

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 141 of 1998

Tues day this the 1st day of April, 2008

Hon'ble Dr. K.B.S. Rajan, Member (J)

Hon'ble Mr. K.S. Menon, Member (A)

1. Amul Rajvanshi a/a 42 years Son of Sri K.C. Gupta posted as Head Clerk, In the Office of Senior Crew Controller, N.R., Tundla.
2. Vijay Kumar Sharma a/a 48 years Son of Sri R.R. Vishwakarma, posted as Head Clerk, In the Office of Senior Section Engineer (C&W) NR, Allahabad.
3. Kailash Nath Singh a/a 40 years Son of Sri Jwala Prasad Singh, Posted as Head Clerk, In the Office of Chief Traction Foreman (Loco Running) Northern Railway, Allahabad.

Applicants

By Advocate Sri S.K. Mishra

Versus

1. Union of India through the Secretary, Ministry of Railways, New Delhi.
2. The General Manager, Northern Railway, Baroda House, New Delhi.
3. The Divisional Railway Manager, Northern Railway, Allahabad.
4. The Divisional Personnel Officer, Northern Railway, Allahabad.
5. Sri S.P. Singh, Head Clerk In the Office of S.S.E. (Loco) Northern Railway, Tundla.
6. Sri I.A. Siddiqui, posted as Head Clerk, In the Office of S.S.E. (C&W) Northern Railway, Allahabad.
7. Sri R.E. Singh posted as Head Clerk In the Office of S.S.E. Northern Railway, Tundla.
8. Sri Arun Kumar, posted as Head Clerk In the Office of Senior Divisional Mech. Engineer, Northern Railway, Allahabad.
9. Sri Bhudeo Prasad Misra, posted as Head Clerk, In the Office of E.T.C. Northern Railway, Kanpur.

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10. Sri Shiv Shanker Gupta, posted as Head Clerk, In the Office of T.F.R. Northern Railway, Tundla.
11. Sri Prahlad Shankhwar (SC) posted as Head Clerk, In the Office of SSE (Loco) Northern Railway, Allahabad.
12. Sri Ashghar Haseeb, posted as Head Clerk, In the Office of Senior DEE (RSO) Northern Railway, Allahabad.
13. Sri Santosh Kumar Singh posted as Head Clerk, In the Office of Senior DEE (RSO) Northern Railway, Allahabad.
14. Sri Vishwakant Srivastava, Posted as Head Clerk, In the Office of SSE (C&W) Northern Railway, Kanpur.
15. Sri Ashok Kumar son of Sri Motilal posted as Head Clerk, In the Office of CTEO, Northern Railway, Allahabad.
16. Sri Vishnu Lal Prasad (SC) posted as Head Clerk, In the Office of Senior Divisional Mechanical Engineer Northern Railway, Allahabad.
17. Sri B.D. Dass (SC) posted as Head Clerk, In the Office of Senior DEE (RSO) Northern Railway, Allahabad.
18. Sri P.K. Malviya, posted as Head Clerk, In the Office of Senior Divisional Mechanical Engineer, Northern Railway, Allahabad.
19. Sri Shatrughan (SC) Posted as Head Clerk In the Office of Senior DEE (RSO) Northern Railway, Allahabad.
20. Sri Lavi Prakash Agarwal, Posted as Head Clerk, In the Office of Senior Divisional Mechanical Engineer Northern Railway, Allahabad.
21. Sri Ram Krishna Chaurasia, Posted as Head Clerk, In the Office of Senior Divisional Mechanical Engineer, Northern Railway, Allahabad.
22. Sri Krishna Kumar Khare, posted as Head Clerk, In the Office of CTFO (LR) Northern Railway, Allahabad.
23. Sri Kishore Kumar Vishwakarma, posted as Head Clerk, In the Office of Senior Section Engineer (Loco) Northern Railway, Kanpur.
24. Sri V.K. Dagore (SC) posted as Head Clerk, In the Office of Senior Cr. Cont. N.R. Tundla.
25. Sri Prem Chandra Adher, Posted as Head Clerk, In the Office of Senior Cr. Cont., Northern Railway, Tundla.
26. Sri Sushil Kumar, posted as Head Clerk, In the Office of Chief Traction Foreman (Loco-running) Northern Railway, Allahabad.
27. Sri Pramod Kumar Gupta, posted as Head Clerk, In the Office of Senior Divisional Electrical Engineer (RSO) N.R., Allahabad.
28. Sri Ghulam Mujtaba, posted as Head Clerk, In the Office of Senior DEE (RSO) Northern Railway, Allahabad.



