
(2025) 05 SC CK 0282

In the Supreme Court Of India

Case No : Civil Appeal No. 5498 Of 2012

Dinesh D Panchal And Ors

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 01-05-2025

Acts Referred:

Citation : (2025) 05 SC CK 0282

Hon'ble Judges : Abhay S. Oka, J;Ujjal Bhuyan, J

Bench : Division Bench

Advocate : Wajeesh Shafiq, Vishwajeet Kumar, Sabika Ahmad, Pradhuman Gohil, Taruna Singh Gohil, Alapati Sahithya Krishna, Hetvi Ketan Patel, Rushabh N. Kapadia, Taniya Bansal, A. Venayagam Balan, Arvind Kumar Sharma, Amrish Kumar, Yatin Soni, Hemal Kiritkumar Sheth

Final Decision : Dismissed

Judgement

Abhay S. Oka, J

1. Leave granted in Special Leave Petition (C) No.15769 of 2010.

FACTUAL ASPECT

2. The appellants were working in Bhavnagar Division of the Western Railway Zone. They were holding the posts of goods guard, senior goods guard, passenger guard, senior passenger guard and mail/express guard. By the year 2002, there was a reduction of goods traffic within the territorial jurisdiction of Bhavnagar Division on account of the conversion of railway tracks from meter gauge to broad gauge. Apart from a considerable reduction in the number of goods trains running between Sabarmati and Botad, there was a cancellation of mail/express trains running between Ahmedabad and Bhavnagar as well.

3. On 17th September 2002, the Western Railway accorded sanction for the surrender of 19 posts of goods guard in Bhavnagar Division. Similarly, by a letter dated 8th January 2003, sanction was accorded for surrendering 12 permanent

posts of goods guard based on a six-monthly cadre review. In view of surrender, the Division Officer of Bhavnagar Division, by a communication dated 22nd November 2002, gave an option to the employees (guards and drivers category) to opt for transfer to another division. Some of the petitioners before the High Court exercised this option. By memorandum dated 7th March 2003, the option of original petitioners Nos. 7, 8, 11, 12, 13, 14 and 15 before the High Court, and three others was accepted, and they were posted at Ahmedabad with a direction that they should be relieved to report to the place of posting. They were all goods guards. At the relevant time, Ahmedabad Division was not in existence, but Ahmedabad was falling within the territorial jurisdiction of Baroda Division. On 1st April 2003, due to restructuring, new divisions were created, and accordingly, Ahmedabad Division was formed. Those petitioners before the High Court, whose option was accepted under the memorandum dated 7th March 2003, joined at Ahmedabad Station on various dates from 9th April 2003 to 26th April 2003.

4. There was a communication issued on 30th June 2003 by the Divisional Office, Bhavnagar, addressed to the Deputy Regional Manager, Ahmedabad, requesting to give acceptance for absorbing 12 surplus guards mentioned therein on the ground of being rendered surplus. The original petitioners Nos. 1, 2, 3, 4, 5, 6, 9 and 10 were named in the letter. They were either mail/express guards, senior passenger guards and passenger guards named in the letter. On 5th April 2004, the competent authority in Bhavnagar Division issued a formal office order in accordance with the approval of the competent authority for the surrender of a total of 11 posts and accorded approval for the transfer of original petitioners Nos. 1 to 6, 9 and 10 before the High Court, and three others. Accordingly, on 9th April 2004, the original petitioners Nos. 1 to 6, 9 and 10 resumed duties at Ahmedabad. The surrender of 11 posts, which was approved on 5th April 2004 by Bhavnagar Division, was in respect of three mail/express guards, four posts of passenger guards, and the remaining posts of senior goods guard.

5. In the present appeals, we are dealing with two categories of appellants. The first category is of original petitioners Nos. 7, 8, 11, 12, 13, 14, and 15 before the High Court, who belonged to the goods guard category and who joined Ahmedabad station in April 2003. The second category of appellants are original petitioners Nos. 1 to 6, 9, and 10 before the High Court, who belonged to the cadre of guards, such as mail/express guards, senior passenger guards, and passenger guards who were in a higher pay scale than the first category. They joined at Ahmedabad on 5th April 2004, after the formation of Ahmedabad Division. As far as the first category is concerned, they were rendered surplus in Bhavnagar Division and were absorbed in Baroda Division in Ahmedabad. After the formation of Ahmedabad Division, they were allotted to Ahmedabad Division. The rest of the petitioners before the High Court, as stated above, were higher in hierarchy. After ascertaining the willingness to be treated as surplus, they were transferred and absorbed in Ahmedabad Division on the condition that they would take seniority in respect to cadre from the date of their absorption.

