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Reserved:

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

Original Application No. 601 of 1987

Kuldip Kumar Raikwar

... Petitioner

Versus

Union of India and Ors

... Respondents

CORAM:

HON'BLE MR. JUSTICE R.K. VARMA, V.C.

HON'BLE MR. V.K. SETH, MEMBER (A)

(By Hon'. Mr. Justice R.K. Varma, V.C.)

By this petition Under Section 19 of the Administrative Tribunals Act 1985, the petitioner has sought a direction to the respondents to promote the petitioner to the upgraded post for Asstt. Shop Supdt. w.e.f. 1.1.84 with all consequential benefits of the post like arrears of pay and allowances etc.

2. The facts leading to this petition are briefly stated as under:

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The petitioner has been working as Asstt. Shop Supdt. in the Central Railway Work Shop at Jhansi w.e.f. 1.12.1986. Prior to 1.1.84 there were only two posts of Asstt. Shop Supdt. in the Central Railway Work Shop at Jhansi on which the incumbents Shri S.R. Yadav and Sri S.C. Srivastava were working having been promoted much earlier than 1.1.84. As a result of restructuring of the cadre, one post of Charge man 'A' was upgraded w.e.f. 1.1.84 to that of Asstt. Shop Supdt and because the petitioner was a senior most person in the Chargeman

he claimed promotion to the upgraded post of Asstt. Shop Supdt, but his representation dated 23.5.85 in this behalf made to the Addl. C.M.E, Workshop, Jhansi (Annexure C to the petition) was rejected vide (Annexure-E to the petition) and a subsequent appeal dated 13.4.87 to the Chief Engineer (W) Central Railway, Bombay (Annexure-B to the petition) was also rejected vide (Annexure-F to the petition).

3. The reason given out for rejecting the claim of the petitioner for promotion to the upgraded post of Asstt. Shop Supdt. is that the said upgraded post was meant to be filled by the SC/ST candidate, on the basis of Railway Ministry's letter No. 85-E(SCT)/49/2 dated 26.2.85 issued for guidance and necessary action by the Railway Authorities vide circular No. 24/85 dated 6.3.85 (Annexure-A to the petition).

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4. The respondents in denying the claim of the petitioner for promotion to the upgraded post of Asstt. Shop Supdt. have averred that they are giving effect to Instruction No.(ii) contained in the Railway Ministry's letter aforesaid by reserving the post in question for SC/ST community candidates. The said instruction(ii) of the Railway Ministry's letter reads as follows:

- (ii) "Reservation of posts for SC/ST community candidates shall be made only to the extent there is deficit in the cadre as on 1.1.84 in respect of the categories and grades, i.e.

15% & 7½% of the revised cadre respectively for SC and ST community candidates. While making promotions of SC/ST employees against the upgraded posts to make up the deficit it should be ensured that reservations do not exceed 50% of the posts to be filled up by promotion due to upgradation". (Underlining is ours).

5. The learned counsel for the petitioner has contended that on a plain reading of the above quoted instruction, it becomes clear that the promotion of SC/ST employees is contemplated only where there are more than one upgraded posts available because the emphasis laid in the instruction is that it should be ensured that such reservations do not exceed to 50% of the posts to be filled up by promotion due to upgradation. If the available post due to upgradation is only one as in the instant case where only one post of chageman has been upgraded to the post of Asstt. Shop Supdt, what has to be ensured under instruction is that the reservation ought not to exceed 50% of the upgraded post that is to say the single upgraded post available at the time of promotion cannot be filled up by a candidate of reserve category since if the only available upgraded post is given to the candidate of reserve category. The said instruction shall be contravened inasmuch as the reservation shall exceed 50% of the single post. In our opinion, the submission of the learned counsel is as aforesaid and deserves to be accepted. The prohibition contained in the aforesaid instruction that it should be made sure that the reservation to the upgraded

post does not exceed 50% can be abided in the case of single available upgraded post by promoting a candidate of non reserve category and not by a candidate belonging to SC/ST community. As such, the claim of the petitioner for promotion in the single available upgraded post of Asstt. Shop Supdt should have been accepted by the respondents on a proper construction of the Railway Ministry's instruction no. (ii) aforesaid.

6. The learned counsel for the petitioner has submitted that the petitioner on account of the promotion of Sri S.R. Yadav, Asstt. Shop Supdt to the post of Shop Supdt. w.e.f. 1.12.86, has been promoted as Asstt. Shop Supdt vice Sri S.R. Yadav w.e.f. 1.12.86 and the upgraded post of Asstt. Shop Supdt. has been lying vacant since before and it is this upgraded post of Asstt. Shop Supdt. to which the petitioner was entitled to promotion since its creation w.e.f. 1.1.84.

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7. The learned counsel for the petitioner has further submitted that so far as the claim for promotion to the available single upgraded post is concerned, the petitioner shall have better claim than any candidate belonging to SC/ST community, on account of the prohibition contained in the Railway Ministry's instruction no. (ii). But if it be the policy of the respondents to give one post of Asstt. Shop Supdt to a candidate of reserve category out of the total three posts of Asstt. Shop Supdt including the one upgraded post, the respondents may give effect to such policy only after the petitioner's post falls vacant upon his claim of promotion to the

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upgraded post being accepted w.e.f. 1.1.84 since when the upgraded post is made available for being filled in.

8. In view of the discussions aforesaid, we are of the opinion that the petitioner should have been held entitled to promotion on the upgraded post of Asstt. Shop Supdt. since its creation w.e.f. 1.1.84 and that his representations in this behalf have been wrongly rejected by the respondents.

9. Accordingly, this petition is allowed. The respondents are directed to promote the petitioner on the upgraded post of Asstt. Shop Supdt. w.e.f. 1.1.84 with all consequential benefits of the post like arrears of pay and allowances.

10. There shall, however, be no order as to costs.

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Member (A)

R. K. Varma
Vice Chairman

Dated: 8th Sept. 1993

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