

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1470 of 1994

Allahabad this the 20th day of March 1997

Hon'ble Dr. R.K. Saxena, Member Judicial
Hon'ble Mr. D.S. Baweja, Member Admn.

1. P.N. Srivastava aged about 43 years, Guard, Varanasi Grade 'A', District Varanasi.
2. G.L. Srivastava aged about 43 years, Guard, Varanasi Grade 'A' District Varanasi.
3. R.B. Singh aged about 53 years, Guard, Varanasi Grade 'A' District Varanasi.
4. Shusil Kumar Gaur aged about 48 years S/o Sri M.M. Gaur, Guard 'B' District Varanasi.
5. Sunil Kumar Srivastava aged about 35 years S/o Late Sri S.D. Srivastava, Guard 'B' District Varanasi.
6. S.C. Tripathi aged about 48 years, Guard 'A', Gorakhpur.
7. Javed Akhtar Khan aged about 37 years Guard 'B' Mau.
8. Anil Kumar Singh aged about 33 years Guard 'B' District Varanasi.

APPLICANTS.

By Advocate Sri P.K. Sinha

Versus

1. Union of India through Secretary, Ministry of Railway, New Delhi.
2. General Manager, North Eastern Railway, Gorakhpur.
3. Divisional Railway Manager, N.E. Railway, Varanasi
4. Senior Divisional Personnel Officer, N.E. Railway, Varanasi.
5. Senior Divisional Operating Manager, N.E. Railway, Varanasi.
6. Sita Ram, Guard Special, N.E. Railway, Varanasi.
7. Lallan Prasad, Guard Special, N.E. Railway, Varanasi.
8. MMurari Lal, Guard Special, N.E. Railway, Varanasi

9. Sheo Pujan Ram, Guard Special, N.E. Railway, Varanasi.
10. Ram Bhawan Ram Guard 'A', N.E. Railway, Varanasi.
11. Bhal Chandra Ram, Guard 'A', N.E. Railway, Varanasi.
12. Basant Lal Guard 'A', N.E. Railway, Gorakhpur.
13. Ram Nath Ram, Guard 'A', N.E. Railway, Varanasi.

RESPONDENTS.

By Advocate Sri A.V. Srivastava(Official)
Sri Anand Kumar (private respondents)

O R D E R

By Hon'ble Dr. R.K. Saxena, Member 'J'

This O.A. has been filed jointly by eight applicants to challenge the order of promotion passed on 20/10/93(annexure-1). The directions sought are that besides quashing the promotion order annexure-1, the respondents be also directed not to make further promotion at all of Guards belonging to S.C. and S.T. and not to promote beyond the reservation quota of 15% and 7½% respectively.

2. The facts of the case are that the applicants as well as the respondents no.6 to 13 are Guards and are working under the respondents no.1 to 5. The contention of the applicant is that after ignoring the claim of the Guards belonging to general category, the promotion of respondents no. 6 to 13 ^{were} ~~was~~ made vide impugned order dated 20/10/93. It is further pleaded that not only that the promotion is made of the respondents no.6 to 13 in violation of various decisions of the Tribunal as well as the Supreme Court but also ^{made} ~~in~~ in

excess of the quota fixed for the S.C. and S.T. categories. It is also pointed out that the applicants are senior to the respondents no.6 to 13 but their seniority was ignored and promotion was denied. The claim of the applicants is that the promotion can be made keeping seniority-cum-suitability in view but in the present case, the merits of the Guards of general category, has altogether been ignored. Feeling aggrieved by the impugned order and also the orders of promotion which are going to be made in future, this O.A. has been preferred on the ground that the promotion could be made against the posts sanctioned and not against the vacancies existing. The other ground is that the promotion could not be made beyond the quota of 15% and 7½% of S.C. and S.T. candidates.

3. The respondents no.6 to 13 have contested the case and filed the counter-reply. It is pleaded that the O.A. was premature and liable to be dismissed because they did not make any representation and the alternate remedy has not been exhausted. They also point out that the applicants were in no way affected because the impugned order of promotion was made on the basis of normal seniority. It has been brought in the counter-reply that there was short-fall in the strength of S.C. and S.T. candidates. A chart of short fall has been given in para no.4 of counter.reply. According to this chart, a short fall of reserved category candidates in Guards(Goods) was 17 of S.C. and 10 of S.T., in Guards(Passenger), short fall was 16 in S.C. and 8 in S.T.; and in Guards(Mail/Express),

the short-fall was of 5 in S.C. and 3 in S.T. It is further averred that despite the promotions made through the impugned order dated 20/10/93, the short-fall continued. It is stated that the respondents no 6 to 9 were placed at much higher position in the seniority list annexure C.A.-1 and they were promoted according to the seniority list. The respondents no.10 to 13 were claimed to have been promoted as Guards (Mail) much after the applicant no.1 was promoted. It is also contended that the applicant no.2 to 8 are much junior to the respondents no.10 to 13 in the seniority list.

4. Challenging the averment of the applicants about the roaster system, it is stated that roaster is maintained to give effect to the policy which is envisaged in the Constitution about reservation in respect of S.C. and S.T. Because of this roaster-system, the merit of general candidate vis-a-vis the candidates of reserved category, gets affected and as such the said effect ^{not} cannot be said to have been brought ^{can be called} arbitrarily and ~~was~~ unconstitutional. It is asserted that filling of vacancies in the general category from amongst the candidates belonging to reserved category, was quite legal because the legality of such a situation was held by the Hon'ble Supreme Court in the case of R.K. Sabharwal. These respondents have also pointed out that the existing short-fall of the candidates of reserved category, indicates that the respondent no.1 to 5 are reluctant to fill up the vacancies of reserved category. In the end, it is also pleaded that the applicants have failed to establish

as to how their claim of promotion has been affected. The O.A. is said to be bad because the applicants are seeking quashment of promotion order dated 20/10/93 but without making all those persons who were promoted, as the respondents. It is, therefore, contended that the O.A. be dismissed.

