

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

7/13

R.A. No. 3/86 in

O.A. No. 36/

T.A. No.

1985 (Review petition)

DATE OF DECISION 7th January, 87.

Shri D.V. Chadha

Petitioner

In person

Advocate for the Petitioner(s)

Versus

Secretary, Railway Board,
New Delhi.

Respondent

Shri K.N.R. Pillay

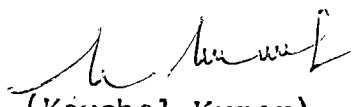
Advocate for the Respondent(s)

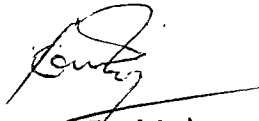
CORAM :

The Hon'ble Mr. Justice K. Madhava Reddy, Chairman.

The Hon'ble Mr. Kaushal Kumar, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether to be circulated to other Benches? *Yes*


(Kaushal Kumar)
MEMBER (A)
7.1.1987.


(K. Madhava Reddy)
CHAIRMAN
7.1.1987.

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

R.A. No. 3/86 in
O.A. Regn. No. 36/85

7th January, 1987.

Shri D.V. Chadha

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Petitioner.

V/s.

Secretary, Railway Board,
New Delhi

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Respondent.

Petitioner

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In person.

Respondent

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Through Shri K.N.R.
Pillay, Advocate.

CORAM:

Hon'ble Mr. Justice K. Madhava Reddy, Chairman.

Hon'ble Mr. Kaushal Kumar, Member (A).

(Judgment of the bench delivered by
Hon'ble Mr. Kaushal Kumar, Member)

This is a review petition against our order dated 14th February, 1986 in O.A. No. 36/85. In the said petition, the applicant, now working as S.M.E. (C&W), Northern Railway, had prayed 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. Even though the applicant had been working in the higher grade on an ad-hoc basis since November 1978, he was promoted on regular basis only in March 1983 when the vacancy became available after its de-reservation. The operative portion of the judgment in the main petition runs as follows: -

"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



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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."

2. It has been contended in the review petition that the vacancies for which the selection was held pertained to the years 1978, 1979 and 1980 and the same were not for 1979-80 only. It has further been contended that it was on account of vacancies in the year 1978 that the applicant was promoted to Class II in November 1978 and had been continuously and regularly working in Class II since his appointment and that he was promoted to Class II after proper observance of the roster in respect of the Scheduled Castes and Scheduled Tribes. In para 3 of the review petition, it has further been stated that "Having once been promoted against general vacancy in year 1978, how this vacancy which was unreserved in year 1978 became reserved in year 1980 when the panel was formed. Roster once having been observed at the time of first promotion should not have been re-introduced at the time of panel formation. This is anomalous."

3. In para 4 of the review petition, reliance has been placed on the decision of the Supreme Court in the case of Shri Narendra Chadha and others, judgment given on 11.2.82.

4. In the counter-affidavit filed by the respondent, the averment in para 3 of the review petition has been denied. It has been stated that the applicant was promoted on ad-hoc basis against roster point No.4 reserved for a Scheduled Tribe candidate. It has further been stated that the roster registers for ad-hoc and regular promotions are maintained separately and while holding the selection for

regular promotion, vacancies are earmarked for Scheduled Caste/Schedule Tribe candidates on the basis of the regular roster register.

5. We find from a perusal of the record that the contentions raised in the review petition that the applicant was promoted on an ad-hoc basis against a general vacancy and not a vacancy reserved for Scheduled Tribe candidate seems to be an after-thought and this plea was not taken in the original application. In fact, in the original application, it was admitted that "A panel of successful candidates including the name of 31 people was issued on 30.12.80, in which the applicant's name had not been included. The applicant's name was included subsequently after the posts had been de-reserved by the Ministry of Home Affairs on 22.2.83 and a panel, including applicant's name was issued."


6. In view of the categorical denial of the petitioner's assertion by the respondents in their counter-affidavit, the plea of the applicant that he was initially promoted against a general vacancy cannot be accepted. The ad-hoc promotion having been made against a vacancy reserved for a Scheduled Tribe candidate, the applicant cannot claim regular promotion till the vacancy was de-reserved.

7. The ruling of the Supreme Court in the case of Shri Narender Chadha and others v. Union of India⁽¹⁾ is also of little avail in this case. When the initial promotion itself was ad-hoc and against a reserved vacancy, which was not permissible under the rules for regular promotion, the theory of deemed relaxation cannot be invoked. Moreover, as pointed out in para 4 of the counter-affidavit, in the present case all appointments were made from the same source that is, by promotion, and the question of inter-se

(1) AIR 1986 SC 638.

seniority as between promotees and direct recruits is not involved so as to attract the dicta laid down by the Supreme Court in the above referred case.

8. In view of the above, the review petition fails and is accordingly dismissed.


(Kaushal Kumar)
Member (A)
7.1.1986.


(K. Madhava Reddy)
CHAIRMAN
7.1.1986