

Central Administrative Tribunal
Principal Bench

O.A.No.2387/95

O.A.No.2345/95

Hon'ble Shri R.K.Ahooja, Member(A)
Hon'ble Shri Syed Khalid Idris Naqvi, Member(J)

New Delhi, this the 25th day of ~~September~~ ^{October}, 1999

O.A.No.2387/95

1. Shri Jagmohan Singh
S/o Sardar Tirath Singh
working as Office Supdt.II
General Branch
Northern Railway
Baroda House, New Delhi
 2. Shri Roop Ram
S/o Shri Urvi Dutt
working as Office Supdt.II
General Branch
Northern Railway
Baroda House, New Delhi
 3. Shri Mohd. Ali
S/o Shri Bakhtawar Ali
working as Office Supdt.II
General Branch
Northern Railway
Baroda House, New Delhi
 4. Smt. Sushma Kapoor
W/o Shri Vijay Kumar Kapoor
working as Office Supdt.II
General Branch
Northern Railway
Baroda House, New Delhi
 5. Ms. Urmila Devi
D/o Shri Kunj Bihari Lal
working as Office Suptd.II
General Branch
Northern Railway
Baroda House, New Delhi
- ...Applicants.

(By Shri S.K. Sawhney, Advocate)

Versus

1. Union of India through
General Manager
Northern Railway
Baroda House, New Delhi
2. Shri S.N. Raut
S/o Shri Bhola Raut
Working as Office Supdt.II
General Branch
Northern Railway
Baroda House, New Delhi

3. Shri Pyare Lal
S/o Shri Khem Chand
Working as Office Supdt.II
General Branch
Northern Railway
Baroda House, New Delhi

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4. Shri Mohan Lal Meena
S/o Shri
Working as Office Supdt.II
General Branch
Northern Railway
Baroda House, New Delhi

...Respondents

(By Shri B.S.Jain, Advocate for the official respondents and Shri P.M.Ahlawat, Advocate for the private respondents).

O.A. No.2345/95

1. Shri D.S. Bhasin
S/o Shri Manohar Singh Bhasin
Chief Goods Clerk
Northern Railway
under Chief Goods Supervisor
Railway Station
Subzi Mandi, Delhi
R/o D-162, Fateh Nagar
New Delhi

2. Shri P.B. Narang
S/o Shri Desraj Narang
Working as Chief Goods Clerk
under Chief Goods Supervisor
Northern Railway
Railway Station
Subzi Mandi, Delhi
R/o 64, State Bank Nagar
Outer Ring Road
Paschim Vihar, Delhi

....Applicants

(By Shri S.K. Sawhney)

Versus

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

2. Divisional Railway Manager
Northern Railway
Chelmsford Road, New Delhi

...Respondents

(By Shri O.P. Kshatriya, Advocate)

ORDER

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

Since both the OAs raise the same question of law, they are being disposed of by this common order.

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2. The applicants herein who belong to general category were promoted to the post of Office Superintendent Grade-II scale Rs.1600-2660 (hereinafter referred to as Grade-II) in the General Branch of Northern Railway. Their promotion to Grade-II is w.e.f. 11.3.1995. Respondents No.2, 3 and 4 who were junior to the applicants in the feeder cadre obtained accelerated promotion before the applicants to Grade-II w.e.f. 28.10.1987, 2.5.1988 and 19.8.1985 respectively against reserved vacancies. The dispute now devolves around the inter-se seniority of the applicants vis-a-vis Respondents No.2, 3 and 4 as in Grade-II for consideration for further promotion to Grade-I of Office Superintendent in the pay scale of Rs.2000-3200(pre revised). The promotion is to be made as per seniority-cum-fitness. In other words it is a case of non-selection promotion.

