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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 286
T.A. No.

1998

DATE OF DECISION 11/05/2001

Rajendra Kumar Gaur

Petitioner

Mr. S.N. Trivedi

Advocate for the Petitioner (s)

Versus

U.O.I. & Ors.

Respondent(s)

Mr. R.K. Soni

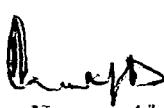
Advocate for the Respondent (s)

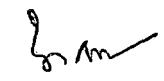
CORAM :

The Hon'ble Mr. A.K. Misra, Judicial Member

The Hon'ble Mr. A.P. Nagrath, Administrative 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? Yes


(A.P. Nagrath)
Admin. Member


(A.K. Misra)
Judl. Member

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH JODHPUR.

OA No.286/98

Date of order: 11/05/2001

1. Rajendra Kumar Gaur S/o Shri Inder Chand Ji Gaur, by caste Gaur, aged 34 years, resident of at present working as Senior Clerk in Electrical Engineering Branch, D.R.M's. Office, Northern Railway, Bikaner.
2. Chhagan Lal S/o Shri Lalu Ram Ji by caste Suthar aged about 35 years, resident of at present working as Senior Clerk in Personnel Branch, D.R.M's. Office, Northern Railway, Bikaner.

....APPLICANT

V E R S U S



1. The Union of India through its General Manager, Northern Railway, Baroda House, Headquarter Building, New Delhi.
2. The Director, Department of Personnel and Training, Ministry of Pensions and Public Grievances, North Block, New Delhi.
3. The Chairman, Railway Board, Rail Bhawan, New Delhi.
4. The Divisional Railway Manager, Northern Railway, D.R.M's. Office, Bikaner.
5. The Divisional Personnel Officer, Northern Railway, D.R.M's. Office, Bikaner.

....RESPONDENTS

Mr. S.N. Trivedi, counsel for applicant.

Mr. R.K. Soni, counsel for respondents No.1 & 3 to 5

RECORDED

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CORAM

Hon'ble Mr. A.K. Misra, Judicial Member.

Hon'ble Mr. A.P. Nagrath, Administrative Member.

ORDER

(per Hon'ble Mr.A.P. Nagrath)

In this application, office memorandum dated 2.7.97 issued by the Department of Personnel and Training regarding implementation of post-based roster consequent to Hon'ble the Supreme Court's judgment in the case of R.K. Sabarwal and Railway Board's circular dated 21.8.97 laying down instructions regarding implementation of the R.K. Sabarwal's judgment and Veerpal Singh's case have been assailed. The two applicants before us have also challenged the notification dated 8.7.98 Annex.A/1 inviting applications for filling up one vacancy of Welfare Inspector Grade 5000-8000 reserved for SC candidates.



2. Case of the applicants is that vide impugned notification Annexure A/1, single vacancy has been reserved for SC candidates meaning thereby that General Community and OBC candidates have been totally left out of consideration. There are two posts in the cadre of Welfare Inspector Rs.5000-8000 and the applicant's plea is that in view of the law laid down in R.K. Sabarwal's case that the reservation has to be confined to 15% and 7.5% for SC and ST respectively. the respondents cannot treat one of the two posts as reserved, at any time.
3. Office memorandum issued by the Department of Personnel (Annex.A/2) has been challenged to the extent that where the cadre is of less than 13 posts, and 'L'

type roster has been framed which permits making reservation to the extent of 50%. This is stated to be in contravention of the law laid down by the Apex Court. Further order dated 21.8.97 of the Railway Board (A/3) has been challenged, on the ground that the post-based roster issued by the Railway Board is at variance with the roster issued by the Department of Personnel. It has been submitted that the instructions on reservation policy are issued by the Department of Personnel and Training i.e. respondent No.2, which is the nodal department of the Central Government and are binding on all the Ministries of Government; and that Railway Board has no authority to issue any instructions on the same subject which are not in conformity with the instructions of the Department of Personnel and Training. In that view, the 'L' type roster issued by the Railway Board has also been assailed. It is the contention of the applicants, that the Department of Personnel and Railway Board had issued these post-based rosters relying upon decision of the Apex Court in the case of U.O.I. Vs. Madhava but that decision has been disapproved by the Constitution Bench of the Hon'ble Supreme Court. The applicants submit that reserving a single vacancy for the year 1998 only for SC is illegal and such a notification deserves to be quashed and set aside.

