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CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

LUCKNOW

Lucknow this the 11th day of Dec., 97.

O.A. No. 102 of 1992.

HON. MR. JUSTICE B.C. SAKSENA, V.C.

HON. MR. V.K. SETH, MEMBER(A)

1. Ochin Kumar Banerji, aged about 47 years, son of late Vishwa Nath Banerji, resident of 82/13 Guru Govind Singh Marg, P.S. Husainganj, Lucknow.

2. Kazi Naseemul Haq aged about 54 years, son of late Kazi Zamirul Haq, resident of Rly. Quarter 12 D, Badshah Nagar Colony, Lucknow.

3. Saiyed Wazeer Hasan, aged about 48 years, son of late Saiyad Mohammad Hasan, resident of Rly. Quarter No. 15 D-1, Badshah Nagar Colony, Lucknow.

Applicants.

By Advocate Shri Y.S. Lohit.

versus

1. Railway Board through its Chairman, New Delhi.

2. Union of India through G.M.(P) N.E. Rly, Gorakhpur.

3. Divisional Railway Manager (P), N.E. Railway, Ashok Marg, Lucknow.

4. Hargovind, aged about 35 years, Head Clerk, DRM(C) office, N.E. Railway, Lucknow.

5. Shri Babu Aged about 29 years, Head Clerk, DRM(C) Office, N.E. Railway, Lucknow.

6. Suresh Kumar Sankhwar, aged about 28 years, Head Clerk, DRM(C) Office, N.E. Railway, Lucknow.

Respondents.

By Advocate Shri A.K. Chatruvedi.

O R D E R (RESERVED)

HON. MR. JUSTICE B.C. SAKSENA, V.C.

This O.A. has been filed by three applicants

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who were working as Head Clerks in the office of the D.R.M. (Commercial) N.E. Railway Lucknow. They challenge a notification dated 30th of January, 1992 issued by the D.R.M. (P) N.E. Railway intimating a selection to six posts of Office Superintendent grade II. An eligibility list was also issued along with the said notification showing the names of the applicants at serials 12 to 14. The applicants' claim is that the opposite parties 4 to 6 who were junior to the applicants have been shown at higher serial in the eligibility list. In fact, the claim of the applicants is that the respondents 4 to 6 belong to the S.C. and had been granted accelerated promotion on the basis of reservation ~~on the post of Clerk~~ to the post of Senior Clerk and Head Clerk. The applicants claim that after the applicants had gained promotion to the said two grades of Senior Clerk and Head Clerk, they should have been allowed to regain their seniority vis-a-vis the said respondents. For this, the applicants rely on the decision of the Tribunal in Vir Pal Singh Chauhan vs. Union of India and others and in the case of Krishan Chandra Lal and others. The applicants, besides seeking quashing of the notification dated 30.1.92 have also prayed for a direction to ^{official} respondents to recast the seniority of respondents 4 to 6 in relation to the applicants.

2. At the time of filing of the O.A. the applicants had prayed for an interim order seeking a direction to be issued to the respondents 1 to 3 not to fill up the post of Office Superintendent grade II on the basis of the impugned notification dated 30.1.92. After considering the said prayer for interim relief, by an order passed on 4.3.92 it was provided that "if any selection takes place for the post in question,

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the same shall be subject to further orders of the Tribunal. The candidates if any selected shall be apprised of this order. The said interim order does not appear to have continued in operation during the pendency of the O.A.

3. The official respondents have filed a counter affidavit while a separate counter affidavit on behalf of private respondents has also been filed. The applicants have filed their Rejoinder Affidavit in reply to the said two Counter affidavits. Besides Supplementary Counter on behalf of the official respondents has been filed and a Supplementary Rejoinder has also been filed. Subsequently an additional Supplementary Counter to the Supplementary Rejoinder was also filed by the official respondents.

