

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
A L L A H A B A D

Dated : Allahabad this the...17th day of April, 1996.

CORAM : Hon'ble Dr. R. K. Saxena, Member-J
Hon'ble Mr. D. S. Baweja, Member-AORIGINAL APPLICATION NO. 1196 of 1987

1. Ram Murti Tiwari S/o. K. R. Tiwari, R/o. 1205, European Colony, Moghalsarai, Varanasi.
2. S. N. Yadav, S/o. D. N. Yadav, R/o. Tak Takpur, P.S. Cantt. Varanasi.

THROUGH ADVOCATE SHRI S.K.DEYApplicant.

Versus

1. Union of India through the General Manager, E.Rly, 17, Netajee Subash Road, Calcutta-1.
2. The Divisional Rly. Manager, E.Rly, Moghalsarai,
3. The Divisional Personnel Officer, E.Rly, Moghalsarai.
4. Tarkeshwar Prasad -Guard Mail
5. Sachida Nand Ram II Guard, Mail
6. Shiv Nath Ram III Guard, Passenger.
7. B. N. Mazumdar-Guard, Mail.
8. Laxman Ram --Guard Mail
9. Ramesh Kumar-Guard, Passenger.
10. Mukesh Kumar-Guard Passenger.
11. Raghunath Paswan-Guard, Passenger
12. Shoe Dhani Prasad, Guard Passenger.
13. R. K. Nirala-Guard Passenger.
14. Vikrama Ram -Guard Passenger.
15. Suresh Ram-Guard Passenger.
16. Gulab Ram-Guard Passenger
Under SS/Gaya.

All are C/o. Station Superintendent, E.Rly.,
Moghalsarai.

.....Respondents.

(THROUGH ADVOCATE SHRI A.V. SRIVASTAVA, Sri G.P. Agarwal
and Sri Vinod Swarup).

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

This O.A. has been filed by S/Sri Ram Murti Tiwari and S.N. Yadav challenging the Seniority List of Guards and also promotions of respondents no.4, 5 and 7 to 9 to the posts of Guard grade 'A' Special (also known as Guard Mail) on the basis of the said seniority.

2. The facts of the case are that these two applicants were posted as Guard Grade 'C' (now designated as Guard Goods Train) on 10.4.1957 and 16.4.64 respectively. The promotions of the Guard grade 'C'/Guard Goods train are made on the post as Guard grade 'B'/Guard passenger train and Guard 'A'/Guard Mail train. The promotion of the applicants and their seniority was disturbed because of the accelerated promotions to the candidates belonging to the Schedule Caste and Schedule Tribe.

3. It is contended on behalf of the applicant that the applicant no.2 challenging the promotions of S.C. candidates in excess to 15% of quota, had filed a Civil Suit No. 321⁴ of 1984 T.N. Prasad & Others Vs. Union of India and Others. The said case was then transferred to the Tribunal on its constitution and it was registered as 321 T/86 and was decided on 05.1.87.

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The promotions which were made in excess of prescribed quota, were quashed. The applicants then made an application on 23.3.1987 (annexure-1) to recast the seniority of Guard 'A' Special and Guard 'A' on the basis of the decision given by the Tribunal in O.A. No.647/86 Virpal Singh Chauhan and Others Vs. Union of India and Others, decided on 21.1.1987. The respondents failed to communicate any decision on the application of the applicant. It is said that the respondent no.2 and 3 informed verbally that the seniority of the Guards of Passenger and Mail trains could not be recast.

4. The seniority list(annexure-2) of Guard Grade 'C' (also known as Guard Goods Train) was published in the year 1977 in which the placement of the applicants was at serial no.132 and 229 respectively. The respondents no.4 to 16 belong to the reserve category. Of them, the respondents no.4 to 9 and 11 were shown in the said seniority list(annexure-1) at serial no.339, 353, 341,338, 340, 342 and 343 respectively. The respondents no.10 and 12 to 16 were not appointed in the service by the time of the preparation of the seniority list and, therefore, their names were not shown. It is, however, claimed by the applicant that all the respondents no.4 to 16 are juniors in the initial grade of Guard 'C' to the applicants.

5. The respondent no.3 prepared another seniority list (annexure-3) of Grade 'C' (Guard Goods Train) relating to Moghalsarai division in which the applicant no.2 was placed at sl.no.3

while respondents no.5, 8, 10, 11, 13, 15 and 16 were placed at serial no.70, 63, 73, 64, 102, 120 and 121 respectively. The name of the applicant no.1 was not shown in the list(annexure-3) because before the said s-eniority list was finalised, he was promoted to the post of Guard Grade (A) (Guard of Mail Train). Similarly the names of respondents no.4, 6, 7, 9, 12 and 15 were also not shown in the said list because they too were promoted.

