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**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR**

Original Application No. 59/2006

Date of order: 11th September 2006

**HON'BLE MR. D. SANKARANKUTTY, JUDICIAL MEMBER.
HON'BLE MR. TARSEM LAL, ADMINISTRATIVE MEMBER.**

Vishwambhar Dayal S/o Shri Chotelal, aged 54 years, Office Supd.-I, Personnel Branch, DRM Office, North West Railway, Jodhpur.

...Applicant.

Mr. S.K. Malik, counsel for applicant.

VERSUS

1. Union of India, through Secretary Min. of Railways, Rail Bhawan, New Delhi.
2. General Manager, North Western Railways, Jaipur (Raj.).
3. Senior DPO, DRM Office, North Western Railway, Jodhpur.
4. Satya Dev Sankhla S/o Rameshwar Singh, Chief Office Supd., Personnel Branch, DRM Office, N.W. Railway, Jodhpur (Raj.).

...Respondents.

Mr. Manoj Bhandari, counsel for respondent nos. 1 to 3.

**ORDER
Per Mr. Tarsem Lal, Member (A)**

Vishwambhar Dayal, the applicant, has filed this Original Application No. 59/2006 under Section 19 of the Administrative Tribunals Act, 1985 and prayed for the following reliefs -

"It is most respectfully prayed that the annexure A/1 dated 5-12-05 and annexure A/2 dated 10-02-2006 may kindly be quashed and set-aside qua the applicant and by issuance of an appropriate order the respondents may please be directed to accord promotion to the applicant on the post of CHOS from the date respondent no. 4 was given promotion i.e. 10-05-98 with all consequential benefits, it is further prayed that the application may kindly be allowed with cost.

Any other appropriate order which this Hon'ble court deems fit may kindly be passed."

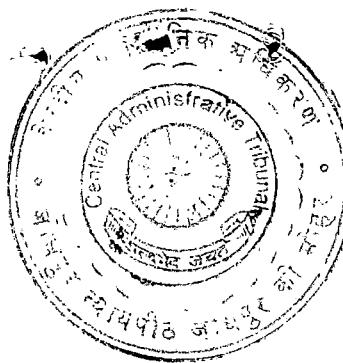
2. The brief facts of the case as narrated by the applicant are



that the applicant was appointed in the Railways on 09.12.1977 in the pay scale of Rs. 3050-4590 and respondent no. 4 was appointed on 28.05.1971 in the same pay scale. The applicant belongs to reserve category of Scheduled Caste (SC) whereas respondent no. 4 is from the general category. Although the applicant joined services later than respondent no. 4 but got higher grade upto the level of Office Superintendent-I (OS-I) earlier than the respondent no. 4. The promotion to the post of OS-I was given to the applicant on 01.03.1993 whereas the respondent no. 4 was given the promotion of OS-I on 01.06.1995.

3. The applicant was promoted in the each grade earlier than the respondent no. 4 but for promotion to the post of Chief Office Superintendent (COS), respondent no. 4 was given promotion from 10.05.1998 and the case of the applicant was not even considered for the above post. As the respondent no. 4 was promoted to the post of OS-I on 01.06.1995, his case was falling under para 319-A of Indian Railway Establishment Manual (IREM) Vol.I, 1989 edition and after judgment of Hon'ble Supreme Court in the cases of **R.K. Sabarwal** and **Veerpal Singh Chouhan**, the amendment of para 319-A was carried out which was reflected in the policy letter dated 13.01.2005 circulated on 28.02.2005 (Annex. A/4).

4. The applicant made a representation dated 13.04.2004 (Annex. A/5) bringing out the complete details of the seniority

of being promoted on each grade and prayed inter alia, to promote the applicant to the post of Chief Office Superintendent. The applicant also stated that the respondent no. 4 was promoted on 22.11.2000 but the effective date was from 10.05.1998.

5. The respondents issued a letter dated 08.03.2002 (Annex. A/6) with regard to laying down the principles for determining of staff belonging to SC/ST promoted earlier vis-a-vis General/OBC/Staff later. By this letter, the para 319-A of the IREM Vol.I, 1989 edition was amended under which the earlier policy of retaining of seniority by the General/OBC Railway Servants will be rejoined over SC/ST railway servants promoted earlier was withdrawn. It was decided that the SC/ST shall on their promotion be entitled to consequential seniority. In view of this policy, the applicant being SC who was promoted earlier to the respondent no. 4 should regain his consequential seniority but for the promotion to the post of Chief Office Superintendent, his seniority was ignored and the respondent no. 4 was promoted as Chief Office Superintendent though he was promoted as OS-I much later than the applicant.

