

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: July 15, 2013*
Judgment Pronounced on: July 29, 2013

+ **WP(C) 1356/2010**

UNION OF INDIA GENERAL SECY IRCA & ORS. Petitioners
Represented by: Mr.V.S.R.Krishna, Advocate with
Mr.Abhishek Yadav, Advocate

versus

ASHOK KUMAR RAI Respondent
Represented by: Ms.Jyoti Singh, Sr.Advocate
instructed by Ms.N.S.Bajwa,
Advocate for R-1
Mr.Sanjay K.Pathak, Advocate for
R-2

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR.JUSTICE V.KAMESWAR RAO

PRADEEP NANDRAJOG, J.

1. In the year 1879 that is 25 years after the first rail had been laid in India there was a network of 89 separate, Government and private, railway systems covering a total mileage of 8475. But on account of lack of a common set of rules and regulations the user of railway transport was inconvenienced. The main drawback was the unwillingness of individual railway systems to permit its wagons to move over the other railways. This resulted in an unsatisfactory state of affairs, and with a view to overcoming the difficulties, the Director-General of Railways, the then

highest Government official incharge of Railways, convened a Conference of all Railways in February 1879 in Calcutta. This was the first railway conference held. The main purpose of the Conference of 1879 was to frame rules for the movement of railway wagons of one railway over the track of another. And this meant to set down rules for the interchange of stock. The Conference had the opportunity to discuss, amongst others: (i) lay down rules for Open Lines; and (ii) draft the Indian Railways Act.

2. Encouraged by the results of the first conference the Director-General of Railways convened conferences in the year 1880, 1882, 1884 and 1888 in which various subjects relating to railway matters were discussed with a view to securing uniformity of practice and procedures. In the year 1902, at a conference it was decided to establish a permanent organization named '*The Indian Railways Conference Association*' – independent of the Government – to conduct regular meetings of the representatives of various Railways. This is the historic background relevant to be noted to understand the character and functioning of Indian Railways Conference Association, for short, IRCA.

3. During its formative years, the Association functioned through three main committees namely: (i) Goods Classification Committee; (ii) Audits and Accounts Committee; and (iii) Locomotive and Carriage Superintendence Committee. These committees framed rules regarding interchange, accounts and maintenance. After the 1st World War, the IRCA decided to form a wagon pool on broad gauge sections to enable wagons to move from one railway system to another without hindrances. The said scheme was made permanent in the year 1925.

4. Another important function of the Association was to act as a neutral authority for conducting examinations for wagons at important junctions to ensure that wagons pass from one railway system to another in a safe condition.

5. At the time of independence and partition, in September 1947, a draft revision of the functions and constitution of the IRCA was prepared with the main recommendation being that the IRCA would be a completely neutral, self-governing autonomous railway body; and that the Director of Wagon Interchange would not be under the control of the Railway Board.

6. As early as October 15, 1947, the Chief Commissioner of Railways recommended that the functioning of the IRCA was no longer necessary and that it should be dissolved and at a meeting of the General Managers of Indian Government Railways held in February 1956, it was recommended that the IRCA be closed down and the work be transferred to the direct control of the Railway Board. The said proposal was rejected by the Railway Board in the month of April 1957 since it was felt that the IRCA ought to continue functioning as an independent organization.

7. The historical background of IRCA throws light on the fact that IRCA was originally constituted during the British regime as an association of different railway companies including those that were then a part of the Indian Dominion but not forming a part of India to enable these railway companies to frame rules regarding wagon interchange, to act as a board of conciliation between the different railway companies and to conduct neutral examination of wagons at interchange junctions. Thus, the Association had no role to play in the internal management of any of the said railway companies. The proviso to Article III of IRCA Conference Rules stipulated that the rules passed by the Association

would not extend to matters of internal administration, which would remain under the control of the various railway companies. After independence, the association remained only as a shadow of its formal self, the association continued to operate confining itself to interchange related work at various inter-railway junctions including those at the border areas of India and Pakistan. The reason was that the railway lines laid in the territories of British India crossed over between the territories of Pakistan and India.

