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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 2043 of 2001

New Delhi, this the 4th day of December, 2001.

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

1. Shri R.C. Mehrotra
Office Superintendent-I, Refund Branch,
Northern Railway,
Baroda House,
New Delhi.
2. Shri A.K. Khurana
Office Superintendent-I, Refund Branch,
Northern Railway,
Baroda House,
New Delhi.
3. Shri D.C. Gupta
Office Superintendent-I, Refund Branch,
Northern Railway,
Baroda House,
New Delhi.
4. Shri Gopal Singh
Office Superintendent-I, Refund Branch,
Northern Railway,
Baroda House,
New Delhi.
5. Shri Manohar Lal Bhatia
Office Superintendent-I, Refund Branch,
Northern Railway,
Baroda House,
New Delhi.
6. Shri N.K. Dhamija
Office Superintendent-I, Refund Branch,
Northern Railway,
Baroda House,
New Delhi.

...Applicants

By Advocate: Shri K.K. Patal.

Versus

1. Union of India
Through
General Manager,
Northern Railway, Head Quarter Office,
Baroda House,
New Delhi.
2. Chief Personnel Officer,
Northern Railway,
Head Quarter Office Baroda House,
New Delhi.

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3. Ms. Eligabath
working as
Office Superintendent-I, Refund Branch,
Northern Railway,
New Delhi.

4. Shri Fardi Nand Lakra
working as
Office Superintendent-I, Refund Branch,
Northern Railway,
Baroda House,
New Delhi.

5. Shri Bani Singh
working as
Office Superintendent-I, Refund Branch,
Northern Railway,
Baroda House,
New Delhi. Respondents.

By Advocates: Shri M.K. Gaur, proxy counsel for
Shri R.P. Aggarwal, Counsel for
respondents 1 and 2.

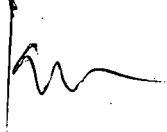
Shri P.M. Ahlawat, Counsel for
respondents 3 to 5.

O. R. D. E. R. (ORAL)

By Hon'ble Mr. Kuldip Singh, Member (Jud)

This application has been filed under Rule 4(5) of the CAT Rules, 1987 seeking permission to file application jointly is allowed.

2. The applicants have filed this OA as they have a common grievance about some illegal and arbitrary action of the respondents as they apprehend that the respondents are going ahead with the selection for the post of Office Superintendent Grade-II, Chief Office Superintendent (Group "C") and Assistant Personnel Officer (Group "B") on the basis of eligibility circulated dated 7.7.1999 and provisional seniority lists issued on 22.6.2001 and 4.7.2001 without revising/recasting the seniority list as per the

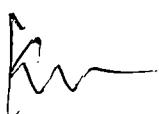


directives of the Hon'ble Supreme Court in the case of Ajit Singh and Others (II) Vs. State of Punjab and Others, 1297(7) SCC 202 which has enunciated the principles of determining the seniority of staff belonging to SC/ST promoted earlier (at roster points) vis-a-vis General/OBC staff promoted later.

3. It is also submitted that since the respondents are going ahead with making promotions on an illegal provisional seniority list, the same be quashed and the respondents be directed to recast the seniority list.

4. An interim order was also claimed and at the time of initial hearing the same was granted restraining the respondents from carrying out promotions till revision or recasting of the seniority list in terms of Ajit Singh II is done.

5. The OA is being contested by the respondents. The official respondents have filed their short reply. They admit that the Hon'ble Supreme Court vide their judgment dated 16.9.99 in Ajit Singh Juneja (II) had made certain observations with regard to determination of seniority in respect of SC/ST candidates vis-a-vis the general candidates but the official respondents have referred the matter to the Railway Board for seeking guidelines. The Railway Board in turn had referred it to the Ministry of Personnel and Training for issuing guidelines on the subject since the Ministry of



Personnel is the nodal Ministry. It is also agreed that in terms of the interim order passed by this Court, no promotions have been made so far.

