

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
OA 1133 OF 1996

Present : Hon'ble Mr. D. Purakayastha, Judicial Member

Hon'ble Mr. G. S. Maingi, Administrative Member

1. Deb Satya Choudhury
2. Himansu Pal
3. Lalit Mohan Adhikary
4. Shyamal Kumar Biswas

VS

1. Union of India through the General Manager, E. Rly. 17, N.S.Road, Calcutta-1
2. The Sr. Div. Personnel Officer, E. Rly. Howrah Division.
3. The Div. Rly. Manager, E. Rly. Howrah Division.
4. Shri Ranjit Kumar Das
5. Shri P.K.Das
6. Shri Ajay Ray
7. Shri A.P.Roy

..... Respondents

For the applicants : Mr. B.Mukherjee, Counsel

For the Rly. respondents : Mr. R.K.De, Counsel

For the private respondents : None

Heard on : 21.8.2000 : Order on : 24.8.2000

O R D E R

G.S.Maingi, A.M.:

This application has been filed by four applicants, out of whom applicant Nos. 1 and 2 are O.S.Gr.II in the office of T.R.Branch Section under the Sr. Div. Operating Manager, Howrah, E.Rly and applicant Nos. 3 and 4 are working as Head Clerks in the same office. The main respondents are the Union of India through the General Manager, E. Rly, The Sr. Div. Personnel Officer, E.Rly. Howrah and Divisional Rly. Manager, Howrah. In addition, there are four private respondents. While respondent Nos. 4 and 5 are working as O.S.Gr.II in Howrah Division, respondent Nos. 6 and 7 are functioning as Head Clerks in the same Howrah Division of E. Rly.

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2. The names of these four applicants as also of the four private respondents appear in the provisional seniority list of clerical staff of Transportation Deptt, Howrah published on 28.4.94 (annexure-A1). The applicants belong to unreserved category whereas the private respondents belong to the reserved category. The applicants have stated that while there is shortage of officials in the unreserved category by 3 persons, there is no shortage of reserved category employees in the grade of O.S. Gr.I. They have invited the attention of the Tribunal to the E. Rly.'s letter dt. 29.8.96 (annexure-A2) and E. Rly.'s letter dt. 30.8.96 (annexure-A4). While in annexure-A2, the break up for the posts for promotion to OS Gr.I in scale of Rs. 2000-3200/- (RP) has been given as unreserved posts- 3, SC-nil and ST-nil, yet the respondent authorities were considering 3 persons belonging to unreserved -1 and reserved -2 for promotion to the post of O.S.Gr.I. Likewise in the letter dt. 30.8.96 (annexure-A4), for the written test for promotion to the post of OS, Gr.II in scale of Rs. 1600-2660/- (RP), the break up of posts for which selection is to take place has been indicated as unreserved-4, SC- 1 and ST-nil. Thus it appears that there is no vacancy meant for reserved category as indicated in the E. Rly's letter dt. 29.8.96 for promotion to the post OS, Gr.I, there is only one vacancy for SC employees for promotion to the post of OS, Gr.II as per annexure-A4 dt. 30.8.96.

3. The Divisional Railway Manager, Howrah had consulted the Sr. Law Officer of E. Rly. in the matter and the Sr. Law Officer advised on 10.7.96 as per his letter No. G351/1350/7/818/LS/M (annexure-A6) that the judgement of the Hon'ble High Court, Allahabad in J.C.Malik's case has been confirmed by the Hon'ble Supreme Court by its judgements dt. 10.2.95 and 10.10.95 in R.K.Sabharwal and Vir Pal Singh Chauhan's case respectively, and that in view of the law laid down by the Hon'ble Supreme Court posts meant for unreserved category candidates cannot be offered to the reserved category candidates in a

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cadre, category or grade if the prescribed quota has already been achieved.

