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Central Administrative Tribunal, Principal Bench

Original Application No.596 of 1998

New Delhi, this the 3rd day of July, 2000

Hon'ble Mr. Justice Ashok Agarwal Chairman  
Hon'ble Mr. V.K. Majotra, Member (Admnv)

Hari Chand s/o late Sh. Dal Chand Retd.  
Asstt. Supdt. Northern Railway, Divisional  
Railway Managers Office, r/o 3220, Gali  
School Wali Pahar Ganj, New Delhi-55.

- Applicant

(By Advocate Shri H.P. Chakravorti)

Versus

1. Union of India through the Chairman,  
Railway Board, Principal Secretary to  
Govt. of India, Ministry of Railway,  
Rail Bhawan, New Delhi.

2. The General Manager, Northern Railway,  
Baroda House, New Delhi.

3. The Divisional Railway Manager, Northern  
Railway, New Delhi.

- Respondents

(By Advocate Shri R.L. Dhawan)

O R D E R (Oral)

By V.K. Majotra, Member (Admnv) -

The applicant has challenged the following orders: (i) order dated 9.6.1997 whereby his request for considering him for promotion as Assistant Superintendent Grade Rs.1600-2660 has been rejected, and (ii) the Railway Board's letter No.E(NG) I-97/SR6/3 dated 28.2.1997 whereby principles for determining the seniority of staff belonging to SC/ST have been laid down.

2. The applicant, who was working as Head Clerk in Northern Railway, has claimed that he was entitled to the next promotion to the post of Assistant Superintendent from March, 1989. According to him as per the sanctioned strength at the relevant time all posts meant for SCs and STs were filled up and only six posts reserved for general candidates were vacant. However, the respondents ignoring the claim of the applicant

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promoted four more SC employees on the post of Assistant Superintendent vide order dated 1.3.1990. The applicant along with others filed O.A.No.692/1990 (M.L.Gupta & ors Vs. Union of India) which was disposed of by this Tribunal vide order dated 3.2.1997 as follows :-

"The respondents shall grant relief to the applicant in terms of the directions given by the Hon'ble Supreme Court in the matter of J.C.Malick, and Union of India Vs. Veer Pal Singh Chauhan and as clarified by the Hon'ble Supreme Court itself in the subsequent decisions and appropriate orders in this regard shall be passed within two months from the date of receipt of a certified copy of this order".

3. The applicant retired from service on 31.10.1992 on attaining the age of superannuation. The respondents rejected the claim of the applicant vide order dated 9.6.1997 placing reliance on the instructions of the Railway Board contained in letter No. E(NG)-I-97/ SR6/3 dated 28.2.1997 (Annexure-A-2). The applicant submitted representation against the impugned orders dated 9.6.1997 on 6.8.1997 and reminders on 19.9.97 & 20.11.1997 but the respondents have not examined the case. The applicant has sought quashing of the impugned orders dated 9.6.1997 and 28.2.1997/4.3.1997 to the extent they hurt the right of consideration of the applicant for promotion as Assistant Superintendent Grade Rs.1600-2660 on the basis of seniority assigned in 1988 and direction to the respondents to release promotional benefits to him with effect from 18.3.1998 when his junior was promoted.

4. The respondents in their counter have stated that selection for the post of Assistant Superintendent was held in 1990. Out of 11 posts as per 40 point



roster applicable at the time 3 posts were filled from SC candidates and 5 posts including previous short fall were to be filled from the ST candidates. 5 ST candidates were not available at that time. Thus, in accordance with Railway Board's order circulated vide serial no.9722 (Annexure-R-I) these 5 posts were given to SC candidates. In accordance with Railway Board's instructions in a selection not more than 50% vacancies can be filled by reserved community candidates. Thus out of 11 vacancies 6 vacancies were proposed to be filled by general candidates and 5 by SC candidates. As a result of selection, a panel of only 6 candidates was prepared vide letter dated 1.3.1990 out of which 2 candidates were from general candidates and 4 from SC category. The applicant did not come within the zone of consideration at the relevant time. The respondents have also taken a preliminary objection that the present OA is barred by limitation. According to the respondents Railway Board's instructions dated 28.2.1997 regarding the principles for determining seniority of staff belonging to SC & ST issued as per the law laid down by the Hon'ble Supreme Court in the cases of Union of India and others Vs. Veerpal Singh Chauhan, (1995) 6 SCC 684 = JT 1995 (7) SC 231 will have a prospective effect from 10.2.1995 and since the applicant had retired from service from 31.10.1992 he would have no locus standi to challenge any such instructions or any action taken thereunder.

