

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Transfer Application No. 559 of 1986
In

Original Suit No. 823 of 1984
Connected With

Transfer Application No. 1762 of 1987
In

Writ Petition No. 309 of 1985

Allahabad this the 24th day of Dec. 1996/97

Hon'ble Dr. R.K. Saxena, Member 'Jud.'
Hon'ble Mr. D.S. Baweja, Member 'Admn'

T.A. No. 559 of 1986

Parmatma Prasad Pandey, S/o Shri Triyugi Narain Pandey
R/o Village Nauwa Awal, Tappa & Pargana Haveli, Distt.
Gorakhpur.

Applicant.

By Advocate Sri Swaraj Prakash

Versus

1. Union of India representing the Administration of N.E. Railway, Gorakhpur, through the General Manager, N.E. Railway, Gorakhpur.
2. Additional C.S.T.E., S.W.S. Gorakhpur Cantt., Gorakhpur.
3. G.M(P), N.E. Railway, Gorakhpur.

Respondents.

By Advocate Sri Lalji Sinha

T.A. 1762 of 1987

Parmatma Prasad Pandey, S/o Shri Triyugi Narain Pandey
R/o Village Nauwa Awal, Tappa & Pargana Haveli, Distt.
Gorakhpur.

Applicant

By Advocate Sri Swaraj Prakash

Versus

1. The Ist Addl. Distt. Judge, Gorakhpur
2. The Munsif Ist, Gorakhpur.
3. The Union of India, representing the Administration of N.E. Rly. Gorakhpur through the General Manager, N.E. Railway, Gorakhpur.
4. The Addl. C. S. T. E., S.W.S. Gorakhpur Cantt. Gorakhpur.

5. The General Manager (P) , N.E. Railway,
Gorakhpur.

Respondents.

By Advocate Sri Lalji Sinha

O R D E R

By Hon'ble Dr. R.K. Saxena, Member (J)

These are two T.A.s no.559 of 1986 and 1762 of 1987. The dispute in these two cases has arising out of one Civil Suit no. 823/84 which was instituted before the Munsif, Gorakhpur. Therefore, both the cases are taken up together and are being disposed of by one common judgment.

2. The brief facts giving rise to these cases are that one P.P. Pandey was working as High Skilled Grade II Fitter in Relay shop, S.W.S., N.E. Railway, Gorakhpur. The pre-revised scale of pay was Rs.330-480/-. There is Chargeman 'B' post in the grade of Rs.425-700/-, which is required to be filled ⁱⁿ from three sources. 50% of the total posts are filled by direct recruitment through Railway Service Commission while 25% of the total posts are filled by promotion. The remaining 25% of the total posts are filled-in by direct recruitment from amongst the Skilled Artisans having prescribed educational qualification and being within the prescribed age limit. It is averred that there were three posts of Chargeman 'B' and they were required to be filled in according with the procedure prescribed therein. It appears that a notification was ^{is} issued on 24.3.83 and those who were eligible Skilled Artisans, were required to apply for the said posts. The applicant Parmatma Prasad Pandey also applied and he appeared in the test. Three persons qualified and they

were S/ Shri Prem Narain Misra, Ramayan Singh and Parmatma Prasad Pandey (the applicant). The appointment of P.N. Misra and Ramayan Singh was made but the appointment to P.P. Pandey was refused on the pretext that one post was reserved for S.C. candidate. The contention of the applicant is that because no employee belonging to S.C. candidate had qualified and there was no indication in the notification that one post would be reserved for S.C. candidate, the refusal to appoint the applicant on the said post was illegal. He, therefore, filed the said civil suit with the prayers that the plaintiff (applicant) be declared as Inter-Apprentice Chargeman 'B' in the scale of Rs. 425-700/- as against 25% quota for serving Skilled Artisans, the mandatory injunction be issued directing the defendants (present respondents) not to select and appoint any S.C. and S.T. candidate on remaining one post of Charge-man 'B' in the said scale.

3. The plaintiff (present applicant) had also moved an application that he may be permitted to file the Suit without service of notice under Section 80(1) of Code of Civil Procedure. The application for interim injunction was also moved. The defendant (present respondents) had filed written statement and had taken the plea that the suit was not maintainable without the notice under Section 80 of C.P.C. and that one post was reserved for S.C. candidate; and, therefore, the plaintiff/applicant who was third man, could not be appointed. It was, further pleaded that because of the S.C. candidates having not come out successful in the said test, it was decided that best amongst the failures would be taken.

