

Central Administrative Tribunal, Principal Bench

Original Application Nos. 1491/98 with
1006/99, 479/99 and 480/99

New Delhi, this the 10th day of August, 2000

Hon'ble Mr. S. R. Adige, Vice Chairman(A)
Hon'ble Mr. Kuldip Singh, Member (J)

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O.A. 1491/98

1. All India Scheduled Caste/Scheduled Tribe Railway Employees Association, New Delhi
At 224/4, Railway Colony, Kishan Ganj,
through its Zonal President
Ashok Kumar S/o Shri Balam Singh,
R/o. 224/1, Railway Colony, Kishan Ganj
New Delhi.
2. I.R. Meena S/o Shri B.R. Meena (DA-II)
Office of Chief Commercial Manager/Refund
Station Building, 11nd Floor,
New Delhi Railway Station.
3. Ajab Singh S/o Shri Pirthi Singh (DS-II)
Office of Chief Commercial Manager/Refund
Station Building, 11nd Floor,
New Delhi Railway Station.

Applicants

Versus

1. Union of India through the General Manager,
Northern Railway, Baroda House,
New Delhi.
2. The Secretary,
Railway Board, Govt. of India
Rail Bhawan, New Delhi.
3. The Divisional Railway Manager,
Northern Railway, Delhi Division
Near New Delhi Railway Station
New Delhi.
4. Akhil Bhartiya Shoshit Karamchari Sangh
through its President Sh. Ishwar Chandra Sharma
Northern Railway Station,
Moradabad
5. All India Equality Forum(Regd)
through Vice President namely Sh. R.S. Shukla
IV, N.20 Doublestorey, Lajpat Nagar,
New Delhi.
6. Shri M.L. Bhatia
S/o Shri H.R. Bhatia
OS-II,
Office of Chief Commercial Manager/Refund
Northern Railway Station, New Delhi.
7. Shri B.S. Bisht
S/o Shri Khushal Singh Bisht, OS-II
Office of Chief Commercial Manager/Refund
Northern Railway Station, New Delhi.

Respondents

O.A. 1006/99

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1. R.C.Meena
 S/o Shri Late Shri Sultan Meena
 R/o RZ-94B, Galli No.7, Mohan Block
 West Sagar Pur, New Delhi

2. Ghanshyam Jari - S/o Shri Dunda Jari
 R/o 1/8, Railway Colony, Lodhi Road
 New Delhi

Applicants**Versus**

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

2. The Secretary,
 Railway Board, Govt. of India
 Rail Bhawan, New Delhi

3. The Assistant Personnel Officer/HQ.I
 Northern Railway, Baroda House,
 New Delhi

4. Shri Ram Dular
 Office Superintendent
 Operating Branch,
 Northern Railway, Baroda House,
 New Delhi

5. Shri Munshi Ram Kirar
 Office Superintendent
 Operating Branch,
 Northern Railway, Baroda House,
 New Delhi

6. Shri Ghandgi Ram
 Office Superintendent
 Operating Branch,
 Northern Railway, Baroda House,
 New Delhi

7. Shri Bal Mukand
 Office Superintendent
 Operating Branch,
 Northern Railway, Baroda House,
 New Delhi

RespondentsO.A. 479/99

1. Akhil Bhartiya Shoshit Karamchari Sangh
 through its Secretary Sh.M.K.Chaturvedi S/o
 Shri H.P.Chaturvedi
 R/o B-291, Krishna Nagar, Izathnagar,
 Bareilly

2. H.N.Singh

3. G.C.Agarwal

4. Rejesh Kumar

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5. R.A.Pal

6. R.K.Singh

7. Rajinder Singh

8. Shiv Kumar Shreshth S/o Sh. Pritam Parsad

R/o C/o Shri Randhir Singh,

H.No.3, BC Bank Colony,

Bareilly (U.P.)

... Applicants

Versus

1. Union of India through the General Manager,
North Eastern Railway, Gorakhpur (U.P.).2. The Secretary,
Railway Board, Rail Bhawan,
New Delhi.3. The Divisional Railway Manager,
N.E. Railway, Izat Nagar,
Bareilly (U.P.).4. Shri M.L. Gupta
S/o Shri R.P. Gupta, 14, Kala Vihar,
Near Killa, Bareilly. . . . RespondentsO.A. 480/99Roop Chand Meena S/o Shri Bajrang Lal Meena
Head Clerk DRM Office, North East Railway,
Izat Nagar, Bareilly (U.P.). . . . Applicant

Versus

1. Union of India through the General Manager,
North Eastern Railway, Gorakhpur (U.P.).2. The Secretary,
Railway Board, Rail Bhawan,
New Delhi.3. The Divisional Railway Manager,
N.E. Railway, Izat Nagar,
Bareilly (U.P.). . . . Respondents(In all the aforesaid OAs, applicants are represented
by Shri V.P. Sharma and Shri Yogesh Sharma)(In all the aforesaid OAs respondents are represented
by S/Shri B.S.Jain, K.C.Dewan, P.S.Mahendru and
D.S.Jagotra, Counsel for official respondents)

(Shri T.S.Pandey, Counsel for private respondents)

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ORDER

Mr. S.R. Adige, VC(A):

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As these four OAs involve common questions of law and fact, they are being disposed of by this common order.

