

CENTRAL ADMINISTRATIVE TRIBUNAL, ALIAHABAD BENCH,
ALIAHABAD

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

CORAM : Hon'ble Mr. T. L. Verma, J.M.
Hon'ble Mr. D. S. Baweja, A.M.

Original Application No. 934 of 1987

1. G. D. Dahera Son of late Sri Khem Chand
Chief Typist office of D.RM(P)
2. R. K. Bhargava son of late Sri K. N. Bhargava
Chief Typist office of Sr. D.O.S.M.
3. M. P. Singh s/o. Sri Ram Kawal Singh
senior Typist in the office of
Medical Superintendent.

All C/o. Sri V.K. Barman, Advocate, 9-B, Sapru Road,
Allahabad.Applicant.

Versus

1. Union of India through General Manager, C.Railway,
Bombay.
2. D.R.M. C. Railway, Jhansi.
3. Sr. D. P. O. C. Railway Jhansi
4. Shri Yad Ram S/o. Kharga, officiating O.S.I
C/o. D.R.M(P) Central Rly, Jhansi
5. Sri Ramesh Kumar S/o. Babil,
Head Typist, C.Rly, Jhansi.

.....Respondents.

(THROUGH V. K. GOEL)

.....contd. on page 2/---

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O_R_D_E_R (reserved)

(By Hon. Mr. T. L. Verma, Member-J)

This application under Section 19 of the Administrative Tribunals Act, 1985 has been filed for issuing a direction to the respondents to revert Shri Yadram, the respondent No.4 to Typist Grade Rs.425-700/- and send him back to his original Division(Bhusawal) after holding that he has no right to be promoted either to the post of Chief Typist Grade Rs.550-750/- or to the post of O. S. Grade I of Rs. 700-900 and for issuing further direction to revert Ramesh Kumar, respondent No.5 to his original post of Junior Typist after holding that he was not ^{meant} entitled to promotion against reservation quota for Scheduled Caste candidates

2. The applicant Nos. 1 and 2 are Chief Typists in the grade Rs. 550-750/- and applicant No.3 is a Senior Typist in scale Rs.330-560/-. The applicant Nos.1 and 2, it is stated, have become due for promotion to the post of O.S. Grade -I in the scale of Rs. 700-900 and applicant No.3 for promotion to the post of Head Typist Scale Rs.425-700/-.

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3. The Highest post in Typist Grade is O.S. Grade I and Chief Typist Grade Rs.550-750/-. These posts were initially Headquarter controlled post but ^{said} the post has since been decentralized with effect from July, 1986. The respondent No.4, Yadram, it is stated, is at present officiating as O.S. I and is posted at Jhansi. According to the applicants, Sri Yadram belongs to Bhusawal Division, therefore, has no right to remain posted at Jhansi. Before his transfer to Jhansi, he was working in Grade Rs.425-700/- at Kanpur on officiating basis. He was transferred to Jhansi on

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his request and was posted at Jhansi in the Selection Grade Rs. 550-750/- on officiation basis. According to the applicants, respondent No.4, Sri Yadram should have been given bottom seniority in Jhansi Division as he was transferred on his own request according to the extant rules. The respondents have not only given bottom seniority to him in the scale Rs. 475-700 have also given him officiating promotion in grade Rs. 550-750/- against all canons of law and rules in force in that behalf and as such the same is illegal, void and without jurisdiction.

4. In addition to the above, it is stated that the post in grade Rs. 550-750/- is a Selection Grade Post. Therefore, for promotion/appointment on the said post, the incumbent has to pass the required selection test. The respondent No.4, Yadram neither appeared at such a test nor has passed the same hence he is not entitled for being promoted/appointed on a post in Grade Rs. 550-750/-

5. The next higher grade of Grade Rs. 550-750/- is that of O.S. Grade I, Rs. 700-900/-. Twelve posts in grade Rs. 550-750/- it is said, were upgraded to Grade Rs. 700-900/-. The respondent No.4, who, it is said, was allowed to officiate in the grades of Rs. 425-750/- and Rs. 550-750/- without clearing selection test was given to officiating grade promotion to grade Rs. 700-900/- also.

