

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1132 of 1994

Allahabad this the 14th day of Aug 1996

Hon'ble Dr. R.K. Saxena, Member (Judicial)
Hon'ble Mr. D.S. Baweja, Member (Administrative)

Vijai Kumar Saxena, Upgraded Guard Passenger,
North Eastern Railway, Izatnagar, Bareilly.

APPLICANT

By Advocate Sri T.S. Pandey

Vs.

1. Union of India through its Secretary Railways,
Rail Bhawan, Baroda House, New Delhi.
2. General Manager, North Eastern Railway, Gorakhpur.
3. Divisional Railway Manager, Izatnagar, Bareilly.
4. Senior Divisional Personnel Officer, Izatnagar,
Bareilly.
5. i) Smt. Sushila Devi W/o Late Suresh Chand
ii) Sunil Kumar A/a 22 years)
iii) Praveen Kumar A/a 20 years) both sons of
Late Suresh Chand
iv) Km. Aneeta A/a 18 years D/o Late Suresh Chand
v) Bhupendra Kumar A/a 16 years)
vi) Satyendra Singh A/a 14 years) Both minors through
their natural guardian Smt. Sushila Devi.
vii) Smt. Sunita D/o Late Suresh Chand.

All residents of Naya Nagar, Mathura.

RESPONDENTS.

By Advocate Sri A.V. Srivastava (for official respondents)

ORDER

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

The applicant has approached the Tribunal
under Section 19 of the Administrative Tribunals Act,
1985 to challenge the Seniority Lists dated 01.4.84

(Annexure - 3) of Guard Grade 'B', dated 01.4.93 (Annexure - 4) of Guard Mail/Express Grade and another list dated 01.4.93 (Annexure-5) of Guard Passenger Grade. The directions of restructuring the entire seniority list and not to make promotions of the employees related to S.C. and S.T. community, are also sought.

2. The facts of the case are that the applicant was initially appointed as Goods Clerk on 03.5.64 and was promoted as Guard Grade 'C' (now known as Guard Goods Train) on 01.7.1976. His contention is also to the effect that Late Suresh Chand, original respondent no.5 and was substituted by respondents no.5/1 to 5/7 because of his death, was initially appointed as Train Clerk on 04.2.1972. The said Suresh Chand was subsequently promoted as Guard grade 'C' (now grade Goods Train) on 24.1.1978. The respondent no.3 issued the seniority list of Guard grade 'C' (now Guard Goods Train) on 1.4.81(Annexure-1). In this list, the name of the applicant figured at serial no.89 while that of deceased Suresh Chand appeared at serial no.93. It is also averred that the respondents no.2 to 4 had promoted the deceased Suresh Chand as Guard grade 'B' (now Guard Passenger Train grade) on 27.1.93 vide annexure-2. The applicant on the other hand, being senior to Late Suresh Chand, was promoted as Guard grade 'B' (Guard Passenger Train grade) with effect from 01.7.94. The applicant had been contesting this anomalous situation by

approaching the respondents but, with no result.

3. The respondents no.1 to 4 published the seniority list of Guard grade 'B' (now Guard Passenger Train grade) dated 01.4.84 (Annexure - 3) in which the name of the applicant was shown at serial no.89 and that of Late Suresh Chand was shifted to serial no.61. Thus, the seniority list(annexure-3) is claimed to be illegally prepared and suffers from inherent defect. It is also contended that there were 25 posts of Guard Mail Express in Izatnagar division and there were 8 Guards belonging to S.C./S.T. community in the grade of Rs.1400-2600. The contention of the applicant is that the number of the Guards belonging to S.C./S.T. community is in excess to the prescribed percentage of 22½ fixed for the said community. In this way, the claim of the applicant is that the seniority list, had been prepared in violation of the law laid down by the various Courts, and giving accelerated promotions and placement in the seniority lists to the members of S.C./S.T. community, was also illegal. Hence, this O.A. challenging the seniority lists, is filed.

4. The respondent no.1 to 4 filed the counter reply/through Sri R.K. Parashar, Senior D.P.O. It has been averred that the existing channel of promotion of Guards is as follows:-

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|--------------------|-------------------|
| 1. Guard Goods | (Rs. 1200-2040) |
| 2. Guard Goods | (Rs. 1350-2200) |
| 3. Guard Passenger | (Rs. 1350-2200) |
| 4. Guard Passenger | (Rs. 1400-2600) |
| 5. Guard Express | (Rs. 1400-2600) |

5. It is further averred that in every channel , the vacancies for members of S.C./S.T. community are fixed at the rate of 15% and 7.5% respectively for their promotions. The respondents have come with the plea that the promotion which was given to Late Suresh Chand was in keeping this principle in view. Since the said respondent (Suresh Chand) was promoted earlier to the applicant, he was given seniority in the cadre as well. Accordingly the seniority lists have been justified.

