

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH, NEW BOMBAY-400614

O.A. NO. 760/88

All India Scheduled Caste/  
Scheduled Tribe Railway  
Employees Association  
C/o. Office of Controller of Stores  
Central Railway  
Bombay V.T.

Applicants

V/s.

1. General Manager  
Central Railway  
Bombay V T

2. Chief Personnel Officer  
Central Railway  
Bombay V T

Respondents

Coram : Hon'ble Member(J) M B Mujumdar  
Hon'ble Member(A) P S Chaudhuri

ORAL JUDGMENT  
(PER: M B MUJUMDAR, MEMBER[J])

DATE : 26.10.1988

We have heard Mr. D V Gangal, learned Advocate for the Applicant Association and Mr. V G Rege, learned Advocate for the respondents regarding admission of the application and interim relief claimed by the applicant.

2. On 24.4.1987 we have passed interim orders in Transferred Application No.154/86 and 26 other matters. The question involved in these applications was the dispute between Scheduled Caste (SC) and Scheduled Tribe (ST) employees and employees of other categories. We have passed the following interim order in these cases (with suitable directions in each case):

1) The promotions which may be made hereafter by the respondents will be strictly in accordance with the judgement of the Allahabad High Court in Civil Misc. Writ No.1809 of 1972, in J.C. Mallik & Others V. Union of India and others reported in

1978, SLJ 401 and such promotions will be subject to the final result of the cases. If any promotions have been so far made otherwise than in accordance with the judgement of the Allahabad High Court, such promotions shall be adjusted against the future vacancies.

- 2) It is hereby clarified that if any Scheduled Caste/Scheduled Tribe candidate is appointed or promoted in his present cadre on the basis of his overall merit and/or seniority and not on the basis of reservation alone, the respondents are not prevented from promoting him to the higher cadre if he is found otherwise suitable for promotion, even if the reservation quota fixed for Scheduled Caste/Scheduled Tribe candidates has been already achieved in the higher cadre.
- 3) The respondents shall not follow the directions or instructions given by the Railway Board or other authorities in respect of promotions if and to the extent they are inconsistent with this interim order.
- 4) If the respondents have made some promotions on the basis of the orders passed by the High Court of Judicature at Bombay these promotions should not be disturbed. However, these promotions will be subject to the final decision in the cases.
- 5) However, all the promotions in future should be made by the respondents in accordance with this interim order.
- 6) This interim order should be followed subject to the direction given in each case.

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3. What Allahabad High Court has held in J.C. Mallik's case is explained in para 8 of our above mentioned interim order dated 24.4.1987. We have pointed out there that, in short, the Allahabad High Court has held in that case that the percentage of reservation of SC/ST relates to the appointments to the posts in the cadre and not to the vacancies which may occur in the cadre of the posts. Clause (2) of our above mentioned interim order, reproduced at para 2 above, was not passed on the basis of any Supreme Court decision or order as such. The question that has arisen in the present case is regarding the interpretation of that clause of the interim order dated 24.4.1987. The interim order was challenged by the Scheduled Caste/Schedule Tribe Association by filing a Special Leave Petition (SLP) in the Supreme Court, but that SLP was dismissed. Western Railway has also filed a SLP in the Supreme Court challenging the interim order, but that is still pending in the Supreme Court. The appeal preferred by the Railways in Mallik's case is also still pending in the Supreme Court.

4. This application is filed by the All India Scheduled Caste/Scheduled Tribe Railway Employees Association. The relevant facts for the purpose of this judgment may be stated like this: The application is filed on behalf of 32 persons mentioned in the list at Exhibit G at page 73 of the application. They are members of SC/ST communities. They are at present working as Office Superintendents Gr.I/Depot Stores Keeper Gr.I which are Class-III posts. The higher promotional post for them is that of Assistant Controller of Stores which is a Class II post. By notification dated 4.10.1988 issued by the Head Quarters office Personnel Branch, Central Railway, it is notified that a selection for the post of Assistant Controller of Stores for 26 vacancies is to be held on 29th & 30th October 1988 in the office of the Controller of Stores, Bombay VT. A list of candidates who are called for the selection is attached to that notification. The list contains the names of 80 candidates. According to the notification

there are 26 vacancies of which one is reserved for SC candidate and two are reserved for ST candidates. Hence 78 candidates were to be called for the test. We are told that two more employees are called because they are to retire in this month itself. That is why the list consists of 80 candidates. We may point out that out of these 80 candidates three are SC candidates, six are ST candidates and others general candidates.

