

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1775/2001

New Delhi this the 26th day of April, 2002.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)
HON'BLE MR. S.K. AGRAWAL, MEMBER (ADMN)

1. Surinder Singh,
S/o Shri Asha Ram,
R/o Y-454/455, Camp No.1,
Nangloi, Delhi-110041.
2. Subash Chand Narang,
S/o Shri Amar Chand,
R/o House No. S-44, School Block,
Shakarpur,
Delhi-110092.

-Applicants

(By Advocate Shri S.K. Sawhney)

-Versus-

1. Union of India through
General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. Deputy Controller of Stores,
Northern Railway,
General Store,
Shakurbasti,
Delhi.

-Respondents

(By Advocate Shri B.S. Jain)

ORDER

By Mr. Shanker Raju, Member (J):

Applicants have impugned order dated 7.7.2001 (Annexure A-1) wherein on the basis of accelerated seniority nine posts of Chief Office Superintendent (COS) in the pay scale of Rs.7400-11500 have been filled up on promotion by the incumbents of reserved category *and one general only.*

2. As a result of the Fifth Central Pay Commission's recommendations nine posts of COS have been created and though selection posts as a one time measure decided by the Ministry of Railway Board are filled up by modified selection process on the basis of seniority-cum-fitness. Reserved categories employees who

have been accorded accelerated promotion obtained seniority above the applicants in the feeder cadre of Office Superintendent Grade I and accordingly on this seniority the have been promoted. Against this the applicants submitted their representation for recasting seniority on the basis of the decision of the Apex Court in Ajit Singh (II) v. State of Punjab, 1999 SCC (L&S) 1239, but the same has not been revised. The learned counsel of the applicants has drawn our attention to the conclusion arrived at by the Constitutional Bench in Ajit Singh-II's case (supra) where the following observations have been made:

"We have accepted while dealing with points 1 and 2 that the reserved candidates who get promoted at two levels by roster points (say) from Level 1 to Level 2 and Level 2 to Level 3 cannot count their seniority at Level 3 as against senior general candidates who reached level 3 before the reserved candidates moved up to level 4. The general candidate has to be treated as senior at Level 3. Where, before 1.3.1996 (i.e. the date of Ajit Singh's judgment) at the Level e, there were reserved candidates who reached there earlier and also senior general candidates who reached there later, (but before the reserved candidate was promoted to Level 4) and when in spite of the fact that the senior general candidate had to be treated as senior at Level 3 (in view of Ajit Singh), the reserved candidate is further promoted to Level 4 - without considering the fact that the senior general candidate was also available at level 3 - then, after 1.3.1996, it becomes necessary to review the promotion of the reserved candidate to level 4 and reconsider the same (without causing reversion to the reserved candidate who reached level 4 before 1.3.1996). promotion of the reserved candidate to level 4 before 1.3.1996. As and when the senior reserved general candidate is later promoted to level 4, the seniority at level 4 has also to be refixed on the basis of when the reserved candidate at level 3 would have got his normal promotion treating him as junior to the senior general candidate at level 3."


3. Having regard to the aforesaid ratio it is contended that the action in re-casting the seniority in the feeder cadre of Office Superintendent Grade I before ordering promotion to the posts of COS is illegal on the ground that though the applicants were senior as general candidate but the reserved category employees have attained present seniority on accelerated promotion. Earlier promotion of these employees cannot give them the seniority vis-a-vis general employees who have been promoted later. It is contended that the action of the respondents amounts to contempt of court.

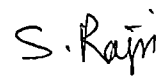
4. The learned counsel for the respondents at the outset drawn our attention to the 85th Constitutional Amendment wherein in Article 16 (4) (a) (in the matters of promotion with consequential seniority to any class) has been substituted in place of the words "any matters of promotion to any class." Further drawing our attention to OM issued on 30.1.97 in pursuance of the decision of the Apex Court in Union of India v. Veerpal Singh Chauhan, JT 1995 (7) SC 231 has been negated and by amendment of Article 16 (4) (a) of the Constitution of India and as a result SC/ST Government servant on their promotion by roster points are made entitled to consequential seniority and this has taken effect from 17.6.95. In this backdrop it is stated that the decision in Ajit Singh (II)'s case supra) has re-iterated the law laid down in Veerpal Singh Chauhan's case (supra) the constitutional amendment has negated the effect of the earlier decision as well as OM and the assignment of seniority as well as further promotion to the reserved category to the post of COS on

accelerated seniority cannot be found fault with. It is also stated that the matter is receiving consideration of the Railway Board and Department of Personnel & Training.

5. We have carefully considered the rival contentions of the parties and perused the material on record. Though the contention of the applicants that the ratio in Ajit Singh (II)'s case (supra) is different from what has been arrived at in Veerpal Singh Chauhan's case (supra). We do not agree with this contention. In Veerpal Singh Chauhan's case (supra) accelerated seniority has been disallowed on the basis of promotion in feeder cadre on reservation in accordance with roster. The decision in Ajit Singh's case (supra) has upheld the ratio in Veerpal Singh's case (supra) and as a principle what has been laid down regarding accelerated seniority is not different from what has been arrived at in Veerpal Singh's case (supra). In view of the constitutional amendment carried out in Article 16 (4) (a) and in pursuance of the OM dated 21.1.2002 by the DOP&T we find that the Railway Board is yet to take a final decision.

6. In this view of the matter the OA is disposed of with a direction to the respondents to take a final decision regarding recasting of seniority, as prayed for, in the representation of the applicants by passing a detailed and speaking order, within a period of three months from the date of receipt of a copy of this order. No costs.


(S.K. Agrawal)
Member (A)


(Shanker Raju)
Member (J)

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