

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

No. OA 1388 of 96

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

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

SIBRAM ADAK

VS

UNION OF INDIA & ORS.

For the applicant : Mr. B. Mukherjee, counsel

For the respondents: Mr. P.K. Arora, counsel

Heard on : 10.1.2001

Order on : 31-1-2001

O R D E R

R.N. Ray, VC

The applicant has filed this OA on the facts and ground stated therein for a direction upon the respondents to cancel or set aside or quash the impugned call letter dated 11.11.96 calling for the private respondent No.5 for suitability test for promotion to the post of Superintendent Telephone Operator and to call for the applicant for suitability test by a fresh order against 2 number of vacant posts along with Shri A.K. Sarkar for promotion to the post of Superintendent Telephone Operator cancelling the impugned call letter dated 11.11.96 as set out in Annexure A/2.

2. It is the case of the applicant that he is posted as Chief Telephone Operator/^{under} ~~ix~~ Sr. Divisional Telecom Engineer, Eastern Railway, Howrah in the scale of Rs.1600-2660/-. The post of Chief Telephone Operator is the feeder grade post of Superintendent Telephone Operator in the scale of Rs.2000-3200/-. Therefore the post of Superintendent Telephone Operator is the direct promotional post from the post of Chief Telephone Operator. The applicant was posted as Telephone Operator on regular basis w.e.f. 5.12.64 and he was promoted as Sr. Telephone Operator w.e.f. 20.6.79 and as Head Tele

phone Operator w.e.f. 29.6.90 and he was promoted as Chief Telephone Operator w.e.f. 1.3.93 whereas the private respondent No.5 Smt Prova Biswas was appointed as Telephone Operator w.e.f. 4.12.78/17.12.79 and she was promoted as Sr.Telephone Operator w.e.f. 16.12.83, as Head Telephone Operator w.e.f. 3.11.88 and as Chief Telephone Operator from 1.3.93. Xerox-copy of the seniority list and the promotion orders are collectively marked as Annexure A/1. The applicant is an unreserved category employee where as the private respondent No.5 is a SC community candidate. The applicant has challenged the call letter dated 11.11.96 calling for respondent No. 5 as SC candidate though quota for reserve community candidate have been achieved by then in excess of the percentage of 15% for SC and 7½% for ST earmarked for them. It has been contended by the applicant that sanctioned strength for the promotional post of Superintendent Telephone Operator are 4, which is evident from the seniority list dated 8.8.94. The applicant states that previously 3 number of post were held by SC candidates against the sanctioned strength of 4 number of post. Therefore 75% of the total post of Superintendent Telephone Operator have been occupied by the reserve community candidates (SC) as on 8.8.94. The applicant states that retirement of following Superintendent Telephone Operator after 8.8.94 is as follows :

1. Shri B.R.Paul	1.2.95
2. Shri B.B.Mondal(SC)	30.6.95
3. Shri S.C.Haldar(SC)	30.8.96
4. Shri S.Som	31.10.96
5. Shri K.C.Ghosh	30.11.96

It has been contended that in place of the above candidates the promotion was given by replacement as follows :

- a) In place of Shri B.B.Mondal(SC), Shri S.Som was promoted to the post of Superintendent Telephone Operator w.e.f. 1.6.96.
- b) In place of Shri S.C.Haldar(SC), Smt. Gayatri Das was promoted to the post of Superintendent Telephone Operator w.e.f. 1.9.96.

c) In place of Shri B.R.Paul, Shri K.C.Ghosh was given promotion to the post of Superintendent Telephone Operator w.e.f. 12.4.96.
d) In place of Shri S.Som, Smt. Prova Gishwas, the respondent No.5 is going to be promoted as Superintendent Telephone Operator.
Now, the post of Superintendent Telephone Operator are being held by Shri N.C.Roy(SC) and Smt Gayatri Das(SC) against 4 numbers of sanctioned strength. Therefore balance two posts of Superintendent Telephone Operator are being kept unfilled for which the suitability test against 1:1 formula is going to be held.

3. It has been contended that the respondent No.5 was junior to the applicant from the Gr.'C' panel/post which is evident from the seniority list dated 3.12.87 wherein her name is appearing at Sl.No.35 as Telephone Operator wherein her date of appointment has been shown at on 4.12.78 but as being transferred on own request from Northern Railway to Eastern Railway her date of entry in Telephone Operator Section has been declared on 17.12.79. Till date the respondent No.5 got accelerated promotion from Sr.Telephone Operator to the post of Chief Telephone Operator on out of turn basis exclusively as SC candidate jumping the queue over the UR candidates as SC candidate and not on merit. Therefore, accelerated promotion might have been given some-time exceeding quota also, but, she cannot be given accelerated seniority in terms of Kameswar Sharma's case as well as Vir Pal Singh Chouhan's case decided by the Hon'ble Supreme Court. Copy of the judgments have been duly furnished by the ld. counsel for the applicant at the time of hearing. Hon'ble Supreme Court in R.K.Sabharwal and Others -vs- ~~State~~ of Punjab & Others decided on 10.2.95 as follows:

"(A) Constitution of India, Article 16(4)- Reservation - when the total number of posts in a cadre are filled up and the posts earmarked in the roster for the Scheduled 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.