8. With the constitution of IRCA as a permanent self-governing autonomous railway body independent of control by the Railway Board in the backdrop aforesaid, it is apparent that IRCA was an association of Government and Railway systems operating in British India at the time of its formation and with the integration of India after independence its role got limited as an interface body between the Railways in India and Pakistan after the year 1947 and this explains a somewhat hybrid situation, in that, appointment to various posts under IRCA with respect to wagon interlocking and interchange at the railway junctions in the border areas, but within the territory of India is being made by the railway authorities in India, which exercise disciplinary control over the person so appointed, and yet the person holding the post holds so under IRCA.

9. At the time of its constitution IRCA drafted the '*IRCA Conference Rules*' containing the Fundamental Rules and General Constitution of the Association were framed. Amended from time to time, the Rules which were in force from January 01, 2004, vide Article 3 listed the functions of the Association as:-

- (i) To frame Rules for the management of traffic interchanged between Railways;
- (ii) To act as a Board of Conciliation;

- (iii) To maintain records of wagon interchange, Broad Gauge and Meter Gauge separately between Indian Railways, as well as between Indian Railways and Railways in Pakistan, and Bangladesh as directed by the Railway Board;
- (iv) To conduct the natural control of examination of Broad and Meter Gauge wagons at interchange junctions and other points;
- (v) To advise on other subjects relating to railways which may be referred to it; and
- (vi) To carry out such other functions as may, from time to time, be assigned to it.

10. The financial powers of IRCA pertain to sanctioning posts in IRCA Establishment. Chapter II of IRCA Conference Rules, as per Rule 2 and in particular the note thereunder clearly adumbrates that IRCA may create gazetted posts, equivalent to Group 'B' and senior scale posts on the Indian Railways. Pertaining to cadre, Rule 6, pertaining to appointments, Rule 7 and pertaining to Rules regarding establishment, Rule 8 in Chapter II read as under:-

“6. Cadre –

The strength and salaries of the staff of the Association shall be fixed by the Association, subsequent changes being sanctioned by the Association on the representation of the President. The prior sanction of the Association is necessary to appointments on more than the minimum pay of the post or to the grant of an accelerated increment.

7. Appointments –

(1) Group 'A' and Group 'B' – Appointments to Group 'A' and Group 'B' sanctioned posts in the I.R.C.A. shall be made by the President, I.R.C.A., in consultation with the Executive Council. Temporary vacancies in Group 'A' and Group 'B' posts may, however, be filled in by the President, I.R.C.A.

(2) Group 'C' and Group 'D' – Appointments to sanctioned posts in Group 'C' and Group 'D' shall be made by the President, I.R.C.A., or such lower authority to whom the powers have been delegated by the President.

8. Rules regarding Establishment –

The provisions of the codes and rules applicable from time to time to Indian Railway Establishment in matters relating to pay, travelling allowance, joining time, miscellaneous advances, provident fund, pensionary benefits, gratuity, foreign service, leave, discipline and appeal, conduct, etc. and any other rules that the Association may prescribe are applicable to the staff of the Association.”

11. It needs to be stated at this stage that the Indian Railways, for purposes of efficient functioning has been divided into different geographical areas under the control of a General Manager, for example the Northern Railway, Southern Railway, Central Railway, Eastern Railway, South Central Railway etc. Wagon interchange takes place at the junctions wherefrom the trains cross over the territorial boundaries of one Railways to the other. But this is within India and concerns the Indian Railways within India. This wagon interlocking and interchange also takes place at the Indo-Pak border at Wagha in the State of Punjab.