5. We have heard the learned counsel of both sides and gone through the material available on file. The claim of the applicant is that he should have been considered against vacancies available in the year 1989.



6. The objection of the respondents relating to limitation has to be rejected because the issue of seniority had been raised by the applicant in his earlier OA namely OA 692/90, which was disposed of vide orders dated 3.2.1997, whereby the respondents had been issued directions to consider the case of the applicant in terms of the directions given in the cases of J.C.Malik and Veerpal Singh Chouhan (supra). Whereafter the respondents have rejected the claim of the applicant vide order dated 9.6.1997 (Annexure-A-1), which has been challenged in the present OA filed on 12.3.1998.

7. The basic issue in the present OA is whether at the relevant time there were vacancies reserved for SCs & STs. As per the applicant's claim only 6 vacant posts existed and none of which was reserved for SC/ST. This claim of the applicant has been refuted by the respondents by stating that out of the 11 posts as per the 40 point roster applicable at the relevant time 3 posts were filled up through SC candidates and 5 posts including previous short fall were to be filled from ST candidates. As ST candidates were not available at that time, in accordance with Railway Board's order circulated vide serial no.9722 dated 25.10.1988 (Annexure-R-1) those five posts were reserved for SC candidates. Again as per Railway Board's instructions not more than 50% vacancies could be filled by reserved community. Thus only 6 posts were proposed to be filled by general candidates and 5 by SC candidates. A panel of 6 selected candidates was declared on 1.3.1990 out of which 2 were from general candidates and 4 from SC community. In the seniority list the applicant was at serial no.58 and thus he did not come within the zone of

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consideration.

8. Shri Dhawan, learned counsel of the respondents relied on Bharat Ram Meena Vs. Rajasthan High Court, 1997 SCC (L&S) 797 stating that the respondents have given factual information in regard to the sanctioned strength, vacancies, feeder posts and position relating to reservation. The applicant has contested these facts without any basis. As per the ratio of the aforesaid case ~~the applicant~~ <sup>such facts</sup> facts cannot be gone into by Courts in the case like the present one. Shri Dhawan, has also drawn our attention to a decision of Hon'ble Supreme Court in the case of Baburam etc. Vs. C.C. Jacob & others, 1999 (1) SCSLJ 347 wherein it was observed that the judgment in the case of R.K. Sabharwal & others Vs. State of Punjab and others, (1995) 2 SCC 745 was delivered on 10.2.1995 and declared to be prospective. It was held in that case that "the prospectivity was given to Sabharwal's case only to see that status prevailing prior to the judgment in Sabharwal's case should not be disturbed". Relevant portion of Baburam's case (supra) is extracted below:-

"5. The prospective declaration of law is a device innovated by the apex court to avoid reopening of settled issues and to prevent multiplicity of proceedings. It is also a device adopted to avoid uncertainty and avoidable litigation. By the very object of prospective declaration of law, it is deemed that all actions taken contrary to the declaration of law prior to its date of declaration are validated. This is done in the larger public interest. Therefore, the subordinate forums which are legally bound to apply the declaration of law made by this Court are also duty bound to apply such dictum to cases which would arise in future only. In matters where decisions opposed to the said principle have been taken prior to such declaration of law cannot be interfered with on the basis of such declaration of law. In the instant case, both decisions of the DPC as well as the appointing authority being prior

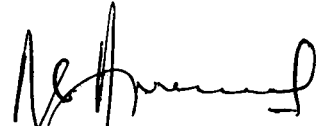


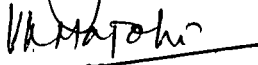
to the judgment in Sabharwal's case, we are of the opinion that the tribunal was in error in applying this decision. For this reason, these appeals succeed and are hereby allowed; setting aside the orders and directions made by the Tribunal in ...."

9. In the facts and circumstances of the case we are in agreement with the learned counsel of the respondents that the impugned order dated 28.2.1997 regarding the principles for determining seniority of staff belonging to SC/ST issued in the light of the law laid down by the Hon'ble Supreme Court in the case of Veerpal Singh Chauhan (supra) will have to <sup>taken</sup> effect with effect from 10.2.1995 and thus the applicant who retired from service on 31.10.1992 cannot avail of any benefit by challenging the said instructions.

10. The facts contended by the respondents have also to be taken as true and it has to be held that the applicant was not considered being not within the zone of consideration at the relevant time in 1989.

11. Having regard to the above discussions and reasons we do not find any merit in the present OA. The same is accordingly dismissed without any order as to costs.

  
(Ashok Agarwal)  
Chairman

  
(V.K. Majotra)  
Member (Admnv)