

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. 261/96

Present : Hon'ble Mr. Justice S.N. Mallick, Vice-Chairman.

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

Shri T.K. De,
Dy. Shop Supdt./Jr. Engineer Gr.II,
Shop No.16,
S.E. Railway Workshops Kharagpur,

- v e r s u s -

1. Union of India through
General Manager,
S.E. Railway, Garden Reach, Calcutta.
2. Chief Project Manager,
S.E. Railway Workshops Kharagpur.
3. Dy. Chief Mechanical Engineer (M&P),
S.E. Railway Workshops Kharagpur.
4. Workshop Personnel Officer,
S.E. Railway Workshops Kharagpur.
5. Shri S.K. Mondal,
Dy. Shop Supdt./Jr. Engineer Gr.II,
Shop No.16,
S.E. Railway Workshops Kharagpur.

...Respondents.

For the applicant : Mr. S.N. Mitra, counsel.

For the respondents : Mr. P. Chatterjee, counsel (Off. respdts.)
Mr. S.K. Ghosh, counsel (Pvt. respdts.)

Heard on 11.8.99

Order on 15-10-99

O R D E R

B.P. Singh, AM

In this O.A., the applicant has prayed for following reliefs:-

1. ~~"8. b) A declaration that the~~ applicant is eligible for being considered for promotion against the single post of Shop Supdt./Jr. Engineer Gr.I in scale of pay Rs.2375-3500/- in Shop No. 16 as a single post cannot be brought within the purview of reservation and cannot be termed as reserved post and an order directing the respondents to consider the promotion of the applicant to the said single cadre post of Shop Supdt./Jr. Engineer Gr.I in scale of pay Rs.2375-3500/-."

2. The fact of the case is as under:

2.1 The applicant is working as a Deputy Shop Superintendent/Junior Engineer Gr.II in the pay scale of Rs.2000-3200/- in shop No. 16 of S.E. Railway workshop, Kharagpur. He is the seniormost official according

to the seniority list of the Dy. Shop Superintendent/Junior Engineer Gr.II. Shop No. 16 of S.E. Railway workshop, Kharagpur which is a separate water tight Unit for the purpose of appointment and promotion. There is one and single cadre post of Shop Superintendent/Junior Engineer Gr.I in the pay scale of Rs.2375-3500 (on revised scale) sanctioned and available in shop No. 16. The post is a non-selection post to be filled up by the seniormost Dy. Shop Superintendent/Junior Engineer Gr.II. The existing shop Superintendent/Junior Engineer Gr.II was due to retire on attaining the age of superannuation on 29.2.96. The applicant was the seniormost Dy. Shop Superintendent in the Shop and was due to be considered for promotion against the post of Sri D.C. Ganguly in terms of Rules as contained in para 214 (a) and 319 (a) of the Indian Railway Establishment Manual. But the Dy. Chief Mechanical Engineer (M&P) S.E. Railway Workshop, Kharagpur vide his letter dated 19.1.96 directed Sri S. K. Mondal, respondent No.5, Dy. Shop Superintendent / Junior Engineer Gr.II of shop No.16 to appear at the suitability test scheduled to be held on 30.1.96 for promotion to the post of Junior Engineer Gr.I vide Annexure-A. The applicant being the seniormost was not directed to appear in the suitability test. Therefore, he submitted an application dated 24.1.96 to the Chief Project Manager (W/M), S.E. Railway Workshop, Kharagpur as per Annexure-B seeking his claim for the post of Shop Superintendent/J.E. Gr.I on the basis of seniority. The applicant submitted that Sri S.K. Mondal, respondent No.5 was junior to the applicant in various grades. The applicant was promoted as chargeman Gr.A on 10.1.81 whereas the respondent No.5 was promoted as chargeman Gr.A on 19.4.90. The applicant was promoted as Dy. Shop Superintendent/J.E. Gr.II on 1.1.84 whereas respondent No.5 was promoted on 16.1.93. The applicant has been looking after the work of Shop Superintendent/Junior Engineer Gr.I since 14.3.92. The workshop Personnel Officer, S.E. Railway Workshop, Kharagpur vide his letter dated 8.2.96 (Annexure-C) did not dispute the seniority of the applicant in the seniority list of Dy. Shop Superintendent/Junior Engineer Gr.II in shop No.16. He stated that there is a single vacancy in the year. It cannot be treated unreserved vacancy

