

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH, JODHPUR

OA No.265/98

Date of Order: 04-6-2001

with
MA No.165/98

G.S. Meena S/o Shri Khyali Ramji Meena, aged about 40 years,
R/o Quarter No.T-9D Railway Station Nawa City, District Nagour
(Rajasthan) Presently Working as Head Goods Clerk at Railway
Station Nawa City District Nagour (Rajasthan)

Applicant.

VERSUS

1. Union of India through the General Manager Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Jodhpur.

Divisional Personnel Officer, Northern Railway,
Jodhpur.

Respondents.

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Mr. S.K. Malik, Counsel for the applicant.

Mr. Vinit Mathur, Counsel for the respondents.

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

Hon'ble Mr. Gopal Singh, Administrative Member.

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ORDER

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

In this application filed under Section 19 of the
Administrative Tribunals Act, 1985, the applicant has sought

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for quashing of Annexure A/1 dated 11.05.94, Annexure A/2 dated 25.05.98 and Annexure A/10 dated 02.09.98. He has also sought for a direction to the respondents to consider the case of the applicant for promotion to the post of Head Goods Clerk (HGC, for short) in the grade of Rs.1400-2300 w.e.f. 1.3.93 or w.e.f. 25.7.94 on ST point.

2. The applicant submitted that he was appointed as Goods Clerk w.e.f. 2.7.80. Thereafter, he was promoted on the post of Senior Goods Clerk w.e.f. 1.01.84 under the restructuring Scheme. But in the year 1993, vide office order dated 7.9.93 the respondents promoted certain persons from the post of HGC to the post of Goods Supervisor in the grade of Rs.1600-2660 under the restructuring Scheme, in which on an ST point, one Shri Tara Chand Meena was promoted. On the vacancy caused by Shri Tara Chand Meena being promoted to the post of Goods Supervisor, the applicant would have been promoted as HGC on ST point. He accordingly, made a representation. On the basis of the representation, the impugned order vide Annexure A/1 dated 11.05.94 was issued, stating that on the basis of the cadre strength of 23 of HGC, two posts were reserved for ST, and on these two posts S/Sh. Tara Chand Meena and Babu Lal Meena were working, and therefore, the applicant is not entitled to promotion as HGC, but the impugned order Annexure A/1 is not correct. The applicant further submitted that thereafter, the respondents conducted selection for the post of Goods Supervisor and in that selection, Shri Babu Lal Meena was empanelled and promoted as Goods Supervisor, and on the vacancy caused by said Shri Babu Lal Meena, the applicant requested for his promotion to the post of HGC w.e.f. 25.7.94 on ST point.



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But the same was not considered, and accordingly the impugned letter dated 25.5.98 vide Annexure A/2 was issued to the applicant. The applicant further submitted that he should have been promoted on the vacancy caused by Shri Babu Lal Meena being promoted to Goods Supervisor, and the impugned order Annexure A/2 dated 25.05.98 also is illegal. Though subsequently Shri Tara Chand Meena was reverted because of some punishments imposed on him, but after the punishment was over, he was again promoted to the post of Goods Supervisor. Therefore, the applicant could have been promoted on the ST point as Goods Supervisor but the respondents have been taking inconsistent stand. ~~xxx~~ On further representations made by the applicant after promotion of Shri Tara Chand Meena and Babu Lal Meena, the department again stated vide Annexure A/10 dated 2.9.98 that one Shri Amar Singh Meena is still working on ST point as HGC, therefore, the applicant is not entitled for promotion to the said post. This order also the applicant has challenged as illegal. The learned counsel appearing for the applicant contended that as per Annexure A/1 dated 11.05.94, there were 23 posts and out of those 23 posts, there would be two posts meant for ST on the basis of 7.5 per cent quota. Therefore, the applicant could have been promoted, as prayed for. However, the applicant has been promoted as HGC vide Annexure A/8 w.e.f. 12.01.96. The applicant contended that he should have been promoted w.e.f. 1.03.93 or w.e.f. 25.07.94 on ST point, instead of 12.01.96 vide Annexure A/8.

