

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No. 1469/97
T.A. No.

199

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DATE OF DECISION 31.3.98

Sh. Mukul Saxena & Ors **Petitioner**Sh. T.S. Pandey with Shri B.S. Maini **Advocate for the Petitioner(s)**

VERSUS
UOI and others

RespondentSh. P.S. Mahendru, counsel for the **Advocate for the Respondent**
~~official respondents~~Sh. V.P. Sharma, counsel for the private
respondents

CORAM

The Hon'ble Shri S.R. Adige, Vice Chairman(A)

The Hon'ble Smt. Lakshmi Swaminathan, Member(J)

1. To be referred to the Reporter or not? 425

2. Whether it needs to be circulated to other Benches of the Tribunal X

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

Central Administrative Tribunal
Principal Bench

O.A. 1469/97

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New Delhi this the 31th day of March, 1998

Hon'ble Shri S.R. Adige, Vice Chairman(A).
Hon'ble Smt. Lakshmi Swaminathan, Member(J).

1. Shri Mukul Saxena,
S/o Shri R.C. Saxena,
2. Ram Singh,
S/o Shri Chidda Singh,
3. Chandra Kumar,
S/o Shri Kala Goley,
4. Jitendra Nath,
S/o Shri Ram Asray Lall.

(Under Chief Controller,
Northern Railway, Moradabad) ... Applicants.

By Advocate Shri T.S. Pandey, Sr. Counsel with
Shri B.S. Mainee.

Versus

Union of India through

1. The Secretary,
Ministry of Railways,
(Railway Board),
Rail Bhavan, Raisina Road,
New Delhi.
2. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
3. The Divisional Railway Manager,
Northern Railway,
Moradabad.
4. Shri Chander Pal Singh,
Goods Guard.
5. Shri Ram Pal Singh,
Goods Guard.
6. Shri Jodh Pal Singh,
Goods Guard.
7. Shri Ram Shankar Ram,
Goods Guard.
8. Shri Mohd. Sibtan,
Goods Guard.

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9. Shri Shankar Lal,
Goods Guard.
10. Shri Balishter Singh,
Goods Guard.
11. Shri Ram Mohan,
Goods Guard.

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(Respondents 4 to 11 working under
Chief Controller, Northern Railway,
Divisional Railway Manager's Office,
Moradabad)

... Respondents.

By Advocate Shri P.S. Mahendru for official respondents.
By Advocate Shri V.P. Sharma for private respondents.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicants who are working as Goods Guards with the respondents are aggrieved by the Selection orders passed by them dated 3.6.1997 and 12.7.1996 as well as the order dated 28.2.1997 laying down the principles for determining the seniority of SC/ST staff who are promoted vis-a-vis the general staff.

2. According to the applicants, by the aforesaid first two impugned orders, the reservation for the Scheduled Caste (SC) community is excessive and beyond their entitlement and hence violative of statutory rules and Articles 14 and 16 of the Constitution. With regard to the Railway Board circular dated 28.2.1997 which has been issued in pursuance of the judgement of the Supreme Court in **Union of India Vs. Virpal Singh Chauhan (JT 1995(7) SC 231)** dated 10.10.1995, they have submitted that the last 5 lines of the correction slip No. 25 are distorted and contrary to Government of India instructions.

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3. The relevant facts are that for 45 vacancies in ⁽²⁾ the post of Guard 'A' in the scale of Rs.1350-2200, the respondents had held selections on 16.5.1996 and 11.6.1996. According to them, out of the 45 vacancies, 37 were for general candidates, ~~categories~~¹⁸ 4 for SC and 4 for ST categories in the sanctioned strength of 112. The applicants have submitted that when the selection was initiated, the quota for SC candidates had already been filled because as many as 17 Guards were working as Guard 'A' and all of them had been promoted as Guard 'A' in the reserved posts according to the roster. This position has, however, been disputed by the respondents who have submitted that against the quota of 17 reserved vacancies, there were 13 candidates who had come on their own seniority and merit in the promotion posts. Respondents have submitted that in the absence of 4 ST candidates, dereservation was granted by the General Manager, Northern Railway vide letter dated 28.2.1997 instructing that 2 posts will be filled by general candidates and the remaining 2 posts by mutual transfer with SC candidates. The respondents have, therefore, submitted that a provisional panel has been declared which contains 14 SC ~~18~~¹⁸ candidates who have come up on their own seniority and merit, plus 4 by rule of reservation as per requirement of relevant instructions, plus 2 more SC candidates against mutual exchange from ST quota. In the circumstances, they have submitted that the SC candidates empanelled in the impugned panels of selected candidates dated 3.6.1997 and 12.7.1996 are not in excess of their quota reserved for them but are strictly in accordance with their merit and seniority and reservation quota as provided under the relevant rules and instructions.