as there is a shortfall in the SC category of J.E./W.S. Gr.I in shop No.16. Hence he submitted that the notice for suitability test was issued accordingly and the same cannot be changed. In view of this position, the respondent No.5 being a SC candidate and the vacancy having been treated as reserved, was again directed to appear for suitability test vide Annexure-D scheduled on 29.2.96. The applicant was thus denied by this order his rightful and legitimate claim for being considered for promotion to the post of Shop Superintendent /J.E. Gr.I to the one and the single cadre post in shop No. 16 in which the applicant as well as respondent No.5 are working. The decision being arbitrary, malafide, against the statutory rules and against the law of the land, the applicant filed this O.A. praying for the reliefs stated above.

3. We have heard Id. counsels for both the parties and respondent No.5. We have also gone through the O.A., reply to the O.A. and rejoinder. Id. counsel for the respondent No.5 has also submitted his written short note of argument on 6.9.99. The counsels for the applicant as well as for official respondents have also submitted their written brief.

4. The Id. counsel for the applicant submitted that according to para 2.14(a) and 3.18(a) of the Indian Railway Establishment Manual promotion to the non-selection post is to be made on the basis of seniority-cum-suitability of the seniormost staff in the next lower grade. The suitability of the eligible candidates is judged on the basis of the record of service and/or departmental test/examination etc. The applicant was the seniormost candidate in the gradation list of Deputy Shop Superintendent/J.E. Gr.II and according to the establishment Rules he was entitled for suitability test. But he was not allowed to appear in the test. The applicant was not allowed because the vacancy, though single, was treated as reserved one due to back-log in SC vacancy in the category of workshop Superintendent/J.E. Gr.I. According to the provision of the law on the subject if there is only one vacant post for filling up, the same cannot be reserved. This position has been settled by the Hon'ble Supreme Court which has laid down that appointment/promotion cannot be made exceeding 50% of total number

of posts by SC/ST candidates treating such posts as reserved posts in a recruitment year. The post in question being a single cadre post should not have been treated in any circumstances as a reserved post. Ld. counsel further drew our attention to the latest orders of the Railway Board dated 16.6.92 referred to in paragraph 5 (d) & (e) of the O.A. which are also in accordance with Hon'ble Apex Court's decision. Thus the denial of opportunity for suitability test of the applicant was against the law of the land and departmental instructions. The reply given by Workshop Personnel Officer by his letter dated 8.2.96 vide Annexure-C is also violative of the order of the Hon'ble Supreme Court. In the rejoinder, the Id. counsel for the applicant while dealing in detail with the above has further drawn our attention to the position of law in decision of the Constitutional Bench of the Hon'ble Supreme Court in J.C. Malik's case (Para 6 and 9 AIR 1995 SC 1375 & 1376). Hon'ble Supreme Court in Dr. Chakradhar Paswan -Vs.- State of Bihar and Ors. (AIR 1988 SC 959) held that where there is only one post in a cadre, there can be no reservation with reference to that post either for recruitment at initial stage or for filling up future vacancy in respect of that post. The Hon'ble Supreme Court further held that the whole concept of reservation for application of the 50 point roster is that there are more than one post, and the reservation as laid down by the Court in M.R. Balaji's case (AIR 1963 SC 649) can be upto 50%. Similar view was held in R.K. Sabharwal -Vs- State of Punjab (AIR 1995 SC 1375) where the court held that for the purpose of applying the rule of 50% a year should be taken as the unit and not the entire strength of the cadre. Ld. counsel for the applicant has further cited the Chetna Dilip Matghare (Smt) -Vs- Bhide Girls' Education Society, Nagpur & Ors. (1995) ATC 107 where the Hon'ble Supreme Court held that reservation of single isolated post is unconstitutional. In view of these various decisions of the Hon'ble Supreme Court including the above one the Railway Board through their circular dated 21.8.97 (Annexure-R/I) circulated revised rules and policy in detail. Here also the detailed instruction was issued keeping in view the above decisions of the Hon'ble Apex Court. It has

been provided that total reservation should in any case not exceed 50%. In other words, there cannot be reservation in a single post.