4. The Munsif decided the application for interim relief and rejected the prayer for interim injunction. The plaintiff/applicant preferred an appeal before the District Judge which was decided by the First Additional District Judge on 12.10.84 and dismissed the same. The order which was passed by the Munsif was upheld. The matter of Civil Suit no.823/84 remained pending but feeling aggrieved by the order which was passed by the Munsif, rejecting the prayer for temporary injunction and confirmed in appeal, the applicant preferred writ petition no.309/95. In the said writ petition the notices were issued to the respondents and stay was granted on 22.1.1995 to the effect that remaining post for Inter Apprentice Chargeman 'B' be not filled in by the respondents no. 3 to 5, incase the same had not been filled in already. Thus, the writ petition no.309/85 was pending in the High Court and Civil Suit no. 823/84 was pending before the Munsif. In the meantime, the Administrative Tribunals Act, 1985 came into operation and both these cases were transferred to the Tribunal and were registered here as T.A.s which are already mentioned.

5. The matter came up for hearing before the Bench and a preliminary objection was raised if the matter in civil suit no.823/84 (now T.A.no.559/86) would proceed in the absence of service of any notice under Section 80 of C.P.C. The Bench referred the matter to be heard by a Larger Bench because there was no clear opinion at the point. Consequently, a Larger Bench was constituted which decided the issue on 08.9.94, holding that the transferred suit should be decided on the footing that for its purpose Section 80 of the Code ^{stands} ~~stands~~ ^{is} ~~is~~ ^{com} ~~com~~

After this decision was rendered, the matters have been listed for hearing before this Bench.

6. We have heard the learned counsel for the applicants-Sri Swaraj Prakash and Sri Lalji Sinha on behalf of the respondents. The record is also perused.

7. The main question in this case is whether the member of S.C. can be posted on the remaining third post as Inter Apprentice Charyeman 'B' despite the fact that the reservation was not invited and no member of the reserved category had qualified. There is no dispute that 3 persons were finally selected as against 25% of the total posts by direct recruitment from amongst the Skilled Artisans and the applicant was one of them. It is also an admitted fact that this applicant was placed at serial no.3. First ^{two} persons were posted but the applicant was not given the posting order on the plea that the third post was reserved for S.C. candidate. In this connection, the respondents had taken the plea that there was a circular of the Railway Board in which it was indicated that in the direct recruitment, reservation policy should be adopted. The respondents admitted that no S.C. candidate had qualified but in view of the circular which was annexed with the appeal before the District Judge, third post was to be filled-in from amongst the best candidate of failures. There is no averment anywhere that the quota of S.C. or S.T. was already full. In such a situation, the reservation policy cannot be ignored. Since the circular was quite clear on the point it was obligatory on the respondents to have kept one post reserved for the member of S.C./S.T. members.

8. This point came for consideration before

of Supreme Court in the cases 'R.K. Sabharwal
Others Vs. State of Punjab and Others 1993 (1) S.L.R.
and Union of India and Others Vs. V.P.S. Chauhan and
1996 (1) A.I.S.L.J. 65' and it was held that the
reservation should be against the post or cadre and not
against the vacancies. It was further reiterated that
the reservation should continue till the percentage, re-
served for S.C./S.T., is achieved. The ratio of two
judgments is also to the effect that if any violation
of the guide lines which were fixed in the two cases was
done prior to 10.2.1995, it should not be taken into con-
sideration because it would upset the promotions or sen-
iority which were given or determined in the past. The
cut off date of 10.2.1995 was fixed because the judgment
in the case of 'R.K. Sabharwal' (Supra) was given by their
Lordships on that date. For these reasons, the claim of
the applicant on the third post which ^{was} reserved for S.C.
candidate under extant rule, is not supported. The result,
therefore, is that their remains no merit in T.A. 559/86
(civil suit no.823/84). ^{is} ~~is concerned.~~

9. The High Court had granted the stay in Writ
Petition no. 309/85 (now T.A. 1762/87). Since the original
case of the applicant is found devoid of merits, their remains
no logic or rationale in continuing with T.A. 1762/87. In
other words, the interim stay which was granted by the
High Court, loses its significance. Similarly their re-
mains no merit in Writ Petition no. 309/85 (T.A. 1762/87).

10. In view of the discussions made above, we come
to the conclusion that both T.A.s no. 559/86 (C. Suit no.823/84)

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and T.A. 1762/87 (writ petition no.309/85) have no merits and same are dismissed. The stay which was granted on 22.1.1985, stands vacated.

[Signature]
Member (A)

[Signature]
Member (J)
24/12/96

/M.M./