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CAT/J/13

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO. 281 of 1990

~~T.A. NO.~~

DATE OF DECISION 11/7/1994

Shri D.G. Chaudhari & Anr. Petitioner

Shri S.V. Parmar Advocate for the Petitioner (s)

Versus

Union of India & Ors. Respondent

Shri N.S. Shevde Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. N.B. Patel

: Vice-Chairman

The Hon'ble Mr. V Radhakrishnan

: Member(A)

JUDGMENT

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

No

1. Mr. D.G. Chaudhari,
DCOS Office,
Western Railway,
Sabarmati.

2. Mr. H.N. Jadav,
DCOS Office,
Western Railway,
Sabarmati.

..... Applicants

Mr. S.V. Parmar

..... Advocate

Versus

1. DCOS,
Western Railway,
Sabarmati.

2. Mr. K.I. Pandya,
DCOS Office,
Western Railway,
Sabarmati.

..... Respondents

Mr. N.S. Shevde

..... Advocate.

J_U_D_G_M_E_N_T

IN

O.A. 281 of 1990

Date: 11/7/1994

Per Hon'ble

Shri N.B. Patel

Vice-Chairman

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The applicant No.1 is a member of a Scheduled Tribe and the applicant No.2 is a member of a Scheduled Caste and they seek a direction or order from this Tribunal quashing and setting aside the order, Annexure - A6 dated 11-5-1990, whereby the respondent No.2, Mr. K.I. Pandya, is promoted to the post of Office Superintendent and for a further direction that the applicants to be promoted to the said post w.e.f. 11-5-1990 and also for a direction that all benefits consequential upon the promotion of the applicants to the post of Office Superintendent be awarded to them.

.....3/-

2. Before proceeding further, some of the facts which are not in dispute may be set-out. The applicant No.1 joined the railway service as a clerk on 7-4-1965, the applicant No.2 on 17-11-1959 and the respondent No.2 on 15-10-1956. Thus, in the cadre or grade of clerks, the respondent No.2 was senior to both the applicants. However, the applicants No.1 and 2 got accelerated promotions to the higher posts of Senior Clerk, Head Clerk and Chief Clerk as their promotions to the said posts were against the posts reserved for Scheduled Tribe and Scheduled Caste persons. The applicant No.1 was promoted to the post of Chief Clerk on 1-6-85 and regularised on that post w.e.f. 20-6-86. The applicant No.2 was promoted to the said post on 27-11-86 and was regularised on that very date. The respondent No.2, Shri Pandya, though senior to the two applicants in the base cadre of clerk, was promoted to the post of Chief Clerk on 17-6-87 and was regularised w.e.f. 16-6-88. In other words, both the applicants had entered the cadre or grade of Chief Clerk earlier than the entry of the respondent No.2 in the said cadre or grade. The next promotion post above the post of Chief Clerk is the post of Office Superintendent. By the impugned order Annexure-A6 dated 11-5-90, the respondent No.2, Shri K.I. Pandya, is promoted as Office Superintendent while the applicants are not promoted to the said post.

3. Thus, the above order dated 11-5-90 by which the respondent No.2 is promoted to the post of Office Superintendent while not promoting either the applicant No.1 or the applicant No.2 to the said post, is challenged before us by the applicants. It is an un-disputed fact

that the post to which Shri Pandya is already promoted and for which the applicants or either of them stake a claim, is not a reserved post but is a general category post. In seeking promotion to the post of Office Superintendent, the applicants do not claim any benefit due to them on account of their being members of Scheduled Tribe or Caste. They claim the said post on the basis that both of them were senior to Shri Pandya in the immediately lower post of Chief Clerk and, therefore, Shri Pandya could not have been considered for promotion to the higher post of Office Superintendent in supersession of their claim. There is no dispute about the fact that the post of Office Superintendent is a non-selection post and the promotion is governed by seniority-cum suitability test. There is also no dispute about the fact that the applicants or either of them have not been promoted to the post of Office Superintendent only on the ground that they were not senior to Shri Pandya. The controversy in the case arises from the fact that while the applicants contend that the question of seniority in the cadre or post of Chief Clerk has to be determined on the basis of the entry of an incumbent into that cadre or grade irrespective of the question whether an incumbent in that grade had in the post got accelerated promotion against a reserved post, the contention of the respondents, including the respondent No.2 Shri Pandya, is that, after the applicants got accelerated promotion to the post of Chief Clerk on account of their being members of a Scheduled Caste or Scheduled Tribe, seniority in the grade or post of Chief Clerk has to be determined on the basis of the date of entry of the incumbents at the initial stage i.e. their ranking in the base of feeder cadre.

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4. As already stated, if the proposition, that if a member of Scheduled Tribe or Scheduled Caste gets accelerated promotion to a particular post on account of his being a member of a Scheduled Tribe or Scheduled Caste, he will not rank as senior to a general category candidate whom he might have superseded while getting promotion earlier were valid, the promotion of Mr. Pandya to the post of Office Superintendent by the impugned order will not be open to any challenge. However, if that proposition were not valid and if the correct position was that merely because a Scheduled Caste or a Scheduled Tribe incumbent gets early promotion against roster point, he will still rank as senior to the general category incumbent whom he might have superseded in the promotion cadre or post, the challenge posed by the applicants to the promotion of Mr. Pandya must succeed.

