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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO : 7 of 1989

Date of Decision : 24.12.1991.

SOMANATH BEHERA AND OTHERS : Applicants

Versus

UNION OF INDIA AND OTHERS : Respondents

For the Applicants : Mr. M. M. Basu, Advocate.

For the Respondents : M/s B. Pal and D. N. Ghosh,
Sr. Standing Counsel
(Railway Administration)

C O R A M :

THE HON'BLE MR. K. P. ACHARYA, VICE-CHAIRMAN.

THE HON'BLE MR. J. C. ROY, MEMBER (ADMN.).

1. Whether reporters of local papers may be allowed to see the judgement? *yes*
2. To be referred to the reporters or not? *yes*
3. Whether Their Lordships wish to see the fair copy of the judgement? *NO*

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CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

ORIGINAL APPLICATION NO.7 of 1989

Date of decision : December 24 , 1991.

SOMANATH BEHERA AND ORS. : Applicants

Versus

UNION OF INDIA & ORS. : Respondents

For the applicants : Mr.M.M.Basu, Advocate.

For the Respondents : M/s B.Pal, D.N.Ghosh,
Senior Standing Counsel
(Railway Administration)

CORAM :

THE HON'BLE MR.K.P.ACHARYA, VICE-CHAIRMAN

A N D

THE HON'BLE MR.J.C.ROY, MEMBER (ADMN.)

JUDGEMENT

J.C.ROY, MEMBER (A)

In this application, three applicants all working as Driver Grade-A in the Khurda Division of South Eastern Railway were permitted to take out a common application challenging the order dated 4.1.1989, passed by the Divisional Personnel Officer, Khurda Road (annexure-2), by which ten Drivers Grade-A were promoted to the next higher post of Mail and Express Driver purely on ad-hoc basis.

2. The facts required for understanding the dispute in question are that all the three applicants and the ten persons who were given ad-hoc promotion by the impugned order at annexure-2 are Drivers Grade-A, who are also called Passenger Drivers. Their pay

scale is Rs.1600-2660. The next promotion is to the post of Special Grade Driver, otherwise known as Driver Mail and Express Trains in the pay scale of Rs.1640-2900. The promotion from Grade-A Driver to a Special Grade Driver is made on the basis of seniority, subject to the elimination of unfit. The case of the applicants is that according to the gradation list as on 30.5.1988, the applicants are senior to three Drivers whose names appear at serial nos. 8, 9 and 10 respectively, who got ad-hoc promotion by the order at Annexure-2. All these three candidates belong to the reserved community, two namely, P.Bhagabati Rao and L.Sethi at serial nos. 8 and 10 (Annexure-2) belonging to scheduled caste and A.Murty at serial no.9 belonging to S.T. community. Their second contention is that K.P. Biswas, a scheduled caste (SC) candidate appearing at serial no.1 of the impugned order, did not belong to the cadre of Driver Grade-A, as his name does not appear in the seniority list at Annexure-1. But, the main contention of the applicants is that out of the ten vacancies four were treated as being reserved for the reserved community, as the first candidate, K.P.Biswas, is also a scheduled caste candidate. Their argument is that in the Khurda Road Division, there are altogether 23 posts as Special Grade Driver and out of these 23 posts, 13 persons belonging to SC and ST community are already working as Special Grade Drivers. Based on the total strength of 23 posts, the applicants point out, that the total number of posts earmarked for reserved community candidates could have been at best 5 posts. Therefore, there has also been excess representation of the reserved community in the promotional posts. They say further promotion, as given in Annexure-2, leaves no room for reservation for the SC and ST candidates. According to them, the impugned order at Annexure-2 is in violation of the 40-Point Roster prescribed for such promotion. They have, therefore, prayed for passing a direction to the Railway authorities to give promotion to candidates on seniority-cum-fitness basis without earmarking any further posts for SC and ST candidates.

