

(a)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 306/98

New Delhi this the 27 Day of August 1998

Hon'ble Mr. Justice K.M. Agarwal, Chairman
Hon'ble Mr. R.K. Aahooja, Member (A)

Smt. Renu Vasudeva,
W/o Shri S.K. Vasudeva,
Working as Office Superintendent-I (P)
In the Office of Northern Railway Hqrs,
Baroda House, New Delhi-110 0011.
R/o 28/7 DCM Railway Colony,
Delhi-110 007. Applicant
(By Advocate: Shri P.M. Ahlawat)

-Versus-

1. The General Manager,
Northern Railway,
Baroda House, New Delhi-110 001.
2. The Dy. Chief Personnel Officer (HQ.),
Northern Railway,
Baroda House, New Delhi-110 001. Respondents
(By Advocate: Shri R.L. Dhawan)

ORDER

Hon'ble Shri R.K. Aahooja, Member (A)

The applicant joined service as a Clerk on 19.9.1961 and was promoted as Senior Clerk and later on as Head Clerk w.e.f. 23.4.1981. She claimed that she was promoted as Office Superintendent in the Grade II of Rs. 550-750/1600 - 2660 on adhoc basis w.e.f. 6.4.1985. This promotion was regularised vide Notice dated 25.6.1987. Thereafter, she was promoted as Office Superintendent Grade I in the pay scale of Rs. 2000-3200 on 9.4.1990 vide Notice of the same date. Her grievance is that she was arbitrarily reverted back w.e.f. 3.8.1990 vide Notice dated 14.9.1990 even though vacancies in Grade I were available. She filed an O.A No. 92/91 against this reversion order which was disposed of on 26.4.1996 with the direction to the respondents to take a decision in the light of the orders of the Hon'ble Supreme Court in Union of India Vs. Virpal Singh Chauhan and Ors. JT 1995 (70 SC 231, R.K.

d/

(2)

Sabharwal & Ors. Vs. State of Punjab and Ors., 1995(2)

SCC 745 and J.C. Malik and Ors. Vs. Union of India and Ors, 1978(1) SLI P. 844 (Allahabad High Court). It is the case of the applicant that the respondents wrongly interpreted the direction of the Supreme Court and thereby wrongly lowered her seniority. The applicant submits that on the basis of the Supreme Court Ruling, she is entitled to have promotion as Office Superintendent Grade I maintained with all consequential benefits.

2. The respondents have raised two preliminary objections namely that the application is barred by limitation as well as by res judicata. On merits, they say that the applicant who belongs to the Scheduled Caste category, got accelerated promotion as Office Superintendent Grade II. Her further promotion as Office Superintendent Grade I was against a newly created work charged post. The sanction for the work charged posts expired and not only the applicant but her senior one Shri Bhagwan Singh was also reverted to the post of Office Superintendent Grade II. Simultaneously, the applicant's seniority as Office Superintendent Grade II came to be revised. However, according to the respondents the applicant has again been promoted as Office Superintendent Grade I in the pay scale of Rs. 2000-3200 w.e.f. 1.3.1993.

3. We have heard the counsel on both sides. Shri P.M. Ahlawat, Learned counsel for the applicant argues that since the applicant is impounding the decision of the respondents consequent to the direction of this Tribunal in O.A. No. 936/90 she has a fresh cause of action. We are in agreement with the learned counsel.

The applicant had sought restoration of her position as Office Superintendent Grade I from the date she had been reverted in 1990 and the O.A. was disposed of with the direction that the respondents should decide the matter in terms of the various Supreme Court Judgements in Virpal Singh Chauhan (Supra), et al. It is the case of the applicant that the respondents have wrongly interpreted the directions given by the Hon'ble Supreme Court in the aforesaid judgements. We, therefore, find that the present O.A. is neither barred by limitation nor by res judicata.

4. Shri Ahlawat, learned counsel strenuously argued that the Hon'ble Supreme Court have decided in Virpal Singh Chauhan (Supra) that the directions therein would have only prospective effect and promotions already made would not be disturbed. On the other hand, Shri R.L. Dhawan submitted that the Tribunal in its interim order in O.A. No. 92/91 had directed as follows:

" The issue in the OA itself relates to the determination of seniority between two categories of employees and as such it is not possible to say at this stage as to who is senior and who is junior. The relief prayed in sub-para (a) as aforesaid, cannot be therefore be allowed as an interim relief. However, we are inclined to pass an interim order that all promotions to be made from now onwards to the post of Suptt. (P) in the Personnel Branch of the Northern Railway, Headquarters Office shall be subject to the outcome of the decision in the OA....."

5. He further submitted that as annexure R-3 shows the Tribunal in O.A. 936/90 S.K. Anand and Ors. Vs. Union of India relating to the promotions to the post of Asstt. Superintendent had directed that the same would be determined in accordance with the Supreme Court order dated 24.9.1994. A copy of this order of the

02

Supreme Court is Annexed at R-5 of the present OA. Shri R.L. Dhawan submitted that since the Interim Order made in O.A. No. 936/90 and O.A. No. 92/91 made the final outcome subject to the 1994 orders of the Supreme Court which were confirmed by the final orders of the Supreme Court in J.C. Malik and Virpal Singh Chauhan (Supra), the case of the applicant is not saved by the stipulation in Virpal Singh Chauhan (Supra), that the general principle enunciated therein would have only prospective effect. 6. We have considered the matter carefully. The respondents themselves have produced the instructions of the Railway Board contained in their letter dated 28.2.1997 addressed to the General Managers detailing the principle for determining the seniority of the staff belonging to SC/ST promoted earlier vis-a-vis general/ OBC staff promoted later. Citing Union of India Vs. Virpal Singh Chauhan (Supra), the correction slip annexed thereto makes the new amended rules applicable ~~as per~~ only w.e.f. 10.2.1995. This shows that the Railways have as per the directions of the Hon'ble Supreme Court enforced the new principle with prospective effect from 1995. In so far as the applicant is concerned the interim Order of this Tribunal in O.A. No. 92/91 would merge in the final order dated 26.4. 1996. A direction therein was to decide the case of the applicant on the basis of Supreme Court's rulings. As per these rulings promotions already made were not to be disturbed. The correct interpretation as submitted by the learned counsel for the applicant would be that prior to that date seniority would be determined in accordance with the promotions already made. 7. We, however, notice that according to the respondents the reversion of the

13

applicant in 1990 took place because the work charged post of Office Superintendent Grade I had lapsed on expiry of the sanction. The applicant contends that there were still three more vacancies available. We cannot go into this dispute of fact more so because the applicant has not given any indication about the authority under which these work charged posts were created but left unfilled. We are therefore unable to grant the relief sought for namely to have the order of reversion set aside. 8. In the light of the above discussion, we dispose of this O.A with the direction to the respondents to consider applicant's case for promotion to the post of Office Superintendent Grade I subject to the availability of vacancy from 1990 onwards on the basis of pre-revised seniority as Office Superintendent Grade II. If her promotion as Office Superintendent Grade I is as a result antedated, she will be entitled to her seniority and notional fixation of pay. She will however be not entitled to any arrear of pay till the date of filing of this OA, i.e., 5.2.1998. There will be no order as to costs.

KM
(K.M. Agarwal)
Chairman

RKA
(R.K. Ahuja)
Member(A)

Mittal