

Supreme Court of India

Indian Railway Service Of ... vs Indian Railway Traffic Service ... on 30 April, 1993

Equivalent citations: JT 1993 (3) SC 474, (1993) IILLJ 539 SC, 1993 (2) SCALE 720, 1993 Supp (4) SCC 473

Author: S Mohan

Bench: A Ahmadi, S Mohan

JUDGMENT S. Mohan, J.

1. Leave granted.

2. The controversy in these cases arises out of the challenge by the first respondent in SLP (C) No. 7853 of 1992 (Indian Railway Traffic Service Association) to the amendment in the scheme for making appointments to the posts of General Managers in the Indian Railways. The effect of the amendment is the rule of predominance restricting the number of persons who could be appointed as General Managers from any one Railway Service, which was originally 6 out of 16 posts, was changed to 37.5 per cent of the total number of posts. Simultaneously, the total number of posts was increased to 19. This challenge was upheld by the Central Administrative Tribunal, Principal Branch, New Delhi.

3. The short facts are as under:

4. In the year 1984, for the first time, a scheme of making appointments to the posts of General Managers was notified. That included a rule of predominance which restricted, the number of posts of General Managers which could be held by officers of any one Railway Service. This scheme was replaced by a new scheme on 16th of July, 1986. In the said new scheme also rule of predominance was included. In terms of the said rule, holding, of more than 6 posts of General Managers and equivalent by officers belonging to any one service was construed as undue predominance. The posts were enumerated in Appendix I to the scheme which are as follows:

A P P E N D I X - 1 L i s t o f p o s t s o f G e n e r a l M a n a g e r s
S.No. Name of Post

No. of posts 1. General Managers(Open Line) 9 2. General Manager, Integral Coach Factory, Perambur. 1 3. General Manager, Chittranjan Locomotive Works, Chittranjan 1 4. General Manager, Diesel Locomotive Works, Varanasi. 1 5. General Manager, Wheel & Axle Plant, Bangalore. 1 6. General Manager, North-east Frontier Rly, (Construction), Guwahati. 1 7. General Manager, Metro-Railway, Calcutta. 1 8. Director General, Research, Designs and Standards Organisation, Lucknow 1 9. Any other post that may be created after the publication of the scheme in the scale of General Managers unless such post (or posts) is specifically excluded from the scheme.

5. Paragraph 4 of the scheme stated that the scheme shall be applicable to the posts of General Managers and equivalent in the scale of Rs. 3000-3500 as listed in Appendix I (quoted above).

6. The total number of posts specified in Appendix I is 16. However, it requires to be noted that Rule No. 9 has provided for applicability of the scheme to any other post which may be created in the

scale of pay equivalent to the scale of General Managers. The reason is to obviate the need to amend the scheme on each occasion when new posts are created or surrendered.

7. On 26.2.88, an amendment to the scheme was brought about. Under that amendment three posts were added to Appendix I. By the same resolution another amendment was made whereby in Explanation I to Paragraph 8 the figure "6" was substituted by "37.5". It may be noted arithmetically 6 out of 16 exactly comes to 37.5 per cent. The purpose of replacing the figure was in view of the increase of posts from 16 to 19 and further to take care of any future increase or decrease of posts. It was this amendment which was challenged by respondent No. 1-Association. That came to be allowed by the Central Administrative Tribunal.

8. Aggrieved by this the Union of India has preferred SLP(C) No. 2802 of 1993 and the intervenor, Indian Railway Service of Mechanical Engineers Association, whose application for intervention was dismissed by the Tribunal, has preferred SLP (C) No. 7853 of 1992.

9. The Tribunal was of the view that the objective of the scheme is to provide equitable opportunities to the members of the various services. This was in order to ensure that these posts are manned by men of proven ability and competence. After assessing their suitability on merits based on the records of service experience and any other special requirement of the post for which selection is to be made. It was on this ground the predominance factor came to be incorporated. This was with a view to ensure that merit and performance were placed on the higher pedestal in the interest of smooth functioning of Railway than possible partisan interest.

