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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 2158 of 2001

New Delhi, this the 5th day of December, 2001

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

Shri Jai Kanwar Singal
S/o Late SHri Chander Bhan Singal
working as Office Superintendent-I,
Medical Branch, Northern Railway,
Baroda House,
New Delhi.
R/o House No. 4597/14, Tri Nagar,
Delhi-110 035.Applicant

By Advocate: Shri S.K. Sawhney.

Versus

1. Union of India
Through
General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. Shri H.R. Meena
Office Superintendent-I, Medical Branch,
Northern Railway, Baroda House,
New Delhi.
3. Shri Radhay Shyam
Office Superintendent-I, Medical Branch,
Northern Railway,
Baroda House,
New Delhi.Respondents

By Advocates:

Shri R.L. Dhevan, Counsel for
respondent No.1

Shri P.M. Ahlawat, Counsel for
respondents 2 and 3.

O R D E R (ORAL)

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

The applicant has filed this OA under Section 19 of the Administrative Tribunal's Act, 1985 wherein he has prayed for the following reliefs:-

(i) To quash the illegal seniority list dated 29.6.2001, Annexure A-2 in so far as the applicant is

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shown junior to respondent Nos. 2 and 3.

(ii) To direct the respondents to recast seniority of applicant vis-a-vis respondents Nos.2 and 3 on the principle of law laid down by Hon'ble Supreme Court in the case of Ajit Singh-II.

(iii) To direct the respondents to order promotion of applicant to the post of Chief Office Superintendent scale Rs.7450-11500 in preference to respondents No.2 and 3.

2. The applicant has filed this OA as he has a grievance about some illegal and arbitrary action of the respondents as he apprehend that the respondents are not recasting the seniority in the cadre of Office Superintendent Grade-I for promotion to the post of Chief Office Superintendent 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, 1997(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.



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4. An interim order was also claimed and at the time of initial hearing the same was granted on 27.8.2001 restraining the respondents from passing final order in the modified selection which they have proposed.

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 guide-lines. The Railway Board in turn had then referred it to the Ministry of Personnel and Training for issuing guide-lines 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 applicant has 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

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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 SLJ 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 S.K. Sahani appearing for the applicant submitted that this judgment is binding on this court, hence the OA be allowed.



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.

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 A-3 of the paper book.

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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".



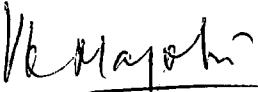
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12. So in view of this state of affairs and as per the decision given in OA 2494/2000, we find that the Railways are required to recast their seniority before proceeding with the promotions in the present case.

13. Accordingly, the OA is allowed and the interim order passed on 27.8.2001 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)

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