4. In filing the application, the applicants have prayed for following reliefs :-

a) For quashing of the aforesaid two letters dt. 29.8.96 and 30.8.96.

b) For directing the respondent authorities to call the applicants 1 and 2 for promotion to the post of OS, Gr.I in place of respondents 4 and 5 after cancelling their names from the call letter dt. 29.8.96.

c) For directing the respondents to call the applicants 3 and 4 for promotion to the post of OS, Gr.II in place of respondents 6 and 7 after cancelling their names from the call letter dt. 30.8.96.

5. The respondents have filed a written reply which has been submitted by one Shri B.D.Roy, Sr. DPO, Howrah. He has nowhere stated in the reply that he is filing the reply on his behalf as well as on behalf of other respondents. He does not say that the reply issues with the approval/authorisation of other respondents i.e. respondents 1 and 2.

6. In the reply he has made the following statements :

a) That the application is barred by limitation. But he fails to state the reasons which enable him to hold that the application is barred by limitation.

b) He has further stated that the application is barred by the principles of estoppel, waiver and acquiescence. Again he gives no reason for such submission.

c) He has also stated that the respondents are advised to traverse only those portions of the application that are relevant for adjudication of the present matter. This is obviously contradictory statement as on the one hand he says that the application is barred by limitation and on the other hand, he submits that the respondents are advised to traverse only those portion of the said application which are relevant for adjudication of the matter. In other words, he is

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quite convinced that the matter is fit for adjudication by this Tribunal.

d) In paras 6.2 and 6.3, he questions as to how the applicants 1 and 2 and applicants 3 and 4 can challenge the letters dt. 29.8.96 and 30.8.96 respectively. It is stated in para 6.4 of the reply that the applicants belong to two groups i.e. OS, Gr.II and Head Clerk while they have challenged the selection of OS, Gr.I and OS, Gr.II respectively. Therefore, the cause of action between applicants 1 and 2 on the one hand and applicants 3 and 4 on the other hand differs and hence the application is not maintainable in the eye of law as they have no common cause of action.

e) In para 6.7, he has stated as to how applicant Nos. 1 and 2 and private respondents 4 and 5 were promoted as Head Clerks. It is his contention that private respondents 4 and 5 were promoted as Head Clerk in 1984 whereas the applicants 1 and 2 were promoted to the said post in 1991 and 1987 respectively.

f) In para 6.8, he has placed reliance on some circulars prescribing that as per decision of the Hon'ble apex court, the seniority of SC/ST employees will be maintained as per their basic seniority who had been promoted on or after 10.2.95. But in the present case, the respondents 4 and 5 were promoted as OS, Gr.II in 1993 i.e. before 10.2.95 and therefore, their seniority has to be maintained as per the old rule i.e. on the basis of their grade seniority. He has referred to some Circular Nos. 87/92 and 31/97 issued by the CPO, E.Rly.Calcutta but no copy of the circulars has been enclosed with the reply. Copies of these circulars have also not been produced at the time of hearing by the ld. counsel for the respondents.

7. The case was listed for hearing on 21.8.2000 when the ld. counsel for the applicants as also the ld. counsel for the respondents argued it vehemently. Ld. Counsel for the applicants has placed reliance on the judgements of the Hon'ble Supreme Court in the case of UOI -vs- Vir Pal Singh Chauhan reported in 1996 SCC(L&S) 1.

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Ld. counsel for the respondents has also placed reliance on the same judgement. In addition to the aforesaid decision of the Hon'ble apex court, we have also looked into the decision of the Hon'ble apex court in the case of R.K.Sabharwal & Ors -vs- State of Punjab & Ors reported in 1995 SCSLJ 330.

8. In the reply of the respondents, much stress has been placed on the decision of the Hon'ble apex court in the case of R.K.Sabharwal (supra) with particular reference to the concluding part of the judgement wherein it is stated that " we, however, direct that the interpretation given by us to the working of the roster and our findings on this point shall be operative prospectively." It is argued that since the judgement was delivered on 10.2.95, it would apply only from that date onwards and not earlier.

