

SMT. ANURADHA MUKHERJEE AND ORS. ETC. ETC.

v.

UNION OF INDIA AND ORS. ETC.

MARCH 12, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

Service Law :

Railway Establishment Manual (Volume I) :

Para 302—Graduate Clerks Grade-II—Appointment as Clerks Grade I—Seniority—Held in service graduate Clerks Grade II appointed as Clerks Grade I would get only proforma promotion as Clerks Grade I from 1.10.1980, but would be entitled to emoluments from the date they actually took over charge—Those appointed after 1.10.1980 would not get promotion from 1.10.80 but only from the date of their actual appointment as Clerks Grade-II notionally upgraded as Clerk Grade I.

Government Litigation :

Government not assisting their counsel properly—Steps to be taken—Explained.

In the Railways vacancies in the cadre of Clerks Grade I in the pay scale of Rs. 330-560 prior to 1.10.1980 were filled up, 20% of the cadre strength by direct recruitment from open market and by in service graduate Clerks Grade II by way of limited recruitment through departmental examination, and 80% posts were filled by promotion of non-graduate clerks Grade-II. After October 2, 1980 in-service graduate Clerks Grade-II were recruited on principle of seniority-cum-merit and in the event of non-availability of suitable in service candidates, the balance vacancies were filled up alongwith other vacancies by direct recruitment. 80% vacancies remained available to non-graduate Clerks Grade-II for promotion on the basis of seniority-cum-suitability. Later, as one time measure, recruitment through Railway Service Commission was dispensed with and limited recruitment by departmental competitive examination was conducted for selection of the graduate Clerks Grade II.

The present appeals were filed against the judgments of various

Benches of Central Administrative Tribunal in the cases arising out of disputes regarding claim to seniority and emoluments in Clerk Grade-I of in service graduate Clerks Grade-II appointed as such on different dates from 1968 to 1982.

Disposing of the appeals, this Court

HELD : 1.1. All in-service graduate Clerks, Grade II appointed to Grade I Scale would get only proforma promotion as Grade I Clerks from October 1, 1980 without any monetary benefits except for the purposes of pension. They are entitled to emoluments with effect from the date they actually took over the charge. The *inter se* seniority would be as per para 302 of the Railway Establishment Manual (Vol.I). i.e., the date of seniority in the grade is the date of appointment to a post in that grade. The grant of higher pay, as a rule, does not confer seniority above the existing incumbents regularly appointed to the post. Among direct recruits and promotees, the date of joining the working post is the date for the direct recruits and date of regular promotion, after completion of the process to order promotion, is the date for the promotees. *Inter se* seniority is alternative, i.e., promotee first and direct recruit would be below him and the same would continue in the order of merit in the respective lists and the roster maintained by the Railway Administration. Promotee would thus be senior to direct recruits. [283-F-H; 284-A]

1.2. Such of the graduate Clerks though appointed as Grade II Clerks after October 1, 1980 by process of selection through open competitive examination or limited recruitment by departmental examination and upgraded under the rules, would not get the promotion with effect from the proforma date of October 1, 1980 but only from the date of their actual appointment as Grade II Clerks, notionally upgraded as Grade I Clerks since their appointments are after October 1, 1980. The *inter se* seniority of the 20% direct recruits on the one hand and limited recruitment graduate Grade II Clerks and promotees on the other, shall be determined in accordance with para 302 of the Railway Establishment Manual (Volume I).

[284-B-C]

1.3. The persons appointed on *ad hoc* basis de hors the rules can get seniority not from the date of their initial appointment but from the date on which they are actually selected and appointed in accordance with the rules and their appointment and seniority would take effect from the date

of selection after due completion of the process and they would be junior to in-service as well as direct recruit-candidates. The *inter se* seniority should be reckoned accordingly. [284-D-E]

2. It has been the experience of the Court that in some cases even after reserving the matters for judgment and directing the Government to give their written arguments no one would take responsibility to assist the Court. The Government should make a particular officer responsible to assist the counsel appearing for them and should take steps to see that necessary and needed assistance is made available to the Courts or the Tribunals to adjudicate the disputes and reach proper decision expeditiously. [284-H; 285-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4265 of 1996. Etc. Etc.

From the Judgment and Order dated 18.12.90 of the Central Administrative Tribunal, Calcutta in T.A. No. 1301 of 1986.