6. In the OA the applicants have also made certain reserved category candidates as private respondents, who are contesting the OA and they have filed their separate reply. These private respondents contended that according to the judgment given by the Hon'ble Supreme Court in the case of R.K. Sabharwal and Others Vs. State of Punjab and Others, JT 1995 (2) SC 351 and Ajit Singh-II and U.O.I. Vs. Virpal Singh 1996(6) SCC 685 the promotions made against selection post where merit and selection were involved, separate panels were to be prepared at every level and those candidates who were in the earlier panel, were held to be senior than those who came to be empanelled later on. It is also submitted that the law as laid down in Virpal Singh's case was upheld in Akhil Bhartiya Soshit Karamchari Sangh Vs. U.O.I., 1996 (6) SCC 65 and Babu Ram etc. Vs. C.C. Jacob and Others, 1999 (1) SC 381 347. The private respondents in this case claim that since they were empanelled earlier than the applicants and the posts which they are manning are selection posts, so their seniority is not required to be redetermined and the stay order granted should be vacated and the official respondents should be allowed to proceed with the proposed selection for promotion.

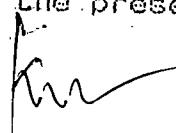
7. We have heard the learned counsel for the parties and gone through the record.



8. The learned counsel for the applicants referred to a judgment given by a Co-ordinate Bench (Court No.I) on 17.9.2001 in OA 2494/2000 wherein also the applicants who were working as Superintendent Grade-I in the scale of Rs.6500-10500 and certain SC/ST candidates who were promoted earlier to applicant claimed seniority over and above SC/ST candidates, who had been earlier promoted on account of accelerated promotion and the Court No.I while referring to the judgment of Ajit Singh and Others (II) (Supra) allowed the OA and directed the respondents to recast the seniority in terms of the judgment of Supreme Court in the case of Ajit Singh (Supra). Shri K.K. Patel appearing for the applicants submitted that this judgment is binding on this court, hence the OA be allowed.

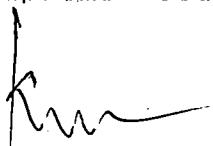
9. On the contrary Shri P.M. Ahlawat appearing for the private respondents submitted that the Court No.I had also given another judgment on 17.7.2001 in OA 599/99 to which one of us (Shri V.K. Majotra) was also a party wherein the applicant, a general category candidate had claimed seniority over SC/ST in the cadre of Assistant Engineers, Government of NCT of Delhi and the court on the basis of the OM dated 30.1.1997 had held that the OM dated 30.1.1997 should be prospective in nature, i.e., to take effect from the date of issue of the OM dated 30.1.1977 so the seniority granted earlier cannot be redetermined and the OA was dismissed.

10. We have considered all these judgments and we find that the judgment relied upon by the private respondents does not apply to the present facts of the



case because the court in that case did not make any distinction between selection post and non-selection post and that case pertained to Assistant Engineers of Government of NCT of Delhi whereas the case in hand is of the Railways and the applicants are working as Superintendents and in the judgment relied upon by the applicants there also the applicants were working as Superintendent Grade-I belonging to the Northern Railway and the circular of the Railways had also done away with the distinction between the selection and non-selection post and the circular is available at Annexure P-2 of the paper book.

11. Besides that we may also mention that the official respondents are not sure as to what instructions they have to follow with regard to determination of seniority and that is why the official respondents have referred to Railway Board who in turn had referred the matter to the Ministry of Personnel & Training. According to the reply they are still awaiting directions from the Railway Board and the observations made by the Hon'ble Supreme Court in the case of Ajit Singh (Supra) are also quite relevant as they do speak about regaining of seniority if a senior employee belonging to general category reaches to the higher post to which his SC/ST colleague has reached earlier than the said general category candidate regains the seniority. The observation of the Hon'ble Supreme Court are quoted hereinbelow:-



"92. Where before 1.3.1996, i.e. the date of Ajit Singh judgment (1) at Level 3, 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 (1), 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). As and when the senior reserved 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. Chander Pal Vs. State of Haryana has to be understood in the manner stated above".

12. So in view of this state of affairs and as per the decision given in OA 2494/2000, we find that the Railways are required to recast their seniority before proceeding with the promotions in the present case.

13. Accordingly, the OA is allowed and the interim order passed on 14.8.2001 is made absolute. The respondents are directed to recast the seniority in view of the directions given by the Hon'ble Supreme Court in the case of Ajit Singh (Supra) within a period of 2 months from the date of receipt of a copy of this order. No costs.


(KULDIP SINGH)
MEMBER(JUDL)


(V.K. MAJOTRA)
MEMBER (A)