

Central Administrative Tribunal  
Principal Bench: New Delhi

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OA No. 2609/96

New Delhi, this the <sup>615</sup>~~10~~ day of <sup>March</sup>~~February~~ 1998

Hon'ble Dr. Jose P. Verghese, Vice-Chairman(J)  
Hon'ble Shri S.P. Biswas, Member (A)

Bhanwar Singh s/o Khem Chand,  
resident of village Kanchanpur,  
P.O. Lesadi,  
Distt. Meerut (U.P.) .....Applicant

(By Advocate: Shri P.M. Ahlawat)

Vs.

Union of India through

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

2. The Chief Personnel officer,  
North Railway,  
Baroda House,  
New Delhi.

.....Respondents

(By Advocate: Shri R.L. Dhawan)

O R D E R

DR. JOSE P. VERGHESE, VICE-CHAIRMAN (J)-

The petitioner in this case was appointed to the post of Head Clerk by promotion in the grade of 1400-2300 w.e.f. 19.8.1985. The allegation of the petitioner is that in view of the interim order passed by this Tribunal on 13.7.1990, his seniority happened to be re-cast and about 21 juniors have been promoted in the meantime. It is further alleged that by an order dated 20th November, 1996, three posts of the Office Superintendent Gr. II in the General Branch in the scale of 1600-2660 became vacant due to promotion of three SC/ST candidates and the respondents by the said order had decided to conduct a selection for all three posts and fill

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up the said posts exclusively by the general candidates. It was stated in the said order "it has been decided to conduct a selection for three posts (SC/ST-Nil) of OS-II/General branch Gr. Rs. 1400-2660 (RPS) in this connection written test will be held on 21.12.1996 (Saturday) at 10.00 hrs in the General Branch, Baroda House, New Delhi". It was stated by the petitioner that the said three posts became vacant due to promotion of 2 SC and 1 ST candidate in the grade of Rs. 1600-2660 promoted as OS-I in the scale of Rs. 2000-3200 w.e.f. 23.7.1996.

2. The petitioner submitted that in view of the decision of the Hon'ble Supreme court in R.K. Sabharwal & Ors's case, when three posts of SC/ST became vacant in a running roster the same will have to be filled up by SC/ST candidates only since the concept of vacancy has been done away with and all the government departments are directed to re-arrange all the posts in a cadre according to the roster point by way of a running roster and once the roster is complete to the extent of total number of posts in the cadre, the roster point is to stop and thereafter if a general candidate vacates the post the said slot will be filled up by a general candidate and in case any reserved candidate vacates the post the said slot will have to be filled up by reserved candidate only. Yet inspite of the said clear directions of the Hon'ble Supreme Court in the above said R.K. Sabharwal's case, the respondents are now proceeding to fill up these three posts by general candidtes vide notification above quoted dated 20.11.1996. This court on 18.12.1996 had granted the

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interim order stating that further action in regard to holding of the selection to the post of OS-II Grade in the scale of 1600-2660 shall be kept in abeyance. The said interim order continued and matter was argued and reserved for final orders.

3. The case of the petitioner is that the petitioner was the second senior-most of the Headclerks as on today and his seniority was disturbed only due to interim order passed by this court on 13.7.1990 and thereafter the general community candidates promoted after the said interim order, have now been shown as senior to the petitioner and are being given promotion inspite of the decisions of the Hon'ble Supreme Court in R.K. Sabharwal's case. The candidates available for promotion to the grade of OS-II as on today are shown herebelow alongwith their appointment to the post of Head clerks in the grade of Rs. 1400-2300:

Senior-most Head Clerks in the grade  
of 1400-2300 as on 10.3.1995

<u>Sr.No.</u>	<u>Name</u>	<u>Date of Apointment</u>
1.	Nand Kishore (SC)	01.01.84
2.	Bhanwar Singh(SC)	19.08.85
3.	Shanker Pal (SC)	29.08.85
4.	Prakash (SC)	29.02.88
5.	Yodh Raj	08.11.90
6.	Salim Mohd Khan	01.02.91
7.	Nirmal Arora	25.04.91
8.	Rohtash Singh	18.12.91
9.	Hanuman Singh	28.01.92
10.	Smt. Saroj Bala	27.07.92
11.	Ram Singh Meena (ST)	26.11.93

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4. It is stated that except serial No. 1 and 2, all the incumbents have been posted to the post of Head Clerk only after the interim order passed on 13.7.1990 and the respondents are proceeding to promote three general community candidates out of this list as per the above said order of 20.11.1996.

