on 26th October, 1976. As per these instructions, the inter se seniority of the staff working in the grade of Rs.700-900 and the grades above it in the different streams was to be based on the total length of service rendered by an employee in all the grades. This did not satisfy all sections of the staff and difficulties were also experienced in applying the instructions. For example, a Deputy Chief Controller, who had been in the grade of Rs.370-475 upto 31.12.72 and was placed on Rs.700-900 from 1.1.73, gained an advantage over his colleagues in the other stream viz. the Station Masters and Traffic Inspectors. The matter was therefore reconsidered and modified instructions were issued on 11.7.77. According to these instructions, for purposes of drawing out the combined seniority of Group C employees from different streams, the services rendered in the top-most scale in one stream would be considered equivalent to the service rendered in the

455

top-most scale in the other streams, even though the top-most scale in the two streams might be different. This rule also produced anomalies. For example, if in one stream, the top-most scale was Rs.700-900, in another Rs.550-750 and in yet another Rs.840-1040, the length of service rendered in all these grades by the employees was stated to be the basis to determine the combined seniority. Thus an employee having ten years of service in the top-most scale of Rs.550-750 in one stream would rank senior to another having slightly less than ten years of service in the top-most scale of Rs.700-900 in another stream. The Department, therefore, issued revised instructions in August'78/ February'79. As per these instructions, where the top-most scale prior to 1.1.1973 has been replaced by two different scales after 1.1.73, one

higher and the other lower, service rendered in the lower scale will be notionally stepped up as if the service had been rendered in the higher scale. For example, the grade of Rs.450-575 was replaced by Rs.840-1040 for the Controllers and Rs.700-900 for Station Masters and Traffic Inspectors. While drawing up the combined seniority, the service rendered in the grade of Rs.700-900 by the Station Masters and Traffic Inspectors was to be treated as service rendered in the grade Rs.840-1040. Similarly, the pre-revised grade of Rs.370-475 had given rise to two scales, namely, Rs.700-900 and Rs.550-750, and, in that case, the service rendered in the grade Rs.550-750 was notionally treated as rendered in grade Rs.700-900 for drawing up the combined seniority. This principle did not work well either. It seems the circulars of 11.7.77 and August '78 were quashed by the Bombay High Court in W.P. No. 55 of 1980 by its order dated 14.12.83. In the meantime, detailed consideration of the issues was undertaken in consultation with the federations of organised labour and it was finally decided that the combined seniority for purposes of Group B selection should be determined on the basis of the total length of service rendered by employees in any or in all the grades commencing from Rs.700-900 and above and these instructions were issued on 5.3.83. In January 1984, further instructions were issued which, while maintaining the principles laid down on 5.3.83, provided protection to senior employees, who got superseded in a stream for promotion to the higher nongazetted grade in that stream. For example, if an employee in grade of Rs.700-900 supersedes one of his seniors in promotion to the grade of Rs.840-1040 within the stream, he would control the seniority of the employee whom he had superseded. Such a superseded employee would be put to hardship when the combined seniority is drawn up along with employees from the other streams for purposes of selection to Group B. In order to avoid the situation of a senior employee being subjected to such disability, instructions were issued on 6.1.1984 that

456
an employee who supersedes his senior will be credited with the service of the senior whom he had superseded. Aggrieved by these experiments which, according to them, only resulted in chaos and confusion, 45 employees of the Control Stream filed WP 11704/85 when, on the issue of a list published by the administration on the basis of these instructions on 15.6.85, they found themselves excluded from the panel of staff to be taken into consideration for promotion to Group B. They prayed that the circular of 6.1.84 and the follow-up action culminating in the Selection List be also set aside.

The petitioners are also aggrieved by a different set of steps initiated by the Railway Board. A further discrimination against the control stream, it is alleged, has resulted from two circulars issued by the Board, one on 29.7.83 and the other on 26.12.83. These circulars envisaged, what the petitioners call, "mass upgradations" and what the circulars call a "restructuring of the cadres".

