

UNION OF INDIA & ORS.

A

v.

V.K. KRISHNAN & ORS

(Civil Appeal No. 2532 of 2010)

B

FEBRUARY 17, 2015

[ANIL R. DAVE AND SHIVA KIRTI SINGH, JJ.]

Railway service: Indian Railway Establishment Manual, 1989 – Paras 180, 189, 320 – Promotion of railway employees from one group to another and from one grade to another within the group – Respondent nos. 1 to 3 working in group D – Respondent nos.2 and 3 working in highest grade in group D promoted to higher post, in group C – Respondent no.1 was in a lower grade than respondent nos.2 and 3 – Claim of respondent no.1 that he was having the longest service in group D but was not promoted – Held: Respondent no.1 was not in the highest grade of group D and being in a lower grade than respondent nos.2 and 3, he could not have been promoted along with respondent nos.2 and 3 – The Tribunal as well as the High Court committed an error while coming to the conclusion that simply because respondent no.1 had a longer service in group D, he should also have been promoted along with respondent nos.2 and 3, who were working in a higher grade in group D – There cannot be one seniority list for all the employees working in different grades in one particular group – The seniority list for employees working in different grades should be different and there cannot be any common seniority list for all the employees working in one particular group.

C

D

E

F

G

H

A Disposing of the appeals, the Court

B HELD: 1. Respondent no.1 was working in the lowest grade of group D, as a substitute porter, whereas respondent nos.2 and 3 were working in the highest grade in group D. Respondent no.1, though having longer service in group D, was in a lower grade than respondent nos.2 and 3 in group D service. For this reason, respondent nos.2 and 3 were promoted to a higher post, namely, in the lowest grade of group C from the highest grade of group D, whereas respondent no.1, who was in the lower grade of group D, was not promoted to a group C post. To be able to get promoted to a post in group C, one must be in the highest grade of group C and admittedly respondent no.1 was not in the highest grade of group D and being in a lower grade than respondent nos.2 and 3, respondent no.1 could not have been promoted along with respondent nos.2 and 3. [Paras 11] [189-C-F]

E 2. Para 180 of the Indian Railway Establishment Manual, 1989 pertains to promotion to higher grades in group D and group C posts. According to the said para, all railway employees in the lowest grade should be eligible for consideration for promotion to higher grades in the transportation and commercial branches. The said para further deals with a preparation of seniority list. According to the said para, an ad hoc seniority list is to be prepared on the basis of length of continuous service in the grade and for the purpose of promotion, a suitable person is selected and placed on a panel of training. The aforesaid content of para 180 clearly denotes that seniority lists of the employees are to be prepared on the basis of length of continuous service in different grades. This clarifies that there

H

cannot be one seniority list for all the employees working in different grades in one particular group. In other words, there would be different seniority lists in one particular group and each seniority list will contain list of employees working in one particular grade or there may be different sub-seniority lists of employees working in different branches of one grade. Promotion will be given from lower grade to higher grade in one group and for that purpose, seniority list of the lower grade will be taken into account. Once a person gets promotion to the higher grade, his name will be included in the seniority list of the employees of the higher grade. [Para 14] [191-D-H; 192-A]

3. Para 189 pertains to the promotion to higher grade in group C. As per the provisions of para 189, when an employee working in group D, who has no regular avenue for promotion in group D, i.e. when he is in the highest grade in group D, he becomes eligible for promotion to a group C post. Group C posts are also divided into different grades. Upon getting promotion from the highest grade of group D, a person gets promotion to the lowest grade in group C. So far as maintenance of seniority is concerned, para 320 stipulates that there would be different seniority lists for persons who are in equivalent grades. It may happen that different persons might be working in different branches or different units doing different type of work, but they are in one grade, i.e. in one pay scale, and a seniority list for those persons working in one particular grade would be a common seniority list. Thus, it is very clear that seniority list shall be different for each grade and in that event a person working in one particular grade would be promoted to the higher grade on the basis of his seniority in that particular

A grade. [Paras 18 and 19] [193-B-F]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2532 of 2010.

B From the Judgment and Order dated 27.11.2007 of the High Court of Kerala at Ernakulam in Original Petition No. 14500 of 2003.

with

C C. A. Nos. 1972-1973, 1974-1975 & 1976-1977 of 2015.

D A. K. Sanghi, Kiran Bhardwaj, S. N. Terdal, Anil Katiyar, B. Krishna Prasad, C. N. Sreekumar, G. Prakash for the Appellants.