4. The applicants have challenged the authority of the Railway Board to issue a different post-based roster than that of Department of Personnel and Training and for this they placed reliance on the judgment of the Apex Court in the case of P.C. Jain Vs. State of Haryana decided on 23.10.95. Prayer of the applicants is that respondents be directed to quash and set aside



the impugned notification at Annexure-A/1 and not to treat the one vacancy as reserved and further that the policy decision of the Department of Personnel and Training dated 2.7.77 to the extent of 'L' type roster may be struck down as ultravires Constitution.

5. Respondents in their reply, justify their action of treating the post as reserved on the ground that this being a cadre of two posts, initially both the posts were treated as unreserved and filled up by general candidate. When the first replacement became due, it was again filled up by posting Shri Surya Prakash a general candidate. Impugned notification was issued to fill up the vacancy which has now arisen. This is replacement No.2 and as per 'L' type roster issued by Railway Board, the second replacement in a cadre of two posts has to be reserved for SC candidate. They submit that the 'L' type roster is an attempt towards post-based roster as enjoined by orders in R.K. Sabarwal's case and a care has been taken that at no point of time more than 50% of posts in the cadre are given to SC/ST candidates. We have carefully perused all the written statements and we find that till the time of hearing, no reply had been filed on behalf of respondent No.3 (Chairman Railway Board). The learned counsel for the respondent's side, ^{stated} at the oral arguments stage that he was representing respondents No.1, 3, 4 & 5.

6. From the facts and circumstances of the case it is clear that the controversy involved is on two points, whether a single vacancy arising in a cadre of two posts can be treated as reserved for the purpose of promotion and whether the 'L' type roster issued by the Department of Personnel and Training; and 'L' type roster issued

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by the Railway Board are in contravention of the law laid down by Hon'ble the Supreme Court in R.K. Sabarwal and Virpal Singh Chouhan's case.

7. Learned counsel for the applicants placed reliance on AIR 1998 SC 1767-Post Graduate Institute of Medical Education and Research Vs. Faculty Association and Anr. and AIR 1875 SC 1436 Jai Singh Vs. State of Rajasthan. The learned counsel submitted that 'L' type roster had come up for detailed scrutiny by the Constitution Bench in PGI's case wherein the Constitution Bench over turned the decision of the three Judge Bench of the Apex Court in Madhav's case.

8. Learned counsel for the respondents submitted that the post based rosters issued by the Department of Personnel and the Railway Board are only in implementation of the law laid down by the Hon'ble Supreme Court in R.K. Sabarwal and Virpal Singh's cases and that there is no contradiction with the law laid down in those cases. He stated that the 'L' type roster is an attempt towards achieving the same objective as that of a post based roster inasmuch as this is a rotational roster and at the first instance the posts are distributed bly as per the prescribed percentage, it is only when the replacements become due, these are on occasions, filled by SC/ST candidates dependent on the number of replacements. In the case of a cadre of two posts, the learned counsel submitted that the 'L' type roster issued by Railway Board specifically provides for reservation in favour of SC, when second replacement is due. His contention is that action of the respondents is not illegal and there is no contradiction in so far as the law laid down by the Apex Court is concerned. Since on

the basic principle that the roster is to be post-based as laid down in R.K. Sabarwal and J.C. Malik's cases, there is no dispute, the only issue which has to be adjudicated upon is whether a single vacancy arising in a cadre of only two posts can be reserved. Learned counsel for the applicant stated that it was an anomaly that in larger cadres, the reservation is confined to 15% and 7.5% but in cadres of less than 14, the reservation is being permitted upto 50%. In fact, in the instant case, he emphasized that it is a case of 100% reservation when a single vacancy occurring in the year 1998 is being treated as reserved.

