

Open Court.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

ORIGINAL APPLICATION NO. 635 of 1998

this the 6th day of August 2004.

HON'BLE MR. JUSTICE S.R. SINGH, V.C.
HON'BLE MR. D.R. TIWARI, MEMBER(A)

Hakim Singh, S/o Sri Nisua Ram, O.S.II DEE/TRS, Central
Railway Agra Cantt.

Applicant.

By Advocate : Sri R.B. Tripathi.

with

Original Application No. 636 of 1998

Pal Singh, S/o late Asha Ram, at present posted as Office
Supdt. II under AEE/TAD, Central Railway Mathura Jn.

Applicant.

By Advocate : Sri R.B. Tripathi.

With

Original Application No. 636 of 1999

Daryl D'Souza, aged about 36 years, S/o late Sri A.J. D'Souza
R/o 32, Friends Enclave, Dayal Bagh, Agra.

Applicant.

By Advocate : Sri R.K. Nigam (absent)

Versus.

1. Union of India through General Manager, Central Railway, Mumbai CST.
2. The Divisional Railway Manager, (Personnel), Central Railway Jhansi Division, Jhansi.
3. N.K. Nayak, Sr. DEE/TD Office, Central Railway, Jhansi.
4. D.D. D'Souza, DEE/T.D. Office, A.G.C., Central Railway, Agra Cantt.
5. Sr. Divisional Personnel Officer, Central Railway, DRM's office, Jhansi.

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6. Sri Pal Singh, S/o Sri Asha Ram, Office Supdt. through Divisional Electrical Engineer (TD), Central Railway, Mathura Jn.

Respondents.

By Advocate : Sri P. Mathur & Sri R.B. Tripathi in O.A. no. 6 of 1999

ORDER

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

With a view to appreciate the questions involved in these O.As, it would be necessary to give the facts of the case, in brief.

2. Shri Hakim Singh - applicant of O.A. no. 635/98 was appointed as Junier Clerk on 14.11.1980 and was promoted to the post of Senier Clerk on 1.9.1983. He was further promoted to the post of Head Clerk on 30.12.1986 and lastly he was promoted to the post of O.S. Gr.II on 1.3.1993. By order dated 28.4.1998 the respondent nos. 3 & 4 namely N.K. Nayak and Daryl D'Souza respectively were promoted to the post of O.S. Gr.I in the scale of Rs.6500-10500/- (RSRP). The said order is subject matter of challenge in O.A. no. 635/98 and 636 of 1998. It is not disputed that N.K. Nayak and Daryl D'Souza - respondent nos. 3 & 4 were junier to the applicant namely Hakim Singh since they were appointed on the post of Junier Clerk on 7.8.1982 and 20.1.1983 respectively. They were further promoted on the post of Senier Clerk on 6.8.1984 and 5.7.1985 respectively and on the post of Head Clerk, they were promoted on 8.1.1988 and further on the post of O.S. Gr.II on 1.3.1993. The grievance of the applicant Hakim Singh is that through the criterian for promotion to the post of O.S. Gr.I was seniority subject to suitability, yet the applicant Hakim Singh was superseded illegally by his juniors, while his juniors namely respondent nos. 3 & 4 were promoted vide order dated 28.4.1998. The order dated 28.4.98

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is accordingly sought to be quashed by the applicant - Hakim Singh with a direction to the respondents to promote him to the post of O.S. Gr.I.

3. The reliefs claimed by the applicant-Hakim Singh is sought to be opposed by the respondents inter alia on the ground that he was promoted as O.S. Gr.II in the pay scale of Rs.1600-2660/- (RSP) revised to Rs.5500-9000 (RSRP) on 1.3.1993 against 40 point roster of Scheduled Caste and in view of the decision of R.K. Sabbarwal Vs. State of Punjab and others reported in ATC 29 1995 481, the vacancy caused due to retirement of ^a ~~person~~ ^{an} incumbent not being Scheduled Caste could not be filled by giving promotion to Hakim Singh who belongs to Scheduled Caste.

4. Similarly the subject matter of challenge in O.A. no. 636 of 1998 in re. Pal Singh Vs. Union of India & Ors. is the same order dated 28.4.1998 on the same grounds that the applicant Pal Singh being senior to respondent nos. 3 & 4 namely N.K. Nayak and D. D'Souza, yet he has illegally been superseded by them in respect of the promotion to the post of O.S. Gr.I. It is not disputed that the applicant- Pal Singh was appointed as Junior Clerk earlier to the appointments of the respondent nos. 3 & 4 and also he was promoted to the post of Senior Clerk on an earlier date than the respondent nos. 3 & 4 and further on the post of Head Clerk and O.S. Gr.II the applicant and respondent nos. 3 & 4 were promoted on one and the same date i.e. 8.1.1988 and 1.3.1993 respectively. Thus, it is clear that the applicant Pal Singh being senior to the respondent nos. 3 & 4 and, therefore, he was entitled to be promoted to the post of O.S. Gr.I in preference to his juniors namely respondent nos. 3 & 4.

