

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

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Application No. 36 of 1985.

Shri D.V. Chadha

In person

Versus

Secretary, Railway Board
Ministry of Transport

Through

Shri K.N.R. Pillay,
Advocate.

CORAM

Shri Justice K. Madhava Reddy, Chairman.

Shri Kaushal Kumar, Member.

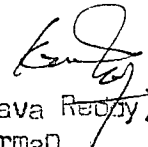
1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether to be circulated to all Benches?
4. Whether fair copy to be typed for perusal?

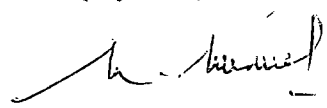
Yes

Yes

Yes

No


(K. Madhava Reddy)
Chairman
14.2.1986.


(Kaushal Kumar)
Member
14.2.1986.

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

Regn. No. 36/85.

14th February, 1986.

CORAM

Shri K. Madhava Reddy, Chairman.

Shri Kaushal Kumar, Member.

Shri D.V. Chadha

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Petitioner.

Versus

Secretary, Railway Board
Ministry of Transport

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Respondents.

Petitioner in person.

Respondents through Shri K.N.R. Pillay, Advocate.

(Judgment of the Bench delivered by
Shri Kaushal Kumar, Member).

This is an application under Section 19 of the Administrative Tribunals Act, 1985, by Shri D.V. Chadha, now working as S.M.E. (C&W), Northern Railway, praying for ante-dating his regular promotion to Group 'B' (earlier called Class II) Service in the Mechanical Engineering Department of the Northern Railway on the basis of the selections made in December 1980. He was promoted on a regular basis in March 1983 when the vacancy became available on its de-reservation. The applicant has also sought full Senior Scale Pay from 30.12.1983 as also payment of arrears of pay accruing from the same.

2. The petitioner has filed another application regarding fixation of his pay, which matter is being separately considered. The discussion in this case will be limited to the petitioner's claim for retrospective promotion.

3. The facts of the case briefly stated are as follows:

The applicant joined the Railways in 1948 as a Train Examiner. He was promoted to Group 'B' Service (earlier called Class II) in November 1978 on purely ad-hoc basis. Written test and interviews were held in 1980 for the empanelment of names for regular promotion to Group 'B' Service of the Mechanical Engineering Department (AME Class II) of the Northern Railway. There were 44 vacancies, whose break-up was - 34 General, 6 Scheduled Castes and 4 Scheduled

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Tribes. The original panel, which was issued on 30.12.1980 consisted of 31 names and did not include the name of the applicant. A perusal of the relevant file of the Northern Railway shows that although the panel was prepared for 34 names, only 31 names were shown in the panel since there were vigilance enquiries pending against three incumbents and as per the prescribed procedure, their names were kept in sealed covers. This panel did not cover the Reserved Vacancies as the Scheduled Castes and Scheduled Tribes candidates in the field of selection did not qualify. The applicant's name was included subsequently after the vacancies reserved for Scheduled Castes and Scheduled Tribes were de-reserved with the approval of the Department of Personnel & Training, Government of India. The inclusion of the applicant's name in the panel was notified on 22.2.1983 and he was promoted to Senior Scale in March 1983.

4. The applicant, who argued his case in person, contended that it was no fault of his that the inclusion of his name in the panel had been delayed. The Railways had taken inordinate time in getting the vacancies de-reserved. According to him, the selection forms singular action for a particular empanelment and the de-reservation, if at all it had to be obtained, should have been done between the result of written test and interviews, since no Scheduled Castes and Scheduled Tribes candidates had qualified in the written test. Since his inclusion in the panel and subsequent promotion were based on the panel which was formed in December 1980, he should be given the benefit of promotion and consequential benefits from the date when the first panel was notified i.e., from 30th December, 1980.