3. The case of the applicants is that they have regained their seniority over Respondents No.2, 3 and 4 in Grade-II in terms of various Judgments of this Tribunal and those of Hon'ble Supreme Court in Union of India and Ors. Vs. M/s. J.C.Malik and Ors., SLJ 1996(1) SC 115; R.K.Sabharwal and Ors. Vs. State of Punjab and Ors., 1995(2) SCC 745; Union of India and Ors. Vs. Virpal Singh Chauhan Etc., JT 1995(7) SC 231 and Ajit Singh Januja and Ors. Vs. State of Punjab & Ors., 1996(2) Scale 526. They further contend that in terms of the Judgments of the Hon'ble Supreme Court in Ajit Singh Januja & Ors. (Supra), Respondents No.2, 3 and 4 can not claim

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promotion to a general category vacancy in Grade-I on the strength of their accelerated promotion to Grade-II.

4. It is an admitted position that in the feeder cadre to Grade-II the applicants were senior to Respondents No.2, 3 and 4. It is also admitted by both sides that out of 8 posts in Grade-I four posts are already held by persons belonging to Scheduled Caste and Scheduled Tribes. It has also not been disputed on the part of the official respondents and private respondents that the prescribed reservation for Scheduled Castes and Scheduled Tribes has been achieved in Grade-I and in terms of R.K.Sabharwal and Ors. (Supra) the roster system for reservation would no longer be operative.

5. The case of the official respondents is that they have recasted the inter-se seniority in Grade-II on the basis that the principle enunciated in Union of India & Ors. Vs. Virpal Singh Chauhan Etc. (Supra) is to be applicable only w.e.f. the date of Judgment in R.K.Sabharwal (Supra), i.e. 10.2.1995. In other words, the inter-se seniority position as existing on that date has not been disturbed. The ad hoc promotions have also been given by the official respondents to private respondents in Grade-I on that basis.

6. The stand of the private respondents is that the decision of the Hon'ble Supreme Court in Union of India & Others Vs. Virpal Singh Chauhan (Supra) was in respect of Guards in the Railway

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service and was per incuriam. This, according to the private respondents, has also been clarified by the three Bench Judgment of the Supreme Court in Jagdish Lal and Others Vs. State of Haryana and Ors., AIR 1997 SC 2366. Therefore according to the private respondents the general principle laid down in the Indian Railway Establishment Manual, Vol.1 Chapter-3 para 306 that "candidates selected for appointments at earlier selection shall be senior to those selected later irrespective of the date of posting." The private respondents having entered Grade-II earlier than the applicants herein are under the provision of Para 3 of the principle, it is clarified, entitled to count their seniority on the basis of the comparative length of service in Grade-II.

7. Before we proceed further, we may briefly survey the case law on which reliance has been placed by both the parties.

8. In Indira Sawhney Vs. Union of India and Others (1992 Suppl.(3) SCC 217), it was held that while it may be permissible to prescribe in the matter of direct recruitment reasonably lesser qualifying marks or evaluation for the OBCs, SCs and STs, consistent with the efficiency of administration and the nature of duties attaching to the office concerned, such a course would not be permissible in the matter of promotions.

9. In R.K.Sabharwal Vs. State of Punjab and Ors. (Supra) it was held that when the total number of posts in cadre are filled by the operation of the

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roster then the result envisaged by the reservation policy is achieved. There is thereafter no justification to operate the roster again. The "running account" is to operate only till the quota provided under the impugned instructions is reached and not thereafter. The vacancies arising in the cadre, after the initial posts are filled, will pose no difficulty as a vacancy on account of a general candidate will be filled by a general candidate and that of reserved candidate will be filled by a person from the reserved category.

10. In Union of India & Others Vs. J.C. Malik and Others (Supra) - the view held in R.K. Sabharwal Vs. Union of India was reiterated.

11. In Union of India & Others Vs. Virpal Singh Chauhan Etc. (Supra) it was held that even if a Scheduled Caste and Scheduled Tribes candidate is promoted earlier by virtue of reservation then his senior general candidate who is promoted later to the said higher grade, the general candidate will regain his seniority over such earlier promoted Scheduled Castes and Scheduled Tribes candidate. In other words, the accelerated promotion of the reserved category candidates in such a situation will not confer upon him seniority over the general candidate.