12. Time to note the facts concerning the instant case.

13. The post of Assistant Director of Wagon Interchange is the subject matter of debate. It is an IRCA Cadre post created in terms of Rule 6 under Chapter II of IRCA Conference Rules and concerns wagon interchange between Indian Railways, Pakistan Railway and Bangladesh Railway, and currently primarily concerning Indian Railway and Pakistan Railway at Wagha Border. The post fell vacant on July 24, 2007. On October 05, 2007 the General Managers of different railways in India

were requested to forward names of those who were willing to be considered for appointment to the said post on deputation basis notifying that the eligible candidates would be the ones holding posts in Group 'C', being the feeder post for the post of Assistant Director of Wagon in the Indian Railways, and we clarify here that similar posts exist on the sanctioned cadre under the Indian Railways. The reason is obvious. It has already been noted hereinabove. Wagon interchange takes place at the junctions of various railways in the territories of India. Initially it was notified that three years' experience as Assistant Traffic Manager in interchange branch would be an essential eligibility condition for being appointed to the post in question, which experience period was later on reduced to one year. This experience period of Assistant Traffic Manager in interchange branch is the bone of contention.

14. Ashok Kumar Rai, respondent No.1 questioned the stipulation by way of a qualifying norm of one year experience as an Assistant Traffic Manager in the interchange branch. As per him the Recruitment Rule concerning the post of Assistant Director Wagon Interchange framed by the Indian Railways does not envisage experience in the interchange branch and thus he claimed that the executive instruction could not add a condition of eligibility and that the eligibility had to be determined with reference to the notified Recruitment Rule, which he claims has a statutory flavour.

15. Original Application being OA No.276/2009 filed by him has been allowed by the Tribunal. The Tribunal has held that the criteria one year's experience is the result of excessive sub-delegation. The Tribunal has held that rules framed pursuant to Article 309 of the Constitution cannot be supplemented by executive instructions and that authorities which are creature of statute are bound by the statute. The

Tribunal has held that once a rule is clear, issuing clarifications would not be apt in law. The Tribunal has held that once statutory rules are framed the eligibility norms cannot be defined by executive instruction with reference to some RTI query response that the past practice to fill up post under IRCA is to strictly apply the Recruitment Rules framed for analogous posts under the Indian Railways, the Tribunal has held that while interpreting a rule the past practice followed becomes relevant. Thus, vide impugned decision dated June 02, 2009 the Tribunal has quashed the prescription of one year's experience in interchange branch as an eligibility criteria for the post of Assistant Director Wagon Interchange as irrational, illogical and with an oblique motive to support the claim of a particular individual.

16. The final reasoning of the Tribunal pertaining to the prescription being irrational, illogical and with oblique motive is sans any reasoning as to why prescribing one year's experience in interchange branch was irrational and illogical or with oblique motive. As we understand, said expressions have been used inappropriately by the Tribunal, to be understood to mean that the post was required to be filled up strictly as per the Recruitment Rules framed by the Indian Railways for analogous posts in the various divisions of Indian Railways.

17. At the outset we note that the Tribunal has very perfunctorily noted what IRCA is. Had the Tribunal noted with care the historical background under which IRCA was created and its character coupled with IRCA Conference Rules, as we have noted in paragraphs 1 to 7 above, it would have dawned upon the Tribunal that the post in question is not a cadre post under the Indian Railways. It is a cadre post under IRCA created in terms of Rule 6 of Chapter II of the IRCA Conference Rules. IRCA functions as a self-governing autonomous railway body,

although funded by the Government of India, but not under the control of the Railway Board. Thus, to import the Recruitment Rules for analogous posts under the Indian Railways would not be proper and said part of the reasoning of the Tribunal which treats the post as under Indian Railways is patently incorrect.

18. But we note an independent line of reasoning in the decision of the Tribunal flowing from Rule 7 and 8 under Chapter II of IRCA Conference Rules which Rules have been extracted by us in paragraph 10 above.

19. With reference to Rule 8 and in particular the words '*in matters relating to pay, travelling allowance, joining time, miscellaneous advances, provident fund, pensionary benefits, gratuity, foreign service, leave, discipline and appeal, conduct, etc.*' highlighting the word '*etc.*' the Tribunal has opined that IRCA has adopted the rules contained in the Indian Railway Establishment Manual and since the applicable Rule in the Indian Railway Establishment Manual does not list, as an essential condition, one year experience in interchange branch, the Tribunal has concluded that the policy instruction which brings in said condition is illegal.