2. For this purpose the facts in OA No. 1491/98 will be referred to:

3. In this OA applicants impugn respondents' Circular dated 15.5.98 (Annexure-A1), which partially modified their earlier Circular dated 28.2.97 (Annexure-A2). These modifications are challenged as being illegal, unjust, arbitrary and unconstitutional.

4. Respondents' Circular dated 28.2.97 (Annexure-A2) is extracted in full which reads as under:

"Subject: Principles for determining the seniority of staff belonging to SC/ST promoted earlier vis-a-vis General/OBC staff promoted earlier.

In terms of provisions contained in paragraphs 302, 318 and 319 of Indian Railway Establishment Manual, Volume-I, 1989 Edition, seniority on promotion to higher grade is assigned in that grade with reference to date of entry on regular basis after due process of selection/suitability.

2. The Supreme Court in its judgment dated 10.10.95 in the Union of India Vs. Virpal Singh Chauhan etc. (JT 1995(7)SC 231) held as under:

'Even if a scheduled caste/scheduled Tribe candidate is promoted earlier by virtue of rule of reservation/roster than his senior general candidate and the senior general candidate is promoted later to the said higher grade, the general candidate regains his seniority over such earlier promoted scheduled caste/scheduled Tribe candidate. The earlier promotion of the scheduled caste/scheduled Tribe candidate in such a situation does not confer upon him seniority over the

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general candidate even though the general candidate is promoted later to that category."

2.1 In the same judgment, the Supreme Court further held as follows:-

"It also means that members in one panel take precedence over the members in the next panel. The application of the rule of seniority referred to in the said circular/letter and other circulars/letters referred to supra most of which do not make any distinction between selection and non-selection posts has to be subject to the said limitation."

3. The issue of revised instructions regulating seniority pursuant to the judgment of the Hon'ble Supreme Court has been considered by the Ministry of Railways. It has been decided that if a Railway Servant belonging to the scheduled caste or scheduled Tribe is promoted to an immediate higher grade/ post against a reserved vacancy earlier than his senior general/OBC Railway servant who is promoted later to his said immediate higher post/grade, the general/OBC Railway servant will regain his seniority over such earlier promoted railway servant belonging to the scheduled caste and the scheduled Tribe in the immediate higher post/grade. This will, however, be subject to the condition that in respect of selection posts, the over-riding principle that a Railway servant borne in a later panel, will be observed.

4. Accordingly, the Indian Railway Establishment Manual may be amended as in Advance Correction Slip No.25 enclosed.

5. This will have effect from 10.2.95 and will not disturb the seniorities decided earlier as per the rules in force at the relevant times."

5. It is clear that the aforesaid Circular dated 28.2.97 has been issued in the background of the Hon'ble Supreme Court's judgment dated 10.10.95 in the case of UOI & Ors. Vs. Virpal Singh Chauhan & Ors. JT 1995(7) SC 231.

6. Respondents' impugned Circular dated 15.5.98 (Annexure-A1) is also extracted in full which reads as follows:

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"Subject: Principles for determination the seniority of staff belonging to SC/ST promoted earlier vis-a-vis General/OBC staff promoted later."

1. Reference this Ministry's letter of even number dated 28.2.97 on the above subject.

2. The instructions contained in this Ministry's letter of even number dated 28.2.97 vide para -3 thereof make a distinction between selection posts and non-selection posts for the purpose of regarding seniority by a senior General/OBC Railway Servants promoted later to a higher grade/post over a junior SC/ST Railway Servant promoted earlier to such a higher grade post against reserved vacancy. These instructions have been reviewed at the instance of and in consultation with Department of Personnel and Training. It has been decided, in partial modification of this Ministry's letter dated 28.2.97, that there will be no distinction between selection posts and non-selection posts.

3. Accordingly the Indian Railway Establishment Manual may also be amended as in advance Correction Slip No.44 enclosed.

4. This will have effect from the date of effect of original orders contained in this Ministry's letter dated 28.2.97 and 10.2.95."

5. The question for adjudication is whether distinction between selection and non-selection posts made in Circular dated 18.5.98 was a valid one.

6. In this connection, it is important to note that pursuant to Hon'ble Supreme Court's judgment in Virpal Singh's case (supra), the DOP & T which is the nodal Ministry primarily concerned with framing of personnel policy for the entire Govt. of India had issued Circular dated 30.1.97 (Annexure-R 1) which provides that

"If a candidate belonging to the scheduled castes or the scheduled tribe is promoted to an immediate higher post/grade against a reserved vacancy earlier than his senior general/OBC candidate who is promoted later to the said immediate higher post/grade, the general/OBC candidate will regain his seniority over such earlier promoted candidate of the scheduled castes and the scheduled Tribe in the immediate higher post/grade."