6. Respondents Nos.4 to 7 in Civil Appeal No. 5498 of 2012, filed original application No. 355 of 2006 before the Central Administrative Tribunal (for short, 'the Tribunal'). The Tribunal held that goods guard absorbed in the Baroda Division and later allotted to Ahmedabad Division shall take their seniority from the date of absorption in the Baroda Division. It was held that other goods guards higher in hierarchy who had expressed their willingness to be posted in Ahmedabad Division would be absorbed at the bottom of the seniority list in the recruitment grade of the goods guard. By the impugned judgment, a Division Bench of the Gujarat High Court confirmed the view taken by the Tribunal. Being aggrieved by the judgment of the High Court, Civil Appeal No. 5498 of 2012 was filed by those appellants who were parties before the Tribunal. Civil appeal arising out of Special Leave Petition (C) No.15769 of 2010 is preferred by the appellant, who was a passenger guard and was not a party before the Tribunal.

SUBMISSIONS

7. The learned senior counsel appearing for the appellants in Civil Appeal No. 5498 of 2012 submitted that the appellants were absorbed in Ahmedabad Division on 5th April 2004. He submitted that the circular no. E 106/2004 dated 25th May 2004 and consequent amendment brought in the Indian Railway Establishment Manual, 1989 (for short, 'the Manual') in the form of paragraph 313A cannot be made applicable to the appellants for fixing their seniority at the bottom of the recruitment grade instead of fixing it at the bottom of the absorption grade. He pointed out that paragraph 313A of the Manual means that only the seniority of surplus employees is to be fixed at the bottom of the grade of absorption and not at the bottom of recruitment grade. He submitted that the appellants who were given the option for absorption cannot be made to suffer by fixing the seniority of surplus employees at the bottom of the recruitment grade.

8. Learned senior counsel for the appellants invited our attention to the prayers made in the original application before the Tribunal filed by the 4th to 7th respondents in Civil Appeal No. 5498 of 2012. He pointed out that the prayer 'A' was for a direction to the railway authorities to consider the representation made by the 4th to 7th respondents. The prayer 'B' was to declare that respondents Nos. 9 to 19 to the original application were not surplus staff of Bhavnagar Division when they were transferred from Bhavnagar Division to Ahmedabad Division. A prayer was made to repatriate them to their original Bhavnagar Division, or alternatively, they may be put at the bottom level of the original recruitment grade, i.e., the bottom level of goods guard in the seniority list at the transferred place. He submitted that, therefore, prayer for repatriation ought to have been considered.

9. Learned counsel representing the respondents supported the decisions of the Tribunal and the High Court.

CONSIDERATION OF SUBMISSIONS

10. We must note here from the impugned judgment of the High Court that the

prayer to repatriate the appellants was not pressed into service. Therefore, now in this appeal, the appellants cannot be permitted to agitate the same.

11. We have carefully perused the impugned judgments. Even the Tribunal has noted that respondents Nos. 4 to 7 in Civil Appeal No. 5498 of 2012 were working in Ahmedabad Division after its formation on 1st April 2003. The Tribunal noted that those who have come to Ahmedabad Division after having been declared surplus in Bhavnagar Division were the private respondents in the original application. Both the Tribunal and the High Court considered the grievance that the original application was barred by limitation. It was held that when the representation of the 4th to 7th respondents was rejected by the order dated 19th April 2006, the cause of action arose for filing the original application. Therefore, the objection of limitation was rightly rejected. The Original Application was filed within three years from 19th April 2016. Hence, there is no merit in the contention based on the bar of limitation.

