

Central Administrative Tribunal Lucknow Bench Lucknow

Original Application No. 266/2006.

This, the 21st day of August, 2008

Hon'ble Mr. M./ Kanthaiah, Member (Judicial)
Hon'ble Dr. A. K. Mishra, Member(Administrative)

Mohd Saleem aged about 51 years S/o Wahab Ali R/o New Chhoti Maszid, Mullah Ki Gali, Azadnagar Alambagh Lucknow.

Applicant.

By Advocate: Sri A. Moin.

Versus

1. Union of India, Northern Railway Baroda House, New Delhi.
2. Deputy Chief Material Manager, Northern Railway, Alambagh Store, Lucknow.
3. Sri Lakhi Kant Munda working as Painter Grade II under the Respondent No. 2.
4. Sri Naumi Lal, working as Painter Grade II, under the Respondent No. 2.

Respondents.

By Advocate: Sri N.K. Agarwal, Sri Praveen Kumar and Sri S. P. Sinha.

Order

By Hon'ble Dr. A. K. Mishra, Member (Administrative)

This Original Application has been filed against the order dated 12.5.2006 passed by the respondent No. 2 i.e. Deputy Chief Material Manager, Northern Railway, Alambagh Lucknow.

2. The brief facts of the case are as follows:-

The applicant was appointed as a Khallasi of Northern Railway on 18.5.1982. He was promoted as Khallasi Helper on 1.1.84 and subsequently, he was promoted as Painter Grade III on 6.7.93 as against which, the Respondent No. 3 got his promotion to this grade on 31.1.95. However, the respondent No. 3 got promotion to the post of Painter Grade II on 1.3.1997, availing himself of the reservation facility meant for members of Scheduled Tribe. The applicant got the promotion to the post of Painter Grade II on 27.3.2000. According to his own averments, Respondent No. 3 became senior to the applicant in this grade, which is the feeder level for promotion to Painter Grade I level, in which, two vacancies were recently released. As per the L Shaped roster maintained indicating the points meant for filling up by Scheduled Tribe and Scheduled Caste and General Candidates, the second and third replacements were meant for

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Scheduled Caste and General category candidates. Respondent No. 4, who belongs to Scheduled Caste, got his promotion to Painter Grade II level on 1.6.2005. As he had not completed the minimum required of 2 years' experience in the lower grade, the point relating to the second replacement was kept vacant for some time till he acquired the prescribed minimum experience of 2 years. Meantime, the next replacement point, which was meant for general category candidates, was filled up by promoting Respondent No. 3 who was No. 1 in the seniority list prepared for Painter Grade II (Rs. 4000-6000). This position is admitted by the applicant as revealed from the statement supplied by him at Annexure A-4. His contention is that both the two posts available in this grade, if filled up by Respondents No. 3 and 4, would amount to 100% reservation to the detriment of the interest of the applicant who is at serial No. 2 in the seniority list. It was forcefully argued by the learned counsel for the applicant that such a course of action would be contrary to the circular issued by the Railway Board on 21.8.97. Since, more than 50% reservation cannot be made, at least one post should be filled up by a candidate from the General category. He cited the decision of the Hon'ble Supreme Court, reported in 1999 (1) SCC 546, where it has been said that once the quota is achieved for a community entitled to reservation, the roster will cease to be operative. He also cited the Supreme Court decision, reported in 2006 (3) ALJ 626, wherein the settled legal proposition is reiterated that what could not be done directly cannot be permitted to be done indirectly.

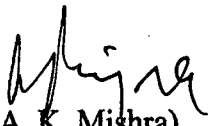
3. The case of the respondents is that the Respondent No. 3 is the senior most in the gradation list of the feeder cadre Painter Grade II. Even if he has got the promotion because of operation of the principle reservation, he would be entitled to all the benefits including his seniority in the promotion post. The Constitution, through amendments, has clarified, this position beyond doubt. As such, if he is found suitable, through appropriate suitability test, he would be entitled to be considered for the vacancy against general quota. His promotion against such general point will not be considered as on account of reservation policy. On the other hand, if he gets it on his own merit, and because of the principle of suitability cum seniority, it cannot be said that both posts are occupied by candidates coming from reserved categories. If he is given promotion against general point and Respondent No. 4 is promoted against the Scheduled Caste




point, indicated at the stage of second replacement, it would not be correct to say that the instructions of the Railway Board have been violated in the process. Paragraph '2' of Railway Board's letter dated 21.8.97 makes the position very clear. It says that candidates belonging to reserve categories, if appointed on the basis of merit, are not to be counted towards the quota meant for reservation.

4. We find that there is considerable force in the arguments advanced by the respondents. Therefore, we do not see any merit in this O.A. We do not find any legal ground to interfere with the promotions to be made against the second and third replacement points by respondents No. 3 and 4 respectively.

5. Accordingly, the O.A. is dismissed. No costs.


(Dr. A. K. Mishra)
Member (A)

21/08/02


(M. Kanthaiah)
Member (J)

v.