5. Ld. counsel Mr. Mitra appearing for the applicant pleaded that if there is only one post in the cadre there can be no reservation in reference to that post either for recruitment at the initial stage or for filling up a vacancy in respect of that post as held by the Hon'ble Supreme Court in Dr. Chakradhar Paswan Vs. State of Bihar & Ors. (A.I.R. 1988 SC 959). He also cited the case of Chetna Dilip Matghare (Smt) - Vs. Bhide Girl's Education Society, Nagpur & Ors. (1995) ATC 107 which held that reservation of single isolated post is unconstitutional. Similarly in the case of Post Graduate Institute of Medical Education & Research, Chandigarh -Vs- Faculty Association and Ors. (AIR 1998 SC 1767) the Hon'ble Apex Court held that there cannot be any reservation in a single post cadre. In view of the above decisions of the Hon'ble Apex Court promotion on the 'single post of SS/JE Gr.I of respondent No.5 in shop No. 16 was against the decision of the Hon'ble Apex Court though the promotion was made with clear stipulation. Ld. counsel submitted that the law settled by the Hon'ble Supreme Court at the material time was that in a single post there cannot be any reservation and that when the post was a solitary post in the cadre the roster and carry forward scheme cannot apply. In view of the above facts, rules, orders and judicial pronouncements, the ld. counsel for the applicant prayed for grant of relief as prayed for in the O.A.

6. Ld. counsel Mr. Chatterjee, appearing on behalf of the official respondents submitted that the vacancy caused due to retirement of one Sri S.N. Mukherjee, Shop Supdt. Shop No. 16 from the year 1976 had to be filled up against roster point No.1 of 40 point roster, which is earmarked for SC. As no SC candidate was available at the material time Shri D.D. Mukherjee was promoted w.e.f. 30.4.1976 against the roster point No.1. On transfer of Shri D.D. Mukherjee to the ex-cadre post Sri D.D. Ganguly was promoted to the post w.e.f. 1.7.88 against Roster point No.2 as there was no SC candidate available at the material time. Thus there was a shortfall of one SC candidate against roster point No.1

of 40 point roster. The same was carried forward once in 1976 and again in 1988. The vacancy carried forward from 1976 and 1988 was to be filled in 1996 i.e. in the third recruitment year. Therefore, the present vacancy of Junior Engineer Gr.I/Shop Superintendent in shop No. 16 was to be filled up against the carry forward vacancy reserved for SC candidate. He has also drawn our attention to communication dated 31.8.93 (Annexure-R/1) in this respect. He further stressed the point that shortfall in filling up the SC vacancy should be carried forward for third recruitment year. The vacancy which arose in 1976 could not be filled up in that year. Therefore, the same was carried forward to the next recruitment year i.e. in 1988. Again in the year 1988 which was the second recruitment year for the vacancy, the vacancy could not be filled up due to non-availability of the SC candidates. The position reversed in 1996 i.e. in the third recruitment year when eligible SC candidates were available. Accordingly the candidature of respondent No.5 was considered and he was empanelled for promotion to the post. Regarding contention of the applicant that he was working as Shop Supdt. since 14.3.92 the Id. counsel submitted that incumbent of the post Sri Ganguly was directed to report modernisation cell and the applicant was advised to look after the work of Shop Supdt., shop No. 16 on temporary basis. The applicant was not promoted and no office order was issued by the Personnel Department. The arrangement was internal arrangement in the exigency of work. Shri Ganguly retired and present vacancy arose on 1.3.96. This vacancy was to be filled up by SC candidate due to shortfall of the same against the roster point No.1 and the same was done. There was no irregularity thus committed in directing the respondent No.5 to appear at the suitability test for promotion to the vacant post. He was declared suitable for the post but the result could not be published due to interim order dated 26.2.96 passed by the Hon'ble CAT in the instant application. However, consequent on modification of the aforesaid interim order *subject to final adjudication in the OA* on 19.7.76 as passed by the Hon'ble Tribunal

in disposing of M.A No. 101/96 filed by the private respondent No.5, the result has been published. In view of the above submissions, the Id. counsel for the official respondents prayed for disallowing the application of the applicant.