The earlier of the two circulars applied to the traffic stream. In so far as is relevant for our present purposes, the "upgradation" was on the following lines:

Name of post	Existing scale	Revised Designation	Revised Scale	Percentage of posts	Remarks
Yard Masters /Asst. Yard Masters	455/700	Dy. Chief Yard Masters	700-900	20%	

Yard Masters	550-750	Chief Yard Masters	840-1040	10% of post in scale of 700-900
Station Master	455-750	Station Supdt.	700-900	10%
Dy. Station Supdt./ Station Master	350-750	Station Supdt.	840-1040	10% of posts in scale of Rs.700-900
2		Separate Cadre of Station Masters/ Asstt. Station Superintendants	700-900	43.5% This we (10% of told, has these'll not been carry scale given of Rs.840- effect 1040 to.

The circular stated that this restructuring will be with reference to the sanctioned strength as on 1.8.83. The staff, who will be placed in the revised grade in terms of these orders will be eligible to draw pay on the higher grades from 1.8.83 with benefit of proforma promotion from 1.8.82. It was made clear that the benefit of proforma fixation will be admissible only to the staff who are placed in the vacancies arising directly as a result of these restructuring orders. The date of proforma fixation has later been shifted, from 1.8.82 to 1.8.83 by a circular dated 13.7. 1987.

The second circular, dated 20.12.1983 pertained to the control stream. The restructuring was on the basis of the cadre strength as on 1.1.84 and the revision of scales was also to be effective from 1.1.84. The pattern of restructure, in so far as it is relevant for our present purposes, is set out thus in the schedule:

Existing Grade & Posts	Existing percentage	Revised percentage
(i) 470-750 (Section Controllers)	Not laid down	15
(ii) 700-900 (Dy. Chief Controllers)	"	58
(iii) 340-1040 (Chief Controller-Gr. II)	"	23
(iv) 840-1200 (Chief Controller-Gr. II)	"	4

It was made clear that the cadre has been restructured keeping in view additional duties, responsibilities and heavier workload in some of the charges and that the revised grades were to be given to employees eligible therefore on such considerations in their existing positions.

Reference must be made to two more circumstances before we deal with the contentions urged before us. The first is that the circular of 6.1.84 referred to above which, according to the counsel for the petitioner introduced the principle of "chance seniority" was quashed by the Central Admin-

istrative Tribunal by its order dated 5.2.1988. A copy of this order has not been made available to us. Secondly, consequent on the said decision of the Tribunal, the Railway Board issued certain instructions on 22.12.88 which reads thus:

"Consequent upon the judgment given by the Central Administrative Tribunal in connection with the above, matter has been reviewed in consultation with the representatives of the recognised organised federations and it has been decided in partial modification of the orders contained in Railway Board's letters dated 28.5.83 and 6.11.84 that the integrated seniority of group C employees for promotion to group B posts should be determined on the basis of consolidated length of non-fortuitous service rendered in the grade of Rs.700-900/2000-3200 and above ignoring promotions to the grade of Rs.840-1040/23753500

It may be mentioned that the petitioners were fully satisfied with the circular of 5.3.83 which according to them, gave effect to rule 321 of the Indian Railway Establishment Manual. According to them, this equilibrium was unjustifiably disturbed by the circulars issued subsequently. The principal grievance urged before us by learned counsel for the petitioner was that, as a result of the restructuring orders read with the order reckoning all persons working in salary grades of Rs.700-900 and above as one group for determining seniority, the control stream staff has been adversely affected to a considerable extent. He points out that persons in the Traffic Stream who entered the supervisory grade of Rs.470-750 were placed in the grade of Rs.700-900 much later than the dates when those in the control stream entered the corresponding scale of Rs.455-700 will gain seniority over the latter. He asks us to compare for this purpose the positions of officers in the control stream with seniority positions Nos. 90 to 190 with those occupying seniority positions Nos. 61 to 208 in the traffic stream. He contends that the staff employed in the control stream lose both monetarily as well as in terms of seniority by being placed in the scale of Rs.700-900 only w.e.f. 1.1.84 as compared to those of the traffic stream who receive such promotions and pay scales w.e.f. 1.8.83. Leaving aside the question of monetary benefits for the time being, the submissions are:

(i) that seniority should be determined on the total length of service as envisaged in rules 202 and 321 of the Indian Railways' Establishment Manual, which read thus:

"202--For selection to class II posts or Civil Engg. Transportation (power) and Mechanical Branch, Transportation (traffic) and Commercial, Signal and Telecommunication, Electric and Stores Department.