29. Sri Manmohan, Posted as Head Clerk In the Office of Senior Section Engineer (Loco) Northern Railway, Kanpur.
30. Sri Vishwanath Maurya, posted as Head Clerk, In the Office of Chief Traction Foreman (Loco running) Northern Railway, Allahabad.
31. Sri Mangla Prasad Dubey, posted as Head Clerk, In the Office of Section Engineer (Loco) Northern Railway, Chunar.
32. Sri Girja Shankar Pandit, posted as Head Clerk, In the Office of Chief Traction Foreman (Loco Running) Northern Railway, Allahabad.
33. Sri Ramesh Singh, posted as Head Clerk, In the Office of Sr. Divisional Electrical Engineer (RSO) Northern Railway, Allahabad.
34. Sri Sunil Kumar Jain, posted as Senior Divisional Electrical Engineer (RSO), Northern Railway, Allahabad.
35. Sri Shamshad Ahmad, Posted as Head Clerk In the Office of Senior Section Engineer Loco, Northern Railway, Allahabad.
36. Sri P.K. Chatterjee, posted as Head Clerk, In the Office of Sr. Divisional Mech. Engineer, NR, Allahabad.
37. Sri Usman Ali, Posted as Head Clerk In the Office of Dy. CSTE/C Northern Railway, Allahabad.
38. Sri Kumar Devendra Narain, posted as Head Clerk, In the Office of Senior Section Engineer (C&W) Northern Railway, Allahabad.
39. Sri Gyan Prakash, posted as Head Clerk, In the Office of Senior Divisional Mechanical Engineer, Northern Railway, Allahabad.
40. Smt. Hemlata Srivastava, posted as Head Clerk, In the Office of Senior Divisional Electrical Engineer (RSO) NR Allahabad.
41. Sri Sripat Ram, posted as Head Clerk In the Office of Senior Section Engineer Loco, Northern Railway, Allahabad.
42. Sri Mohan Lal, posted as Head Clerk, In the Office of Sr. Section Engineer (Loco) Northern Railway, Allahabad.
43. Sri Basant Kumar, posted as Head Clerk, In the Office of Sr. Divisional Mechanical Engineer, NR, Allahabad.
44. Sri S.K. Sahrai, posted as Head Clerk, In the Office of Sr. Divisional Mech. Engineer, Northern Railway, Allahabad.
45. Sri Ashok Kumar, posted as Head Clerk, In the Office of Senior Section Engineer (C&W) Northern Railway, Allahabad.
46. Sri Mahesh Prakash, posted as Head Clerk, In the Office of Sr. Section Engineer (C&W) Northern Railway, Tundla.

By Advocate Sri S.S. Agnihotri.

Respondents



ORDER

By K.S. Menon, Member (A)

This O.A. has been filed jointly by applicants' No. 1 to 3 seeking directions of this Court to quash the panel of Office Superintendent Grade II (Mechanical) dated 22.01.1998 prepared on the basis of a written examination and viva voce held on different dates between 02.11.1997 and 16.01.1998. Applicants have also sought the following additional reliefs: -

- " (2) *to issue a mandamus directing the respondents to hold selection to the post of Office Supdt. Grade II afresh according to annual vacancies and accordingly without clubbing the vacancies of almost eight years and to make appointment to the post of Office Supdt. Grade II, in accordance with law.*
- (3) *to issue any other order or direction as this Hon. Tribunal may deem fit and proper in the circumstances of the case.*
- (4) *to award costs throughout to the applicants."*

