

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

ORIGINAL APPLICATION NO. 44/2004

ORDER RESERVED ON: 06/02/2014

ORDER PRONOUNCED ON: 16/02/2014

CORAM :

**HON'BLE MS. JAYATI CHANDRA, ADMINISTRATIVE MEMBER
HON'BLE MR. M. NAGARAJAN, JUDICIAL MEMBER**

Jagan Nath Prasad, aged about 40 years, S/o Ram Prasad R/o C&W
31-B Bari Road Alambagh Colony, working as Section Engineer,
P&T Trade C&W Shop Alambagh, Lucknow.

....Applicant.

(By Advocate: Sri A. Moin for the applicant)

VERSUS

Union of India through

1. General Manager, Baroda House, New Delhi.
2. Deputy Chief Mechanical Engineer (W), Alambagh, Lucknow.
3. Sri S.P. Tewari working as Senior Section Engineer, C&W
Shop Alambagh Lucknow.

....Respondents.

(By Advocates: Sri S. Verma for respondent nos. 1 & 2.
Sri Praveen Kumar for respondent no. 3)

O R D E R

Per: Shri M. Nagarajan, Member (J)

1. The grievance of the applicant in the O.A. is as to his promotion to the post of Senior Section Engineer grade Rs. 7450-11500. His claim is that he is entitled for promotion to the said post of Senior Section Engineer with effect from 28.03.2004 in view of the restructuring as formulated by the Railways and the Railway Board Circular dated 09.10.2003.

[Signature]

2. The facts stated by the applicant in support of his grievance and claim are that he belongs to Scheduled Caste category. He was appointed in the Indian Railways on 11.07.1988 as Chargeman-B, presently designated as J.E.-II. By an order dated 28.03.2002, he was promoted as Section Engineer grade Rs. 6500-10500. The next promotional post for Section Engineer is Senior Section Engineer grade Rs. 7450-11500, which is a non selection post and promotion to the post of Senior Section Engineer is to be made on the basis of seniority-cum-merit.

3. The applicant submits that the post of Senior Section Engineer Grade Rs. 7450-11500 was a Headquarter Control Post and promotions were made by the Headquarter itself but with effect from 03.07.1996, the said post has been decentralized and promotions are made on the basis of seniority, which is maintained in the Workshop. The cadre of Senior Section Engineer comprises of 04 posts and accordingly "L" shape roster is applicable. As per "L" shape roster where the cadre strength is of 04 posts, first 03 posts are un-reserved while the 04th roster point is a reserved point. The applicant claims that as on 03.07.1996 when the post of Senior Section Engineer was decentralized, the following persons were working against the points indicated hereunder -

"I Point	Unreserved	B.K. Dixit (Gen)
II point	Unreserved	Paul Barla (ST)
III point	Unreserved	Gyanendra Kalyan (SC)
IV point	Reserved (SC)	M.M. Rehman (General)"

The applicant claims that though Shri Paul Barla and Shri Gyanendra Kalyan, respectively, belong to the category of ST and

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SC, were promoted on the basis of their own seniority without any element of reservation.

4. After the decentralization, the said Shri B.K. Dixit (Ist point) retired on 30.09.2003 and by following the "L" shape roster, the first replacement number went to unreserved category candidate and accordingly, on 01.10.2002, Sri Ashok Kumar, a reserved category candidate, who was senior-most amongst all employees, was promoted on the basis of his own seniority taking into account that he was the senior-most person in the cadre of Section Engineer.

5. The order of the seniority of the officials, who were working in the post of Section Engineer in the Workshop, is as follows: -

- (1) Shri G.S. Kulshreshta
- (2) Shri S.P. Tewari
- (3) Shri S.D. Jaiswal (Shanker Dayal)
- (4) Shri Jagan Nath Prasad (applicant)

6. As per Railway Board circular dated 09.10.2003 which provided for restructuring the existing percentage of up-gradation was increased in the category of Technical Supervisor grade Rs. 7450-11500 with a result that two additional vacancies arose in the cadre of Senior Section Engineer and as a consequence of the same the cadre strength of Senior Section Engineer is increased from 4 to 6.

