

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.1091 OF 2001

ALLAHABAD THIS THE 20th DAY OF November 2006

HON'BLE Dr. K. B. S. RAJAN, J.M.

HON'BLE MR. A. K. SINGH, A. M.

1. Virendra Kumar Rawat,
Son of Sri Hublal Posted
As Fitter Grade-II, under Senior
Section Engineer, Pipe shop,
D.L.W., Varanasi.
2. Mahesh Prasad Son of Sri Sahdewan ram,
posted as Mechinist Grade-III,
In the office of Senior Section Engineer,
Ligh Machine Shop, D.L.W., Varanasi.

. Applicant

BY Advocate : Sri Vikash Budhwar

Versus

1. Union of India,
Ministry of Railways,
Through the General Manager,
D.L. W. Varanasi.
2. The General Manager, D.L.W.,
Varanasi.
3. The Dy. Chief Personnel Officer,
Headquarter, D.L.W. Varanasi.

. Respondents

By Advocate : Shri A. Sthalekar

O R D E R

HON'BLE Dr. K. B. S. RAJAN, J.M.

Brief Facts of the case as per OA are as under:-

(a) The applicant no.1 was initially appointed as Fitter Grade-III in the Pay Scale of (Rs.950-1500/-) on 14.12.1989 and thereafter was promoted to the post of Fitter Grade-II on 3.8.1998. The applicant no.2 was initially appointed as

Mechinist Grade-III in the Pay Scale of (Rs.950-1500/-) on 24.9.1993.

(b)Both the applicants belonged to schedule caste category. Vide Annexure A-1 requisition dated 30.1.2001 the General Manager, D.L.W. Varanasi notified 31 vacancies of Junior Engineers Grade-II (Mech) (Rs.5000-8000/-) to be filled in by selection and 25 percent by Limited Departmental Competitive Examination quota.

© One post each was reserved for Schedule caste category in the Trade of Fitter and Mechanist and two posts each were reserved for Schedule Tribes candidate in the same trade. As per Annexure A-2 the Railway Board order dated 30.06.1999 SC/ST candidates for non-safety category may be selected with the relaxation standard. Written examination was held and the name of applicants figured at serial no.19 and 36 vide Annexure A-4.

(d)The respondents have declared final panel on 20th June 2001 vide Annexure A-5 wherein only 24 candidates have been empanelled. Schedule tribes vacancies were lying unfilled for the last more than three years and, therefore in absence of Schedule Tribes candidates were liable to be filled in by Schedule Tribes candidates in order to complete the reservation quota. However, against the total eight vacancies reserved for SC/ST candidates only five candidates belonging to SC category have been selected amongst 24 candidates.

(e)The applicants have reliably learnt that the respondents have not selected any reserved category candidates by applying relaxed standard. Thus leaving three vacancies in the reserved category by the respondents is clearly arbitrary and discriminatory. SC candidates mentioned at

serial nos.8.12.17 and 18 in the panel have been selected on their own merit competing with the general category candidates and therefore they could not have been adjusted against the reserved quota.

(f) The Railway Board circular dated 10.10.1997 clearly points out that person belonging to reserved category that were selected on the basis of merit and not on account of reservation, are not to be counted towards the quota meant for reservation. The said circular further provides that the reserved vacancies shall be filled in as per Roster provided therein. Thus out of 31 vacancies seven posts fell in roster for reserved category candidates. Hence it was incumbent upon the respondents to fill in all the reserved vacancies by applying relaxed standard, which has not been done in the present case. In the past also the respondents have filled in reserved category vacancies by applying relaxed standard as far as final panel declared in the year 1997-98 (Annexure A-6 & 7). By not applying relaxed standard in order to fill in the reserved vacancies the respondents have acted arbitrarily and discriminatory, which is violative of Article 14 and 16 of the Constitution Of India.