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9. The aforesaid OM dated 30.1.97 issued by DOP & T, does not make any distinction between selection and non selection posts and has not been impugned by the applicants. Respondents in their reply have stated that Circular dated 15.5.98 modifying their earlier Circular dated 28.2.97 has been issued in consultation with DOP & T to ensure uniformity and to bring the rules on the seniority of SC/ST staff promoted earlier against a reserved vacancy vis-a-vis a senior General/OBC staff promoted later, in line with the instructions issued by DOP & T in their OM dated 30.1.97.

10. We have heard Shri V.P.Sharma for applicants in all the four OAs. On behalf of official respondents S/Shri K.C.Dewan, P.S.Mahendru, R.L.Dhawan, D.S.Jagotra B.S.Jain while on behalf of private respondents Shri T.S.Pandey had been heard.

11. The first ground taken in the OA is that the impugned Circular dated 15.5.98 is violative of law as laid down by Hon'ble Supreme Court's ruling in Jagdish Lal Vs. State of Haryana & Ors. J.T 1997(5) SC 387. The aforesaid judgment of the Hon'ble Supreme Court in Jagdish Lal's case was by a three-Member Bench, but the same has been held as having not been correctly decided by a Five Member Bench of the Hon'ble Supreme Court in Ajit Singh & Ors. Vs. State of Punjab & Ors. J.T.1999(7) SC 153 decided on 16.9.99. Hence the ruling in Jagdish Lal's case (supra) is of no help to the applicants while challenging the impugned Circular dated 15.5.98.

12. The next ground taken by applicants is that

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in the case of Mukul Saxena & Ors. Vs. UOI & Ors. (OA No. 1469/97, decided on 31.3.98) (Annexure-A8) in which one of us (S.R. Adige, VC(A) was a party, it had been held that "the following five lines in Railway Board Circular dated 28.2.97 were in order and need not be deleted." This will, however, be subject to the condition that in respect of selection post the overriding principle that a railway servant borne in an earlier panel will rank senior to a railway servant borne in a later panel will rank senior to a railway servant borne in a later panel will be observed.

13. When the order dated 31.3.98 in Mukul Saxena's case (supra) was pronounced, DOP & T's OM dated 31.1.97 was not placed before the Bench. Furthermore, the five-Member Constitution Bench's judgment of the Hon'ble Supreme Court in Ajit Singh's case (supra) had also not been pronounced. The Tribunal's ruling in Mukul Saxena's case (supra) must therefore be treated as per curium.

14. It has next been urged that in Har Bhajan Singh & Ors. Vs. UOI & Ors. OA No. 1142/97 decided on 24.7.97 (Annexure-A5) it had been held that the Hon'ble Supreme Court's ruling in Jagdish Lal's case (supra) had not overruled the ratio laid down by subsequent coordinate Benches in Virpal Singh Chauhan's case (supra) and Ajit Singh's case (supra) and had only advanced the principles contained in the previous decisions and the Tribunal was therefore required to abide by the judgment in Jagdish Lal's case (supra).

15. We have already noticed that the ruling of a

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three Member Bench of the Hon'ble Supreme Court dated 7.5.97 in Jagdish Lal's case (supra) has been held as having not correctly decided by a Five Member Bench of the Apex Court in Ajit Singh's case (supra) decided on 16.9.99 and under the circumstance the ruling in Jagdish Lal's case (supra) is of no avail to applicants while challenging the circular dated 15.5.98.

16. Very recently the CAT Jodhpur Bench in order dated 12.4.2000 while disposing of OA No.49/86 All India Rail Karamchari Non-Scheduled Caste and Non Scheduled Tribe Association & another Vs. UOI & Ors. has held thus

"the law laid down in Ajit Singh's case was further clarified by Hon'ble Supreme Court vide their judgment dated 16.9.99 in Ajit Singh II's case 1999(8) 211 thus We therefore hold that the roster point promoters (reserved category) cannot count their seniority in the promoted category from the date of their continuous officiation in the promoted post vis-a-vis the general category candidates who were senior to them in the lower category, but were later promoted. On the other hand, the senior general candidate at the lower level if he reaches the promotional level later but before the further promotion of the reserved candidate, he will have to be treated as senior at the promotional level to the reserved candidates, even if the reserved candidate was earlier promoted to that level"

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17. The aforesaid extracts make no distinction between selection posts and non-selection posts, and indeed the CAT Jodhpur Bench's aforesaid order dated 12.4.2000 also does not make any such distinction.

18. In the result, we find no reason to interfere with the impugned circular dated 15.5.98.

19. These four OAs are therefore dismissed. No costs.

20. Let a copy of this order be placed in all the OAs i.e. OA Nos. 1491/98, OAs. 479, 480 and 1006/99.

Kuldeep
(KULDIP SINGH)

MEMBER (J)

S.R. Adige
(S.R. ADIGE)

VICE CHAIRMAN (A).

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