

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

C.P. 12/97 converted into OA-2131/97 ✓

and

C.P. 14/96 converted into O.A. 1524/97 ✓

HR.

New Delhi, this the 28th day of August, 1998

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Hon'ble Shri N. Sahu, Member(A)
Hon'ble Dr. A. Vedavalli, Member(J)

1. Shri R. N. Dohrey (O.A. 2131/97) ✓

2. Shri S. N. Dhusia (O.A. 1524/97) Applicants

(By Advocate Shri P. M. Ahlawat)

Versus

Shri Shanti Narain,
General Manager,
Northern Railway, Baroda House,
New Delhi.

. Respondent

(By Advocate Shri R. L. Dhawan)

O R D E R

By Hon'ble Shri N. Sahu, Member(A)

Common grounds and identical issues are involved in these two OAs and therefore they are disposed of in a common order.

2. The applicant filed a contempt petition no. 12/97 on 7.1.97. In OA-2296/90, there was a prayer for a direction to the respondents to promote the applicants as Superintendent (Statistics) in the grade of 2000-3200 on the basis of their seniority in accordance with the letter of the Railway Board No. 85-E(SCT)/1/49-18 dated 14.3.89. The applicant alongwith one Shri J. N. Singh was working as Assistant Superintendent in the grade of 1600-2660 as a result of selection by an order dated 26.4.85. They claimed the relief for promotion as Superintendent. By order dated 26.4.96, the Tribunal disposed of the O.A. with a direction to the respondents to decide on the applicant's claim in the light of the

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decisions of the Supreme Court in the cases of Union of India and ors. vs. Virpal Singh Chauhan and ors. - JT 1995(7) SC 231, R.K. Sabharwal and ors vs. State of Punjab and ors. - 1995 (2) SCC 745 and Allahabad High Court's decision in the case of J.C. Malik and ors. vs. Union of India and ors. - 1978 (1) SLR 844.

3. The applicants wanted to be considered for promotion as Superintendent on the basis of original seniority from the date of promotion of their junior Shri O.P.Garg and payment of arrears of salary with effect from 7.11.90 to 26.9.91 to applicant no.1 and 7.11.90 to 2.2.92 to applicant no.2. In spite of the Railway Board's letter No.96-E(SCT)/1/49/1 dated 20.3.96 for taking action in terms of paras 28, 45 and 46 of Supreme Court decision in civil appeal no.9272/95, no action was taken. Hence C.P.12/97 was filed.

4. The respondents in their reply stated that the Constitution Bench of the Supreme Court in the case of R.K. Sabharwal and ors. vs. State of Punjab and anr. laid down that "where the total number of posts in a cadre reserved for Scheduled Castes and Tribes are filled by operation of roster, the object of the rule of reservation must be deemed to have been achieved and there is no justification to operate the roster thereafter." They also decided "that this law shall operate prospectively." In the case of Union of India and ors. vs. Virpal Singh Chauhan (supra), it was held by the Supreme Court that if an SC/ST candidate is promoted earlier by virtue of rule of reservation than his senior general candidate and the senior general candidate is

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promoted later to the said higher post, the general candidate regains his seniority over such earlier promoted SC/ST candidate. It is also made clear by the decision of the Hon'ble Supreme Court in the case of Akhil Bhartiya Shoshit Karmachari Sangh vs. Union of India - JT 1996 (8) SC 274 that appointments according to roster already made prior to the judgement in Sabharwal's case, are legal and valid. Certain principles have emerged as a result of the above Supreme Court decisions.

They are as under:-

(i) when the panel select list is prepared at the time of making selections for promotion to the selection post, it would be that panel and not the panel selection list prepared at the time of appointment to the initial grade that would determine seniority to the post.

(ii) the two judgements in the case of R.K. Sabharwal vs. State of Punjab and Union of India vs. Virpal Singh Chauhan would become effective from the date of decision in Sabharwal's case. All appointments made prior to that date being legal and valid including right to seniority in promoted post or cadre, are required to be given effect to.