Gurusharan Sharma, Amit Sharma, Dipesh Sinha, A. Raghunath for the Respondents.

E The Judgment of the Court was delivered by

ANIL R. DAVE, J. 1. Leave granted in all the special leave petitions.

F 2. A common question of law is involved in all these appeals and therefore, at the request of the learned counsel appearing in these appeals, all these appeals have been heard and decided together.

G 3. The issue involved in these appeals is with regard to interpretation of some of the paras of Indian Railway Establishment Manual, 1989 (hereinafter referred to as 'the Manual'). We are mainly concerned with interpretation of paras 180, 189 and 320 of the Manual. For the purpose of deciding these appeals, we have taken facts from Civil Appeal No.2532 of 2010, which is the main matter in this

H

group of matters.

A

4. Before advertng to the real issue, in our opinion, it would be proper to deal with the subject, which pertains to preparation of seniority lists and promotion of railway employees from one group to another and from one grade to another within the group. Railway services have been mainly classified in four groups. In the instant case, we are concerned with services included in different grades in groups C and D. In each group, there are different grades and the employees working in the lowest grade in one group get promotion to the higher grade within the group. When an employee is in the highest grade in a group, he would get promotion to the higher group and the promotion is given on different basis, with which we are not concerned.

B

C

5. Group D is the lowest group having different grades, as stated hereinabove. The persons working in a particular grade would be having same pay scale though they might be working in different branches i.e. different persons working in one grade, who would be having same pay scale, might be working in different departments or different branches with different qualifications and different nature of work. For the purpose of service conditions and for the purpose of higher promotion, persons belonging to one grade are treated equally.

D

E

F

6. So far as the facts of Civil Appeal No.2532 of 2010 are concerned, all the respondents were initially working in group D, which is the lowest group as per the railway set-up. Out of respondent nos.1, 2 and 3, respondent nos.2 and 3 were promoted to a higher post of Pointsman 'B' in group C, whereas respondent no.1, who was having the longest service in group D, had not been promoted and therefore, he had approached Central Administrative Tribunal with a grievance that he had been denied benefit of promotion.

G

H

A 7. After hearing the concerned parties, the Tribunal had allowed Original Application No.1761 of 1998 on 21st June, 2001 and had directed that respondent no.1, who was the applicant before the Tribunal, should be considered for promotion on the basis of his seniority.

B 8. Union of India, the appellant herein, was aggrieved by the aforesaid order passed by the Tribunal and had, therefore, approached the High Court of Kerala by filing O.P. No.14500 of 2003. Vide judgment dated 27th November, C 2007, the Original Petition filed by the Union of India has been dismissed and therefore, the Union of India has filed the present appeal.

D 9. The case of respondent no.1, who was working as a substitute porter in group D, was that he was having longer service in group D than respondent nos.2 and 3 and therefore, case of respondent no.1 ought to have been considered for promotion and he ought to have been promoted to the higher post in group C as respondent nos.2 E and 3 had been promoted. It is an admitted fact that so far as length of service in group D is concerned, respondent no.1 was having longer service than respondent nos.2 and 3.

F 10. As stated hereinabove, in one particular group, there are employees working in different grades and the grades are also having a different hierarchy and a person working in the lowest grade within the group on the basis of his seniority or merit or both, as the case may be, is G promoted to a higher grade within the group. As stated earlier, we are not concerned with the basis on which promotion is given from one grade to another or from one group to another. The question here is whether a person H working in one grade of a lower group can get promotion on the basis of his seniority in his group irrespective of the

length of service rendered in a particular grade. So as to understand the issue in a better perspective, hypothetically we may say that there are four grades in group D viz. I, II, III and IV; grade IV being the lowest and grade I being the highest. A person working in the lowest grade i.e. in grade IV would get promotion to grade III, then to grade II and then to grade I. After he has been placed in grade I of group D, he would get promotion to the lowest grade in group C, which is a higher group.

A

B

11. It is an admitted fact that respondent no.1 was working in the lowest grade of group D, as a substitute porter, whereas respondent nos.2 and 3 were working in the highest grade in group D. Respondent no.1, though having longer service in group D, was in a lower grade than respondent nos.2 and 3 in group D service. For the aforesaid reason, respondent nos.2 and 3 were promoted to a higher post, namely, in the lowest grade of group C from the highest grade of group D, whereas respondent no.1, who was in the lower grade of group D, was not promoted to a group C post. To be able to get promoted to a post in group C, one must be in the highest grade of group C and admittedly respondent no.1 was not in the highest grade of group C and being in a lower grade than respondent nos.2 and 3, respondent no.1 could not have been promoted along with respondent nos.2 and 3.

