

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 1040/1041/96

Date of Decision: 7.11.2001

Shri Gangadhar Ganpatrao Khadgi & anr. Applicants

Shri D.V. Gangal Advocate for Applicants

Versus

Union of India & 2 others ... Respondents

~~Shri V.S. Masurkar.~~ Advocate for Respondents

CORAM: HON'BLE SHRI S.L. JAIN. .. MEMBER (J)
HON'BLE SMT. SHANTA SHAstry. .. MEMBER (A)

(1) To be referred to the Reporter or not?

(2) Whether it needs to be circulated to other Benches of the Tribunal?

(3) Library ✓

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(SMT. SHANTA SHAstry)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 1040 & 1041/96

THIS THE 7 TH DAY OF NOVEMBER, 2001

CORAM: SHRI S.L. JAIN. : MEMBER (J)
SMT. SHANTA SHAstry : MEMBER (A)

O.A. NO.1040/96

Shri Gangadhar Ganpatrao Khadgi,
Age 38 years,
Occ: Working as OS (II),
General Section, C.C.M.'S Office,
Central Railway, Mumbai-1. Applicant

By Advocate Shri D.V. Gangal.

Versus

1. Union of India, through
The General Manager,
Central Railway,
Mumbai CST-400 001.
2. The Chief Commercial manager,
General Section, Central Railway,
Mumbai CST-400 001. Respondents

By Advocate Shri V.S. Masurkar.

O.A. NO.1041/96

Shri Ashok Narayan Wikhe,
Age 47 years,
Occ: Working as OS (II),
Rates Section, C.C.M.'s Office,
Central Railay, Mumbai CST. Applicant

By Advocate Shri D.V. Gangal.

Versus

1. Union of India, through
The General Manager,
Central Railway,
Mumbai CST-400 001.
2. The Chief Commercial manager,
General Section, Central Railway,
Mumbai CST-400 001.

3. The Chief Rates Manager,
Office of C.C.M., Central Railway,
Mumbai CST-400 001. .. Respondents

By Advocate Shri V.S. Masurkar.

O R D E R

Smt. Shanta Shastry. Member (A)

Since the issue involved is same and the facts are similar in both these OAs though the dates of appointment and promotion may be different, we proceed to decide these OAs together.

O.A. NO.1040/96

2. The grievance of the applicant in this case is that he has not been promoted to the post of Office Superintendent (OS for short) Grade-I with effect from 01.8.1990/01.10.1990. He has therefore prayed for directing the respondents to grant him the promotion accordingly with all consequential benefits.

3. The applicant was initially appointed as Junior Clerk on 20.3.1972 on the basis of reservation as Scheduled Tribe candidate. He was further promoted as Senior Clerk and Head Clerk on 26.6.1978 and 01.0.1984 respectively again on the basis of reservation. Thereafter he was promoted to the post of OS Grade-II on 05.02.1988 again against reserved post. The respondents did not promote the applicant as OS Grade-I but promoted some of his alleged juniors particularly Shri P.V. Gangal though he was promoted to OS Grade-II in the

subsequent panel on 23.6.1989. A seniority list was published by the respondents of the OS Grade-II on 11.10.1990. The applicant was at Sl.No.6 whereas Shri P.V. Gangal was at Sl.No.7. According to the applicant there were four posts of OS Grade-I and seven posts of OS Grade-II with effect from 09.01.1984. The posts of OS Grade-I were increased to six with effect from 01.3.1993. The applicant submits that he was superseded by six employees unlawfully overlooking the claim of the applicant. The applicant has made two contentions: one is that the respondents should have considered him for promotion to OS Grade-I on the basis of the quota available for ST employees. Secondly even if there were no quota for the ST candidates, the applicant should have been considered for the vacancies meant for general candidates. According to the applicant the Railways should have followed 40 point roster as per rules and should have given him promotion based on the vacancies. The applicant was quite senior as per the seniority list published as on 11.10.1990. However, the respondents failed to consider him against the general vacancies and instead promoted his alleged juniors. Lot of injustice has been caused to the applicant because of the pendency of the appeal in the case of Union of India Vs. J.C. Mallick. The applicant submits that J.C. Mallick's case came to be decided in 1995. At the same time, just prior to that, a land mark judgment of the Supreme court in the case of R.K. Sabharwal & Others Vs. State of Punjab & Others came to be pronounced on 10th February, 1996 (SLJ) (1) SC 115

1995 and the Supreme Court held that henceforth the quota of 15% or 7 1/2% for SC and ST respectively should be calculated with reference to the number of posts i.e. sanctioned strength and not with reference to vacancies. This was the ruling given in J.C. Mallick also. According to the applicant the judgment in Sabharwal's case categorically stated that it would be prospective. Therefore, the respondents should not have denied promotion to the applicant in 1990. The applicant therefore represented on 09.8.1995 and 08.8.96 protesting about the promotion to nine junior employees superseding the applicant. He claimed that the seniority cannot be ~~anything~~^{only} other than the date of his actual promotion. However, his representation did not yield any result and therefore, the applicant has approached this Tribunal.