12. In Ajit Singh Januja & Ors. Vs. State of Punjab & Ors 1996(2) Scale 526/1996(1) ATJ 648 - the earlier view expressed in Union of India Vs. Virpal Singh Chauhan was reiterated. It was held that the rule of reservation gives accelerated promotion

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but it does not give accelerated "consequential seniority". Thus whenever a question arises for filling up a post reserved for Scheduled Caste/tribe candidate in still higher grade than such candidate belonging to Scheduled Caste/tribe shall be promoted first but when the consideration is in respect of promotion against the general category post in still higher grade than the general category candidate who has been promoted later shall be considered senior and his case shall be considered first for promotion applying either principle of seniority-cum-merit or merit-cum-seniority. Otherwise the result will be that the majority of the positions in the higher grade shall be held at one stage by persons who have not only entered late in service but have excluded the general candidates from being promoted merely on the ground of their initial accelerated promotion.

13. In Jagdish Lal and Ors. Vs. State of Haryana & Ors. (AIR 1997 SC 2366) it was held that the principle consideration in Virpal Singh Chauhan (Supra) was seniority under the rules described in the Railway Establishment Code/Manual and in any case it related to the interpretation of "panel" position under those rules. It was also held that the Supreme Court decision in Ajit Singh Januja & Ors. Vs. State of Punjab & Ors. (Supra) only reflected the principle that where the promotion post is to be filled through the selection process then a junior if more meritorious can by pass the senior; however, where seniority is the main consideration, then the length of service in the higher cadre will be the determining factor. In other words even while filling up general

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vacancies if the mode is that of selection then a junior general candidate could, on consideration of merit, by-pass the reserved candidate who had become senior through accelerated promotion from lower cadres. But where the general vacancy is to be filled through seniority-cum-fitness then the reserved candidate who entered the cadre earlier through accelerated promotion will have a prior claim on account of his longer length of service in the cadre.

14. In the back ground of the aforesaid judgments, we have to examine the contentions of the parties in the present OA. As already stated the private respondents had already been promoted to Grade-II by 1987, i.e., earlier to the cut off date of the judgment in R.K.Sabharwal, i.e., 10.2.1995. The date of judgment in Virpal Singh Chauhan (Supra) is also 10.10.1995. While in Ajit Singh Januja & Ors. Vs. State of Punjab & Ors. (Supra) it has been held that against a general vacancy reserved candidates who entered the feeder cadre on the basis of the accelerated promotion, will not have a claim vis-a-vis general candidates, in Jagdish Lal Vs. Union of India (Supra) it has been held that where the posts are non selection the reserved candidates who have accelerated promotion would have prior claim on the basis of the length of service in the feeder cadre. As already noted the promotion from Grade-II to Grade-I in the cadre of Office Superintendent is by non selection.

15. After we had heard the case, the decision of the five Judge Constitution Bench of the Supreme

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Court has come in the case of Shri Ajit Singh and Ors. Vs. The State of Punjab and Others, JT 1999(7) SC 153. In their order the Constitution Bench, after reviewing the case law, have held as follows:

"The general candidates who are senior at Assistants' level (Level 2) and who have reached Superintendent Grade-II (Level 3) before the reserved candidate moved to Level 4 (Supdt. Grade-I), will have to be treated as senior at the level 3 also (Supdt. Grade-II) and it is on that basis that promotion to the post of Level 4 must be made, upon first considering the cases of the senior general candidates at Level 3. If the cases of the senior general candidates who have reached Level 3 though at a latter point of time, are not first considered for promotion to Level 4, and if the roster point promotee at Level 3 is treated senior and promoted to level 4, there will be violation of Article 14 and 16(1) of the Constitution of India. Such a promotion and the seniority at Level 4 has to be reviewed after the decision of Ajit Singh. But if reserved category candidate is otherwise eligible and posts are available for promotion to Level 4, they cannot be denied right to be considered for promotion to Level 4, merely because erstwhile seniors at the entry levels have not reached Level 3."