3. On the side of the Railways, the case was contested by filing a written reply. The main argument in the reply is that the Drivers

including Special Grade Drivers are a zonal cadre. At the relevant time, 10 vacancies of Special Grade Driver occurred due to retirement death, etc., and the S.E.Railway Headquarters could not provide replacement by posting regularly promoted hands. In the exigency of service and due to the compulsion of the Railway operation, the Divisional Authorities decided to fill up 10 posts purely on ad-hoc basis. In effecting this ad-hoc promotion, they followed the 40-Point Roster. Since in the said Roster there are three reserved posts between points 1 to 10, 2 for SC and 1 for ST, the persons appearing at serial nos. 8, 9 and 10 in the impugned order at Annexure-2, were promoted in preference to their seniors belonging to the unreserved community. They also stated that K.P.Biswas is SC, but he was promoted at serial no.1 because he was the senior-most Grade-A Driver who had qualified for promotion over all others. So he was promoted against an unreserved post. Thus, although according to the 40-Point Roster for filling up the first 10 points, 7 posts could have gone to the unreserved candidates, the senior-most one (K.P.Biswas), having been promoted by dint of his seniority, no violation of the 40-Point Roster was done. In support of this, they refer to the Railway Board's circular No.76-E(SCT)15/6 dated 21.2.1976 in which it was stated that reservation quota prescribed for SC and ST is the minimum and not the maximum and SC/ST person appointed against an un-reserved quota, cannot be adjusted against subsequent reservation point. In the reply, it has also been pointed out that if in giving the ad-hoc promotion on the Divisional basis the 40-Point Roster was not followed, none of the three applicants would have benefitted because according to the Divisional Seniority List of Drivers, Grade-A, which has been furnished at Annexure-I by the applicants, the names of the applicants appear at serial nos. 29, 33 and 66 respectively. Since none of them are within the first 10 seniormost candidates, they could not have been given the ad-hoc promotion even on local basis. The Railway, therefore, have argued that the petitioners have no case.

4. We have heard Mr.M.M.Basu, 1d.counsel, appearing for the applicants and Mr.B.Pal, 1d.Sr.Standing Counsel, for the railway administration. Mr.Basu's main argument was that the reservation for SC and ST has to be done with reference to the number of posts and not with reference to the vacancies sought to be filled up. He relied heavily on the judgement of this Bench delivered on 29.1.1991 in T/A 77 of 1987 (Bhajaman Naik and Ors. vs. Union of India). In that the subject matter of dispute was promotion from the cadre of Head Clerk to the higher post. According to the pleadings, the Clerical Cadre including the Head Clerk and the higher post were Divisional Cadre. In that case, this Bench held that since reservation of SC and ST candidates are required to the extent of 15% and $7\frac{1}{2}\%$ and no reservation in filling up of vacancy in a particular year can be done in excess of 50% of the total number of vacancies, excess reservation was not permitted. In doing that, they followed a judgement of the Madhya Pradesh High Court reported in 1986 (1) SLR 511. On the other hand, Mr.Pal pointed out that dispute here is regarding a Zonal Cadre. Although a Divisional Gradation List of Drivers is maintained and circulated, regular appointment to these posts including promotion are made on the basis of the seniority maintained at the Zonal Headquarters. In this case, all that has happened is that the impugned order was passed only as an ad-hoc measure for emergent filling up of 10 vacancies of Special Grade Drivers. Since the zonal position is not known for making the ad-hoc promotion, the Divisional Authority followed the special 40-Point Roster. The impugned order makes this point very clear and none of the ad-hoc promotees were entitled to seniority for regularisation or confirmation in the grade based on that local promotion. Mr.Pal also argued that the applicants' plea that there has been excessive reservation, is misconceived because

for deciding this question, what is necessary is to see whether the total number of posts in the entire South-Eastern Railway of special Grade Drivers has got more than $22\frac{1}{2}\%$ of officials for SC and ST. Mr.Pal also argued that during all the years when Roster is followed for filling up of posts and Roster was introduced in 1956, the basis had been the vacancies to be filled up and not the number of posts held by the reserved candidates in the entire cadre. Mr.Basu strenuously argued that the 40-Point Roster is to be followed for filling up of vacancies only in the case of direct recruitment or promotion on the basis of selection. Since the promotion in dispute is promotion on the basis of seniority, the impugned order has violated the Railway Board's circular. The other argument which was pressed by Mr.Basu was that Mr.K.P.Biswas's name has been included although he was not in the divisional gradation list of Drivers as on 30.5.1988 circulated by the respondents. On behalf of the respondents, the entire gradation list was filed as also some documents to show the cadre strength of the Drivers Grade-I and Special Grade Drivers in the different divisions of S.E.Railways.

