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In the Central Administrative Tribunal
Jodhpur Bench, Jodhpur

Date of order : 21.12.2000

O.A. No. 153/1998

Ganesh Singh S/o Late Shri Shankar Singh Chauhan, Ex.
Assistant Superintendent, Signal and Telecommunication
Department, Northern Railway under Tele-com. Inspector
(Wireless), Divisional Office, Bikaner R/o Near Orphanage
Bikaner (Raj) 334 004.

..... Applicant.

Vs.

1. Union of India through General Manager, Northern
Railway Headquarters, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway,
Bikaner.
3. Senior Divisional Personnel Officer, Northern Railway,
Bikaner.
4. Shri Devi Sahai Meena, Office Superintendent Signal &
Telecommunication Branch, Divisional Office, Northern
Railway, Bikaner (Raj) 334 001.

..... Respondents.

.....

CORAM :

HON'BLE MR. JUSTICE B.S. RAIKOTE, VICE CHAIRMAN
HON'BLE MR. GOPAL SINGH, ADMINISTRATIVE MEMBER

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Mr. Bharat Singh, Counsel for the applicant.
Mr. S.S. Vyas, Counsel for the respondents.

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ORDER

PER HON'BLE MR. GOPAL SINGH, ADMINISTRATIVE MEMBER :

In this application under section 19 of the Adminis-
trative Tribunals Act, 1985, the applicant, Ganesh Singh
has prayed for setting aside the impugned order dated

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12.7.97 (Annex.A/1) and dated 4.12.97 (Annex.A/3) and for a further direction to the respondents to up-grade the applicant in the scale of Rs. 2000-3200 on the post of Office Superintendent with effect from 1.3.93, with all consequential benefits.

2. Applicant's case is that, he was initially appointed as Lower Division Clerk on 17.8.57 in Signal and Telecommunication department of Northern Railway, Bikaner, was promoted regularly as Senior Clerk on 6.10.74, as a Head Clerk on 1.1.84 in the scale of Rs. 425-700/1400-2300. The applicant was promoted on ad hoc basis as Assistant Superintendent on 15.1.91 but failed in the selection held for the post and, therefore, was reverted in April, 1991. He was again promoted on ad hoc basis as Assistant Superintendent on 12.12.91, promotion being effective from 1.3.93. The applicant was regularised on the post of Assistant Superintendent in the scale of Rs. 1600-2660 with effect from 1.3.93. One Shri Devi Sahai Meena, who was appointed as Lower Division Clerk on 30.11.78, was junior to the applicant and was promoted as Office Superintendent in the scale of Rs. 2000-3200 with effect from 1.3.93. It is the contention of the applicant that he being senior to Shri Devi Sahai Meena, is entitled to get promotional benefit in the scale of Rs. 2000-3200 from 1.3.93 till the date of his retirement at par with Shri Devi Sahai Meena (Respondent No.4). The Representation filed by the applicant on 27.8.96 was rejected by the respondents vide letter dated 12.7.97 (Annex.A/1). An another representation dated 16.10.97, filed by the applicant before the Pension Adalat was rejected vide respondents letter dated 4.12.97 (Annex.A/3). Feeling

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aggrieved the applicant has filed this O.A.

3. In the Counter, it has been stated by the respondents that the applicant cannot be treated as senior to Shri Devi Sahai Meena, for the simple reason that the applicant was promoted as Assistant Superintendent on 1.3.93 while Shri Meena was promoted as Office Superintendent on that very day and, therefore, as on 1.3.93 Shri Devi Sahai Meena was functioning as Office Superintendent whereas the applicant was functioning as Assistant Superintendent. It has therefore, been averred by the respondents that application is devoid of any merit and deserves dismissal.

4. We have heard the learned counsel for the parties and perused the record of the case carefully.

5. The service particulars of the applicant and Shri Devi Sahai Meena, have been furnished by the respondents in their reply statement and these service details have not been contested by the applicant. These service details are as under :-

	<u>Ganesh Singh</u>	<u>Devi Sahai Meena</u>
1. Date of appointment as Clerk Gr. 260-400	17.8.57	30.11.78
2. Date of Promotion as Senior Clerk Gr. 330-560 (RS)	06.10.74	01.01.79
3. Date of promotion as Head Clerk Gr. 425-700 (RS)	01.01.84	01.10.80
4. Date of regular promotion as Asstt. Supdt. Gr. 1600-2660 (RS)	01.03.93	01.01.92
5. Date of promotion as Supdt. Gr. 2000-3200 (RS)	-	01.03.93
6. Date of retirement	30.11.93"	-