6. Further, it is stated, that promotion against S. C. & S. T. quota has to be confined to 15% of S.C. and 7½% for S.T. Candidates. In other words, the total percentage of reserved posts for S. C. & S.T. candidates has to remain upto 22½% only. The quota of S.C. and

S.T. candidates against 12 upgraded post in Grade Rs.700-900/- therefore, was only two posts . It is stated that since the quota of S.C. & S. T. was already full no further post for promotion to S. Cs. and S. Ts. against 12 upgraded post was available. The respondents, it is alleged, promoted respondent No.4, Sri Yadram against one of the 12 upgraded post in scale of pay Rs.700-900/- on the pretext of promotion against roster point No.12 on officiating basis. This promotion, it is alleged, was wholly illegal, arbitrary and without jurisdiction.

7. The applicants have also contended that seniority assigned to respondent No.4 in the seniority list circulated and notified in 1983 was wrong. This, it was alleged, was contrary to the ratio of decision in Vir Pal Singh Chauhan's case.

8. After decentralization, it is stated, there was only one post in grade Rs. 700-900/- in Jhansi Division. According to the applicants, in terms of the extant rules, the aforesaid post should have gone to general candidate and not to the reserved candidate. For this reason also, promotion of respondent No.4 to the post of O. S. Grade I is said to be arbitrary, illegal and violative of principle of Article 14 and 16 of the Constitution.

9. The respondent No.5 Ramesh Kumar, it is said, was initially appointed as Khalasi on 2.6.1979. He was promoted to the post of Typist on 1.9.1982. Upto this stage, he was shown in the category of general candidate. However, in the year 1983, said Ramesh Kumar obtained a certificate dated 3.1.83 from Madhya Pradesh to the effect that

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he belongs to S.C. community. On the basis of the said certificate he was treated as S.C. candidate and promoted as Senior Typist on 19.9.1984 and thereafter to the post of Head Typist on 7.5.1985. In this way he has secured three promotions in less than 3 years. Promotion given to the respondent No.5 also, it has been stated, is illegal and arbitrary. Hence this application for the relief mentioned above.

10. The respondents have appeared and contested the application. In the counter reply filed on behalf of the respondents, it has been stated that Sri Yadram was promoted and transferred to Nagpur Division in grade Rs. 550-700/- as Chief Typist in the year 1981 when the post of Chief Typist was non-selection Headquarter controlled post. He was transferred as Chief Typist grade Rs. 550-750/- to the office of Divisional Railway Manager, Jhansi vide order dated 10.8.1982 on his request against the vacancy caused consequent upon the retirement of Sri S. V. Verma vide order dated 10.8.82. The posts of Typist cadre grades Rs. 700-900/- and Rs. 550-750/- in all the Divisions of Central Railway namely Bombay, Bhusawal, Jhansi, Jabalpur ^{Nagpur} were in common post upto 8.7.1987 therefore, on transfer from one Division to another question of giving bottom seniority in grade Rs. 725-800/- did not arise. The further case of the respondents is that Sri Yadram was not promoted as Office Superintendent ~~axis~~ against any upgraded post and that he was promoted as Office Superintendent grade Rs. 700-900/- against S.C. quota vide Office Order No.243 dated 18.12.1984 hence the objections raised by the applicants in that regard are without substance.

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11. The respondents in their counter reply have accepted that Ramesh Kumar (respondent No.5) was initially appointed as general candidate and that on the basis of

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the caste certificate issued by the Madhya Pradesh Govt. which was subsequently verified by an officer of the ^{Kumar} ~~Off~~ Railway, that Ramesh ~~△~~ belongs to S.C. and has therefore, been given the benefit of reservation with effect from 1984. There is, therefore, nothing wrong in promoting the said respondent No.5 as S. C. candidate.

12. We have heard the learned counsel for the parties and perused the record. It is not in dispute that till July, 1987 Typist Grade Rs.700-900(Rs.2000-3200/-) and Rs. 550-750(1600-2600/-) were controlled by Headquarter upto 8.7.1987. Thereafter the posts were decentralized vide Railway Board's letter dated 8.7.1987 and are now now controlled at Divisional Level. Annexure-1 to the counter-affidavit whereby the respondent No.4 was promoted as Chief Typist Grade Rs.550-750/- indicates that he was promoted against the upgraded post of Chief Typist sanctioned vide office letter No. HPB/311-R/Review / Typists dated 15.10.1980 to be operated from 1.10.1979. Annexure-RA-1 annexed by the applicant to his rejoinder indicates that the Ministry of Railway, revised the classification of non-gazetted posts sanctioned in introduction of revised scales. According to these instructions, the post in Grade Rs.550-750/- has been classified as Selection grade. These instructions have been issued vide letter dated 9.10.1979. In other words, the post carrying scale of pay of Rs. 550-750/- became selection post from 9.10.1979. Prior to that ~~before the instructions~~, the posts carrying the scale of Rs. 550-750/- were non-selection post as would appear from Railway Board's letter No. E(NO) 1/79 FMI/41(AIRF) dated 31.5.79. The post in the scale Rs. 550-750/- thus was a non-selection post till 9.10.1979. Respondent No.4