6. The applicants belong to the category of general category candidates and their promotions to higher post ^{were} ~~was~~ made on the basis of seniority-cum-suitability. On the other hand, the respondents no. 4 to 16, who belong to the S/C. category, they were promoted on the basis of the reservation quota as Guard Passenger Trains on different dates between 26.4.79 to 11.7.1985 as given in para 6 (IX) of the O.A.. The date of promotions of respondents no.5, 15 and 16 were not known and, therefore, they were not mentioned. It is contended that the respondents no.4, 5, 7 and 9 were further promoted to the post of Guard 'A' Special wide orders dated 25.4.86 and 25.2.86. The effect of promotion was, however, given from 01-1-1984. The applicants, therefore, claimed that the respondents no.1 to 3 had allowed accelerated promotions to the respondents no.4 to 16 and also in excess of the quota, arbitrarily and illegally. Senior employees to those respondents could not be promoted. It is further claimed that despite the accelerated promotions on the ground of reservation given to the respondent no.4 to 16, they could not get

seniority over and above the applicants in the promotional grades.

7. The applicants plead that the respondent no.3 prepared seniority list(annexure-4) of Guard Grade 'A' on 20.9.85 in which the applicant no.1 was shown at serial no.24 and respondents no.6 to 13 were placed at serial no.20, 12, 17, 18, 21, 19, 33 and 28 respectively. Another seniority list annexure -5 of Guard Grade 'A' Special was prepared on 20.9.85 in which the respondent no.4 and 5 were placed at serial no.12 and 18.. In this way, ^{they were not} only given accelerated promotions but were also given accelerated seniority whereas the seniority as given in the list of Guard Grade 'C' was the basic seniority list. The accelerated promotions to the respondents no. 4 to 16 could at the best be termed as fortuitous and not in the normal course, is the pleading of the applicants. The applicants further pleaded that the seniority lists annexure-4 and 5 have been prepared in utter disregard of the seniority which was initially given to the applicants as well as the respondents no.4 to 16 in the year 1977 through annexure-2.

8. Feeling aggrieved by the act done by the respondents no.2 and 3, this O.A. has been filed with the relief which is already described.

9. In this case, two counter-replies have been filed, one was filed on behalf of respondents no. 1 to 3 by Sri S. Bhattacharya Senior D.S.O. while the

other was filed by the respondent no.12 - Sri Sheo Dhani Prasad of respondents no.4 to 16. As regards the official respondents, it is contended that the policy of reservation was under the challenge before their Lordships of Supreme Court and on the final decision by the Apex Court, policy would be implemented. As regards, criteria of fixation of seniority is concerned, length of service in the grade is alleged to be the basis. The averment was to the effect that the applicants were promoted on 23.11.1982 and the respondents no.4 to 16 were promoted by maintaining 40 point roster at the material time. It is claimed that since the respondents were promoted earlier in point of time to the applicants, they could not be said juniors to the applicants. The claim of the official respondents is that the seniority list was correctly published..It is pleaded that the petition was pre-mature because no representation was made to the administration and departmental remedies were not exhausted.

10. In the counter-reply filed on behalf of the respondents no.4 to 16, it has been contended that the Tribunal had decided the case no. 321 T/86 T.N. Prasad and Others, ex parte which was challenged by moving review application which was still pending As regards the decision in the case no. 647/86 Virpal Singh Chauhan Vs. Union of India and Others, it is pleaded that the appeal has been preferred before the Hon'ble Supreme Court which was still pending.

11. So far as the seniority lists are concerned, these respondents have come with the plea that the seniority list ~~of~~ ^{is} the year 1977 (annexure-2) ^{is} related to Danapur division. It has been contended ~~if~~ ^{that} the seniority fixed at the time of initial appointment, should ^{not} be the governing factor. According to them, the seniority in ~~which~~ ^{any} grade would be determined from the date of promotion in the said grade and the seniority in grade 'C' would have nothing to do with the determination of the seniority in the higher grade. It has been illusterated that on promotion of an employee in grade 'B' or 'A', the date of such promotion shall be material to reckon with the seniority in the particular grade. It is further contended that those who are promoted subsequent to the earlier promotee, shall be junior to him. The averment of the respondents no.4 to 16 is that the petitioner no.2 was promoted as Grade 'A' on 04.6.1987 after all the respondents (4 to 16) were promoted as Guard Grade 'A'. Thus according to the respondents, the applicant no.2 would be junior in Guard Grade 'A' to each of the respondents no.4 to 16. The averment that the respondents no.4 to 16 were promoted in excess of the quota fixed for S.C./S.T. candidates, was denied and contended to be incorrect. It is also denied that the respondents no.4 to 16 had been given jumping promotions. The respondents in reply to the averment contended in para 6(XIV) of the O.A. aver that the applicant no.1 Ram Murti Tiwari was ²