9. In PGI's case the issue before the Constitution Bench was whether in a cadre of single post, the same could be reserved by rotation of roster. The Constitution Bench disapproved the ratio in Madhav's case (1997 AIR SCW 3133) Brij Lal Thakur's case and Bageswari Prasad's case (1995 Supp. (1) SCC 432) upholding reservation in a single post cadre either directly or by device of rotation of roster points. It was held that there cannot be any reservation in a single post cadre. The reservation on the single post cadre at any point has been rejected by the Apex Court in view of what has been observed in para 35 extract below:-

"35. In a single post cadre, reservation at any point of time on account of rotation of roster is bound to bring about a situation where such single post in the cadre will be kept reserved exclusively for the members of the backward classes and in total exclusion of the general members of the public. Such total exclusion of reservation for the backward classes is not permissible within the constitutional framework. The decision of this Court to this effect over the decades have been consistent."



In this case the 'L' type roster, both for recruitment and for promotion had also come up for scrutiny. Hon'ble the Supreme Court in that case observed as under:-

"36. Hence, until there is plurality of posts in a cadre, the question of reservation will not arise because any attempt of reservation by whatever means and even with device of rotation of roster in a single post cadre is bound to create 100% reservation of such post whenever such reservation is to be implemented. The device of rotation of roster in respect of single post cadre will only mean that on some occasions there will be complete reservation and the appointment to such post is kept out of bound to the members of a large segment of the community who do not belong to any reserved class, but on some other occasions the post will be available for open competition when in fact on all such occasions, a single post cadre should have been filled only by open competition amongst all segments of the society."

10. In view of these observations made by the Constitution Bench and the law laid down, the conclusion is that if there is plurality of posts in a cadre, the roster by rotation can be applied. Reservation in a single post cadre has been rejected as that at some time could amount to total exclusion of general candidates. In view of the principle thus, established let us now take a look at Annexure-A/2. The Note under Appendix to Annexure-3 to this letter, which is the roster for promotion in cadre strength upto 13 posts as issued by the Department of Personnel and Training, reads as follows:

"The relevant rotation by the indicated reserved category could be skipped over if it leads to more than 50% representation of reserved category."

It is clear from the Note that the safeguard is in-built in this scheme and number of reserved posts

in the small cadre is not being permitted beyond the limit of 50%. Consequently, we do not find any infirmity in the 'L' type roster for cadre strength upto 13 posts as issued by Department of Personnel and Training.

11. The next question is whether Railway Board has the authority to issue a roster which is at variance with the roster issued by the Department of Personnel. We find from the OM dated 2.7.97, the same has been sent to all the Ministries and Departments of the Government of India and no exception has been made for the department of Railways. In para 7 of the letter it has been clearly stated that:-

"All Ministries/Departments are requested to initiate action to prepare rosters and immediate/operate them according to these guidelines."

12. Learned counsel for the respondents also was not able to place before us, any material to support that Railway Board had been given authority to issue a roster which is different from the one, issued by the Department of Personnel and Training. In terms of Department of Personnel and Training OM NO.36001/15/79-ESTF. (SCT) dated January 6, 1981 all Ministries/Departments have been advised that if they intend to depart from the policies laid down by the Department of Personnel, it is mandatory for them to consult the Department of Personnel, in terms of sub-Rule 4 of Rule 4 of the Transaction of Business Rules; otherwise the policies laid down by the Department of Personnel are binding on them. If that is the policy of the Government, we do not see any reason for the Railway Board not to adopt the policy instructions relating to reservation roster as issued by the Department of Personnel. The orders issued by Railway Board dated 21.8.97 Annexure-A/3 are thus, liable to be quashed and set aside.

13. As per 'L' type roster issued by the Department of Personnel, in a cadre of two posts, a vacancy shall be reserved for SC only when 5th replacement is due. In view of this, impugned notification at Annex.A/1 is liable to be quashed and set aside. This is a case of second replacement and this vacancy cannot be treated as reserved for SC.

14. In view of the facts and circumstances as discussed above, we decide the matter as follows:-

"The impugned notification dated 3.7.98 (A/1) is quashed and set aside. The vacancy shall be treated as unreserved, as this is a stage of second replacement only. Model roster issued by Railway Board vide letter dated 21.8.97 (A/3) is also quashed and set aside. Respondents No. 1 and 3 are directed to adopt the same model roster as issued by the Department of Personnel and Training and communicate the same to their subordinate units within a period of 3 months from the date of this order."

15. In the facts and circumstances of the case, the Parties are left to bear their own costs.

Nagrath
(A.P. Nagrath)
Admin. Member

8/11/57/2001
(A.K. Misra)
Judl. Member