
(1977) 08 MAD CK 0023
In the Madras High Court

K.S. Somasundaram and Others

APPELLANT

Vs

The Secretary, Railway Board and Others

RESPONDENT

Date of Decision : 02-08-1977

Acts Referred:

Citation : (1978) 1 MLJ 272

Hon'ble Judges : Govindan Nair, C.J

Bench : Division Bench

Judgement

Govindan Nair, C.J.—The order impugned in these five writ petitions is the one dated 14th July, 1976 passed by the Railway Board, the first respondent, reverting the five petitioners who were on that date holding the post of A Grade Guards having their lien in B Grade to the lower post of B Grade Guards. Counsel for the petitioners contended that the order dated 14th July, 1976 of the first respondent was passed on a misunderstanding of the decision of the Supreme Court in *The General Manager, South Central Railways and Another Vs. T. Venkata Rao and Others*, . The facts are the following.

2. There was a Grain Shop Department to supply provisions to the railway staff. The petitioner in these five writ petitions were appointed respectively on 24th September, 1944, 17th March, 1945, 25th June, 1943, 24th June, 1943 and 24th June, 1943, the petitioner in Writ Petition No. 4164 of 1976 as attender and the petitioners in the other writ petitions as clerks. The Grain Shop Department was wound up in 1949 and on the winding up of the Grain Shop Department all the petitioners were absorbed as brakesmen in the permanent department. The principle of fixation of salary as well as the determination of seniority was laid down by a circular of the Railway Board dated 16th October, 1952. Since we are concerned in this case only with the question of seniority, we shall extract that part of the circular which specifically relates to the question of seniority and that is contained in the last sentence of the circular:

They should be given only such seniority which they would have got had they been absorbed in the absorbing department right from the beginning of service.

3. This sentence was put in because, as far as fixation of pay was concerned, the absorbed persons were entitled to have their pay fixed taking into account what they were drawing and by reckoning the service which they have rendered in the Grain Shop Department. Such a procedure may result in the position that a person with lesser service will receive a higher pay. To avoid such persons getting higher pay and also getting seniority over persons in the Grain Shop Department having longer service, the last sentence has been incorporated. But that sentence also clearly and unambiguously lays down that the seniority after absorption in the absorbing department must be such that they would have if they were treated as having been absorbed right from the beginning of their service in the absorbing department. This means that those absorbed could carry with them their service in the Grain Shop Department. No distinction was sought to be made between persons who were absorbed as clerks and others who have been absorbed as in the case of the five petitioners as brakesmen, or for that matter, in any other capacity in the absorbing department. From the wording of the circular, the general provision to be applied was that the service in the Grain Shop Department will be available for those who have been absorbed in the permanent department . That is how the circular was also understood by the Railway Board and accordingly the petitioners had their seniority fixed by taking into account their services in the Grain Shop Department. This resulted in their being promoted as A Grade Guards. We need not refer in detail to two of the decisions of the Railway Board, one in 1957 and the other on 13th January, 1961, for, the order dated 13th January, 1961, restored the position as we have stated above.

4. In the case of certain "Class III" persons as they were called, i.e., those who were temporarily absorbed into the temporary Grain Shop Department and who were later taken into the permanent department, the Railway Board decided not to allow them the service they have had in the Grain Shop Department for fixing their seniority in the permanent absorbing department. Those persons who were thus denied their service in the Grain Shop Department challenged the discrimination, as they called it, in proceedings under Article 226 of the Constitution before the Andhra Pradesh High Court and the Andhra Pradesh High Court held that there was no justification for denying them the services they have had in the Grain Shop Department. The Railway's appeal before the Supreme Court failed and the Supreme Court confirmed the view of the Andhra Pradesh High Court.

5. Some of the persons who have been absorbed as clerks in the permanent absorbing department volunteered to be appointed as Assistant Station Masters and they were chosen and appointed as Assistant Station Masters. The persons so appointed as Assistant Station Masters took up the position that they were entitled to have their seniority fixed in the cadre of Assistant Station Masters by taking into account the seniority they had in the clerical cadre fixed on the basis of the principle that their Grain Shop Department's service must also be counted. In dealing with this question, the Supreme Court in the decision

reported in *The General Manager, South Central Railways and Another Vs. T. Venkata Rao and Others*, , observed in paragraph 5 of the judgment which we shall extract in full; for, the arguments in this case, to a very large extent, turned on the construction we have to place on the said paragraph of the Supreme Court judgment:

As respects the cases of Respondents Nos. 4, 5 and 33 who were respectively Petitioners Nos. 4, 5 and 34 in the writ petition, the appellants' case was they had been drafted into other cadres. They were originally given their seniority in the cadre of Commercial Clerks as it was given to the other Grain-shop Clerks. But later they volunteered for promotion as Assistant Station Masters in the years 1955 and 1956 earlier to the receipt of the revised instructions of the Railway Board in the years 1957 and 1961. They were confirmed as Assistant Station Masters and thereupon they ceased to have any lien in the cadre of Commercial Clerks. As regards Respondent No. 27 who was Petitioner No. 28 in the writ petition, certain other facts were pleaded showing that he had also gone to a different cadre. The learned single Judge did not make any clarification or distinction in the application of the instruction issued in the year 1952 in cases of Respondents Nos. 10, 4, 5, 27 and 33. Argument put forward by learned Counsel for the appellant is that determination of seniority on the basis of the decision of this Court in *The General Manager, South Central Railway, Secunderabad and Another Vs. A.V.R. Siddhantti and Others*, , would be only applicable in the cadre of clerks and not in any other cadre lower or higher. The grievance is justified to some extent. Primarily the instructions issued in the year 1952, which were held to govern the cases of the employees like the respondents were for determination of seniority in the cadre of clerks. It was not meant to override any other instruction, rule or directions concerning the determination of seniority in any other cadre. For instance if a person had become a confirmed Assistant Station Master earlier than any of the Respondents Nos. 4, 5 and 34, the latter could not count his entire period of working in the clerk's post for getting seniority over the former. If, however, the seniority determined on the basis of the decision of this Court in *The General Manager, South Central Railway, Secunderabad and Another Vs. A.V.R. Siddhantti and Others*, , was to be reflected in determination of the seniority in any other cadre to which any of the respondents might have gone, then the seniority in the cadre of the clerk will have to be determined on the principles laid down in *The General Manager, South Central Railway, Secunderabad and Another Vs. A.V.R. Siddhantti and Others*, .

It is seen from the portion of the judgment extracted that their Lordships have repeatedly referred to the clerical cadre and there are even expressions showing that the principle of carrying over the service in the Grain Shop Department will apply only to the clerical cadre. Counsel for the Railway, therefore, was seemingly justified in contending that if the question of seniority in any cadre, other than the clerical cadre arose for determination the principle of the Supreme Court case should be applied.

6. But we think that we must understand this decision of the Supreme Court in the light of the specific contentions which had been raised before the Supreme Court. We must also remember that the case did not deal with the initial absorption in accordance with the principle laid down by the Railway Board itself, by circular, dated 16th October, 1952. The judgment dealt with a case where the persons so absorbed initially, voluntarily left the post of clerks and discarded their normal avenues of promotion and chose to opt for what are called ex-cadre posts as Assistant Station Masters. We cannot understand the Supreme Court as having laid down that in the initial absorption, if the employer due to exigencies of the situation and in the exercise of managerial functions decided that the absorption should not be only to clerical cadre but must be in such posts where the absorbed persons can be more conveniently and, particularly, more usefully employed, all the persons absorbed cannot be treated similarly one section having the benefit of the services rendered by them in the Grain Shop Department and another section not getting that benefit. That will be clearly discriminatory, as such a procedure would amount to denying to some what has been given to others. But in fact the Railways did not so discriminate. They gave the brakemen, the petitioners, the benefit of their services they have had in the Grain Shop Department as early as in 1949 and they were also duly promoted to the cadre of guards and they remained as guards till the decision of the Supreme Court was rendered in the case which we have just referred to above. The passage which we have extracted and tried to understand gave rise to doubts and the Railway Board, we think, have misunderstood the dicta in passing the order, dated 14th July, 1976 and the consequential further orders reverting the five petitioners from Guards Grade A to Guards Grade B. We see no justification for this. The decision of the Supreme Court cited above does not support such a procedure. We, therefore, set aside the order of the Railway Board, dated 14th July, 1976 as well as the consequential orders by which the petitioners have been reverted to the post of Guards Grade B from the post of Guards Grade A and direct that the posts held by the five petitioners before the order of the Railway Board, dated 14th July, 1976 be restored to them with consequential benefits and their services continued in the cadre of Guards Grade A. We direct the parties to bear their respective costs in these petitions.