7. The applicant further submits that the consequent upon the increase of two additional vacancies in the cadre of Senior Section

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Engineer in the grade Rs. 7450-11500, Shri G.S. Kulshreshta was promoted by an order dated 24.12.2003 against the Vth post and taking into account that one reserve category point / post was still unfilled.

8. The applicant submits that he came to know that one Shri S.P. Tewari whose name finds place below Sri G.S. Kuishreshta in terms of the seniority and above the applicant represented for being restructured against the VIth post of Section Engineer and due to the pressure of the Union, the Administration acceded to the request and one Shri Ashok Kumar who had been promoted on the basis of his own seniority as Senior Section Engineer by order dated 21.10.2002 with effect from 01.10.2002 was adjusted against the reserve point / post and another order dated 07.02.2004 was issued by which the respondent No. 3 Shri S.P. Tewari was promoted as Senior Section Engineer and given consequential benefits of restructuring with effect from 01.11.2003.

9. The specific claim of the applicant is that if a reserve category candidate were to be promoted on the basis of his own merit and seniority, such person shall not be treated as a reserve category candidate, but shall be treated as a general category candidate for the benefit of reservation. By emphasizing on this principle, the applicant submits that the order dated 07.02.2004 under which the respondent No. 3 namely Shri S.P. Tewari was promoted is contrary to the law laid down by the Hon'ble Supreme Court and as such the same is arbitrary and illegal. Hence, he presented this

O.A. with a prayer to quash the order dated 07.02.2004 (Annexure A/1) under which the respondent No. 3 Shri S.P. Tewari has been promoted to the post of Senior Section Engineer in the grade of Rs. 7450-11500 and for a direction to the respondent nos. 1 & 2 to promote him to the post of Senior Section Engineer in the grade of Rs. 7450-11500 with effect from the date on which he was due i.e. on 28.03.2004 for promotion to the post of Senior Section Engineer and to extend him the benefit of restructuring as formulated by the Railways as contained in the Railway Boards' circular dated 09.10.2003.

10. The respondents have filed their reply to the claim and contentions urged by the applicant in his O.A. and contended that the impugned order dated 07.02.2004 (Annexure A/1) under which the respondent no. 3 was promoted does not suffer from any legal infirmity and prayed for the dismissal of the O.A.

11. Heard Shri A. Moin, learned counsel for the applicant, Shri S. Verma, learned counsel for the official respondent nos. 1 & 2 and Shri Praveen Kumar, learned counsel for the private respondent no. 3. Perused the pleadings and the documents annexed to the pleadings.

12. Shri A. Moin, learned counsel for the applicant argued that as long as the "L" shape roster issued by the Railway Board continues to be in existence, the same is required to be followed in the entire Railways. By inviting our attention to the Annexure-III of letter No. 95-E(SCT)/I/49/5/2 dated 21.08.1997 (Annexure A/2), learned

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counsel for the applicant submitted that first 3 point of the "L" shape roster is required to be operated for unreserved candidate whereas the 4th point is required to be operated for a candidate belonging to Scheduled Caste category. By referring to the roster point as provided in Annexure A/2 and also by referring to the fact that two officers belonging to Scheduled Caste namely one Shri Gyanendra Kalyan and Shri Ashok Kumar were promoted on the basis of their own seniority and merit, learned counsel for the applicant specifically contended that since the said two officers were promoted on the basis of their own seniority and as such none of the said two could not be shown against the roster point no. 4 earmarked for S.C. candidates.

