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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 20th day of February 1997.

Original application No. 1179 of 1987.

Hon'ble Dr. R.K. Saxena, JM
Hon'ble Mr. D.S. Baweja, AM

1. Ram Asaray Prasad, S/o Sri Belli,
a/a 40 years, Senior Clerk CPO's Office,
N.E. Railway, Gorakhpur.
2. Paras Nath, S/o Nageshwar, a/a 36 years,
Senior Clerk(Railway Printing) Press, N.E.
Railway, Gorakhpur.
3. Hari Ram, S/o Prasad, a/a 37 years,
Senior Clerk(CWMP) Workshop, N.E. Rly.,
Gorakhpur.
4. N.L. Chaudhary, S/o Harbangi Ram,
a/a 35 years, Senior Clerk(CWMP)
Workshop, N.E. Rly.
5. Ghanshyam Das, S/o Vishram Das,
a/a 39 years, Senior Clerk(CWMP),
N.E. Rly(G.K.P.).
6. Hament Kumar, S/o Raman Prasad,
a/a 36 years, Senior Clerk (CWMP),
N.E. Rly. Gorakhpur.

..... Applicants.

C/A Sri Anand Kumar

Versus

1. Union of India through Secretary,
Railway Board, New Delhi.
2. General Manager, N.E. Railway,
Gorakhpur.

..... Respondents.

C/R Sri G.P. Agarwal

O R D E R

Hon'ble Mr. D.S. Baweja, AM

This application has been filed jointly by
six applicants praying for restoration of their seniority
as per seniority list issued on 30.11.92. The brief facts

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leading to filing of this O.A. are as follows. The applicants were appointed in 1976 as Junior Clerks in the office of Chief personnel Officer, N.E. Railway, Gorakhpur. All the applicants belong to scheduled caste category. After passing the suitability test held in 1981 all the six candidates were selected and promoted as Senior Clerk. In the seniority list issued on 30.11.82, they were shown at S.No. 349, 324, 348, 350, 353 respectively. Vide order dated 12.4.83 a corrigendum was issued whereby the seniority of the applicants was lowered. Subsequently another corrigendum dated 23.6.83 was issued whereby nine Senior Clerks who were directly recruited were placed above the applicants in the same seniority list. The applicants allege that they had no notice or knowledge of the above referred corrigendum being issued. A fresh seniority list incorporating the corrigendum dated 12.4.83 and 23.6.83 was issued on 26.8.86, when the applicants came to know that their seniority had been lowered. The applicants contacted the concerned authorities and came to know the reasons that 12 scheduled caste candidates including the applicants were given wrong seniority treating them as general candidates and the seniority has been revised by adjusting them against the future reserved points leading to issue of corrigendum dated 12.4.83. The applicants made a representation to Railway Board through All India Scheduled Caste and Scheduled Tribe Railway Employees Welfare Association. The Railway Board vide letter dated 2.4.87 however upheld the action taken by N.E. Railway to adjust the applicants against the reserved points against the future vacancies. Thereafter the revised seniority list was published on 21.5.87. Being aggrieved the present application has been filed jointly on 10.12.87.

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The applicants have assailed the revision of

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seniority list on two ~~accounts~~. Firstly the lowering of seniority has been done without affording any opportunity. Secondly that the Railway authority has misinterpreted the rules for promotion and seniority of the scheduled caste employees. If scheduled caste candidate has qualified by virtue of seniority and suitability in the category of general candidate, then the posts lying vacant reserved for scheduled caste candidates are to be filled by the other candidates of scheduled caste category and not by those qualified as a general candidate. The scheduled caste and scheduled tribe candidate appointed against an earlier point, even if it is unreserved, cannot be adjusted against the future reserved points.

3. The respondents have filed the counter reply opposing the application. The respondents have submitted that the corrigendum dated 12.4.83 to the seniority list dated 30.11.82 lowering the seniority of the applicants had to be issued when it was found at a later stage that they were allowed seniority by promotion against the general posts due to wrong interpretation of the Railway Board's circular dated 11.1.73. As a result of wrong interpretation of the circular, 14 scheduled caste candidates were called from below in the seniority list than the number of persons required to be called. On representation of the general candidates, the matter was reviewed and the seniority list was revised, to rectify the mistake. The applicants also made a representation to the Railway Board and the decision taken at the Zonal level was upheld by the Railway Board and the 12 scheduled caste candidates who were promoted in excess treating them as general candidates were adjusted against the future reserved categories which also included

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the six applicants. The second corrigendum dated 23.6.83 had to be issued as the seniority of nine senior clerks recruited against the graduate quota was wrongly fixed as they were to be given seniority from the date of appointment. The contention of the applicants that they were not aware of the corrigendum being issued is not tenable. It is not incumbent to show the corrigendum to each employee and it is circulated as per the normal procedure for information of all the staff. In view of these facts, the respondents plead that the applicants cannot have any claim of benefit of seniority wrongly allowed in the seniority list dated 30.11.82 and therefore the application deserves to be dismissed.

4. The applicants have filed the rejoinder reply. The pleadings made in the application have been reiterated while countering the contentions of the respondents.

5. We have heard the learned counsel for the parties. We have carefully gone through the material placed on record. The respondents have ^{also} made available the file dealing with selection under reference for perusal of the Bench.

