

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

OA NO. 111 OF 1997

Present : Hon'ble Mr. D. Purakavastha. Judicial Member

Hon'ble Mr. B. P. Sinha. Administrative Member

1. Bivekananda Senapta
2. Samar Kumar Ghosh
3. Dulal Chandra Gaudel

..... Applicants

VS

1. Union of India through the Secretary, Ministry of Defence, (Dept. of Defence Production) New Delhi- 110 011
2. Chairman, Ordnance Factory Board, 10A, Auckland Road, Calcutta-1
3. Dy. Director, Ordnance Factories, (Admn.) (A), OFG, 10A, Auckland Road, Calcutta-700 001.

.... Respondents

For the applicants : Mr. S.K. Dutta, Counsel
Mr. T.K. Biswas, Counsel

For the respondents : Mrs. Uma Sanyal, Counsel

Heard on : 22.12.98 : Order on : 12.1.99 *by*

O R D E R

D.Purakavastha, J.M.:

The question involved in this case is whether the applicants, who belong to general category and are presently working as Assistant under the respondents, are entitled to recast their seniority in the grade of Assistant with effect from 10.2.95 in pursuance of the judgement of the Hon'ble Apex Court in R.K. Sabharwal case, 1995(1) SCSLJ 330 or with effect from 30.1.97 as per direction contained in the letter dated 30.1.97 issued by the Director (E), Deptt. of Personnel & Training, New Delhi.

2. This original application was initially filed by four applicants. Subsequently, the fourth applicant viz. Smt. Indrani Bhattacharjee withdrew vide order dt. 19.6.97. The

applicants initially joined the OFB as LDC and after getting some promotions they are now working as Assistant in the Ordnance Factory Board, Calcutta. All of them belong to general category. They claim seniority over reserved category candidates in terms of the judgements of the Hon'ble Supreme Court in R.K.Sabharwal case (supra) which was later followed in Ajit Singh Januia & ors -vs- State of Punjab, 1996(1) ATJ 648. Their grievance is that such reserved category candidates though junior in service counted from entry grade, by virtue of their accelerated promotions because of reservation policy in promotion, have been placed in higher position in the seniority list of Assistants as on 1.1.96 and as a result, they are going to be promoted to the next higher post again ignoring the claim of their seniors like the applicants. They have challenged the seniority list of Assistants as on 1.1.96 and have submitted that the Hon'ble Supreme Court by its judgements in R.K.Sabharwal and A.K.Januia cases settled the law regarding determination of inter se seniority between reserved category and general category candidates in the promotional posts and by virtue of these judgements, they are entitled to get higher seniority position with effect from 10.2.95 i.e. the date when R.K.Sabharwal case was decided as clarified by the Hon'ble Supreme Court in the subsequent decision in A.K.Januia case. However, the respondents have revised the seniority list based on the principles laid down in the aforesaid decisions of the Hon'ble Apex court but not from 10.2.95 and instead they have done so with effect from 30.1.97 on the basis of executive decision as contained in the DOPT OM dt. 30.1.97. In filing this application, they have prayed for revising the seniority list of Assistant as on 1.1.96 (Annexure-A2 to the OA) with effect from 10.2.95 and to give them all consequential promotions to the next higher grade on the basis of such

revised seniority list. 1/2

3. When the application was moved on 31.1.97, an interim order was passed by this Tribunal directing that any promotion to unreserved posts on the basis of the impugned seniority list of Assistant shall be subject to the final outcome of this OA.

4. The respondents have contested the case by filing a written reply in which the material averments made in the original application have not been denied. It is admitted that the applicants are senior to many reserved category candidates as mentioned in the application in the entry grade of LDC. However, by dint of reservation roster, such reserved category candidates were promoted in the higher grades of UDC and Assistants earlier than the applicants as a result of which the applicants became junior to their erstwhile junior reserved category candidates in the grade of Assistant. It is contended that the impugned seniority list of Assistant as on 1.1.1996 was drawn on the basis of the then instructions contained in MHA OM dt. 22.12.59. Therefore, the applicants cannot make any grievance against the same. However, it is admitted that after the decisions of the Hon'ble Supreme Court in R.K.Sabharwal and A.K.Juneja cases, the principle for determination of seniority of reserved category candidates vis-a-vis general category candidates has undergone a change and on the basis of the aforesaid decisions the DOPT issued an OM dt. 30.1.97 by which a proviso was directed to be inserted in the earlier OM dt. 22.12.59 and subsequent OM dt. 3.7.86. According to such proviso if a candidate belonging to SC/ST is promoted to the immediate higher post/grade against a reserved vacancy earlier than his senior general/OBC candidate who is promoted later to the said higher post/grade, such general/OBC candidate will regain his seniority over such earlier promoted SC/ST candidate in the immediate higher post/grade. By virtue

of this new proviso, the seniority list of Assistant was redrawn as on 1.1.97 and was given effect to from 30.1.97 as directed in the aforesaid OM dt. 30.1.97. Therefore, the applicants cannot claim revision of seniority list of Assistant as on 1.1.96 which was issued and finalised before the issue of the aforesaid OM dt. 30.1.97 of DOPT. The respondents have, therefore, prayed for rejection of this case.

