

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.424/2002

New Delhi this the 23<sup>rd</sup> day of October, 2002.

HON'BLE MR. M.P. SINGH, MEMBER (ADMNV)  
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Jai Kanwar Singh,  
office of Supdt. (Medical Branch),  
Northern Railway,  
Baroda House, New Delhi.

-Applicant

(By Advocate Shri S.K. Sawhney)

-Versus-

Union of India through  
the General Manager,  
Northern Railway,  
Baroda House,  
New Delhi.

-Respondents

(By Advocate Shri R.P. Aggarwal)

O R D E R

By Mr. Shanker Raju, Member (J):

Applicant through this OA seeks antedating of his promotion as Assistant Superintendent w.e.f. 1991 with all consequential benefits, including seniority.

2. Applicant was promoted as Head Clerk on 1.1.84. A selection was held for 8 posts of Assistant Superintendent in the pay scale of Rs.1660-2660 out of which three were reserved for SC/ST. Subsequently, as a result of an interim order passed in OA-988/97 the notification was revised and as the quota for SC category has already exceeded four posts have been assigned for general category and one for ST. A panel of three general candidate was issued on 26.8.92. As one of the seniors to the applicant R.N. Verma was not placed in the panel and as the post belongs to ST category the incumbent was not available in the feeder grade. A proposal has been sent to Secretary (Estt) for dereservation of one post of ST category. Applicant on restructuring was promoted to one

of the upgraded post of Assistant Superintendent on 1.3.93. The unfilled post in ST category in the selection of 1991 was dereserved on 22.8.94. Applicant preferred a representation which was rejected by the respondents observing that applicant has been correctly assigned the seniority as he was promoted as OS-II against the restructured post of Assistant Superintendent w.e.f. 1.3.93 and till the approval of Railway Board for dereservation has not been received.

3. Sh. S.K. Sawhney, learned counsel appearing for the applicant assails the impugned order on the ground that as the selection was initiated for 8 posts out of which three were reserved for SC and one for ST and in view of interim order three SC posts were to be released. Respondents instead of promoting the applicant against the post lying vacant for the general category denied the same on the ground that four posts were reserved for SC/ST and the applicant's case would be considered on de-reservation. Subsequently on his promotion on restructuring his seniority has been wrongly determined as the applicant was selected earlier to the promotion in restructuring he is to be placed senior to the persons selected subsequently, which is violative of Articles 14 and 16 of the Constitution of India.

4. Shri Sawhney further states that SC post was available before dereservation and there was no evidence of reduction of post or modification of the selection and the respondents have arbitrarily not filled up the post meant for general category depriving the applicant of his right of promotion and seniority w.e.f. 1991.

5. Shri R.P. Aggarwal, learned counsel for the respondents has placed reliance on a decision of the Apex Court reported in AIR 1971 SC 757 to contend that it is for the competent authority to reduce the vacancies and even on selection one has no indefeasible right for promotion. According to him whereas the panel was prepared in 1991, application filed in 2002 is barred by limitation.

6. As the selection was initially for 8 posts, in pursuance of the interim orders of the Tribunal the same was changed to four posts. A panel of three general candidates was prepared and one post reserved for ST was kept unfilled on non-availability of the candidate but dereseravation process was started immediately. As the applicant was a successful candidate for the post of Assistant Superintendent in the written examination but he was never placed in the panel for want of vacancies, one R.N. Verma who although passed the written test but due to shrinkage of the panel on account of the court case could not be placed on the panel but subsequently promoted under upgradation w.e.f. 27.1.93. It is further contended that the post of ST was dereserved on 22.8.94 but before that applicant who was upgraded and promoted w.e.f. 1.3.93 and this benefit of dereservation has to be given only on receipt of the approval from the Railway Board as the applicant was, as per the vacancy position, not within the zone of consideration of Office Superintendent w.e.f. 1991 he has no valid claim.

7. In rejoinder, applicant has re-iterated his pleas taken in the OA, which have been further denied by the respondents through an additional affidavit contending that in the notification of 8.1.91 for selection to the

post of Assistant Superintendent for 8 posts written test was held. Out of 18 persons 9 were eligible for interview which was held in 1992 and accordingly 8 persons have been found eligible to be placed on panel which included five general and three SC, as no ST candidate was available.

8. In view of the decision of the Apex Court in J.C. Malik v. Union of India, as the posts for SC candidates have been restricted to 15% and ST 7-1/2% total cadre of Assistant Superintendent was 15 and two SC employees were already there. So only 5 posts have been decided to be filled up which included four general and one ST. As a vigilance case was pending against the general candidate in the panel who was under suspension his result was withheld whereas three other general candidates have been promoted applicant was promoted in the restructured cadre on account of upgradation of posts before the post of ST was de-reserved on 22.8.94. As such he cannot be considered against the de-reserved post from 22.8.94.

9. We have carefully considered the rival contentions of the parties and perused the material on record as well as the record submitted by the respondents.

10. From the perusal of the record we find that the Lucknow Bench of the Tribunal in MP-998/2000 in OA-411/99 passed an interim order placing reliance on J.C. Malik's case. As the quota for SC category has exceeded 15-1/2% the earlier selection for 8 posts of Assistant Superintendent was revised and the selection has been held where result has been declared of four candidates and one result was to be declared after de-reservation on one vacancy of ST category. Accordingly panel of four general

candidates in the order of seniority was approved and action for de-reservation of one post of ST was initiated and the 5th person was to be placed in the panel after de-reservation on 22.8.94. The applicant could not be promoted as he stood already promoted as Assistant Superintendent w.e.f. 24.3.94 in pursuance of the upgradation. The claim of the applicant that the respondents should have filled 8 posts and the applicant being the next available incumbent should have been promoted w.e.f. 1993 cannot be countenanced, as it is the prerogative of the competent authority to reduce the vacancy and one has no indefeasible right to be promoted. Moreover, in absence of any vacancy for general category and as the post reserved for SC a proposal has been mooted for dereservation, the approval was not available the claim of the applicant at this belated stage cannot be countenanced. In so far as the case of R.N. Verma is concerned, though he was senior but was promoted on upgradation of the post w.e.f. 1.3.93 as per vacancy position applicant was not within the zone of consideration. As such the promotion has been made in compliance with the directions of the Tribunal in OA-988/97.

11. In so far as the empanelled candidate at serial No.3 is concerned, as a vigilance case was pending and he was under suspension his case has been withheld and has been placed under sealed cover. Against this post applicant cannot be adjusted.

12. In the result, we do not find any merit in the OA, which is accordingly dismissed. No costs.

S. Raju  
(Shanker Raju)  
Member (J)

M.P. Singh  
(M.P. Singh)  
Member (A)