

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. No. 2541 of 1990 Decided on: 24.3.98

Mrs. Manju Kumari

Applicant(s)

(By Advocate: Shri B.S. Mainee)

VERSUS

U.O.I. & Ors

Respondents

(By Advocate: Shri P.S. Mahendru)

CORAM

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

1. To be referred to the Reporter or not? YES
2. Whether to be circulated to other Benches
of the Tribunal? NO

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

CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

(69)

O.A. No. 2541 of 1990

New Delhi, dated the 24th March 1998

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

Mrs. Manju Kumari,
W/o Shri Kanchan Singh,
Superintendent (Claims), Northern Railway,
NDCR Building,
R/o 41/1419, DDA Flats, Mandangir,
New Delhi. APPLICANT

(By Advocate: Shri B.S. Mainee)

VERSUS

1. Union of India through
the General Manager,
Northern Railway,
New Delhi.
2. Shri R.S. Bhardwaj,
Supdt. (Claims),
Claims Office, NDCR Building,
New Delhi.
3. Shri R.D. Harnautia,
Asst. Supdt.,
Northern Railway Construction Branch,
Saharanpur (U.P.) RESPONDENTS

(By Advocate: Shri P.S. Mahendru)

JUDGMENT

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

Applicant had initially filed this O.A. on 3.12.90 praying for appointment on permanent basis as Superintendent (Claims) w.e.f. 1.11.88 and against reversion from that post to her substantive post of Asst. Supdt. Claims and for quashing of the promotion of Shri Bhardwaj (R/2) as Supdt. (Claims) made on 3.1.89. An interim order was passed on 3.1.91 restraining respondents from reverting the applicant, but when it was shown to

the Bench on 18.1.91 that applicant already stood reverted by order dated 1.11.90, the interim order was not extended.

2. On 31.1.91 applicant filed M.A. No. 763/91 for amending the O.A. along with a copy of the amended O.A. in which she sought quashing of the impugned reversion order dated 1.11.90 and seeking a direction to respondents to appoint her as Supdt. (Claims) on permanent basis w.e.f. 1.11.88 or alternatively w.e.f. 16.4.90 or at the latest w.e.f. 26.7.90 and not to revert her in the meanwhile. That M.A. was allowed on 27.3.92 and meanwhile any promotions made were subject to the outcome of the O.A. Subsequently the O.A. was dismissed for default on 13.12.94, but upon M.A. No. 128/95 being filed, was subsequently restored to its original position on 13.2.95.

3. Thereafter in May, 1995 yet another M.A. bearing No. 1161/95, was filed seeking further amendments in the O.A. in which apart from the reliefs mentioned in Para 2, applicant also sought salary eligible to her with retrospective effect and for consideration of her case for promotion in accordance with law as laid down in V. Laxmi Naryan's case ATJ 1992 (2) 611 and Karam Chand's case AIR 1989 SC 261. That M.A. was allowed on 16.10.95.

(A)

4. The case of the applicant who belongs to SC community and was appointed as Asst. Supdt. (Claims) under the reserved quota on 31.10.85, is that on 31.10.88 consequent to the retirement of Shri Gurdev Singh, a post of Supdt. (Claims) fell vacant. On that date, 3 other SC candidates who were senior to her already stood appointed to the post of Supdt. (Claims) on the basis of their seniority against general category posts and not under reserved category. The only other reserved category candidate was one Shri Harnautia, who was away on deputation to Saharanpur for the previous 30 years and was facing departmental proceedings, and was hence out of reckoning for promotion. Applicant contends that the said vacancy created by Shri Gurdev Singh's retirement on 31.11.88 fell under Roster Point 28 and was therefore reserved for a reserved category candidate as per Reservation Rules (Ann. D to OA) and in view of the aforesaid circumstances she had an enforceable right for being considered for promotion against that vacancy, but respondents had not done so despite several representations. Her further grievance is that she was promoted on ad hoc basis as Supdt. (Claims) w.e.f. 26.4.90, but even that was terminated and she was reverted to her substantive post of Asst. Supdt. (Claims) w.e.f. 1.11.90.

(F2)

5. Respondents in their reply contest the O.A. and state that in 1989, 3 vacancies of Supdt. (Claims) were available against which the following were available for consideration:

1) Shri R.D. Harnautia,	SC
2) Shri Shiv Lal	SC
3) Shri H.S. Pipla	SC
4) Shri R.S. Bhardwaj	G

As there was a disciplinary case pending against Shri Harnautia he was not promoted at that time, and S/Shri Shiv Lal, H.S. Pipla and Bhardwaj (R-2) were promoted against Roster Points 27, 28 and 29 respectively. It is stated that the two SC candidates S/Shri Shiv Lal and Pipla were adjusted against exchangeable points reserved for ST and against the shortfall of Roster Point 22 reserved for SC community and at that stage there was a backlog of 1 SC against Roster Point No.28. It is further stated that by Memo dated 26.4.90 applicant was appointed as Supdt. (Claims) purely on ad hoc basis against an existing vacancy for a period ^{of} three months or till the departmental proceeding against Shri Harnautia was finalised, whichever was earlier, but meanwhile in the case of Kuldeep Singh Chopra the CAT, P.B. passed orders on 4.10.90 that promotions in the category of Supdt. (Claims) should be made strictly as per prescribed