(i) Only permanent staff will be eligible

(ii) all staff in grade Rs.335-425 and above provided they have rendered a minimum of 3 years non-fortuitous service after reaching the stage of Rs.335 either in those grades or in a lower grade.

321--Relative Seniority of employees in an intermediate grade belonging to different seniority units appearing for a selection/non-selection post in higher grade.

'When a post (selection as well as non-selection) is filled by considering staff of different seniority units, the total length of continuous service in the same or equivalent grade held by the employee shall be determining factor for assigning inter-seniority irrespective of the date of confirmation of an employee with lesser length of continuous service as compared to another unconfirmed employees with longer length

of continuous service. This is subject to the proviso that only non-fortuitous service should be taken in account for this purpose."

(ii) that if all the grades in the eligible groups are to be clubbed together, the seniority should be reckoned as and from the date of entry into the lowest of the grades in Group 'C' (class III) viz. Rs.470-750/455-700;

460

(iii) that even if the mass upgradations are to be upheld on principle, they must be directed to be made effective from the same date (whether it be 1.8.83 or 1.1.84) in respect of both the streams and should not be on different dates.

(iv) that the whole object and purpose of these circulars is to obliterate the effect of the recommendations of the Third (and even the Fourth) Pay Commissions, after assessing the duties and responsibilities of the staff in both streams, that the staff on the control stream deserve higher scales although these recommendations have been duly accepted and implemented by the Government.

According to the learned counsel, the traffic stream has a huge strength and a powerful union and, pressurised by their numbers, the Railway Board is attempting to take away, indirectly, the benefits given to the control stream by the Pay Commission's recommendations and that too at a point of time when a fresh Pay Commission was in the process of being constituted. Counsel also alleged that the All India Controllers' Association (which has filed writ petition No. 12802 on similar lines) has not been consulted at any stage and these circulars are being issued at the behest of the unions of the traffic staff and despite the representations and protests of the comparatively weaker union of the control staff.

On the other hand, Sri V.C. Mahajan, learned counsel for the Union of India, submitted that the petitioners have not placed any data before the Court to make out a case of discrimination. He submits that after the Writ Petitions were filed in 1985 the Department has issued a circular dated 27.12.88 and a combined seniority list in March 1989. The petitioners have not taken any steps to amend the Writ Petition to challenge this circular or this list or to show in what respect and to what extent the rights of the petitioners have been prejudiced by the restructuring orders. Turning to the "restructuring" circulars, counsel points out that in this case the Government has been hard put to evolve an equitable formula for fair promotional chances to the two sets of people in question. Various attempts had been made earlier but they were not successful. Finally the present formula has been evolved after consulting all the concerned unions. It is not correct, he says, to say that the decisions have been taken without consulting the representatives of the Controlling Stream. It is submitted that, having regard to the few posts at the top of the scale, the Traffic Stream had been complaining of inadequate promotional opportunities. The

461

Government has tried to solve the problem as best as it could and counsel refers to the following basic features behind the restructuring:

(i) The date of entry into grades Rs.700-900 above will be taken as the starting point to reckon seniority. This is the effect of the circular of 22.22.88 the validity of which has not been challenged in the petition.

(ii) Considering the large strength of employees in the Traffic Stream, viz. 4430, about 10% of the posts have been upgraded which will mean that about 443 persons will be in

the above grades. So far as the Control Stream is concerned, the percentage of posts in the above zone has been increased to about 35% of the 270 posts available with the result that about 211 people will be in the above grades. As a result of the mass upgradation, a large percentage of people in the Control Stream immediately derive monetary benefits. They have accepted these benefits and have been occupying the upgraded position since 1984 onwards.

(iii) The date of the upgradation in both the streams cannot be the same for the result of it would be that all the upgraded personnel will have seniority reckonable from the same date. This being the position, their seniority will have to be based on the length of their services in the immediately lower scales or reckoned as from the date of their entry into the lowest of the Group C grades and this would, have revived the same problem which the Government was trying to solve. That is why the Government fixed different dates for the two streams separated only by a short span of five months and this was neither unreasonable nor discriminatory.

