

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:

LUCKNOW BENCH, LUCKNOW.

Original Application No. 433/90 of 1998.

T.A.R.A./C.C.P.No. of 1998.

Date of Decision: 31.5.2000

A.C. India Station Master, Agra. Applicant  
Sh. S. S. S. Advocate for applicant

Versus

.....L.D.I. & D.I. .... Respondents  
.....A.B. Chaturvedi, A.M. Advocate for  
Respondents

CORAM

HON'BLE MR. D.C. Verma, J.M.

HON'BLE MR. A.K. Misra, A.M.

1. Whether reporter of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether to be circulated to other benches?

Vice Chairman/Member

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

Lucknow this the 31<sup>st</sup> day of May, 2000.

O.A. No. 433/90

HON. MR. D.C.VERMA, MEMBER(J)

HON. MR. A.K. MISRA, MEMBER(A)

1. The All India Station Master's Association Registered No. 1369 Northern Eastern Railway, Lucknow Division Lucknow through its working President Sri A.P. Srivastava.
2. Ganga Saran Misra, Major son of Sri Ram Ghulam Misra, employed as Station Master, Fatehpur, District Barabanki.
3. V.S. Srivastava son of Sri R.D. Lal Srivastava employed as Station Supdt. Badshah Nagar, Lucknow.

Applicants.

By Advocate Shri S.P. Sinha.

versus

1. The Union of India, Ministry of Railways through the Secretary Railway Board New Delhi.
2. The G.M. N.E. Railway, Gorakhpur.
3. The D.R.M. Lucknow.
4. Sri Ram Shankar S.S. Nakhajangal Gorakhpur.
5. Sri Ram Dhirkaj S.S. Bichhia, Behraich.
6. Sri Hari Ram Prasad S.S. Barhaniy Gonda.
7. Sri Bharat Ram S.S. Tiqunia District Lakhimpur.
7. Sri P.L. Shankhwar S.S. Rawatpur, Kanpur.
8. Sri Sita Ram S.S. Behraich.
10. Sri B.N. Dass, Dy. S.S. Lucknow Jn.
11. Sri R.B. Prasad, S.S. Brijmanganj, Maharajganj.
12. Sri Brahma Nand S.S. Sahjanwa, Gorakhpur.
13. Sri Parashuram S.S. Munderwa District Basti.
14. Sri Bala Nand Prasad S.S. Pipiganj, Gorakhpur.
15. Sri Yamuna Prasad S.S. Kampiyarganj, Gorakhpur.
16. Sri Chetan S.S. Kampiyarganj, Gorakhpur.
17. Sri H.L. Henbrum Dy. S.S. Lucknow.
18. Sri Pannal Lal S.S. Burhwal, Gonda.
19. Sri Ram Bhawan S.S. Sishauli Sitapur.
20. Sri Ram Niwas S.S. Biswan, Sitapur.
21. Sri Jaleshwar prasad S.S. nawagarh, basti.

22. Sri Arun Kumar Kunjroo S.S. Palia Kalan, Lakhimpur.

23. Sri Ram yash S.S. Mihinpurwa, Behraich.

24. Sri B.K. Singh Munda S.S. RTS Lakhimpur.

25. Sri Prem Chand Dy. S.S. Lucknow.

26. Sri Shet Kumar Khaloo S.S. Mehhoodabad Avadh, Sitapur.

27. Sri Alar Te. Te. S.S. Bhirakhiri Lakhimpur.

28. Sri Shankar Ram S.S. Balrampur. Gonda.

29. Sri K.N. Ram, S.S. Jarwal Road Behraich.

30. Sri Ram Murti, S.M. Gonda Kachari, Gonda.

Respondents.

By Advocate Shri A.K. Chaturvedi.

O R D E R

BY D.C.VERMA, MEMBER(J)

The applicants of this O.A. have prayed for quashing of seniority lists Annexures -3 and 5 and for a direction to prepare a correct seniority list after correcting the mistakes done in the promotion of reserved quota candidates.