12. The Tribunal in paragraph 24 has noted that the question was whether inter-divisional transfer of surplus staff and intra-divisional transfer of surplus staff are governed by the same set of rules. The Tribunal referred to paragraphs 311-312 of the Manual, which is a compilation of instructions of the Railway Board. It also referred to RE 106/89 dated 21st April 1989, which is on the subject of absorption. Thereafter, the Tribunal considered the Railway Board circular No. RE 106/2004 dated 26th June 2004. Accordingly, paragraph 313A was incorporated dealing with assignment of seniority to redeployment of surplus staff. Paragraph 313A provided that the surplus employees are not entitled for benefits of the past service rendered in the previous units/departments for the purposes of their seniority in the new department and such persons are to be treated as fresh entrants in the department. The Tribunal also considered the argument that circular no. RE 106/2004 was brought in on 26th June 2004. The Tribunal held that the circular itself provided that closed cases should not be reopened based on the said circular. The Tribunal found, as a matter of fact, that the draft seniority list was published for the first time in November 2004, and therefore, the circular dated 26th June 2004 would apply. This view is correct.

13. Now, we may refer to the Railway Board circular dated 26th June 2004, which the Tribunal has quoted. Relevant paragraphs of the circular read thus:

".....

Para 1, 3, 3.1 & 3.2 are as under:-

1. In terms of instructions contained in this Ministry's letter No. E(NG) 11-84/REI/10 dated 21.04.1989. and reiterated in their letter No. E (MPP)/99/1/75 dated 28.11.2000. Seniority of surplus staff absorbed in other units/departments is determined as follows:-

(1) When only a small number of staff is being rendered surplus and they have to be absorbed in various units of other departments against vacancies of duly

sanctioned posts. They can be suitably adjusted in those units with their full seniority and their seniority merged in the respective units.

(2) When large number of staff is being rendered surplus and they are absorbed in new units, they should be given their full seniority but kept in a separate block against special supernumerary posts in consultation with the unions so that they get promotion separately as per percentage applicable to them. In their original cadre and the existing staff in the absorbing unit are also not adversely affected.

(3) In light of the above, the question of review of instructions regulating seniority of surplus staff on their absorption in the new cadre/department has been under consideration by this Ministry. The views of both the recognized Federation have also been obtained and taken into account, it has been decided that the service rendered by the surplus staff prior to redeployment will not count for seniority and promotion in the absorbing unit. To this extent item (i) of para 1 above stands modified. Other stipulations in the existing instruction including the one referred to in (ii) of para 1 above will remain unaltered.

3.1 Indian Railway Establishment Manual, 1989 may also be amended as per advance correction Slip No. 159 enclosed.

3.2 Past cases decided otherwise will not be reopened."

13.1 As provided therein, paragraph 313A was inserted into the Manual. Paragraph 313A reads thus:

"313A - Assignment of seniority to redeployment surplus staff:-

The surplus employees are not entitled for benefits of the past service rendered in the previous units/department for the purpose of their seniority in the new unit/department. Such employees are to be treated as fresh entrants in the matter of their seniority, promotion etc.

Note: 1. When two or more surplus employees of a particular grade in a unit/department are selected on different dates for absorption in a grade in another unit/department, their inter se seniority in the latter unit/department will be same as in their previous unit/department. Provided that-

(i) No direct recruit has been selected for appointment to that grade in between these dates; and

(ii) No promotee has been approved for appointment to that grade between these dates.

Note: 2 When two or more surplus employees of a particular grade in a unit/department are simultaneously selected for redeployment in another unit/department in a grade, their inter se seniority in the particular grade, on redeployment in the latter unit/department would be same as in their previous unit/department.

(Authority: Ministry's of Railway letter No. E(NG-1-2000/SR6/28 dated

25.05.2004)."

14. Now, coming to the decision of the High Court, we find that the High Court has referred to the policy of Western Railway, which was in force from 1989. The High Court has quoted the said policy, which reads thus:

"Normally, the junior most of the employees should be rendered surplus, irrespective of the manner in which they had entered the grade. However, where staff give their willingness to go on bottom seniority in recruitment grades to other departments, such volunteers should be given preference depending upon the availability of vacancies in the other cadre and their suitability, including medical fitness."

15. Therefore, those who have been rendered surplus in Bhavnagar Division cannot have a grievance if they were to go to the bottom of the seniority of the recruitment grade. As regards the first category, which we have referred to is of goods guards who were rendered surplus. The second category comprises senior goods guards, senior passenger guards, and mail/express guards. Though the persons belonging to the second category were not rendered surplus, on the option exercised by them, they were brought to Ahmedabad Division. Thus, they volunteered to be rendered surplus, and therefore, as per the policy, they went down to the bottom of the seniority in recruitment grade.

16. No case is made out to interfere with the concurrent findings of the Tribunal and High Court. Hence, appeals are dismissed.