

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH**

O.A. No.251 of 1997

Present : Hon'ble Mr. S. Biswas, Administrative Member
Hon'ble Mrs. Meera Chhibber, Judicial Member

Sudhir Ranjan Das, S/o late R.N. Das,
working for gain as C.I. Gr.I, Claims
Office, Comml. Dept., S.E. Rly., 14,
Strand Rd., Calcutta-1, now residing at PO
& PS, Belur, Dist. Howrah

.... Applicant

VS

1. Union of India, service thro' General
Manager, S.E. Rly., Garden Reach, Calcutta

2. General Manager, S.E. Rly., GRC,
Calcutta

3. Chief Personnel Officer, S.E. Rly.,
Garden Reach, Calcutta-43

4. Chief Comml. Manager, S.E. Railway,
14, Strand Road, Calcutta-1

5. Sri J.C. Pahan, C.I. Gr.I, Claims
Office, Comml. Dept., 14, Strand Road
Calcutta-1

... Respondents

For the Applicant : Mr. B. C. Sinha, counsel
For the Respondents: Mr. S. Sen, counsel

: : Date of order: 08.03.2002

O R D E R

Meera Chhibber, JM

In this OA the applicant has sought for quashing of the letters dated 4.12.96 and 20.2.97 wherein the names of respondent No.5, a S/T candidate has been included in the list for appearing in the suitability test for unreserved posts of CCI in the scale of Rs.2375-3500/-, while the applicant's name did not figure therein, even though he is a general candidate. The grievance of the applicant is that there were only four vacancies of CCI as per the circular dated 4.12.96 and all the vacancies were unreserved because against the S/C and S/T it was clearly mentioned 'nil' in the same circular. The applicant submits that since respondent No.5 was a S/T candidate who got his promotion



reserved candidate, he could not have been allowed for the suitability test for the post of CCI as S/T candidates are already in excess in the grade of CCI. He has referred to the seniority list of CCI, wherein it has been shown that that the S/C candidates are in excess by five numbers and S/T candidates by two numbers. Therefore, the applicant submits that instead of respondent No.5, the applicant's name should have been included in the said list as he was senior to respondent No.5 in the initial grade.

2. The respondents, on the other hand, have contested the claim of the applicant by stating that though all the four vacancies of CCI were unreserved, but the respondent No.5's name has to be included in the list as he was the seniormost CI Grade I as per the the seniority list issued by the respondents and as per guidelines laid down by the Railway Board's letter dated 25.4.96, also published in Srl.No. 50/96 wherein the Board had clarified the point whether a reserved candidate can be considered against an unreserved point if he is shown senior in the seniority list. After referring to the judgment of Hon'ble Supreme Court in the case of R. K. Sabharwal vs. State of Punjab (AIR 1995 SC 1371), the Railway Board had clarified that though an unreserved candidate cannot be considered against a reserved post, the reserved category candidate can compete for the post of unreserved candidate. The respondents have annexed the seniority list of CI Grade-I to show that the respondent No.5 was at Sl.No.2 of the seniority list while the applicant's position was at Sl.No.25 and since respondent No.5 was senior to the applicant, he had to be allowed to appear in the suitability test as it is a selection post. Therefore, there is nothing wrong in the impugned letters.



3. We have heard both the counsel and seen the pleadings of the case. It would be relevant to point out the latest OM dated 21.1.2002 issued by the DOPT on the subject, which reads as follows:-

"The Seniority of a person appointed to a post is determined according to the general principle 5(i) contained in MHA OM No.9/11/55-RPS dated 22.12.1959 and para 2.2 in DOPT OM No.22011/7/86-Estt.(D) dated 3.7.1986 read with DOPT OM No.20011/5/90-Estt.(D) dated 4.11.1992 (copy enclosed). Seniority of such persons is determined by the order of merit indicated at the time of initial appointment and seniority of persons promoted to various grades is determined in the order of selection for such promotion. Thus, as per the aforementioned instructions, persons appointed through an earlier selection would enbloc be senior to those promoted through subsequent selection.

