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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of order : 29.03.2000

O.A. No. 223/1996

1. Kamlesh Kumar aged about 31 years son of Shri Shyophool by caste Meena resident of village & Post Raghopura, Tehsil Bamanwas, District Sawai Madhopur, presently working in Bikaner Division of the Northern Railway.
2. Ram Singh aged about 31 years, son of Shri Radha Krishan, by caste Meena, resident of village Machan Ka Pura, Post Palanheda, Tehsil Mahuwa, District Dausa, presently working in Bikaner Division of Northern Railway.

... Applicants.

v e r s u s

1. The Union of India through the General Manager, Northern Railway, Baroda House, Headquarters Office, New Delhi.
2. The Railway Board, Rail Bhawan, New Delhi, through its Chairman.
3. The Divisional Railway Manager, Northern Railway, Bikaner.
4. The Divisional Personnel Officer, Northern Railway, Bikaner.

... Respondents.

Mr. M.S. Singhvi, Counsel for the applicants.

Mr. R.K. Soni, Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman

Hon'ble Mr. Gopal Singh, Administrative Member.

: O R D E R :

(Per Hon'ble Mr. Justice B.S. Raikote)

This application is filed challenging the order dated 8.7.96 (Annexure A/1) passed by the Divisional Personnel Officer, Northern Railway, Bikaner, the respondent No.4 herein. The learned counsel appearing for the applicants contended that the earlier order

passed by this Tribunal in M.A. No. 118/96 in OA No. 178/95 does not apply to the ~~the~~ facts of this case inasmuch as the posts involved for consideration in OA No. 178/95 pertain to Assistant Personnel Officer (APO), Chief Ticket Inspectors (CTI) and Ticket Examiners (TXR) and the post involved in the present application is Carriage Foreman (CFO). Therefore, the impugned order makes a factual mistake in applying the order of the Tribunal passed in MA No. 118/96 in OA No. 178/95.

2. He contended that in the instant case, the roster system has been followed. The applicants belong to Scheduled Tribe category and keeping in view the roster system, they were promoted to the next cadre of Carriage Foreman. If that is so, the earlier order passed in MA No. 118/96 in OA No. 178/95 does not apply to the facts of the case and the impugned order has been passed under a mistaken belief. By following the roster system, within 2 posts in which, the applicants were promoted as against the posts, meant for Scheduled Tribe category and the applicants belong to ST category, therefore, no illegality has been committed in promoting the applicants vide order No. 293-E/4/P3/Loose dated 28.6.96. He submitted that the impugned order dated 8.7.96 (Annexure A/1) is liable to be set aside.

3. The respondents have filed a detailed counter. In the reply, they have stated as under:

" The sanctioned strength of H.T.X.R. grade Rs. 1600-2660 (RPS) was 32 after cadre restructuring w.e.f. 1.3.1993 on the basis of reservation in promotion in the tune of 7½% of ST, both the applicants though junior in the seniority list of T.X.R. grade Rs. 1400-2300 (RPS) were promoted in grade Rs. 1600-2660 (RPS) against the upgraded post and against the reservation quota of Scheduled Tribes vide letter No. PCW/847-E/TXRs dated 27.1.1995 (Annexure A-2).

The position of sanctioned strength and staff on roll including SC/ST in grade Rs. 1600-2660 (RPS) was as under:-

Sanctioned Strength	No. of S.T. required as per 7½%	No. of S.T. already available	Shortfall
32	02	Nil	02

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(1)

Since the applicants were promoted in grade Rs. 1600-2660 (RPS) from 1.3.1993, their seniority in grade Rs. 1600-2660 (RPS) was fixed on the basis of their date of promotion as para 319 of I.R.E.M. Vol.I.

In order to fill up seven posts of CFO grade Rs. 2000-3200 (RPS) the selection was initiated. Out of the seven posts, two posts were reserved for ST community. The cadre strength and men on roll in grade Rs. 2000-3200 (RPS) is given below:-

Cadre	No. of S.T. required as per 7½%	No. of S.T. already available	Shortfall
35	03	Nil	03 (one for D.R. and two for promotee quota)

Against the shortfall of 2 ST, no other person that the applicants were available in the feeder grade as such although, they were much junior in the seniority but called to appear in the selection against reserved quota vacancies. After written test and viva voce they were placed on the provisional panel at S.No.6 and 7 respectively issued vide this office letter No. 293-E/4/93 dated 19.2.96 (Annexure A/5) and subsequently promoted in grade Rs.2000-3200 (RPS) vide letter No. 293-E/4/P3/Loose dated 28.6.96 (Annexure A/7)."