5. According to the respondents, there is no need to disturb promotions made prior to 10.2.95. Being Scheduled Caste candidates, the applicants got accelerated promotions as Senior Clerk, Head Clerk and Assistant Superintendent on the reserved quota. There was an interim direction in OA-1382/90 dated 15.7.90 to the effect that the seniority of SC/ST employees

vis-a-vis other employees be regulated in all cadres and grades in accordance with the directions of the Allahabad Bench in the case of Virpal Singh Chauhan vs. Union of India - 1987 (4) ATC 685. AR

6. Seniority list of the staff of different Branches was recast on the basis of date of entry in service disregarding the accelerated promotion of SC/ST employees. It is on the basis of this recast list that the petitioners were promoted as Office Superintendent Grade I in the scale of 2000-3200 with effect from 26.9.91 and 3.2.92. In fact the petitioners retired from service on 30.11.93 and 30.6.96 respectively. They now claim that they should have been promoted as Office Superintendent grade I on the basis of seniority which existed prior to recasting of the seniority list in terms of interim order dated 15.7.90. However, in an order in Contempt Petition No.246/96 in OA-1946/98 this Tribunal has taken the view that promotions and seniority of the SC/ST employees prior to 10.2.95 should not be disturbed.

7. The applicants referred to Railway Board letters dated 26.2.85 and 14.3.89 according to which SC/ST promotions may be made as per their own seniority over and above the percentage of reservation provided therein. The applicants have also referred to paras 45 and 46 of the judgement of the Supreme Court in the case of Union of India vs. Vir Pal Singh Chauhan (supra).

8. This Court at the time of consideration of these CPs found that the respondents had shown considerable slackness in implementing the orders of this

court dated 26.4.96. Accordingly, this court directed these CPs to be converted as OAs and directed the respondents to file a proper reply. The interim order was passed to the effect "that the respondents shall not make any further promotion in any of the cadres which were the subject matter of the O.A. referred to in our orders dated 26.4.96. Only the orders of the Supreme Court and the directions of this court dated 26.4.96 are to be finally implemented, in the first instance." That is how we have before us these CPs converted into OAs. (18)

9. An M.A. was also filed on 5.3.98 for modifying the order of the Tribunal dated 8.5.97. The respondents mentioned that promotions in the relevant cadres were held up and it had caused considerable anguish and unrest amongst the Railway employees.

10. We have heard the M.A. also and since we are disposing of the OAs, we did not find any urgency to modify the interim directions of this court dated 8.5.97. Having waited so long, the respondents could bear a little more for the final orders.

11. We have heard the rival counsel at length. In the case of Union of India vs. Virpal Singh Chauhan (supra), the Supreme Court referred to circular letter dated 31.8.82 of the Railway Board providing that seniority of SC/ST candidates vis-a-vis others would continue to be determined according to the panel position. "Panel" would mean the panel prepared at the time of making selections for promotion to the selection post and not the panel prepared at the time of

appointment to initial grade. In the case of Jagdish Lal (9)
and ors. vs. State of Haryana and ors. - 1997 (2)

SC/SLJ 1, the Supreme Court had to consider Rule 11 of the Haryana Education Department Class III Service Rules, 1974 and 1980 for considering the affect of reservation on promotion and seniority. It was laid down at para 19 as under:-

"But Virpal Chauhan and Sabharwal's cases, kept at rest the promotion already made by that date, and declared them as valid; they were limited to the question of future promotions given by applying the rule of reservation, to all the persons prior to the date of judgement in Sabharwal's case, which required to be examined in the light of law laid in Sabharwal's case. Thus earlier promotions cannot be reopened? Only those cases arising after that date would be examined in the light of the law laid down in Sabharwal's case and Virpal Chauhan's case and equally Ajit Singh's case. If the candidate has already been further promoted to the higher echelons of service, his seniority is not open to be reviewed. In A.B.S. Karamchari Sangh's case, a Bench of two Judges to which two of us, K.Ramaswamy and G.B.Pattanaik, JJ were members, had reiterated the above view and it was also held that all the prior promotions are not open to judicial review. In Chander Pal & ors. vs. State of Haryana (W.P.(C) Nos. 4715-18/93 dated December 4, 1996) a Bench of two Judges consisting of S.C.Agrawal and G.T.Nanavati, JJ considered the effect of Vir Pal Chauhan's Ajit Singh, Sabharwal and A.B.S. Karamchari Sangh's cases and held that the seniority of those respondents who had already retired or promoted to higher posts could not be disturbed. The seniority of the petitioner therein and the respondents who were holding the post in the same level or in the same cadre would be adjusted keeping in view the ratio in Vir Pal Chauhan's and Ajit Singh's cases; but promotion, if any, had been given to any of them during the pendency of this writ petition, was directed not to be disturbed." (Emphasis supplied by us).