O.A. NO. 1040/96

4. The applicant in this case was appointed initially as Junior Clerk on 27.2.1980 against ST quota. He was then promoted as Senior Clerk and Head Clerk. There was a selection held in 1982 for the post of OS Grade-II in the scale of Rs.1600-2660. The applicant appeared in the selection. Though he failed in the selection, he was promoted on trial basis for six months, As he had secured highest marks amongst failed ST candidates, and as the post was reserved for ST, He was empaneled as OS Grade-II on 01.11.1982. Again in

the year 1988 some employees who were allegedly junior to the applicant as OS Grade-II were promoted on 05.10.88. The applicant was superseded. A seniority list was published on 07.02.1996 and the applicant gathered information therefrom that he had been superseded. The applicant, like the applicant in OA 1041/96 also represented on 09.8.95 and he was given a reply on 26.02.1996 which has been impugned stating that the applicant all along had been promoted against reserved quota and his further promotion to higher grade i.e. OS Grade-I will be against the reserved quota only as he had acquired earlier promotion against quota earmarked for reserved candidates. Aggrieved by the same, the applicant has approached this Tribunal with a prayer that he should be considered for promotion to the post of OS-I with effect from 05.10.88 with all consequential benefits.

Subsequently during the pendency of the OA, this applicant has been promoted vide other order No. 1431/97 dated 8.12.97.

5. It is contended by the learned counsel for the applicant that prior to the judgment in the case of R.K. Sabharwal, two Full Bench judgments of this Tribunal were rendered on 27.2.92 and 21.2.94 in a group of matters beginning with V.L. Lakshminarayanan Vs. UOI & Ors reported in 1993 (24) ATC (FB) 420 and 1994 (28) ATC (FB) 214. In both these judgments it was held that there is nothing like accelerated seniority or normal seniority in service jurisprudence. In para 24 of the Full Bench judgment of Hyderabad it was held that seniority should be fixed with reference to the date of

*And in
Jungacharan
Halder and others
vs UOI & others*

selection whether an employee is promoted by reservation or otherwise. The Full Bench relied upon the judgment of the Supreme Court in Comptroller & Auditor General of India Vs. K.S. Jagannathan reported in SC 1986 (1) as well as in the case of Karamchand Vs. Haryana State Electricity Board^{(1989) 10 ATC 518} wherein it was propounded that an employee recruited or promoted, occupies a place in the post with seniority normally available along with others irrespective of whether he got the benefit of reservation or otherwise and that he cannot be later classified on the basis of his original appointment or promotion if he is fully qualified otherwise on the ground that he acquired posting or promotion on the basis of reservation quota. According to the applicant, the judgment of the Full Bench ruled at the relevant time when the applicant was due for promotion to the post of OS Grade-I, it was binding, yet the respondents failed to consider him for promotion. The applicant in his representation also had mentioned that the Railway Board's letter dated 16.6.1992 had clearly directed that the seniority of SC and ST candidates be reckoned from the date of promotion to a higher grade and subsequently insisted vide letter dated 18.5.93 pointing out that this procedure was being followed all over Zonal Railways.

7. The respondents filed their reply belatedly on 19th April, 2001. They have also filed an application for condonation of delay in filing the reply. The

reasons given are that they had to consult the RP Cell of the Railway Board and get the reply vetted and also various cases were heard by different Courts and appeals were pending in the Supreme Court and therefore, the Railway Board had not vetted the draft reply and now that all the judgments have been pronounced, the reply could be filed.