5. It is the grievance of the Applicant Association that the other SC/ST candidates mentioned in the list on whose behalf this application is filed were promoted to their present post on the basis of seniority-cum-merit and not on the basis of reservation alone. These candidates are within the first 78 candidates in the integrated seniority list of Office Superintendent Gr.I and Deputy Store Keeper Gr.I of the Stores Department circulated on 14.9.1988. Hence, according to the Applicant Association, all these persons should have been called for the test which is to be held on 29th and 30th of October 1988.

6. The Applicant Association has, therefore, filed the present application on 24.10.1988. In para 11 a number of prayers are made, but the main prayer is for directing the respondents to call all the SC/ST candidates within the first 78 candidates in the integrated seniority list circulated on 14.9.1988. Alternatively, the Association has prayed that at least 4 SC and 2 ST vacancies should be reserved for SC/ST candidates and hence the respondents may be directed to call 12 SC and 6 ST candidates for the test. Other prayers are consequential in nature.

7. The Applicant Association has also prayed for an interim relief viz., that either the respondents may be directed to call the affected SC/ST candidates for the selection test which is to be held on 29th and 30th October or alternatively the selection may be stayed.

8. At the time of arguments it was admitted on behalf of the Applicant Association that (i) in the cadre of Assistant Controller of Stores there is a short fall

of only one SC candidate and two ST candidates. Their quota would be complete if one SC and two ST candidates are promoted as Assistant Controller of Stores; (ii) the affected candidates on whose behalf the present application is filed were promoted on the basis of seniority-cum-merit.

9. Mr. Gangal, the learned Advocate for the Applicant Association with his usual vehemence submitted that the employees on whose behalf this application is filed were not at all promoted to the present post on the basis of reservation policy alone, but their seniority-cum-merit was also taken into account while promoting them. But in our view no SC/ST employee is ever promoted only on the basis of reservation. He is promoted on the basis of reservation policy coupled with either seniority-cum-fitness or merit-cum-seniority. Of course certain concessions are given to SC/ST candidates while promoting them though they might not be found completely suitable for promotion. But we are not concerned with these concessions in this case. What is clear to us is that the affected employees on whose behalf this application is filed got promotions because of the reservation policy, though they must have been found suitable for promotion on the basis of their seniority.

10. After considering the interim order passed by us on 24.4.1987 carefully, we are of the view that the main clause of that order is clause (1) wherein we have directed that the respondents will follow the judgment of the Allahabad High Court in J.C. Mallik's case. Clause (2) of that order is a clarification. According to that clause if any SC/ST candidate is appointed and promoted to his present post on the basis of his overall merit and/or seniority and not on the basis of reservation alone, then the respondents may promote him to the higher grade if he is otherwise found suitable even if the reservation quota has been already achieved in the higher grade. The affected candidates on whose behalf

this application is filed were not promoted to the present cadre on the basis of overall merit and/ or seniority. In other words, if they would not have been members of SC/ST communities they would not have been promoted at all. As already pointed out the quota fixed for SC/ST candidates is already achieved except for the short fall of one SC and two ST candidates in the higher cadre of Assistant Controller of Stores. We, therefore, feel that the present application is misconceived and devoid of any merit.

11. Mr. Gangal strongly relied on an order passed by the Division Bench comprising of Mr. Justice K. Madhava Reddy, Chairman and Mr. S.D. Prasad, Administrative Member on 29.9.88 in Miscellaneous Petition No.446/88 in Transferred Application No. 275/86. A copy of that Miscellaneous Petition is produced along with the order. That application was filed by general candidates against the Western Railway. The prayer in that Miscellaneous Petition was to restrain the respondents from including the names of any SC/ST candidates in the eligibility list for promotion to the post of Chief Ticket Inspector (CTI) if such persons have reached the present position due to the reservation policy and jumping the queue as a result thereof. They have also prayed for interim relief to that effect. After hearing learned Advocates for the applicants and respondents the Division Bench has passed the following order on 29.9.1988:

1. Mr. G K Masand, Advocate for the Applicant and Mr. R C Master, Advocate for the Respondents present.
2. The directions as prayed for in this Miscellaneous Petition cannot be given for that would be resulting in disturbing the seniority in the cadre. Admittedly, the SC&ST candidates now in Class-I in the scale of Rs. 2000-3200 have not exceeded the quota reserved for them. Even as per the interim order the quota of reservation for SC&ST candidates has to be enforced.