3. Respondents by filing reply, have vehemently denied the averments made in the application. They have stated that the statement made in Annexure A/1 that the total number of posts were 23 itself, was a mistake. In fact, as per Annexure R/1 dated 5.3.93, the total number of posts were reduced from 25 to 17

after restructuring the cadre as on 1.3.93. Therefore, out of 17 posts, the per centage of 7.5 per cent meant for ST category comes to only one post, and that one post was already occupied by Shri Amar Singh Meena, who was senior to the applicant, and in these circumstances, the applicant could not be promoted earlier to Annexure A/8 dated 12.1.96. Therefore, the application has no merits and is liable to be rejected.

4. From the pleadings and contentions of both the parties, we have to see whether the applicant is entitled to be promoted as w.e.f. HSC. /- 1.3.93 or w.e.f. 25.7.94, instead of 12.1.96, as per Annexure A/8.



The cadre strength of HSC, as per Annexure R/1 dated 5.3.93, as on 1.3.93 was reduced from 25 to 17, as per restructuring of the cadre. In view of this order dated 5.3.93, the statement made in Annexure A/1 dated 11.5.94 regarding cadre strength as 23 was a mistake, as contended by the respondents, deserves acceptance. In all probability, Annexure A/1 was issued without noticing Annexure R/1, and Annexure R/1 categorically reduced the cadre strength of HSC from 25 to 17. If that is so, the reservation of 7.5 per cent for ST category candidate would come to one post, and that one post was occupied by one Shri Amar Singh Meena, who belonged to ST category, and admittedly, Shri Amar Singh was senior to the applicant. If that is so, there was no post meant for ST category candidate, for ~~existing~~ promoting the applicant from the post of senior Goods Clerk to HSC. It is not the case of the applicant that any of his junior was promoted as against his claim, and admittedly Amar Singh Meena was senior to him, and only after Amar Singh Meena vacated further the post by promotion, the applicant could get it. Therefore, the contention of the respondents that there was no post available

for the applicant, as an ST candidate, for being promoted to the post of HGC, deserves to be accepted. As per the law declared by Hon'ble the Supreme Court, roster reservation would be accordingly to the post-wise, but not on the vacancywise, and as per the percentage of posts meant for ST category, the applicant could not get it and in such circumstances, the applicant cannot make any grievance for his non-promotion either w.e.f. 1.3.93 or w.e.f. 25.7.94. Admittedly, he was promoted as HGC w.e.f. 12.1.96 vide Annexure A/8. In these circumstances, we do not find any merit in this application.

6. However, the learned counsel for the applicant contended that in fact, Shri Amar Singh Meena was earlier posted to the post of HGC as a general category candidate, but not as an ST category candidate. Therefore, there would be one vacancy for ST category. On the other hand, department contended that Shri Amar Singh Meena was promoted only on the ST point, but not as a general candidate. The applicant has not produced any material to substantiate his contention that in fact, Shri Amar Singh Meena was occupying the post of HGC on his own general merit as general candidate, but not as a candidate belonging to ST category. In this view of the matter, the contention of the applicant that Shri Amar Singh Meena was in fact, occupying the post of HGC, as general candidate cannot be accepted. Moreover, from going through the entire application, we do not find any allegation that Shri Amar Singh Meena was occupying the post of HGC on his own merit as a general candidate, but not as a candidate belonging to ST category. In this view of the matter, this contention of the applicant is also liable to be rejected. However the learned counsel for the applicant has relied upon the judgments of Hon'ble the Supreme Court in 1997 SCC (L & S) 1044 (Superintending Engineer, Public Health U.T.