13. In support of his contention that if a candidate belonging to Scheduled Caste or Scheduled Tribe came to be promoted on the basis of his own seniority, he could not be adjusted or shown against a roster point earmarked for the candidates belonging to Scheduled Caste, learned counsel for the applicant placed reliance upon the judgment of the Hon'ble Supreme Court in the following cases -

- (1) R.K. Sabharwal and Others vs. State of Punjab and Others [AIR 1995 SC 1371 : 1995 (3) SLJ 227].
- (2) Indra Sawhney etc. etc. vs. Union of India and others, etc. etc. [1992 Supp (3) SCC 217 : AIR 1993 SC 477]
- (3) Union of India and others etc. vs. Virpal Singh Chauhan etc. [1995 (6) SCC 684 : AIR 1996 SC 448]

14. Learned counsel for the applicant further submitted that after decentralization one Shri B.K. Dixit retired on 30.09.2003 and by following "L" shape roster, the first replacement number also went to unreserved category candidate and accordingly, one Shri Ashok

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Kumar, a reserved category candidate was promoted on the basis of his own seniority and taking into account that he was the senior-most person in the feeder cadre of Section Engineer.

15. Learned counsel for the applicant argued that since the said Shri Gyanendra Kalyan and Shri Ashok Kumar were promoted on the basis of their own seniority, the fact that the said Shri Gyahendra Kalyan and Shri Ashok Kumar belong to Scheduled Caste category, cannot be assigned as a reason for not granting promotion to the applicant by operating 4th point in the "L" shape roster.

16. Per contra, Shri S. Verma, learned counsel for the official respondent nos. 1 & 2 and Shri Praveen Kumar, learned counsel for the private respondent no. 3 contended that the argument of the learned counsel for the applicant cannot be accepted.

17. Upon hearing Shri A. Moin, learned counsel for the applicant, Shri S. Verma, learned counsel for the official respondent nos. 1 & 2 and Shri Praveen Kumar, learned counsel for the private respondent no. 3, the question that arises for our consideration is 'whether a candidate belonging to SC/ST category, who is entitled to be considered as per his seniority position has to be accommodated as per his seniority and rank or has to be accommodated against SC/ST vacancy?

18. An identical issue arose before Madras Bench of this Tribunal and the finding on the issue of the Madras Bench of this Tribunal

was confirmed by the Hon'ble High Court of Madras by its order dated 22.01.2008 in the case of **Gautam Dass vs. Union of India & Ors.** (Writ Petition No. 11233 of 2007 and M.P. No. 1 of 2007).

Paragraph 20 and 21 of the said judgment dated 22.01.2008 of the Hon'ble High Court of Madras is relevant, which reads as -

"20". In this context the Tribunal in para 17 of its order dated 16.10.2006 has posed a question, "though the clarification letter of the Board dated 6.5.2005 says that merit is not involved in the non-selection promotion. Does it mean that SC/ST candidates who are entitled to be considered as per their seniority position need not be accommodated as per their seniority and rank and has to be accommodated only in the SC vacancy? The answer can only be 'No'

21. We have carefully analysed the above position and agree with the findings of the Tribunal, which has got support from the following decisions: (1) Sawhney vs. Union of India 1992 Supp (3) SCC 217, wherein it was held that SC candidates selected on the basis of their own merit need not be counted against the quota reserved SC candidate. They will be treated as open competition candidate. (2) In R.K. Sabharwal vs. State of Punjab 1995 (3) SLJ 227, wherein it was held that the reserved category candidates can compete for the non reserve posts and in the event of their appointment to be said posts, their number cannot be added and taken into consideration for working out the percentage of reservation. (3) In Union of India vs. Virpal Singh Chauhan 1995 (6) SCC 684, wherein it was held that candidates selected / promoted on the rule of merit (and not by virtue of rule of reservation) shall not be counted as reserved category candidates. (4) In Ritesh R. Sah vs. Dr. Y.L. Yamul and Ors. (1996) 3 SCC 253, wherein it was held that a student who is entitled to be admitted on the basis of

merit, though belonging to a reserved category cannot be considered to be admitted against seats reserved for reserved category. (5) In Union of India vs. Satya Prakash & Ors. 2006 (3) SLJ 74, wherein it was held as follows:

"In other words, while a reserved category candidate recommended by the Commission without resorting to the relaxed standard will have the option of preference from the reserved category recommended by the Commission by resorting to relaxed standard, but while computing the quota / percentage of reservation he/she will be deemed to have been allotted seat as an open category candidate (i.e. on merit) and not as a reserved category candidate recommended by the Commission by resorting to relaxed standard."