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own request. After the posts were decentralized, in terms of the order dated 8.7.1987, he could have been retained in the Jhansi Division on his exercising option to remain there. In this view of the matter, we find no merit in the contention of the learned counsel for the ~~xxxxx~~ applicants that the respondent No.4 be transferred back Bhusawal.

14. The argument of the learned counsel for the applicant that the respondent No.4 could not have been promoted to O.S.Graee-I and allowed to continue on the said post in Jhansi Division after July, 1987 is ^{also} fallacious. The order, promoting the respondent No.4 to grade Rs 700-900/-, as we have already seen above, was passed on 18.12.1984. The said post on that date was a headquarter controlled post as is apparent from the pleadings of the applicant also. As the respondent No.4 was working on the post of O.S.Grade-I in grade Rs.700-900/- on the date the post was decentralized, he had the option to remain at the place where he was posted at that time. We therefore, find no fault in continuing respondent No.4 in Jhansi Division.

15. The respondents contend that Yadram was promoted to grade Rs.700-900/- as per 40-Point roaster. ^{That} ~~the~~ ~~of~~ ~~respondent~~ ~~No.4~~ belongs to S.C.community, is not in dispute. The applicant, in para 15 of the rejoinder-affidavit, has reiterated the averments made in para 6(xii) of the application. There is nothing in the said paragraph which may indicate that the contention of the respondents that Yadram was promoted in terms of 40 -point roaster is not correct. The order promoting the applicant has been annexed as Annexure-CA-3 to the

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counter-affidavit. The promotion order clearly indicates that Sri Yadram Schedule Caste, Officiating Chief Typist grade Rs. 350-550/- in D.R.M. Jhansi was promoted to officiate as O.S. Typist grade ~~vice~~ Sri N. L. Chitrakar. The promotion order clearly indicates that the promotion was regular in nature and not against upgraded post. Roaster Point-40 is ^{meant} ~~meant~~ for Scheduled Caste is not in dispute. We, therefore, are in agreement with the learned counsel for the applicant that Sri Yadram ^{roaster on a post} was promoted in terms of 40 point ^{meant} for S.C. candidate in a regular manner.

16. It was next argued that the seniority assigned to Sri Yadram respondent No.4 and the general candidates was incorrect. According to the seniority list of 1983, extract whereof may be seen at Annexure-1 to the petition, the applicant No.1 G. D. Dehra has been shown as junior to respondent No.4. The ^{other} applicants also have been shown junior to the respondent No.4. The applicants, if were aggrieved with the lower seniority assigned to them in 1983, should have submitted representation before the appropriate authority if their representations were not headed to then the same ought to have been challenged before an appropriate forum. The applicants do not appear to have done so therefore, the seniority list of 1983 has to be ^{now after 4 years} treated as final. The applicants therefore, cannot be allowed to challenge the same by filing this application in 1987 and unsettle ^{the} position that they have allowed to settle.

17. The learned counsel for the applicants ^{next} argued that according to the ratio of the decision of this

tribunal in Vir Pal Singh Chauhan's case, the seniority of the applicants should have been restored on their promotion to grade Rs. 550-750 as respondent No.4 had not been promoted to the higher scale on the date they were promoted to the said scale. The controversy raised in Vir Pal Singh Chauhan's case has since been settled by the apex court in Union of India vs. Virpal Singh Chauhan and others reported in (1995) 31 A.T.C. 813 in which Hon'ble Supreme Court has held that :-

