

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH.

ORIGINAL APPLICATION NO.:100/1999.

Dated this Wednesday the 18th day of June, 2003

Shri Omprakash Rahi & Another

Applicants.

Shri D.V. Gangal

Advocate.
for applicants.

VERSUS

Union of India & 2 others.

Respondents.

Shri S.C. Dhawan

Advocate for

Coram : Hon'ble Shri V.K. Majotra, Member (A)
Hon'ble Shri Shanker Raju, Member (J).

- (i) To be referred to the Reporter or not ? ☒
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? ☒
- (iii) Library. ☒

V.K. Majotra
(V.K. Majotra)
Member (A).

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.100/99.

Dated this Wednesday the 18th Day of June, 2003.

Coram : Hon'ble Shri V.K. Majotra, Member (A)
Hon'ble Shri Shanker Raju, Member (J).

1. Shri Omprakash Rahi,
presently working as
PWI Grade II,
under the Asst. Engineer,
Central Railway, Kalyan.

2. Shri Anil Namdeo Narwade,
Working as
PWI Grade II,
Under PWI (W),
Central Railway,
Kalyan.

..Applicants.

(By Advocate Shri D.V. Gangal).

Versus

1. The Union of India,
through
General Manager,
Central Railway,
Head Quarters Office,
Mumbai CST,
Mumbai - 400 001.

2. The Chief Personnel Officer,
Central Railway,
Head Quarters Office,
Mumbai CST,
Mumbai - 400 001.

3. The Divisional Railway
Manager,
Mumbai Division,
DRM's Office,
Mumbai CST, Mumbai-400001.

.. Respondents.

(By Advocate Shri S.C. Dhawan).

ORDER (ORAL)

Shri V.K. Majotra, Member (A).

The grievance of the applicants is that as SC
employees, they have been deprived of right to appear in
the selection to the post of Permanent Way Inspector,
Grade I (scale Rs.6500-10500) held on 10.2.1999 and

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16.2.1999. The respondents have not published seniority list of Permanent Way Inspector Grade II. They ^{have} also ~~do~~ ^{filled up} not roster backlog/backlog and chain vacancies arising out of promotions/retirements and deaths of SC employees. They have been promoted as Permanent Way Inspector, Grade II in 1997 instead of with effect from 1994. It is also their case that as per the eligible candidates shown in the Notification dated 18.1.1999, only 5 candidates were called for from the existing seniority list published on 15.11.1996 and thereafter no seniority list is published. The applicants made representation on 5.2.1998 which has remained unreplied at the hands of respondents despite several reminders. They have sought the following reliefs:-

- "b) to hold and declare that the non publication of Seniority List of Permanent Way Inspector Grade II, prior to issuing notification dated 18.01.1999 is illegal.
- c) to hold and declare that the Applicants are entitled to be called for selection to the post of PWI Grade I both as General Candidates or alternatively as SC candidates."

2. At the outset learned counsel of the respondents drew our attention to Railway Board instructions dated 8.3.2002 relating to principles for determining seniority of staff belonging to SC/ST promoted earlier vis-a-vis General/OBC staff promoted later. It is stated in this memorandum that as per DOP& T instructions dated 30.1.1007 issued pursuant to the Judgment of the Supreme

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Court dated 10.10.1995 in the case of Union of India Vs. Virpal Singh Chauhan etc. {JT 1995(7)SC 231} if a railway servant belonging to SC/ST is promoted to immediate higher post/grade against the reserved vacancy earlier than his senior General/OBC railway servant who is promoted later to the said immediate higher post/grade, the General/OBC railway servant will regain his seniority over such earlier promoted SC/ST railway servant. In pursuance of the Constitution (Eighty-first) ^{21st} Amendment Act, 2001 amending Article 16(4A) ^{1b} of the Constitution, right from the date of its inclusion in the Constitution, i.e. 17.6.1995, the DOP & T have decided to negate the effects of the DOP ² ~~TS~~ ^{1b} OM dated 30.1.1997 with a view to allow the SC/ST employees to retain the seniority in the case of promotion by virtue of rule of reservation. Accordingly, the Ministry of Railways too decided to negate the effects of para 319 of Indian Railway Establishment Manual, Vol.I, 1989 to RBE 33/2002 dated 8.3.2002. Supreme Court gave the following directions on 11.11.2002 in IA No.5/2002 in Writ Petition (Civil) No.234/2002 as follows:-