9. We have gone through the judgement in R.K.Sabharwal's case (supra). It is mentioned in the head-note as under :-

" (A) Constitution of India, Article 116(4)Reservation
When the total number of posts in a cadre are filled up and the posts earmarked in the roster for a schedule castes and backward classes are duly filled- The purpose of reservation provided for reserved categories is achieved Thereafter the roster does not survive - Any post falling vacant, in the cadre thereafter, will be filled from amongst the category of persons to whom the respective post belongs."

10. It is further stated in another paragraph as below :-

" Respondent-Rattan Singh was promoted to the rank of Chief Engineer against the post reserved for the Scheduled Castes by superseding 36 senior colleagues including the petitioners. Similarly, respondent Surjit Singh and Om Prakash were promoted as Superintending Engineer against the reserved vacancies by superseding 82 and 87 senior colleagues respectively."

11. Yet in another paragraph it has been stated " Any post falling vacant, in a cadre thereafter, is to be filled from the category



reserve or general -- due to retirement etc. of whose member the post fell vacant."

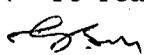
12. There is another paragraph at page 334 of this judgement which runs as follows :-

".... The running account is to operate only till the quota provided under the impugned instructions is reached and not thereafter. Once the prescribed percentage of posts is filled the numerical test of adequacy is satisfied and thereafter the roster does not survive."

13. The observation made in another paragraph at page 335 is also relevant :-

"..... Once the total cadre has full representation of the scheduled caste/tribes and backward classes in accordance with the reservation policy then the vacancies arising thereafter in the cadre are to be filled from amongst the category of persons to whom the respective vacancies belong.

14. R.K.Sabharwal case relates to the Engineers of Govt. of Punjab. The other important case on which the applicants as also the respondents placed reliance is that of UOI -vs- Virpal Singh Chauhan's case reported in 1995 SCC(LS) 1. This judgement clarifies many doubts after R.K.Sabharwal's case. This is a case relating to the railway employees and apply squarely to the facts of the present case because the applicants in the present case are railway employees and the respondents have relied on various circulars issued by the railways regarding reservation and seniority of reserved candidates vis-a-vis unreserved candidates. The relevant paragraphs of this judgement are 10, 15, 24 and 26. This judgement was pronounced on 10.10.95 i.e. after R.K.Sabharwal case was decided. Paragraph 10 of this judgement is very illuminating and important to understand the decision of the Hon'ble Supreme Court. We would like to highlight para 26 of the Judgement of the Central Administrative Tribunal, Allahabad Bench which was quoted in para 10 of this judgement. It reads like this :-



"26. To clarify the position further we will enunciate the principles of determining seniority in situations as are under dispute here.

The basic seniority in Grade C will be the guiding seniority list for the cadre of Guards.

Reservations in promotions would be made against posts in the grades and not against vacancies.

Persons who are promoted by virtue of the application of roster would be given accelerated promotion but not the seniority.

The seniority in a particular grade amongst the incumbents available for promotion to the next grade will be recast each time new incumbents enter from the lower grade on the basis of the initial grade C seniority i.e. a senior grade C Guard who gets promoted to Grade B or from Grade B to Grade A and so on will find his position amongst the incumbents of that grade on the basis of the original Grade C seniority.

Such persons as are superseded for any reasons other than on account of reservation will be excluded. A person superseded on account of a punishment or unfitness will count his seniority on the revised basis and not on original Grade C seniority.

The reserved community candidates who are senior not by virtue of reservation but by the position in Grade C selections which the Grade C seniority list will automatically take care of, will not wait for reservation percentage to be satisfied for their promotion. They will get promoted in their normal turn irrespective of the percentage of reserved community candidates in the higher grade. Others who get promoted as a result of reservation by jumping the queue will wait for their turn.

Reservation will again have to be applied on depletion of the reservation quota in the higher grade to make good the shortfalls."