2 A panel is prepared by the selecting authority on the basis of and in the order of merit. Appointments have to be made from out of this list/panel. But appointment orders will not be issued in the order in which the candidates are arranged in this select list/panel. they will be issued ~~in the order of merit~~ following the roster. ~~xxxxxxx~~ Suppose the forty-point roster is being operated afresh, then the first vacancy in the roster would go to a Scheduled Caste candidate though he may be down below in the select list/panel. The candidate at Sl.No.1 in the said select list- a general candidate-will be appointed in the second vacancy. But once appointed, the general candidate (at Sr. No.1 in the select list) will rank senior to the Scheduled Caste candidate though he (general candidate) is appointed subsequent to the Scheduled Caste candidate. In promotions (based on seniority -cum-suitability, i.e. non-selection posts) to Grade 'B' also roster applies. Again assume that the forty point roster is opening now in Grade 'B'. The first vacancy has again got to go to a Scheduled Caste candidate though he may not be the senior most in Grade 'C'. The senior most candidate in Grade 'C' (the general candidate, who was at Sl. No.1 in the select list/panel and who regained his seniority on appointment to Grade 'C' as aforesaid) will be promoted in the next vacancy. But once promoted, the general candidate again becomes senior to the Scheduled Caste candidate though promoted subsequent to the Scheduled Caste candidate. And so on and so forth. It is in this manner that the rule of reservation (and the roster) merely enables a reserved category candidate to obtain an appointment or promotion, as the case may be- which he may not have obtained otherwise or would not have obtained at the time he is now getting- but it does not give him the seniority. In this sense, the rule confers, a limited benefit, -a qualified benefit. Such a rule of reservation does not fall foul of Article 16(4).

Therefore, the conclusion of the Tribunal is acceptable though it may not be possible to agree with the reasons given by it. It is not possible to agree with the view expressed by the Tribunal that a harmonious reading of clauses (1) and (4) of Article 16

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should mean that a reserved category candidate promoted earlier than his senior, a general category candidate, in the feeder category shall necessarily be junior in the promoted category to such general category candidate. No such principle may be said to be implicit in the said clauses. But inasmuch the Railway Board's circulars herein concerned, do provide specifically for such a situation and since they cannot be said to be violative of the constitutional provisions they must prevail and have to be given effect to. The said instructions are not shown to be inconsistent in any manner with any of the statutory provisions or statutory rules relevant in this behalf."

This decision, however, will apply prospectively

This argument of the learned counsel for the applicant therefore, does not hold good in view of the ratio of the Supreme Court's decision referred to above. We also find no merit in the contention of the learned counsel for the applicant that there being only one post of O.S. Grade-I (Rs. 700-900) in Jhansi Division. Respondent No.4 ~~also~~ who belongs to S.C. could not have been promoted as a reserved candidate against the said post in view of the extant rules. We have already mentioned above that on the date of respondent No.4 was promoted, the post of grade Rs. 700-900 was Headquarter controlled post. The number of post in that scale will therefore, be reckoned as were available in all the divisions controlled by the Headquarter. Obviously there could not have been only one post in the said scale in all the divisions controlled by the Headquarter. This argument also therefore, is of no consequence.

18. Coming to the case of Rajesh Kumar, respondent No.5 it may be mentioned that the respondents have in para 25 of the counter-affidavit averred that the respondent No.4 is not resident of Uttar Pradesh as alleged by the applicants and that his home address is given in the service register of the said respondent

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is Ashok Nagar, District Guna (M. P.). The concerned officer of the M. P. Government therefore, was competent to issue caste certificate to him. The said respondent submitted caste certificate dated 21.7.1984 alongwith application for treating him as S.C. candidate. The respondents deputed an inspector of Personnel Department to verify the correctness of the caste certificate furnished by the respondent No.5. It was on such verification, the certificated furnished by respondent No.5 was accepted and he was given the benefit of reservation on 15.5.1985. We have perused the rejoinder-affidavit of the applicants and we find that there is no transible material to show that the verification done by the Inspector of Personnel Department of the respondent was farzi therefore did not inspire confidence. The official acts carry a presumption of correctness. This presumption of correctness has not been rebutted by the applicant so as to shift the burden of proof ^{the} assertions made in para 25 of the counter-affidavit to the respondent. We, there ore, find no reason to dis-agree with the contention of the respondents that the respondent No.5 belongs to Scheduled Caste community and therefore, is entitled to the benefit of reservation given to him. We have carefully considered the material on record and find that the promotions given by the respondents to respondent No.5 as Head Typist grade Rs.425-700/-.

20. On a careful consideration of facts and circumstances discussed above, we find no merit in this application and dismiss the same leaving the parties to bear their own costs.

S. Pandey
Member-A

J. L. Verma
Member-J