6. Late Suresh Chand had also filed counter-reply contesting the claim of the applicant. He had justified the accelerated promotion and placement of himself in the seniority list over and above the applicant. The respondents, however, sought dismissal of the O.A.

7. Learned counsel Sri T.S. Pandey and Sri A.V. Srivastava appeared for the applicant and official respondents respectively. None appeared on behalf of the respondent no.5/1 to 5/7. We, therefore, proceeded ex parte against them. We have also perused the record.

8. The main question in this case is whether the members belonging to S.C./S.T. category, be given accelerated promotions, and if so, whether they also get accelerated seniority over and above the employees who are ^{of general category and} senior to them at the initial stage. The learned counsel for the parties agreed that this principle had been settled by their Lordships of

Supreme Court in the cases 'R.K. Sabharwal and Others Vs. State of Punjab and Others 1995(1) S.L.R. 791' and 'Union of India and Others Vs. Vir Pal Singh Chauhan 1996 (1) A.I.S.L.J. 65'.

The determination of the percentage of reservation quota has been dealt with by their Lordships of Supreme Court in Sabharwal's case, observing that it should be related to the population of the different communities. It appears that keeping this principle in view, the percentage of quota which is ofcourse not a point of dispute before us, was fixed for reservation. In this case, their Lordships had further observed that the reservation should be against the post or cadre and not against the vacancy. This Judgment was rendered on 10.2.95. The applicability of this principle, therefore, shall be prospective. This aspect was clarified by their Lordships in Vir Pal Singh Chauhan's case (Supra). Even if any reservation has been made against the vacancies prior to the date of judgment in Sabharwal's case, that situation will be required to be ignored. Their Lordships also expressed the view that if any promotion was made in excess of prescribed percentage, the same would be required to be ignored. It would be apt to quote the relevant portion of the judgment in Vir Pal Singh Chauhan's case. It runs;

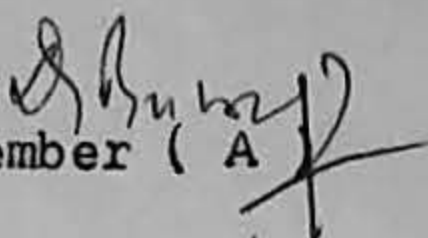
"It is not possible for us to say, on the material before us, how and why the said situation has come about. It may be partly because the rule now enunciated in R.K. Sabharwal, was not there and was not being followed. It may also be that such

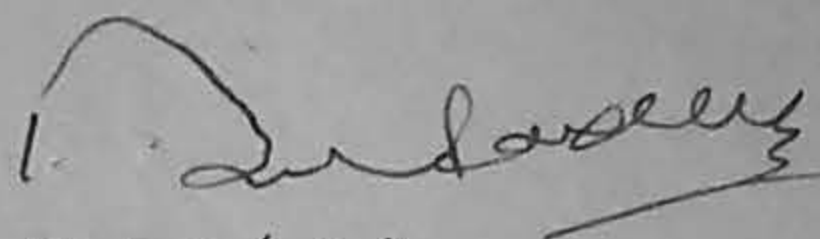
a result has been brought about by a combined operation of the factors mentioned in (i) and (ii) above. The fact remains that the situation assuming that it is what is described by the general candidates-cannot be rectified with retrospective effect now. The Constitution Bench in R.K. Sabharwal too has directed that the rule enunciated therein shall have only prospective operation. So far as the present appeals are concerned, it is sufficient to direct that the Railway authorities shall hereinafter follow Rules (i), (ii) and (iii) stated in para no.28 with effect from the date of judgment in R.K. Sabharwal i.e., February 10, 1995. *

9. The reading of the above extract of the Judgment makes the position clear about the promotions and placement of seniority made or done prior to 10-2-95. In view of these pronouncements one will have to sit contented to whatever was done earlier. It may be pointed out that in the case of Vir Pal Singh Chauhan's case, the dispute was about the accelerated promotion and accelerated seniority of the Railway Guards. The present case before us, is also related to the Railway Guards and the same dispute has been raised. In our view, the law laid down by their Lordships of Supreme Court in the case of R.K. Sabharwal and Vir Pal Singh Chauhan, shall totally be applicable to this case. The applicant in the present case has raised the question of

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accelerated promotions and seniority prior to 10.2.95. In view of two judgments referred to above, no relief can be given to the applicant. Thus, the O.A. stands dismissed. No order as to costs.


Member (A)


Member (J)

/M.M./