15. In para 16 of this judgement, the Hon'ble Supreme Court has referred to the decision of the Madhya Pradesh High Court in the case of G.C.Jain which had referred to Rly. Board's letter dt. 20.10.60 and it states -

" seniority of SC/ST employees will be determined under the normal rules. The reservation roster is considered only a machinery to ensure the prescribed percentage of reservation of SC/ST employees and should not be related to the question of seniority and confirmation. If any of the SC/ST employee is confirmed in the post by virtue of roster, such confirmation will not give them any benefit in respect of seniority."

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16. In para 26 of this judgement, the Hon'ble Supreme Court has discussed about how the roster point is to operate for promotion. We would like to highlight the observation of the Hon'ble Supreme Court in para 56 of this judgement which reads as follows :-

" 56. Before parting with these appeals, we feel obliged to reiterate the principle affirmed in Indra Sawhney that providing reservation in promotion is not warranted by Article 16(4). The facts of these cases illustrate and demonstrate the correctness of the said holding. They also bring home the intractable problems that arise from such provision - problems that defy solutions. No more need we say on this aspect. The decision in Indra Sawhney speaks for itself."

17. The case was argued at length by both parties from their respective point of view. The issue to be decided by us is very simple and does not lead to any confusion. We have to consider as to how promotion is to be given to the reserved category candidates as also the unreserved category candidates. In other words as to how the seniority of the reserved category candidates vis-a-vis unreserved category candidates is to be determined in the matter of promotion to next higher grade. A number of decisions have been pronounced by the Hon'ble Apex court on this issue viz. Indra Sawhney, J.C.Malik, R.K.Sabhwärwal, Virpal Sing Chauhan, Ajit Singh Januja, Jagadish Lal, Ajit Singh Januja (2nd) and Indra Sawhey (2nd). A reading of these judgements will indicate that reservation in respect of SC/ST/OBC candidates is to be done in respect of posts and not with reference to vacancy. It is also demonstrated that vacancy based roster had resulted in various problems and in many occasions, the reserved category candidates got advantage by holding posts exceeding their quota vis-a-vis unreserved category candidates. It has ultimately been held in first Ajit Singh's case that when an unreserved category candidate gets promotion to the next higher grade after a reserved category candidates, who is junior to him in the basic entry grade but got accelerated promotion by virtue of reservation roster, will have

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his seniority refixed in the higher promotional grade and will regain his original basic seniority and will be placed above the reserved category candidate in the promotional grade. This principle will be applicable in the selection post as well. For non-selection post it will not create much of a difference.

18. There is no doubt that the case of the applicants would be covered by the decision of the Hon'ble apex court in Virpal Singh Chauhan's case which was a case in relation of employees of the railways only. It will get further support from the decision of the Hon'ble apex court in the case of Ajit Singh -vs- UOI & Ors reported in JT 1999(7) SC 153. While it appears from paragraph 62 at page 180 of the judgement that the railways had accepted the judgement in Virpal Singh Chauhan's case and issued an order on 28.2.97 both in regard to non-selection and selection posts and as such the points raised by the railways in that case as also in the case of Ajit Singh's case were rejected.

19. The decision in Virpal Singh's case gets a lot of support from the judgement of the Hon'ble Supreme Court in Ajit Singh's case (supra). Paras 51, 65, 76 lend a lot of support to Virpal Singh's case. It is stated in para 38 at page 172 of Ajit Singh's case, " it must be noted that whenever a reserved candidate goes for recruitment at the initial level (say level 1), he is not going through the normal process of selection which is applied to a general candidate but gets appointment to a post reserved for his group. That is what is meant by 'reservation'. That is the effect of 'reservation'." In para 65 of this judgement the Hon'ble Supreme Court observed that "this court had therefore to lay down that any circular, order or rule issued to confer seniority to the roster point promotees, would be invalid. Thus, the decision in Ajit Singh cannot be found fault with." In para 71 at the bottom portion at page 184 the Hon'ble apex court has stated, "we may state that any observations in the above cases that the roster promotees will get seniority over the senior general candidates who reach that level later, (but before the further

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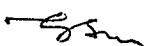
promotion of the reserved candidate) cannot be accepted as correct in view of the legal position stated earlier." The apex court has observed in para 73 att page 185 as under :-

"73. The above factual position is not, in fact disputed but it is said that this could be because the roster was operated again and again till that was stopppped after Sabharwal was decided, but no body has gone into the extent to which excess roster operation has created such a situation."