8. In the written reply, the Railways submit that no injustice has been caused to the applicant, the applicant could be promoted only against the quota meant for the reserved category employees as he was appointed as Office Superintendent Grade-II by relaxed standard against general post as he cannot be granted seniority or concession in such matter. The respondents sought to rely on the judgment in the case of Vinod Kumar & Others Vs. UOI & Others and the judgment of this Tribunal dated 31.3.1997 in batch of OAs ~~1041/96~~. The respondents have justified their action by stating that Shri P.V. Gangal the alleged junior of the applicant was promoted against the general category post as he was appointed as Junior Clerk from 04.11.1955 and he was senior to the applicant in the recruitment grade. The applicant in OA 1041/96 was appointed only on 20.3.1972. Only by virtue of accelerated promotion, the applicant had become senior to Shri Gangal.

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9. It has now been held by the Supreme Court in the cases of UOI Vs. Virpal Singh Chauhan JT 1996 SC 261, of Ajit Singh Juneja Vs. State of Punjab reported in 1996 (33) ATC 239 as well as Ajit Singh II & Others Vs. State of Punjab & Others 1999 SCC (L&S) 1239 that accelerated promotion does not give accelerated seniority and a person senior in the base grade gets his seniority ~~restored~~ ^{restored} when he is promoted to a grade to which a reserved category employee got promoted earlier due to reservation quota. In case of Vinod Kumar the Supreme Court held that so far as the provision for lower qualifying marks or lesser level of evaluation in the matter of promotion is concerned, it is not permissible under Article 16 (4) in view of command contained in Article 335 of the Constitution. In otherwards even if it is assumed for the sake of arguments that reservation is permitted by Article 16 (4), provision of lower qualifying marks or lesser level of evaluation is not permissible in the matter of promotion by virtue of Article 335. Therefore, the applicant's promotion by relaxed standard cannot grant him seniority above those who were senior to him in the base grade. The respondents have also drawn support from the case of D.T. Tete Vs. UOI decided by this Tribunal on 06.9.1996 wherein, it was held that such candidates cannot have any claim for promotion against general post with relaxation of marks or grading as they

had not found a place in the panel. Therefore, they could be considered for further promotion only against the reserved vacancies.

9. Coming to the facts of the case, the respondents submit that the sanctioned strength of OS Grade-I is six and as per the prescribed percentage, the reservation is worked out as 0.90 rounded upto one and 0.45 for SC and ST respectively. Thus, no post is available for ST. This is as per the clarification issued in para 2 of the Railway Board letter dated 16.6.1992. Since there was no quota for the ST the applicant could not have been considered for promotion against the reserved quota.

10. The respondents further submit that interim orders were operating upto the date of the judgments in the case of J.C. Mallick, R.K. Sabharwal, Veerpal Singh Chauhan etc. This Tribunal also had passed interim order on 05.10.93 confirmed on 11.10.1994 in a group of OAs which came to be decided later by orders dated 31.3.1997 and 05.5.1998 and therefore the respondents had rightly not considered the applicants against the vacancies meant for the general category employees.

11. Both the learned counsel for the applicants and for the respondents advanced the same arguments in both the OAs.

12. We have heard the learned counsel for the applicant as well as the respondents in both the OAs and have perused the various judgments. We find that at the relevant time i.e. in 1988 when the applicant in OA 1041/96 had been promoted as OS Grade-II and when the seniority list as on 11.10.1990 was published, there was no pronouncement by the Supreme Court that the SC/ST employees cannot be considered against the quota reserved for general category employees. There was also no judgment stating that the seniority gained by the SC/ST candidates on account of accelerated promotion against the reserved quota cannot be taken into consideration for promotion to higher post and the seniority of those senior in the base grade would get restored on their promotion subsequently. In fact, the Supreme Court had already ruled in the case of Karamchand Vs. State of Haryana (supra) that the SC/ST candidate, who had got accelerated promotion by virtue of reservation would also get seniority according to the date of their promotion and there is nothing like accelerated seniority or normal seniority. This principle has been followed by the Railways in their letter dated 16.6.92 wherein the Railways clearly stated that reservation will be provided as per the reserved point following the roster as per the number of vacancies being filled. In fact these instructions were in compliance of the Full Bench judgment in OA No.759/87. Further clarification was issued by the