Dushyant Dave, Dr. Rajeev Dhawan, Pratap Venugopal, K.J. John, V.K. Verma, B.K. Prasad, A.D.N. Rao, A.K. Sharma, C.V.S. Rao, V.N. Patil, Gopal Singh, Manoj Prasad, S.N. Shukla, O.P. Gupta, N.A. Siddiqui, E.C. Vidyasagar, L.R. Singh, Amlan Ghosh, K.N. Rai, T.N. Singh, R. Mukherjee for the appearing parties.

Raju Ram Chandran, M.D. Adkar, S.D. Singh, Ejaz Maqbool, Anis Suhrawardy and A.S. Bhasme, Advs. for Intervenor.

The Judgment of the Court was delivered by

K. RAMASWAMY, J. Leave granted.

These appeals by special leave filed by some of the employees and by the Union of India, arise from the orders of Calcutta, Allahabad New Delhi and Lucknow Benches of the Central Administrative Tribunal. The facts in the main appeal filed by Mrs. Anuradha Mukherjee, are sufficient for disposal of the controversy raised in all these appeals.

The appellants are graduates appointed as Lower Division Clerks - Grade II on different dates between 1968 to 1982. The Railway Administration restructured the ministerial cadres in the Railways; determined their

gradewise percentage of the posts and made distribution. We are concerned in these cases with Clerks (Grade I) in the pay-scale of Rs. 330-560. 40% of the vacancies existing prior to October 1, 1980 in the Clerks category were earmarked for Clerks (Grade I) by Railway Board's letter dated June 1, 1979. Subsequently it was revised by Board's letter dated November 10, 1981 to 57.5%.

Under the Board's letter dated November 10, 1980 to bring about qualitative improvement in the functioning of the restructured cadres in the Personnel Department, it was decided to fill up 20% of those total posts of Senior Clerks (Grade I) by direct recruitment through the Railway Service Commission. Out of balance 80% of the in-service graduates, 13-1/3% posts were made available to the in-service graduate Grade II Clerks to compete for those vacancies in their quota. Existing graduate employees in the Personnel Department, subsequently extended to Accounts Department and other Departments, were also permitted to compete for direct recruitment quota and age qualification was relaxed. It was decided that seniority of directly recruited Senior Clerks vis-a-vis those promoted to the Grade would be determined with reference to the date of entry into the Grade.

By letter dated June 18, 1981, the Board had decided to fill up 13.1/3% of the posts of Senior Clerks from in-service graduate Clerks (Grade II) by competitive examination to be held by the Railway Service Commission. In the event of their non-availability it was decided to fill up the residue vacancies by direct recruitment along with 20% direct recruitment quota from open market. The orders issued thereunder were made effective from October 1, 1980 but no arrears are payable on that account. The pay of the employees so appointed was decided to be fixed proforma from October, 1, 1980 but the actual payment of emoluments as Senior Clerks was allowed from the date of their actually taking over the charge in that post. It was further decided that 40% vacancies in the said post existing as on September 30, 1980 would be filled up in accordance with the orders in force prior to the issue of letter dated June 18, 1981. These orders were made applicable to the non-Accounts Department as well as Personnel Department and this ratio of 20 and 13.1/3 per cent between direct recruitment and promotion of in-service graduate candidates was made applicable to all in-service graduate Clerks (Grade II).

Letter dated January 20, 1981 clarified in para 2 (ii) that 10% of the vacancies of Senior Clerks existing as on October 1, 1980 as per Board's letter of November 10, 1980 were to be filled up by promotion from amongst the existing Clerks (Grade II) of the Personnel Department on *seniority-cum-suitability basis*. The direction was to obviate the confusion that direct recruitment from open market would always be by merit. The existing Clerks (Grade II) in the Personnel Department were also made eligible for 20% direct recruitment quota.

In the letter dated July 31, 1981 it was decided in para 2 (ii) that 13.1/3% of the vacancies in the posts of Senior Clerks existing as on October 1, 1980 made available by order dated June 18, 1981 were directed to be filled up from amongst the in-service graduate Clerks (Grade I) in the manner indicated in para 1 (ii) of the letter dated June 18, 1981. In other words, out of 57.5% of the vacancies, 13.1/3% vacancies would be available to the in-service graduate Clerks (Grade II) for recruitment by competitive examination by Railway Service Commission. The unfilled vacancies would be thrown open to candidates from open market. Para 2 (iii) of this letter indicates that 10% vacancies thereof would be filled up by direct recruitment through Railway Service Commission. The balance 10% vacancies having arisen on October 1, 1980 against direct recruitment quota were decided to be filled up by promotion of Clerks (Grade II) on the basis of seniority-cum-suitability as per the then existing procedure. 13.1/3% plus 10%, i.e., 23.1/3% of the vacancies were to be filled up from amongst the in-service graduate Clerks (Grade II) by recruitment through limited departmental examination. In other words, recruitment of graduate in-service Grade-II Clerks as Grade I Clerks through Railway Service Commission was dispensed with. 10% of the vacancies out of 57.5% were to be filled up by direct recruitment from open market. These orders were made applicable to non-Personnel Departments also and this order, it was clarified, was in supersession of their letter dated January 20, 1981. All graduate Clerks (Grade II) working in any Department were made eligible to compete in the limited recruitment for selection as Grade I Clerks. This was open to all in-service graduate Clerks (Grade II) including SCs and STs by open competition as well as by rule of reservation applicable to them. In para 3, it was clarified that limited reservation to the extent of 13.1/3% by limited departmental examination or 10% by direct recruitment would be applicable only if candidates from graduate Clerks (Grade II) were available. 80% of the posts should be kept unfilled for available