2. Resisting the claim of the applicant respondents have submitted that as per clarification dated 14.4.1983 (Annexure CA-2) the concession in qualifying marks is granted to fill up the reserved vacancies only. The selection committee should first draw a list of candidates who can be empanelled by applying the general standard for qualifying in a selection and empanelment and then the list should be checked up to see whether this contains the required number of

Schedule Caste/Schedule Tribe employees. In case of deficiency, the same should be made good by including other reserved candidates who pass by applying relaxed standards (evident from Annexure A-2 of the OA). In the instant case selection was held strictly as per rule for such selection as notified under notification dated 30.1.2001 (Annexure A-1 to the OA). The duly constituted selection committee, found that more than required numbers (03) of scheduled caste candidates are available for empanelment by applying the general standard for qualifying in the selection i.e. 5 SC employees are qualified to be placed on the panel by applying only general standards in terms of Railway Board clarification (I) dt. 14.4.83 and 30.6.1999, there was no need to relax the standard as there was no deficiency in filling up the reserved vacancies. However, as there was no candidate belonging to Schedule Tribe community to fill up the required number of (05) either by applying the general standard or relaxed standard, the said vacancies being short fall in promotions through Limited Departmental Competitive Examination reserved for ST has been added to direct recruitment quota as per the instructions contained in Railway Board's letter No.E(NG) 1/99/PM I/29 dt. 20.4.2000 (copy enclosed as Annexure CA-3). The required number (03) of the Schedule Caste have been empanelled and the rest 05 number of ST community being short fall in promotions through LDCE and could not be filled up for want of eligible candidates of ST community have been added to Direct Recruitment quota

as per Railway Board's letter enclosed as Annexure CA-3.

3. The counsel for the applicant submitted that the respondents have committed an error in assuming that those who have been selected even under the general quota have been taken into consideration for working out the number of candidates to be selected under reserved quota. Similarly, in respect of ST candidates, in case of non availability, the respondents ought to have filled up the same by diverting the vacancies to be filled up by SC candidates. In other words, once certain percentage of vacancies have been earmarked, intermediate division as SC or ST may be followed and any deficiency in one such division should be made up by a corresponding increase in the other division. And, in the case of post based roster also, such a provision should be made and in the event of availability of the ST candidate at the earliest opportunity, adjustment should be made. On the other hand the counsel for the respondent submitted that action taken was legal and based on the rules cited in the counter.

4. Arguments were heard and documents perused. After 02.07.1997 post based vacancies came into existence according to which the total number of reserved candidates shall be constituted only by those who were at one point or the other given the benefit of reservation. If in the earlier^{or} the latest selection in which certain SC ST candidates had obtained more marks

at par with general candidates and their selection was based without any relaxation available to reserved candidates, such persons can be said to have been selected under the general quota provided such candidates in the past have not been given any benefit of reservation. If these candidates were initially recruited as reserved candidates and in the recent selection performed well thereby not needing any concession or relaxation, then notwithstanding their better performance such candidates should be treated as belonging to reserved category. It is not exactly known from the pleadings whether these candidates who have secured the marks as fixed for general candidates had at any time been afforded the reserved category concessions.

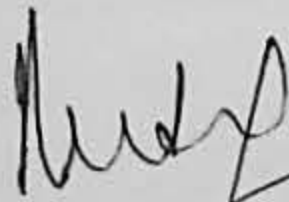
5. In view of the above, the respondents should undertake the exercise of verification of the career details of the SC candidates at Serial Numbers 8, 12, 17 and 18 of annexure A-5 list of promotion to ascertain whether these candidates had at any earlier point of time availed of the concession of SC or ST. If so, the action taken by the respondents in considering these candidates as candidates under the reserved quota is in order. In case, it is not so then the respondents shall consider the case of other SC candidates for promotion so that the reserved quota is complete.

6. As regards the contention of the applicants that when ST candidates are not available the vacancies

should be diverted to Scheduled castes and accordingly promotion has to take place, it is directed that the respondents shall take up the matter with DOPT to ascertain the rule position as on the date when promotions were effected i.e. June, 2001 and in case such vacancies of ST, which could not be filled up by ST candidates due to non availability of eligible ST candidates, are to have been filled up only from among the eligible and suitable SC candidates, suitable remedial action be taken.

7. The O.A. is disposed of on the above said directions and observations. This exercise should be completed within three months from the date of communication of this order.

No costs.



Member-A



Member-J

/ns/