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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.3105/2002

New Delhi this the 22nd day of April, 2004.

HON'BLE MR. V.K. MAJOTRA, VICE-CHAIRMAN (ADNV)  
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Vishwa Nath Nangia,  
S/o Sh. Jagan Nath Nangia,  
R/o B-I, Hurricane,  
Greater Kailash Enclave-II,  
Opposite Savitri Cinema,  
New Delhi-110048.

-Applicant

(By Advocate Shri M.L. Sharma with Sh. H.P. Chakravorty)

1. The Union of India through  
Chairman Railway Board,  
Principal Secretary to Govt. of India,  
Ministry of Railways, Rail Bhawan,  
New Delhi-110001.

2. The General Manager,  
Northern Railway,  
Baroda House,  
New Delhi-110001.

-Respondents

(Shri Shailendra Tiwari)

O R D E R (ORAL)

By Mr. Shanker Raju, Member (J):

Applicant, a retired Office Superintendent (OS) Grade-I, impugns respondents' order dated 26.11.2001, wherein his request for upgradation as Chief Office Superintendent (COS) with consequential benefits of enhanced pensionary benefits has been turned down.

2. On acceptance of 5th Central Pay Commission's recommendations post of COS was created vide Railway Board's letter dated 10.5.98. Though the post was declared selection post but was to be filled up on modified selection. Three posts of COS have been worked out in Medical Branch of ministerial cadre. As the respondents have not worked out the post applicant preferred several representations.

3. As per the seniority of applicant pre-85th

constitutional amendment in the cadre of OS-I stood above the SC/ST candidates. Applicant superannuated on 31.1.2001. On representation his claim was rejected on the ground that after retirement either on proforma or actual basis upgradation of functional post cannot be allowed. This gives rise to the present OA.

4. Learned counsel for applicant Shri M.L. Sharma by referring to the decision of the Apex Court in Ajit Singh II v. Union of India, 1999 (7) SCC 530 contends that on promotion the seniority of general candidate shall be maintained and SC/ST candidates would not be accorded accelerated seniority. In this view of the matter it is stated that one Lakhan Singh who stood at serial No.3 of the seniority list of OS-I preferred OA-380/2001 before the Tribunal wherein by an order dated 8.1.2002 having regard to the decision of the Apex Court in M.G. Badappanavar & Anr. v. State of Karnataka & Ors, JT 2000 (suppl.3) SC 408 consideration has been ordered for the post of COS with post retiral benefits. The aforesaid decision has been complied with by the respondents as admitted by them in their reply, by promoting applicant w.e.f. 27.4.2002. In this backdrop it is stated that applicant in all fours is covered by the decision as he was next to applicant Lakhan Singh. His consideration should have been made against three identified posts of COS, ignoring the claim of two SC and ST candidates respectively. He alleges hostile discrimination violative of Articles 14 and 16 of the Constitution of India.

4. Learned counsel for respondents Sh. Tiwari vehemently opposed the contentions and stated that post retirement neither notional nor actual promotion could be

given as per Railway Board's letter dated 30.10.2000. It is further stated that the seniority in the feeder post of OS-I was settled after the retirement of applicant and in view of the decision of the Apex Court where 85th Constitutional amendment was challenged it has been directed that seniority should not be disturbed.

5. We have carefully considered the rival contentions of the parties and perused the material on record.

6. It is no more res integra in the light of the Constitutional Bench decision in K.C. Sharma v. Union of India & Ors., JT 1997 (7) SC 58 similarly circumstance should not be denied benefit of extension of a judgement.

7. Admittedly, while accepting the recommendations of the 5th Central Pay Commission Railway Board vide letter dated 10.5.98 identified on notional basis three posts of COS where modified selection was to be adopted. The delay in finalising the seniority of the feeder cadre is attributed to respondents. From the seniority list we find that two SC and ST candidates who have been placed above applicants have been given accelerated seniority in the feeder cadre. The 85th Constitutional amendment is post 31.1.2001, i.e., date of superannuation of applicant. Prior to it, though the effect would relate back to the year 1997 but the implementation has been stayed.

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8. The decision in Ajit Singh-II case (supra) holds the field. In the case of Lakhan Singh taking cognizance of three posts of COS as the restructuring was one time exception on modified selection seniormost in the feeder cadre of OS Grade-I should have to be given upgradation. In the Medical Branch as per the seniority applicant by virtue of his date of appointment stands below at serial No.2 after Lakhan Singh two SC and ST candidates respectively are much juniors to him. It appears that with accelerated seniority they have been accorded upgradation. The Tribunal while allowing the claim of Lakhan Singh having regard to the decision of the Apex Court in Badappanayar's case (supra) allowed reconsideration on the post of COS despite applicant had superannuated.

9. On the same analogy applicant who was a general candidate would have stood below Lakhan Singh in the seniority list at serial No.2 of OS Grade-I and against three identified posts should have been considered. The aforesaid decision on all fours covers the case of applicant who is identically situated.

10. In the result, OA is allowed. Impugned orders are quashed. Respondents are directed to consider the case of applicant for promotion to the post of COS in accordance with rules and instructions w.e.f. 10.5.1998 and as a consequence thereof grant benefit including retiral benefits to applicant, within a period of three months from the date of receipt of a copy of this order. No costs.

*S. Raju*  
(Shanker Raju)  
Member (J)

"San."

*V.K. Majotra*  
22-4-04  
(V.K. Majotra)  
Vice-Chairman (A)