Chandigarh & Ors. V/s Kuldeep Singh & Ors.), 1999 SCC 362 (Baburam v/s U.O.I.), 1999, (3) Supreme 129 (Baburam etc. v/s C.C. Jacob and Ors. etc.,), in support of his contention. But in our opinion, these judgments would not be applicable to the facts of the present case. In 1997 SCC (L & S) 1044, Hon'ble the Supreme Court has laid down the law that if ST candidate was not available, such vacancy would have been reserved for SC candidate, and in case of non-availability of SC candidate, the vacancy should have been carried forward for three recruitment years. But that is not the principles involved in the present case. In 1999 (3) Supreme 129, Hon'ble the Supreme Court held that the matter prior to R.K. Sabharwal's cannot be considered on the basis of principles of Sabharwal's case. That is also not an issue in the present case. The Hon'ble Supreme Court also held that the reservation is in relation to number of posts comprising the cadre and not in relation to the vacancies. Even according to the constitutional judgment of Hon'ble the Supreme Court in Ajit Singh Juneja-II, Hon'ble the Supreme Court has held that reservation is provided on the basis of the number of posts in the cadre but not in relation to vacancies, and if any person was promoted prior to Sabharwal's case, such promotion cannot be disturbed. In the instant case, that is also not an issue. Therefore, these judgments do not apply to the facts of the present case, and they are distinguishable from the facts of the case on hand. As we have already stated above, if there was no post available for promotion to the applicant on ST point and the person promoted earlier was senior to him and none of the person junior to him has been promoted, the applicant's prayer for promotion cannot be accepted.

7. From the impugned order at Annexure A/1, it is clear that the applicant's case for promotion w.e.f. 1.3.93 has been

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rejected on 11.5.94. But this order the applicant has not challenged. Even the case of the applicant that he should have been promoted w.e.f. 25.7.94 also, would be barred by time, as stated above. The present application is filed in the year 1998. From these two dates that is 1.3.93 and 25.7.94, the applicant should have preferred an application within one year. Only because he made one representation in the year 1998 which was rejected vide Annexure A/2, the cause of action cannot revive once it is barred by time. Annexure A/2 dated 25.5.98 further reiterates the same stand of the department as in Annexure A/1. Hon'ble the Supreme Court in 1999 SCC (L & S) 251 (U.O.I. and Anr. V/s S.S. Kothiyal and Ors.) has pointed out that filing of repeated representations do not revive the cause, which was already barred by time, and if that is so, his further representations vide Annexure A/9 and Annexure A/11 would not have any consequence regarding the cause of action, which accrued to him in the year 1993 and 1994. Admittedly, the applicant has been given promotion in the year 1996 on the basis of Annexure A/8, and his alleged claim for promotion w.e.f. 1.3.93 and 25.7.94 would be barred by that time. However, the applicant has filed a separate application for condonation of delay in MA No.165/98. But from the reading of the entire MA, we find that the applicant simply stated that he made subsequent representation and if the applicant has not challenged the earlier order, his constitutional right available to him would not be effected. But in our opinion, this does not constitute any sufficient cause for the purpose of condonation of delay. If the applicant was not promoted in the year 1993 or 1994, he should have immediately approached this Tribunal within one year, and after the period of limitation if he makes some representations, that would not extend the limitation. In these circumstances we do not find any merit

in the MA also. Accordingly, we pass the order as under:

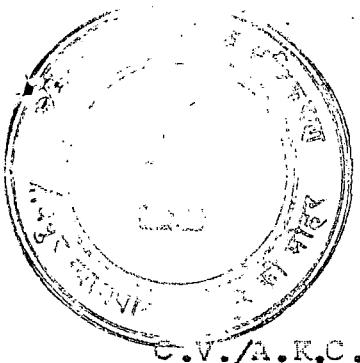
"The OA No.265/98 and the MA No.165/98 are hereby dismissed. But in the circumstances without costs."



Gopal Singh

(Gopal Singh)
Admn. Member

(Justice B.S. RaiKote)
Vice Chairman



C.V./A.K.C.