2. The facts of the case in brief are that the applicants were initially appointed as Clerk and were promoted to Senior Clerk and subsequently as Head Clerk on 19.12.1990, 01.04.1984 and 1994 respectively. Similarly respondents' No. 5 to 45 were also promoted as Senior Clerk and Head Clerk on various dates. A seniority list of Head Clerks was prepared on 05.08.1997 (annexure A-2 of Compilation II) in which the applicants were at serial No. 47, 11 and 65 respectively. Out of respondents No. 5 to 46, respondents' No. 11, 16, 17, 18, 19, 24, 26, 29, 31, 32, 50 and 71 belonged to scheduled caste category. Respondents issued a notification dated 07.10.1997 (annexure A-3 Compilation II) for selection to 47 posts (General-36, SC-6 and ST-3) of Officer Superintendent Grade II in the scale of Rs. 1600-2660/-. There were 95 eligible candidates and the Written Tests were held on 22.11.1997 and 29.11.1997 and all the applicants and respondents No. 5 to 42 and a few others were declared successful on 16.12.1997. Interviews to be conducted for the above successful candidates initially scheduled on 18th and 19th December 1997 were periodically postponed and was finally held on 13th ^{15th} and ¹⁶ 15th January 1998. On 13th January 1998 only six candidates i.e. respondents No. 5 to 10 were interviewed and on 15th January 1998 all the candidates including respondents No. 5 to 10 interviewed earlier on 13.01.1998 were directed to appear in the interview. In all 58 candidates were interviewed on 15th and 16th January 1998. The results of these interviews were declared and a final panel was issued on 22.01.1998 comprising 42 candidates-General-30 and SC-12 against the notified vacancies of General 38 and Scheduled caste-6. The applicants challenged this panel stating that it is illegal



stating that it is illegal and contrary to the provisions of the Railway Board Circular dated 27.09.1994 (Annexure A-9 of Compilation II). Their contention is that since six S.C. candidates were selected on their own merit, there was no necessity to select another six SC candidates on the basis of relaxed standards since the vacancies reserved for SC candidates was only six. This has resulted in excess representation of candidates under the reserved category quota at the cost of General candidates. In support of this argument, they have relied on the Judgment of Supreme Court in J.C. Malik's and R.K. Sabbarwal's case in which it has been held that the Constitution under Article 16 (4) only enables the Government to make reservation in respect to such classes as are inadequately represented in the service. They therefore submit that respondent Nos. 41 to 46 have therefore been illegally included in the panel when six SC candidates have already been selected based on general standards.

3. The procedure for selection of Group 'C' posts is governed by Chapter II Section B of I.R.E.M. Volume I, para 215 which stipulates that selection for Group 'C' posts is required to be made for vacancies occurring in the next one year. The applicants point out that the last selection held was in 1990 and it was obligatory on the part of the respondents to hold a selection every year based on vacancies or at least every two years as the life of a panel is two years. The respondents despite vacancies in the post of Office Superintendent Grade II occurring every year did not hold selections and after almost seven years held a combined selection by clubbing all the vacancies in the last seven years and the anticipated vacancies in the ensuing year. This resulted not only in expansion of the zone of consideration but also inclusion of candidates who were ineligible had selections been held at the relevant time. This they maintain is arbitrary and violative of Articles 14 and 16 of the Constitution. The applicants have also alleged violation of provisions of paragraph No. 219 of I.R.E.M. Vol. I in respect of award of marks which has been done in an arbitrary and discriminatory manner to favour a few candidates at the cost of the applicants. Since the selection is illegal, they have sought that the panel based on this illegal selection be quashed and set aside and the selection to the post of Office Superintendent Grade II be held afresh based on annual vacancies, without clubbing the same.