16. On the question of prospective operation of two Judgments of R.K.Sabharwal and Ajit Singh (Supra), the Constitution Bench have concluded as follows:

"It is axiomatic in service jurisprudence that any promotions made wrongly in excess of any quota are to be treated as ad hoc. This applies to reservation quota as much as it applies to direct recruits and promotee cases. If a Court decides that in order only to remove hardship such roster point promotees are not to face reversions - then it would, in our opinion be, necessary to hold - consistent with our interpretation of Articles 14 and 16 (1) - that such promotees cannot plead for grant of any additional benefit of seniority flowing from a wrong application of the roster. In our view, while Courts can relieve immediate hardship arising out of a past illegality, Courts cannot grant additional benefits like seniority which have no element of immediate hardship. Thus, while promotions in excess of roster made before 10.2.1995 are protected, such promotees cannot claim seniority. Seniority in the promotional cadre of such excess

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roster point promotees shall have to be reviewed after 10.2.1995 and will count only from the date on which they would have otherwise got normal promotion in any future vacancy arising in a post previously occupied by a reserved candidate. That disposes of the 'prospectivity' point in relation to Sabharwal."

17. Applying the aforesaid principles laid down by the Constitution Bench of the Apex Court, we conclude as follows, in the present OA:

(1) The applicants on promotion to the cadre of OS Gr.II regained their original seniority over Respondents No.2, 3 and 4 and thus acquired a prior claim for consideration for promotion to Grade-I as the vacancies are to be filled on the basis of the seniority-cum-fitness and the posts to be filled do not fall in the reserved category; and

(2) Even though the promotion of R-2, 3 and 4 to Grade-II of OS was prior to the date of the decision of the Supreme Court in R.K.Sabharwal and Virpal Singh Chauhan (Supra) the advantage gained by them in the seniority vis-a-vis the applicant's is not protected by the 'prospectivity' in regard to the application of the ratio of the aforesaid judgments. Since promotions of R-2, 3 and 4 to Grade-I is only on ad hoc basis, such promotion is also not protected.

18. In the result the OA is allowed. The respondents are directed to consider the applicants for promotion to the post of Office Superintendent Grade-I on the basis of their revised seniority in terms of Ajit Singh Vs. The State of Punjab and Ors. (Supra) with all consequential benefits.

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19. The applicants herein were initially appointed as Goods Clerk in the scale of Rs.975-1540 were successively promoted on selection basis as Senior Goods Clerk scale Rs.1200-2040, Head Goods Clerk scale Rs.1400-2300 and Chief Goods Clerk. They are now aspirants to the post of Goods Supervisor in the scale of Rs.1600-2660 which is a selection post.

20. The case of the applicants is that the prescribed reservation has already been achieved in the cadre of Goods Supervisor and therefore the reservation yardstick is no longer applicable. Their second contention is that their inter-se seniority vis-a-vis such of the reserved category Chief Goods Clerk will obtain accelerated promotion with this rank regularised in terms of the judgment of the Supreme Court in Virpal Singh Chauhan (Supra). In other words the claim of the applicants is that they should be allowed to regain their inter-se seniority vis-a-vis reserved category employees as determined at the time of their recruitment to the initial appointment as Goods Clerk and that they have therefore a prior claim for consideration to the post of Goods Supervisor.

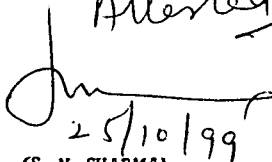
21. For the reasons advanced above, while dealing with OA No.2387/95, the relief sought for by the applicants in this OA can also be granted. Accordingly, this OA is also allowed. There will be no order as to costs.

(Syed Khalid Idris Naqvi) /
Member(J)

(R.K. Ahuja)
Member(A)

/rao/

Attested.



(S. N. SHARMA)
Private Secretary
Central Administrative Tribunal
Principal Bench, Faridkot House
New Delhi-110001