5. We have heard the learned counsel for the parties in extenso. Both parties have also filed their respective written arguments. We have also considered the same.

6. Mr. S.K.Dutta, the learned counsel for the applicants has submitted that the respondent in compliance with the principles laid down in R.K.Sabharwal case redrawn the seniority list of Assistant with effect from 30.1.97 on the basis of directions contained in the DOPT letter dt. 30.1.97 overlooking the direction of the Hon'ble apex court contained in the Constitution Bench judgement in R.K.Sabharwal case which was subsequently followed and clarified by the Hon'ble Supreme Court in Vir Pal Singh Chauhan case, 1995(2) SCSLJ 417. Mr. Dutta has drawn our attention to para 33 of the judgement in UOI & Ors -vs- Virpal Singh Chauhan case (supra) in which it was observed that the "Constitution Bench in R.K.Sabharwal too has directed that the rule enunciated therein shall have only prospective operation. So far as the present appeals are concerned, it is sufficient to direct that the Railway authorities shall hereinafter follow rules (1), (ii) and (iii) with effect from the date of judgement in R.K.Sabharwal i.e. February 10, 1995. Mr. Dutta, therefore, contends that the revision of seniority list of Assistant ought to have been given effect to from 10.2.95 as decided by the Hon'ble Supreme Court. But the respondents ignoring such direction of the apex court has ^{handed} laterally revised the

seniority list from 30.1.97 as a result of which the interest of the applicants has been prejudiced and their junior reserved category candidates are promoted to next higher grade ignoring the claim of the applicants. Mr. Dutta has also argued that when the decision of the Hon'ble apex court came on 10.2.95, the said decision took effect from that very date and no executive decision can change the date of effect of such decision as has been done by the respondents. In this context he has referred to the decision of the Hon'ble Supreme Court in the case of Makhan Waza & ors -vs- State of Jammu & Kashmir & Ors as reported in AIR 1971 SC 2206. Mr. Dutta has also contended that when law is laid down by the Hon'ble Supreme Court it should be deemed to have been incorporated in the Statute and its effect cannot be fixed on any subsequent date by issuing executive instructions. He has relied on the decisions of the Hon'ble Supreme Court in the cases of Harbans Lal -vs- M.L.Wadhawan as reported in AIR 1987 SC 217, Baliram Waman Hiray as reported in AIR 1985 SC 2267 and Kihoto Hallohan -vs- Zachillahu reported in 1992 Supp. (2) SCC 651.

7. Mrs. Uma Sanyal, learned counsel appearing on behalf of the respondents does not dispute that the law is now settled after the decision of the Hon'ble Supreme Court in R.K.Sabharwal case and that such decision was to be given effect to ~~from 10.2.95~~ ^{prospective}. She, however, contends that seniority lists of all employees based on such principles have also been redrawn by the respondents accordingly. However, the respondents have to act on the basis of Government order which was issued on 30.1.97 and in this order it was specifically directed that such revision of seniority list would be effective from the date of such of the said OM i.e. from 30.1.97. The said OM was received in the office of the respondents subsequently and after carefully considering all relevant facts, the respondents issued the revised seniority

lists including that of Assistant as on 1.1.97 with effect from 30.1.97 strictly in compliance with the direction of the Govt. of India. She has produced revised seniority list of submitted Assistant as on 1.2.97. She has, therefore, that no illegality was committed by the respondents and hence the applicants cannot successfully challenge the seniority list of Assistant as on 1.1.96 which was finalised long before the issue of the Govt. of India OM dt. 30.1.97.

