

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

**OA/739/93 With
M.A 152 OF 94**

Date of Decision: 21-09-99

A.J. Makwana & Ors. :Petitioner (s)

Mr . B.B. Gogia :Advocate for the petitioner(s)

Versus

Union of India & Ors. : Respondent(s)

Mr.N.S. Shevde & Mr. M.K. Paul for R-3 :Advocate for the Respondent(s)

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The Hon'ble Mr. V. Ramakrishnan : Vice Chairman

The Hon'ble Mr. P.C. Kannan : Member (J)

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? ~

- (1) Shri. Abhesingh Jiwajibhai Makwana,
Aged : 58 years, Occ. : Service,
Add :- Working as Office Superintendent,
Western Railway, Rajkot.
- (2) Shri. Tolaram Ramandas Vangani,
Aged : 58 years, Occ. Service,
Add : Working as Office Superintendent,
W.Rly., Rajkot.
- (3) Shri. Shantilal Amratlal Shah,
Aged : 54 years, Occ : Service,
Add : Working as Chief Clerk,
W.Rly., Kothi Compound,
Rajkot.
- (4) Shri. Jaswant Jesinghbhai Rathod,
Aged : 40 years, Occ : Service,
Add : Working as Chief Clerk,
W.Rly., Kothi Compound,
Rajkot.
- (5) Shri. Jayendra P. Adhiya,
Aged : 40 years, Occ : Service,
Add : Working as Chief Clerk,
W.Rly., Kothi Compound,
Rajkot.
- (6) Shri. Hilaibin Sayeedbhai Yamni,
Aged : 49 years, Occ : Service,
Add : Working as Chief Clerk,
W.Rly., Kothi Compound,
Rajkot.

- Applicants -

(Advocate : Mr. B.B. Gogia)

Versus

1. Union of India,
Owing and representing, W.Rly.,
Through : General Manager,
W.Rly., Churchgate,
Mumbai.
2. The Divisional Railway Manager,
W.Rly., Kothi Compound,
Rajkot.

(Advocate : Mr. N.S. Shevde &
Mr. M.K. Paul for R - 3)

- Respondents -

ORAL ORDER
O.A 739 OF 93
WITH
M.A 152 OF 94

Per Hon'ble Shri. V. Ramakrishnan : Vice Chairman.

Date : 21.09.99

We have heard Mr. Gogia and Mr. Shevde and have gone through the materials on record.

2. The applicants working as Office superintendent, Chief Clerk etc., in the office of the DRM, Rajkot., have approached the Tribunal seeking a direction that they should not be reverted from the higher post to accommodate SC / ST employees in excess of their quota meant for such reservation category. The Tribunal by its order dated 30.12.93 directed the maintenance of the status-quo. However, following the

decision of the full Bench of the Tribunal in O.A 854 of 90, the interim order was vacated by its order dated 17.05.94.

3. The applicants who belong to the General category have contended that vacancies available from time to time to the reserved category should be filled up in accordance with the 40 ^{point} roster scheme subject to the condition that the members of SC / ST do not exceed 15 and 7 ½ percent respectively at any given point of time. In other words, the reservation is to be reckoned to the total cadre strength and not to the recruitment year. This was on the basis of the directions of the Tribunal in Malik's case (O.A 514 of 93). The applicant had referred to the decision of the Full Bench of this Tribunal which met in Hyderabad and had decided as under :-

" 49. Under these circumstances though we have discussed the contentions urged before us by the parties based on the arguments advanced by them, we accept the request of the learned Additional Solicitor General, Shri. V. R. Reddy, who appeared on behalf of the Railway and refrain from expressing our final conclusion on the issue arising in this case, which shall await the decision of the Supreme Court in Malik's case.

50. However, pending decisions of the Supreme Court in the Malik's case, Tribunals are bound to pass interim orders on applications challenging reservation on the basis of 40 point roster and promotion of SC and ST candidates consistent with the interim order already passed by the Supreme Court in Malik's case dated 29.09.84 as extracted above. We approve the interim order passed by the Division Bench in this case in the reference order dated 16th May 1988 and having been passed in terms of the Interim Order passed by the Supreme Court in Malik's case. We also direct that in similar case the Tribunal shall pass similar order taking into account the directions of the Supreme Court. If the Tribunal has already passed any order not in conformity with the order of Supreme Court in advertantly such order may be recalled and fresh orders passed in terms of order of the Supreme Court, on that conflicting directions and interim orders by various Tribunals can be avoided.

24.

51. In the result all cases heard by this Bench are ordered to be posted before the Division Bench immediately after the decision of the Supreme Court of final disposal following the directions and the final decision of the Supreme Court in Malik's case.

52. In this view of the matter we are not finally disposing of the case. But, the Registry may issue copy of the order to the parties for information."

The Full Bench had taken a view that the seniority should be fixed with reference to the date of selection whether an employee comes in service through the reservation quota or otherwise and that the earlier appointee shall be senior to the later entrant in the cadre. They further held that he should be considered as senior in that grade to all others who came later. In other words, the Full Bench did not differentiate between promotion in the normal course and accelerated promotions available to members of SC / ST on the basis of reserved point and held that if the reserved category employee is promoted on the basis of roster point and has been given accelerated promotion, he would rank senior to other general category candidates who joined the higher grade from later date even though they were senior to him in basic grade.

4. We now find that the law in this issue has been settled by the direction of the Supreme Court in a catena decisions particularly in Virpal Singh Chauhan, Ajit Singh Juneja etc., The Supreme Court has clearly laid down that if a reserved category candidate gets accelerated promotion on the basis of the roster point, he would not be entitled to be ranked senior on the basis of date of entry and his seniors in the lower grade when promoted to the higher grade will rank senior to him so long as he has not already moved over to the next higher grade. This position has been

referred
referred by the Supreme Court in a recent judgment consisting of 5 Hon'ble Judges. ✓

5. In the light of this position, it would be clear that the action of the Railway Administration in determining seniority of the persons getting accelerated promotion on the basis of their entry in the grade cannot be sustained and they have to follow the law laid down by the Supreme Court in this regard in Virpal Singh Chauhan's case etc., referred to earlier. We accordingly direct the respondents to take further action to determine the seniority of the applicant vis-a vis others as per the law laid down by the Supreme Court and after determining seniority, they shall also review the promotions and extend to the applicant whatever benefits are admissible on that basis.

6. With the above directions, the O.A is finally disposed of with no orders as to costs.

P.C. Kannan
(P.C. Kannan)
Member (J)

V. Ramakrishnan
(V. Ramakrishnan)
Vice Chairman

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