

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1909/96

New Delhi this the 31st day of May, 2000.

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE-CHAIRMAN
HON'BLE MRS. SHANTA SHASTRY, MEMBER (ADMV)

1. Sh. Pramod Prakash,
S/o Shri R. Prakash
2. Sh. Maha Singh Dhama,
S/o Shri G. Singh
3. Shri Kuldip Ram Bholra,
S/o Shri Kishan Lal
4. Shri Ved Prakash,
S/o Shri Bhalla Ram
5. Shri B.K. Sikka,
S/o Shri S.R. Sikka

...Applicants

(All working as Head Parcel Clerks, Northern Railway
Parcel Office, New Delhi.)

(By Advocate Shri S.K. Sawhney)

-Versus-

1. Union of India through
General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. Divisional Personnel Officer,
Northern Railway,
DRM Office,
New Delhi.
3. Shri Har Narain,
S/o Shri Subey Singh,
Head Parcel Clerk,
Northern Railway,
Parcel Office Nizamuddin,
New Delhi.
4. Shri Jagdish Prasad Dass,
S/o Shri P. Dass,
Head Parcel Clerk,
Northern Railway,
Parcel Office,
New Delhi.
5. Shri Prem Sagar,
S/o Shri Charan Dass
Head Parcel Clerk,
Northern Railway,
Parcel Office,
New Delhi.
6. Shri Mohinder Singh,
S/o Shri M. Singh,
Head Parcel Clerk,



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Northern Railway,
Parcel Office,
New Delhi.

- ✓ 7. Shri Suresh Ram,
S/o Shri Sagar Ram,
Head Parcel Clerk,
Northern Railway,
Parcel Office,
New Delhi.
- ✓ 8. Shri Kailash Prasad,
S/o Shri Ram Lakhanlal,
Head Parcel Clerk,
Northern Railway,
Parcel Office,
New Delhi.
9. Shri Tara Singh,
S/o Shri M. Singh,
Head Parcel Clerk,
Northern Railway,
Parcel Office,
New Delhi.
10. Shri Hukam Chand Reddy,
S/o Shri D.C. Reddy,
Head Parcel Clerk,
Northern Railway,
Parcel Office,
New Delhi.
11. Shri Nand Lal,
S/o Shri Jamuna Ram
Head Parcel Clerk,
Northern Railway,
Parcel Office,
New Delhi.
12. Shri Ropen Ram,
S/o Sh. Pawan Ram,
Head Parcel Clerk,
Northern Railway,
Parcel Office,
New Delhi.
13. Shri Kailash Prasad,
S/o Shri Jhim Prasad,
Head Parcel Clerk,
Northern Railway,
Parcel Office,
New Delhi.

...Respondents

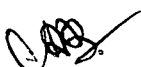
(By Advocates Shri B.S. Jain and Shri Romesh Gautam)



ORDER

By REDDY. J -

There are five applicants in this case. They were appointed as Parcel Clerks in the office of the Divisional Personnel Officer, Northern Railway, Delhi during 1961-78. They were promoted to the post of Senior Clerks and thereafter to the posts of Senior Parcel Clerks and thereafter during the period 1987-93 they were promoted to the next post of Head Parcel Clerk. Promotions to the above posts were based on seniority, subject to rejection on account of unfitness. The Supreme Court in Union of India & Others v. Virpal Singh Chauhan & Others, JT 1995 (7) SC 23 = 1995 (31) ATC (SC) 813 laid down that the promotion of a reserved category candidate earlier to a general candidate by applying the rule of reservation will not wipe out the seniority of the general candidate at the lower level, even though he was promoted at a later date. However, in the case of a selection the seniority of a reserved candidate at the higher level shall be maintained as per the panel of selection. The grievance of the applicants is that respondents 3-13, who belong to the scheduled caste (SC) community ~~and they~~ were granted accelerated promotion to the grade of Parcel Clerks and Head Parcel Clerk in preference to the applicants and they had attained their present seniority position on account of such accelerated promotion. The seniority lists of Senior Parcel Clerks dated 20.10.94 and Head Parcel Clerks dated 18.10.94 (provisional) are filed. In the impugned orders dated 8.4.96 (Annexure A-1) the respondents 3-13 were shown and considered for promotion to the next level of Parcel Supervisors, as they were treated as seniors to the applicants though they were seniors to them in the entry level of Parcel Clerks. It is further submitted that the strength of SC and ST employees in the cadre of Parcel Supervisor already having exceeded the permissible



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percentage of 15% and 7-1/2% respectively, any further promotion of the SC/ST employees would violate the law laid down in Union of India & Ors. v. J.C. Malik & Ors., 1996 (SLJ) (1) SC 115. The OA is, therefore, filed to review and correct the seniority of applicants 1-5 vis-a-vis respondents 3-13 and to direct the respondents not to promote further SC/ST employees to the cadre of Parcel Supervisors and to fill up the vacancies in the cadre of Parcel Supervisors on the basis of the seniority to be determined on the principle laid down by the Supreme Court in the case of Virpal Singh Chauhan's case and J.C. Malik's case (supra).