5. The applicants have filed the supplementary affidavit whereby another order of promotion dated 16.12.1994 has been brought on record to show that the respondents no.1 to 5 are continuing with their efforts to promote the candidates of reserved ~~categories~~^{1 2} at the cost of the candidates of general category. Anyway, no rejoinder to the counter-reply which has been filed on behalf of the respondents no.6 to 13, has been filed by the applicants.

6. We have heard Sri P.K. Srivastava counsel for the applicants and Sri A.V. Srivastava counsel for ^{official} the ~~respondents~~. ~~no~~ Sri Anand Kumar counsel for the respondents no.6 to 13 also argued. We have also perused the record.

7.- The question for determination is whether the impugned order of promotion dated 20/10/93 can be challenged by the applicants when their promotion was not affected. We have gone through the various paras of the O.A. carefully and we did not find any averment to the effect that they were held senior to the respondents no.6 to 13, and because of the promotion of respondents no.6 to 13, their promotion was adversely effected. The seniority list has also been brought

On record as annexure-2 but it has not been shown what is the placement of the applicants on the one hand and the respondents no.6 to 13 on the other hand. The respondents should have filed the counter-reply and have categorically stated that the promotion of the applicants was in no way affected. Despite this assertion, the applicants chose not to file any rejoinder. It leads to the conclusion that the applicants were neither senior to the respondents no.6 to 6 to 13 nor were their promotion adversely affected because of the promotion order annexure-1. In this way, the O.A. does not remain maintainable.

8. It is also pointed out on behalf of the respondents that the applicants are seeking quashment of order of promotion annexure-1 but they have not made those persons who were promoted by virtue of the said order, as respondents. The contention of the respondents, therefore, is that if the impugned order of promotion is quashed, the persons so promoted, shall be adversely affected without having an opportunity of hearing. Nothing has been brought on record to controvert this assertion. We also hold the view that these persons who were promoted vide order dated 20/10/93 were necessary parties. A perusal of the impugned order speaks that 8 persons were made Guard (Mail), 8 persons were made Guard (Passenger) in the grade of Rs. 1400-2600, 24 persons were made Guard (Passenger) in the grade of Rs. 1350-2200 and 17 persons were made Guard (Passenger) in the grade of Rs. 1350-2200. Not to implead all these persons as necessary parties,

makes the O.A. bad and non-maintainable.

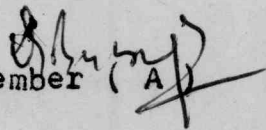
9. It appears after going through the pleas raised in the O.A. that it is a sort of public interest litigation. The applicants have filed this O.A. to protect the interest of the candidates belonging to general category of Guards. The public interest litigation is not permissible before the Tribunal. Only a person who feels aggrieved, may seek redress and his grievance should have a proximity with the orders so passed. Even^y_a those pleas which have been raised in the O.A., are taken into consideration, we find that the said controversy has been set at rest by two judgments given by the Hon'ble Supreme Court in "R.K. Sabharwal and Others Vs. State of Punjab and Others 1995 (2) S.C.C. 745" and "Union of India and Others Vs. Virpal Singh Chauhan etc. 1996(1) A.I.S.L.J. 65". The scrutiny of the controversy raised in the O.A. centres around the promotions being given to the reserved category of persons in excess of their quota and against vacancies. Another point which is raised^{is} that the promotion of a candidate belonging to S.C. or S.T. who has qualified as a general candidate, cannot be given the promotion if the reserved quota is full. All these points were considered by their Lordships in the two cases cited earlier. The judgment in R.K. Sabharwal's case was rendered on 10/2/95 and it was clarified in Virpal Singh Chauhan's case that the judgment shall be operative prospectively. Their Lordships held that the promotions cannot be made against the vacancies because the concept of vacancy has no relevance in

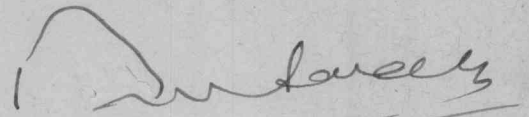
operating the percentage of reservation. It is again pointed out that if the roaster is completed in promotions, further promotions will be according to the percentage worked out on total posts in the cadre. Further observation is that S.C. and S.T. candidates selected on general quota, cannot be counted against the reserved points. Where the reserved candidates are already in more than prescribed percentage, only general candidates including S.C. and S.T. selected on general points may be considered for selection. Their Lordships ignored the point of excess promotion made of S.C. and S.T. candidates because the position before the Judgment in R.K. Sabharwal's case was given, was fluid. It was, therefore, held that the guide-lines which have been laid down, should be strictly followed w.e.f. 10/2/1995.

10. In the present case even if it is assumed for the sake of argument that the promotion to S.C. and S.T. candidates was given in excess of the reserved quota and the seniority of general candidates was affected, these points may be ignored because the impugned order of promotion was made on 20/10/93. Another order which has been brought on record by way of supplementary affidavit, was made on 16/12/94. The dates of both these orders are prior to the date of 10/2/1995 from which date the guide-lines laid down by their Lordships of Supreme Court, are to be followed. Thus, the points raised by the applicants in the O.A. are to be ignored. In other words, the applicants cannot seek any relief.

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11. In view of the discussion made above,
we come to the conclusion that there is no merit
in the O.A. and the same is dismissed. No order
as to costs.


Member (A)


Member (J)

/M.M./