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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,

NEW DELHI.

O.A.No.573 /94.

New Delhi: April 25, 1995.

HON'BLE MR. J.P.SHARMA, MEMBER (J)

HON'BLE MR. S.R.ADIGE, MEMBER (A)

Shri Manik Chand,  
s/o Shri Har Parshad,  
Head Draftman,  
Divisional Railway Manager Office,  
Northern Railway,  
Moradabad

2. Sh.J.N.Tiwari. Both Head Draftman Engineering  
3. Shri Ram Chander DRM Office, Moradabad.

By Advocate Shri B.S.Mainee.

Versus.

Union of India through

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

2. The Divisional Railway Manager,  
Northern Railway,  
Moradabad

..... Respondents.

Shri H.K.Gangwani, Advocate for official respondents.

Shri G.D.Bhandari, Advocate for intervenors.

OR D E R (JAL)

By Hon'ble Mr.J.P.Sharma, Member (J)

The applicant of SC category was promoted from the post of Draftsman in the grade of Rs.1200-2040 to the post of Senior Draftsman in the grade of Rs.1400-2300 on 5.4.89. The next higher post to which the applicant was eligible is that of Head Draftsman in the grade of Rs.1600-2660, which is a non-selection post.

2. The grievance of the applicant is that one Head Draftsman Shri R.K.Saxena of general category had vacated the vacancy on 31.8.92 when he was promoted

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as Chief Draftsman in the scale of Rs. 2000-3200. It is also his grievance that the respondents have not given promotion to him as Chief Draftsman against the upgraded post which was to take effect from 1.3.93 irrespective of his SC category candidate. He made several representations to the concerned authorities and thereafter he was promoted as Head Draftsman w.e.f. 11.10.93 instead of 31.8.92. Feeling aggrieved, he filed this O.A. praying for grant of the reliefs stated in paragraphs 8.1, 8.2 and 8.3 of the application which are as follows:-

- 8.1. That this Hon'ble Tribunal may be pleased to quash the impugned orders directing the respondent No.1 not to approve the proposal of the respondent No.2 for de-reservation of the post of Chief Draftsman but to direct the Respondent No.2 to promote the applicant as a Chief Draftsman against an upgraded post in accordance with the roster point.;
- 8.2. That this Hon'ble Tribunal may be further pleased to direct the Respondent No.2 against the vacancy which had arisen on 31.8.92 on promotion of Shri R.K.Saxena ;
- 8.3. That any other or further orders as this Hon'ble Tribunal may deem fit and proper under the circumstances of the case may also be passed in favour of the applicant.

3. A notice was given to the respondents and the official respondent contested the application challenging the jurisdiction of the Principal Bench to entertain this application because the territorial jurisdiction of the Principal Bench does not extend to the place where the applicant at the time of making application was posted. On merit, the official respondent has taken the stand that in the cadre of Head Draftsman, there were six posts and applying

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15% reservation, the share of SC was less than one and as such no post fell vacant in the share of SC candidate to follow the 40 Points Roster as laid down by various Circulars of the Railway Board. It is further contended that the vacancy which arose on 31.8.92, was to go to third General Category candidate whose name was on select list on 4.5.92. Shri Manik Chand was promoted to grade Rs.1600-2660 in his turn as per seniority on 11.10.93 against the vacancy reserved for SC category candidates in terms of P.S.No.10647 subsequently. The respondents have also denied various other averments made by the applicant but maintained that the roster was not applicable as per interim orders of CAT dated 6.6.90 passed in O.A.No.1168/90. The respondents have also considered the anticipated vacancies occurring on 31.8.92 while preparing the select list for promotion to the grade Rs.1600-2660/- against two vacancies occurred on 4.5.92 and in this select list no vacancy was to be reserved for SC candidates.

4. Shri G.D.Bhandari also appeared for certain intervenors who filed reply to the original application and has also placed before us the judgment delivered by the Principal Bench of CAT in O.A.No.1593/90 on 10.7.91 pointing out certain reservations and application of 40 Points Roster.

5. The applicant has also filed the rejoinder reiterating the facts averred in the O.A. and referring to the affidavit filed by the intervenors. In the rejoinder, the applicant has also given the further

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details of the vacancies stating that the respondents had admitted that the three posts of Chief Draftsman in the grade of Rs.2000-3200/- had been upgraded.

6. We have heard Shri B.S.Mainse again today. The case was already heard on 10.10.94 but since the learned counsel for the respondents had filed certain documents, so the case was released from delivering judgment which was at that time reserved after hearing the rival contentions and, therefore, it was again heard today.