10. The impugned amendment would serve the interest of one or two of the 8 services listed in Appendix II at the cost of remaining services. The amendment is, therefore, bound to affect the interest of the applicants judicially.

11. The argument before us by the Union of India is to the effect that the posts of General Managers were selection posts based on merit-cum-seniority. The rule of predominance is restrictive in nature because even though there are more than specified number of persons on the select list, not all of them could be appointed as General Managers. This indirectly brought about a quota system which was sought to be avoided by the impugned amendment. That is a matter of policy. The Tribunal had interfered with a policy matter. There is nothing irrational or arbitrary in fixing the percentage. Besides, the rule of predominance cannot remain constant for all time to come,

12. this Court had constantly taken the view that the Court hardly interferes with matters of policy of the Government. In support of this cases in R.R. Verma v. Union of India , K. Nagaraj v. State of Andhra Pradesh and Union of India v. S.L. Datta , are cited.

13. In opposing the stand, the learned Counsel for the respondent, namely Indian Railway Traffic Service Association states as follows:

14. As rightly found by the Tribunal where equitable opportunities is the underlying theme of the scheme, if that is sought to be interfered with by the amendment, certainly the Tribunal was entitled

to strike down the amendment. The object of the amendment would serve the interest of one or two of the 8 services, as rightly pointed out by the Tribunal. Therefore, it has come to be struck down. No valid exception could be taken to the impugned order.

15. In SLP (C) No. 7853 of 1992 it is argued that the appellants wanted to be impleaded as a party as they were rightly interested in the result. There was no justification for denying that request, more so, when two other Associations came to be impleaded. In support of this, the learned Counsel relies on *Udit Narain Singh v. Board of Revenue* 1963 Suppl. (1) SCR 676 and *Prabodh Verma v. State of U.P.* . In addition, the learned Counsel also challenged the correctness of the ruling of the Tribunal.

16. The posts of General Managers are selection posts based on merit-cum-seniority. Therefore, in accordance with the scheme initially notified in September 1984 and later replaced by Resolution of July 1986 and amended on 30th January, 1987 and 26th February, 1988, the posts of General Managers and equivalent are required to be filled up from a select list drawn from amongst the Senior Administrative Grade Officers, They must fulfill the conditions of eligibility irrespective of service to which they belong. The selection is made from amongst Senior Administrative Grade Officers of 8 organised Group 'A' Railway Services which Services are listed in the scheme itself. The scheme provided that the Selection Committee as far as practicable ensures that equitable opportunities are available to the various members and that there is no undue predominance of any one of the Railway Services. Both the 1984 and 1986 schemes made a specific provision in this regard as seen from Explanation I in paragraph 8 of the Schemes.

17. Initially, at the time of the framing of the scheme in 1984 there were 16 posts of General Managers and equivalent posts. It was considered by the Union that the holding of more than 6 posts by officers of any particular service to be undue predominance. Therefore, the figure "6" was substituted by "37.5%".

18. It requires to be carefully noted that ordinarily 37.5% sets a ceiling on General Managers from one service. It is not a distributive factor. It restrains one service but allows others to go ahead, of course, only when other requirements such as fitness etc. are met. Then again, all the posts of General Managers can be filled up from any service. In case a Service does not provide for promotion of senior and fit persons for whatever reasons it may be, it will occupy fewer posts of General Managers. No service can claim posts of General Managers as a quota or as a right.

19. The object of the scheme is to lay down clear guidelines for selection of officers who are eligible from amongst the various Railway Services for appointment to the post of General Managers .and equivalent in the Indian Railways so as to see that these posts are manned by persons of proven ability and competence, regard being had to the specific requirement of each post for the smooth and efficient running of Railway system. For this purpose a high level selection committee considers all eligible officers on merits to assess the suitability in all respects based on the record of their service experience and special requirement of the posts for which selection is to be made. Paragraph 8 of the scheme ensures equitable opportunities to members of various services consistent with experience and specific requirement of the vacancies in the posts of General Managers and equivalent for which the panel is being made. The said paragraph also states that there is no undue

predominance of any of the Railway Services listed in Appendix-II amongst the holders of the posts of General Managers and equivalent. A close reading or Explanation 1 of the said paragraph will reveal that holding of more than 6 posts of General Managers and equivalent by officers belonging to any one service would ordinarily be construed as undue predominance. Consequently, not more, than 6 officers from one particular service are allowed to hold more than 6 posts of General Managers and equivalent at a time.