4. From the above counter of the respondents, it is clear that there were in all 32 posts after restructuring with effect from 1.3.93. On the basis of reservation in promotion to the extent of 7½% to the ST category, the applicants who were junior to certain persons were entitled to be promoted as per the roster point under ST category against upgraded posts. Out of three posts to be filled in under the category of ST, one was for direct recruitment and two for promotional quota and out of 2 promotional quota meant for ST category, the present applicants were promoted as Carriage Foreman after the written test and viva voce. From this counter,

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it is clear that the respondents supported the case of the applicants inasmuch as it is their case that the applicants were earlier promoted within the quota meant for ST category. If that is so, the impugned order could not have passed.

5. Even otherwise, as pointed out by the learned counsel for the applicants, that the earlier interim order dated 21.6.96 passed by this Tribunal in MA No. 118/96 in OA No. 178/95 directing the authorities to consider the case for selection to the post of Assistant Personnel Officer, Chief Ticket Inspectors and Train Examiners, keeping in view the principles of reservation as enunciated by the earlier orders of this Tribunal as also the judgements of Hon'ble Supreme Court in relation to other cases, has no relation with the post of Carriage Foreman to which the applicants were promoted and that order of promotion was kept in abeyance keeping in view the interim order of this Tribunal passed in MA No. 118/96 in OA No. 178/95. From this fact, it is clear that the authorities misdirected themselves in keeping the promotion orders of the applicant in abeyance by the impugned order (Annexure A/1). Moreover, the order dated 21.6.96 is only an interim order passed in OA No. 118/96 in OA No. 178/95. From the records of the Tribunal, we find that the said OA No. 178/95 (All India Non-Scheduled Castes and Tribes Association (Railway) Bikaner through its working President Shri Jagdish Rai Agarwal, Rajendra Kumar Bhatnagar and Raj Kumar Sharma vs. Union of India & Ors.), itself has finally been disposed of vide order dated 23.7.96 with the direction that the members of the applicants' Association may make fresh representations for redressal of their grievances in regard to the matter of their seniority and promotion within a period of three months from the date of that order and if the representations are made by the members within the aforesaid period, the same shall be entertained by the respondents and fresh decisions thereon shall be taken by the respondents in terms of directions given by Hon'ble the Supreme Court in various cases. In this view of the matter, it is clear that the said interim order dated 21.6.96 passed in MA No. 118/96 stood merged with the final order passed in OA No. 178/95. From the nature of the order of this Tribunal it is clear that it is a general direction issued to the authorities to consider afresh regarding the posts involved in that application after such representations are made by the aggrieved persons. From this, it is clear that the considerations

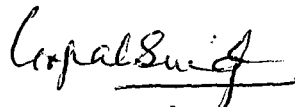
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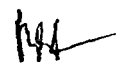
regarding other posts in terms of the directions of the Tribunal in OA No. 178/95, would be different without affecting the posts of Carriage Foreman to which the applicants were promoted and, therefore, the impugned order cannot be sustained. What would be the effect if the judgement of Hon'ble the Supreme Court in (1999) (7) SC 209 is implemented, that would be a matter having general implications and if, by chance, the applicants would also be affected thereby, that would be a matter on which nothing can be said as on today. But as on today, there is no legal impediment for giving effect to promotion already given to the applicant vide order No. 293-E/4/P3/Loose dated 28.6.96.

6. It is now brought to our notice that the applicants have been continuing on the promotional post in pursuance of order dated 28.6.96 (Annexure A/7) on the basis of the interim order passed by this Tribunal on 12.7.96 in the present application. If that is so, the applicants would be entitled to continue on the said post on the basis of the said promotion order dated 28.6.96 (Annexure A/7).

7. In this view of the matter, we pass the following order:

Application is allowed. The impugned order dated 8.7.96 at Annexure A/1 is hereby set aside. The applicants' promotion vide letter No. 293-E/4/P3/Loose dated 28.6.96 stands revived as a consequence of setting aside the impugned order dated 8.7.96 (Annexure A/1). Parties shall bear their own costs.


(GOPAL SINGH)
Adm. Member


(B.S. RAIKOTE)
Vice Chairman

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RJ.
Rw
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Kulha
Stalmond

Part II and III destroyed
in my presence on 13-1-06
under the supervision of
section officer () as per
order dated 29/8/06


Section officer (Record)