

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH, CALCUTTA
O.A. No. 220 of 1996

Dated Calcutta the 18th June 2002

Alokesh Saha, son of Sri Presh Chandra Saha, working as Depot, Stores Keeper Gr.III under the Assistant Controller of Stores, CLW, Howrah and residing at Village Biki Hakola, PO Biki Hakola, P.S. Banchla, District Howrah.

Applicant

-versus-

1. Union of India, through the G.M., Chittaranjan Locomotive Works, Chittaranjan, District Burdwan.
2. The Chief Personnel Officer, Chittaranjan Locomotive Works, PO Chittaranjan, District Burdwan,
3. The Controller of Stores, Chittaranjan Locomotive Works 4, Chittaranjan Avenue, Calcutta-72.
4. The Assistant Controller of Stores, Chittaranjan Locomotive Works, 9, Mukhram Kanoria Road, Howrah.
5. Sri Moley Banerjee, DSK Gr.II under Assistant Controller of Stores, Chittaranjan Locomotive Works, 9, Mukhram Kanoria Road, Howrah.

Respondents

Counsel for the applicant .. Mr. A.K. Roychoudhury
Mr. D.P. Bhattacharjee
Counsel for the respondents .. MS. U. Sanyal

P R E S E N T: The Hon'ble Mr. L.R.K. Prasad, Member (A)
The Hon'ble Mrs. Meera Chibber, Member (J)

O R D E R

L.R.K. Prasad, Member (A):

1. The applicant was appointed as Clerk Grade II in Chittaranjan Locomotive Works at Chittaranjan on the basis of recommendation of Railway Recruitment Board. Later on, he was transferred to the office of Assistant Controller of Stores, CLW, Howrah. He was promoted to Clerk Grade I. Thereafter, he got further promotion to the post of Depot. Stores Keeper Grade III with effect from 9.10.1993.
2. The applicant has alleged that one Shri Moley Banerjee (respondent no.5) has been promoted against the roster point 14

even though he is a) U.R. candidate. The promotion of Shri Molley Banerjee to DSK Grade II is in utter violation of the reservation policy and the roster points, which the respondents are supposed to follow in accordance with law and prescribed instructions. He has been making representations to concerned authorities and he has annexed copies of the same with the prayer that his case for promotion to DSK Grade II should be considered against roster point 14 and he should be given due seniority in DSK Grade II. However, his representations have, by and large, been rejected. Hence, the applicant has filed the instant O.A. for issuance of direction upon the respondents to revert the private respondent no.5 to the post of DSK Grade III and promote the applicant to the post of DSK Grade II vice respondent no.5 with effect from 10.10.1995 with consequential benefits. The further prayer of the applicant is that he should be paid arrears of promotion to the post of DSK Grade II with effect from 10.10.1995.

3. W.S. has been filed, opposing the above application on the grounds as stated in the reply. It is admitted position that the applicant was promoted to the post of DKS grade III with effect from 9.10.1993 against an upgraded post under restructuring of DSK cadre. He was asked to appear in a test for promotion to the post of DSK Grade II along with others vide letter dated 24.12.1994 (Annexure-A2). The applicant made representation to the effect that the very point (a) against which he has been called should be reserved for S.C. staff instead of U.R. staff, and a reply was given to him, Vide letter at Annexure-A4. Written test for selection/suitability test for the post of DSK Grade II was held on 7.1.1995 and viva-voce on 9.2.1995. However, in view of the point raised by the applicant regarding S.C. reservation point, the result of the selection was not published. It is admitted fact that during verification of

official record, it was detected that due to communication gap between Controller of Stores, Calcutta Office and Chittaranjan Office, the name of promoted staff was not recorded in official record, where reservation of allotment is made. The error was amended and in cancellation to selection test held 7.1.1995 and 9.2.1995, the applicant was alone called to appear in the selection for DSK Grade II on 1.7.1995 vide office letter dated 20.6.1995 (Annexure-A8). In the said selection process, the applicant was declared successful and, accordingly, he was empanelled on the condition that his promotion to the post of DSK Grade II will be done on availability of approval of Railway Board for the post of DSK Grade I. The respondents have further stated that roster point against which the applicant was called for test for promotion to DSK Grade II was the 15 point though the same was reserved for U.R., but being the first carry forward, it was allotted to S.C. It is also admitted fact that Shri Moley Banerjee (respondent no.5) was promoted against serial 14 point, which should have been normally allotted/reserved for SC but was treated as U.R. due to rule 50 per cent limitation as outlined in Railway Board's letter dated 29.4.1982. In this regard, our attention was drawn to letters, which are at Annexure-R1.

4. The office order dated 25.6.1996 (Annexure-R-2) shows that even though the applicant was empanelled for promotion to DSK Grade II, he could ~~not~~ be given promotion only from 17.6.1996 when a vacancy in DSK Grade II became available on promotion of one person as stated in the letter to the DSK Grade I.

