

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

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O.A. No. 766/93
T.A. No.

199

DATE OF DECISION

5.8.93

Shri M.S.Meena**Petitioner**Shri B.S.Mainee**Advocate for the Petitioner(s)****Versus**Union of India**Respondent**Shri Shyam Moorjani**Advocate for the Respondent(s)****CORAM****The Hon'ble Mr.** J.P.Sharma, Member (J)**The Hon'ble Mr.** N.K.Verma, 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**(Hon'ble Shri N.K.Verma, Member (A)).**

In this O.A. the applicant Shri Man Singh Meena, Grade Superintendent Grade II in the office of the A.C.O.S., Northern Railway, Tughlakabad has prayed this Tribunal to direct the respondents to promote the applicant as Office Superintendent from the date from which his juniors have been promoted with all consequential benefits and seniority etc. He has also prayed for the interim relief of restraining the respondents from promoting the juniors of the applicant to the Superintendent Grade I against the upgraded posts without considering the applicant in accordance with his seniority. A notice to the respondents was issued on 12-4-93 and also interim relief was granted till the return of the notice. On application from the respondents the interim relief was modified to keep one post of Superintendent Grade I reserved till the next date of hearing.

2. Short facts of the case are that the applicant was

promoted as Superintendent Grade II (Chief Clerk) in the revised pay scale of Rs.1600-2660 w.e.f. 1-1-84 as a scheduled tribe candidate for the post earmarked for reserved category. The next higher post to which the applicant was eligible was that of the post of Supdt. Grade I in the scale of Rs.2000-3200 which is a non-selection post to be filled up by staff working as Supdt. Grade.II. The applicant became eligible for this promotion in the year 1986-88 when his four juniors were promoted to that grade. The applicant made representation against the wrongful orders of the respondent in promoting his juniors by excluding the applicant. He was replied that since he was placed on the roster point above the others on basis of his being Scheduled Tribe employee, he could not be considered senior to those general community candidates who were placed below him in the panel after they also got promoted to the post of Supdt. Gr.II. This meant that after his erstwhile seniors in the lower post were promoted to the Supdt. Grade II and placed below in the panel, they regained their seniority for consideration to the post of Supdt. Grade I thereby relegating the applicants' position to the original one which he held in the lower grade. As recently as June 1992 another junior to him has been promoted to the Supdt. Grade I on the same reason. Hence this application.

3. The applicant alleges that the action on the part of the respondent is totally against the existing rules issued by the Railway Board and several judgements of this Tribunal as also of Supreme Court.

4. The Respondents in their counter affidavit have taken the preliminary objection that the applicant has not exhausted the alternative remedies available to

him and as such the O.A. is premature. They have also submitted that ^{in resp to} the office of the railway respondent in Kota Division under which Division the applicant is working, the Hon'ble CAT (Jodhpur Bench) had issued an interim order staying the appointment or promotions of candidates belonging to members of SC and ST in such a way ~~as to~~ to exceed 15% and 7½% of the total number of posts respectively in any category of grade or post in any of the department including workshops, Accounts and Stores of the Kota Division of the Western Railway irrespective of general seniority assigned to them over non scheduled caste and non scheduled tribe employees on account of promotion given to them in reservation quota. This interim stay was given on 14-8-86 and since the applicant belonged to the scheduled tribe the railways respondents have not been able to give him the promotion. They have also taken the plea that he attained his present position in the Grade II purely because of being a scheduled tribe inasmuch as the post of Chief Clerk/ OS Grade II is a selection post. He did not qualify in the written test but however being the senior most ST candidate he was called for the interview before the Selection Board as per rule. Even though he could not pass the selection test he was promoted on trial basis for six months as per rules and thereafter he was regularised. The officials who had been promoted over him to the Supdt. Grade I were senior to him in the earlier grade of UDCs and in view of the CAT (Jodhpur Bench) stay orders, he cannot be given promotion now. Since the quota of scheduled tribes is only 7½% and as per the present strength of the Grade I Superintendent posts numbering 5 the justification counts for only 0.37% which is less than 0.50%. They have also submitted that in pursuance of the judgements of the Bombay Bench of the CAT in number

of O. As in relation to the subject matter vide orders dated 24-4-87 which was further clarified by order dated 1-3-93. The General Manager had issued instructions on 10-9-91 under which it had been stipulated that candidates belonging to the SC and ST candidates who have not come to the present rate by virtue of overall merit and seniority but have come on account of reservation, they cannot be promoted to the higher grade. It was under these instructions that the applicant was not promoted.

5. We have heard learned counsels for both the sides. The learned counsel for the applicant has produced an order from the Western Railway dated 28-4-93 in which the impugned order of 1991 quoted by the learned counsel for the respondents has been kept in abeyance pending approaching concerned Central Administrative Tribunal for recalling their decision to confirm in line with Full Bench judgement, as directed by the Railway Board. The Hyderabad Bench of the CAT in a Full Bench judgement delivered in the case of Luxmi Narain Vs. Union of India has observed that SC/ST employees, who are in turn of their seniority for promotion, cannot be ignored even if the quota reserved for them is already full. It was pointed out that the Hon'ble Central Administrative Tribunal (Jodhpur Bench) had stayed only promotion of the SC/ST in excess of the 15% and 7½% and not the normal promotion which they would have got in their own turn within the prescribed percentage. It cannot be argued that the present staffing in the Superintendent Grade I the scheduled caste and scheduled Tribes are over represented. As a matter of fact it was pointed out by the counsel of the applicant that there is no scheduled caste in that grade at all. One of the posts of the Supdt. Grade I has to be clearly reserved for SC/ST candidate. If we take the combined percentage prescribed for scheduled caste and scheduled tribes ~~which~~ works out to be 22½%. In absence of

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Schedule Caste ^{a post}

an eligible candidate, reserved for the Scheduled Caste goes to the Scheduled Tribes and the applicant would surely qualify to hold the post of Superintendent Grade I in that vacancy. However whether there is a reservation or not for the Scheduled Caste/Scheduled Tribe in the rank of Supdt. Grade I, the applicant qualifies for promotion to that grade in view of the Full Bench judgement of this Tribunal being the senior most official of the Supdt. Grade II. We do not find ourselves in agreement with the earlier judgement of the Allahabad High Court. We have to ~~await~~ the judgement ^{SLP} in the case of JC Malik & Ors. from the Hon'ble Supreme Court ^{in regard to} ~~decision~~ by the Allahabad High Court wherein the question regarding relegation of the Scheduled Caste/Scheduled Tribe candidates to a lower position in their cadre was decided vis-a-vis the promotees from the same cadre who ^{made} had to ~~be~~ the higher grade subsequently. As a matter of fact, the New Bombay Bench of the Tribunal had very clearly directed the Western Railway to issue promotion orders to any Scheduled Caste/Scheduled Tribe candidate on the basis of his own merit or seniority if he is found otherwise suitable for promotion even if the reserved quota fixed for Scheduled Caste/Scheduled Tribe candidates has been already achieved in the higher grade. It seems that the Railway Respondents have been tarrying on this issue for some reason or the other unnecessarily. We find that there is absolutely no difficulty in promoting the applicant to the grade of Superintendent Grade I if he is found otherwise suitable and if there was a clear vacancy available for him on the day he was due for it being the senior most official in the Superintendent Grade II. The application, therefore, succeeds and we order accordingly. ~~No costs~~.

N.K.Verma
(N.K.VERMA)
Member(A)

J.P.Sharma
(J.P.SHARMA) 578/23
Member (J)

Pronounced by me.

J.P.Sharma
(J.P.SHARMA)
Member (J).