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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 177/95
T.A. No.

199

DATE OF DECISION 19.7.95.

ALL INDIA NON-SC AND ST

Petitioner

ASSOCIATION & CRS.

Mr. M.L. Shrimali,
Mr. S.N. Trivedi

Advocate for the Petitioner (s)

Versus

UNION OF INDIA & CRSI.

Respondent

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N.K. Verma, Administrative Member.

The Hon'ble Mr. Rattan prakash, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
- ✓ 2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

N.K. Verma
(N.K. VERMA)
Administrative Member

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

DATE OF ORDER: 19.2.95

O.A.No.177 OF 1995.

ALL INDIA NON-SC AND ST ASSOCIATION

AND OTHERS: v

....Applicants

Vs.

UNION OF INDIA AND OTHERS

....Respondents

PRESENT

Mr. M. L. Shrimali). Counsel for the Applicants.
Mr. S. N. Trivedi)

CCRAM :

THE HON'BLE MR. N. K. VERMA, ADMINISTRATIVE MEMBER

THE HON'BLE MR. RATIAN PRAKASH, JUDICIAL MEMBER

PER HON'BLE MR. N. K. VERMA :

Heard the learned counsel for the applicants.

2. This OA has been filed by the All India Non-Scheduled Castes and Scheduled Tribes Association (Railway), Bikaner through its Working President and two other applicants (Shri Rajendra Kumar Bhatnagar and Kum. Savita Saxena) seeking directions by this Tribunal to the respondents to allow fixation of pay and payment of arrears to the employees of general community in each category and grade working in Bikaner Division Workshop, Lalgarh and Store Department who have been ignored for these benefits due to application of reservation

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of scheduled castes/scheduled tribes employees on additional upgraded posts occurring as a result of cadre restructuring w.e.f. 1.1.1984 with all consequential benefits of recasting of seniority list and further promotions on the basis of revised seniority. The case of the applicants is that as a result of the restructuring orders effective on 1.1.1984 certain posts were upgraded and these posts were filled up by officials of the reserved community against the roster points. In a few cases officials of the reserve category in several levels below the officials of general category have been promoted to such reserved vacancies/posts. Although, it has been held by the Jodhpur Bench of this Tribunal that upgradation of posts as a result of cadre restructuring either in mass or partial is neither promotions nor appointments and policy of reservation of scheduled caste and scheduled tribes shall not be applicable on the upgradation ^{as decided} in the case of A.K.Srivastava Vs. Union of India reported in ATC(4) 1987 385. This judgment of the Jabalpur Bench of the Tribunal was affirmed by the Hon'ble Supreme Court on merit in a Special Leave Petition No. 11801 decided on 8.12.1987. The Kerala High Court also took a view in N.G.Prabhu Vs. Chief Justice's case that upgradation of an existing post is neither a selection nor a promotion, it is simply nomination of placing of some seniors to the upgraded posts with better pay scale on the basis of seniority subject to suitability. However, the Railways

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have continued with the reservation policy issued under the Railway Board's order dated 16.11.1984 wherein up-graded posts are also being filled up under the reservation quota for scheduled caste and scheduled tribe employees.

3. An OA in this matter was filed (OA No. 86/92) for issue of directions for not applying the reservation/ roster of scheduled caste/scheduled tribe employees on the additional up-graded posts which was dismissed by this Tribunal on 15.12.1993. A Special Leave Petition against this order is pending before the Hon'ble Supreme Court. Meanwhile on 20.10.1992, this Tribunal disposed of the OA No. 326/89 with the decision that " the reservation of scheduled caste/scheduled tribe employees is not applicable on the upgradation of existing posts." While disposing of the Contempt Petition to this O.A. on 13.7.1994, the Tribunal observed that the aggrieved party in the matter can approach this Tribunal for claiming relief after having his representation treated as rejected under sec. 20 of the Administrative Tribunals Act, 1985. It was observed that " apart from that, an individual case needs ~~thorough~~ thorough examination whether the case is covered by the judgment dated 20.10.1992 passed in OA No. 326/1989. The applicant may, therefore, file a fresh OA, if he so choses, mentioning all the facts taking into consideration the general judgment given in OA No. 326/89".

4. The matter was heard at length on behalf of the applicants in which S/Shri M.L. Shrimali and S/Shri S.N.

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Trivedi, both made very strenuous arguments for admitting the case and adjudicating in the matter for the reliefs prayed for. However, we find that the reliefs prayed for are not tenable in view of the two recent judgments of the Hon'ble Apex Court which have totally decided the issues in very clear terms. The 9 judges Special Bench in its judgment delivered in Indra Sawhney's case on 16.11.1992 (AIR 1993 SC 477) categorically decided by a near unanimous judgment that the reservations up to 50% is only made applicable for the initial entry into the service where direct recruitment is made and not for promotions. Hon'ble Justice Shri B.P.Jeevan Reddy speaking for the majority had observed at para 107 page 572 that "we find it difficult to agree with the view in Rangachari (AIR 1962 SC 36) that Article 16(4) contemplates or permits reservation in promotions as well. It is true that the expression "appointment" takes any appointment by direct recruitment, appointment by promotion and appointment by transfer. It may also be that Article 16(4) contemplates not merely quantitative but also qualitative support to backward class of citizens.... . At the initial stage of recruitment reservation can be made in favour of backward class of citizens but once they enter the service, efficiency of administration demands that those members too compete with others and earn promotion like all others; no further distinction can be made thereafter with reference to their "birthmark",..... . They are expected to operate on equal footing with others. Crutches cannot be provided

