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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A.No.656 of 1988

Nanhey Khan Applicant

Versus

Union of India & Others Respondents

Hon. Mr. Justice U.C. Srivastava, VC

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

(By Hon. Mr. Justice U.C. Srivastava, VC)

The applicant was class III employee of Central Railway at Jhansi. Vide order dated 16.11.84 restructuring in the cadre was ordered with effect from 1.1.84 and some posts of the lower cadre were upgraded to the higher posts. The applicant was working as Head Clerk and after restructuring he also became eligible to be promoted as OS.II/Chief Clerk. The Railway Administration issued an order on 21.2.85 that there were 34 posts lying to be filled up and 18 posts under the restructuring were available and therefore 52 posts were to be filled up.

2. From the Counter Affidavit it reveals that there were only 39 posts to be filled up. By another order dated 16.11.84 it was laid down that if the promotion to the higher post was due from one grade below, the modified selection as prescribed would be effected. Thus under this order even if the promotion was by selection, promotion would be made by scrutiny of service on the basis of seniority. ^{alone} It was also provided under clause 5(3) of the said order (Annexure-1) that vacancies existing on 1.1.84 and thus arising on that date under the restructuring order should be filled by the procedure indicated earlier in clause

5(1) referred to above. Thus these 52 posts were to be filled in by seniority alone. In the Counter Affidavit it has been denied and only 31 posts out of 39 were filled and not out of 52 posts. There is no denial that the applicant was not senior, ~~inspite~~ of the fact he was not promoted. Out of 21 posts remaining vacant opposite parties promoted only 8 persons in which six persons who were junior to the applicant were promoted and they belong to the category of SC/ST. A similar matter was challenged in the case of V.K. Sirothia in which this Tribunal held that reservation cannot be applied while filling the post on restructuring basis. On behalf of the respondents it has been pleaded that the applicant is not entitled to the said judgement of the Tribunal in view of the S.L.P. filed against the same and which is still pending decision in the Hon'ble Supreme Court. It has been further pleaded in the Counter Affidavit that the applicant was communicated adverse entry in the year 1983 and the same was communicated to him on 6.6.83. This adverse entry made him unsuitable for promotion and he could not get his promotion. The learned counsel for the applicant contended that this adverse entry was given to him in the late stage. He filed a representation. If the adverse entry could not have been taken into account in the matter of promotion of the applicant and the procedure of clause 5(3) and 5(1) would have been followed, his seniority would not have effected and certainly the applicant should have been given promotion in preference to the SC/ST candidates. The applicant

is liable to be promoted and for that some members of the SC/ST could have been detained for the purpose of promotion. In view of the above, the application is allowed and the respondents are directed to promote the applicant taking into consideration his seniority. May it be by removing or without removing any promatee. Let it be done within six weeks from the date of communication of this order. Parties shall bear their costs.

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Member (A)

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Vice Chairman

Dated the 14th March, 1991.

RKM