4. The respondents in their Counter Reply admit that the post of Office Superintendent Grade II is a selection post held amongst the

Head Clerks on the basis of merit cum suitability. The respondents notified 47 posts of Office Superintendent Grade II to be filled by promotion from amongst the Head Clerk. Out of the 47 posts, 38 were for General category, six for scheduled cast, and three for Scheduled Tribes. 98 candidates applied, out of which 62 were declared successful in the written test held on 22.11.1997 and 29.11.1997. In the interviews held on 13th 15th and 16th January 1998, 42 out of the above 62 candidates emerged successful and their names were included in the panel issued on 22.01.1998 out of the 42 finally selected candidates. 36 were General category and six were scheduled caste, there were no Scheduled Tribe candidates. They admit that the 36 General category candidates include six scheduled caste candidates selected on the basis of merit in competition with general candidates. The applicants' main grouse is that after selecting six scheduled caste candidates and placing them in the General category, the percentage reserved for the scheduled caste had been met and there was no justification for selecting another six candidates against the reserved quota. Responding to this argument the respondents submit that the applicants are relying on the Railway Board Circular dated 27.09.1994, and Supreme Court Judgments in R.K. Sabharwal and J.C. Malik's case whereas the Railway Board Circular dated 27.09.1994 was issued much before the aforesaid Judgments were issued as such this circular is not applicable. They contend that after these Judgments Railway Board issued fresh instructions vide their circular dated 21.08.1997. Respondents have also relied on **Indra Sawhney Vs. U.O.I. 1992 Supp (3) SCC 217/ (1992) 22 ATC 385** in which it has been held that when SC get selected in open competition on the basis of their own merit they will not be counted against the quota reserved for scheduled caste, they will be treated as open competition candidates.

5. Respondents submit there is no merit in the applicants' claim that the Judgment and the Circular dated 21.08.1997 pertains to recruitment and not promotion. A bare reading of the Circular dated 21.08.1997 shows that these are applicable to promotion category of Group 'C' and 'D' posts and these instructions were issued in pursuance of Supreme Court Judgment in R.K. Sabharwal and others Vs. State of Punjab and others AIR 1995 SC 1371, Union of India Vs. Virpal Singh Chauhan (AIR 1996 SC 442) and J.C. Malik Vs. Union of India and others (1978) 1 SLR 844. They state that the applicants appear to have misconstrued the interpretation of the aforesaid judgments.

6. On the issue of not holding selections between 1990 and 1997 and clubbing of vacancies occurring in the cadre of Office Superintendent Grade II instead of holding selections in respect of vacancies occurring in each year, the respondents contend that the rules do not specifically provide for selection to be held every year for the vacancies occurring in that year. Paragraph No. 215 and 220 of I.R.E.M. Volume I quoted by the applicants in support of their contention does not refer to the frequency of selection at all. Paragraph No. 220 refers to the periodicity of the panel so finalized which is two years. Besides the respondents contend in paragraph No. 16 of their counter reply filed on 14.12.1998 that no selection could be held after 1990 because of various orders/directions passed by Courts, the seniority of candidates could not be finalized, which resulted in delay in making selection for the said post. Process of selection could be started after the Judgment passed by Supreme Court in Anuradha Mukherjee's case, besides there were stay orders also operating vide Judgments of this Tribunal in S.A. Tripathi's (O.A. No. 1405 of 1992) and D.P. Singh's (O.A. No. 1660 of 1994) case. It was only after these interim orders were modified that the selection was held for all the vacancies existing at that point of time. They state that this is perfectly legal and in consonance with the rules on the subject.

7. Respondents have also clarified the point that respondents No. 8 to 10 were not interviewed twice, as made out by the applicants. After respondents 5 to 7 were interviewed, respondents 8 to 10 were called inside the interview hall to inform them that their interviews would be held on 15.01.1998 as one of the selection committee members had to leave immediately on urgent official work. The contention of the applicants is therefore unfounded. Respondents submit that in view of the above, the grounds taken by the applicants in their O.A./ Rejoinder/Written Submissions have no basis on facts and law and deserve to be dismissed.

8. We have heard Sri S.K. Mishra, learned counsel for the applicant and Sri S.S. Agnihotri for the respondents and perused the pleadings and written submissions submitted subsequently.