3. Shri R C Master, learned counsel for the respondents also states that persons who are now sought to be promoted to the post of Chief Ticket Inspector in the scale of Rs.2000-3200 were earlier promoted on the basis of seniority-cum-merit from Rs.425.640 to Rs.550-700 and not on the basis of any reservation. He also states that the promotions even now are sought to be made strictly in accordance with the seniority-cum-merit and as the quota of reservation has not been exceeded in the category of Chief Ticket Inspector in the scale of Rs.2000-3200, it is being given effect to. In the circumstances, the directions prayed for in this application cannot be granted and Miscellaneous Petition No.446 of 1988 is accordingly rejected.

12. It is clear from clause (2) of the above order that the SC/ST candidates in Class-III<sup>in</sup> the scale of Rs.2000-3200 have not exceeded the quota reserved for them. It is also clear from Clause(3) that the persons who were now seeking to be promoted to the post of Chief Ticket Inspector in this scale were earlier promoted on the basis of seniority-cum-merit and not on the basis of any reservation. On the contrary in the present case it was not disputed that the quota reserved for SC/ST candidates in the cadre of Assistant Controller of Stores is achieved except for the short fall of one SC and two ST candidates. Similarly in the present case the candidates on whose behalf the present application is filed were promoted to their present post on the basis of reservation though their seniority-cum-merit was taken into account. Hence it is clear that the facts in the case before the Division Bench which passed the above order on 29.9.1988 are materially different from the facts of the present case.

13. Lastly Mr. Gangal relied on the recent judgement of the Supreme Court in P&T SC/ST Employees Welfare Association V. Union of India reported in 1988(2)SCALE September 12-18 at page 662. There the comparative advantage that the members belonging to SC/ST were enjoying was taken away and all the employees, viz., the employees belonging to SC/ST and to other categories were placed at par. This was held to be bad by the Supreme Court and the Supreme Court directed the Government of India to issue an order under Clause-6 of the letter dated 23.11.1983 (the clause is quoted in the judgement) conferring some additional advantages on the employees belonging to the SC/ST in the P&T department commensurate with the similar advantages which are being enjoyed by the employees belonging to the SC/ST candidates in the other departments of the Government of India. Hence the question involved in that case was regarding withdrawal of the advantages which were previously given to SC/ST candidates. It is true that there is an observation in para 2 of the judgement regarding the policy which was adopted by the Government reserving 15% of vacancies for SC candidates and 7½% vacancies for ST candidates wherever promotions were to be made subject to fitness. Mr. Gangal has strongly relied on this observation. But this observation was made while stating the facts and we do not think that it is held, overruling the judgement of the Allahabad High Court, that the reservations should be to vacancies also. We are not able to draw that inference from the judgement of the Supreme Court.

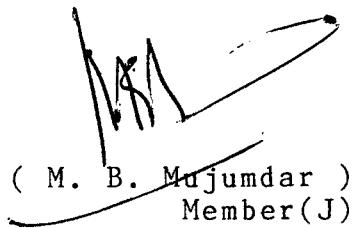
14. As already pointed out we have passed the interim order which is as exhaustive and as workable as possible in the circumstances. In para 3 of the order we have clarified that the respondents shall not follow the directions or instructions given by the Railway Board or other authorities in respect of promotions if they are not consistent with the interim order. Moreover after all it is an interim order. The appeal preferred by the Railways against the judgement of the Allahabad High Court in J.C. Mallik's case is still pending in the Supreme Court. The SLP preferred by the SC/ST candidates Association in Supreme Court against our interim

order was rejected, though the SLP preferred by the Western Railway is still pending. In other words the Supreme Court is yet to give its final verdict on the points involved in such cases.

15. In result we hold that the present application is not worth admitting. We, therefore, reject it summarily under section 19(3) of the Administrative Tribunals Act with no order as to costs.



( P.S. Chaudhuri )  
Member(A)



( M. B. Mujumdar )  
Member(J)