20. A perusal of Rule 8 of IRCA Conference Rules would reveal that it incorporates, by reference, the provisions of the codes and rules applicable from time to time in Indian Railway Establishments in matters relating to pay, travelling allowance, joining time, miscellaneous advances, provident fund, pensionary benefits, gratuity, foreign service, leave, discipline and appeal, conduct; and thereafter uses the word '*etc.*'. The words and expressions preceding the word '*etc.*' relate to matters concerning conditions of service and none of them refer to condition of appointment. If only the Tribunal had been careful in applying the

principle of *ejusdem generis* it would have dawned upon the Tribunal that where two or more words which are susceptible of analogous meaning are coupled together, a *noscitur a sociis*, they are understood to be used in their cognate sense. They take, as it were, their colour from each other, the meaning of the more general being restricted to a sense analogous to that of the less general.

21. The true scope of the rule of *ejusdem generis* is that words of general nature following specific and particular words should be construed as limited to things which are of the same nature as those specified. In the opinion reported as (1989) 2 SCC 458 M/s.Siddeshwari Cotton Mills (P) Ltd. Vs. UOI & Anr., in para 12, it was explained as under:-

“12. The expression ejusdem generis – ‘of the same kind or nature’ – signifies a principle of construction whereby words in a statute which are otherwise wide but are associated in the text with more limited words are, by implication, given a restricted operation and are limited to matters of the same class or genus as preceding them. If a list or string or family of genus-describing terms are followed by wide or residuary or sweeping-up words, then the verbal context and the linguistic implications of the preceding words limit the scope of such words.”

22. It is apparent that Rule 8 of IRCA Conference Rules incorporates by reference the codes and rules applicable from time to time to Indian Railway Establishment in matters relating only to conditions of service and the word ‘etc.’ would mean that only such codes and rules framed by Indian Railway Establishment which concern conditions of service would be applicable to posts under IRCA and not rules and codes pertaining to conditions of appointment.

23. Further, the reasoning of the Tribunal that once on a subject relating to service a statutory rule has been framed no executive instruction can be issued in respect of the Rule in question, is contrary to law. Noting the decision reported as AIR 1967 SC 1910 Sant Ram Sharma Vs. State of Rajasthan & Ors., in the decision reported as 2012 (3) SCALE 124 The Accountant General M.P. Vs. S.K.Dubey & Anr. the Supreme Court observed that whereas the executive cannot amend or supersede statutory rules by administrative instructions it can fill up the gaps and supplement the rules if on a particular point the rules are silent subject to the condition that the instructions issued are not inconsistent with the rules already framed.

24. We have noted as above in the preceding paragraph to correct an incorrect statement of law by the Tribunal and we need not take the argument any further for the reason we have already opined that the constitution of IRCA would reveal that it is an autonomous body and it has its own cadre which is apparent from Rule 6 under Chapter II of IRCA Conference Rules. Appointments to Group 'A' and Group 'B' posts in IRCA have to be made as per Rule 7 under Chapter II of IRCA Conference Rules and as per Rule 8 the codes and rules applicable from time to time to Indian Railways Establishment are incorporated by reference limited only to conditions of service and thus pertaining to posts under IRCA there are no rules pertaining to appointment and thus it would be fully permissible for the Appointing Authority to issue an executive instruction that appointment to a particular post under IRCA shall be as per the condition specified in the executive instruction. Such executive instruction can say that the appointment would be as per the appointment rule for the analogous post under the Indian Railways plus some more condition.

25. The writ petition is accordingly allowed. Impugned decision dated June 02, 2009 is set aside and OA No.276/2009 is dismissed.

26. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(V.KAMESWAR RAO)
JUDGE

JULY 29, 2013
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