"These Writ petitions involve the constitutionality of Article 16 (4A). The Court by an interim order has directed not to revert any of the petitioners from their existing placement nor affect their standing in the seniority list, but at the same time the provisions of Article 16 4(A) can be implemented and by virtue of that provision if some of the reserve category candidates are entitled to promotion they shall be promoted. The obvious idea being the court should not stay the operation of a constitutional provision. The state finds difficulty in implementing the order on the ground that there does not exist ...4..

sufficient vacancy of posts in a particular cadre to give effect to the provisions contained in Article 16 4(A). This being an interim arrangement we direct that they should apply to the number of vacancies available in a cadre to give effect to the promotional policy and undoubtedly such a promotion can be granted only when the state makes a provision for reservation in terms of Article 16 4(A).....".

By Circular No.81/2002 dated 22.11.2002, the Central Railway have issued instructions on the basis of Railway Board letter dated 21.11.2002 on the subject of principles of determining the seniority of staff belonging to SC/ST categories promoted earlier vis-a-vis General/OBC candidates promoted later. It has been advised to publish fresh seniority list and conduct/finalise selection in accordance with directions contained in Board's letter dated 8.3.2002.

3. Learned counsel of the respondents stated that respondents are implementing the directions contained in the Supreme Court's order dated 11.11.2002 as is clear from Railway's Circular dated 22.11.2002 cited above.

4. Having regard to the above referred decision of the Supreme Court as also Railway instructions this O.A. is ^{allowed by} ~~disposed of~~ with a directions to the respondents to publish fresh seniority list and conduct/finalise selection ⁱⁿ accordance with directions contained in Board's letter dated 8.3.2002 within a period of 3 months from the date of communication of this order. No costs.

S. Raju

(Shanker Raju)
Member (J)

V.K. Majotra

(V.K. Majotra)
Member (A).

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**CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, MUMBAI**

Dated this Friday the 11 th day of March, 2005

Coram: Hon'ble Shri A.K.Agarwal - Vice Chairman
Hon'ble Shri S.G.Deshmukh - Member (J)

CONTEMPT PETITION NO.50 of 2004
(In O.A 100 of 1999)

O.P.Rahi,
Junior Engineer Grade – I (P-Way),
Central Railway,
Mankhurd,
R/o 23, Sai Charan Apartments,
Old Dombivili,
Dombivili, District Thane
(By Advocate Shri D.V.Gangal) - Petitioners

Versus

Shri S.D.Ghosh Dastrigeer,
General Manager,
Central Railways, Hqrs.Office,
Mumbai, CST, Mumbai.

Shri Madhav Pathak,
Divisional Railway Manager,
Mumbai Division,
Central Railway, DRM's Office,
CST, Mumbai
(By Advocate Shri S.C.Dhawan) - Respondent/
Contemner

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The petitioner has filed this Contempt Petition alleging non-compliance of the Tribunal's order dated 18.6.2003 given while disposing of O.A 100 of 1999. The direction given by the Tribunal in its order dated 18.6.2003 was as follows -

“4. Having regard to the above referred decision of the Supreme Court as also Railway instructions this OA is allowed with a direction to the respondents to publish fresh seniority list and conduct/finalise selection in accordance with directions contained in Board's letter dated 8.3.2002 within a period of 3 months from the date of communication of this order.”


2. The learned counsel for the petitioner stated that the respondents have not given due benefit in seniority to the petitioner and even the representation made in this regard was rejected by them. The learned counsel submitted that after the 85th amendment to the Constitution the Railway Board had issued instructions vide O.M dated 8.3.2002 for giving benefit of seniority in promotion to SC/ST employees based on the

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amended provision in the Constitution. Such benefit was to be given retrospectively w.e.f. 17.6.1995. The learned counsel for the petitioner contended that if the benefit of seniority was correctly given to the petitioner he would have been eligible for being included in the panel notified vide letter dated 31.3.1999 for promotion to the post of P.W.I. Grade -I . The petitioner was not called for the selection solely on the ground that he was not senior enough so as to come within the zone of consideration.

