

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 5TH DAY OF FEBRUARY, 2002

Original Application No. 317 of 2001

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

HON.MAJ.GEN.K.K.SRIVASTAVA, MEMBER(A)

1. All India Non-Scheduled Caste
Railway Employees Fedaration through
Its Secretary D.P.N.Tewari, Son
of Shri V.N.Tewari, R/o 22 Ram nagar
Colony, Railway road No.1, Izat
Nagar, Bareilly.
2. Smt.Madhu Agarwal,W/o Sri R.K.Garg,
R/O 473, Beharipur, Bareilly
3. Smt.Nahid Ara, W/o Late Hanif Khan
R/o 493/K, New Model Railway
Colony, Izat Nagar, Bareilly.
4. Smt. Shashi Prabha Tiwari, W/o
Late Sri kishran, r/o 490 New
Model railway colony, Izat Nagar, bareilly
5. Smt. Vimleash Sharma, W/o Late D.D.Sharma
R/o 487, New Model Railway Colony
Izat Nagar, Bareilly.
6. Ashok Kumar Singh, S/o Late Raj kumar
Singh. R/o 569, Subhash Nagar,
Bareilly.
7. A.K.Tripathi, S/o Sri R.N.Tripathi
R/o Bunglow No.2-A,Railway
Colony, Kasganj.
8. Ram Autar Shukla, S/o Sri Munshi Lal
C/o 17, Bholepur-Fatehgarh,
Farrukhabad.
9. Syed Nusrat Ali, S/o Syed Ashique Ali,
269, Nadrai Gate, Kasganj, Etah
10. R.M.Sharma, S/o Sri R.P.Sharma, C/o Station
Manager, N.E.Railway, Fatehgarh
11. Rameshwar, S/o Sri M.N.Yadav,
C/o Station Manager, N.E.Railway
Kasganj, Etah
12. K.S.Varma, S/o Sri Gazadhar Singh
C/o Station manager, N.E.Railway
Hathras City

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13. U.D.Agnihotri, S/o Sri R.G.Agnihotri
C/o Station Manager, N.E.Railway,
Hathras City.
14. Hari Baboo Mishra, S/o Sri C.B.P.
Mishra, C/o Station Manager, N.E.Railway
Hathras City.

.. Applicants

(By Adv: Shri T.S.Pandey)

Versus

1. The ED(SC/ST Cell), Railway Board,
New Delhi.
2. General Manager, North Eastern
Railway Gorakhpur.
3. Chief Personnel Officer, N.E.Railway
Gorakhpur.
4. Divisional Manager, North Eastern
Railway, Izat Nagar, Bareilly.
5. Senior Divisional Personnel Officer,
Izat Nagar, Bareilly
6. Umesh Chandra Singh, s/o unknown, head Clerk
(Operating branch), C/o Divisional
RailwayManager(Operating)
North Eastern railway, izat Nagar
Bareilly.
7. Nirmal Chand, S/o unknown,
Head Clerk(Operating branch)
C/o Divisional Railway Manager
(Operating), North Eastern Railway
Izat Nagar, Bareilly.

.. Respondents

(By Adv: Shri A.K.Gaur)

O R D E R(Oral)

JUSTICE R.R.K.TRIVEDI,V.C.

By this OA u/s 19 of A.T.Act 1985 applicants have prayed for quashing orders dated 17.1.2000,8.11.1999,26.10.99 and 21.8.1997. It has also been prayed that a direction may be given to the respondents 1 to 6 to consider the candidature of applicant no.3 for promotion on the post of O.S.Grade-II of Operating Branch of Izat Nagar Division, Bareilly. It has also been prayed that seniority of list of class III

Railway employees be corrected according to the direction given by Hon'ble Supreme Court in various judgements on the subject and to prepare and issue the correct seniority list.

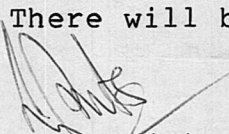
Shri T.S.Pandey, learned counsel for the applicant has submitted that after the judgement of Hon'ble Supreme Court in 'R.K.Sabbarwal's case order was issued dated 21.8.1997(Annexure 4) for implementing the policy of reservation according to roster proposed alongwith the letter. It is submitted that a letter dated 21.8.1997 was wholly without authority as Executive Director has no jurisdiction to issue such a direction.

The second submission is that DOPT has issued a roster dated 2.7.1997 in pursuance of the judgement of Hon'ble Supreme Court in 'R.K.Sabbarwal Vs. State of Punjab (AIR 1995 SC 1371) and the circular dated 21.8.1997 could not be issued which was in contravention of the DOPT circular. Learned counsel for the applicant has placed before us the judgement of Jodhpur Bench of this Tribunal in case of 'Rajendra Kumar Gaur and Ors Vs. Union of India and another, 2001(2) Administrative Total Judgements pg-438 and submitted that as the circular dated 21.8.1997 has been quashed ^{or it is} is non-existant ^{it is}, it cannot be implemented by the respondents. It is also submitted by the counsel for the applicant that the judgement of Jodhpur bench mentioned above has not been challenged in superior courts and it has become final. Learned counsel has also placed before us the Railway Board' letters dated 15.5.1998 and 28.2.1997(Annexures 6 and 7) stating that the correction and modification were issued which are in accordance with the judgements of Principal Bench of this Tribunal and they may be directed to be implemented.



Applicants in their OA have specifically pleaded in para 4.8 that circular letter dated 21.8.1997 is in contravention of the letter dated 2.7.1997 to DOPT. This fact has not been denied by the respondents in the counter but it has been sought to be explained on the basis that judgements of Hon'ble Supreme Court were in personam and were not the judgements in rem (para 9 of the counter affidavit). Shri A.K.Gaur learned counsel for the respondents could also not place any other judgement contrary to the view taken by Jodhpur Bench. In our opinion, the applicants are entitled for relief in the following manner.

The OA is partly allowed. Following the Jodhpur Bench it is declared that the circular letter dated 21.8.1997 is non existant^{or a} having been already quashed. The Respondents shall recast^{be} the roster and seniority list in accordance with the judgements of Hon'ble Supreme court in case of 'R.K.Sabbarwal Vs. State of Punjab, Union of India Vs. V.P.S Chauhan and A.K.Juneja II Vs State of Punjab 1996(2) SCC-715 and the correction letter dated 15.5.1998. There will be no order as to costs.


MEMBER(A)


VICE CHAIRMAN

Dated: 5th February, 2002

Uv/