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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.1173 of 2002

New Delhi, this the ~~25~~ day of June, 2004

HON'BLE MR.V.K. MAJOTRA, VICE CHAIRMAN (A)
HON'BLE MR.KULDIP SINGH, MEMBER(JUDL)

Shri Brij Mohan Meena
Head Clerk (P)
Northern Railway,
Printing Press,
Shakurbasti.

...Applicant

By Advocate: Shri B.S. Maini

Versus

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Controller of Stores,
Northern Railway,
Baroda House,
New Delhi.
3. The Deputy Chief Controller of Stores,
General Stores Depot,
Northern Railway,
Shakurbasti. Respondents

(By Advocate: Shri R.L. Dhawan)

O R D E R

By Hon'ble Mr.Kuldip Singh, Member(Judl)
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The applicant has filed this OA under Section 19 of the A.T. Act. He has challenged orders dated 28.8.98 and 3.1.2002 issued by Deputy Controller of Stores, Annexure A-2.

2. The grievance of the applicant is that the respondents have rejected the claim for promotion as Office Superintendent Grade-II against a vacancy meant for ST which was available with the respondents in the year 1993. The applicant belongs to ST category and had been appointed directly as UDC through Railway Recruitment Board, Ajmer w.e.f. 18.9.1989.

*NOTE: Figure '1993' has been substituted in place of the figure '1983' as per orders dated 22.9.2005 in RA No.284/04 passed by the Hon'ble Court of Hon'ble Mr. V.K. Majotra, VC (A) & Hon'ble Mr. Shanker Raju, Member (J). *11/andm
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6/9/05/2005*

3. It is further submitted that in the year 1991 a vacancy in the category of Head Clerk had arisen at roster point No.4 for which the applicant was only candidate belonging to ST category and was eligible to be promoted against the said vacancy falling at point No.4 of the roster. When the name of the applicant was being considered as Head Clerk one Smt. Usha Madan filed an OA and obtained a stay order with the result that the applicant was ignored for promotion on the basis of the stay order and on the contrary Smt. Madan who belongs to general category was promoted as Head Clerk. Ultimately the applicant was promoted as Head Clerk against subsequent vacancy which had accrued against the post which fell vacant in the year 1993. The OA filed by Smt. Usha Madan was also dismissed as said Smt. Madan had been transferred to Headquarters Office on his request accepting bottom seniority.

4. It is further submitted that in spite of the fact that the OA filed by Smt. Madan was dismissed but respondents failed to promote applicant as Head Clerk against vacancy which arose in the year 1991 so the applicant had to file OA 39/1998 praying for directions to the respondents to promote the applicant against the post of Head Clerk and give further promotion on the basis of revised seniority. The said OA was allowed by the Tribunal and respondents were directed to grant seniority in the grade of Head Clerks from the date of October, 1991 when Smt. Usha Madan was promoted.

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Respondents were further directed to consider the case of the applicant for further promotion on the basis of the revised seniority.

5. The applicant claims that in accordance with the judgment of this Tribunal he was to be granted seniority in the category of Head Clerk, promotion to the post of OS and also entitled for grant of promotion to the post of OS Grade-II against upgraded post w.e.f. 1.3.93 because at that time there was shortfall of ST category at roster point No.4 in 40 point roster. The applicant also requested the respondents to give him promotion as OS Grade-I from 1.11.1995 again on roster point No.4 against 40 point roster.

6. It is further stated that during the pendency of the OA the respondents held the selection for the post of OS Grade-II but the applicant was wrongly ignored and was not considered at roster point No.4 reserved for ST category. The applicant made a representation but the respondents in terms of their letter dated 28.8.1998, Annexure A-I informed the applicant that the shortfall in the category of ST which was carried forward till the receipt of Circular No.11450. It was further submitted that the selection could not be finalized on account of Administrative reasons and that after the receipt of the circular No.11450 dated 9.9.97 the said short fall was not carried forward.

7. It is further submitted that however, the respondents issued a circular dated 30.4.99 pre-dating the promotion of the applicant as Head Clerk w.e.f.

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9.10.1991 from the date Smt. Madan was promoted. Accordingly, the seniority was allowed to the applicant in the category of Head Clerk w.e.f. 9.10.1991 and though the applicant was given the benefit of promotion as Head Clerk from 9.10.1991 but the respondents again ignored the applicant for promotion to the post of OS Grade-II w.e.f. 1.3.93 when the post of ST was vacant at roster point No.4. It is also stated that there was shortfall in the ST category in the cadre of OS-II and the applicant was the only ST category candidate in the feeder category for promotion as OS-II in the vacancy which was available w.e.f. 1.3.1993.

8. The applicant had also become eligible for promotion as OS-I and made a representation also but the same had been rejected.

9. It is further stated that respondents has wrongly informed the applicant that there was no reservation in favour of ST employee vide circular No.10647 dated 3.7.1992.