2. The case of the respondents 1&2, as revealed in their counter-affidavit, is as follows:

Out of the total 22 posts of Parcel Supervisors to be selected, the vacancies shown against general category are 20, SC, 1 and ST, 1. The total sanctioned strength is 54, prescribed quota for SC 15% - 8, ST 7-1/2% - 4. SC candidates available in the cadre are 7, ST - 3, shortfall SC-1, ST-1. Hence, it is submitted that the SC/ST candidates who were promoted were within the limit of the percentage prescribed, as laid down in Malik's case. It is further submitted that the ratio in Virpal Singh Chauhan's case (supra) that the seniority of the entry level grade shall be maintained in the higher level promotion grade, was effective only on or after 10.2.95, i.e., the date of the judgment in R.K. Sabharwal & Ors. v. State of Punjab & Ors., 1995 (2) SCC 745. Hence the seniority list circulated vide office order dated 18.10.94 cannot now be challenged. It is also submitted that the promotion to the post of Parcel Supervisor was by way of selection and the staff in the zone of

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✓ consideration having been promoted prior to 10.2.95, their seniority cannot be reviewed. It is further submitted that the OA is not maintainable, as barred by limitation.

3. R-3 also filed counter-affidavit, adopting the stand taken by the official respondents.

4. We have given careful consideration to the points raised and the arguments advanced by the learned counsel.

Q 5. A preliminary objection was taken by the respondents that the OA is not maintainable, as it is hit by Section 21 of the Administrative Tribunals Act, 1985. It is, therefore, necessary to dispose of the said preliminary objection before we deal with the facts.

5. It is not in dispute that the seniority lists of Parcel Clerk and Head Parcel Clerk were circulated on 20.10.94 and 18.10.94, which are filed as Annexures A-3 and A-4 in the OA. In the said lists the applicants were shown as juniors to the SC/ST employees in both the levels. The law in this case was laid down by the Supreme Court initially by the Virpal Singh Chauhan's case (supra) where it was held that the ~~seniority~~ of the junior SC/ST employees, who got accelerated promotion against the reserved quota would nevertheless maintain their seniority of their lower post and the general candidates who are senior to them, though they were promoted at a later date should be treated as seniors to the SC/ST. But the Supreme Court has categorically stated while approving Virpal Singh Chauhan's case (supra) that this principle would be operative from the date of the above

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judgement, i.e., 1.3.96, as the law prior to it was fluid and entirely different and the SC/ST employees used to get their seniority in preference to the general candidates depending upon their length of service in the promoted cadre. Hence, the limitation in the case would start only from 1.3.96. We are, therefore, of the view that the OA is within the period of limitation.

7. The applicants, however, have no case on merits. The applicants' main grievance in this case is against the seniority of the respondents 3-13 and the proposed action of the respondents in promoting them (SC/ST employees) to the cadre of Parcel Supervisor on the basis of the seniority list of Senior Parcel Clerks dated 18.10.94.

8. It is the case of the applicants that the above seniority list was wrongly prepared on the basis of the accelerated promotion given to the SC/ST employees, though they are juniors to the applicants in the entry (lower) grade, contrary to the law laid down by the Supreme Court in R.K. Virpal Singh Chauhan's case (supra). In Ajit Singh Januja & Ors. v. State of Punjab & Ors., 1996 (2) SCALE 526 it was clearly laid down that the ratio laid down by the judgement in Virpal Singh Chauhan's case (supra), as affirmed by it was to be operative only prospectively, i.e., w.e.f. 1.3.96 and hence, the seniority list prepared prior to the said date, was not liable to be reviewed or disturbed. Prior to the law laid down by the Supreme Court in the above case, the seniority of the SC/ST candidate in the promotion cadre was counted from the date of their promotion, irrespective of the date of promotion of the general candidates at a later date. Basing upon the law existing on the relevant dates the

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respondents had rightly finalised the seniority of SC/ST candidates, on their promotions to Senior Parcel Clerks and Head Parcel Clerks in 1994. The said seniority list had become final. The eligible Senior Parcel Supervisors were called for the written test to be held, for selection for the post of Parcel Supervisor and viva voce test during 1996. As already stated supra 66 candidates have been called for interview, including SC/ST candidates as per the position they held in the seniority list. Since the post of Parcel Supervisor is a selection post they have been selected validly and promotions also have been given. The contention that the reserved candidates were being recruited in excess of the required percentage was also belied by the facts and figures stated in the counter, as narrated supra. We do not, therefore, find any merit in the OA.

9. O.A., therefore, fails and is accordingly dismissed. No costs.

Shanta Shastri

(SMT. SHANTA SHASTRY)
MEMBER (ADMNV)

V. Rajagopala Reddy

(V. RAJAGOPALA REDDY)
VICE-CHAIRMAN (J)

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