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CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH, JODHPUR.

O.A.No.264/2003

October 29, 2004.

**CORAM : HON'BLE MR.KULDIP SINGH, VICE CHAIRMAN &
HON'BLE MR.M.K.MISRA, MEMBER (ADM.)**

Amar Nath Singh S/o Sh. Puran Singh Ji, Aged about 36 Years R/o C/o Kana Ram Choudhary Plot No.9, Shakti Colony, Gali No.1, Ratanada, Jodhpur (Rajasthan), presently working on the post of Senior Clerk in the Office of Deputy Chief Mechanical Engineer (Workshop), North Western Railway, Jodhpur (Rajasthan).

.... Applicant

By : Mr.S.K.Malik with Mr.Day Ram, Advocates.

Versus

1. Union of India through the General Manager, North Western Railway, Jaipur (Rajasthan).
2. Deputy Chief Mechanical Engineer (Workshop), North Western Railway, Jodhpur (Rajasthan).
3. Assistant Personnel officer (Workshop), North Western Railway, Jodhpur (Rajasthan).
4. Sh. Shiv Kumar, Head Clerk (Mechanical-1), working in the office of Deputy Chief Mechanical Engineer (Workshop), North Western Railway, Jodhpur (Rajasthan).

By : Mr. Manoj Bhandari, Advocate.

By : None.

.... Respondents

ORDER

M.K.MISRA,AM

Applicant Amar Nath Singh, who belongs to Scheduled Tribe (ST) category, has filed this O.A. pleading that he was initially appointed as Gang man w.e.f. 7th October, 1989.

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He came to be promoted as Clerk on 26.10.1998 and then as Senior Clerk in the pay scale of Rs.4500-7000 on 25.10.2000. The next promotion from the post of Senior Clerk is to the post of Head Clerk, which is to be filled in by non-selection method.

2. The total sanctioned strength of Head Clerk in the respondent workshop is 24. 15% quota is reserved for Scheduled Caste category whereas 7-1/5% is to be filled in from ST category. The no. Of posts, by applying this ratio, comes to 3 for SC and 1 for ST. In 1997, the post of Head Clerk was filled up. It was to be filled up by a S.T. category candidate. However, since S.T category candidate was not available, by exchange of the point with S.C. Category, it was filled up by a S.C. category candidate namely Shri Mahavir Singh, by office order dated 23.12.1997 (Annexure A-3). Annexure A-4 is seniority list of Senior Clerks in which name of Shri Shiv Kumar, Respondent No.4 is at Sr.No.1 and that of Shri Ghansyam is at Sr.No.9/10. Name of applicant is at Sr.No.32 of the seniority list. Annexure A-5 is seniority list of Head Clerks in which name of Shri Mahaveer Singh (SC) finds mention at Sr.No.20. The case projected by the applicant is that since the S.T. point was exchanged with S.C. in 1997, it remained unfilled and the subsequent vacancy was to be given to a candidate belonging to S.T. Category. He is the only S.T. category candidate amongst the Senior Clerks. However, ignoring his claim, the respondents promoted two persons namely Shri Surendra Kumar Vohra



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(General) and Shri Udayvir Singh (SC) as Head Clerk by order dated 27.8.2001 (Annexure A-6). Being aggrieved, the applicant submitted a representation but the same was rejected by the respondents on 11.10.2001 (Annexure A-7) on the grounds that there is no shortfall of S.T. category. Further representations of the applicant submitted on 9.12.2002 and 26.12.2002 (Annexures A-8 and A-9) came to be rejected on 10.12.2002 (Annexure A-2). The applicant filed an O.A.No.103/2003 before this Tribunal which was withdrawn with liberty to file fresh one with better particulars. Thereafter, he filed O.A.No.224/2003 challenging the impugned order dated 27.8.2001 by which Mr.Udaiveer Singh (SC) was promoted as Head Clerk and order dated 10.12.2002 and for direction to the respondents to consider his case for promotion to the post of Head Clerk as per roster and promote him on the said post from the date Sh.Udaiveer Singh has been promoted with all the consequential benefits. Finding that the applicant was not having the requisite length of service for promotion as Head Clerk at the relevant time, the Original Application was dismissed on 6.11.2003 (Annexure A-10). The arguments in O.A.No.224/2003 were heard on 10.10.2003 and judgement was reserved. The respondents passed an order dated 24.10.2003 (Annexure A-1) by which Respondent No.4 and one Sh. Ali Mohd. Both were promoted as Head Clerk ignoring the interest of S.T. category.