2. The brief facts of the case are that the applicant No. 1 All India Station Masters Association, Lucknow Division is a recognised Association on All India basis but the present application has been filed by the Lucknow Division Association only. All the Station Masters and Assistant Station Masters, as claimed, are members of the Association applicant No. 1. The pay scale of various posts of Assistant Station Masters (ASMs), Station Masters (SMs) and Station Superintendent (SSs) has been given in para 4 of the O.A. It has been stated that separate seniority lists are maintained in respect of every pay scale. As per recitals made in the O.A., there is no dispute in the seniority of ASMs in the scale of Rs 1200-1800 but there is a dispute in all the remaining pay scales of SMs and SSs. As per recitals made in the O.A., the Department have wrongly interpreted the Government order dated 20.4.70 circulated with the letter dated G.M.(P) of N.E. Railway under letter dated 16.5.70 in respect of quotas of SC/ST. According to the applicants, the promotion has been given on the basis of vacancies and not on the

basis of posts. Consequently, the illegal promotions of quota candidates has been made in excess. Position at the time of filing of the O.A. of S.C./S.T. candidates in the total number of posts has been indicated in the O.A. As per the details given in the O.A., in the scale of Rs 2000-3200 there were 57 posts of which 9 were for S.C. and 4 for S.T. However, 23 SCs and 6 STs were occupying the post i.e. 14 SC and 2 ST candidates were occupying in excess of the prescribed quota. Out of 14 S.C. candidates occupying the post in excess of quota, only 10 were entitled for the scale of Rs 1600-2660 and the rest 4 junior most were not so entitled. Similar was the position in respect of two S.T. candidates occupying the post in excess of the quota. According to the applicants, a wrong seniority list was prepared by the Department and that has affected the further promotion of the Members of the applicant No. 1 in the pay scale of Rs 2000-3200, with the result that the illegal promotions have been given treating juniors as seniors. The submission is that S.C/ST candidates promoted by virtue of quota i.e. roster point are not entitled to earn seniority against the general candidates in the light of the decision given in the case of Veer Pal Singh vs. Union of India and others decided by the Allahabad bench of the Central Administrative Tribunal reported in SLJ 1987(2), 534.

3. When this O.A. was filed in the year 1990, the case of Veer Pal Singh (supra) had been decided by the Tribunal. The position at present is that the question of seniority of reserved candidates promoted in excess of quota vis-a-vis general candidates who are promoted subsequently, and the question of occupation of the post by reserved candidates who came to occupy the post in excess of the quota were considered by the apex court in various decisions. The learned counsel for the respondents has submitted that the matter has now come to be finally settled in view of the decision of the apex court in the case of R.K. Sabharwal v. State of Punjab (1995) 2 SCC 745 and in the case of Ajit Singh II and others vs. State of Punjab and others reported in 1999 SCC (L&S). 1239. The submission of the learned counsel for the applicant is that this Tribunal has decided the similar matter in the case of O.K. Banerjee vs. Railway Board and others in O.A. no. 102/92 decided

on 11.12.97. The case of O.K. Banerjee was filed by Head Clerks in the office D.R.M. N.E. Railway and they had challenged the notification dated 13.1.92 which was for selection to six posts of Office Superintendent grade II. The claim of the applicant in the case of O.K. Banerjee was that the private respondents who belong to the S.C. category candidates were given accelerated promotion on the basis of reservation to the post of Senior Clerks and Head Clerks but actually those private respondents were junior to the applicant of O.A. 102/92. The submission of the learned counsel is that in the light of the decision of the apex court in the case of R.K. Sabharwal, the Railway Board had issued a letter on 28.2.97 wherein after referring to the Supreme Court decision in the case of Union of India vs. Veer Pal Singh Chauhan reported in J.T. 1995 (7) SC, 231 the principle for determining the seniority of staff belonging to S.C. and ST promoted earlier vis-a-vis general / subsequently O.B.C. staff promoted earlier were laid down and correction slip No. 25 seeking to para 319-A in Chapter III of the Indian Railway Establishment Manual, Volume I was introduced and added. It was clearly provided that it will have effect from 10.2.95 i.e. the date on which the decision in the case of R.K. Sabharwal was delivered by the apex court. The submission of the learned counsel for the respondents is that after considering all the aspects and the correction issued by the Department, the Tribunal held that as the private respondents of the cited case were promoted as Head Clerks on 1.11.85, 9.12.86 and 29.10.87, i.e. prior to 10.2.95, their seniority could not be disturbed and the O.A. was dismissed.