5. The petitioner was the second senior-most among those Head clerks who were in the seniority list at the time when this Tribunal passed an interim order on 13.7.1990 in OA No. 1382/90 in the matter of J.N. Sharma & Ors. Vs. Union of India & Ors. This court passed the following interim order:-

"We further direct that the seniority of SC/ST employees vis-a-vis other employees be regulated in all cadres and grades strictly in accordance with the judgement of the Allahabad Bench of this Tribunal in Veerpal Singh Chauhan Versus Union of India [1987(4) ATC 685]."

6. It was further stated that this Tribunal had decided the said OA No. 1382/90 finally on 27.9.1995 and the operative part of the judgement is reproduced herebelow:-

"In the background of the Hon'ble Supreme Court's judgement dated 26.7.1995 in J.C. Malik's case (Supra) the respondents are directed to take further action in this matter in accordance with that judgement. Interim order if any passed by this Tribunal in this O.A. are hereby vacated".

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7. It was submitted on behalf of the petitioner that even though the petitioner was promoted to the post of Head clerk as on 19.8.1985, on the basis of the above said interim order dated 13.7.1990, respondents proceeded to re-cast the seniority of the petitioner and subsequently 21 of his juniors have been given promotion on the basis of the said interim orders. It is in the meantime that the Hon'ble Supreme Court had decided the case of J.C. Malik by an order dated 26.7.1995 and the final order passed by this court in J.N. Sharma's case directed the respondents to re-cast the seniority as per Malik's case in view of the fact that the interim order passed by this court on 13.7.1990 was vacated while the final order was passed by this Tribunal. In the meantime, this Tribunal also decided another OA namely OA 521/92 in the matter of Nand Kishore Head Clerk vs. Union of India and by an order dtd 26.4.1996 this court again disposed of the said OA in terms of the order passed by this court in OA No. 1382/90 as shown above. Subsequently, in view of the fact the respondents did not "re-re-cast" the seniority list of the petitioner on the basis of that interim order passed by this court on 13.7.1990 has been vacated, filed the Contempt of Courts Proceedings vide CP No. 263/96 in OA No. 1382/90. This court by an order dated 7.11.1996 disposed of the said CP stating that it is not necessary to mention in this court that the orders of the Hon'ble Supreme court are law for the territory of India under Article 141 of the Constitution of India. They need no further direction or orders to acquire validity. Further the matter was referred to the General manager through a representation and no action has been taken on the said representation at the instance of the General Manager. It

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was, in the meantime, that three vacancies arose in the OS-II Grade in the scale of Rs. 1600-2660 when 2 SC and 1 ST candidates were promoted to the post of OS- Grade I in the scale of Rs. 2000-3200 w.e.f. 23.7.1996. The submission of the petitioner was, based on the decision of the Hon'ble Supreme Court in R.K. Sabharwal's case, that once the total cadre has full representation of the SC & ST and backward classes in accordance with the reservation policy, then the vacancy arising thereafter in the cadre are to be filled from among the category of persons to whom the respective vacancies belong. It was further stated that the said three vacancies occurred due to promotion of SCs and STs in the grade of OS-Grade I and these should have been filled up by promoting SCs and STs only since no other SC/ST cadre officer is available in OS-Grade II which has a total cadre strength of 11 persons.

