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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

....

Registration O.A No. 357 of 1987

Hari Shankar Sharma Applicant

versus

Union of India and others... Respondents

Hon'ble Justice U.C.Srivastava, V.C.

Hon'ble Mr.A.B.Gorthi, Member (A)

By Hon'ble Justice U.C.Srivastava, V.C.

The applicant has approached this Tribunal under section 19 of the Administrative Tribunals Act, 1985, that the respondent nos. 1, 2 and 3 be directed not to promote opposit parties 4 to 7 treating the said respondents as senior to the petitioner and the other general candidates and to designate them on passenger/Express/Mail trains as guards on permanent officiating basis, and that promotions be made only on the basis of the original seniority list Guard Grade 'C', or in accordance with the law laid-down in Vijaypal Singh Chauhan & others Vs. Union of India.

2. The applicant and op.Ps. 4 to 7 were in the category of Guard Grade 'C' in the Central Railway. In the seniority list the position of the applicant was higher than the Op.Ps. 4 to 7 who are members of Scheduled Caste/ Scheduled Tribe community. The Op.Ps. 4 to 7 being members of Scheduled Caste and Scheduled Tribe community were promoted earlier than the petitioner on the basis of reservation and subsequently the applicant was also promoted as Guard Grade 'B' grade on 26-5-1982. The instant dispute arose as promotion for higher grade was going to be made on the basis of

higher grade was going to be made on the basis of passenger/Mail/Express guards from among the goods train guards of Central Railway, Jhansi. The factual position appears to be that initially there were 3 grades of Guards, namely, Guards Grade 'C', 'B' and 'A'. With the restructuring on 1-6-1981 the category of Guards Grade 'A' Special, 'A', 'B' and 'C'. Out of which 'C' & 'B' Guards were goods Guards and 'A' Guards were passenger Guards and 'A' Special Guards were Express Guards. The Guards categories have once again been changed which are now known as Goods Guard, Passenger Guard and Mail Guard.

3. On roster basis respondent 4 to 7 were promoted in Guard 'B' Grade earlier than the applicant who till their promotion was higher than those persons in the seniority of the grade to which all of them belonged. The question that arises for consideration is as whether this accelerated promotion occurred even being member of SC/ST community will place them higher in the seniority list and ban the general candidate.

the applicant whose promotion was delayed because of enforcement of roster system as stated above. Para 320 of the Railways Establishment Code which deals with Seniority on Promotion to Non- Selection posts, reads as under :

" Promotion to non-selection posts shall be on the basis of seniority-cum-suitability- suitability being judged by the authority competent to fill the post, by oral and/or written test or a departmental examination as considered necessary and record of service.

The only exception to this would be in cases where for administrative convenience which should be recorded in writing, the competent authority considers it necessary to appoint a railway servant other than the seniormost

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suitable railway servant to officiate in a short term vacancy not exceeding two months as a rule and four months in any case. They will not, however, give the railway servant any advantage not otherwise due to them."

On the basis of rule 320 extracted above it has been contended that the practice of respondents who get accelerated promotion because of Scheduled Caste/ Scheduled Tribe quota was not full would not make them senior to the applicant. Our attention has been drawn to a circular issued by Railway Board which provides that a railway servant was promoted against a vacancy which is non fortuitous should be considered as senior in the grade with all others which were subsequently promoted. (a) It further provides that the suitability of a railway servant for promotion should be judged in the grade higher to the grade in which he is placed as far as possible (b) An employee who qualified in the earlier test and gets promoted to a non fortuitous vacancy but reverts to a lower grade before a subsequent test is held became senior to all others who qualified in the subsequent test. In respect of those who have either officiating in the fortuitous vacancy or did not officiate at all will not be given seniority on subsequent promotion; (c) In respect of non selection post in the channel of promotion for staff in various categories in combined seniority list of the employees passing suitable test should be placed on the length of service in comparable grade without, however, disturbing the inter-se seniority of the staff belonging

to the same category. On behalf of applicant, reliance has been placed on para (c) quoted above which makes it clear that in the same grade, a person who is in service before gets seniority over those who entered the service later on. The seniority is not dependent on promotion. If promotion is given on a particular basis, may be on the ground that on roster basis, a member of Scheduled Caste and Scheduled Tribe community that cannot be taken to means that they would be senior in the same grade as against those whose promotion was postponed.

A reference has been made in the case of Vijaypal Singh Chauhan Vs. Union of India and Others decided by a Bench at Allahabad reported in 1987 (4) ATC 685. In the said case, similar question arose and it was held that who were junior belonging to reserved category gets promotion by jumping over their senior due to reservation for Scheduled Castes and Scheduled Tribes much junior cannot enjoy the seniority on higher post for ever. When juniors were also promoted, they were given their original seniority vis-a-vis their juniors in the higher post. The Tribunal also relied on para 320 of the Railway Establishment Code extracted above and held that the reservation in favour of SCs/STs applies not to the vacancies which arose from time to time, but to a total number of vacancies. Hence roster for watching reservation can be operated when the number of SCs/STs employees falls below the prescribed percentage. As soon as, the prescribed percentage completed, operation

roster has to be discontinued. We are in agreement with the said decision and do not find any ground to differ with it. Even otherwise under the general law relating to service reiterated by Supreme Court again and again is for counting that seniority, entire period of continuous officiation is to be taken into account on all counts the applicant will be ranked senior to respondents 4 to 7 notwithstanding their accelerated promotion due to roaster system.

4. In this view the application under Administrative Tribunals Act deserves to be allowed and consequently it is held that the applicant is made senior to the opposite parties 4 to 7 and in the matter of promotion, it cannot be postponed on the ground that the opposite parties 4 to 7 are senior to him. While considering the question of promotion, the case of the applicant shall also be considered, he being senior most among all these persons. In the circumstances, of the case, there will be no order as to costs.

Janardan Singh
Member (A)

V.K.S.
Vice Chairman

Dated the 14th March, 1991.
Allahabad