7. The Id. counsel Mr. Ghosh appearing for Pvt. respondent No.5 in his reply has submitted that the application of the applicant is misconceived and the same is liable to be dismissed in limine. He has pleaded that the applicant has no authority to implead respondent No.5 in the instant proceeding in order to deprive him from getting promotional and other ^{service} ~~service~~ benefits. The Id. counsel has drawn the attention to the roster point and the vacancy in the post of Shop Superintendent/JE Gr.I since 1976. Since no suitable candidate was available the point No.1 reserved for the SC candidate was carried forward in the year 1976 and again in 1988 and on availability of suitable candidate from SC category administration took the action to fill up the post by an available SC candidate viz. respondent No.5. The action was taken by the respondents according to the various circulars and rules on the subject. The requirements prescribed in the recruitment rules for the post were met by the respondent ^{my} No.5 and he was accordingly found suitable for promotion to the post of Shop Superintendent/JE Gr.I. The Id. counsel very emphatically pleaded that if there is an element of carry forward vacancy even a single vacancy in a particular recruitment year can be reserved. He has tried to support his arguments by various general orders issued by the Railway Board from time to time regarding carry forward vacancy & their following. Due to above position, he emphasised that there was no irregularity done by the Administration in asking respondent No.5 to appear in the suitability test as he was the seniormost SC candidate available in the cadre. In view of the above submissions the Id. counsel for respondent No.5 pleaded that the entire action taken for suitability test, empanelment and promotion of the respondent No.5 to the post of Shop Superintendent/J.E. Gr.I in Shop No. 16 was according to rules and order issued by the respondents was proper. The respondent No.5 in his own right has been approved and promoted to the post. Therefore, the application of the applicant is misconceived and the most

harassing for respondent No.5 and the same requires to be disallowed.

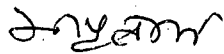
8. From the above discussion, it is clear that there was one vacant post of Shop Superintendent/J.E. Gr.I to be filled up by the eligible candidate in Shop No. 16 from the next below grade of Dy. Superintendent /J.E. Gr.II and the vacant post was declared reserved post. The applicant was the seniormost eligible candidate for promotion to the post of Shop Superintendent/J.E. Gr.I from the grade of Dy. Superintendent/J.E. Gr.II. But he was not allowed to appear in the suitability test as he was from unreserved category. Since the post was declared reserved respondent No.5 who was from the reserved category (an SC candidate) was allowed to appear for suitability test as he was the seniormost eligible SC candidate though junior to the applicant in general seniority. The respondent No.5 was declared suitable and empanelled for the single vacant post and promoted as such vide memo dated 6.8.96 enclosed as Annexure-X on page 13 after the order dated 19.7.96 in M.A. 101/96 of O.A. No. 261/96 enclosed as Annexure-X on page 11 of the reply on behalf of the respondent No.5.

9. The most important issue in this application is whether a single vacant post can be reserved for filling up. The respondents have reserved such post and ignored the claim of senior unreserved candidates and given promotion to junior but eligible SC candidate viz. the respondent No.5. The position in the rules on the subject is very clear that a single post cannot be reserved. The Hon'ble Apex Court's decisions have also settled the legal position that a single vacant post cannot be reserved. The position of the rules as well as judgment of the Hon'ble Apex Court have been quoted in the above paragraphs. They make the issue amply clear. It is thus settled position that a single vacant post cannot be reserved under the scheme of reservation and any action taken in violation of this position is illegal. This being the position, entire action taken by the respondents in allowing the respondent No.5 for suitability test (vide Annexure-A) and promotion of respondent No.5 as Shop Supdt./J.E.

Gr.I (Vide Annexure-X to the reply on behalf of respondent No.5) is against the rules and settled position of law as decided by the Hon'ble Apex Court and, therefore, requires to be quashed.

10. In view of the above, we allow the application and quash the orders of suitability test at Annexure-A, empanelment and promotion at Annexure -X of reply of respondent No.5 and direct the respondents to treat the single vacant post of Shop Superintendent/J.E. Gr.I as unreserved and consider the applicant for promotion on that post w.e.f. the date the respondent No.5 was promoted and allow him all the consequential benefits w.e.f. the same date within a period of three months from the communication of this order. The respondents will also communicate their final order to the applicant not later than a week.

11. We do not pass any order as to costs.



(B.P. Singh)
Member (A)



(S.N. Mallick)
Vice-Chairman.

a.k.c.