20. In para 76 of the Hon'ble apex courtt has stated that- "the roster point promotees (reserved category) cannot could their seniority in the promoted category from the date of their continuous officiation in the promoted post, vis-a-vis the general candidates who were senior to them in the lower category and who were lateer promoted. On the other hand, the senior general candidate at the lower level, if he reaches the promotional level later but before the further promotion of the reserved candidate he will have to be treated as senior at the promotional level, to the reserved candidate even if the reserved candidate was earlier promoted to that level."

21. In the present case, since the private respondents got promotion out of turn because of reservation quota over unreserved category candidates i.e. the applicants, after promotion to the same grade , the applicants will regain their original seniority reckoning from basic grade. It was the duty of the railway resondents to redraw the seniority of the applicants on the basis of this principle laid down by the Hon'ble Appex court as discussed above and thereafter consider the case of further promotion on the basis of such redrawn seniority as per rules applicable at that time. Obviously the respondents have not done so.

22. At the time of hearing and in the reply, the railway respondents have placed much reliance on the cut off date pronounced by the Hon'ble Supreme Court in R.K.Sabharwal case i.e. 10.2.95.



They had called the reserved category candidates for selection on the basis of their grade seniority.

23. This aspect of the matter was also taken care of by the Hon'ble apex court in Ajit Singh's case and it was decided in para 88 as follows :-

" 88. It is axiomatic in service jurisprudence that any promotions made wrongly in excess of any quota are to be treated as ad hoc. This applies to reservation quota as much as it applies to direct recruits and promotee cases. If a court decides that in order only to remove hardship such roster point promotees are not to face reversion, - then it would, in our opinion be, necessary to hold 0 consistent with our interpretation of Articles 14 and 16(1) - that such promotees cannot plead for grant of any additional benefit of seniority flowing from a wrong application of roster. In our view, while courts can relieve immediate hardship arising out of a past illegality, courts cannot grant additional benefits like seniority which have no element of immediate hardship. Thus, while promotions in excess of roster made before 10.2.95 are protected, such promotees cannot claim seniority. Seniority in the promotional cadre of such excess roster point promotees shall have to be reviewed after 10.2.95 and will count only from the date on which they would have otherwise got normal promotion in any future vacancy arising in a post previously occupied by a reserved candidate. That disposes of the 'prospective' point in relation to Sabharwal."

24. In the present case, since the private respondents got accelerated promotion out of quota meant for reserved category by superseding the senior general category candidate and since the general category candidates were promoted to the same grade subsequently, it was incumbent on the respondent authorities to draw the seniority list afresh on the principle laid down by the Hon'ble apex court as discussed above and consider the question of further

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promotion to higher grades as per rules applicable. Obviously, the respondents have not done so and instead they issued call letters to the candidates based on grade seniority which is not permissible.

25. In view of our discussion made above, we dispose of the application with the following orders :-

- a) The impugned letters dt. 29.8.96 and 30.8.96 are hereby set aside.
- b) The railway respondents are directed to redraw the seniority of the applicants and the private respondents on the basis of principles laid down by the Hon'ble apex court in Virpal Singh Chauhan and Ajit Singh's cases (supra) and issue fresh call letters to eligible persons as per rules for promotion to the posts of OS, Gr.I and OS, Gr.II. While doing so, they should keep in mind the recommendation of the Sr. Law Officer, E.Rly. dt. 10.7.96.
- c) The entire process be completed within four months from the date of communication of this order.
- d) There will be no order as to costs.

G.S.MAINGI
24.8.2000
(G.S.MAINGI)

MEMBER(A)

D.PURAKAYASTHA
24.8.2000
(D.PURAKAYASTHA)

MEMBER (J)