5. From the pleadings of the parties, it is clear that due to communication gap, roster point 14,

which should normally have gone to S.C. candidate, was filled up by U.R. candidate. Therefore, in order to set the matter right, the applicant was alone called for selection test for the post in question against 15 point roster, and the applicant was ultimately promoted to the grade of DSK II with effect from 17.6.1996. It is noted that as the applicant was promoted to the post of DSK Grade III with effect from 9.10.1993, he could become eligible for consideration only after two years of service, as per Recruitment Rule. Therefore, the question of getting promotion in the year 1993 does not arise, as he came within the zone of consideration for promotion to DSK Grade II only in 1995. In the meantime, due to certain communication gap, respondent no.5 had already been promoted to the post of DSK Grade II with effect from 1.3.1993. As per prescribed instructions/rule on the reservation policy, if a particular vacancy is reserved for S.C. and if S.C. candidate is not available at the relevant time, the same can be de-reserved with the approval of the competent authority after following prescribed procedure. It is obligatory on the part of the respondents to maintain rosters in respect of SC/ST candidates, as admissible under law and the instructions of the Government. The applicant has categorically stated that 14 point roster was meant for S.C. candidate and, therefore, in event of non-availability of S. C. candidate, the same should have been carried forward for a period of three years; and in that event, the applicant would have become eligible for consideration in 1995, but the same was not done. Ultimately, realising the mistake, the respondents took steps to promote the applicant to the post of DSK Grade II against 15 point roster, which was normally meant for a U.R. candidate. As mistake was detected, the respondents had no alternative but to accommodate the case of the applicant subsequently. On the other hand,

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the respondents have argued that since the applicant has been given due promotion to the Grade of DSK II vide order dated 25.6.1996 (Annexure-R-2), his grievances, in this regard, have already been met and, as such, nothing remains to be adjudicated. It is also noted that there were four posts of DSK Grade II and the applicant has stated that one of the post, as per prescribed rule, was supposed to be reserved for S.C. candidate, and as per reservation roster, it falls on 14 point. In any view of the matter, the fact remains that the applicant has been given due promotion vide order dated 25.6.1996 (Annexure-R-2).

6. Even though the applicant has claimed arrears, etc. and his promotion with effect from 10.10.1995 against the reserved vacancy (roster point no.14) with consequential benefits, the basic issue for consideration with regard to determination of seniority of the applicant in DSK Grade II vis-a-vis respondent no.5, who was promoted against 14 point roster which, according to the applicant, was supposed to be reserved for S.C. category.

7. During the course of hearing, the learned counsel for the applicant relied on the instruction of the Government regarding roster points, letter No.99-E(SCT)125/25/10 dated 11.5.1999 of the Railway Board (RBE No.102/99, the order of Hon'ble Supreme Court dated 4th April 1997 passed in Civil Appeal No.3081 of 1997 (1997 SCC(L&S) 1146) and the order of the Hon'ble Supreme Court dated 18.2.1994 passed in Civil Appeal No.1508 of 1994 (1994 SCC(L&S) 1033). The learned counsel for the applicant strongly pleaded that the case of the applicant is deserving ~~case~~ and, as such, appropriate direction may be given to the respondents to look into the matter and grant the applicant necessary relief in accordance with law.

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8. We have considered the case of the applicant in the light of submissions made on behalf of the parties as well as materials on record. We find from the record that respondent no.5 had filed Vakalatnama but neither anybody has appeared on his behalf, nor any written reply has been filed by him.

9. From the pleadings of the parties, we gather an impression that roster point 14 was meant for S.C.candidate, whereas roster 15 point was meant for U.R. However, due to some communication gap, the roster point 14 was filled up by respondent no.5 in 1993 under U.R.category. When the mistake was detected, and on the representations filed by the applicant, a decision was taken by concerned respondent to fill up 15 point roster by S.C. candidate. Accordingly, the applicant was alone called to appear in the selection test for DSK Grade II on 1.7.1995 and on his being declared successful, he was empanelled for the said post, but the actual promotion was given to him in 1996 vide order dated 25.6.1996 (Annexure-R-2) in the light of position explained therein. It may be significant to point out that the applicant was not within consideration zone for promotion to the post of DSK Grade II in 1993, since he was promoted as DSK Grade III in that year and he could become eligible for consideration for the post of DSK Grade II only in 1995 after completing two years of service in the grade of DSK III. Nevertheless, the fact remains that some mistake was done by the respondents which resulted in above position, and as there was no vacancy at the relevant time, the applicant could be promoted only in 1996.

W.C.
In our opinion, the case of the applicant requires to be examined in the light of prescribed reservation policy and admissible roster for determining the seniority of the applicant vis-a-vis respondent no.5 in the grade of DSK II in accordance with law.

10. So far as prayer of the applicant to grant him promotion with effect from 10.10.1995 is concerned, it was not possible for the respondents to do so since there was no vacancy available in the grade of DSK II at the time of his selection. In absence of vacancy in the said grade, he could not be given promotion from 10.10.1995.

11. In view of the facts and circumstances of the case, as stated above, we dispose of this O.A. by directing the concerned respondent to consider the case of the applicant regarding his seniority vis-a-vis respondent no.5 in the grade of DSK II in accordance with law and in the light of observations made by us hereinabove and thereafter to pass speaking reasoned order in the matter within a period of three months from the date of communication of this order. No order as to the costs.



(Meera Chibber)
Member(J)



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(L.R.K. Prasad)
Member(A)

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