

Central Administrative Tribunal
Principal Bench

O.A. No. 2086 of 1994

DECREE

New Delhi, dated this the 21 ~~November~~, 1999

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Hon'ble Mr. S.R. Adige, Vice Chairman (A)
Hon'ble Mr. Kuldip Singh, Member (J)

Shri Jawahar Ram,
S/o late Shri Ganpati,
Ex-Supdt. (Mech.) C&W Dept.,
Northern Railway, Moradabad,
R/o House No. RZ-I/9, Tamilar Enclave,
Debri, Palam Road,
New Delhi. Applicant

(By Advocate: Shri P.L. Mimroth)

Versus

1. Union of India through
the General Manager, Northern Railway,
Baroda House, New Delhi.
2. The Chief Personnel Officer,
Northern Railway, Baroda House,
New Delhi.
3. The Sr. Divisional Personnel Officer,
Northern Railway,
Moradabad (U.P.). Respondents

(By Advocate: Shri P.S. Mahendru)

O. R. D. E. R

BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

Applicant has filed this O.A. on 8.9.94 by which he imputes respondents' order dated 28.7.93 (Annexure A-1) and seeks promotion as Asst. Supdt. (Mechanical) w.e.f. 1.1.84 consequent to the orders for Cadre Review and restructuring of Group C and D staff dated 24.11.84 issued by respondents, and for promotion as Supdt. (Mechanical) w.e.f. July, 1997, which he claims is the date his junior Shri T.C. Sharma was so promoted.

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2. Applicant's case is that the post of Asst. Supdt. (Rs.550-700) was a selection post and he was selected to that post vide letter dated 12.10.84 (Annexure A-8) and was consequently promoted as such vide letter dated 12.11.84 (Annexure A-9), after being adjusted a-against reserved point No.25 of the Communal Roster (Annexure A-10). The next selection of Asst. Superintendents was held in 1985 and various persons were selected and empanelled. Applicant asserts that as a result of restructuring as per Railway Board's letter dated 16.11.84 (Annexure A-11), 12 persons were promoted as Asst. Supdt. (Mechanical) w.e.f. 1.1.84. He contends that while four candidates of 1984 panel and 8 candidates of 1985 panel of Asst. Superintendents were given benefit of upgradation w.e.f. 1.1.84, he was deliberately ignored and discriminated against, and what is worse, Asst. Superintendents in 1987 and 1988, while he was not. Applicant contends that while he should have been adjusted against the carryforward balance of reserved points No.4 and 17 earmarked for ST candidates vide Railway Board's letter dated 20.4.70 (Annexure A-12) he was in fact adjusted against reserved point No.22. He further contends that two SC candidates selected in 1980-81 and 1982-83 respectively were adjusted against reservation of subsequent reservation points and in violation of Railway Board's letter dated 31.8.82. He states that consequent to restructuring ordered by respondents w.e.f. 1.1.84 vide their letter dated

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16.11.84, the percentage of posts of Asst. Sup dt. increased and respondents were required to fill up those vacancies approved on or before 15.11.84 and current on that day, but respondents did not assign applicant's seniority in the cadre of Asst. Superintendents despite his regular selection in that grade, and his continuous and regular working against that post since 12.11.84, whereas his juniors who had been selected later on in the 1985 panel were included in the seniority list. He states that he filed several representations, but receiving no response, he was compelled to file this OA.

3. Respondents in their reply challenge the OA. They state that the seniority list circulated vide letter dated 4.5.92 (Annexure-A5) shows applicant's name at his proper place and position which he never challenges, and he is now estopped from assailing the same. It is stated that prior to the Hon'ble Supreme Court's interim order in Girdhar Kohli Vs. Union of India, the selections for any post were based on the vacancies as per 40 point roster, and vacancies reserved for SC/ST were filled up through available reserved candidates and where reserved candidates were not available, the vacancies were dereserved and filled up. However, the aforesaid interim orders directed that the posts in each category and grade should be filled on percentage basis as prescribed for SC/ST i.e. 15% and 7%. Those orders further directed that after each promotion

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the seniority position of each employee should be changed and revised. In the process SC/ST candidates who obtained promotion through roster point overlooking their seniors from the general category were relegated to their original seniority. Respondents state that applicant who is a member of SC community was picked up from the bottom ignoring senior employees of the general category and he was thus selected as Asst. Supdt. For purposes of promotion as Supdt. the seniority of all the Asst. Superintendents was revised and their original seniority restored. Thus those SC/ST candidates who were promoted out of turn, got lower position as in the case of applicant. Respondents state that as the Hon'ble Supreme Court had directed to maintain the percentage of SC/ST in each grade and post, applicant could not be promoted as Superintendent as the quota prescribed for SC was full. Applicant was eventually posted as Supdt. w.e.f. 1.3.93 vide order dated 28.7.93 as per his turn and seniority.

4. The aforementioned averments of respondents contained in Para 4.IV of their reply has not been specifically denied by applicant in the corresponding paragraph of his rejoinder. All that is said is that respondents' contentions are not tenable because Railway Board's letter dated 26.2.85 is not attracted in applicant's case, but why it is not attracted is not explained.

5. We have heard applicant's counsel Shri Mimroth and respondents' counsel Shri Mahendru. We have also

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perused the materials on record and given the matter our careful consideration.

6. In this connectin our attention has been invited to the letter of the DPM Moradabad dated 17.8.99 which is taken on record, in which it is stated that applicant's promoted as Supdt. w.e.f. 1.3.93 i.e. the date of his promotion of his junior Shri Nahar Singh Bhatoo was made vide office Notice dated 28.7.93 as per recast seniority on the basis of seniority position in the initial recruitment grade of Rs. 260-400 (Rs. 950-1500 RPS) and in grade Rs. 330-560 (Rs. 1200-2040 RPS) in terms of certain interim orders passed by the Tribunal in OA No. 1168/90. A copy of the seniority list of Senior Clerks of Mechanical Division (Rs. 330-560) issued by respondents in August, 1981 has been enclosed with letter dated 17.8.99 Shri T.C. Shamma who applicant claims is his junior is shown at Sl. No. 19 of that list. S/ Shri P. V. Tilak; T. R. Mahajan; Bashir Ahmed; Ram Bihari along with whom applicant was selected for promotion as Asst. Supdt. vide letter dated 17.10.84 (Annexure-A8) are shown at Sl. Nos. 17, 20, 22 and 28 of that list while applicant is positioned at Sl. No. 40 and Shri Nar Singh Bhatoo who also belongs to SC community is shown at Sl. No. 41.

7. As applicant claims to be senior to Shri T.C. Shamma, ^{which} is not borne out by the materials on record, and as his promotion as Superintendent w.e.f. 1.3.93 was ordered by respondents pursuant to certain interim orders passed by the Tribunal in OA No. 1168/90, we find no good grounds to interfere in this matter.

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The OA is dismissed. No costs.

(KULDIP SINGH)
MEMBER(J)

(S. R. ADIGE)
VICE CHAIRMAN (A).

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