Counsel submits that the Government was trying to forge out a solution that will be fair 'to both the streams and that the attempt of the petitioners to accept the upgradations of the scales in their stream but objecting to the other part regarding date of fixation should not be allowed to succeed. He submits that if the petitioners were prepared to accept the same percentage of upgradation as the Traffic Stream personnel and give up the extra benefits received, the Government could reconsider the whole question afresh.

After hearing both counsel, we have reached the conclusion that the materials before us are totally inadequate to come to any conclusion on the true impact of the circulars, In fact, to start with, we were

462

of the view that, in a matter like this, the proper remedy of the petitioners is to approach the Central Administrative Tribunal which has been set up for that very purpose. But since counsel for the petitioners pleaded that the writ petitions have been pending here since 1985 and it would not be fair to the petitioners to sent them now to pursue that remedy, we heard the petitioners and the opposite parties at some length but, as will emerge from the above discussion, the exact position and impact of the circulars is very nebulous. As pointed out by Sri Mahajan, the Department is trying to cope with the problem of giving fair promotional opportunities to two different streams which become eligible for promotion to Group B posts. Since the counsel for the petitioner has stated that he has no quarrel with the circulars of 5.3.83 and 22.12.88 and since the circular of 6.1.84 already stands quashed by the Central Administrative Tribunal, the only grievance of the petitioners that survives is against the upgradation circulars. Apart from the merits, there are three difficulties in considering the plea of the petitioners that the part of the two circulars fixing different dates of upgradation should alone be set aside:

(a) The plea of the petitioners, if accepted, will affect a large number of persons in the traffic stream and even result in a number of reversions in all the Railways. Though the petitioners have made some persons in the traffic stream working in the Central Railway parties, neither the persons likely to be affected in other parts of the country nor their union have been made parties.

(b) As discussed above, the circular of 20.12.83. confers substantial benefits on members of the control stream. A large number of them have been able to secure an upgradation

to the scale of Rs.700-900 which, otherwise, may not have come to them for sometime, and they may or may not all be affected adversely by the date of upgradation. It is also pointed out that upgradation in the traffic stream are subject to selection on the basis of a written test and viva voce, while the upgradations in the control stream are automatic based on seniority-cum-suitability. It is, therefore, not clear even whether the All India Controller's Union is speaking in one voice for all its members either for or against the circular of 20.12.83.

(c) As pointed out by Sri Mahajan, the Department has issued a seniority list in pursuance of its circular. No attempt has been made to substantiate the grievances of the petitioners by pointed factual references to that list.

463

Coming to the merits again, the inequity is not apparent. Having to deal with two different streams, differently placed, the Government has to find out an equitable solution and it has been groping towards it. One method would perhaps have been to have fixed quotas for promotion from each of the streams but that is not necessarily the only method. An alternative method is being attempted here--and the principle that grades of Rs.700-900 and above should be considered together being conceded--the Department is trying to give some weightage by granting upgradation to each stream based on its total strength in order to balance the promotional chances in both the streams. It is possible that some individual cases may be affected but no answer to the question whether any class discrimination has resulted can be given unless fuller details are available and the practical impact of the latest position is placed before us. If a good number of persons in the control stream are benefitted monetarily despite the disadvantage to a few, in the matter of promotion, it may be a question how far the Association of the Controllers will be able to make out a case of class discrimination. Even if we assume that the entire control stream would be adversely affected, the question will still remain whether the basis of differentiation is justified in the circumstances or amounts to arbitrary discrimination. We express no opinion on these questions at this stage. We would only say that, in the absence of adequate material before us, we are unable to reach any conclusion on the plea of discrimination. We, therefore, dismiss the writ petition but we will leave it to the petitioners, if so advised, to move the Central Administrative Tribunal, with fuller facts and in the light of the latest developments, for appropriate relief after impleading all affected parties or their representatives so that the entire picture may emerge and a just conclusion arrived at.

Y. Lal
missed.

Petition dis-

464