8. We have given our anxious consideration to the rival contentions of both the parties. We have also gone through the records. On a perusal of the decisions of the Hon'ble Supreme Court in R.K.Sabharwal, A.K. Januja and Virpal Singh Chauhan cases, it is clear that the issue relating to determination of inter se seniority between general category employees and reserved category employees is no longer res integra. In the instant case, there is no dispute between the parties that the seniority of Assistant is to be revised based on the principles laid down by the Constitution Bench of the Hon'ble Supreme Court in R.K.Sabharwal case. In fact, the respondents have revised such seniority list. The only dispute is regarding the date from which such revision would be given effect to. We find such a question arose before the Hon'ble Supreme Court in the case of UOI & Ors -vs- Virpal Singh Chauhan case and the Hon'ble apex court in para 33 has categorically held as follows :

" The fact remains that the situation - assuming that it is what is described by the general candidates - cannot be rectified with retrospective effect now. The Constitution Bench in R.K.Sabharwal too has directed that the rule enunciated therein shall have only prospective operation. So far as the present appeals are concerned, it is sufficient to direct that the Railway authorities shall hereinafter follow rules

(i), (ii) and (iii) " stated in para No. 291 with effect from the date of judgement in R.K.Sabharwal, i.e. February 10, 1995."

9. In view of such clear findings of the Hon'ble Supreme Court, there should not be any confusion in the minds of any authority regarding giving effect to the revised seniority between general category vis -a-vis reserved category employees in promotional posts. Be it mentioned here that law laid down by the Hon'ble Supreme Court is binding upon all authorities under Art. 141 of the Constitution. Therefore, there cannot be any doubt that any revision of seniority based on the principles laid down in R.K.Sabharwal case should be given effect to from 10.2.95.

10. We may now consider the DOPT OM No. 20011/1/96-Estt.(D) dated 30th January 1997 issued by the Director (E), Deptt. of Personnel, Public Grievance, Pension which available on record. In paras 2, 3 & 4 of the said OM it is mentioned as follows :

"2. The Supreme Court has in its judgement dated 10.10.95 in the case of Union of India Vs. Virpal Singh Chauhan etc. (JT 1995(7) SC 231) held as follows :-

"Even if a Scheduled Caste/Scheduled Tribe candidate is promoted earlier by virtue of rule of reservation/roster than his senior general candidate and the senior general candidate is promoted later to the said higher grade, the general candidate regains his seniority over such earlier promoted Scheduled Caste/Scheduled Tribe candidate. The earlier promotion of the Scheduled Caste/Scheduled Tribe candidate in such a situation does not confer upon him seniority over the general

candidate even though the general candidate is promoted later to that category."

3. Having regard to the above judgement of the Supreme Court, it has been decided to modify the existing policy of fixing seniority on promotion on the lines mentioned in para 2 above. Accordingly, it has been decided to add the following proviso to general principle 5(i) contained in MHA (now DOPT) OM No. 9/11/55-RPS dated 22.11.2.59 and para 2.2. of this Department OM No. 22011/7/86-Estt.(D) dated 3.7.1986 :

" provided that if a candidate belonging to the Scheduled Caste or the Scheduled Tribe is promoted to an immediate higher post/grade against a reserved vacancy earlier than his senior general/OBC candidate who is promoted later to the said immediate higher post grade, the general/OBC candidate will regain his seniority over such earlier promoted candidate of the Scheduled Caste and the Scheduled Tribe in the immediate higher post/grade."

4. These orders shall take effect from the date of issue of this office memorandum."

11. It is, therefore, quite clear that the DOPT while issuing the aforesaid OM dt. 30.1.97 considered the decision of the Hon'ble Supreme Court in Virpal Singh Chauhan case and has issued necessary direction as to how to determine the inter se seniority of general category and reserved category employees. But it appears that while giving effect to the said direction, the DOPT overlooked the observation of the Hon'ble Supreme Court in the aforesaid case given in para 33 above which was extracted above. In this para it is specifically held that such revised principle should be given effect from 10.2.95 i.e. the date of judgement in R.K.Sabharwal case.

12. It is now well settled that all courts in India are bound to follow the decision of the Supreme Court even though they are contrary to the decision of House of Lords or of the Privy Council vide Dwarkadas Shrinivas -vs- Sholapur Spinning & Weaving Col., AIR 1954 SC 119. In the case of Makhanlal Waza -vs- State of Jammu & Kashmir, AIR 1971 SC 2206, it has been held by the Hon'ble apex court that

"when the judgement delivered by the Supreme Court not merely declared the promotions granted to the respondents in the writ petition filed at the previous stage as unconstitutional but also laid down that the distribution of appointments, posts or promotions made in implementation of communal policy was contrary to Art. 16, the law so declared was binding on the respondents State and its officers and they were bound to follow it whether the majority of the present respondents were parties or not' to the previous litigation."