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officiating as Guard Grade 'A' Special from the year 1986/87, ^{he} and was selected in the suitability test held on 09.3.1987; and was posted as Guard Grade 'A' Special on 21.3.1988. The seniority lists prepared on 20.9.85 are claimed to have been prepared in accordance with the rules. In view of these facts, the O.A. has been opposed.

12. The applicants filed rejoinder restating the facts which were mentioned in the O.A. Besides, it has been pleaded that the respondents did not file any reply or review against the order passed in the case no.321 T/86 T.N. Prasad and Others Vs. Union of India and Others, and, therefore, whatever decision was taken, was binding on the respondents. It is stressed that the seniority in Guard Grade 'C' was the initial seniority and would govern the fixation of seniority in the higher grades. Since the candidates belonging to S.C./S.T. candidates get jumping promotions, because of reservation policy, their seniority should be recast each time when other persons are promoted subsequently to the grade in which S.C. candidate was also promoted. It is reiterated that the respondents have been given promotion in excess to their fixed quota.

13. We have heard the learned counsel for the parties and have perused the record.

14. The pleadings of the parties in the

case are to the effect that the Tribunal had decided the principle of seniority in the case Virpal Singh Chauhan (supra). According to the applicants, the said principle should have been followed by the respondents no.1 to 3 in this case also. According to the respondents, on the other hand, the matter was pending disposal before the Hon'ble Supreme Court. It has now been conceded by learned counsel for both the parties that the S.L.P. which was filed by the respondent no.1 against the Judgment of Virpal Singh Chauhan - (Supra) given by the Tribunal, has been decided. It is reported in '1996(1) A.I.S.L.J. 65'. Their Lordships of Supreme Court while deciding the issue of seniority and examining various circulars and letters issued by the Railway Board, held that the seniority between the reserved category candidates and general candidates in the promoted category, should continue to be governed by their panel positions. The expression panel was further defined to mean the panel prepared by the selecting authority at the time of selection for Grade 'C'. According to their Lordships view, it is seniority in this panel which must be reflected in each of the higher grades. It is clarified that this means that while the rule of reservation gives accelerated promotion, it does not give the accelerated or what may be called, the consequential seniority. The observation of their Lordships is that there is one situation ² where the rule may not have any practical relevance. In a given case, it may happen that by the time, the senior general candidate gets promotion to the higher grade, junior reserve category

candidate (who was promoted to the said higher grade earlier), may get promotion to ~~yet~~^q higher grade.

It is obvious that in such a case, the rule evolved in the aforesaid circular does not ~~avail~~^{apply} to the senior general candidate for there can be no question of any seniority as between the person in 'B' Grade and a person in 'A' Grade.

15. Their Lordships also pointed out 3 rules which were laid down in the case 'R.K. Sabharwal and Others Vs. State of Punjab and Others 1995 (1) S.L.R. 791' to deal with the situation of excess promotion ~~than~~^{to} the quota fixed ~~for~~² for S.C. and S.T. candidates. It was observed that the percentage of reservation has to be worked out in relation to the number of positions which forms a cadre strength and that the subject of vacancy has no relevance in operating the percentage of reservation. The points which were dealt with by their Lordships ~~and summarised in V.P. Chaudhary's case~~² in R.K. Sabharwal's case (supra) are follows;

1. Once the number of posts reserved for being filled by reserved category candidates in a cadre, category or grade (unit for application of rule of reservation) are filled by the operation of roster, the object of rule of reservation should be deemed to have been achieved and thereafter the roster cannot be followed. While determining the said number, the candidates belonging to the reserved category but selected/promoted on their own merit (and not by virtue of rule of reservation) shall not be counted as reserved category candidates.

2. The percentage of reservation has to be worked out in relation to number of posts in a particular grade, class, category or grade (unit for the purpose of applying the rule of reservation) and not with respect to vacancies.

