

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No.O.A.355/97

Present : Hon'ble Mr. D.Purkayastha, Judicial Member

Hon'ble Mr. G.S.Maingi, Administrative Member

Sri Swapan Kumar Bhowmik, son of Shri Khagendra Nath Bhowmik residing at 13/4, R.N. Tagore Road, PS: Thakurpur, Dist: 24 Parganas (South), Calcutta: 700 063 and working as Sr. Clerk under the Assistant Controller of Stores, Chittaranjan Locomotive Works, Howrah.

... Applicant

-Versus-

1. Union of India, represented through the General Manager, Chittaranjan Locomotive Works, P.O.: Chittaranjan, Dist : Burdwan (West Bengal) and
2. The Chief Personnel Officer, Chittaranjan Locomotive Works, PO: Chittaranjan, Dist. Burdwan, West Bengal.
3. Deputy Controller of Stores (IV), Chittaranjan Locomotive Works, Hindustan Building, Calcutta: 700 072.
4. Mr. Amitava Ghosh, Private Respondent.

For the applicant(s) : Mr. C.Samaddar, counsel
Mr. D.P.Bhattacharya, counsel

For the respondents : Ms. U. Sanyal, counsel

Heard on : 16.6.2000

Order on: 30.6.2000

ORDER

G.S.Maingi, A.M. :-

This application u/s.19 of the A.T. Act, 1985 has been filed by the applicant Sri Swapan Kumar Bhowmik. Applicant has sought for the following reliefs :-

- (i) To pass an order quashing and setting aside the impugned call letter dated 20.6.95 (Annexure 'A/3' to the application).
- (ii) To direct the Respondent's ^{esm} authorities not to give any promotion to Shri Amitava Ghosh (UR) to the post of DSK Gr.III at Howrah Depot. Office of Chittaranjan Locomotive Works. _{esm}

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- (iii) To direct the Respondent Authorities to consider the applicant as reserved candidate for promotion to either of the posts of DSK Gr.III in Howrah Depot. Office which are earmarked for the reserved community.

The Call letter as mentioned in Clause (i) of the Relief Portion relates to the written test for the post of DSK Gr.II and DSK Gr.III in which two persons viz. Sri Alokesh Saha (S.C.) for the DSK Gr.II and Sri Amitabha Ghosh (UR) for the post of DSK Gr.III were asked to appear for the written test on 1.7.1995.

2. The applicant belongs to the reserve category (S.C.) who was initially appointed as Clerk Gr.II through the Railway Recruitment Board and posted at Chittaranjan. Thereafter, he was transferred to the Office of the Assistant Controller of Stores, Chittaranjan Locomotive Works at Howrah. While working in that capacity in Howrah Office, he was promoted to the post of Sr. Clerk in the scale of Rs.1200/- - Rs.2040/- (RP) against a post reserved for ST community.

3. According to the applicant, the post against which Sri Amitava Ghosh was promoted belongs to the reserved category (S.T. candidate). The name of Sri Amitava Ghosh was included as a Private Respondent vide order dated 17.4.1997 in M.A. 164/97. Applicant has stated at Para 4.7 of the application that two vacancies occurred in the category of DSK Gr.III which were earmarked for S.C. community and ST community and as there was no S.T. employee in the grade of Senior Clerk in Howrah Depot., the aforesaid two remaining reserved posts had to be filled up by SC candidates by way of exchange as per Railway Board's order No.E9SCT)70 CM 15/10 dated 20.4.1970. Although the applicant has mentioned this order in the application, he has failed to enclose its copy to the application. It is the contention of the application that against the vacancies which were required to be filled up by reserved candidates came to 0.60%. One SC post/^{was} vacated as a result of Shri Alokesh Saha's promotion to the post of DSK Gr.II and the other meant for ST post was vacant.

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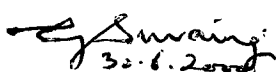
4. The respondents in their reply to the application have inter alia explained that the applicant was promoted to the post of Sr. Clerk against a post reserved for ST point and that ST point had to be exchanged by the SC point since the vacancy was carried forward for three Recruitment years. This is according to the orders of the Railway Board. It is further^{egsm} stated by the respondents that the 4th Point which is reserved for ST could not be filled up yet due to non-availability of the ST candidate in the feeder grade. As per Railway Board's order^{egsm} No.95-E9SCT)II/60/6 dated 22.9.95 requisition has been placed in the Railway Recruitment Board, Calcutta. As per extant orders of the Railway Board, Communal Allotment cannot exceed 50% limit at a time and accordingly, for the two vacancies as indicated in Para 4.7 of the application are allotted one for ST and another for Unreserved category. Respondents in their reply in Para 11 have explained that Shri Amitava Ghosh has been empanelled and promoted as DSK Grade -III in the scale of Rs.1400/- .. Rs.2300/- (RP) against Unreserved Point. It is further stated by the respondents that the ST point will be filled up by Direct Recruitment from Railway Recruitment Board, Calcutta as per Railway Board's Order^{egsm} No.95-E(SCT)-II/60/6 dated 22.9.95. So, according to the respondents Shri Amitava Ghosh has been promoted as DSK Grade-III against Unreserved vacancy.

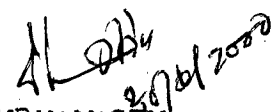
5. The application was listed for hearing on 16.6.2000 when Mr. C. Samaddar, Id. Advocate leading Mr. D.P. Bhattacharya, Id. Advocate appears on behalf of the applicant while Ms. U. Sanyal, Id. Advocate appears on behalf of the respondents. Both the parties strongly argued their cases.

6. The position has been elaborately explained by the respondents in their reply dated 28.8.1997. But the applicant did^{egsm} not file any rejoinder. Id. counsel appearing on behalf of the applicant opposed the contention of the respondents that Sri Amitava Ghosh included as Private Respondent in this O.A. as per order in MA 164/97 dated 17.4.97 has been appointed against an

unreserved vacancy. There appears to be some iota of mis-understanding on the part of the applicant that vacancies in question have ^{arisen} ~~arised~~ in a particular year. This position has long back been settled by the Hon'ble Supreme Court by passing various judgements like Indra Sahani's case, Ajit Singh's case etc. The Supreme Court has clearly held that the reservation is in respect of post and it is not in respect of vacancies. Respondents have explained in Paragraph 17 of the reply that the earlier SC Point as per 40 Point Roster was utilised by the SC candidate and ST point is only unfilled due to non-availability of ST candidate in feeder grade. The ST point is carried forward. Railway Board have ordered that the ST point be filled up by Direct Recruitment through Railway Recruitment Board/Calcutta. Till the Railway Recruitment Board, Calcutta send this panel of DSK Gr.III in scale of Rs.1400/- ... Rs.2300/- (RP) with the ST candidate, the same cannot be filled up regularly by SC community candidate as it stands now as per the Railway Board's letter No.95-E(SCT)II/60/6 dated 22.9.95.

7. We have considered the matter very carefully. One of the reliefs sought by the applicant is not to give any promotion to Shri Amitava Ghosh(UR) to the post of DSK Gr.III at Howrah Depot. Office of Chittaranjan Locomotive Works. Since this position has been clarified by the respondents in their reply to the application and to which no rejoinder has been filed by the applicant, we find no justifiable ground in the application of the applicant and the same is, therefore, dismissed. No order is passed as to costs.


30.6.2000
G.S. MAINGI
MEMBER(A)


20/06/2000
D. PURKAYASTHA
MEMBER(J)