

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

OA 1080 of 1996.

Present :

Hon'ble Dr. B.C.Sarma, Member (A)

Hon'ble Mr. D. Purkayastha, Member (J)

1. S.K.RAKSHIT ;
2. K. K. PAKHIRA ;
3. DALIA BISWAS ;
4. GOURI SENGUPTA ;
5. RITA ADHIKARI ;
6. SARAT CHANDRA KARMAKAR ;
7. NAMITA SINHA ;
8. MANJU ROY ;
9. SWAPAN KUMAR MUKHERJEE ;
10. PUSPENDU KUMAR BOSE ;
11. TARAKESWAR SAHA ;
12. KAJAL SAHA ;
13. ABANI BHUSAN ACHARJEE ;
14. ATANU CHATTAPADHYA ;
15. SUMITA MUKHERJEE ;
16. PROSANTO SARKAR ;
17. PURNIMA CHOWDHURY ;
18. ASLAM AHMED ;
19. K.K.V.B. NAGAMONIA ;
20. MANJUSHREE SEN ;

... Applicants.

Vs.

1. Union of India, through the General Manager, Eastern Rly., 17, N.S.Road, Fairlie Place, Calcutta - 1.
2. Chief Personnel Officer, Eastern Rly., Fairlie Place, Calcutta - 1.
3. Chairman, Railway Board, Rail Bhawan, New Delhi.
4. Sri Ashoke Sardar (SC), Head Clerk, in the office of the General Manager, E.Rly., Central Registry Office, 17, NS Road, Calcutta-1.

..... Respondents.



For applicant : Mr. B.C.Sinha, Counsel.
Mr. P.C.Das, Counsel.

For respondents : Ms. U. Sanyal, Counsel.

Heard on : 7.4.97 :: Ordered on : 7.4.97.

ORDER

B.C.Sarma, AM

The dispute raised in this application is about the impugned notice dated 31.10.94 (annexure-B) issued by the respondents regarding holding of the selection for filling up the post of OS Gr.11 in the scale of Rs.1600-2600/-. The applicants contend that in the basic grade, they are senior to the respondent No.4, Shri Ashoke Sardar, who belongs to Scheduled Caste community. It is the specific averment of the applicants that on the basis of accelerated promotion, which was given to said Shri Sardar to the post of Head Clerk, which is the feeder grade for the purpose of filling up the post of OS Gr.11, the respondents have sought to call him for necessary test as per the said notice. The applicants aver that this decision is not sustainable in the eye of law and hence, they have prayed for the relief that the impugned notice dated 31.10.94 and 14.6.95 (annexure-B and C) be quashed and set aside and the respondents be directed to take appropriate action as per law.

2. The case has been resisted by the respondents by filing a reply. The stand taken by them has been that the respondent No.4 is the seniormost candidate on the basis of his date of entry in the grade of Head Clerk, which is the basis of the grade seniority and the said respondent has got accelerated promotion in the post of Head Clerk as he belonged to the Scheduled Caste community. They have prayed for dismissal of the application on the ground that it is devoid of merit. As directed, a copy of the application has been served by the applicants on the private respondents No.4, neither private respondent No.4 nor any one on his behalf has



entered appearance.

3. During hearing, Mr. B.C.Sinha, ld. counsel for the applicants, invited our attention to the decision of this Bench passed on 11.7.96 in O.A. 93 of 1994 (Mrinal Kanti Roy Vs. Union of India & Ors.). We have perused the said judgement.

4. The basic issue to be adjudicated in this case is whether the respondents are entitled to fill up the vacancy occurring in the grade of OS-11 on the basis of seniority earned by the Scheduled Caste candidate, who is respondent No.4, by virtue of accelerated seniority or such post should be filled up by calling candidates on the basis of grade seniority. This issue has now been settled and two judgements have been passed by the Hon'ble Apex Court in the case of Virpal Singh Chauhan Vs. Union of India & Ors, reported in 1995(5) SLR 400 and in the case of R.K.Sabharwal Vs. Union of India & Ors, reported in 1995(1) SCSLJ 330. The judgements took into effect from 10.2.95. However, the impugned notice, at least, which is at annexure-B to the application was issued before Sabharwal case. The issue regarding pre-Sabharwal position was discussed in the case of Mrinal kanti Roy case and it has been held unambiguously that the decision rendered in Kameshwar Sharma case, reported in 1990(12) ATC 26 by the Patna Bench of this Tribunal will prevail. Consequently, the basic grade seniority and not the grade seniority ~~that~~ shall be considered for the purpose of filling up of vacancies in the promotional post. Relying the said judgement delivered in Mrinal kanti Roy case, we have no hesitation to hold that in this case the respondents are bound to follow the decision rendered in Kameshwar Sharma case and the decision is the basic grade seniority will have to be considered by them for the purpose of calling candidate to fill up the vacancy of OS Gr.11, which has not been done by the respondents.

5. In view of the above, the application succeeds. the impugned notices as set out in annexure-B and C to the

application are hereby quashed and set aside. The respondents are directed to take appropriate action as per law. No order is passed as regards costs.



(D. Purkayastha)

MEMBER(J)

pkb



(B.C. Sarma)

MEMBER(A)