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4. In the rejoinder, the applicants have submitted that the reply is misconceived, the respondents have misinterpreted the law and they have reiterated their averments in the application.

5. We have carefully considered the pleadings and submissions of the learned counsel for the parties and the various judgements referred to by them (copies placed on record).

6. Shri T.S. Pandey, learned counsel has very eloquently made his submissions on behalf of the applicants. Relying on the judgement of the Supreme Court in **Virpal Singh Chauhan (supra)**, he has submitted that the aforesaid impugned orders are clearly in violation of the directions of the Apex Court as the reservations for SC candidates are in excess of the permissible quota for them and should, therefore, be struck down. He has also relied on the judgements of the Supreme court in **R.K. Sabharwal & Ors. Vs. State of Punjab** (1995(2) SCC 745) and **J.C. Malik Vs. Union of India** (SLJ 1996(1) SC 115). He contends that once the SC reservation quota is filled by operation of the roster or otherwise, the object of the rules of reservation must be deemed to have been achieved and there is no need to further reserve posts in respect of SC and ST candidates. He has submitted that the judgement in **Jagdish Lal and Ors. Vs. State of Haryana and Others** (JT 1997(5) SC 387) is not applicable to the present case as that case dealt with the rules passed under the Haryana Education Department Class III Service Rules 1974 and 1980.

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7. On the other hand, in the present case what the respondents have submitted is that a number of SC candidates have come up and have been promoted to the higher grade of Guard 'A' on their own seniority and merit. In the absence of any documents to the contrary, we have no reason to doubt these averments made by the respondents. In respondents letter No. 807-E/240-Pt.VI/Loose/RP. Cell. (Annexure R-II), they have relied on the judgement of this Tribunal (Jodhpur Bench) in All India Non SC/ST Employees Association (Railway) Bikaner & Ors. Vs. Union of India (OA 326/89),^{where} it was directed as follows:

"The vacancies available from time to time in various cadres will be filled in accordance with 40 point roster system subject to the condition that the posts held by the member of SCs/STs in the cadre of promotional posts do not exceed 15% and 7.5% respectively at any given point of time. If a person belonging to the SCs or STs is promoted on his own merit and not in a reserved vacancy then such appointment will be excluded while computing the required percentage. This will, however, may be subject to any order that Hon'ble Supreme Court may take in the Special Leave Petition pending against the judgement of Allahabad Bench in J.C. Malik's case (supra) or in any other cases".

(emphasis added)

8. We respectfully agree with the above reasoning that where SC or ST candidates are promoted to a higher post on their own merit or seniority, then such appointment will have to be excluded while calculating the reservation percentage in the roster maintained according to the relevant Govt. of India rules/instructions. In the circumstances of the case, therefore, we are unable to come to the conclusion that the posts occupied by persons belonging to SC or ST community and who are promoted on their own merit and seniority, and not against the reserved vacancy, should be counted in the reservation quota. In

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✓ This view of the matter, the contention of Shri Pandey, learned counsel, that the number of Scheduled Caste candidates in the impugned select lists are grossly in excess of the percentage they are entitled to ^{is} not tenable. They have not been able to show that excluding the SC candidates who have been promoted as Guard 'A' on their own merit and seniority, the number of SC candidates in the select panels are 'excessive or arbitrary which justifies interference in the matter. Therefore, this ground is rejected.

9. The second main argument of the applicants was that for promotion to the post of Guard Grade 'A' it was necessary to hold a written examination and viva voce test but in the present case the respondents have only held a viva voce test, which is, therefore, illegal.

10. Shri P.S. Mahendru, learned counsel, has, however, drawn our attention to the letter issued by the respondents dated 3.8.1990 in which it has been stated that on the basis of the references received from the recognised Unions and after consideration by the competent authority, it was decided to dispense with the written test prescribed in the channel of promotion of Guard for the selection of the passenger Guard Grade Rs.1350-2200 (RPS) and that the selection will henceforth be conducted only on the basis of viva voce test. The respondents have also submitted that in the letter dated 25.2.1996 it was mentioned that against the 45 vacancies, 135 candidates were called, including reserved candidates, and the selection was held only by viva voce test. It is also not disputed that the applicants also had taken ~~only~~ the viva voce test only for selection

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Guard^{B.}
for promotion to Grade 'A'. It is settled law that once the applicants have appeared in a selection or test, and have not been declared successful, they cannot challenge that very selection later on the ground that the same is not in accordance with the rules. (See **Om Prakash Vs. Union of India** (AIR 1986 SC 1403). Apart from that, in the present case, the written test had been dispensed with for selection to Guards Grade 'A' from 3.8.1990, and it is, therefore, not open to the applicants to challenge the selection now on this ground. This contention of the applicants is, therefore, rejected.