5. Therefore, the next question which arises for determination in the case is, whether the seniority of a Scheduled Caste or Scheduled Tribe candidate in a particular grade or post is to be fixed according to his date of entry into such grade or post, even though his promotion was due to reservation, or whether he would carry his original seniority even in the promotion post and would rank below the general category employee whom he might have superseded earlier on account of reservation policy. That question came up for consideration before a Full Bench of the Tribunal in the case of V. Lakshminarayanan Vs. U.O.I. and Ors. and a group of cases (O.A. 759 of 1987 and other cases) of the Hyderabad Bench of the Tribunal. The contention before the Full Bench was that a person

promotion if he is fully qualified otherwise, on the ground that he acquired posting or promotion on the basis of reservation quota. There is nothing like accelerated seniority or normal seniority in service jurisprudence".

7. Another Full Bench in O.A. No.854/90 and other connected cases of the Calcutta Bench of the Tribunal has held that the above view of the Hyderabad Bench is a final pronouncement on this point and not a mere interim pronouncement.

8. We are bound by the aforesaid view of the Full Bench and accordingly we hold that the applicants were senior to respondent No.2, Shri Pandya, in the grade or post of Chief Clerk which was the feeder post or grade for promotion to the post of office Superintendent. The fact that Shri Pandya was senior to both the applicants in the base grade or post of clerk to both the applicants, will not be a material factor in deciding the seniority of the applicants vis-a-vis Shri Pandya in the grade or post of Office Superintendent. As already stated, promotion to the post of Office Superintendent from the post of Chief Clerk is based on seniority-cum-suitability test and it is not the plea of the respondents that the applicants were not suitable for the post of Office Superintendent. As already stated, the only ground on which Shri Pandya is promoted to the post of Office Superintendent and neither of the applicants is promoted to that post is that, Shri Pandya was senior to both the applicants in the grade of Clerk. Shri Pandya is treated as senior to both the applicants in the grade or post of Chief Clerk only on the ground that both

promoted by virtue of reservation, must be treated permanently as a Scheduled Caste or Scheduled Tribe candidate and must be placed below the forward community senior candidates in the lower cadre whom he might have superseded on account of reservation policy. The Full Bench has held, "The argument of the applicants that on promotion of an employee belonging to S.C. and S.T. community, based on reservation, he should rank junior to general community employees in accordance with seniority in the lower feeder cadre is not supported by any principle or precedents".

6. The Full Bench has further held, "Normally the seniority should be fixed with reference to the date of selection whether an employee comes in service through the reservation quota or otherwise. That is to say, an earlier appointee shall be senior to a later entrant to a cadre. Once an employee is promoted against a vacancy on regular basis he should be considered as senior in that grade to all others who come later by promotion for all purposes." "The Supreme Court in Karamchand Vs. Haryana State Electricity Board (AIR 1989 SC 261) held that seniority of SC and ST employees will be reckoned from the date of their promotions to the grades and not from the date of their entry into grades from which they were promoted. From whatever source an employee had been recruited or promoted, he occupies a place in that post with the seniority normally available along with others irrespective of whether he got the benefit of reservation or otherwise and he cannot be later classified on the basis of his original appointment or promotion and denied further


the applicants were promoted to the grade or post of Chief Clerk against reserved quota. Following the decision of the Full Bench in the aforesaid cases of Hyderabad Bench, we must hold that the authorities were wrong in treating Shri Pandya as senior to the applicants in the grade of Chief Clerk. The challenge by the applicants to the promotion of Shri Pandya to the post of Office Superintendent in supersession of their claim must, therefore, be upheld.


9. It was stated at the bar that Shri Pandya has retired from service on 31-10-91 but, before that, the applicant No.2 was promoted to the post of Office Superintendent on 1-8-90. Among the applicants, the applicant No.1 is senior to the applicant No.2 and, therefore, legally speaking the applicant No.1 ought to have been promoted to the post of Office Superintendent as the post was not a reserved post.

10. In the result, therefore, the application is allowed and the respondent authorities are directed to promote the applicant No.1 to the post of Office Superintendent w.e.f. 11-5-90 and give him all consequential benefits including difference in wages etc. So far as the applicant No.2 is concerned, it is directed that his claim for promotion to the post of Office Superintendent must be considered when the next vacancy in the post of Office Superintendent arose, after the promotion of the applicant No.1 to the said post, w.e.f. 11-5-90 and the applicant No.2 must be given promotion to the post of Office Superintendent

from such date with all consequential benefits including difference in the wages. The respondent authorities are directed to comply with these directions, including payment of difference of wages to the applicant No.1 or both the applicants, as the case may be, within a period of 8 weeks from the date of the receipt of a copy of this order. The promotion of the applicants ^{or} ~~either~~ of them and award of consequential benefits, if any, to them pursuant to these directions will be subject to the result of the decision of the Supreme Court involving the ^{same} ~~said~~ question as is involved in the present case as it is stated that such question is pending before the Supreme Court.

No order as to costs.


(V. Radhakrishnan)
Member (A)


(N.B. Patel)
Vice-Chairman