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throughout one's career. That would not be in the interest of efficiency of administration nor in the larger interest of the nation." Justice Pandian who had given a dissenting judgment on the limit of reservation up to 50% of the posts also shared the majority views in following words : "Hence, I share the view of my learned brother Mr. B.P. Jeevan Reddy, J. holding that Article 16(4) does not permit provisions for reservation in the matter of promotion and that this rule shall however, be of prospective operation and shall not affect the promotions already made or were made on regular basis or on other basis." Justices Dr. T.K. Thommen, Kuldip Singh and R.M. Sahai, also have agreed with this view. Only Justice Ahmadi, as he was then, felt that since this point was not raised in the petition, there was no need to give any decision in the matter. The 9 Judges Special Bench, however, decided to make a final decision on all the issues raised including that of promotion to the reserved category and they therefore made the above decision. Besides, Justice B.P. Jeevan Reddy also gave the judgment "however taking into consideration of the circumstances, we direct that our decision on this question shall operate only prospectively and shall not affect promotions already made whether on temporary or regular/permanent basis. It is further directed that wherever reservations are already provided in the matter of promotion be it for Central service or State service or for under any Corporation, Authority or Body falling under the definition of "State" under Article 12, such reservations shall continue in operation for a period of 5 years

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from this date. Within this period, it would be open to the appropriate authorities to revise, modify or reissue relevant rules to ensure the achievement of Article 16(4).

5. In this very judgment the question of reservation up to 50% limit was also decided in relation to the vacancies in a year. This land mark judgment of the Hon'ble Supreme Court got substantially altered and decided finally by the 5 judges Constitutional Bench in the case of R.K. Sabharwal Vs. State of Punjab (1995 SCC (L.S) 548) decided on 10.2.95. The Hon'ble Apex Court at para 6 has brought the whole controversy relating to the percentage of reservation in relation to the posts or vacancies to be settled by saying that the reservation is to be worked out in relation to the number of posts which form the cadre strength. In saying so, the Hon'ble Supreme Court has upheld the ratio of the judgment delivered at the Allahabad High Court in J.C. Malik's case reported in 1978(1) SIR 844, wherein the Railway Board's Circular dated 20.4.70 was interpreted to mean that the reservations of 15% in relation to Scheduled Castes and 7½% in relation to Scheduled Tribes would apply to reservation in respect of appointment to the posts in the cadre. The Hon'ble Supreme Court also endorsed the judgment in J.C. Malik's case by saying that "we see no infirmity in the view taken by the High Court that in case the reservation is permitted in the vacancies after all the posts in a cadre are filled then serious consequences would ensue and the

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general category is likely to suffer considerably.

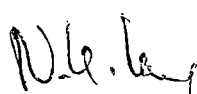
6. The nut-shell of the two land mark judgments mentioned above settles the cases once for all, that (i) the reservations of the back-ward class including the Scheduled Castes and Scheduled Tribes cannot exceed 50% of the posts and; secondly (ii) the reservations can only be operated against the posts which are filled in by direct recruitment and it is not applicable for promotion or upgradation where no direct recruitment is permitted and; thirdly (iii) the Government departments were given a five years period from the date of issue of the order on 16.11.1992 to revise their rules relating to promotion to conform to the directives given in that judgment. Both the judgments are prospective in their operation and they do not envisage any change in the promotion already made under the existing policy decisions of the Government and the interpretation of the same by the Apex Court judgments made earlier to these judgments.

7. Viewed against the amplitude of these two judgments, the issues now brought to our notice do not deserve to be considered by us at all. The sweep of the two judgments is wide enough to cover all the challenges posed. We ^{are} sure that the Railways in this case will comply with the directives of the Hon'ble Supreme Court in the case of Indra Sawhney's case followed by the ratio given in the Sabharwal's case that reservation will not be made applicable in cases of promotion and the reservations in direct recruitment

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will be limited only up to 50%. The past cases or promotions already been decided are not to be re-opened and these orders are only to be operated prospectively after the time limit prescribed in the case Indra Sawhney Vs. Union of India, for promotional post. We are surprised that the learned counsels for the applicants had not taken into account the total answers provided to their challenges in the two judgments above and they needlessly came to this Tribunal for obtaining adjudication in a matter which already stands disposed of finally in the orders of the Hon'ble Supreme Court. We find no merit in this application and, therefore, dismiss it at the admission stage itself for the reasons mentioned above.


(RATTAN PRAKASH)
Member (Judl)


(N.K. VERMA)
Member (Administrative)