

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Dated : this the 23rd day of May 2002.

Original Application no. 965 of 1996.

Hon'ble Maj Gen K.K. Srivastava, Member (A)
Hon'ble Mr. A.K. Bhatnagar, Member (J)

1. Smt. Sunila Yadav, w/o Sri Suresh Chand,
c/o Sri B.P. Yadav, 13E/1 Mayo Road, Rajapur,
Allahabad.
2. Shaligram Mishra, s/o late R.R. Mishra,
R/o N 10/66-B, Kakarmutta, Varanasi.

... Applicants

By Adv : Sri A.K. Sinha

Versus

1. Union of India through the General Manager,
Diesel Locomotive Works, Manduadih, Varanasi.
2. Chief Personnel Officer, Diesel Locomotive Works,
Varanasi.

... Respondents

By Adv : Sri P. Mathur

O R D E R

Hon'ble Maj Gen K.K. Srivastava, Member (A).

This O.A. was filed under section 19 of A.T. Act, 1985, by two applicants namely Smt. Sunila Yadav, (applicant no. 1) and Sri Saligram Mishra (applicant no. 2). The learned counsel for the applicant submitted that the O.A. has become infructuous in respect of applicant no. 2. Therefore, we are considering this O.A. in respect of applicant no. 1 only ie Smt. Sunila Yadav, hereinafter called applicant.

2. In this OA the applicant has prayed that direction be given to the respondents to make promotion on the post

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of Hindi Assistant Grade I strictly in accordance with seniority issued on 19.2.1996 and direction be given to respondents to follow the judgments of Hon'ble Allahabad High Court in JC Malik & Others vs. U.O.I. & Ors (1978) 1 SLR 844 (Alld) case and this Tribunal in ⁱⁿ Veerpal Chauhan case and not to make reservation against the post in the category of Hindi Assistant.

3. The facts, in short, giving rise to this OA are that the applicant is employed substantively as Hindi Assistant Grade II in scale of Rs. 1400-2300 in Diesel Locomotive Works, Varanasi (in short DLW). The applicant is presently on deputation ^{in the} to the office of General Manager Railway Electrification Allahabad (in short GM RE) and has been promoted as Hindi Assistant Grade I in the scale of Rs. 1600-2300 on adhoc basis. In the seniority list applicant is senior most person. There are three posts of Hindi Assistant Grade I and promotion to the post of Hindi Assistant Grade I is from Hindi Assistant Grade II on seniority cum suitability. The confidential records of applicant were called for by respondents from GM RE vide letter dated 20.2.1996. The respondents have not held any selection nor have issued any promotion order. The GM RE ^{reminded} ~~remained~~ the respondents on 10.7.1996 and has requested the respondents to promote applicant before the V Pay Commission to avoid any financial loss. Applicant also sent reminders on 11.7.1996, 9.7.1996 and 21.8.1996. When no reply was received she met Senior Personnel Officer and she was informed that the third post in question on which applicant no. 2 was officiating, is to be filled by SC and the case was being processed accordingly. Hence this OA which has

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been contested by respondents by filing counter reply.

4. Sri A.K. Sinha, learned counsel for the applicant submitted that the post in question cannot be filled by SC candidate in the light of Judgment of Hon'ble Allahabad High Court in JC Malik's case (supra) wherein it has been held that reservation should be made against the post and not against the vacancy. The decision of Hon'ble Allahabad High Court has been upheld by the Apex Court. Another Judgment, relied upon by the learned counsel for applicant, is of this Tribunal in case Veerpall Singh Chauhan & Ors Vs. U.O.I. & Ors (1987) 4 ATC 685. This Tribunal has gone one step ahead while upholding the judgment in JC Malik's case (supra) that seniority has to be recast at every stage as soon as junior OC person gets promoted to the higher grade post and the seniority would have to be recast based on the length of service in the initial grade of the cadre. Accordingly 15% reservation in respect of SC candidates has to be made against the number of sanctioned posts in the grade and not against vacancies. Therefore, since there are only 3 posts no reservation can be made and the SC candidate has to wait for his turn.

5. The learned counsel for the applicant also submitted that by making reservation when there are only 3 posts, the respondents will inflict great injustice and the applicant would be hardhit financially.