6. The applicant made various representations which was replied by the respondent-authorities vide letter dated 05.12.2005 (Annex. A/1) stating that the respondent no. 4 has been shown below the applicant in the seniority list of 2002 but



there was no whisper of granting of promotion to the post of Chief Office Superintendent to the applicant.

7. The applicant made representations on 12.12.2005 (Annex. A/9) and 05.01.2006 (Annex. A/10) against the impugned order dated 05.12.2005 (Annex. A/1) bringing out the Railway printed serial No. 01/2005 and prayed for promotion in view of the same.

8. The respondents have not considered the case of the applicant in the light of the laid down policies. Although, the respondent-authorities have admitted that the respondent no. 4 is below the applicant in the seniority list and they have not explained as to how the applicant and others have been asked to appear in the written test starting on 05.03.2006. The applicant has prayed that he is to be promoted from 10.05.1998 notionally and hence there is no requirement of appearing in any examination which was introduced recently.

9. Aggrieved by the above, the applicant has filed this Original Application and prayed for the relief as given in para 1 above.

10. The official respondents have filed a detailed reply and contested the Original Application, inter alia, pleading that the applicant on the basis of initial entry in the pay scale of Rs. 260-400 as Clerk was substantively junior to the respondent no. 4. The respondents have given a comparative table of



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various events of promotion of the applicant as well as respondent 4 as per details given below: -

Sl. No.	Category & Grade	Shri Satyadeo Sankha	Shri Vishwanath Das
1	Clerk 260-400	28.05.1971	09/12/77
2	Sr. Clerk 330-560	23.09.1980	17.06.1980
3	Head Clerk 424-700	01/01/84	12/10/83
4	O.S.-II 1600-2660	07/07/89	09/08/88
5	O.S.-I 2000-3200	01/06/95	01/03/93
6	Chief O.S. 7450-11500	10/05/98	---

The respondents have explained that respondent no. 4 had been promoted as Chief Office Superintendent in pursuance of directives issued by the Railway Board on 31st March, 1997 in PS No. 11347/1997 (Annex. R/1). The above circular was issued with regard to determining the principle of seniority of staff belonging to SC/ST promoted earlier vis-a-vis General/OBC staff promoted later. It was laid down in pursuance of the directions given by the Hon'ble Apex Court in the case of **Union of India vs. Veerendra Pal Singh** reported in 1995 (7) JT (SC) 231, the earlier promotion of SC/ST would not confer seniority over the General category candidates who were senior to him in the lower cadre even though the General candidate is promoted later to the applicant. In view of this, the respondents have prayed that the respondent no. 4 was rightly promoted in the year 1998 prior to the applicant.

11. Keeping in view the said instructions and guidelines, the seniority lists of various categories of Ministerial cadre of

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Personnel Department on the basis of date of appointment in initial recruitment grade of the staff were issued vide office order dated 18.08.2000. Accordingly, in the seniority list of OS-I pay scale of Rs. 6500-10500 with reference to on roll staff, the name of the respondent no. 4 ranked at item no. 2 and the name of the applicant ranked at item no. 7.

12. In terms of Railway Board letter dated 10.05.1998 (PS No. 11466/1997 PC V 48), the restructuring Scheme in the Ministerial cadre was introduced w.e.f. 10.05.1998. According to the above restructuring Scheme, two posts of Chief Office Superintendent in the pay scale of Rs. 7450-11500 w.e.f. 10.05.1998 were upgraded/introduced in Personnel Department vide order dated 24.05.1999. Against these newly upgraded posts of Chief Office Superintendent, respondent no. 4 being senior to the applicant as per seniority list dated 18.08.2000 was correctly promoted as Chief Office Superintendent vide office order dated 22.11.2000 (Annex. R/5).

13. Later on, pursuant to the Constitution 85th Amendment Act, 2001, effective from 17.06.2005, revised instructions for determining the seniority of Railway Staff were issued vide Railway Board letter dated 08.03.2002 in PS No. 12397 (Annex. R/6). In pursuant to the Constitution 85th Amendment Act, 2001, as per Railway Board letter dated 08.03.2002, the matter of assigning of seniority of Railway

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servants promotion in between the period 10.02.1995 to 16.06.1995 under para 319-A (PS No. 11347 and 11593) was kept pending which has been decided vide letter dated 13.01.2005 (PS No. 01/2005) whereby the seniority determined and the promotions made during the period between 10.02.1995 to 16.06.1995 have been protected as personal to the incumbents in terms of para 319-A of IREM.