13. Since the Govt. of India itself has followed the decision of the Hon'ble Supreme Court in Virpal Singh Chauhan case while issuing the OM dt. 30.1.97, they cannot ignore the date from which such revised principles should be given effect to when such date is explicitly declared by the Hon'ble Supreme Court in the said judgement itself.

14. It is not disputed that the respondents have since revised the seniority list of Assistant on the basis of the revised principles but they have given effect to the said seniority list from 30.1.97 in compliance with the OM dt. 30.1.97. In our view, the said seniority list ought to have been given effect to from 10.2.95 as held by the Hon'ble Supreme Court in Virpal Singh Chauhan case and not thereafter. Therefore, the respondents should revise the seniority list with effect from 10.2.95 and not from 30.1.97. If on such

revision of seniority, the applicants are found eligible and fit for any further promotion, they should be given such promotion as per rules.

15. Mrs. Uma Sanyal, the 1d. counsel for the respondents has raised a point that persons to be affected by such revision of seniority from 10.2.95 have not been impleaded as party respondents in this case and hence this application is bad in view of non-joinder of necessary parties.

16. Mr. S.K.Dutta, the 1d. counsel for the applicants has, however relied on a decision of the Hon'ble Supreme Court in the case of V.P.Shrivastava & Ors -vs- State of M.P. & Ors, 1996(1) SCSLJ 253. He has also relied on AIR 1971 2207 reference to which has already been made above. In that case, the Tribunal dismissed the OA on the ground that non-inclusion of the affected parties was fatal to the appellants case. However, the Hon'ble Supreme Court has held that such decision of the Tribunal is unsustainable in law. It is observed that "the appellants do not challenge the so called ad hoc appointments of the promotee respondents but they do challenge the position of the said ad hoc promotee respondents over the appellants in the seniority list. In other words, the very principle of determination of seniority made by the State Govt. is under challenge and for such a case State is the necessary party who has been impleaded. It had been held by this Court in the case of General Manager, South Central Railway, Secunderabad & Ann. etc. -vs- A.V.R. Siddhanto & Ors etc., 1974 (3) SCR 207 :

"As regards the second objection, it is to be noted that the decision of the Railway Board impugned in the writ petition contain administrative rules of general application regulating absorption in permanent departments, fixation of seniority, pay etc. of the employees of the erstwhile Grain Shop Department. The

respondents petitioners are impeaching the validity of those policy decisions on the ground of their being violative of Articles 14 and 16 of the Constitution. The proceedings are analogous to those in which the constitutionality of a statutory rule regulating seniority of government servants is assailed. In such proceedings the necessary parties to be impleaded are those against whom the relief is sought and in whose absence no effective decision can be rendered by the Court. In the present case, the relief is claimed only against the Railway which has been impleaded through its representative. No list or order fixing seniority of the petitioners vis-a-vis particular individuals pursuant to the impugned decisions, is being challenged. The employees who were likely to be affected as a result of the re-adjustment of the petitioner's seniority in accordance with the principles laid down in the Board's decision of October 16, 1952 were, at the most, proper parties and not necessary parties and their non-joinder could not be fatal to the writ petition."

17. In view of aforesaid decision of the Hon'ble Supreme Court, we are of the view that in the instant case the principle of determination of seniority between reserved category and general category candidates is no longer in dispute as the respondents admittedly did it with effect from 30.1.97 instead of 10.2.95. The applicants claim that such principle should be given effect to from 10.2.95 in pursuance of the Hon'ble Supreme Court's decision in Virpal Singh Chauhan case on the basis of which the aforesaid OM dt. 30.1.97 was issued by the DOPT. Therefore, in our view, the persons who may be affected for antedating the date of effect of the revised principles in terms of Hon'ble Supreme Court's

direction, cannot be necessary parties. At best they are proper parties. In that view of the matter, the present application cannot be said to be bad for non-joinder of necessary parties as argued by Mrs. Sanyal.

18. In the result, the application is allowed. The respondents are directed to revise the seniority list of Assistants in accordance with the principles laid down in R.K.Sabharwal, A.K.Januja and Virpal Singh Chauhan cases as reflected in the DOPT OM dt. 30.11.97 with effect from 10.2.95 and if on such refixation of seniority, the applicants are found to be eligible and fit for further promotion as per rules, they shall be given such promotion accordingly. The aforesaid action be taken by the respondents as expeditiously as possible but not later than four months from the date of communication of this order. There will be no order as to costs.

B.P.Singh

(B.P.SINGH)

MEMBER (A)

D.Purakayastha

(D. PURAKAYASTHA)

MEMBER (J)