

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 2500 of 1993

New Delhi, this the 16th day of August, 1999

(8)

HON'BLE MR.JUSTICE K.M.AGARWAL, CHAIRMAN
HON'BLE MR.N.SAHU, MEMBER(ADMNV)

1. Shri Surat Singh, S/o Sh.R.P.Singh
2. Atana Nand Mehta, S/o Sh.Joginder Lal Mehta
3. Shri Ramesh Chander, S/o Sh.Jhangi Ram
4. Shri D.P.Taneja S/o Late Shri Ghan Sham Dass
5. Shri Shiv Nandan Tyagi, s/o Sh.Mangoo Singh Tyagi
6. Shri Vijay Kumar, s/o Lt.Shri Des Raj Anand
7. Shri P.S.Shad, s/o Late Shri B.B.Singh
8. Shri R.P.Johri, s/o Shri S.L.Johri
9. Shri Rajesh Asthana s/o Shri S.Asthana
10. Shri Girish Chand Sharma s/o Late Sh.Mohan Lal
11. Shri Ram Paul Sharma s/o Sh.Bhagwan Dass Sharma

(All working as Assistant Audit Officers, in the office of the Principal Director of Audit, Northern Railway, Baroda House, New Delhi)

- APPLICANTS

(By Advocate: None)

Versus

Union of India: Through

1. The Comptroller and Auditor General of India, 10, Bahadur Shah Zafar Marg, New Delhi-2.
2. The Principal Director of Audit Northern Railway, Baroda House, New Delhi

- RESPONDENTS

(By Advocate: None)

O R D E R

By Mr.N.Sahu, Member(Admnv)

The prayer in this O.A. is for a direction to the respondents to fill up existing/anticipated vacancies to the post of Audit Officers/Sr.Audit Officers in accordance with the law as laid down by the Allahabad High Court and interim orders passed by the Supreme Court as well as Full Bench of this Tribunal in the case of Shri V.Laxminarayanan.

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2. By an order dated 4.5.94, this court disposed of M.A.856/94 with the following directions:-

"2. We note that the Hon'ble Supreme Court in its interim order dated 24.9.84 in JC Malik Vs. UOI observed as follows:

"We clarify our order dated 21.2.84 by directing that the promotions which may be made hereafter will be strictly in accordance with the judgment of the High Court and such promotions will be subject to the result of the appeal. If any promotions have been made after Feb. 24, 1984, otherwise than in accordance with the judgment of the High Court, such promotions will be adjusted against future vacancies. CMP is disposed of accordingly."

3. The respondents in their counter justified the contemplated action of respondent no.2 to make promotion in the cadre of Audit Officers during the panel year 1994 in accordance with the instructions on the subject issued by respondent no.2, Principal Director of Audit, Northern Railway, Baroda House, New Delhi. In para 4.10 of the counter it is stated that the panel for promotion to the post of Audit Officers has since been prepared for the panel year 1994 which includes two Asstt. Audit Officers of SC category for promotion against the reserved vacancies computed on the number of vacancies worked out for preparing the panel and it is stated that there are no administrative instructions incorporating the Apex court decision in this regard.

4. Judgement of the Allahabad High Court in C.W.P.1809/72 - J.C. Malik & ors. vs. Union of India, 1978 SLJ 401 clarified that reservation for SCs/STs for appointment in service should be with reference to posts and not vacancies which may occur in the cadre. This

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judgement also quashed the selection made on the basis of vacancies in excess of the prescribed percentage of quota or posts as not in accordance with law. Subsequently, the Hon'ble Supreme Court had confirmed the above view in J.C.Malik's case in the case of R.K.Sabharwal & ors. vs. State of Punjab & ors., JT 1995(2) SC 251, with the following observations:-

"The cadre strength is always measured by number of posts comprising the cadre. Right to be considered for appointment can only be claimed in respect of a post in a cadre. As a consequence the percentage of reservation has to be worked out in relation to the number of posts which forms the cadre strength. The concept of 'vacancy' has no relevance in operating the percentage of reservation."

5. Even the Ministry of Personnel had issued instructions vide Office Memorandum No.36012/2/96-Estt(Res) dated 2.7.97. Thereafter we have the decision of Union of India & ors. vs. Virpal Singh Chauhan, AIR 1996 SC 448. Chauhan's case also followed Sabharwal's case as under:

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"The vacancies arising in the cadre after initial posts are filled, will pose no difficulty. As and when there is a vacancy, whether permanent or temporary in a particular post the same has to be filled from amongst the category to which the posts belonged in the roster. For example, the SC persons holding the posts at roster points 1,7 and 15 retire, then these slots are to be filled from amongst persons belonging to the SC. Similarly, if the persons holding the post at points 8 to 14 or 23 to 29 retire, then these slots are to be filled from amongst the general category. By following this procedure there shall neither be shortfall nor excess in the percentage of reservation."



6. We therefore direct the respondents to follow the above law laid down by the Hon'ble Supreme Court and the instructions of the Ministry of Personnel in this regard dated 2.7.97 and conduct the promotions contemplated by them in accordance with above. Annexure-1 of the above instructions explain the principles for making and operating post-based rosters. These should be strictly followed.

7. O.A. is disposed of with the above directions. No costs.

KM
(K.M. Agarwal)
Chairman

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(N. Sahu)
Member(Admnv)

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