19. The official respondents in their reply, by referring to the fact that said Shri Ashok Kumar is a Scheduled Caste category candidate and he was promoted to the cadre of Senior Section Engineer submitted that there was no shortfall remained for Scheduled Caste candidates. But, the official respondents while claiming that in view of the fact that said Shri Ashok Kumar was promoted to the cadre of Senior Section Engineer, there was no shortfall, at paragraph 4 of their reply categorically admitted the fact that as on the date of promotion of the said Shri Ashok Kumar, he was the senior-most Section Engineer for being considered for promotion to the cadre of Senior Section Engineer and the relevant portion of the same reads as -

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"4. It is further submitted that due to superannuation of Sri V.K. Dixit, SSE, P&T on 30.9.2003, on post vacant at that time position as per Roster Register is as under -

Sl. No.	Roster Point	Name	Caste	Date of promotion	Shortfall
1	UR 1	Sri V.K. Dixit	Gen.	1.3.1993	-
2	UR 2	Sri Paul Barla	ST	1.3.1993	-
3	UR 3	Sri Gyanendra Kalyan	SC	29.5.1995	As per general seniority
4	SC 4	Sri M.M. Rahman	Gen	1.8.1995	01

As per above mentioned position, there was shortfall at Sl. No. 4 for 1 in SC Roster point, on which was made good by promoting Sri Ashok Kumar, Section Engineer P&T from pay scale Rs. 6500-10500 to SSE P&T in pay scale Rs. 7450-11500 on 1.10.2002. However, Sri Ashok Kumar Section Engineer P&T was senior-most in the seniority list. Due to this there were no shortfall remain in the S.C. list."

20. In view of the aforesaid judgment of the Hon'ble High Court of Madras in the case of **Gautam Dass vs. Union of India & Ors.** in which the finding of Madras Bench of this Tribunal that there is no scope for the department to plead that in the case of non-selection promotion, it is open to them to adjust the Scheduled Caste candidates on their liking and in view of the reply of the official respondents extracted above, we are not persuaded by the argument of Shri S. Verma, learned counsel for the official respondent nos. 1 & 2 and Shri Praveen Kumar, learned counsel for the private respondent no. 3. As a result, the plea of the respondents that Shri Ashok Kumar is a Scheduled Caste candidate and since he has been promoted from the cadre of Section Engineer to the cadre of Senior Section Engineer, there is no shortfall of Scheduled Caste cannot be accepted and, hence, the adjustment of the said Shri Ashok Kumar against the Scheduled

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Caste vacancy is an incorrect one and consequently, the applicant is entitled to be considered for promotion as against the roster point no. IV in the "L" shape roster and only thereafter the respondent no. 3, Shri S.P. Tewari, can be considered for promotion. Thus, the impugned order dated 07.02.2004 under which the respondent no. 3 has been promoted to the post of Senior Section Engineer in the grade of Rs. 7450-11500 is required to be quashed and accordingly the said order dated 07.02.2004 (Annexure A/1) is quashed.

21. The Original Application is allowed. The official respondent Nos. 1 & 2 are directed to consider the claim of the applicant for promotion to the cadre of Senior Section Engineer grade Rs. 7450-11500 as against the point no. IV of the "L" shape roster, if he is otherwise found fit for promotion in all other respects with effect from the date on which respondent No. 3 was promoted to the said post of Senior Section Engineer and extend all the consequential benefits. However, we make it clear that the applicant is not entitled for any arrears. This exercise shall be completed within a period of three months from the date of receipt of a copy of this order. Under the circumstances, there shall be no order as to costs.

M. Nagarajan
(M. NAGARAJAN)
JUDICIAL MEMBER

J. Chandra
(MS. JAYATI CHANDRA)
ADMINISTRATIVE MEMBER