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3. Claiming that respondents are likely to promote some more persons as Head Clerk ignoring his claim, the applicant has filed the present Original Application under section 19 of the Administrative Tribunals Act, 1985, with a prayer to quash the order dated 24.10.2003 (Annexure A-1) and order dated 10.12.2002 (annexure A-2) and for issuance of a direction to the respondents to consider his case for promotion to the post of Head Clerk as per roster point and percentage for S.T. Category and promote him on the said post from the date, respondent no.4 has been promoted as such, with all the consequential benefits.

4. The grounds raised by the applicant to challenge the action of the respondents are that in the entire cadre of Head Clerks, no S.T. candidate is working. The applicant is the only S.T. category candidate in the feeder category and non-consideration of his case is against the reservation policy as well as violative of Articles 16 (4)(A) of the Constitution of India. Once the S.T. point was given to S.C. category, the S.C. category point is now required to be given to S.T. category i.e. applicant who is available and eligible under the rules for promotion.

5. The respondents have filed a detailed reply opposing the Original Application. Their stand is that challenge to impugned order, annexure A-2, is barred by limitation. There are 24 posts of Head Clerks out of which 3 are to be filled up from



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SC category and one from ST category. They deny that no ST category candidate is working as Head Clerk. In the Mechanical Branch of the workshop, Shri Mahaveer Singh, SC has been granted promotion against the quota of ST with effect from 23rd December 1997. This promotion was granted as per the Policy and the Circular of the Railway Board dated 20th April 1970 (Annexure R-1). The policy has been laid down by the Government relating to the reservation of jobs for SC and ST. As per the said Circular, the posts reserved for SC/ST should not be dereserved and should be carried forward as per extant rules. The reserve posts may also continue to be exchanged between SCs and STs in the 3rd year of carry forward as per extant orders. Thus, there may be a situation where a SC may be occupying a post earmarked for STs and vice versa. When such a situation will arise, the combined reservation shall not exceed more than 22.5%. Since the applicant was not in the Mechanical Branch of the Workshop as on 23rd December 1997, the post was exchanged with SC. The applicant was borne in the cadre against the 25% direct recruitment quota only on 26th October 1998 and at that juncture, the post of S.T. had already been exchanged with that of SC. As on 10.12.1992, in the Mechanical Branch, there were 19 sanctioned posts of Head Clerk where two ST candidates namely Shri Montu Sinha and Shri Bihari Lal Meena were working on 11th December, 1992. Shri Monty Sinha was promoted as Office superintendent Gr. II in the pay scale of



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Rs.5500-9000 and Shri Bihar Lal Meena was promoted on account of restructuring on 1.3.1993 as Office Superintendent Gr. II. Therefore, as on 2nd March 1993, against the 19-sanctioned post of Head Clerk in the pay scale of Rs.5000-8000, there was a short fall of one post of ST, but as on 2.3.1993, there was no candidate belonging to ST category. This continued to be so upto 1997. In between, 12 persons were promoted including one Mr.Mahaveer Singh (SC) as the roster point of ST was exchanged with that of SC and promotion was given to him. It was on a representation having been filed by Shri Mahaveer Singh for exchange of vacancy of ST with SC, which was allowed, that after exchange of points, Mr. Mahaveer Singh was promoted. There was shortfall of one post of ST category on 2.3.1993. The point was carried forward for three years from 1.4.1993 to 31.3.1996 nicknamed as selection years. There is no challenge to promotion of Mr. Mahaveer Singh nor he has been arrayed, as a respondent in this O.A. and thus, the O.A. itself is defective. One Prem Sukh (SC), Head Clerk retired on 30.6.2001 and thus, the quota of SC candidates went down from 3 to 2. Thus, the one deficiency was to be filled up by SC candidate. The point meant for ST, after exchange, was consumed by promotion of Mr. Mahaveer Singh. Thereafter, there is no shortfall of ST category candidate. The posts fallen vacant either belong to general category or SC. Thus, the applicant is not entitled to any relief. The applicant has not filed any rejoinder.

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6. We have heard learned counsel for the parties at great length and perused the material on the file minutely.