8. After notice, respondents filed their reply and stated that the respondents had followed the principles contained in the decision of the Hon'ble Supreme Court in Yeer Pal Singh Chauhan's case and in view of the decision of the Hon'ble Supreme Court in R.K. Sabharwal's case, the present selection being for 3 vacancies out of which one post will only go to SC candidate keeping in view the 50% of maximum limit of reservation in any given year. Further Hon'ble Supreme Court order and again had classified that the ratio of R.K. Sabharwal being that of a constitutional Bench, will have precedence over other cases referred above, vide, Ajit Singh Januja & Ors. Vs. State of Punjab & Others (1996(2) SCC 715). The respondents further admitted that all the three vacancies had arisen due to promotion of 2 SCs and 1 ST employees of

OS-Grade II to the grade of OS-Grade I in the scale of Rs. 2000-3200 w.e.f. 23.7.1996 and the only reason stated in the reply was since all the three posts could not be filled up through reserved candidates as per the extant rules, they have decided to fill up two posts by the general community candidates and the remaining one post by SC candidate. Nothing has been stated with respect of the order of the respondents impugned in this OA namely one issued on 20.11.1996 wherein the selection is stated to be held for three posts and all three by general community candidates.

9. We have heard both the parties, perused the pleadings and we are of the opinion that the contentions and averments made by the respondents to outwit the claim of the petitioner to the post is not tenable in law. The respondents might have re-cast the seniority on the basis of the interim orders passed by this court on 13.7.1990 but once the said interim orders have been vacated, the respondents had a bounden duty to "re-recast" or restore the seniority in accordance with the final order of this court as well as the judgement and orders given by the Hon'ble Supreme Court both in J.C. Malik as well as in Veer Pal Singh Chauhan's case. In any event, since the three vacancies had arisen due to promotion of three reserved candidates to the next higher grade, all the three posts should have been filled up by the reserved candidates only by citing the ratio of the Constitution Bench of the Hon'ble Supreme Court in R.K. Sabharwal & Ors. Vs. State of Punjab & Ors. reported in JT 1995 (2) SC 351. The Hon'ble Supreme Court in the said decision had stated that if the roster is permitted to operate till the total posts

in the cadre are filled thereafter the vacancies falling in the cadre are to be filled by the same category of persons whose retirement etc. caused the vacancies then the balance between the reserve category and the general candidate shall always been maintained. To quote:

"5. We see considerable force in the second contention raised by the learned counsel for the petitioners. The reservations provided under the impugned Government instructions are to be operated in accordance with the roster to be maintained in each Department. The roster is implemented in the form of running account from year to year. The purpose of Classes get their percentage of reserved posts. The concept of "running account" in the impugned instructions has to be interpreted that it does not result in excessive reservation. "16% of the posts...." are reserved for members of the Schedules Castes and Backward Classes. In a lot of 100 posts those falling at serial Nos. 1, 7, 15, 22, 30, 37, 44, 51, 58, 65, 72, 80, 87 and 91 have been reserved and earmarked in the roster for the Scheduled Castes. Roster Points 26 and 76 are reserved for the members of Backward Classes. It is thus obvious that when recruitment to a cadre starts then 14 posts earmarked in the roster are to be filled from amongst the members of the Scheduled Castes. To illustrate, first post in a cadre must go to the Scheduled Caste and thereafter the said class is entitled to 7th, 15th, 22nd and onwards upto 91st post. When the total number of posts in a cadre are filled by the operation of the roster then the result envisaged by the impugned instructions is achieved. In other words, in a cadre of 100 posts when the posts earmarked in the roster for the Scheduled Castes and the Backward Classes are filled the percentage of reservation provided for the reserved categories is achieved. We see no justification to operate the roster thereafter. The "running account" is to operate only till the quota provided under the impugned instructions is reached and not thereafter. Once the prescribed percentage of posts is filled then numerical test of adequacy is satisfied and thereafter the roster does not survive. The percentage of reservation is the desired representation of the Backward Classes in the State Services and is consistent with the demographic estimate based on the proportion worked out in relation to their population. The numerical quota of posts is not a shifting boundary but represents a figure with due application of mind. Therefore, the only way to assure equality of



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opportunity to the Backward Classes and the general category is to permit the roster to operate till the time the respective appointees/promotees occupy the posts meant for them in the roster. The operation of the roster and the "running account" must come to an end thereafter. The vacancies arising in the cadre, after the initial posts are filled, will pose no difficulty. As and when there is a vacancy whether permanent or temporary in a particular post the same has to be filled from amongst the category to which the post belonged in the roster. For example the Scheduled Caste persons holding the posts at roster points 1, 7 and 15 retire then these slots are to be filled from amongst the persons belonging to the Scheduled Castes. Similarly, if the persons holding the post at point 8 to 14 or 23 to 29 retire then these slots are to be filled from among the general category. By following this procedure there shall neither be shortfall nor excess in the percentage of reservation".