7. The main contention of the applicant's counsel is as to whether the reservation Point 1 has to be complied with by the respondents in letter and spirit <sup>in view of</sup> and /the Hon'ble Supreme Court's decision in R.K. Sabharwal & others vs. State of Punjab & others reported in S.C.Services Law Judgments 1995(1) 330, there can be no two opinions that atleast in Group 'C' posts, the constitutional mandate of 15% reservation in the case of SC category has to be followed and that the vacancy has, however, to be filled up on the basis of roster point which has been prescribed in consultation with nodal Ministry. 0.5 or above should be taken as 1 and should be reserved for SC category. In June, 1992, the Railway Board also issued clarification of earlier Circular that if by calculation of 15% vacancies, there is fraction of 0.5 or above, that should be taken as 1 and less than 0.5 be ignored and thus 0.5 or above has to be treated as 1. This Circular is 91-E(SCT)II/3/154 dated 19.6.92. The reservation is for giving adequate representation to a particular reserved category vacancy in order that the vacancy may be rotated between various categories. A guideline

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has been laid down in the 40 Point Roster that if any reserved category candidate is not available, that reserved point may be carried forward to subsequent three years. In this case also, the applicant is aggrieved by the departmental communication with the DRM, Northern Railway, Moradabad by memorandum dated 28.9.93 addressed to General Manager (P), Northern Railway for dereservation of one SC and one ST vacancy in the selection of Chief Draftsman (Rs.2000-3200/-). Here it may be recalled that the applicant in the relief clause is claiming that he should be given dereservation point of the vacancy which has fallen on the roster point. According to the applicant, the vacancy occurred on promotion of Shri R.K.Saxena on 31.8.92 to the post of Chief Draftsman in the scale of Rs.2000-3200/-.

It is to be noted that no relief has been claimed by the applicant in the application in respect of this point of dereservation because this is in the grade of Rs.2000-3200/- and the applicant claims a SC category vacancy in the grade of Rs.1600-2660/- w.e.f. 31.3.92. We confine this judgment only to the point whether the applicant who had already been given promotion to the grade of Rs.1600-2660/- by the order dated 11.10.93, can be given that benefit of a vacancy which is said to have fallen vacant on 31.8.92.

8. The respondents' counsel filed 40 Point Roster, a copy of which has been taken on record, which goes to show that since 7.9.90 the starting point of the roster, it was only on 11.10.93 that the vacancy of Head Draftsman was filled in by a SC candidate. A

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perusal of this will show that the name of the applicant is at Sl. No.22, while the SC points are at Sl.Nos. 1, 4, 8, 14, 17, 22 and at that time either non-availability of SC candidates of any other reasons whatsoever, the vacancies of roster point remained unfilled by SC candidates and were carried forward. This statement is not disputed by the applicant's counsel. The respondents have also filed 40 Point Roster in respect of Chief Draftsman but this <sup>is</sup> not relevant as we are considering only whether the applicant was to be given promotion earlier to 11.10.93. The learned counsel for the applicant emphasised the fact that the respondents have taken a wrong stand in their counter ignoring the claim of the applicant for consideration taking the view that when there were six posts then there was no reservation for SC candidates. This statement in the reply cannot be said to be according to the relevant instructions issued by the Railway Board and the specific law on the point. It is not the case of the applicant that the vacancy has since been filled and it is also not the case of the applicant that the respondents kept the post reserved for other categories. It is only in October, 1993 that this Point 1 has been filled up. There is no law on the point that a person who had not been considered for promotion earlier and had been given promotion subsequently on reserved point or unreserved point, the reserved point can claim antedated promotion for monetary and seniority benefits where the rights of the other persons, who are not before us, are

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likely to be effected.

9. Learned counsel for the applicant also argued that the fundamental rights of the applicant has been grossly violated by not giving the benefits of the vacancy which occurred on 31.8.92. The applicant cannot claim a particular vacancy but can claim reservation. He can claim reserved point if it is occupied by unreserved category. This is not the case here. In view of this, no fundamental rights of the applicant has been violated.

10. There is an established principle that a person can get notional benefits of the promotional post when he is promoted. A person cannot be promoted earlier to his date. There are cases where the promotions are withheld and are not allowed which are found illegal. That is the case here. The applicant was promoted on 11.10.93. The promotion ~~for purpose~~ is delayed one but it is for the administration to keep the post vacant, unfilled in view of the exigencies of the services. It is not a right of the employee to ask the employer to fill the post at the time when it has fallen vacant. Nothing has been shown in the O.A. that any prejudice has been caused to the applicant by filling up the vacancy. In fact, the applicant himself has come quite late in March, 1994 while he was given promotion in October, 1993. He placed his grievance when Shri R.K.Saxena was given promotion as Chief Draftsman. He himself has come two years after.

11. The judgment filed by Shri Bhundari in L.A. No.1598/90 only makes it clear that there can be no reservation and there is a reliance on the case Gian Singh Mann Vs. High Court of Punjab & Haryana.

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& others-1980(4) SCC 266. However, the relevancy of this judgment with regard to the issue for decision is not so much material. We, are, therefore, of the view that once an incumbent of reserve category has already been given promotion at a point when he should be given promotion, there remains no question of promotion of SC category, and the administration took steps for dereservation <sup>category</sup> of one post each of SC/ST when reserve candidate was not available.

12. In view of above facts and circumstances, the application is devoid of merits and is accordingly dismissed. No costs.

Sharma

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(S.R. ALIGE)  
MEMBER (A)

(J.P.S. SHARMA)  
MEMBER (J)

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