3. The learned counsel for the petitioner submitted that non-implementation of the direction given by the Tribunal amounts to contempt. Therefore suitable action should be taken against the respondents in this regard.

4. Shri Dhawan appeared on behalf of the respondents. He submitted that as per the directions of the Tribunal a revised list has been published on 28.8.2003. Further, the petitioner was also given a reply to




the representation made by him indicating clearly that since no one junior to the petitioner was promoted earlier, no change in his seniority became necessary even when the list was revised as per the directions of the Railway Board given in O.M dated 8.3.2002.

5. We have heard both the counsel. The direction in the order of the Tribunal dated 18.6.2003 is for giving the benefit of 85th amendment to the Constitution. It has been mentioned that as the 85th amendment to the Constitution negates the effect of the DOPT OM dated 30.1.1997 and the SC/ST employees will retain the seniority in the case of promotion by virtue of rule of reservation.

Regarding the Railway Board's letter dated 22.11.2002, it is stated in the order that -

“By circular No.81/2002 dated 22.11.2002, the Central Railway have issued instructions on the basis of Railway Board letter dated 21.11.2002 on the subject of principles of determining the seniority of staff belonging to SC/ST categories promoted earlier vis-a-vis General/OBC candidates promoted later.”




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The direction given by the in its order dated 18.6.2003 are set out below -

“4. Having regard to the above referred decision of the Supreme Court as also Railway instructions this O.A is allowed with a direction to the respondents to publish fresh seniority list and conduct/finalise selection in accordance with directions contained in Board's letter dated 8.3.2002 within a period of 3 months from the date of communication of this order.”


6. Thus by the 85th amendment to the Constitution the benefit of “catch-up principle” available to the General candidates in seniority after promotion was withdrawn w.e.f. 17.6.1995. As per direction of the Tribunal the seniority of the applicant was to be fixed keeping this basic feature in view. The filling up of backlog vacancy etc. are not at all relevant in this case. Further the reply given by the respondents that no junior to the applicant has been promoted earlier than him does not make the position clear. The respondents were required to confirm that no one senior to the applicant in the feeder cadre but promoted on a later date to the grade of the applicant continues to be above him. The withdrawal of the benefit of “catch-up principle” has nothing to do with the number of vacancies and is purely a matter of fixing seniority of SC/ST employees on promotion posts.



However, in some cases a considerable improvement in seniority may lead to some consequential benefits. But such benefits cannot be claimed through contempt proceedings.

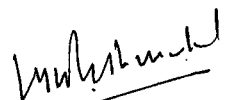
7. The respondents have stated that the seniority list has been revised as per directions contained in Railway Board's O.M dated 8.3.2002 and there has been no change in the seniority position of the petitioner. The respondents have also mentioned about the promotions given to the petitioner after the date of Tribunal's order but since there has been no change in the seniority, we do not think that such benefit has flown out of the Tribunal's order. The applicant might have got that promotion in due course.


8. We therefore hold that there is no wilful disobedience on the part of the respondents in complying the order of the Tribunal since the respondents have published the revised seniority list. However, the reply given to the applicant vide letter dated 26.9.2003 does not meet the necessary points made by the applicant. The Contempt Petition is dismissed



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with a direction to the respondents to inform the applicant about his seniority vis-a-vis General/OBC candidates promoted later to the cadre in which the applicant was placed as on 17.6.1995. Notice is discharged.


(S.G. Deshmukh)
Member (J)


(A.K. Agarwal)
Vice Chairman

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CP-NO 65105
is fixed for
order on
29/11/05
12/08/11

CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH.

CONTEMPT PETITION NO.65/2005
IN
ORIGINAL APPLICATION NO.100/99.

Monday THIS THE 21st DAY OF AUGUST, 2006.