Railways on 18.5.1993. Till this period, there was nothing to prevent the respondents from considering the applicant against the general vacancies on the basis of their seniority as prevalent at the relevant time. We do find that some interim orders were passed by the Tribunal on 24.4.1987 to the effect that the respondents were restrained from making promotion of SC/ST in excess of 15% and 7.5% post respectively. This was further reiterated in the interim order of the Tribunal dated 17.11.1987. It is seen that none of these orders state anywhere that SC/ST candidates should not be considered against general category post on their own merit without any relaxation in standards. We find that Supreme Court had also passed an interim order in the case of JC Mallick on 24.2.84 and 29.4.84, it was directed therein that while all promotions which may be made thereafter would be strictly in accordance with the judgment of the High Court and such promotions will be subject to the result of the appeal, If any promotions had been made after 24th February, 1984 otherwise than in accordance with the judgment of the Supreme Court, such promotions shall be adjusted against future vacancies. These interim orders were limited mainly to the question SC/ST candidates not exceeding the quota meant for them. But the question of seniority was not discussed in these judgments and therefore, the respondents ought to have considered the applicants for promotion against the general vacancy based on the seniority of the applicants at the relevant time. No doubt, in the subsequent

judgments of the Supreme Court starting with the judgment in the case of R.K. Sabharwal in 1995 and ending with the judgment in the case of Ajit Singh II (supra) clear cut principles/ ratio have been laid down by the Supreme Court in regard to the post based roster to be maintained for SC/ST as per quota and in regard to the seniority of SC/ST vis-a-vis the general category on the SC/ST employees getting accelerated promotion against reserved quota. The judgment in the case of Ajit Singh II came to be pronounced in 1999. The Supreme Court has further directed recently in the case of M.G. Badappannavar and another etc., Vs. State of Karnataka and Ors 2001 (2) AISLG 150 that those who were promoted before 01.3.1996 on principles contrary to Ajit Singh II need not be reverted and those who were promoted contrary to Sabharwal before 10.02.95 need not be reverted in order to avoid hardship. Even in the judgment dated 31.3.1997 cited by the respondents, it was held that these principles would be applicable from 10.2.1995. In fact, had the respondents filed their reply in 1996 the reply would have had to be with reference to the date when the promotions were granted to seniors based on the seniority in the base grade. The respondents, relying on the judgment in the case of Ajit Singh II is just an after thought and they cannot be justified in denying promotions to the applicants. In fact even in the judgment of R.K. Sabharwal (supra) it was laid down that reserved candidates can compete for ¹ non reserved posts and in the event of their

appointment to the said posts their number cannot be added and taken into consideration for working out the percentage of reservation.

12. The respondents have taken a plea that the applicant has represented only in 1995, whereas the promotion had taken place in 1988-1990. Thus, the application is beyond the period of limitation of one year of the arising of the cause of action and suffers from delay and laches. We find that the applicant has explained the reason as to why he could not approach this Tribunal earlier. It is because of the interim order of the Tribunal dated 17.11.1987 not to promote the SC/ST candidates and cases pending in the Supreme Court. The situation was fluid. We are therefore, inclined to condone the delay in this matter and do so.

13. Now coming to the merits, as already discussed, in our considered view, the applicant in OA 1041/96 was certainly eligible and entitled for consideration for promotion as per his seniority as reflected in the seniority list of 11.10.1990. His claim to be considered against the general category vacancies should not have been overlooked. None of the judgments has stated that the SC/ST candidates cannot be considered against general vacancy on their own merits. At that relevant time there was no ruling or ratio laid down by the Supreme Court that if the SC/ST candidates have gained seniority due to accelerated promotion, the same

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would not count for purpose of further promotion and therefore, the applicant was entitled for consideration for promotion. The same applies in the case of applicant in OA 1040/96. He was eligible for promotion in 1988. We therefore direct the respondents to hold a review DPC and consider the applicant ^{in OA 1040/96} for promotion against the general vacancy as per then prevailing seniority and if found fit on his own merit the applicant should be granted promotion to OS Grade-I with effect from the date of the promotion of his junior i.e. from 01.8.1990/01.10.1990 with all consequential benefits. However, the arrears of difference in pay, shall be admissible only from one year prior to filing of this OA.

14. OA 1040/96 is also allowed setting aside the impugned letter dated 26.2.1986 and the respondents shall hold review DPC to consider the case of the applicant for promotion to the post of OS Grade-I against general vacancy as per then prevailing seniority on his own merit if is otherwise qualified and promote the applicant with effect from the date his alleged juniors were promoted i.e. from 05.10.88 with all consequential benefits. In this case also the arrears of difference in pay would be restricted to one year prior to filing of this OA.

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15. This exercise of review DPC shall be carried out within a period of three months from the date of receipt of copy of this order. No costs.

Both the OAS are allowed. No Costs.

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(SMT. SHANTA SHAstry)
MEMBER (A)

(S.L. JAIN)
MEMBER (J)

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