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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 1189 of 1987

Krishna Chandra Lal & others Applicants.

Versus

Union of India & others Respondents.

Hon'ble G.S. Sharma, J.M.
Hon'ble K.J. Raman, A.M.

(Delivered by Hon. K.J. Raman, A.M.)

This is an application filed under Section 19 of the Administrative Tribunals Act, 1985, by S/Sri K.C. Lal, S.S. Niranjana, and Mohan Lal Srivastava, all Guards working in the North-Eastern Railway, Lucknow, against the Union of India through the Chairman, Railway Board, New Delhi, General Manager, N-E. Railway, Gorakhpur two other officers of the said Railway and three proforma respondents. The reliefs claimed are that the official respondents should be restrained from filling up the post of higher grades in the category of Guards by way of reservation in favour of SC & ST and from making any promotion in excess of quota fixed by the Railway Board. It is further prayed that the said respondents should be directed to rectify and recast the seniority list of Guards in view of the judgment of this Tribunal in Claim Petition No. 647 of 1986. The applicants further claim higher pay scale with effect from 1984 and arrears on that basis. They further seek a declaration that the seniority lists of 1.4.1968, 1.5.1972 and 20.6.1975 are illegal and want the same to be quashed.

2. It may be stated at the outset that the applicants make a reference to this Tribunal's decision in Claim Petition No. 647 of 1986 a number of times in the application, but have neither annexed a copy of the judgment, nor cited the precise point of decision in that case. The short point in the case of the applicants

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seems to be that the reservations for SCs & STs should be on the basis of the total number of cadre posts and the quota of 15% and 7 1/2% for SC & ST should be applied to the total cadre strength of a post. They state that the present practice of applying the quota to the vacancies is illegal and wrong. It is in this connection they seem to rely on Claim Petition No. 647 of 1986 of this Tribunal and also the decision of the High Court of Judicature at Allahabad in the case of J.C. Mallik. The applicants allege that the decisions of the Allahabad High Court and this Tribunal in the case referred to above, have not been followed by the official respondents in this case. On the premises of the above method of filling up of the reservation quota, the applicants further claim that the official respondents have appointed SC candidates in the cadre of Guards in excess of the quota and they want this situation to be remedied. According to them there are 29 posts of Guard Grade 'A' Special in the North-Eastern Railway, Lucknow Division. It is stated that out of this total, 13 posts are at present filled by SC candidates, which is in excess of the prescribed quota. On the basis of such argument the applicants claim promotion w.e.f. 4.2.1984 and 30.8.1980 and consequential pay and arrears. They also want the seniority lists of 1968, 1972 and 1975 to be declared as illegal.

3. The case has been heard when Sri T.S. Pandey, learned counsel for the Applicants, and Sri Amit Sthalkar, learned counsel for the respondents argued their respective case. We have very carefully considered their arguments and the pleadings.

4. The stand of the respondents is firstly that the application is barred by time and is not maintainable. The respondents aver that the decisions of the Hon'ble Supreme Court, Allahabad High Court and this Tribunal have been complied with. Copies of instructions issued on the basis of the Allahabad High Court's judgment, specifically referring to the case, have been annexed to the reply. This circular relates to 1985 and 1986. The respondents state that the impugned seniority lists have been correctly prepared and were

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duly published. The applicants were fully aware of the seniority list of the years 1972 and 1975 and the allegations that they came to know of the aforesaid seniority list ^{only} on 19.12.1984 is absolutely false and without any basis. No objection had been filed by the applicants till date against the seniority lists of 1972 and 1975. The respondents admit that out of 29 posts of Guards Grade 'A' Special, 13 are SC candidates. This is explained by stating that the promotion of these SC candidate has been made according to the seniority position of Guard 'A' and that the promotions have been made in accordance with the various decisions of the Hon'ble Supreme Court and that the applicants never made any representation as alleged by them. The promotions have been made on the basis of the vacancy in the various grades.

5. In a supplementary reply filed on behalf of the respondents the rationale of giving effect to the reservation in respect of the vacancies rather than the cadre strength, is explained at great length. It is mentioned, e.g. that if the cadre strength is only a small number like 1 or 2 or 3 or 5, apportioning of 15% and 7 1/2% will be of no meaning and SC & ST will never get a representation in such post. If the present system of 40 point or 100 point roster is followed in respect of vacancies, even in a cadre of only one post, all communities will have opportunity to share the post in due turn, in accordance with the prescribed quota. Other similar arguments have also been mentioned. It is stated by the respondents that an appeal is pending in the Hon'ble Supreme Court against the decision of the Allahabad High Court in J.C. Mallik's case as well as the case of Vir Pal Singh Chauhan, decided by this Tribunal. Both the cases have been connected and they are on the list of hearing before a constitutional Bench. The respondents have made a suggestion that the decision in this case be deferred till the decision by the Hon'ble Supreme Court in those cases. This does not seem to be necessary or possible, since the present case has already been heard and the judgment has been reserved considerable time ago.