4. We have heard the learned counsel for the parties at great length and we find that after the O.A. was filed in the year 1990 various decisions have come to settle the law on the point of seniority between reserved category candidates promoted earlier and the General candidates promoted subsequently and also in respect of occupancy of a higher post by reserved candidates in excess of prescribed quota. The decisions on the point are laid down in the case of Union of India vs. Veer Pal Singh Chauhan (supra), (2) R.K. Sabharwal (supra) and (3) Ajit Singh II (supra).

For deciding the matter in the present case, we may refer to the observations of the apex court in the case of Ajit Singh II:

"Before Sabharwal was decided on 10.2.1995, it appears that in several services, the roster was initially put in operation and promotions at all the roster points were filled up. But the roster was once again operated on future vacancies, even though all the required reserved candidates were in position, at the promotional level. It was not realised that once the roster points were all filled, the roster had served its purpose and fresh members of the reserved classes could claim promotional posts only if any promotional posts already filled by reserved candidates fell vacant. The misapplication of the roster came to be removed for the first time on 10.2.1995 when Sabharwal was decided. Obviously, by that time several reserved candidates had got promotion in excess of their quota because of wrong "re-operation" of the roster points. If the law declared in Sabharwal were to be treated as retro-active as is the normal position whenever the law is declared by this Court, it would have resulted in reversions of several officers of the reserved classes as their promotions before 10.2.1995 by the fresh operation of the roster as aforesaid was wholly unjustified. This court in Sabharwal therefore, tried to prevent such reversions and declared (p. 753 of SCC para 11) as follows at the end of the judgment:

"We, however, direct that the interpretation given by us to the working of the roster and our findings on this point shall be operative prospectively."

5. In the case of Ajit Singh II a question arose whether the reserved candidates who got promotions in excess of reservation quota who in addition got the benefit of seniority in the promotional post even if such promotion was made before 10.2.95.

The apex court recorded its conclusion as below:

"It is axiomatic in service jurisprudence that any promotions made wrongly in excess of any quota are to be treated as adhoc. This applies to reservation quota as much as it applies to direct recruits and promotee cases. If a Court decides that in order only to remove hardship such roster point promotees are not to face reversions, then it would in our opinion be necessary to hold consistent with interpretation of Articles 14 and 16(i) that such promotees cannot plead for grant of any additional benefit of seniority flowing from a wrong application of the roster. In our view, while Courts can relieve immediate hardship arising out of a past illegality. Court cannot grant additional benefits like seniority which have no element of immediate hardship. Thus, while promotions in excess of roster made before 10.2.1995 are protected, such promotees cannot claim seniority. Seniority in the promotional cadre of such excess roster point promotions shall have to be reviewed after 10.2.1995 and will count only from the date on which they would have otherwise got normal promotion in any future vacancy arising in a post previously occupied by a reserved candidate. That disposes of the 'prospective' point in relation to Sabharwal."

6. In the case before this Bench, the seniority list of the year 1987 has been challenged but we are not aware of the various dates on which the reserved candidates and the general candidates were promoted to the various posts. The details are also not on record about the various dates on which the reserved candidates promoted in excess of reservation quota superseded their senior general candidates in the previous course, were promoted in the higher grade.

7. After considering the rival contentions, we find that all the promotions made were prior to 10.2.95 as the seniority list was prepared in the year 1987 and the O.A. was filed in the year 1990. Such promotions, cannot, in the light of the decision of R.K. Sabharwal be disturbed. However, the seniority will have to be reviewed after 10.2.95, in case promotion to various levels is effected in view of the decision of the apex court in the case of Ajit Singh II (supra). Thus, we are not disturbing the seniority

list challenged by the applicant in the present case and leave the same open to the respondents to examine the same in the light of the decision given in the case of Ajit Singh II (supra) and pass necessary orders if the seniority gets affected by the said judgment.

8. The O.A. is decided accordingly. Costs easy.

MEMBER (A)

Lucknow; Dated: 31.5.2000

Shakeel/

MEMBER (J)

list challenged by the applicant in the present case and leave the same open to the respondents to examine the same in the light of the decision given in the case of Ajit Singh II (supra) and pass necessary orders if the seniority gets affected by the said judgment.

8. The O.A. is decided accordingly. Costs easy.

MEMBER (A)

Lucknow; Dated: 31.5.2000

Shakeel/

MEMBER (J)