6. Sri P Mathur resisting the claim of the applicant submitted that since there are only 3 posts of Hindi Assistant Grade I in DLW, Varanasi, it is proposed to fill one by SC for proper representation as per the laid down policy

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of Govt. of India. Railway Board vide instructions dated 3.8.1993 and 6.10.1994 has decided that where sanctioned post in a cadre is less than seven (07) reservation is to be made accordingly to roster and not on the basis of percentage of the posts in the cadre. In JC Malik's case (supra) Additional Solicitor General of India has submitted before the Hon'ble Supreme Court that application of the principle may create difficulties when the total number of posts in the cadre is not sufficient for the application of roster in respect of SC/ST and since in JC Malik's case (supra) the facts of that question did not arise, therefore, the apex court did not go into the same and made any observation on that issue. Sri P. Mathur submitted that the Railway Board in light of the judgment of the apex court issued fresh instructions dated 20.12.1995/1.1.1996 (Ann R4 to CA) laying down detailed revised procedure for determining/computing the reserved post for SCs/STs (Railway Board did not modify the procedure laid down vide letter dated 3.8.1993 and 6.10.1994).

7. Sri P. Mathur submitted that as per Railway Board instructions dated 15.6.1977 in the case of the change of the classification of the post from selection to non selection and vice versa it is not necessary to open a fresh roster and the old roster be continued. The classification of Hindi Assistant Grade I was changed from selection to non-selection w.e.f. 9.10.1987 and therefore the old roster has to be continued and reservation is to be given according to the point fallen on the roster. One post of Hindi Assistant Grade I was filled in ~~the~~ by selection w.e.f. 1.1.1968 against roster point no. 1 which was earmarked to be filled in by

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SC. In terms of Railway Board letter dated 29.4.1970 after revision of percentage the old roster was discontinued and carry forward point reserved for SC falling against roster point no. 1 was carried over to new roster which was opened during the year 1981-82. Sri Mathur also submitted that forward point of SC ~~af~~ of the year 1981-82 fourth point on the roster should have been filled by SC candidate against roster point no. 10 by exchanging the ST point to be filled in by SC candidate but due to administrative error although a candidate of SC community was available and eligible for promotion such reserved community was not considered and as such it has been decided to fillup 11th point by a candidate of SC community.

8. We have heard Sri A.K. Sinha, learned counsel for the applicant and Sri Prashant Mathur, learned counsel for the respondents and have also perused records and pleadings.

9. The main issue in this case is whether the post which has fallen in Hindi Assistant Grade I can be reserved for SC under reservation policy or not. We entirely agree with what has been argued by the learned counsel for respondents in respect of maintenance of roster, i.e continuing the old roster on change of classification of Hindi Assistant Grade I from selection to non selection and giving reservation according to point fallen and also regarding principle of carry forward point etc. However, we would like to discuss whether the applicant is entitled for promotion or not.

10. Admittedly the applicant is senior most Hindi

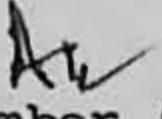
Assistant Grade II and is eligible for promotion as Hindi Assistant Grade I scale Rs. 1600-2660. In para XI of Counter affidavit the respondents have given the details of the vacancies of Hindi Assistant Grade I filled in by promotion from Hindi Assistant Grade II begining from the year 1981-82. As per the roster given Point 11 which is for unreserved is proposed to ^{be} filled in. The learned counsel for the respondents has submitted that point no. 4 meant for ST should have been filled by SC candidate against roster against point no. 10 bue due to administrative error it was not filled in and it has been correctly decided to fill up 11th point by a candidate of SC community in order to rectify the error. We do not find substance in this submission. Respondents have failed to establish that they made any effort to fill up carry forward point (No. 4) during 1985-86 when point no 5 and 6 were filled in by unreserved candidates and during 1987-88 when point no. 9 was filled in. Besides the plea that point no. 10 was to be filled by SC candidate which could not be filled due to administrative error is not acceptable to us. The applicant cannot be made to suffer because of administrative lapse and she cannot be denied of her lawful right of promotion. Point no. 11 is for unreserved candidate and the applicant is entitled to be promoted against that point.

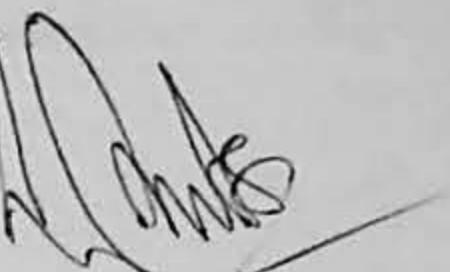
11. In the facts and circumstances and our aforesaid discussion OA is allowed. We direct the respondents to promote the applicant as Hindi Assistant Grade I in scale of Rs. 1600-2660 from the date the vacancy fell. The pay of the applicant will be fixed notionally from the date she is promoted and she will not be entitled for arrears if any

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upto March 2002 on account of refixation of pay notionally.

12. There shall be no order as to costs.


Member (J)


Member (A)

Dated : 23/05/2002

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