(B) Constitution of India, Article 16(4)- Reservation - High Court in B.C. Malik case held that percentage of reservation is in respect of the appointment to the post in a cadre - if the reservation is permitted in the vacancies after all the posts in a cadre are filled then serious consequences would ensue and the general category is likely to suffer considerably - held no infirmity in the High Court view. "

4. The respondents have filed a written reply where it has been contended that the respondent No.5, Smt Prova Biswas(SC) was due to be subjected to appear in the suitability test for the post of Superintendent Telephone Operator in scale of Rs.2000-3200/- (RP) which was scheduled to be held on 21.11.96 & 26.11.96. Although there is no post earmarked for schedule Caste/Schedule Tribe since the required number of percentage for reserved community was already achieved in the category of Superintendent Telephone Operator, but Smt. Biswas was detailed in the above test as per her grade seniority in the next lower grade considering her as a general category candidate. But due to interim order dated 20.12.96 passed by Hon'ble CAT, Calcutta Bench, the suitability test could not be held on 21.11.96 & 26.11.96. Subsequently on vacation of interim order dated 20.1.97 the said suitability test was held on 18.3.97 with the stipulation that the said test will abide by the final result of the DA 1388/96 and accordingly Smt. Biswas having been declared suitable has been promoted as Superintendent Telephone Operator in the scale of Rs.2000-3200/- (RP) from 8.4.97.

5. It has been further contended that the respondent No.5 was appointed as Sr. Telephone Operator on promotion in the scale of Rs.330-560/- w.e.f. 1.8.82 but it has been wrongly mentioned as 16.12.83. However it has been admitted that the respondent No.5 got accelerated promotion to the post of Head Telephone Operator prior to the applicant on 3.11.88 against reserved quota. Thus she gained grade seniority above the applicant for which her position was reflected against serial No.6 to the next promotional post of Chief Telephone Operator. It has been contended that as the res-

pondent No.5 was considered against unreserved quota she cannot be taken as reserved candidate.

6. We have heard and duly considered the submissions made by both the counsels. We have also perused the application and the reply along with all its annexures. We have also considered the judgments referred to in the OA.

7. Smt. Prova Biswas got accelerated promotion to the post of Chief Telephone Operator earlier to the applicant ~~is~~ admitted by both the parties. Since she has already achieved the benefits of accelerated promotion in the reserved category she cannot now come and jump to avail all the promotional benefits as unreserved category treating her as senior to the applicant in view of her accelerated promotion to the post of Chief Telephone Operator. The Hon'ble Apex Court has made it clear that once a candidate availed the opportunity of accelerated promotion in the reserved category she cannot change the line and ask for promotional avenue as a candidate of general category unless the promotional post is ~~in the~~ ^{be} one where there should ~~be~~ no consideration.

8. In view of the declared law, we find the impugned order of promotion given to respondent No.5 in preference to the applicant ~~is~~ against the law in force because the judgments of the Hon'ble Apex Court which are in rem are bindings upon all in view of Article 14 of the Constitution. Whether the respondents will adjust the respondent No.5 by granting a supernumerary post or a vacancy is created and she is adjusted there, that is not our look out. But we direct the respondents to consider the promotion of the applicant for the post of ~~Super~~ Telephone Operator as the post became vacant and that promotional order of the respondent No.5 is set aside and if the respondents allow her to hold the post on ad-hoc basis against any vacancy that will be not our look out. But the applicant cannot be put to ~~any~~ suffer by the wrongs of the respondents. It is further reiterated that once Smt. Prova Biswas has availed the accelerated promotion in the reserved category she is debarred to be

considered for promotion in the general category against any un-reserved post. The respondents are directed to consider the applicant's candidature for promotion to the post of Supdt. Telephone Operator along with other eligible candidates if any, who come within the zone of consideration under the rules and circulars in force and pass appropriate order to that effect within 45 days from the date of communication of this order. Since the applicant is forced to approach this Tribunal by the illegal action of the respondents we order a cost of Rs.3000/- against the respondents and the respondent authorities will be entitled to realise the cost from the officer/officers concerned who are responsible for such illegal action.

J. N. Ram

MEMBER (A) 31012001

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VICE-CHAIRMAN