

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No. 2447/1989
T.A. No.

199

DATE OF DECISION

13, March
Feb. 1997

Shri Lal Singh Meena

Petitioner

Shri B.S. Mainee

Advocate for the Petitioner(s)

Versus

UOI & Ors.

Respondent

Shri H.K. Ganqwani

Advocate for the Respondent(s)

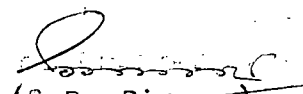
CORAM

The Hon'ble Mr. Jose P. Verghese, VC(J)

The Hon'ble Mr. S.P. Biswas, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

JUDGEMENT


(S.P. Biswas)
Member(A)

CASES REFERRED:

1. R.K. Sabharwal Vs. State of Punjab
JT 1995(2) SC 351
2. UOI & Ors. Vs. J.C. Malik & Ors.
1996(1) SLJ 114
3. State of Rajasthan Vs. V.C. Soni
1996 SCC (L&S) 340
- ~~4. State of Rajasthan Vs. Kunji Ramzan
JT 1997 (1) SC 144~~

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2447/1989

New Delhi, this 13th day of March, 1997

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

Shri Lal Singh Meena
s/o Shri Ghansi Ram Meena
G.195, Railway Colony, Agra Cantt. Agra .. Applicant
(By Advocate Shri B.S. Mainee)

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versus

Union of India, through

1. Secretary
Ministry of Railway
Rail Bhasan, New Delhi
2. General Manager
Central Railway, Bombay VT
3. Senior Divisional Commercial
Superintendent, Jhansi .. Respondents

(By Advocate Shri H.K. Gangwani)

ORDER

Hon'ble Shri S.P. Biswas

The plea of the applicant in this OA was dismissed by the Division Bench of this Tribunal in its decision on 18.5.94. Since there was an error apparent on the face of record, a review application (No.364/94) was filed and decided on 23.9.96 with an order to restore the application to its original number for fresh hearing. This is how this case of 1989 is before us now.

2. The applicant herein is aggrieved by order dated 3.8.89 issued by Respondent No.3 by which he has been denied the opportunity of being considered for promotion to the post of Office Superintendent(OS for short) Grade II in the scale of Rs.1600-2660. The applicant originally appointed as Junior Clerk, was promoted as Senior Clerk in the scale of Rs.1200-2040 and again promoted as Head Clerk vide order dated 20.9.85 in the scale of Rs.1400-2300. Consequent upon

the cadre review and restructuring ordered by the Railway Board on 16.11.84, a total of 8 posts of OS were to be filled up. As per the Railway Board's order dated 26.2.85, reservation quota for promotion of Scheduled Caste and Scheduled Tribe (SC/ST for short) were also to be maintained upto the extent of 15% and 7 1/2% respectively, for filling up the post with effect from 1.1.84. Respondents have submitted that out of total strength of 8 posts for OS Grade II, there is only one SC candidate available and in the absence of any ST candidate they decided to keep the post unfilled against roster point reserved for ST. It has also been contended that reservation for ST employees has to be provided to this category @ 7 1/2% of the total strength and out of a total of 8 posts, the question of considering the applicant against the said percentage of reservation (i.e. ST quota) did not arise. On the other hand, it is not disputed that there was no ST candidate in the concerned cadre.

3. The short question for determination is whether an employee, belonging to ST community, is entitled for consideration of promotion against the point reserved for ST in the 40-Point roster when the vacancies are only eight in number and the employee is otherwise available and eligible for consideration for promotion.

4. We find that Annexure A-2 statement of the respondents dated 19.7.85 and the reply statement dated 26.7.90 are at variance and run contrary to each other. In Annexure A-2 it has been mentioned that "no ST is available and hence one post will be kept reserved for want of ST". Whereas in para 4(E) of the reply, it has been submitted as under:

"The quota reserved for ST is 7 1/2% and out of 8 total post no post of ST comes against reservation percentage hence question of considering him against the reserved post does not arise".

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5. The above submissions of the respondents cannot be accepted for more than one reason. Firstly, the records available before us reveal not only availability of an ST employee namely the applicant but also his uncontroverted eligibility for promotion to the post of OS Grade II. Secondly, roster point No.4 provides reservation for a ST candidate. Respondents have thus erred on both the counts.

6. It is also evident from the letter of the respondents dated 24.9.85 that the applicant was promoted as Head Clerk in the grade of Rs.425-700 against upgraded post with effect from 3.1.84/10.1.84. The fact that the applicant belongs to ST community is evident in the aforesaid communication of the respondents. Therefore, to say that no ST candidate was available was evidently wrong. We have checked up the roster point and we find that in the 40-point roster, "1st" and "4th" posts are to be earmarked for SC and ST candidates respectively. Since the applicant was already available in the feeder cadre of Head Clerk which was taken for consideration for promotion to the post of OS Grade II, the applicant could not have been denied consideration for the purpose of promotion. As per applicant's counsel, by ignoring the applicant, the respondents have violated the law laid down by the Constitution Bench of the Hon'ble Supreme Court in the case of R.K. Sabharwal Vs. State of Punjab JT 1995(2)SC 351. According to the law enunciated in this case, the percentage of reservation has to be worked out in relation to the number of posts which form the cadre strength. The concept of 'vacancy' has no relevance in operating the percentage of reservation. The only way to

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assure equality of 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 views of the Apex Court in R.K. Sabharwal's case have been confirmed in the subsequent judgement of their lordships in the case of UOI Vs. M/s. J.C. Malik & Ors. SLJ 1996(1) SC 114. We find some force in the arguments of applicant's counsel. It has, however, been decided by the apex court that working of roster and findings given in R.K. Sabharwal's case will have prospective effect only [See State of Rajasthan Vs. F.C. Soni, 1996 SCC(L&S) 340].

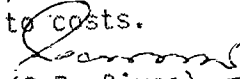
7. Having regard to the aforequoted decisions (cited supra), this OA deserves consideration on merits, and we allow the OA accordingly with the following orders:


(i) The respondents shall consider the case of applicant for promotion to the post of OS Grade II subject to his being found fit by the DPC and promote him as such with effect from 10.2.95, i.e. the date of Hon'ble Supreme Court's decision on the issue of Roster/quota for reservation purposes. The applicant shall also be given consequential benefits, i.e. fixation of pay and seniority, from the above date;

(ii) Subject to same condition aforesaid the applicant shall be paid back wages from 10.2.95. This is because he could have actually carried out the responsibilities of the upgraded post but for the denial of promotion;

(iii) The above direction shall be carried out within a period of six months from the date of receipt of a copy of this order;

(iv) In the circumstances, there shall be no order as to costs.


(S.P. Biwas)
Member(A)


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

/gtv/

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19-7-85