11. Another argument advanced by Shri T.S. Pandey, learned counsel for the applicants is that in the Railway Board circular dated 28.2.1997, the addition of the following 5 lines is not in accordance with the directions of the judgement of the Supreme Court in **Virpal Singh Chauhan's case** and **R.K. Sabharwal's case (supra)**, namely,

"...This will, however, be subject to the condition that in respect of selection post the overriding principle that a Railway servant borne in a earlier panel will rank senior to a Railway servant borne in a later panel, will be observed".

The learned counsel for the applicants has, relying, in particular, on Paragraphs 24-28 of the judgement of the Supreme Court in **Virpal Singh Chauhan's case (supra)** has submitted that even if a SC/ST is promoted earlier by virtue of the rule of reservation/roster when his senior general candidate is promoted later to the same higher grade, the general candidate regains his seniority over the earlier promoted SC/ST candidate. He has submitted that in such a situation the earlier promotion given to SC/ST candidate over the general candidate who has been promoted later on to that post cannot be allowed. In the

circumstances, he has submitted that the aforesaid explanatory/ correction slip by which a person in the earlier panel will rank senior is outside the directions and is a distortion of the Hon'ble Supreme Court directions. This contention has also been controverted by the respondents and they have submitted that in the same judgement ^{Paras. 46 and 47 are also relevant.} In paragraph 47, the Supreme court has explained as follows:

"It may be noticed that of the five grades in the Station Masters' category, two are non-selection posts while the remaining three are selection posts. While in the case of non-selection posts the rule enunciated in the main opinion (Virpal Singh Chauhan) would be applicable, in the case of selection posts, the rule explained herein has to be followed. We may clarify that Rules (i) and (ii) in Para 28 of Virpal Singh Chauhan apply to both selection and non-selection posts. Rule (iii) also applies to both but subject to the above rider. As explained in the main opinion, while there is no question of a "panel" being prepared at the time of promotion to non-selection posts, a panel has to be prepared for promotion to selection post."

(emphasis added)

12. Para 29(iii) of the judgement in Virpal Singh Chauhan (supra) reads as follows:

(iii) So far as Railway Guards in Railway service are concerned - that is the only category we are concerned herewith - the seniority position in the promoted category as between reserved candidates and general candidates shall be the same as their inter se seniority position in Grade 'C' at any given point of time provided that at that given point of time, both the general candidate and the reserved category candidates are in the same grade. This rule operates whether the general candidates in the same batch of promotees or in a subsequent batch. (This is for the reason that the circulars/letters aforesaid do not make or recognise any such distinction.) In other words, even if a Scheduled Caste/Scheduled Tribe candidate is promoted earlier by virtue of rule of reservation/roster than his senior general

candidate and the senior general candidate is promoted later to the said higher grade, the general candidate regains his seniority over such earlier promoted Scheduled Caste/Scheduled

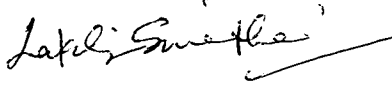
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Tribe candidate in such a situation does not confer upon him seniority over the general candidate even though the general candidate is promoted later to that category."

13. Therefore, having regard to the aforesaid judgements of the Supreme Court, the 5 impugned lines of the Explanatory Note referred to in paragraph 8 above do not appear to be contrary to the judgements. The preparation of a panel for promotion to selection posts has been recognised and, therefore, a person promoted in an earlier panel will rank senior to another person who is borne in a later panel which is according to the Railway Rules. We, therefore, find no justification to delete the impugned 5 lines in the note and this argument is also rejected.

14. We have also considered the other very elaborate arguments advanced by Shri Pandey, learned counsel but are unable to agree with the contention of the applicants that in the facts of this case, the reservation quota for SC candidates has already been exceeded as per the roster points, as many of the SC candidates have come up on promotion on their own seniority and merit. In this view of the matter, the impugned Selection panels dated 3.6.1997 and 12.7.1996 do not warrant any interference. The impugned lines of the Circular dated 28.2.1997 are also in accordance with the judgements of the Supreme Court.

15. In the result, the application fails and is dismissed. No order as to costs.


(Smt. Lakshmi Swaminathan)
Member (J)


(S.R. Adige)
Vice Chairman (A)