C

D

E

F

12. In our opinion, the Tribunal as well as the High Court committed an error while coming to the conclusion that simply because respondent no.1 had a longer service in group D, he should also have been promoted along with respondent nos.2 and 3, who were working in a higher grade in group D.

G

13. Para 180 of the Manual, which relates to promotion to higher grades in group D and C posts, reads as under :

H

A “180. Transportation (Traffic) and Commercial
 Department. – All railway servants in the lowest grade
 should be eligible for consideration for promotion to
 higher grades in both the Transportation and
 Commercial branches. Applications should be invited
 B from amongst categories eligible for promotion from
 both the branches. All Railway servants who apply will
 be considered. An adhoc seniority list will be prepared
 on the basis of length of continuous service in the grade
 C and suitable men selected and placed on a panel for
 training. Systematic and adequate training and
 examinations or tests must precede actual promotions.”

(emphasis supplied)

D Relevant portion of para 189, which pertains to
 promotion to a higher grade in group C, is as under:

“189. Promotion to higher grades in Group ‘C’ :-

E (a) Railway servants in Group ‘D’ categories for whom
 no regular avenue of promotion exists 33-1/3% of the
 vacancies in the lowest grade of Commercial Clerks,
 Ticket Collectors, Trains Clerks, Number Takers, Time
 F Keepers, Fuel Checkers, Office Clerks, Typists and
 Stores Clerks etc. should be earmarked for promotion.
 The quota for promotion of Group ‘D’ staff in the Ac-
 counts Deptt. to Group ‘C’ post of Accounts Clerks will
 be 25%.

G Para 320 of the Manual reads as under :

“320. RELATIVE SENIORITY OR EMPLOYEES IN AN
 INTERMEDIATE GRADE BELONGING TO DIFFERENT
 SENIORITY UNITS APPEARING FOR A SELECTION/
 H 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 employees shall be the 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 employee with longer length of continuous service. This is subject to the proviso that only non-fortuitous service should be taken into account for this purpose."

A
B
C

14. Let us now look at the provisions of para 180 of the Manual first. The said para pertains to promotion to higher grades in group D and group C posts. According to the said para, all railway employees in the lowest grade should be eligible for consideration for promotion to higher grades in the transportation and commercial branches. The said para further deals with a preparation of seniority list. According to the said para, an ad hoc seniority list is to be prepared on the basis of length of continuous service in the grade and for the purpose of promotion, a suitable person is selected and placed on a panel of training. The aforestated content of para 180 clearly denotes that seniority lists of the employees are to be prepared on the basis of length of continuous service in different grades. This clarifies that there cannot be one seniority list for all the employees working in different grades in one particular group. In other words, there would be different seniority lists in one particular group and each seniority list will contain list of employees working in one particular grade or there may be different sub-seniority lists of employees working in different branches of one grade. Promotion will be given from lower grade to higher grade in one group and for that purpose, seniority list of the lower grade will be taken

D
E
F
G
H

A into account. Once a person gets promotion to the higher grade, his name will be included in the seniority list of the employees of the higher grade. For clarity once again, we may give an illustration that a person who is in grade IV, as hypothetically stated hereinabove, upon getting
B promotion to grade III, would get his name included in the seniority list of employees working in grade III and he would be eligible to be promoted to grade II. It may happen that a person working in grade IV, who has not been promoted for whatever reasons to grade III, though having longer
C service as an employee working in that group, may not get promotion to grade II because he is still working in grade IV and in such an event, a person who might be having lesser service in grade III than the employee having a longer
D service in grade IV or in that group, may get promotion to grade II. From grade II, an employee gets promotion to grade I and thereafter he gets promotion to the lowest grade in the higher group. This appears to be the normal mode of promotion.

E 15. So far as Civil Appeal No.2532 of 2010 is concerned, respondent no.1 was in the lowest grade of group D, whereas respondent nos.2 and 3, though having lesser length of service in group D, were in the higher grade
F of group D and therefore, they got promotion to the post of Pointsman B in group C.

G 16. As respondent nos.2 and 3 were employees working in the higher grade of group D than respondent no.1, respondent no.1 cannot make any grievance with regard to promotion of respondent nos.2 and 3 to a higher post in group C.