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6. It is clear from the above details that the applicant was promoted on regular basis as Assistant Superintendent in the scale Rs. 1600-2660 on 1.3.93 whereas Shri Devi Sahai Meena (Respondent No.4), was promoted as Office Superintendent in the scale of Rs. 2000-3200 on 1.3.93. The learned counsel for the ~~applicant~~ has cited various judgements in connection with the seniority amongst general candidates vis-a-vis reserve category candidates as under :-

- "1.(1993) 24 ATC 363 - Vasant Rao Roman Vs. UOI & Ors.
- 2.(1996) 33 ATC 239 - Ajit Singh Januja and Ors. Vs. State of Punjab and Ors.
- 3.(1995) 31 ATC 813 - UOI & Ors. Vs. Virpal Singh Chauhan and Ors.
- 4.(1992) 21 ATC 127- E.Devadanam Vs. UOI & Another".

We have carefully gone through these judgements. In its latest judgement in Ajit Singh and Others (II), reported in 1999 SCC (L&S) 1239, Hon'ble the Supreme Court has held that roster point promotees being not promoted on seniority cum merit basis, their seniority cannot be determined on the basis of length of their continuous officiation on the promotional post by de-linking the seniority rule from the promotion rule. Consequently, the general candidates who were senior to the reserve category candidates at Level 2 and were promoted to Level 3 before the reserve category candidates reached Level 4, have to be treated as senior at Level 3 also even though they have reached Level 3 later than the reserved candidate. Seniority, at Level 3 must be modified accordingly and on that basis, promotion to Level 4 must be made. If any reserved candidate is promoted to Level 4 ignoring the seniority of a

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general candidates, seniority at Level 4 must be re-fixed. But if any reserved candidate reaches Level 3 by roster-point promotion prior to the erstwhile general candidate and if he is otherwise eligible and post is also available at Level 4, he cannot be denied right to be considered for promotion merely because his erstwhile seniors at the entry level had not reached Level 3 by then. Even if seniority of roster-point promotee does not count, experience of both groups can be considered as part of merit for further promotion. Those already promoted as a result of misapplication of roster, however, need not be reverted as that would cause hardship to them. But they would not be entitled to claim seniority in the promotional cadre. In this connection, we consider it appropriate to extract below relevant portions of the cited judgement:-



"13. On the above contentions, the following four main points arise for consideration :

- 1) Can the roster-point promotees (reserved category) count their seniority in the promoted category from the date of their continuous officiation vis-a-vis general candidates who were senior to them in the lower category and who were later promoted to the same level ?
- 2) Have Virpal and Ajit Singh has been correctly decided and has Jagdish Lal has been correctly decided ?
- 3) Whether the "catch-up" principles contended for by the general candidates are tenable ?
- 4) What is the meaning of the "prospective" operation of Sabharwal and to what extent can Ajit Singh be prospective ?

77. We, therefore, hold that the roster-point promotees (reserved category) cannot count their seniority in the promoted category from the date of their continuous officiation in the promoted post, -vis-a-vis the general candidates who were senior to them in the lower category and who were later promoted. On the other hand, the senior general candidate at the lower level, if he reaches the promotional level later but before the further promotion of the reserved candidate-he will have

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to be treated as senior, at the promotional level, to the reserved candidate even if the reserved candidate was earlier promoted to that level. We shall explain this further under Point 3. We also ~~xxx~~ hold that Virpal and Ajit Singh have been correctly decided and that Jagdish Lal is not correctly decided. Points 1 and 2 are decided accordingly.

81. As accepted in Virpal (see SCC at p.702) and Ajit Singh (see SCC at P.729), we hold that in case any senior general candidate at Level 2 (Assistant) reaches Level 3 (Superintendent Grade II) before the reserved candidate (roster-point promotee) at Level 3 goes further up to Level 4 in that case the seniority at Level 3 has to be modified by placing such a general candidate above the roster promotee, reflecting their inter se seniority at Level 2. Further promotion to Level 4 must be on the basis of such a modified seniority at Level 3, namely, that the senior general candidate of Level 2 will remain senior also at Level 3 to the reserved candidate, even if the latter had reached Level 3 earlier and remained there when the senior general candidate reached that Level 3. In cases where the reserved candidate has gone up to Level 4 ignoring the seniority of the senior general candidate at Level 3, seniority at Level 4 has to be refixed (when the senior general candidate is promoted to Level 4) on the basis of when the time of reserved candidate for promotion to Level 4 would have come, if the case of the senior general candidates was considered at Level 3 in due time. To the above extent, we accept the first part of the contention of the learned counsel for the general candidates. Such a procedure in our view will properly balance the rights of the reserved candidates and the fundamental rights guaranteed under Article 16(1) to the general candidates.



