

Central Administrative Tribunal
Principal Bench

OA 2320/1998

New Delhi this the 15th day of February, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).
Hon'ble Shri Govindan.S. Tampi, Member(A).

Shri Dushyant Kumar,
S/o Shri Ghanshyam Das.
Law Assistant,
Northern Railway,
Baroda House,
New Delhi. ... Applicant.

(By Advocate Shri B.S. Mainee)

Versus

Union of India through

1. The Secretary,
Ministry of Railways,
Rail Bhawan,
New Delhi.
2. The General Manager,
Northern Railway,
Baroda House,
New Delhi. ... Respondents.

(By Advocate Shri O.P. Kshatriya)

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Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).

The applicant is aggrieved by the order passed by the respondents dated 17.11.1998 (Annexure A-1).

2. The brief relevant facts of the case are that the applicant contends that he is working as Law Assistant in the grade of Rs.1600-2660 (pre-revised) from 1995. According to him, in the common seniority list of Law Assistants, he is at Serial No.3, and at Serial No.2, with regard to the general community incumbents. He has submitted that there are 5 vacancies in the next higher posts of Chief Law Assistant (CLA) in

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the grade of Rs.7450-11500. This post is a non-selection post to be filled on seniority-cum-suitability.

3. The main contention of Shri B.S. Mainee, learned counsel is that against the 5 vacancies of CLAs, the respondents cannot reserve 4 posts for Scheduled Castes (SCs) and only 1 post for general candidate. This, he submits, is excessive reservation in a year, which patently exceeds the 50% quota as laid down by the Hon'ble Supreme Court in R.K. Sabharwal & Ors. Vs. State of Punjab and Ors. (1995(2) SCC 745).

4. In the impugned order dated 17.11.1998, the respondents have referred to PS No.11450 and have stated that their action for reserving 4 posts of CLAs for SCs out of 5 posts is not erroneous or arbitrary.

5. By Tribunal's order dated 30.1.2001, the respondents were directed to place on record the correct position of the number of vacancies and the reservation quota actually filled by persons of that category. They were also required to state whether after PS No.11450 was issued, any other relevant instructions have been issued by the DOP&T on the question of reservation roster in implementation of the Supreme Court's judgement in R.K. Sabharwal's case (supra). The respondents have filed additional affidavit on 6.2.2001. From this, it is seen that at present the cadre position of CLAs in the Northern Railway is 3945 work-charged

posts with 7 posts for SCs and 3 for STs. They have submitted that when the O.A. was filed in November, 1998, against the sanctioned strength of CLAs they had 37+2 work-charged posts for general candidates, 8 for SCs and 1 for ST. They have also clarified that out of 8 SC candidates on Roll, 3 SCs had become CLAs against ~~the~~ roster points and the balance 5 SC candidates on their merit position. So, according to the respondents, the short fall of SC community became 4 in the Post Based Roster which is also in terms of PS No.11450 dated 9.9.1997.

6. Shri B.S. Maine, learned counsel has submitted that the stand of the respondents is not in accordance with the judgement in R.K. Sabharwal's case (supra) or the later instructions issued on the subject of reservation by the DOP&T O.M.dated 29.8.1997. He has also submitted that PS No.11450 relied upon by the respondents has been issued prior to the later circular, copy placed on record. The learned counsel for the applicant relies on Paragraph 2 of this circular which has referred to another land-mark judgement of the Supreme Court in the case of Indira Sawhney Vs. Union of India (1992 Supp.(3) SCC 217) and states as follows:

"2. The Supreme Court in the judgement in the case of Indira Sawhney v. Union of India, inter alia, validated the "carry forward" rule under which reservations are carried forward from year to year. However, while doing so, the Court also directed that the application of this rule, in whatever manner it was operated, should not result in the breach of the 50% rule. In other words, the judgement laid down that the number of vacancies to be filled on the basis of reservation in a year, including carried forward reservation, should in no case exceed the 50% limit. It is, therefore, not possible now to treat the current and the backlog reservation on

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separate footings in the manner contemplated in this Department's O.M., dated April, 25, 1989 mentioned in Para 1 above".

(Emphasis added)

The above emphasised portion of Paragraph 2 of DOP&T O.M. dated 29.8.1997 has been relied upon by Shri B.S. Maine, learned counsel for the applicant. From the replies filed by the respondents, including the additional affidavit, it is clear that the respondents have not noticed the aforesaid O.M. on the subject of provision for reservation and have only relied on the earlier O.M. issued by the DOP&T.

7. In the above facts and circumstances of the case, the O.A. is disposed of with a direction to the respondents to examine the issue of reservation vis-a-vis the contentions of the applicant that the reservation for SCs/STs should not exceed the 50% limit in a particular year, keeping in view the relevant rules and instructions, including the Govt. of India, DOP&T O.M. dated 29.8.1997 and take appropriate decision in the matter. They shall also intimate the applicant by a reasoned and speaking order, annexing the relevant rules and instructions they rely upon within three months from the date of receipt of a copy of this order. No order as to costs.

(G. V. Indan S. Tampli)
Member (A)

"SRD"

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman (J)