6. The main facts with regard to change in seniority are admitted by the respondents. From the rival contentions the main issue is whether the applicants were not entitled to be included in the eligibility list for filling up the reserved vacancies of scheduled caste quota for selection done in 1981. The respondents have stated that the suitability test was conducted in 1981 for promotion as Senior Clerk for 94 posts with break up of 74 posts for general, 14 for scheduled caste (SC)

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and 7 for scheduled tribe (ST) candidates. Respondents further state that as per the instructions laid down vide Railway Board's letter dated 11.1.73 (Annexure-CA-I) for promotion against non selection posts, if within 94 eligible candidates as per seniority the required number of SC & ST candidates are not available then to fill up all the reserved vacancies the candidate below in the seniority list to the extent of short fall in the required number are to be included in the list of eligible candidates. The respondents have submitted that in the list of 94 eligible candidate twelve (12) SC candidates were available and thus to fill up 14 vacancies only two SC candidates were to be included by going down in the seniority list. Respondents contend that the provisions of Railway Board circular dated 11.1.73 were however wrongly interpreted and all the 12 SC candidates in the list of 94 candidates were treated as general candidates and 14 SC candidates were made eligible by going down in the seniority list for filling up the 14 vacancies reserved for SC candidates. All the applicants were included in the list of 14 candidates from the lower position in the seniority list and were not eligible for the selection and there was thus excess placement of scheduled caste candidates on the panel. The applicants on the other hand have strongly contested the interpretation of the respondents. The applicants have averred that the reserved quota is minimum and not maximum and further if a scheduled caste candidate qualified alongwith general candidates then such a candidate cannot be adjusted against the vacancy reserved for scheduled caste and he is to be treated as a general candidate. The reserved post should go to the next scheduled caste candidate. The applicants also further aver that a scheduled caste/scheduled tribe candidate

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appointed against an earlier point even if it is an unreserved one cannot be adjusted against the subsequent reserved points. The applicants therefore contend that 12 senior scheduled caste candidates qualified on the basis of the seniority are to be treated as general candidates.

7. From the rival contentions detailed above, the issue involved concerns the interpretation of rules laid down with regard to seniority of general staff ^{vis-a-vis} ~~was~~ a reserve category staff, eligibility of the SC/ST staff against general posts as per seniority and the quota of reservation etc. These issues were subject matter of the two recent judgements of ^{the} Apex Court in "R.K. Sabharwal Vs. State of Punjab & Oths." (1995) ²⁹ ATC 481 and ^{UOI Vs.} Virpal Singh Chauhan (1995) ³¹ ATC 813, wherein law has been laid down on the matter of seniority and reservation quota, with the direction that the application of these judgements will have prospective from 10.2.95 i.e. the date of judgement in R.K. Sabharwal Vs. State of Punjab. Whatever promotions have been made before this date are not to be disturbed by applying the law laid down in these judgements. Keeping in view the direction of these judgements, we consider that no judicial interference is called for by going into the merits of the claim made since the selection and promotions were effected before 10.2.95.

8. The applicants have also contended that no opportunity has been given before change of seniority. From the averments made by the respondents, we find that corrigendum dated 12.4.83 ^{and 23.6.86} were issued without giving notice to the applicants. It is however to be seen whether the applicants have been denied the opportunity to represent

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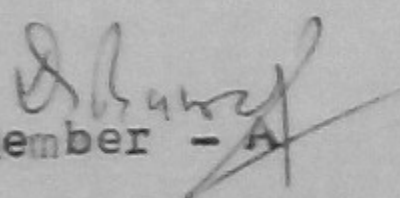
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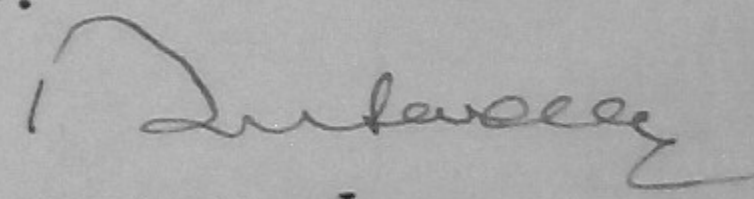
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against seniority list issued based on this corrigenda. The seniority list incorporating the changes as notified vide letter dated 12.4.83 and 23.6.83 was issued vide letter dated 26.8.86 (A-4). This letter invited representations against the seniority if any within a period of three months. The applicants have averred that they came to know of the change in their seniority from this list. ~~The applicants have averred that they came to know of the change in their seniority from this list.~~ The applicants thus got opportunity to represent against the same. The applicants made representation against the same at the Zonal Railway and also at the Railway Boards level through their Association. Their representation was considered at the Railway Board level and the action taken by the Railway was upheld. Thus the applicants got reasonable opportunity to represent their case before the seniority list issued on 26.8.86 was finalised after considering their representation. There was also no reversion of the applicants at any time due to this ^{revision}. We are, therefore, of the view that reasonable opportunity had been availed by the applicants and there is no merit in this contention of the applicants.

9. In the result of the above deliberations, we find no merit in the application and the same is dismissed accordingly. No order as to costs.


Member - A


Member - J

Arvind.