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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
~~XXXXXXXXXXXXXX~~
NEW DELHI

O.A. No. 474 of 1988
~~XXXXXX~~

DATE OF DECISION 3.10.1989

Ishwarlal N. Rupani & Anr. Petitioner

Shri B.B. Gogia Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Shri B.R. Kyada Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. G.S. Sharma Judicial Member

The Hon'ble Mr. M.M. Singh Administrative Member

- ✓ 1. Whether Reporters of local papers may be allowed to see the Judgement?
- ✗ 2. To be referred to the Reporter or not?
- ✗ 3. Whether their Lordships wish to see the fair copy of the Judgement?
- ✗ 4. Whether it needs to be circulated to other Benches of the Tribunal?

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1. Ishwarlal Nebhandas Rupani,
Opp. Block No. 100,
Dharam Nagar, Sabarmati,
Ahmedabad.

2. N.D. Shaikh,
Railway Quarter,
Mehsana.

.. Applicants

(Advocate- Mr. B.B. Gogia)

Versus

1. Union of India,
Through,
General Manager, W.Rly.,
Churchgate, Bombay.

2. Divisional Railway Manager,
W.Rly., Kothi Compound,
Rajkot.

3. Shri Balkishan Kagh Guard,
C/o. Station Supdt., W.R.,
Ahmedabad.

4. S.R. Jadav, Guard,
C/o. Station Supdt., W.R.,
Vijapur.

.. Respondents

(Advocate-Mr. B.R. Kyada)

CORAM : Hon'ble Mr. G.S. Sharma .. Judicial Member

Hon'ble Mr. M.M. Singh .. Administrative Member

O R A L - O R D E R

O.A. No. 474 of 88

3.10.1989.

Per : Hon'ble Mr. G.S. Sharma .. Judicial Member

In this original application under section 19 of the Administrative Tribunals Act, 1985, two applicants who are working as Guard 'B' re-designated as "Pass Guard" in the Western Railway have sought a declaration that the impugned order dt. 15.6.1988 (Annexure A-1) passed by the respondent No. 2 - D.R.M., Rajkot, promoting the respondents 3 and 4 as Mail/Express Guard in preference to the claim of the applicants on the basis of reservation, is null and void and the respondents be directed not to implement the said order.

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2. The case of the applicants is that the respondents 3 and 4 are juniors to them but ignoring ^{the} seniority of the applicant, the respondents 1 and 2 by passing the impugned order dt. 15.6.1988, promoted them to the next higher post of Mail/Express Guard on the basis of reservation roster against principle of law and the decisions of Allahabad High Court and various ^{Benches of this &} other Tribunals.

3. The case has been contested on behalf of the respondent No. 1 and 2 and their stand is that a Special Leave Petition is pending against Allahabad High Court's judgment in J.C. Malik & Ors. v/s. Union of India & Ors. (1978 SLJ 401), relied upon by the applicant and the said judgment is not final. The judgments of other benches of the Tribunal are not applicable to Rajkot Division and the promotions of respondents 3 and 4 have been made in accordance with the policy of reservation followed by the Railway administration and the applicants have no case to approach this Tribunal.

4. We have very carefully gone through the various submissions made before us in the light of the materials on record. There is no dispute about the fact that the judgment of Allahabad High Court in the case of J.C. Malik (supra) is not yet finalised but the Hon'ble Supreme Court did not stay its implementation ⁱⁿ appeal and when it was approached by the respondents for staying the implementation of the judgment, In S.L.P. 2017 of 1970, the Supreme Court had observed that the principles enunciated in the High Court judgment dealing with ^a some matters are to be followed till the petition is finally disposed of by it. It is,

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therefore, not correct on the part of the respondent; to say that the Allahabad High Court's judgment is not to be followed till the S.L.P. is decided. The principles of law as interpreted ^{and laid down} in that judgment are not only applicable to the parties to that case but they are applicable to all ^{the similar} ~~same~~ matters dealing with the question of promotion on the basis of reservation.

5. In Vir Pal Singh Chauhan v/s. Union of India & Ors. (ATR 1987(2) CAT 71) to which one of us was ^{by the Allahabad Bench of the Tribunal} a party, it was held that the reservations are to be made on the basis of post and not on the basis of ^{roster} vacancy and 40 point ^{reserved community} will become inoperative when the percentage of candidate is within prescribed limit. The promotion on the basis of roster can only be ^{turned} ~~turned~~ as fortuitous and not in the normal course and a person who was junior and got promoted to the next grade on the basis of queue breaking by virtue of the special provisions made in this regard cannot claim protection of seniority against his erstwhile senior who was waiting for his chance but could not be promoted because of the reservation. He should get back his seniority and be fixed in the proper place in the grade to which both of them now belong.

6. We are of the view that keeping ^{the} principles of law laid down in the said decision, the General Manager, Western Railway had issued an order on 12.2.1988 (Annexure A-2) stating that those S.C./S.T. employees who had being promoted due to reservation quota, cannot be promoted to compete ^{with} general candidates for further promotion. In this way, we find that the principle of law is well settled and there is no need to go into the question of law ~~at~~ this point any further.

7. The application is accordingly allowed and

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without passing a specific order for cancelling the promotions of the respondents 3 and 4, we direct the respondents No. 1 and 2 to examine the whole issue affecting the order dt. 15.6.1988, promoting the respondents 3 and 4 as C.T.I. ⁱⁿ light of the decision of the Hon'ble Allahabad High Court in J.C. Malik (Supra) and Allahabad Bench of the C.A.T. in the case of Vir Pal Singh Chauhan (supra), and pass the consequential order within a period of three months from the communication of this order. Parties are directed to bear their own costs, of this petition.

M M Li

(M M Singh)
Administrative Member

G S Sharma

(G S Sharma)
Judicial Member

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