non-graduate Grade II Clerks for promotion as Grade I Clerks.

By its letter dated January 5, 1982, Railway Board had modified its earlier letter dated July 31, 1981 relating to paras 2(ii), 2(iii) and 4 and stated that vacancies arising on October 1, 1980 should be filled up as per the manner indicated in para 2 (ii) of their letter dated January 20, 1981, i.e., vacancies arising on October 1, 1980, i.e., 10% of the vacancies should be filled up by existing graduate Junior Clerks (Grade II) by limited competitive examination by Railway Service Commission. The balance vacancies should be filled up by promotion of non-graduate Clerks (Grade II) on the principle of seniority-cum-suitability. Vacancies existing on and from October 2, 1980 should be filled up in the manner indicated in para 2 (iv) of their letter dated July 31, 1981, i.e. 20% of vacancies by direct recruitment while graduate Clerks (Grade II) who are still available are eligible to compete in open competition on the principle of seniority-cum-suitability but not on pure merit like open market candidates. It was made applicable to all ministerial staff. Junior Clerks (Grade II) in all non-Personal Departments also but not to Accounts Department.

In the letter dated August 10, 1983 the Board has stated that pursuant to the order dated June 18, 1981 the promotion of personnel as Senior Clerks would be effective from October 1, 1980 but no arrears were payable on that account. However, they clarified that the "pay of the Railway servants appointed to the upgraded post was fixed pro forma from 1.10.1980 but actual payment of emoluments in the upgraded posts was allowed only from the date they actually took over charge of the upgraded post" and that "pro forma pay only in particular cases covered under the above-quoted order dated June 18, 1981 would be counted for pensionary benefits as a special case in relaxation of Rule 2545-P.II & para 501 MRHR 1950".

In letter July 26, 1985 in para 1 it was stated that the limited recruitment to in-service candidates and direct recruitment from open market would be done on the same basis referred to above, namely, seniority-cum-suitability to in-service candidates and merit to open market candidates and this would be done on one time basis, through departmental competitive examination as one time measure for the in-service candidates.

Thus we have three streams to fill up vacancies in the cadre of Senior Clerks, i.e., Grade I Clerks in the pay-scale of Rs. 330-560. viz., (i) direct

recruits from open market (20% of the Cadre strength); (ii) graduate Grade II Clerks (13.1/3% direct limited recruitment through departmental examination) and (iii) 80% non- graduate promotee-Grade II Clerks. Those three streams continued to remain throughout the period. Though the counsel on either side contended that their inter se seniority should be determined with effect from October 1, 1980 or from the date of taking actual charge of the posts, the above letters do not deal with that controversy.

The *inter se* seniority of the candidates is regulated under para 302 of the Railway Establishment (Volume I-Revised Edition, 1989) which reads as under :

"302. Seniority in initial recruitment grades. - Unless specifically stated otherwise the seniority among the incumbents of a post in a grade is governed by the date of appointment to the grade. The grant of pay higher than the initial pay should not, as a rule, confer on railway servant seniority above those who are already appointed against regular posts. In categories of posts partially filled by direct recruitment and partially by promotion, the criterion for determination of seniority should be date of regular promotion after the process in the case of promotee and the date of joining the working post after due process in the case of direct recruit, subject to maintenance of *inter-se* seniority of promotees and direct recruits among themselves. When the dates of entry into a grade of promoted railway servants and direct recruits are the same, they should be put in alternate positions, the promotees being senior to the direct recruits, maintaining inter-se seniority of each group.

NOTE : In case the training period of a direct recruit is curtailed in the exigencies of service, the date of joining the working post in case of such a direct recruitment shall be the date he would have normally come to a working post after completion of the prescribed period of training."