H 17. For the aforesaid reason, the Tribunal as well as High Court committed an error by giving a direction to the appellants to consider the case of respondent no.1 for

promotion to the post to which respondent nos.2 and 3 were promoted. A

18. Para 189 pertains to the promotion to higher grade in group C. As per the provisions of para 189, when an employee working in group D, who has no regular avenue for promotion in group D, i.e. when he is in the highest grade in group D, he becomes eligible for promotion to a group C post. Group C posts are also divided into different grades. Upon getting promotion from the highest grade of group D, a person gets promotion to the lowest grade in group C. Para 189 gives details as to how the promotion is to be given to an employee working in the highest grade of group D and how many posts are reserved for such employees who have no avenue for further promotion in their group D. B
C
D

19. So far as maintenance of seniority is concerned, para 320 stipulates that there would be different seniority lists for persons who are in equivalent grades. It may happen that different persons might be working in different branches or different units doing different type of work, but they are in one grade, i.e. in one pay scale, and a seniority list for those persons working in one particular grade would be a common seniority list. Thus, it is very clear that seniority list shall be different for each grade and in that event a person working in one particular grade would be promoted to the higher grade on the basis of his seniority in that particular grade. E
F

20. The aforesaid position is so clear that the learned counsel appearing for the appellants had hardly to make any further submission to substantiate his case. According to him, the Tribunal as well as the High Court had committed an error by looking at the length of service of respondent no.1 in group D. True, that respondent no.1 was appointed G
H

A earlier in point of time than respondent nos.2 and 3, but because of their ability respondent nos.2 and 3 had been promoted to higher grades earlier and therefore, they got an opportunity to get promotion to a higher post, whereas respondent no.1, who was working in a much lower grade as a substitute porter, could not get promotion like respondent nos.2 and 3.

21. On the other hand, it had been submitted by the learned counsel appearing for respondent no.1, who, according to him, had been superseded, that a common seniority list for employees in different group should have been maintained and on the basis of length of service an employee should be given promotion to the higher group or grade. According to him, seniority was most important and on the basis of seniority of respondent no.1, he too should have been promoted as it is an admitted fact that respondent no.1 was appointed earlier to respondent nos.2 and 3 in the railway service.

22. It had been further submitted by the learned counsel appearing for the employees who had not been promoted that for the purpose of giving promotion to higher group, i.e. from group D to group C, overall seniority of an employee working in the railways should be considered. According to his interpretation, para 189 provides that promotion should be given on the basis of seniority and that seniority should be seniority in the group and not in the grade. For the aforesaid reasons, it had been submitted by the learned counsel appearing for the employees who had not been promoted by the railways that the impugned judgment affirming the order of the Tribunal was just and proper and therefore, the main appeal should be dismissed and appropriate orders should also be passed in all other appeals on the same principle.

23. Upon hearing the learned counsel appearing for the parties and looking at the legal position which we have already discussed hereinabove, we are of the view that the Tribunal as well as the High Court were not right while giving a direction to the appellants that the case of respondent no.1 should be considered for promotion.

24. In our opinion, respondent no.1 was rightly not promoted to the higher group because he was not in the highest grade of group D. Respondent no.1 was in a lower grade whereas respondent nos.2 and 3 were in the highest grade of group D. Without getting promotion to the highest grade in his own group D, the said respondent could not have claimed promotion to a higher group, i.e. group C. Respondent no.1 was working as a substitute Porter, which is the lowest grade in group D, whereas respondent nos.2 and 3 were working in the grade which was much above than the grade in which respondent no.1 was working, though they had been appointed later in a point of time than respondent no.1 in the railway service. As stated hereinabove, seniority list for employees working in different grades should be different and there cannot be any common seniority list for all the employees working in one particular group.

25. We, therefore, set aside the impugned judgment affirming the order of the Tribunal and also direct that according to the provisions of the aforesaid paras contained in the Manual, the appellants shall prepare different seniority lists for employees working in different grades.

26. Civil Appeal No.2532 of 2010 is, therefore, allowed with no order as to costs.

27. So far as other related appeals are concerned, they

- A have been filed by the persons who are similarly situated, like Respondent No.1 in the main matter, i.e. Civil Appeal No.2532 of 2010, who had not been promoted. No separate arguments were advanced on their behalf. From the facts stated hereinabove, in our opinion, they do not
- B have any right to be promoted, especially when they were not in the highest grade of group D. Therefore, their appeals would fail and are dismissed with no order as to costs.

C Devika Gujral

Appeals disposed of.