9. The main point to be addressed is that made out by the applicants that the respondents have drawn up the panel dated 22.01.1998, in violation of Railway Board's Circulars and Supreme Court Judgments pronounced in R.K. Sabharwal, J.C. Malik and Indra

Sawhney's case. Their contention is that by this, six extra SC candidates have been selected resulting in over representation in the reserved category at the cost of the applicants who are General category candidates. Relevant extract of the Judgments in R.K. Sabharwal and others Vs. State of Punjab and others (AIR 1995 SC 1371) is given below: -

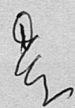
"The prescribed percentage cannot be varied or changed simply because some of the members of the backward class have already been appointed/promoted against the general seats. The roster point which is reserved for backward class has to be filled by way of appointment/promotion of the member of the said class. No general category candidate can be appointed against a slot in the roster which is reserved for the backward class. The fact that considerable number of members of a backward class have been appointed/promoted against general seats in the State Services may be a relevant factor for the State Government to review the question of continuing reservation for the said class but so long as the instructions/Rules providing certain percentage of reservations for the backward classes are operative the same have to be followed. Despite any number of appointees/promotees belonging to the backward classes against the general category posts the given percentage has to be provided in addition."

Based on the Judgments in R.K. Sabharwal's case (supra) and Union of India Vs. Virpal Singh Chauhan (AIR 1996 SC 442) and Union of India Vs. J.C. Malik, the Railway Board issued a Circular No. 114/97 dated 21.08.1997 (annexure CA-1) with regard to Group 'C' and 'D' posts of promotion category. Para-2 of the said Circular, which is relevant in this case is as under:

"The courts also held that persons belonging to reserved categories who are appointed on the basis of merit and not on account of reservation are not to be counted towards the quota meant for reservation."

The Supreme Court has held in Indra Sawhney vs. Union of India and others (1992 Supp (3) SCC 217/ (1992) 22 ATC 385) case as under: -

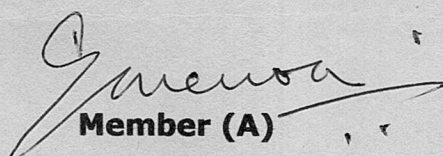
"In this connection it is well to remember that the reservations under Article 16 (4) do not operate like a communal reservation. It may well happen that some members belonging to say Schedule Caste get selected in the open competition field on the basis of their own merit, they will not be counted against quota reserved for scheduled caste; they will be treated as open competition candidates."

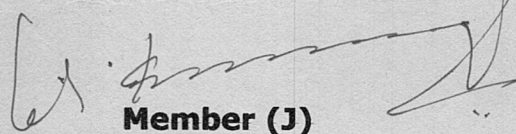


10. The aforesaid Judgments and the Circular issued as a consequence thereof by the Railway Board lends support to the submissions made by the respondents. The inclusion of Schedule caste candidates on merit amongst the General candidates would not deprive the claim of Schedule Caste candidates against posts reserved for them. The contention of the applicants as per their interpretation of the aforesaid Supreme Court decisions is incorrect and runs counter to the ratio of the above decisions of the Apex Court and is therefore rejected.

11. It is abundantly clear that the respondents have carried out the selection to the post of Office Superintendent Grade II in accordance with the Judgments of the Apex Court and as per the Railway Board Circular dated 21.08.1997 while drawing up the impugned panel dated 22.01.1998. Besides the applicants who participated in the selection process did not find a place in the panel as they did not obtain the prescribed minimum percentage of marks. In view of this, it is not open for the applicants to raise the issue of procedural irregularities or other policy matters as they are not affected by it by virtue of the fact that they failed in the selection process. On the issue of incorrect marks raised in paragraph No. 4.29 of the O.A., method of holding interviews and clubbing of vacancies for over seven years, we have carefully gone through the points raised by the applicants and the replies of the respondents and find that the contention of the applicants is without any basis. They have also not been able to substantiate their allegations, further there is no specific and effective rebuttal of the stand taken by the respondents in their counter reply. The respondents have held the selection as per the Railway Board circulars/instructions on the subject and as per law. The applicants having failed to obtain the prescribed marks resulting in their names being excluded from the panel have raised various objections which are without any basis and devoid of merit and cannot therefore be accepted.

12. In view of the foregoing paragraphs, we are of the considered opinion that no valid grounds have been made out for any judicial interference by this Court with the impugned panel dated 22.01.1998. The O.A. being devoid of merit is accordingly dismissed. No cost.


Member (A)


Member (J)

/M.M/