3. So far as Railway Guards in Railway service are concerned, the seniority position in the promoted category as between reserved candidates and general candidates shall be the same as their inter se seniority position in Grade 'C' at any given point of time provided that at that given point of time, both the general candidate and the reserved category candidates are in the same grade. This rule operates whether the general candidate is included in the same batch of promotees or in a subsequent batch. Even if a S.C./S.T. candidate is promoted earlier by virtue of rule of reservation roster than his senior general candidate and the senior general candidate is promoted later to the said higher grade, the general candidate regains his seniority over such earlier promoted S.C./S.T. candidate. In such a situation does not confer upon him seniority over the general candidate even though the general candidate is promoted later to that category."

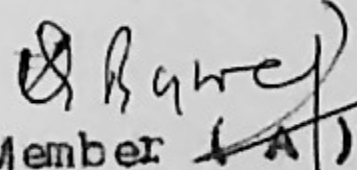
16. Their Lordships of Supreme Court, therefore, laid down the law as regards the determination of seniority between the general candidates and the candidates of reserve category. As regards the excess promotion to the quota fixed, it had been observed in the Virpal Singh Chauhan's case (supra) that this situation had arisen particularly because the rule which was recently enunciated in R.K. Sabharwal's case was not there and was not being followed. It may also be that such a result has been brought by a combined operation of the factors mentioned in point 1 and 2 above in the said Sabharwal's case. Their Lordships in Virpal Singh Chauhan's case further observed that it was sufficient to direct that the Railway Authority should here in after followed rules I, II and III as stated in para 28 w.e.f. the date of judgment in R.K. Sabharwal's case

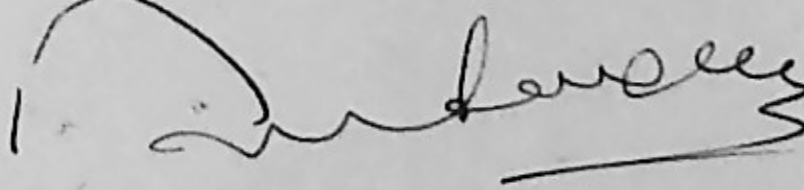
which is decided on 10.2.1995. In this way, even the situation of excess promotion has been considered and their Lordships suggested that adoption of the points discussed above would eliminate the chances of excess promotion made in the reserved category. For the implementation of those points, the date of judgment in Sabharwal's case has been fixed as a pointer. The reason given by their Lordships was that the situation could not be rectified until directions were given that all the promotions be reviewed and redone. This step may not be advisable at this ^{distance} time. It was further observed that the enormity of the exercise should deter any one from launching upon such a course.. It was evidently for this reason that Supreme Court had directed in R.K. Sabharwal's case that the rule framed by ~~them~~ ^{it} should be applied only prospectively.

17. We have discussed the law laid down by their Lordships in the two cases cited above with the purpose that those principles shall be the deciding factors of the seniority between the applicants and the respondents no.4 to 16 in this case. It may be mentioned that, no doubt, the applicants have challenged [&] the seniority lists annexure-2, 3, 4 and 5, the official respondents namely the respondents 1 to 3, have filed the counter-reply in casual manner. Nothing has been specified as to how and why a particular seniority list was prepared and placement of the employees made. It appears from the perusal of the said counter-reply that the criterion of fixing the seniority is the length of service. Similarly the counter-reply filed on behalf

of the respondents no.4 to 16 is indicative of the notion that the seniority in a particular grade or post of promotion is counted from the date when the promotee employees join the said grade or post. It has been clarified in the said counter-reply of respondents no.4 to 16 that since they were promoted in Grade 'B' and 'A' prior to the promotion of the applicants and, therefore, they stand senior to the applicants. This averment is in contradiction to what has been laid down by their Lordships of Supreme Court in the decisions of R.K. Sabharwal and Virpal Singh Chauhan's case. Since the rules laid down in Sabharwal's case are made applicable w.e.f. 10.2.95 and this fact has been restressed in the case of Virpal Singh Chauhan's case, we refrain ourselves from examining the seniority lists (annexure 2 to 5) which were prepared before 10.2.95, from this angle. Similar ^{is} ~~to~~ the situation with regard to the alleged excess promotion of the employees from the reserved category. The result, therefore, is that whatever has been done prior to 10.2.95, cannot be undone.

18. On the consideration of the facts and circumstances and the legal position, we find that the seniority lists annexure 3, 4 and 5 cannot be interfered with. The O.A. is, therefore, dismissed. No order as to costs.


Member (A)


Member (J)