5. After carefully going through the materials on record and the arguments of the rival counsel, we find that the fate of this case hinges preliminarily on the question whether in the instant case, the applicants have been able to prove that there has been excess reservation for SC and ST in the cadre of Special Grade Drivers. As already stated, there is no dispute that this cadre is a zonal one and the divisional gradation list is circulated to show the actual position of the vacancies and seniority within the division. Amongst other, the purpose of this gradation list is to make an ad-hoc promotion should exigencies of service so require. Therefore, we find that the challenge of the competency of the ad-hoc promotion at Annexure-2 by the Divisional Superintendent cannot succeed on the pleading that at the relevant time, in the Division, more than $22\frac{1}{2}\%$ posts

of Special Grade Drivers were being held by the candidates of reserved community. The Divisional authorities had to make an ad-hoc arrangement for urgently filling up the Special Grade Drivers on an ad-hoc basis. In filling up these vacancies, they have followed the divisional seniority list because these are the Grade-A Drivers who are **available** in the Divisions. They have also followed the order in the divisional gradation list except in the cases of Bhagabati Ray (SC), A.N.Murty (ST) and L.Sethi (SC). We are unable to accept the arguments of Mr.Basu that the reservation should be with reference to the total numbers of posts in a cadre and not with reference to the vacancies arising from time to time. The Railway Board's circulars reserving certain point for SC, ST and Anglo Indian candidates beginning from 1956 speak of vacancies. The various pronouncement of Hon'ble Supreme Court on the subject of reservation of vacancies and its carry forward also always speaks of the total number of vacancies. It would be enough for our purpose if we quote the cases of T.Debdasi vs. Union of India reported in AIR 1964 SC 179, Arati Raychaudhury vs. Union of India reported in 1974(1) SCC 87 and Comptroller and Auditor General vs. K.S.Jagannathan reported in 1986 (2) SCC 676. Article 16(4) of the Constitution of India also runs as follows :

"Nothing in this article shall prevent the State from making any provision for the reservation of appointments and posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in services under the State". (emphasis added)

Mr.Basu's various argument based on IREM and SC and ST Manual quoted in isolation failed to persuade us that the 40-Point Roster was prescribed with reference to the total number of posts and not with reference to the **vacancies**, does not convince us. Therefore, the reservation of 3 vacancies out of 10 for SC and ST in the impugned order does not vitiate the order.

6. Regarding K.P.Biswas, we find from the complete gradation list filed by Mr.Pal that his name was not included in the gradation list as on 30.5.1988 of Passenger Drivers. However, the railway respondents have stated that Shri Biswas was senior to all the applicants and was the seniormost among the Grade-A

Drivers in their reply, which has not been disputed by respondents. The impugned order was passed on 4.1.1988 and the gradation list at Annexure - I shows the position as on 30.5.1988. We have no other alternative but to accept the unchallenged statement of the Railway authorities that K.P.Biswas was seniormost Grade-A Driver in Khurda Division. Given this position, the question arises that when K.P.Biswas was promoted on ad-hoc basis, should he necessarily take a reserved vacancy or not. On this point, Mr.Pal draws our attention to the Railway Board's Circular No.76-E(SCT)/15/6 dated 21.2.1976 in which it is clearly stated that the prescribed quota reserved for SC and ST is the minimum and not the maximum. This circular has not been challenged and struck down by any competent Court of Law. In this view of the matter, we find no infirmity in treating the ad-hoc promotion of K.P.Biswas against an unreserved point and securing further reservation according to the roster point for juniors who otherwise would not have been eligible. After all the reservation is for extending additional benefit to the candidates of reserved community. Therefore, we find no infirmity or illegality in the ad-hoc promotion ordered in Annexure-2. But an ad-hoc promotion should be for a limited period which normally should not exceed one year. From the reply filed by the Railways in February, 1991, there is no mention that regular promotion has since been made on zonal basis and the stop-gap arrangement ordered in Annexure-2 has since been replaced. In our opinion, this is an unfortunate situation. It is necessary that the respondents fill up the vacancies of Khurda Road Division, on permanent basis, thus bringing the stop-gap arrangement order in January, 1988, to an end.

7. In the result, we find no infirmity in the ad-hoc promotion ordered in Annexure-2. We also find that the applicants claim that promotions be given only upto 22½% of the posts to SC and ST candidates, is not maintainable. But we find that the ad-hoc arrangement ordered in Annexure-2 has been continuing for almost three years. This is very undesirable. We, therefore, direct the respondents to fill up the vacancies of Mail/Express Drivers in Khurda Road

Division on a regular basis within a period of six months from the date of the order. Annexure-2 is allowed to stand till the expiry of that date.

8. The petition is thus disposed of leaving the parties to bear their own costs.

Leach 24-12-91
Vice-Chairman

Member (Administrative)

