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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

REGISTRATION T.A. NO. 1852 of 1987

(Civil Misc. W.P.NO.9479/85)

P.N. Anand Applicant

Versus

Union of India & 3 others Respondents.

Hon. Ajay Johri- AM
Hon. G.S. Sharma-JM

(Delivered by Hon. G.S.Sharma...JM)

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This Writ Petition under Article 226 of the Constitution of India has been received from the High Court of Judicature at Allahabad under section 29 of the Administrative Tribunals Act no.XIII of 1985.

2. The petitioner has prayed that the promotion of respondent no.4 Ganesh Prasad as Shop Superintendent be quashed and the respondents be directed to follow the decision of Allahabad High Court in J.C.Mallik..vs.. Union of India & others(1978 AWC-338) and respondents be further directed to promote the petitioner as Shop Superintendent and decide his appeal dated 19.9.1984 and other representations made in connection with his promotion. The case of the petitioner is that he was initially appointed as Chargeman 'C' in Foundry Shop of N.E.Railway and became Chargeman 'B' on the merger of the posts of Chargeman 'C' and Chargeman 'B'

The respondent no.4 is a member of Schedule Caste and is junior to the petitioner. In the seniority list of Chargeman 'B' as on 1.4.1975 the name of the petitioner was at serial no.3 and that of respondent no.4 at serial no.15 vide {Copy Annexure-I to the petition}, The petitioner was promoted as Chargeman 'A' w.e.f. 7.7.1970 and was thereafter promoted as Assistant Shop Superintendent. He was promoted as Shop Superintendent vide order dated 3.9.1984, ~~as~~ a result of re-structuring of the Work Shop Supervisors but his promotion was surprisingly cancelled on 13.9.1984 without disclosing any reason. The petitioner preferred an appeal to the Chief Work Shop Engineer, N.E. Railway, Gorakhpur on 19/26-9-84 but the same was not decided till this petition was filed despite repeated reminders. The petitioner thereafter ^{for} wants that his appeal be decided by the competent authority without further delay.

3. The petitioner has further alleged that there are 6 posts of Shop Superintendent in N.E. Railway. Two of them are permanent posts. One of six posts of Shop Supdt. has been given to one Sri O.P.Kanajia out of Schedule Caste quota. One more post of Shop Supdt. was given to Schedule Caste candidate(respondent no.4) vide letter dated 15.2.1985 despite the appeal and representations dated 8.1.1985 and 30.1.1985 of the petitioner for giving the said post to him, wrongly treating it to be a reserved post for Schedule Caste candidates. This is against the judgment delivered by the

Allahabad High Court in the case of J.C.Mallik(Supra) confirmed by the Hon'ble Supreme Court in C.M.P.No.26627 of 1976 Union of India -vs- J.C.Mallik and is, otherwise illegal and adversely affects the interest of the petitioner and infringes his right of promotion under the law. The respondent no.4 being junior to the petitioner and there being no other post for reserved candidates in the cadre of Shop Supdt., the petitioner being the senior most should have promoted and the promotion of respondent no.4 is illegal. It is also alleged that the petitioner was temporarily accommodated as Shop Supat. against 10 Tonn Diesel Crane, a work charged post temporarily, but he can be reverted at any time as the post is not regular and permanent.

4. The petition has been contested on behalf of the government respondents no.1 to 3 only and in the counter affidavit filed on their behalf by the Assistant Personnel Officer, N.E. Railway, Izatnagar, it was stated that out of the two vacancies for Shop Supdt. one was reserved for Schedule Caste as per roaster point. Against one vacancy, the general candidate S.P.Pandey was promoted and against other, respondent no.4 was promoted according to 40 point roaster. In place of Sri S.P.Pandey, the promotion orders of the petitioner were issued on 3/4-9-1984, but before the same could be implemented, the promotion order of the petitioner was cancelled on 13.9.1984 and Sri S.P.Pandey who was senior to him was promoted after reviewing his case as his promotion was earlier withheld on account of adverse entries and the

petitioner can have no grievance against the cancellation of the order of his promotion which was never implemented. The promotion order was not even communicated to him before ~~his~~ cancellation and his appeal is accordingly incompetent and mis-conceived. However, his appeal was decided by the competent authority on 27.11.1985 vide (Copy Annexure-CAI to the Counter). The promotion of the respondent no.4 was made according to the roaster and the orders of Railway Administration as in force at that time. The revised orders were issued on 2.3.1985 and as the respondent no.4 has already been promoted before the stay orders, his appointment was valid and the grievance of the petitioner is not genuine and his petition merits dismissal.