14. The promotion and seniority of the respondent no. 4 to the post of Chief Office Superintendent grade Rs. 7450-11500 w.e.f. 10.05.1998 does not come in the purview of above said period. The promotion of respondent no. 4 has correctly been protected as personal to him in terms of instructions contained in Railway Board letter dated 08.03.2002 (PS No. 12397).

15. The respondent no. 4 being senior to the applicant as per seniority list of OS-I in the pay scale of Rs. 6500-10500 issued on 18.08.2000 under para 319-A was correctly promoted to the post of Chief Office Superintendent grade Rs. 7450-11500 w.e.f. 10.05.1998 vide order dated 22.11.2000, as the post of Chief Office Superintendent was newly introduced/upgraded w.e.f. 10.05.1998.

16. The applicant was not eligible and due for promotion against the upgraded post of Chief Office Superintendent grade Rs. 7450-11500 w.e.f. 10.05.1998 as per revised list of Office Superintendent grade-I pay scale Rs. 6500-10500



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issued on 10.05.2002. The applicant was correctly informed on 05.12.2000 that he is not due to get promotion w.e.f. 10.05.1998 against upgraded post. The applicant is not eligible for promotion ignoring his seniors and due for promotion against two upgraded posts of Chief Office Superintendent grade Rs. 7450-11500 w.e.f. 10.05.1998. Even by introduction of revised seniority as per 85th Amendment, the applicant is not senior-most employee, therefore, his claim has been correctly regretted as per rules.

17. The respondents have further prayed that in terms of instructions contained in PS No. 11466/97 PC V 48, two posts of Chief Office Superintendent grade 7450-11500 were upgraded w.e.f. 10.05.1998 vide order dated 24.09.1999. Against these two upgraded posts, Mr. Sher Singh and Mr. Satyadeo Sankhla / respondent no. 4 were promoted w.e.f. 10.05.1998 vide order dated 18.08.2000.



18. In terms of RBE No. 177/2003, Railway Board letter dated 05.10.2003, one more post of Chief Office Superintendent grade 7450-11500 was upgraded w.e.f. 01.11.2003 vide office order dated 09.02.2004. Against this post, Ms. Grace Hora (ST) has been promoted w.e.f. 01.11.2003 vide office order dated 14.06.2005 who is senior to the applicant in the seniority list issued after introduction of 85th amendment.

19. The existing vacancy as on 01.11.2003 which became

available due to retirement of Mr. Sher Singh on 31.07.2001, the same has been kept vacant due to the rule of reservation as per post based roster. As per seniority, against this vacancy, Mr. S.J. Minz (ST) is due for promotion who has been extended the benefit of promotion with immediate effect vide order dated 29.08.2006 against the subsequent vacancy which accrued due to retirement of Shri Satyadeo Sankhla / respondent no. 4 on 30.06.2006.

20. The respondents have pleaded that the applicant is due to be considered for promotion against the vacancy w.e.f. 01.07.2006 subject to his passing prescribed normal selection. It is very clear that the applicant was never eligible for promotion as per his seniority to the upgraded post upto 30.06.2006. Therefore, until and unless, he passes the selection on the post of normal procedure, for the post of Chief Office Superintendent grade Rs. 7450-11500, he cannot be considered for promotion to the said post with retrospective effect or with prospective effect.



21. The respondents have prayed that the Original Application filed by the applicant deserves to be dismissed with exemplary costs.

22. Learned counsel for the parties have been heard and they generally repeated the arguments already given in their respective pleadings.

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23. Learned counsel for the applicant made us to wade through different documents and pleaded that applicant being SC candidate is required to be given promotion from the date his junior i.e. respondent no. 4 has been given promotion. Therefore, the applicant is also entitled for the promotion as Chief Office Superintendent with effect from his junior respondent no. 4 has been given promotion. He particularly invited our attention to para 5 to the reply where there is an admitted position that except his joining as Clerk in the pay scale of Rs. 260-400, the applicant has always been senior in the designation of Senior Clerk, Head Clerk, OS-II and OS-I whereas respondent no. 4 has been given promotion as Chief Office Superintendent in the pay scale of Rs. 7450-11500 w.e.f. 10.05.1998 and the case of the applicant has not been considered at all. In this regard, learned counsel for the applicant has relied upon in the case of M. Nagaraj and others vs. Union of India & Others reported in 2006 (8) SCC 212.



24. Learned counsel for the respondents emphatically pleaded that the applicant has already been granted the seniority and will be given promotion as and when his turn comes. He was called for the test and did not appear voluntary in the same. He is entitled for the seniority but not for promotion with effect from retrospective effect. In this regard, learned counsel for the respondents has relied upon in the case of P.