5. On behalf of the respondents, it has been submitted by Sri P. Mathur, learned Standing Counsel that by order dated 23.12.1998 the promotion of D. D'Souza, who is junior

(D&F)

to the applicant Pal Singh, has been reverted to the post of O.S. Gr.II in the pay-scale of Rs.5500-9000/- and posted under Sr. DETD, Jhansi and the applicant has been promoted to the post of O.S. Gr.I in the scale of Rs.6500-10500/- (RSRP) and posted to DEETD, Agra Cantt. in place of D. D'Souza. It is, therefore, submitted by Sri P. Mathur that sofar as the O.A. of Pal Singh is concerned, it has been rendered infructuous in view of the order dated 23.12.1998 whereby the applicant Pal Singh has been promoted to the post of O.S. Gr.I. Sri R.B. Tripathi, counsel for the applicant, on the other hand submits that the promotion of Pal Singh - applicant ought to have been made w.e.f. the date his junior Sri N.K. Nayak 3rd respondent has been promoted w.e.f. 28.4.1998.

6. So far as the O.A. no. 6 of 1999 which has been filed by D. D'Souza in which he has challenged his reversion order dated 23.12.1998, ^{✓ is concerned, &} none has appeared on behalf of the applicant to press the aforesaid O.A. However, since the O.A. is connected with other two O.As and we have heard Sri R.B. Tripathi learned counsel for the applicants in O.A. nos. 635 and 636 of 1998 and Sri P. Mathur, learned counsel for the respondents in all the O.As, ^{it would be but proper to} dispose of this off [✓] as well on merit.

7. Sri P. Mathur, learned counsel for the respondents has submitted that D. D'Souza has since been promoted to the post of O.S. Gr.I w.e.f. 22.2.2002 and there is nothing on record to show that any junior to D. D'Souza has been promoted from an earlier date. We are, ^{therefore, &} of the view that O.A. no. 6 of 1999 has been rendered infructuous in view of the order dated 22.2.2002, a copy of the order dated 22.2.2002 has been produced by the learned counsel for the respondents during the course of arguments, which is taken on record.

8. ^{44/2} The admitted position now stand is that Hakim Singh, Pal Singh and D. D'Souza have since been promoted to the post of O.S. Gr.I and we have already observed that

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so far as the O.A. no. 6 of 1999 is concerned, the applicant D. D'Souza has been promoted as O.S. Gr.I w.e.f. 22.2.2002 and nothing remains to be adjudicated in the said O.A., but so far as Hakim Singh and Pal Singh applicants of O.A. no. 635 and 636 of 1998/are concerned, we are of the view that both these applicants are entitled to be promoted to the post of O.S. Gr.I w.e.f. the date when Sri N.K. Nayak has been promoted. From the facts stated hereinabove, it is clear that Sri N.K. Nayak was junior to both the applicants throughout upto the date of promotion to the post of O.S. Gr.II. So far as the applicant-Pal Singh is concerned, he was senior to respondent nos. 3 & 4 in the cadre of Junior Clerk and also in the cadre of Senior Clerk, but he was promoted alongwith the respondent nos. 3 & 4 to the post of Head Clerk on ^{one} ~~one~~ and same date i.e. 8.1.1988 and to the post of O.S. Gr.II on 1.3.1993. It is not disputed that the criteria for promotion to the post of O.S. Gr.I is seniority-cum-suitability. Both these applicants being senior to the respondent nos. 3 & 4 ought to have been promoted atleast w.e.f. the date Sri N.K. Nayak was promoted. ^{As regards} ~~the~~ ^{up} raised on the basis of the judgment in the case of R.K. Sabbarwal (supra) is concerned, suffice it to say that the benefit of the said judgment is not available to the contesting respondents. Both these applicants namely Hakim Singh and Pal Singh were senior to the respondent nos. 3 & 4 and they were not given accelerated promotion on the ground of being members of Scheduled Caste. Therefore, the catching ^{up} principle as laid down by the apex Court in the case of Virpal Singh II will not be applicable to the facts of the present case. In any case, the constitution-^{thereby} ~~Amendment~~ Act no. 85 of 2001 amending the Article 16(4)(a) of the Constitution of India with ⁱⁿ ~~has been given~~ retrospective effect. The affect of Virpal Singh II has been done away.

9. In view of the facts stated above, the O.A. nos. 635 and 636 of 1998 deserve to be allowed, while O.A. no. 6 of 1999 is liable to be dismissed ~~as having become~~

[Signature]

infructuous. It is ordered accordingly. Respondents are directed to give the promotion to the applicants namely Hakim Singh and pal Singh w.e.f. 28.4.1998 the date from which his junior namely N.K. Nayak has been promoted. The applicants are entitled to all the consequential benefits except back wages. parties are directed to bear their own costs. Copy of this order be placed in all the connected O.As.

Dinesh
MEMBER (A)

Dinesh
VICE CHAIRMAN

GIRISH/-