Hon'ble Dr.G.C.Srivastava, Vice-Chairman,
Hon'ble Shri Muzaffar Husain, Member (J).

O.P.Rahi,
23, Sai Charan Apartment,
Old Dombivili West,
Dist. Thane.
(By Advocate Shri D.V.Gangal)

...Applicant.

v.

1. Z.M.Ansari,
General Manager,
Central Railway,
CST M and all Successors
In the Office as General
Manager.

2. R.S.Virdi
Divisional Railway Manager,
Mumbai Division CSTM
and all successors
in the office as
Divisional Railway Manager.
(By Advocate Shri V.S.Masurkar)

...Respondents.

: ORDER ON CONTEMPT PETITION :

{Dr.G.C.Srivastava, Vice-Chairman}

This petition for initiating Contempt of Court
Proceedings has been filed by the applicant
alleging non-compliance of the order of this
Tribunal passed on 11.3.2005 while disposing of
C.P. No.50/2004.

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2. In CP 50/2004 the applicant had alleged non-compliance of the order of the Tribunal dated 18.6.2003 passed in OA 100/99. The aforesaid CP was dismissed with the following observations:

" We therefore hold that there is no wilful disobedience on the part of the respondents in complying the order of the Tribunal since the respondents have published the revised seniority list. However, the reply given to the applicant vide letter dt. 26.9.2003 does not meet the necessary points made by the applicant. The Contempt Petition is dismissed with a direction to the respondents to inform the applicant about his seniority vis-a-vis General/OBC candidates promoted later to the cadre in which the applicant was placed as on 17.6.1995. Notice is discharged".

3. The present CP 65/2005 has been filed by the petitioner alleging that he has not been informed about the seniority vis-a-vis General/OBC candidates as directed by the Tribunal in the above order. Notices were issued to Respondent No.2 i.e. R.S. Virdi, D.R.M., Mumbai Division, C.S.T.M. to show cause as to why he has not implemented the direction of the Tribunal given in the order dt. 11.3.2005. In his reply, the respondent has stated that in order to comply with the directions of this Tribunal, Mumbai Division had to obtain necessary information from the Headquarters Office on the basis of old record pertaining to the year 1995 onwards. It was further stated that the applicant has finally been informed about his seniority vide letter dt. 19.1.2006. A copy of the said letter has been

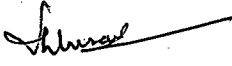
placed on record. It reads as follows :

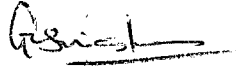
"With reference to the above OA and CP No.50/04 and Hon'ble Tribunals orders dt. 11.3.2005, CPO (Engg.) BB vide L.No.BB/HPB/666/RE/PWI dt. 08.08.05 has advised that no junior GL employee has been promoted as JE I(P/way) after 17.06.95. Consequent upon, the above proforma promotion from 13.09.1995, their name are interpolated in the seniority list of JE I (P/way) Gr. Rs.5500-9000 (RSRP) from 13.09.95 below Shri Atmaram Jaisingh at Sr. No.17 and above Shri D.K.Vyavahare at Sr.No.18 in the cadre of JE 1 (P/way)".

Since the direction of this Tribunal was that the respondents had to inform the applicant about his seniority vis-a-vis general/OBC candidates promoted later to the cadre in which the applicant was placed as on 17.06.95 we find that the Respondent No.2 has complied with this direction by informing the applicant about his seniority position in the cadre. The submission of the applicant is that this is not full compliance of the direction as PWI cadre consists of JE-II, JE-I SE and SSE and the respondent has failed to inform the applicant about his seniority position as S.E. and S.S.E. This argument of the applicant, in our view, goes beyond the directions given by this Tribunal while disposing of C.P. No.50/2004. We are convinced that there has been no wilful disobedience of this Tribunal's order and no case for Contempt of Court

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has been made out by the applicant. The Contempt
Petition is accordingly dismissed and the notice is
discharged.


(MUZAFFAR HUSAIN)
MEMBER (J)


(G.C. SRIVASTAVA)
VICE-CHAIRMAN

B.