10. It is further stated that the respondents did not visualise the reservation in the small cadre so the clarification was also issued in which it was laid down that in the small cadre of less than 4 posts where grouping is not possible and vacancies worked out less than 0.5% post may be reserved for SC/ST as per roster provide there is no SC/ST vacancies available in the cadre. This circular was further amended and the figure 4 was directed to be read as 7 vide letter dated 16.10.1994 as per Annexure A-10. Since the decision

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given by the respondents in not considering the applicant against the shortfall of 1993 in the category of OS-II and subsequently violated the directions given by the Tribunal in judgment dated 14.12.1998 the applicant was forced to file a CP 321/1999 but the CP was dismissed with a liberty to the applicant to agitate the same separately through appropriate legal proceedings. Thus the applicant claims that his promotion to the post of OS-II in the year 1993 has been wrongly denied to him and further consequent promotion as OS-I have also been denied so he prays that the respondents be directed to consider the case of the applicant for OS Grade-II w.e.f. 1.3.1993 and further promotion as OS Grade-I and also to pay consequential benefits to the applicant.

11. Respondents are contesting the OA. Respondents admit that the applicant belongs to ST community. Respondents also admit that the applicant had filed an OA which was disposed of with a direction to the respondents to grant seniority to the applicant in the cadre of Head Clerk from October, 1991 when Smt. Madan was promoted and benefit of that judgment to that extent was given when the applicant was promoted as Head Clerk from 9.10.1991. However, it is submitted that in the cadre of 5 posts of OS-II the reservation of ST candidates was nil because percentage came at 0.37 so there was no vacancy in the year 1993 for the post of OS-II.

12. It is further stated that as per the instructions contained in PS 10647 the roster register was also to be maintained as per printed S.No.9689 even

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though reservation quota for SC/ST is to be worked out on the basis of number of vacancies which arose in the post from time to time and according to the roster register maintained for the post of OS-II, roster point 4 is for ST community, hence the applicant was intimated vide letter dated 27/31.8.1999 that the claim for further promotion to OS-II and OS-I is not tenable.

13. The respondents further stated that the applicant has impugned a letter dated 28.8.1998 after 4 years hence the OA is barred by time.

14. The applicant in the rejoinder submitted that though the order was passed on 28.8.1998 but the applicant had made a representation which was decided on 3.1.2002 so the application filed by the applicant is well within time.

15. We have heard the learned counsel for the parties and gone through the records of the case.

16. The fact that the applicant was ignored for promotion to the post of Head Clerk is not denied. The fact that the applicant had later on filed an OA and he was granted promotion to the post of Head Clerk when Smt. Madan was promoted was not denied. The only question to be seen is whether the applicant was entitled to the post of OS-II in the year 1993 and whether a vacancy for ST was available in the year 1993.

17. The respondents while rejecting the claim of the applicant has stated that as per PS 11450 there was no point reserved for ST category so only general

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category candidate was considered but the applicant pointed out that as per Circular A-9 which mentions that it is evident from the Annexure-I of the Letter dated 16.6.1992 that in arriving at this quota, the fraction of 0.5 and above should be rounded off to 1 and less than 0.5 should be ignored. However, normal rules for filling up of the single post/vacancies will continue to be observed. However, in small cadre of less than 4 posts where grouping is not possible and vacancies worked out less than 0.5% posts may be reserved for SC/ST as per roster provided there is no SC/ST candidate already available in the cadre. Relying upon this the learned counsel for the applicant submitted that in this case the cadre was also small cadre and no ST candidate was working earlier. This Annexure A-9 had been further clarified vide an amendment issued lateron whereby the figure of '4' is to be read as '7'. The counsel for the applicant pointed out that there was no reason for issuing the same because for working out that, reservation for ST candidates though in a cadre of 4 or less than 4, the percentage comes to below as 0.5% and one post was ordered to be reserved but even upto the cadre of 5, 6 and 7 percentage of ST candidates used to be less than 0.5% meaning there was discrimination for those cadres and where there were 7 posts, therefore, the figure '4' has been amended to be read as figure '7' and this is merely clarification and not amendment to the rules.

18. Shri Dhawan appearing for the respondents submitted that this figure of '7' should be read from the date of amendment when it came into force but in our view and this contention has no merits because the purpose of

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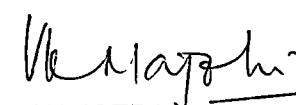
making of reservation for ST candidates was not working properly and by going through the rule of harmonious construction the figure '7' is to be read from the date this original circular was issued so one post has to be made reserved for roster point in small cadres on roster point. Moreover it is merely clarificatory in nature.

19. The learned counsel for the ~~respondent~~ has taken another objection that the waiting period of such like promotion is 2 years. However, Shri Maine appearing for the applicant submitted that in accordance with the Railway Board circular on restructuring dated 19.12.1987 No.EE(NG)I/83/PM-I/12(RRG) the waiting period of promotion has been reduced from 2 years to one year and as such the OA deserves to be allowed.

20. No other contention was raised before us.

21. In view of the above, OA is allowed and the respondents are directed to consider the case of the applicant for promotion to the post of OS-II w.e.f. 1.3.1993 when a post of ST candidate had become available, if he is otherwise eligible and also to grant him consequential benefits within a period of 4 months from the date of receipt of a copy of this order.


(KULDIP SINGH)
MEMBER(JUDL)


(V.K. MAJOTRA)
VICE CHAIRMAN (A)

30.6.04

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