12. In OA-2296/90 in the case of S.N.Dhusia, it was contended by the applicant that the post of Superintendent (Statistics) was a non-selection post and

he sought promotion to that post on the basis of his seniority and in accordance with relevant Rules and instructions contained in Railway Board's letter No. 85-E(SCT)/1/49-18 dated 14.3.89. In the counter to this OA filed on 5.2.91 it is stated that the applicant Shri Dhusia was promoted as Assistant Superintendent since 16.5.85 against a vacancy which arose on cadre restructuring. The private respondents in that case have placed on record the orders of the Hon'ble Supreme Court in Civil Misc. Petitions No. 41966-42003 of 1984. The Hon'ble Supreme Court directed that all promotions made thereafter should be strictly in accordance with the judgement of the Allahabad High Court in the case of J.C. Malik vs. Union of India - 1978 (1) SLR 844 and if any excess promotions were made over and above 15% posts held by the SCs and 7 and a half percent posts held by STs, such promotions should be adjusted against future vacancies coming within these percentages. Shri S.N.Dhusia's promotion ordered in May, 1985 with effect from 1.1.84 was only against a vacancy and not a post. Even by that time, when the applicant's promotion was made, 33 and a half percent posts of Assistant Superintendents were already filled by SCs. Thus these promotions had to be adjusted against the vacancies arising against 15% quota. Thus Shri Dhusia's promotion would become regular only on a future date. There is a judgement of the Allahabad Bench in the case of Virpal Singh Chauhan vs. Union of India - ATR 1987(2) ATC 71 which held that reservation is to a post and not to vacancies. Promotion of SCs by applying 40 point roster to vacancies and not to posts was irregular. Secondly it was held that if in a particular cadre over 15% vacancies

have already been filled by SCs, no further reservation should be made or 40 point roster applied. It is also held that such SCs who have got accelerated promotion by application of 40 point roster, shall not be eligible for next promotion to a grade.

13. The respondents stated that in the case of D.P. Nandwani vs. Union of India (OA-144/89), interim order dated 22.4.89 was passed by the C.A.T. to the effect "that any promotion made to the post of Superintendent grade I in the Statistical Branch will be provisional and any such promotion should be strictly in accordance with the percentage of reservation for SC/ST described under rules." In the case of S.N. Sharma vs. Union of India (OA-1328/90), the order dated 15.7.90 was to the effect 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 C.A.T. in the case of Vir Pal Singh Chauhan vs UOI." It is in accordance with this order that the seniority list of Superintendents in the grade of 1600-2660 in the Statistical Branch was recast in the year 1991. The applicants' claim for promotion as Office Superintendent grade I was considered by the competent authority and they were promoted on 26.9.91 and 3.2.92 (in the case of S.N. Dhusia).

14. It is in this background we have to view the decision of the Supreme Court in R.K. Sabharwal's case to the effect that the law laid down operated prospectively i.e. from 10.2.95. Even in the case of Virpal Singh Chauhan, the apex court had held "that the seniority will

be as per the select panel in a selection post". They refer to the panel in which they were selected to the post of Office Superintendent Grade II. The promotion as Office Superintendent Gr.I being to a non-selection post, the seniority in the panel should have been respected and they should have been promoted much before.

