

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No.1131 of 1996

Present : Hon'ble Mr. Justice R. N. Ray, Vice-Chairman

Hon'ble Mr. B.P. Singh, Administrative Member

1. Anindya Gupta, S/o Sri C.L. Gupta,
working for gain as O.S. Gr.II, C.C.
M's Office, S.E. Rly, Strand Road,
Calcutta-1, now residing at 10/b,
Gopal Banerjee Road, P.O. Bowanipur,
Calcutta-26

2. Avijit Mukherjee, S/o Sri Gopal
Mukherjee, working for gain as O.S. GR.
II, C.C.M's Office S.E. Rly., Strand
Rd., Calcutta-1, now residing at 30-A,
Arya Samity Road, P.S. Behala, Calcutta

.... Applicants

VS

1. Union of India, service through
General Manager, S.E. Railway, Garden
Reach, Calcutta-43

2. Chief Personnel Officer, S.E. Rly.
Garden Reach, Calcutta-43

3. Chief Commercial Manager, S.E.
Railway, Strand Road, Calcutta-1

... Respondents

For the Applicant : Mr. B. C. Sinha, counsel

For the Respondents: Mr. S. R. Kar, counsel

Heard on 20.2.2001 : : Date of order: 20-03-2001

O R D E R

R. N. Ray, VC

This O.A. has been filed by the applicants praying for a direction upon the respondents to set aside and quash the impugned notice dated 29.8.96 (Annexure 'A/1') and also for a direction to prepare a list of regular SC/ST candidates (not by accelerated promotion) along with the list of UR candidates ^{taking} _{making} ² 'inter se' seniority, circulate the same and thereafter call the eligible candidates.

2. The material facts for decision of this case may be briefly stated. On or about 29.8.96, the C.P.O. South Eastern Railway issued a notice calling for seven candidates for filling

up seven vacancies in the post of O.S. Grade I in the scale of Rs. 2000-3200/- . The persons called to appear at the suitability test were according to their position in the existing seniority list as per Annexure 'R/2' to the reply. In this seniority list there are 18 persons and the first seven persons have been called to appear at the suitability test, out of which three are Scheduled Caste candidates. The applicants' positions are at Sl.No.17 and 18 of the seniority list.

3. The main grievance of the applicants is that even though the quota for SC/ST candidates for a total cadre strength of 30 posts of O.S. Grade I has already been achieved, the respondents have called additional S/C candidates as per the existing seniority list. According to the applicants, the seniority list is not in order and that it has not been recasted after the decision of the Hon'ble Supreme Court in the case of R.K. Sabharwal and others vs. State of Punjab and others, reported in 1995(2) SCC 745. According to them, had the seniority list been properly drafted and since the quotas of S/C and S/T have already been achieved, the remaining posts have to be filled up by the general candidates and in that event they would have been called for suitability test and they would have been selected for the post of OS, Gr.I.

4. An interim order was issued by this Tribunal on 12.9.1996 restraining the respondents from proceeding further with the aforesaid impugned notification dated 29.8.1996.

5. The respondents have filed a reply in which they have admitted that the quota for SC/ST candidates in the Cadre of O.S. Grade I has already been achieved and not only that some SC/ST candidates have already been promoted earlier in excess of quota. According to the respondents, the persons called to the suitability test were the seniormost as per the existing seniority list and therefore, there was no irregularity in the action of the respondents.

6. We have heard the learned counsel of both the parties and have gone through the documents produced. The learned counsel for the respondents have also filed a written arguments annexing some judgments in support of his contention.

7. We have given our anxious consideration to the facts of the case as also to the submissions of both the parties. It is the admitted position that the total cadre strength of O.S. Grade I is 30. The respondents have admitted that the quotas for S/C and S/T candidates have already been achieved and that five S/C candidates are holding the position of O.S. Grade I in excess of their quota. According to the respondents, these promotions were given prior to the decision of the R. K. Sabharwal (Supra) case and therefore, their positions cannot be disturbed as the decision in R. K. Sabharwal case will be effective prospectively from 10.2.95. He has also contended that the post of O.S. Grade I is a non-selection post and as per rules selection criteria is seniority-cum-fitness. Accordingly, seven persons i.e., equal to the number of vacancies, have been called according to their seniority. It is further contended that as per this seniority list the positions of the applicants are at Sl.Nos. 17 and 18. Therefore, they have no case for consideration of their promotion as they are much below in the seniority list.

8. The seniority list in question (Annexure 'R/2') is prepared as on 9.6.96 i.e., after the decision of the R. K. Sabharwal case. There have been some confusions regarding the interpretation of the decisions of the Hon'ble Apex Court in R. K. Sabharwal case and the cases of Union of India and others vs. Virpal Singh Chauhan and others, reported in 1996 SCC(L&S) 1 and Ajit Singh Januja case, reported in 1996(2) SCC 215. However, the position has now been settled by the Hon'ble Supreme Court by the decision in Ajit Singh II case, reported in JT 1999(7) 153 and all actions of the respondents in the

preparation of seniority lists and in the matter of giving promotion are to be guided by this decision of the Hon'ble Supreme Court. In this context we may also refer to a circular of the Railway Board dated 28.2.97 (Est.. Srl.No.46/97) regarding the principles for determination of seniority of the staff belonging to the SC/ST community promoted earlier vis-a-vis the general /OBC staff promoted later. In para 3 of the said circular, it is provided as under:-

"It has been decided that if a Railway servant belonging to the Scheduled Caste or Scheduled Tribe is promoted to an immediate higher post/grade against a reserved vacancy earlier than his senior General/OBC Railway servant who is promoted later to the said immediate higher post/grade, the General/OBC Railway servant will regain his seniority over such earlier promoted Railway servant belonging to the Scheduled Caste and the Scheduled Tribe in the immediate higher post/grade. This will, however, be subject to the condition that in respect of selection posts, the over-riding principle that a Railway servant borne in an earlier panel will rank senior to a Railway servant borne in a later panel, will be observed."

9. We find that in the instant seniority list based on which the promotion to the post of O.S. Grade I is sought to be given, has not been revised on the basis of this principle. As a result, there has been excess quota of SC/ST candidates and there is a shortfall of the general category candidates. From a perusal of this seniority list it appears that some general category candidates, who were appointed earlier than SC/ ST candidates in the basic grade, have been shown junior to the SC/ST category candidates. If the revised principle of determination of seniority is applied there would have been a change in the seniority list. Since the vacancies in question arose after 10.2.95 and the seniority list is also prepared after 10.2.95 the aforesaid principles laid down by the Hon'ble Supreme Court in Ajit Singh II case have to be applied. We are, therefore, unable to sustain the action of the respondent authorities in this regard.

10. In view of the above we set aside the impugned notice

dated 29.8.96 as also the seniority list dated 9.7.96 as per Annexure 'A/2' and direct the respondents to prepare a fresh seniority list of general candidates and SC/ST candidates in the grade of O.S. Grade II strictly adhering to the principles laid down by the Hon'ble Supreme Court in Ajit Singh II case and the Railway Board Circular quoted above. After finalization of the seniority list as directed above, necessary action for filling up the vacancies of O.S. Grade I should be made. The entire exercise should be completed within four months from the date of communication of this order. No cost.

D. P. Singh
(B. P. Singh)

MEMBER (A)

R. N. Ray
(R. N. Ray)

VICE-CHAIRMAN