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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY.

Original Application No.368/89.

Shri Govind Daji Shirke.

... Applicant.

V/s.

Union of India & Another.

Coram: Hon'ble Member(A), Shri P.S.Chaudhuri,
Hon'ble Member(J), Shri T.C.Reddy.

Appearances:-

Applicant by Mr.R.T.Lalwani,
Respondents by Mr.N.K.Srinivasan.

JUDGMENT:-

(Per Shri P.S.Chaudhuri, Member(A)) Dated: 13-9-1991

This application under section 19 of the
Administrative Tribunals Act, 1985 was filed on 29.5.1989.

In it the applicant who is working as Head Clerk in the
Office of the second respondent prays that the panel
dt. 6.12.1988 for the post of Chief Clerk be quashed
and set aside and ^{for} connected and consequential reliefs.

2. The applicant, who belongs to a Scheduled Caste,
joined Railway Service as Junior Clerk on 8.10.1958.
He was promoted as Senior Clerk against reservation point
w.e.f. 24.9.1976; thereafter he was promoted as Head Clerk
w.e.f. 28.11.1983. A selection for the post of Chief
Clerk was notified by letter dt. 6.8.1988. It was
indicated that there were 17 vacancies, 2 for SC, one
for ST and 14 for General. A written test was held on
5.10.1988 in which the applicant was successful. A viva voce
test was held on 29.11.1988. When the applicant found that
he did not find a place in the panel that was published
thereafter he submitted a representation but this was
rejected. Being aggrieved the applicant filed this
application.

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3. The respondents have opposed the application by filing their written statement. We have heard Mr.R.T.Lalwani, learned counsel for the applicant and Mr.N.K.Srinivasan, learned counsel for the respondents.

4. The impugned panel is assailed on 3 grounds. The first is that the assessment of vacancies is incorrect and should be 18. This proposition is ~~is~~ put forward on the basis of the number of persons officiating as Chief Clerks on ad hoc basis as shown in the notification dt. 6.8.1988 (supra). We are unable to go along with this submission. It is not impossible that a Chief Clerk officiating on ad hoc basis may be on leave or otherwise absent and, in his place, another person may be appointed as Chief Clerk on ad hoc basis. In that case the number of persons officiating will appear to be more than the available number of vacancies. In any case, there is no pleading to this effect which would have enabled the respondents to verify the position. So, we must reject this submission.

5. The applicant's second ground is that he got higher marks than the two SC candidates who were empanelled and so he should have been empanelled before them. This submission is made on the basis of the written statement of the respondents in Appa Saheb Jalke v. Union of India and others, O.A. 367/89 before the Bombay Bench, in which it has been stated that:

"two SC candidates S/Shri B.P.Jadhav and R.D.Kothari who were successful in the viva voce test after applying relaxed standards applicable to SC community were found eligible for empanelment on the basis of their aggregate marks and accordingly they were placed on panel."

But the respondents have since filed an application for amendment in which they have prayed that the words

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"after applying regular standards applicable to SC community" be deleted. Further, higher placement in the panel on the basis of merit is only in respect of persons who are adjudged as being "outstanding". It is nobody's case that any of the candidates who appeared for the selection in question had been adjudged as "outstanding". Against this background we must reject this submission of the applicant.

6. The applicant's final submission was that by the Railway Board's letter dt. 23.10.1969 at pages 189 to 193 of "Brochure on Reservation for SC and ST in Railway Services" 1985 edition, in answer to the question:

"Whether the Scheduled Caste candidates who obtains first position on the panel by virtue of merit is to be appointed against 1st vacancy which happens to be an unreserved point on the roster or is to be adjusted against a subsequent point, reserved for Scheduled Castes."

It had been clarified that:

"The quota prescribed is the minimum and not the maximum. There is no objection in Scheduled Castes getting more posts than reserved for them by virtue of their merit position. In case a Scheduled Caste candidate gets first position on the panel by virtue of merit, he cannot be adjusted against a subsequent point on the roster merely for the reason that the first point is not a reserved point. He will accordingly be appointed against the first point even if unreserved one and against the subsequent reserved point, another Scheduled Caste candidate from the panel will have to be appointed. In case the second Scheduled Caste candidate is not available on the panel, the reservation quota will have to be carried forward to subsequent recruitment years."

It was the applicant's contention that the two SC employees who had been empanelled, viz. S/Shri B.P.Jadhav and R.D.Kothari, would have been empanelled even if they were not Scheduled Caste employees because they were senior to Sl. Nos. 14 to 16 in the panel. It was his contention that, so, Jadhav and Kothari should not be

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deemed to be occupying posts ear-marked for SC candidates but instead should be held to have been empanelled on merit and that, therefore, the two posts reserved for SC candidates were still available for being filled by SC candidates. To find an answer to the question whether Jadhav and Kothari were empanelled on merit or on the basis of reservation we have to look at the seniority list of Head Clerks. Such a list was shown to us by the applicant and by comparing it with the panel published on 6.12.1988 the position which emerges is:

Sl. No.	Name	Position in seniority list of Head Clerks.
1.	B.B.Desai	32
2.	B.P.Jadhav(SC)	69
3.	P.K.Aphale	37
4.	V.S.Dongre	39
5.	R.S.Kashyap	41
6.	N.G.Kodlekere	43
7.	R.D.Kothari (SC)	75
8.	B.B.Patel	46
9.	K.K.Nair	49
10.	R.P.Anand	56
11.	V.H.Dongre	59
12.	F.J.Quadres	60
13.	G.M.Rane	64
14.	V.V.Karande	76
15.	T.M.Sutar	78
16.	V.M.Desai.	79

From this it is clear that had Jadhav and Kothari not been Scheduled Caste employees, they would not have occupied posts 2 and 7 in the panel but would have been fitted in between G.M.Rane and V.V.Karande. So, we have no difficulty in holding that the posts occupied by Jadhav and Kothari in the panel are not on the basis of merit but are on the basis of reservation. In this view of the matter we are of the opinion that the clarification dt. 23.10.1969 is of no help to the applicant. We also note that this seniority list shows that the applicant is junior to V.M.Desai as regards his date of appointment.

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7. The applicant then sought to contend that he had done very well in the examination but was being made to suffer because two other SC candidates who had not done as well as him had occupied the posts reserved for SC candidates. The instructions regarding selections are, however, quite clear^{up} that it is only candidates who are adjudged as "Outstanding" who can supersede their seniors who are adjudged lower. The applicant was not adjudged as "Outstanding" and so he cannot claim a position higher than his seniors.

8. In this view of the matter we see no merit in this application and are of the opinion that it deserves to be dismissed.

9. We accordingly, dismiss the application. In the circumstances of the case there will be no order as to costs.

T. Chandrasekhar Reddy
(T.C.REDDY)
MEMBER(J)

P.S. Chaudhuri
(P.S.CHAUDHURI)
MEMBER(A).

13.9.1991