91. We have accepted, while dealing with Points 1 and 2 that the reserved candidates who get promoted at two levels by roster points (say) from Level 1 to Level 2 and Level 2 to Level 3 cannot count their seniority at Level 3 as against senior general candidates who reached Level 3 before the reserved candidates moved up to Level 4. The general candidate has to be treated as senior at Level 3.

92. Where before 1.3.1996, i.e the date of Ajit Singh judgment at Level 3, there were reserved candidates who reached there earlier and also senior general candidates who reached there later (but before the reserved candidate was promoted to Level 4) and when in spite of the fact that the senior general candidate had to be treated as senior at Level 3 (in view of Ajit Singh), the reserved candidate is further promoted to Level 4 without considering the fact that the senior general candidate who also available at Level 3 then, after 1.3.1996, it becomes necessary to review the promotion of the reserved candidate to Level 4 and reconsider the

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same (without causing reversion to the reserved candidate who reached Level 4 before 1.3.1996). As and when the senior reserved candidate is later promoted to Level 4, the seniority at Level 4 has also to be refixed on the basis of when the reserved candidate at Level 3 would have got his normal promotion, treating him as junior to the senior general candidates at Level 3. Chander Pal vs. State of Haryana has to be understood in the manner stated above."

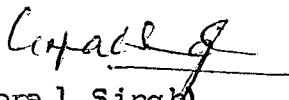
7. It may be pointed-out that the applicant is seeking promotion to the scale of Rs. 2000-3200 at par with his junior reserved category candidate with effect from 1.3.93. It would be seen from the details furnished above that the respondent No. 4 was promoted on regular basis as Assistant Superintendent on 1.1.92 whereas, the applicant was promoted as such on 1.3.93. Further, respondent No.4 Shri Meena, was promoted as Office Superintendent on 1.3.93. In terms of the judgement of the Apex Court, supra, the applicant would be treated as senior to respondent No.4 in the cadre of Assistant Superintendent. However, since respondent No.4, being a reserved category candidate, was further promoted as Office Superintendent in the scale Rs. 2000-3200, the applicant cannot seek parity in seniority with respondent No.4 in the cadre of Office Superintendent scale Rs. 2000-3200. The learned counsel for the applicant has also cited the orders of this Tribunal in O.A.No. 37/96 decided on 28.7.99 and O.A.No. 298/96 decided on 27.7.99 in support of his contention that applicant being senior to the respondent No.4, should be extended the benefit of the scale of Rs. 2000-3200 at par with respondent No.4. We have carefully gone through these orders and find that the applicants therein, were seniors as per the seniority list but were ignored for promotion whereas juniors were promoted to the higher


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grade. In such circumstances, this Tribunal allowed the above mentioned applications extending the benefit of promotion to the applicants therein at par with their juniors who were promoted earlier. As has been pointed-out above, respondent No. 4, was promoted to the scale of Rs. 2000-3200 with effect from 1.3.93 and the applicant was promoted as Assistant Superintendent in the scale of Rs. 1600-2660 on that date, the applicant cannot claim seniority over the respondent No.4 as on 1.3.93 in the cadre of Office Superintendent. Thus, in our view, the application is devoid of any merit and deserves dismissal. It is also pointed-out that whereas respondent No. 4 was promoted to the scale of Rs. 2000-3200 vide respondents letter dated 7.12.93 (Annex.A/2), the applicant submitted a representation seeking promotion in the scale of Rs. 2000-3200 at par with his junior only on 27.8.96. It may also be mentioned that applicant had retired from service on superannuation on 30.11.95. We are of the view that the applicant had ample time to seek parity with his junior (respondent No.4) but he took three long years to represent the case to the respondents. However, out earlier as has been pointed out, we are firmly of the view that the applicant is not entitled to be treated as senior to respondent No. 4, Shri Devi Sahai Meena, in the cadre of Office Superintendent and as such, the benefit of promotion to the scale of Rs. 2000-3200 cannot be extended to him.

8. In the light of the above discussions, we do not find any merit in this application and the same deserves to be dismissed. The O.A. is accordingly dismissed. No costs.


(Gopal Singh)
Adm. Member


(B.S. Raikote)
Vice Chairman

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