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percentage of 15% and 7 1/2% for SC and ST candidates respectively. It is stated that at that point of time 6 incumbents were on roll, out of a total cadre of 9, and out of these 6 working incumbents, 5 were SC and 1 was ST. Respondents state that in order to give regard to the aforesaid order of CAT they had no alternative except to revert applicant, and did so by order dated 1.11.90. They state further that in 1992 as per CAT's direction in many cases and as per decision taken by the competent authority, the seniority list of Asst. Superintendent (Claims) was prepared on the basis of date of initial appointment in which Shri Harnautia (SC) was positioned at Sl. No. 16 while applicant who was the next seniormost SC candidate was positioned at Sl. No. 57. It is stated that after finalisation of the disciplinary case against Shri Harnautia resulting in penalty of censure, he was promoted as Supdt. (Claims) w.e.f. 9.1.95 while applicant has been promoted as Supdt. (Claims) as per recast seniority list w.e.f. 28.9.95.

6. Applicant has filed rejoinder in which she has urged that the 5 SC candidates working as Supdt. had not been promoted against roster points but in order of their general seniority, and under the circumstances, her reversion from ad hoc appointment as Supdt. (Claims) was illegal. She

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(AA)

has urged that this ad hoc appointment has been admitted by respondents to have been against roster point 28 which had been reserved for an SC candidate against which Shri Harnautia should normally have been considered for promotion but for the pending, D.E., and his being away on deputation (see Respondents' letter dated 13.1.89 at Ann. 'L to O.A.), and as he could not be considered, respondents should have considered her for promotion against that vacancy then itself, but they did not do so. It is also contended that the recast seniority list of 1992 prepared by respondents is not in accordance with law and persons junior to her in the seniority list of Asst. Supdt. (Ann. III) have been promoted as Supt. (Claims) before her vide orders dated 19.5.92 (Annexure II to rejoinder). Elsewhere, respondents' contentions have been denied that in January, 1989 there were 3 vacancies of Supdt. Claims out of which 2 vacancies were filled by promotion of S/Shri Shiv Lal and Pipla, both SC, one against exchangeable point reserved for ST and the other against shortfall of SC. It is asserted that both Shiv Lal and Pipla were promoted under general category being the seniormost Asst. Supt. Claims when vacancies became available on retirement of Shri A.D. Kapoor and Shri C.M. Sharma on 30.6.88. It is emphasised that as Shiv Lal and Pipla were promoted in November, 1988 w.e.f. 1.7.88 and 22.10.88 (Ann. A-1) they could not have

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been appointed against any existing vacancy in January, 1989 and their appointment had no relation to the admittedly existing vacancy under Roster Point 28, for which applicant was admitted to being the only eligible person (in view of Shri Harnautia being under a DE) and for which she had a right to be appointed. It is also urged that the appointment of R-2 Shri Bhardwaj has also no bearing on the vacancy under Roster Point 28.

7. We have heard applicant's counsel Shri Maine and respondents' counsel Shri Mahendru. We have also perused the materials on record and have given the matter our careful consideration.

8. Respondents have not explained how they contend that in 1989 3 vacancies of Supdt. Claims were available against which S/Shri Harnautia, Shiv Lal and Pipla were available for consideration when S/Shri Shiv Lal and Pipla stood promoted as Supdt. w.e.f. 1.7.88 and 22.10.88 respectively vide orders dated Nov. 88 (Ann. A-1) in which Shiv Lal is described as seniormost Asst. Supdt. Claims and Pipla as the next seniormost, Asst. Supdt. If Shiv Lal and Pipla were promoted as Supdt. Claims by virtue of their seniority as Asst. Supdt. and not merely because they also happened to belong to the reserved categories of the community, the admissible quota for the reserved categories would not be affected. Similarly if at a particular

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(7b)

point of time out of the total cadre of 9, 6 posts were filled of which 5 were occupied by member of the SC community, that by itself would not warrant the reversion of applicant, if those 5 occupied those posts by virtue of seniority. It is well settled that if candidates belonging to reserved categories are promoted/selected against general category posts, by virtue of seniority, or merit the quota reserved for them is not thereby affected at all and is still available to them as per prescribed percentage.

9. Keeping the above principle in view the O.A. is disposed of with a direction to respondents to consider applicant's case for promotion as Supdt. (Claims) against roster point available for SC/ST candidates w.e.f. the date it became due. While doing so they will also consider the case of all the SC/ST candidates senior to her and pass a detailed speaking and reasoned order in accordance with rules and instructions within four months from the date of receipt of a copy of this judgment.

10. This O.A. is disposed of in terms of Para 9 above. No costs.

Lakshmi
(MRS. LAKSHMI SWAMINATHAN)

MEMBER (J)

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

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