20. In the light of this background, when we examine the order of Tribunal, we find it had erred in interfering with a scheme. It is well-settled in law that the Government has got a right to notify the scheme. It has equally a right to issue amendments. Therefore, it could amend the scheme including the provisions relating to the predominant factor from 6 to 37.5%. This is a matter of policy. This Court had taken the view in *Union of India v. Tejram Parashramji Bombhate* that no court or tribunal could compel the Government to change its policy involving expenditure. Again in *Asif Hameed v. State of Jammu and Kashmir* AIR 1989 Supreme Court 1899, in paragraph 19, page 1906 this Court observed thus:

When a State action is challenged, the function of the court is to examine the action in accordance with law and to, determine whether the legislature or the executive has acted within the powers and functions assigned under the Constitution and if not, the court must strike down the action. While doing so the court must remain within its self-imposed limits. The court sits in judgment on the action of a coordinate branch of the Government. While exercising power of judicial review of administrative action, the court is not an appellate authority. The Constitution does not permit the court to direct or advise the executive in matters of police or to sermonize qua any matter which under the Constitution lies within the sphere of legislature or executive, provided these authorities do not transgress their constitutional limits or statutory powers.

21. Unfortunately, the Tribunal has transgressed its limits while questioning the correctness of a policy. We are afraid that the Tribunal has failed to appreciate that Rule 8 is an independent provision. Appendix I and Item 9 thereof to the scheme only indicate that it will also apply to the posts which may be created in future. The same formula is retained as Item 12 in the amendment dated 26.2.88.

22. Initially, at the time of making of the scheme in September 1984 and subsequently in July 1986, there were 16 posts of General Managers and equivalent. It was considered at that time that holding of more than 6 posts by officers of any particular service would constitute undue predominance. To ensure that the creation of more posts of General Managers and equivalent, as may be required due to administrative exigencies there is no change in the factor of undue predominance. Proportion of 6 out of 16 has been completed into 37.5% of the posts. The result is that there is a maintenance of status quo as far as predominance factor is concerned. Percentage also ensures unanimity irrespective of the number of posts existing at any particular time. In other words, if the posts are reduced from 16 to 12 the ceiling also will get reduced in number in view of the prescription of percentage. Correspondingly, if the number of posts get increased the ceiling number will also get increased due to the uniform percentage of 37.5%.

23. We have already noted the scope of paragraph 8 of the scheme. That specifically provides that in preparing the norms for consideration for appointment to the posts of General Managers and equivalent the selection committee shall, so far as practicable, ensure that amongst others the difference in batch years between any two officers included in any one panel is not ordinarily more than 2. No distinction is made under the rules between technical and non-technical General Managers. A selection committee evaluates the performance and experience of officers and makes recommendations with regard to suitability of individuals for various posts of General Managers irrespective of service to which they belong. The posts of General Managers and equivalent are very limited in number, one on each Zonal Railway or Production Unit etc. The scale of pay is Rs. 7300-8000. No distribution of these posts is possible or practicable as is urged by the Indian Railway Traffic Service Association.

24. When the posts of General Managers are selection posts based on merit-cum-seniority we are unable to see as to how any of the Railway Services could have a valid grievance. If a person from any of the Services was senior or meritorious enough the said person would be appointed. It stands to reason that the same is also in the interest of the best governance of the administrative system of the Railways. By this the best talent is made available. If the argument of the respondent is accepted it will bring in a system of quota which is impermissible in selection posts and that too for such senior posts as General Managers of Railways.

25. For these reasons we are obliged to reverse the order of the Tribunal. Accordingly the same is set aside and the appeal arising of SLP(C) No. 2802 of 1993 filed by Union of India will stand allowed. In view of this, no order is necessary in the appeal arising out of SLP (C) No. 7853 of 1992 filed by Indian Railway Service of Mechanical Engineers Association. However, there shall be no order as to costs.