10. It had been further decided and directed by the Hon'ble Supreme Court that in the event of non-availability of a reserved candidate on the roster point it would be open to the Government to carry-forward the point in just and fair manner. It was further directed that the interpretation given by the Hon'ble Supreme Court to the working of the roster and the finding on this point shall only be operative prospectively. Since the present selection and posting is subsequent to the date of the judgement in R.K. Sabharwal's case namely 10.2.1995, the ratio of the said decision of the Hon'ble Supreme Court is binding on the respondents. In the circumstances, we direct the respondents to proceed to fill up the three posts of OS-Grade II in the scale of Rs. 1600-2660 which had fallen vacant w.e.f. 23.7.1996 due to promotion of 2 SCs and 1 ST officers to the next higher grade of OS-Grade I in the scale of Rs. 2000-3200. The selection shall be made only from among the reserved candidates since all three posts had become vacant due to promotion of the SCs/STs candidates and the said selection from among the available and eligible

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SCs/STs candidates be done within a period of two months from the date of receipt of the copy of this order and if selected, the petitioner as well as other eligible SC/ST candidates shall be given the benefit of the said selection w.e.f. 21.12.1996 the date of selection scheduled by the respondents themselves by their Circular dated 20.11.1996.

11. It may not be in the interest of justice that this case be left at this point for the reason that the respondents did pass an order dated 20.11.1996 stating that all the three posts will be filled by general candidates and that was the reason the petitioner had to approach this court to get the said order set aside. Nothing has been stated by the respondents as to under what circumstances the respondents had decided on 20.11.1996 to fill up all the three posts by general community candidates. That would mean that if the said order is allowed to continue to be proceeded for implementation, all the three posts should have been filled up by general candidates and in view of the fact that no explanation is forthcoming from the respondents in their reply, we are afraid the officers involved in such activities by which the rights available to the reserved candidates being constitutional protection are being denied calculatively at the instance of certain officers of the respondents. In the circumstances we would direct the General Manager to enquire into the conduct of the officer who issued the said order at Annexure A-1 passed on 20.11.1996 stating that all the three posts shall be filled up by general candidates as well as the officer who has filed the counter affidavit on behalf of the Railways. It is found that the original counter affidavit has been verified by Ms Neera Khuntia,

Dy. C.P.O. (Hqrs.). The General Manager shall hold an

enquiry as to under what circumstances the said infraction of constitutional obligation has taken place and pass appropriate orders against this officer if any infraction is detected and the said order shall also be recorded in their confidential reports.

12. We would also like to observe that when the counter affidavit was filed, in view of the fact that the case of Shri R.K. Sabharwal decided by the Hon'ble Supreme Court is clear in its terms, respondents have again tried to justify their action that the three posts that became available due to promotion of three SC/ST candidates to be filled up shall be again subjected to limitation of the 50% rule. Since the Hon'ble Supreme Court has very clearly stated that there is no concept of vacancy any more which is to be applied while roster is to be implemented and all the posts in the cadre are to be arrayed against the roster point, and once any vacancy arises out of promotion, retirement etc. of the employees out of the said roster point, there is no question of applying 50% rule to such instance. It may amount even to ridiculous calculations that if, say for example, all the four posts only arrayed against the roster point happen to be general candidates and four of them happened to resign or died while in service, following the 50% rule, the respondents may have to give two posts out of the four to the reserved candidates, we are afraid that was not the ratio decided by the Hon'ble Supreme Court in R.K. Sabharwal's case. The tendency of hiding behind rules to give "Caesar his due" is often observed by us especially in the department of


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Railways and the General Manager is again impressed upon to look into this matter personally so that such violation of principles of law laid down by the Hon'ble Supreme Court shall not be repeated.

13. ✓ With these observations, this OA is allowed with the cost of Rs. 1000/- (Rupees one thousand only) to be recovered from the officers who are responsible for passing the impugned order dated 20.11.1996. ✓



(S.P. Biswas)  
Member (A)

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(Dr. Jose P. Verghese)  
Vice-Chairman (J)