5. The petitioner reiterated the grounds taken by him in his writ petition by filing rejoinder affidavit and further stated that the implementation of earlier ~~rules~~ ^{rules, order} of promotion relating to reserved vacancies had already been stayed by the Railway Board vide its circular letter dated 16.10.79 and 27.10.79 (Vide Copy Annexure-I to the rejoinder) and the respondents were bound to follow the decision given by Allahabad High Court and confirmed by the Hon'ble Supreme Court in the case of J.C. Mallik and the appointment of respondent no.4 on the basis of roaster point was illegal.

6. At the time of arguments in this case, before

us, it was conceded at the Bar that decision of Allahabad High Court in J.C.Mallik -vs- Union of India & others 1978 AWC 338; 1978(1) SLR-844 still holds good and it has not been upset or quashed by the Hon'ble Supreme Court. In the case of J.C.Mallik, a Division Bench of Allahabad High Court had interpreted the circular letter dated 20.4.1970 (Copy Annexure-10 to the petition) reserving 15% posts for the Schedule Caste and 7½% posts for Schedule Tribes in Class-III and IV and it was held that this circular letter made reservation to the extent of 15% in favour of Schedule Caste in respect of appointment to the posts and not to the vacancies which may occur in the cadre of posts and had quashed the appointment of certain persons made in contravention of this interpretation. The respondents have not been able to point out before us as to how this decision is not binding on them. The petitioner has quoted the extract of the order of Hon'ble Supreme Court in C.M.P.No.26627/76 in his representation to the Chief Work Shop Engineer, N.E. Railway, Gorakhpur (Copy Annexure-VII to the petition) which states that the promotions made after 24.2.84 will be made strictly in accordance with the judgment of the Allahabad High Court subject to the result of appeal. This order shows that even the Hon'ble Supreme Court declined to stay the operation of the judgment of Allahabad High Court in the case of J.C.Mallik and directed the Railway Administration to make promotions in accordance with the said judgment subject to the result

of appeal.

7. The only defence of the respondents is that the promotion of respondent no.4 was made as per 40 point ro^{ster} before the enforcement of new rules w.e.f. 2.3.1985 and as such, his promotion is protected ^{and} ~~as~~ valid. The promotion of respondent no.4 was made on 15.2.1985. {Annexure-I to the rejoinder}, however, shows that Railway Board vide its Wireless/Post Copy issued on 2.11.79 to all the General Managers of Indian Railways had stayed the implementation of 40 point ro^{ster} laid down by it in respect of promotion/selections and recruitment in its letter dated 11.1.73. This knocks down the very bottom of the case of the respondents and in view of this document, it is wrong to contend that there was any 40 point ro^{ster} rule in force for promotion and the promotion of respondent no.4 on that basis was, therefore, illegal and amounts to a discrimination against the petitioner who would have been otherwise considered for promotion against the post given to respondent no.4.

8. The respondents have not denied in their counter affidavit the number of posts of Shop Superintendent as well as the fact that out of six p such posts, one post was already held by a Schedule Caste candidate before promotion of respondent no.4. Applying 15% reserved rule upheld by Allahabad High Court in the case of J.C.Mallik, two posts could not be treated reserved out of

six posts of Shop Superintendent and as such, the promotion of respondent no.4 on the basis of his being the Schedule Caste candidate was not in order and he could be considered and promoted only on his turn.

9. Now, coming to the relief to be granted in this writ petition, we find that the petitioner is already working as Shop Superintendent under the stay order granted by Allahabad High Court in this Writ Petition and has not been reverted. Considering the fact that in the meantime, some more vacancies might have occurred in the cadre of Shop Superintendent and as such, we are not quashing the promotion of respondent no.4 as Shop Superintendent, but give liberty to respondent nos. 1 to 3 to cancel it in case, he has not obtained required seniority for holding such post on merit or against any reserved vacancy according to the principle laid down in the case of J.C.Mallik and in that event, respondent no.4 will not have any right of appeal or representation against the orders of respondent nos. 1 to 3 and the same will be deemed to have been done under the directions of this Tribunal. We further direct that the petitioner shall be deemed to have been promoted as Shop Supdt. with all consequential benefits from the date, the respondent no.4 was promoted.

10. The Writ Petition is disposed of accordingly and the parties are directed to bear their own costs.

Charmaa
MEMBER (J)

3/GR/JK
MEMBER (A)

Dt/ 3rd Jan, 1989/