A narration of these facts clearly indicates the following conclusions:

(1) Vacancies in the posts of Senior Clerks existing prior to October 1, 1980 were 40%. Of them 20% were reserved for direct recruits by competitive examination through the recruitment agency, viz., Railway

Service Commission and 80% for promotees.

(2) Vacancies in the posts of Senior Clerks arising on and from October 1, 1980 were 57.5%. Of them 20% would go to direct recruits and 80% to promotees.

(3) Among the in-service graduates out of 80%, 13.1/3% posts are reserved for graduate Clerks (Grade II). They were eligible for competition as open candidates subject to in relaxation of age qualification. The unfilled posts will be thrown open to open market candidates.

(4) The balance vacancies would be available to in-service non-graduate candidates. Senior-cum-suitability was the basis on which they were entitled to be considered for promotion.

(5) For the vacancies which had arisen after October 2, 1980, 13.1/3% and 10% were reserved for graduate Clerks, (Grade II) subject to their availability. They would be recruited on the principle of seniority-cum-suitability. If no suitable in-service candidate is available the balance vacancies will be filled up along with 10% vacancies by candidates from open market. 80% vacancies will be available to non graduates, seniority-cum-suitability being the principle for promotion of non-graduate Clerks, (Grade II) also.

(6) As one time measure, recruitment through Railway Service Commission was dispensed with and limited recruitment by departmental competitive examination would be conducted for selection of the graduate Grade II Clerks.

(7) All in-service graduate Clerks, (Grade II) appointed to Grade I scale would get only pro forma promotion as Grade I Clerks from October 1, 1980 without any monetary benefits except for the purposes of pension. They are entitled to emoluments with effect from the date they actually took over the charge. It would be available for computation of pensionary benefits. The *inter se* seniority would be as per para 302 i.e., the date of seniority in the grade is the date of appointment to a post in that grade. The grant of higher pay, as a rule does not confer seniority above the existing incumbents regularly appointed to the post. Among direct recruits and promotees, the date of joining the working post is the date for the direct recruits and date of regular promotion, after completion of the

process to order promotion, is the date for the promotees. *Inter se* seniority is alternative, i.e., promotee first and direct recruit would be below him and the same would continue in the order of merit in the respective lists and the roster maintained by the Railway Administration. In other words promotee would be senior to direct recruits.

It is seen that such of the graduate Clerks though appointed as Grade II Clerks after October 1, 1980 by process of selection through open competitive examination or limited recruitment by departmental examination were upgraded under the aforesaid rules, they would not get the promotion with effect from the pro forma date of October 1, 1980 but only from the date of their actual appointment as Grade II Clerks, notionally as Grade I Clerks since their appointments are after October 1, 1980. The *inter se* seniority of the 20% direct recruits on the one hand and limited recruitment graduate grade II Clerks and promotees on the other, shall be determined in accordance with para 302 of the Railway Establishment (Volume I) in the manner indicated above.

We have yet another source who claim parity with others. They are *ad hoc* appointees *de hors* the rules. They are the appellants in C.A. Nos. @ SLP Nos. 2473-77/95. Admittedly, they were appointed *de hors* the rules. Therefore, they can get seniority not from the date of their initial appointment but from the date on which they are actually selected and appointed in accordance with the rules and their appointment and seniority would take effect from the date of selection after due completion of the process and they would be junior to in-service as well as direct recruit candidates. The *inter se* seniority should be reckoned accordingly.

It would be clear that the directions in various letters of the Board should be worked out in the above manner and the seniority should be determined accordingly.

Before parting with these appeals, we place on record the valuable assistance rendered by S/Shri Dushyant Dave and Rajiv Dhavan, learned senior counsel for the respective direct recruit-graduate Grade II Clerks and promotee Junior Clerks. But for the private parties fighting in this case, we would not have received such an assistance to clarify the above legal position. Had it been by the Union as usually we come across, it would have been difficult since the assistance is scanty. This unhappy situation would have resulted in injustice to several persons. It is our sad experience

that in some cases even after reserving the cases for judgment and directing them to give their written arguments no one would take responsibility to assist the Court. We hope that the Union of India and the Railway Administration would take steps to see that necessary and needed assistance would forthcome to the Court or the Tribunal to avoid undue burden on this Court for proper adjudication of disputes. We hope that this unsavoury situation would not be repeated hereafter. We indicate that they should make a particular officer responsible to assist the counsel appearing for them by placing all the necessary rules or instructions so as to enable this Court or the Tribunal to adjudicate the disputes and reach proper decision expeditiously.

The appeals are disposed of accordingly but in the circumstances, without costs.

Appeals disposed of.