4. We have heard the learned counsel for the parties and have been taken through the respective pleadings.

5. The official respondents, in their counter affidavit have indicated that the respondents 4 to 6 had been assigned seniority on the total length of officiating and /or substantive service in the grade of Senior Clerk as also Head Clerks. They have annexed a copy of the seniority list of the grade of Senior Clerks to indicate that the private respondents 4 to 6 had been assigned higher seniority position in the said seniority list. The official respondents however, have not disputed that the said private respondents had gained accelerated promotion on the basis of reservation quota in the grade of senior Clerks as also the Head Clerks. They however, maintain that the criteria for determination of seniority of staff is total length of officiating and/or substantive service in the grade in which seniority is to be fixed and accordingly they maintain that these respondents are senior to the applicants in the cadre of Head Clerks

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Senior Clerks.

6. The official respondents have also indicated that private respondents 4 to 6 have not been called in the selection for the post of Office Superintendent grade II as S.C. candidates but they have been called to appear in accordance with their seniority in the cadre of Head Clerk. The private respondents in their counter affidavit have indicated that seniority list of Head Clerks was issued on 11.12.90 and the applicants had not questioned the seniority earlier. This assertion has also been made by the official respondents.

7. The short question which falls for consideration is whether the indication of the name of the applicants as also of private respondents 4 to 6 in the eligibility list issued alongwith notification dated 30.1.92 is incorrect and the applicants are entitled to have the said of seniority list recasted. Admittedly, the applicants had not challenged at ~~the~~ any ^{Bel} time the seniority list ^{which} was issued on 11.12.90, but they indirectly ^{are disputing the seniority list by Bel} ~~were~~ challenging the notification intimating the selection for the post of Office Superintendent grade II as issued on 30.1.92, ^{and} have sought the relief of recasting the interse seniority vis-a-vis private respondents. While challenging the notification, the applicants cannot be permitted to raise the collateral question of validity of seniority list for the post of Senior Clerks and Head Clerks. In the notification dated 30.1.92 out of six posts, for which the selection was to be held, it was clearly indicated that five posts fall in the general category and one post is reserved for S.T. candidate. This being so, the assumption on the part of the applicants that respondents 4 to 6 have been called to appear on the basis of their belonging to the S.C. is totally

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misconceived. The said respondents, as the official respondents have stated, have been called to appear according to their seniority in the cadre of Head Clerks. Further, we find that the proposition of law laid down by a Bench in Vir Pal Singh Chauhan was based on the decision in J.C. Malik vs. Union of India. The said decision was the subject matter of a decision in a subsequent Supreme Court decision in R.K. Sabharwal and others vs. Union of India and others and it was held that the proposition of law laid down in J.C. Malik's case would be prospective in operation as also the proposition of law laid down in R.K. Sabharwal's case. It was specifically laid down that the interpretation given to the working of the roster and findings on that point was ^{to} ~~operated~~ prospectively. The decision in R.K. Sabharwal's case was rendered on 10.2.95. The learned counsel for the respondents has also placed for our consideration a copy of the Railway Board letter dated 28.2.97 wherein after referring to the Supreme Court decision in Union of India vs. Veer Pal Singh Chauhan, reported in J.T. 1995, 7 SC, 231 the principles for determining the seniority of staff belonging to S.C. and S.T. promoted earlier vis-a-vis General/O.B.C. staff promoted later were laid down. The advance correction slip No. 25 seeking to add para 319 A in section 'B' Chapter III of Indian Railway Establishment Manual Volume I (Revised Edition 1989) was introduced and added. In the said letter the provision in the advanced correction slip it was provided, will have effect from 10.2.95 and will not disturb the seniority decided earlier as per rule in force at the relevant time.

8. The private respondents 4 to 6 have been

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promoted as Head Clerks on 1.8.85, 9.12.86 and 29.6.89 respectively. Their seniority as fixed prior to 10-2-95 cannot be altered. bel

9. In view of the above, there is no merit in the O.A. It is accordingly dismissed. parties shall bear their own costs.

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MEMBER(A)

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VICE CHAIRMAN

Lucknow; Dated: 11/12/97