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Chitharanjan Menon & Ors. vs. A. Balakrishnan & Ors.

reported in 1977 (2) SLR 289.

25. We have considered this case carefully and perused the documents on record.

26. It has been seen that following has been stipulated vide para 3 of Railway Board's letter No. E(NG)I-97/SR6/3(Vol.3) dated 08.03.2003:-

"3. Accordingly, the Ministry of Railway have also considered the matter and decided to negate the effects of para 319-A of Indian Railway Establishment Manual, Vol.-I, 1989. It has, therefore, been decided as follows:

- (i)(a) SC/ST Railway servants shall, on their promotion by virtue of rule of reservation/roster, be entitled to consequential seniority also; and (b) the above decision shall be effective from 17th June, 1995.
- (ii) The provisions contained in para 319 A of Indian Railway Establishment Manual, vol-I 1989 as introduced vide ACS Nos. 25 and 44 issued under this Ministry's letter No. E(NG)I-97/SR6/3 dated 28.2.97 and 15.5.98 shall stand withdrawn and cease to have effect from 17.6.95.
- (iii) Seniority of the Railway servants determined in the light of para 319-A *Ibid* shall be revised as if this para never existed. However, as indicated in the opening para of this letter since the earlier instructions issued pursuant to Hon'ble Supreme Court's judgment in Virpal Singh Chauhan's case (JT 1995 (7) SC 231) as incorporated in para 319-A, *Ibid* were effective from 10.2.95 and in the light of revised instructions now being issued being effective from 17.6.95, the question as to how the cases falling between 10.2.95 and 16.6.95 should be regulated, is under consideration in consultation with the Department of Personnel & Training. Therefore, separate instructions in this regard will follow.
- (iv)(a) On the basis of the revised seniority, consequential benefits like promotion, pay pension, etc. should be allowed to the concerned SC/ST Railway servants (but without arrears by applying principle of 'no work no pay'),
- (b) For this purpose, senior SC/ST Railway servants may be granted promotion with effect from the date of

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promotion of their immediate junior general/OBC Railway servants.

(C) Such promotion of SC/ST Railway servants may be ordered with the approval of Appointing authority of the post to which the Railway servant is to be promoted at each level after following normal procedure viz. Selection/normal selection.

(v) Except seniority other consequential benefits like promotion, pay etc. (including retiral benefits in respect of those who have already retired) allowed to general/OBC Railway servants by virtue of implementation of provisions of para 319-A of IREM, Vol-I, 1989 and/or in pursuance of the directions of CAT/Court should be protected as personal to them."

27. It is also seen from para 5 of reply to the O.A. that the applicant joined as Clerk on 09.12.1977 whereas respondent no. 4 joined as Clerk on 28.05.1971, therefore, the applicant was substantively junior to the respondent no. 4. However, subsequently, the applicant has been promoted in the grade of Senior Clerk, Head Clerk, OS-II and OS-I against the reserved post much earlier than the respondent no. 4.



28. It has been stipulated in para 3 (iv) (c) [supra] that promotion of SC/ST Railway servants may be ordered with the approval of Appointing authority of the post to which the Railway servant is to be promoted at each level after following normal procedure viz. Selection/normal selection as the applicant is not senior-most and he has to be promoted against the reserved category of the roster published by the Department of Personnel & Training. Therefore, the ends of justice will meet if the respondents are directed to reconsider the case of seniority and promotion of the applicant.

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29. In view of the above discussion, the respondents are directed to reconsider the case of the applicant regarding seniority and promotion to the post of Chief Office Superintendent in the pay scale of Rs. 7450-11500. The outcome of the reconsideration may be communicated to the applicant. In case, the respondents are not able to give promotion to the applicant to the post of Chief Office Superintendent in the pay scale of Rs. 7450-11500 in accordance with law and rules, a reasoned and speaking order may be issued by them. The above exercise may be completed within a period of three months from the date of receipt of a copy of this order.



30. Accordingly, Original Application No. 59/2006 is disposed of.

No order as to costs.

Tarsem Lal
[Tarsem Lal]
Administrative Member

D. Sankarankutty
[D. Sankarankutty]
Judicial Member

kumawat

Part II and III destroyed
in my presence on 15/12/14
under the supervision of
Section Officer (Records)
order dated 19/8/2014

Section Officer (Records)

PLC
Rajiv Arv
15.09.08

Ref
S. K. Malhotra
Add
15/9/08