15. In a Miscellaneous Application against the interim order passed in OA-144/89 in the case of D.P.Nandwani vs. Union of India, the SC employees including the applicant Shri S.N.Dhusia argued that they were senior as per the seniority list issued by the Railway Administration and, as such, they should be allowed to be promoted on the basis of such seniority. The Tribunal did not accept this prayer since the seniority of SCs is a disputed matter. Thus the Tribunal upheld that the interim order earlier passed on 24.4.89 does not call for any modification or alteration till the final disposal of the OA. Northern Railway Administration found that the SCs in the cadre of Superintendent were already occupying 62.5% of the posts and therefore it would not be appropriate to order further promotion of SCs whose seniority is questioned on the basis of Supreme Court's order. Accordingly the Railway Administration promoted six general candidates as Superintendents in Statistical Branch who were originally senior before the SCs jumped over them.

16. The claim of the applicants is that they were promoted as Assistant Superintendents/Office Superintendents grade II (Statistics) in the pay-scale of 1600-2660 with effect from 1.1.84 as a result of

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selection. They say that their seniority will be determined according to the panel position as per para 46 of the judgement of the Supreme Court in the case of Virpal Singh Chauhan. According to the applicants, the panel select list prepared at the time of making selections would be the panel for considering seniority and not the panel list prepared at the time of appointment to the initial grade. The applicants further state that according to the judgement of the Full Bench in the cases of V. Laxminarayana and Durga Chand Haldar vs. Union of India, the initial seniority assigned to the applicants according to their panel position as Assistant Superintendent with effect from 1.1.84 is valid as per extant rules. Thus they claim that if their panel seniority is considered, they should have been promoted as Superintendents much earlier. It is finally stated that the applicants were discriminated because the revised seniority list respecting and following the panel position as per extant rules had been issued in the cases of General Branch, Personnel Branch and other Branches.

17. We have given our very anxious consideration to the contentious issue raised in these two CPs converted into OAs. It is true that the Supreme Court in the case of Virpal Singh Chauhan accepted the directions in Sabharwal's case that appointments according to roster already made prior to the judgement in Sabharwal's case, are legal and valid. Chauhan's case held that when the panel select list was prepared at the time of making selections for promotion to the selection post, it would be that panel and not the panel select list prepared at

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the time of appointment to the initial grade. Even this decision of Chauhan's case is applicable prospectively from the date in Sabharwal's case only.

18. The point noticed is that rule in Sabharwal's case was first propounded and explained in J.C.Malik's case by the Allahabad High Court. The Hon'ble Supreme Court of India in CMP Nos.41966-42003 of 1984 already directed the respondents to work out the reservations in accordance with the decision in J.C.Malik's case. In their order dated 21.12.84, this order was reiterated subsequently by the Allahabad Bench of this Tribunal in the case of Virpal Singh Chauhan - ATR 1987(2) ATC 71 (supra). All other Tribunal orders cited above followed Allahabad High Court decision in J.C.Malik's case because rule in Malik's case was approved to be implemented by the Supreme Court. Thus even before Sabharwal's case was pronounced which approved Malik's case, the rule in Malik's case was directed to be implemented and excess promotions made over and above the quota, were directed to be adjusted against future vacancies. The effort of the respondents in undertaking this exercise cannot be faulted.

19. Para 46 in Chauhan's case relied upon by the 1d. counsel for applicant would also apply prospectively as stated above in Shoshit Karamchari Sangh's case. As the respondents have followed the orders of the Supreme Court and various Benches of the Tribunal and the recasting of the seniority was entirely on account of a direction of Supreme Court for following Malik's case, we

/ *.....* and the respondents in that regard.

With regard to the panel position as ~~Assistant~~ 26 23 Superintendents, we note that even this very promotion is not against a post as explained above. There can be no question of seniority to a promotion which is disputed.

20. For the above reasons, both the OAs are dismissed. The interim orders restraining the respondents from making the promotions are hereby forthwith vacated. No costs.

A. Vedavalli
(Dr. A. Vedavalli)
Member(J)

N. Sahu
(N. Sahu)
Member(A)

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