7. The short controversy involved in this Original Application is – If a vacancy meant for ST category is exchanged with SC category, such exchanged point of ST will vanish altogether or the ST point will remain to be adjusted against a SC point. Undisputedly, there is definite quota fixed for reservation for SC and ST in the ratio of 15% and 7-1/2% respectively. It is common case of the parties that out of total sanctioned strength of 24 of Head Clerks, 3 posts belong to SC category and one is meant for S.T. category. This quota is unalterable and has to be followed. The respondents have taken care to fill up the points meant for SC category. However, admittedly, no person belonging to ST category is working as Head Clerk. Learned counsel for the respondents has vehemently argued that the point meant for ST Category was exchanged with SC and one Mr. Mahaveer Singh was appointed against that point and as such the point meant for ST is deemed to have been consumed and unless he is promoted or the point held by him becomes available by some other event, no person belonging to ST category can be promoted as head Clerk. Learned counsel for the applicant has vehemently opposed this submission. It is argued on behalf of the applicant that the point of ST was merely exchanged with SC and such exchange cannot have the effect of taking away the reservation provided to the ST

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category to the extent of 7-1/2%. We have considered the submissions raised on behalf of the parties carefully. The instructions on exchange of reserved vacancies are contained in Letter No.E (SCT) 70CM15/10 dated 20th April 1970 (P.S.No.5003). The same being relevant are reproduced as under:

"16.1 Exchange of reserved vacancies-Group 'C' and 'D' (Class III and IV). —While vacancies reserved for Scheduled Castes and Scheduled Tribes may continue to be treated as reserved for the respective community only, Scheduled Tribe candidates may also be considered for appointment against a vacancy reserved for Scheduled Caste candidate when such a vacancy could not be filled by a Scheduled Caste candidate even in the third year to which the vacancy is carried forward. While advertising or notifying a vacancy which has been carried forward to third year, it should be made clear in the advertisement/requisition/notice in the case of promotion that while the vacancy is reserved for Scheduled Caste/Scheduled Tribe candidates would also be eligible for consideration in the event of non-availability of suitable Scheduled Caste candidates. This arrangement will likewise apply also in the case of vacancies reserved for Scheduled Tribes."

A close examination of the above instructions reveals that if for filling up the posts meant for SC category, suitable candidates are not available, then such points are to be carried forward for three years and thereafter these are to be exchanged with ST category and same is the case with the S.T. category. In other words, if the point meant for ST candidate is not filled up for want of suitable persons, such vacancy will be carried forward for three years and thereafter, it is to be exchanged with SC category. Meaning thereby, the exchanged point does not get automatically evaporated but it is simply taken to subsequent years so as to adjust it against the category by which it was



earlier exchanged. That is the actual position obtaining in this case. As per the admission of the respondents themselves, the vacancy meant for ST category was exchanged with SC and Mr. Mahaveer Singh was appointed against the same. Meaning thereby, the subsequent vacancy falling to the share of SC category was to be filled in by a person belonging to ST category so as to maintain the quota of 7-1/2% meant for such category.

The stand of the respondents that once the point meant for ST category was consumed by a SC category it should be taken that such exchanged point stands evaporated is without any logic and de hors the rules and instructions. Even though the applicant was not having requisite length of service for appointment by way of promotion to the post of Head Clerk at the time when Mr. Mahaveer Singh (SC) was promoted, but certainly he can lodged a claim for consideration of his case for promotion against a future point meant for SC to be set off against ST category. The respondents cannot be allowed to say that Mr. Mahaveer Singh is holding the point meant for ST category.

8. However, in so far as challenge of applicant to the impugned order, Annexure A-1 is concerned, it is *prima facie* untenable in view of the fact that the private respondent no.4 and Mr. Ali Mohd. Both belong to general category and have been promoted against such category. They have not been promoted against SC or ST category. The applicant can claim a point meant for ST category or in the event of that point having

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been exchanged with SC, the next point meant for SC, to be set off against ex-changed point of ST. Thus, we do not find any reason to quash the impugned order, annexure A-1, as prayed for by the applicant.

9. The applicant has not challenged promotion of any person belonging to Scheduled Caste Community against SC category. In the absence of any challenge to promotion orders of persons belong to SC community after attaining his own eligibility, the applicant cannot get any relief in this O.A. However, in view of our specific finding that on account of exchange of vacancy of SC with ST or vice versa, the exchanged point does not get evaporated automatically, the respondents are under an obligation to fill in one post of Head Clerk by promotion from a person belonging to ST community subject to availability of a suitable candidate, and such action is to be taken by them whenever the appropriate time comes i.e. on availability of SC point, to be adjusted against ST point by treating it as a back-log so as to provide and maintain quota meant for ST community.

10. In view of the above discussion, this O.A. is dismissed but with above observations. No costs.


(M.K.MISRA)
Member (A)


(KULDIP SINGH)
Vice Chairman

HC*

October 29, 2004.

Part II
or P.I.C
on 4/11/13
Sanjiv Singh
S.D.S. (S)

File
not
in
use

Part II and III destroyed
in my presence on 30/10/13
under the supervision of
section officer (S) as per
order dated 18/10/13

S. R. Sharma
Section officer (Records) 30.10.2013