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6. Regarding the applicability of the principle laid down by the Allahabad High Court in the case of J.C.Malik Vs. Union of India (1978 (1) SLR-844) we find that interpreting the circular letter dated 20th April 1970 of the Railway Board dealing with the question of reservation, the Hon.High Court had held that the reservation for Scheduled Caste had been made in post and service and not in vacancies occurring from time to time. The Petitioner J.C.Malik approached the Hon.Supreme Court in appeal against this decision and also applied for staying the operation of the decision till the appeal was decided. The Hon.Supreme Court, however, did not stay the operation of the decision of the Allahabad High Court but after considering the circular letter in somewhat detail, had specifically ordered that the judgment of the Allahabad High Court will be followed till the SLP No.2017 of 1970 is finally disposed of. Following the principles laid down in the said decision and many other decisions of different High Courts, a Bench of this Tribunal in O.A.No.647 of 1988 Vir Pal Singh Chauhan and others Vs. Union of India and others (A.T.R. 1987 (2) C.A.T.-71) had initiated certain principles for determining the seniority in situations as are under dispute in the present case and the relevant extract of the said judgment is quoted below for the sake of convenience :-

" The basic seniority in grade 'C' will be the guiding seniority list for the cadre of Guards. Reservations in promotions would be made against posts in the grades and not against vacancies. Persons who are promoted by virtue of the application of roster would be given accelerated promotion but not the seniority. The seniority in a particular grade amongst the incumbants available for promotion to the next grade will be recast each time new incumbents enter from the lower grade on the basis of the initial

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grade 'C' seniority i.e. a Senior grade 'C' Guard who gets promoted to grade 'B' or from grade 'B' to grade 'A' and so on will find position amongst the incumbents of that grade on the basis of the original grade 'C' seniority. Such persons as are superseded for any reason other than on account of reservation will be excluded. A person superseded on account of a punishment or unfitness will count his seniority on the revised basis and not on original grade 'C' seniority. The reserved community candidates who are senior not by virtue of reservation but by the position in grade 'C' selections which the grade 'C' seniority list will automatically take care of, will not wait for reservation ~~percentage~~ to be satisfied for their promotion. They will get promoted in their normal turn irrespective of the percentage of reserved community candidates in the higher grade. Others who got promoted as a result of reservation by jumping the queue will wait for their turn. Reservation will again have to be applied on depletion of the reservation quota in the higher grade to make good for shortfalls.

7. After considering the case of the Applicants before it and laying down the aforesaid principles for determining the inter se seniority of the various categories of Guards belonging to General and Scheduled Caste/Tribe communities, the Tribunal had granted the following relief :-

"The senior reserved community candidates who attained that position purely on seniority -cum-suitability will be promoted irrespective of the quota position. Those who have got promotions by jumping the queue and on the basis of reservation will get the promotion on the basis of the revised seniority list that will be prepared in terms of observations made above. The principles laid down in the Allahabad High Court judgment JC Malik/ UOI (1910)(1) SLR All-844 will also guide the promotions. The impugned order of 10.1.1986 is nonest."

8. We find ourselves bound to follow the said decision and the principles of law laid down therein. There is, however, one difficulty before us in this case and it is regarding the re-fixation of the seniority of the Applicants from 1968 onwards. The Applicants have prayed that the seniority list of 1968, 1972 and 1975 be quashed as illegal. In an Original Application

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u/s.19 of the Administrative Tribunals Act XIII of 1985 the Tribunal is not expected to reopen the time barred matters specially in respect of the seniority. The following observations of the Hon.Supreme Court in the case of M.L.Cecil D'Souza Vs. Union of India (AIR 1975 SC-1269) are relevant in this connection:-

"It is essential that any one who feels aggrieved with an administrative decision affecting one's seniority act with due diligence and promptitude and not sleep over the matter. Raking up old matters like seniority after a long time is likely to result in administrative complications and difficulties. It would, therefore, appear to be in the interest of smoothness and efficiency of service that such matters should be given a quietus after lapse of sometime."

9. We are, therefore, unable to disturb the old seniority list on the ground of limitation prescribed by S.21 of the A.T.Act and it is for the Railway Administration to reconsider the matter of seniority in the light of the various decisions of this Tribunal and the High Courts, especially in the cases of J.C.Malik and Vir Pal Singh Chauhan (Supra). We will, however, certainly safeguard the interest of the Applicants for future.

10. We accordingly direct the Respondents that while filling up posts by promotion in the category of Guards they shall follow the principles laid down by the Bench of this Tribunal in Vir Pal Singh Chauhan (Supra) and by the Allahabad High Court in J.C.Malik (Supra). The petition is disposed of accordingly without any order as to costs.

K. M. Chandra

MEMBER (A)

Sharma

MEMBER (J)

Dated 16-8-1989
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