5. The learned Standing Counsel for the Railways, Shri K.N.R. Pillay, explaining the position, stated that selections for the posts of AME in respect of vacancies of 1979 and 1980 (two years) were held in 1980 for 44 vacancies (34 General, 6 Scheduled Castes and 4 Scheduled Tribes). The name of the applicant in the first Seniority List circulated on 30.12.1980 was at the seventy-second place and the

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position of the applicant in the final list used by the Selection Board was also at Serial No. 72. There was no change in the seniority of the applicant. The allegation of the applicant that seniority was changed thrice between the written test and the interviews was without any basis. It was not the seniority of any individual as such that was changed; the change was only in respect of the principles for determining the relative seniority of different groups viz., Workshop staff, Running Shed Staff and Carriage and Wagon Depot Staff. The Third Central Pay Commission had allotted the higher scale of Rs.840-1040 (RS) to a large number in the Workshop categories. If the earlier procedure of preparing combined seniority list depending on the pay scale had been continued, the other groups including the applicant's group viz., the Carriage and Wagon Depot Staff, would have suffered. The principles of seniority were accordingly revised to retain as far as possible the earlier existing parity between the different groups. In any case, the applicant was one of those whose interests were protected by the revised rules.

6. The learned Counsel for the respondents pointed out that the applicant was not included in the original panel of 31 issued on 30.12.1980. The panel did not cover the reserved vacancies since no Scheduled Castes or Scheduled Tribes candidates had qualified for selection. The existing departmental instructions did not permit de-reservation of the reserved vacancies straightway. In fact, any such provision would defeat the very purpose of reservation, as de-reservation would become far too easy. The instructions of the Department of Railways were that every effort should be made to locate suitable reserved community candidates for promotion against reserved vacancies. It is only after all efforts fail that de-reservation can be processed. Where Scheduled Caste/Tribe candidates are available in the field of selection and they do not qualify, the instructions are that only the Department of Personnel & Training can approve of their de-reservation. Thus the procedure involves the concerned Railways initially taking all possible steps and only if all efforts fail, they

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had to address the Department of Railways, who, in turn, examined whether de-reservation could be adopted. It is only after the Department of Railways are satisfied that the Department of Personnel & Training are addressed in the matter. This procedure took time and it was only on the 21st December, 1982 that the Department of Personnel & Training conveyed approval to the de-reservation of the vacancies. On their de-reservation, the applicant became eligible for inclusion in the panel. The inclusion of the applicant in the panel was accordingly notified on 22nd Feb., 1983.

7. It is not the applicant's case that his seniority was changed to his disadvantage at any stage. The change in the Seniority List due to adoption of revised principles, has been satisfactorily explained by the learned Counsel for the respondents. The number of General vacancies available for the selections held in 1980 is also not disputed. This number was 34 and a panel was issued for 31 incumbents since three persons were facing some vigilance enquiries. The applicant's name figures at Sl. No. 42 in the merit list prepared by the Selection Board. As such, the applicant's name was rightly not included in the original panel of 31 names, which was issued on 30th December, 1980. The question arises whether the applicant had any right for inclusion of his name in the panel on the basis of merit list drawn by the Selection Board and in the event of such inclusion, the date from which he was entitled for regular promotion. Reservation of posts for Scheduled Castes and Scheduled Tribes is based on the provisions of the Constitution and a candidate belonging to the General category has no right as such for appointment against a reserved vacancy. It is also open to the Government not to dereserve a vacancy and carry it forward for being filled up through subsequent selections. The process of de-reservation also requires consultation between different departments, whose concurrence or approval cannot be taken for granted. Further, the benefit of appointment or promotion to a particular post can be given effect to only after de-reservation of vacancies has been agreed to by the competent authority.

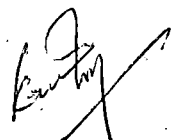
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There is no rule which lays down that in case qualified Scheduled Castes or Scheduled Tribes candidates are not available, the vacancies should necessarily be de-reserved; nor is there a time schedule prescribed for de-reservation in case de-reservation is decided upon. This being the position, inclusion of a name in the panel against a reserved vacancy is dependent upon de-reservation and cannot obviously precede de-reservation. It is only after de-reservation has been done that the vacancy becomes open to be filled up by a General candidate, who has no claim for ante-dating his inclusion to the date of formation of the panel.

8. In the result, the petition fails and is accordingly dismissed without any order as to costs.


(K. Madhava Reddy)
Chairman


(Kaushal Kumar)
Member