2. This position was reviewed subsequent to the judgment of the Supreme Court dated 10.10.1995 in the case of Union of India Vs. Virpal Singh Chauhan et. [JT 1995(7) SC 231] and it was decided vide DOPT OM No.20011/1/96-Estt.(D), dated 30.1.1997, to modify the then existing policy by addition of the proviso to general principle 5(i) contained in MHA (now DOPT) OM No.9/11/55-RPS dated 22.12.1959 and para 2.2 in DOPT OM No.22011/7/86-Estt.(D) dated 3.7.1986, which stipulated 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.

3. The Government have now decided to negate the effect of the DOP&T OM dated 30th January, 1997 by amending Article 16(4A) of the Constitution right from the date of its inclusion in the Constitution i.e., 17th June, 1995, with a view to allow the Government servants belonging to SCs/STs to retain the seniority in the case of promotion by virtue of rule of reservation. In other words, the candidates belonging to general/OBC category promoted later will be placed junior to the SC/ST Government servants promoted earlier even though by virtue of the rule of reservation.

4. Therefore, in pursuance of the aforementioned Constitution (Eighty-fifth) Amendment Act, 2001, it has been decided as follows :-

- (i) (a) SC/ST Government 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, 1985.



- (ii) The instructions contained in DOPT O.M. No.20011/1/96-Estt. (D) dated 30.1.1997 as well as the clarifications contained in DOPT O.M. No.20011/2/97-Estt.(D) dated 21.3.1997 shall stand withdrawn w.e.f. 30.1.1997 itself.
- (iii) Seniority of Government servants determined in the light of O.M. dated 30.1.1997 shall be revised as if that O.M. was never issued.
- (iv) (a) On the basis of the revised seniority, consequential benefits like promotion, pay, pension, etc. should be allowed to the concerned SC/ST Government servants (but without arrears by applying principle of 'no work no pay').

(b) For this purpose, senior SC/ST Government servants may be granted promotion with effect from the date of promotion of their immediate junior general/OBC Government servants.

(c) Such promotion of SC/ST Government servant may be ordered with the approval of Appointing Authority of the post to which the Government servant is to be promoted at each level after following normal procedure of DPC (including consultation with UPSC).
- (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 Government servant by virtue of implementation of O.M. dated 30.1.1997 and/or in pursuance of the directions of CAT/Court should be protected as personal to them.

5. All Ministries/Departments are requested to bring the above decisions to the notice of all concerned for guidance and compliance. Necessary action to implement the decisions contained in para 4(iii) above may be completed within three months from the date of issue of these instructions and necessary action to implement the decision at para (iv) above may be completed within 6 months from the date of issue of these instructions."

4. A perusal of the above O.M. clearly shows that the Government has taken a policy decision to allow the Government servants belonging to SC/ST category to retain their seniority in the case of promotion even by virtue of mode of reservation. They have, in fact, directed the Departments to revise even those seniority lists which were determined on the basis of the O.M. dated 30.1.97 by treating as if the O.M. dated 30.1.97 was never



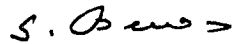
issued, meaning thereby that the principles laid down by Hon'ble Supreme Court on the question of SC/ST have been nullified by the Government. Therefore, the applicant cannot have any agrievance in the light of the above O.M. and Railway Board's circular nor can any relief be given to him in view of the above O.M. and the Railway Board's circular. The only remedy open to the applicant was either to challenge the Railway Board's letter mentioned above and the O.M. dated 21.1.2002 issued by the DOPT, but since neither of these has been challenged by the applicant no relief can be granted to the applicant in the present situation.

5. In view of the above discussion, the OA is dismissed with no order as to costs.



(Meera Chhibber)

MEMBER (J)



(S. Biswas)

MEMBER (A)