

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 28th day of April, 2004.

QUORUM : HON. MR. JUSTICE S.R. SINGH, V.C.

HON. MR. D. R. TIWARI, A.M.

O.A. No. 603 of 1996

1. Manoj Kumar Gaur S/O Late K.K. Gaur, working as Office Superintendent Grade II, N.E. Railway, Varanasi R/O B-46, Sampugnanand Nagar, Sigra, Varanasi.
2. Anupama Majumdar W/O Sri S.C. Majumdar, working as O.S. Grade.II, N.E. Railway, Varanasi R/O C-33/186-D, Chandua Chhittupur, Varanasi..... Applicants.

Counsel for applicants : Sri S.K. Om.

Versus

1. Union of India through Divisional Railway Manager, N.E. Railway, Varanasi.
2. Sr. Divisional Personnel Officer, Northern Eastern Railway Varanasi.
3. Sri Kedar Nath, working as O.S. Grade.II, N.E. Railway, Varanasi.
4. Sri Rakesh Pal Manpata, working as O.S. Grade I, N.E. Railway, Varanasi..... Respondents.

Counsel for respondents : S/Sri A.V. Srivastava, A.S.Dewakar and

O R D E R (ORAL)

BY HON. MR. JUSTICE S.R. SINGH, V.C.

Heard Sri S.K. Om, learned counsel for applicant, Sri A.V. Srivastava, learned counsel representing the official respondents and Sri A.S. Dewakar, learned counsel for Respondent No.4. None is present for Respondent No.3. We have also perused the pleadings.

2. The applicants were appointed Junior clerks in the scale of Rs.260-400/- w.e.f. 24.5.75 and 19.6.76 respectively Respondent Nos.3 and 4, who belong to Schedule Caste, were appointed Junior Clerks on 26.6.84 and 31.8.82 respectively. However, respondent Nos.3 and 4 earned promotion to the post

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of Senior Clerk earlier in point of time than the applicants. Again they were promoted to the post of Head Clerk earlier than the applicants. Further promotion to the post of O.S. Grade-II was given to the applicants and Respondent Nos.3 and 4 by one and the same order dated 23.6.94. The applicant then staked their claim to regain their initial seniority over the Respondent Nos.3 and 4 in view of the judgment of Hon'ble Supreme Court in case of U.O.I. & others Vs. Veer Pal Singh Chauhan - 1995(7) JT 231. The applicants have also placed reliance on the case of Ajit Singh-II reported in 1999(7) SCC 209. The representations filed by the applicants staking their claim for seniority over the Respondent Nos.3 and 4 on the basis of Supreme Court judgments, aforesaid, came to be rejected by the impugned order dated 9.2.96 on the ground that seniority on promotion to a grade is determined with reference to the position of candidates in the panel. The respondent Nos.3 and 4 were admittedly senior as per panel position prepared for the post of O.S. Grade-II. The question that arises for consideration is whether the applicants would regain their original seniority after their promotion to O.S. Grade-II in view of the Veer Pal Singh Chauhan and Ajit Singh (Supra). Learned counsel for respondents has submitted that in view of the Constitution (85th Amendment) Act 2001, which was enforced w.e.f. 17.6.95, the Respondent Nos.3 and 4 are entitled to retain their seniority over the applicants. ^{Clause 2} ~~Class~~ (4A) of Article 16 of the Constitution as it stood before its amendment by the Constitution (85th Amendment) Act 2001, reads as under :-

"4A. Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the service under the State in favour of the Scheduled Castes and the Scheduled Tribes which in the opinion of the State are not adequately represented in the services under the State."

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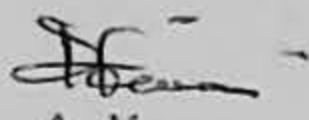
3. By 85th Constitution Amendment, Act 2001, the words "in matters of promotion with consequential seniority to any class" were substituted in place of the words "in matters of promotion to any class" occurring in Article 16(4A) of the Constitution. The statement of objects and reasons of the Constitutional amendment make it clear that the amendment was brought about to undo the effect of the judgment of the Supreme Court in case of Veer Pal Singh Chauhan and Ajit Singh-II(Supra). The consequent seniority, which the Respondent Nos.3 and 4 earned because of their promotion to the post of Junior Clerk and Head Clerk earlier in point of time than the applicants cannot be taken away because of the judgment of Supreme Court in Veer Pal Singh Chauhan and Ajit Singh-II.

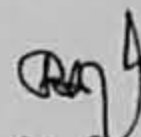
4. Sri S.K. Om, counsel for the applicants, however, submits that since the applicants were promoted to the post of O.S. Grade-II w.e.f. 23.6.94, the Constitution amendment which came into force w.e.f. 27.6.95 will not affect their claim based on judgment of Veer Pal Singh Chauhan and Ajit Singh-II. It may be recalled that the catch-up principle enunciated by the Supreme Court in Veer Pal Singh Chauhan and Ajit Singh (Supra) itself came into play w.e.f. 10.2.95 i.e. the date on which the case of R.K. Sabbarwal was decided by the Hon'ble Supreme Court. The Constitution Bench in R.K. Sabbarwal had directed that the rule enunciated therein would have only prospective effect and following that decision the Hon'ble Supreme Court in V.P.S. Chauhan directed the concerned authority to follow the related rule w.e.f. the date of judgment in case of R.K. Sabbarwal i.e. Feb.10,1995. In Ajit Singh-II - 1999(7) SCC 209 their Lordships considered the point relating to prospective operation of two judgments and emphasised the necessity of giving prospective effect in order to prevent reversion and to avoid hardship to the reserved candidates already promoted. The Respondent Nos.3 and 4 were already promoted to the posts of Senior Clerk and

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Head clerk earlier in point of time than the applicants. In the circumstances, therefore, in view of the 85th Constitution Amendment, Act 2001, the applicants claim for seniority over Respondent Nos.3 and 4 cannot be accepted. No exception can be taken to the impugned order. We find no substance in the argument of Sri S.K. Om, counsel for applicant that since the Amendment Act was enforced w.e.f. 17.6.95, the applicants, for the purpose of promotion to the post of O.S. Grade-I, are entitled to claim their seniority w.e.f. 10.2.95.

5. ^{In view of 2} ~~With~~ the above observation, the O.A. is accordingly dismissed with no order as to costs.


A.M.


V.C.

Asthana/