

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:1268/93

DATE OF DECISION: 29.11.2000

Shri Nareshbhai Khansadia Applicant.

Advocate for
Applicant.

Versus

The Union of India and others Respondents.

Advocate for
Respondents

CORAM


Hon'ble Shri B.S. Jai. Parameshwar, 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.


(B.S. JAI PARAMESHWAR)
MEMBER(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO:1268/93

WEDNESDAY the 29th day of NOVEMBER 2000

CORAM: Hon'ble Shri B.S. Jai Parameshwar, Member(J)

Hon'ble Shri Shanta Shastry, Member(A)

Nareshbai Kharsadia
Zonal President
All India S.C. & S.T.
Railway Employees Association,
Opp. Byculla Railway Station,
Platform No.4,
Byculla, Bombay.

...Applicant.

V/s

Union of India through
General Manager,
Central Railway,
V.T. Bombay.

...Respondent.

ORDER(ORAL)

{Per Shri B.S. Jai Parameshwar, Member(J)}

None for the applicant. The learned counsel for the respondent has sent a letter praying for time. As the matter does not involve any complicated fact or law, we feel it proper to decide the matter on merits as the matter is pending for the last seven years.

2. Hence we are deciding the matter under Rule 15(1) of the CAT (Procedure) Rules 1997.

3. The applicant is the All India SC & ST Railway Employees Association, Byculla, Bombay. However the description of the applicant is not proper. The President of the Association has filed this application in his individual capacity. On going



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through the averments made in the application it is clear that the Association has made out a grievance on behalf of its members. We feel that one of the members of the Association should have been made a party to the application. No such action has been taken. However we do not wish to throw this application on this technical ground.

4. The respondents by their letter dated 12.11.1993 re-structured certain Group 'D' cadre with effect from 1.3.1993 (Exhibit A page 13 of the paper book). Paras 1 and 2 of the letter reads as under:

(1) Vacancies as on 28.2.1993.

The Vacancies available should be filled up in accordance with the 40 point roster scheme subject to the condition that the members of the SC/ST do not exceed 15 and 7 1/2 percent respectively at any given point of time and if a person belonging to the SC/ST is promoted on his own merit and not in a reserved vacancy then for the purpose of this interim order such appointment will be excluded computing the required percentage.

(2) Additional vacancies in higher grades arising as a result of restructuring with effect from 1.3.1993.

The vacancies to the extent of 15% for SC and 7.5 % for ST may be set apart and kept unfilled until further orders and the balance posts may be filled up as per (1) above.

5. The Association is aggrieved by the manner of restructuring of certain group 'D' cadre with effect from 1.3.1993.

6. The respondents have filed their reply. They state that 40 point roster has been applied to fill up the vacant posts as on 28.2.1993 subject to the condition of maintaining the

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prescribed percentage of the reserved communities. They have acted as per letter dated 27.1.1993 issued by the Railway Board restructuring certain group 'C' and 'D' posts/cadres. The restructuring has to be done with effect from 1.3.1993. The impugned letter has been issued as per the Board's letter dated 27.1.1993. Thus they justify the impugned letter. They also relied on the order dated 5.10.1993 in OA 727/93 and batch.

7. We have gone through the grounds raised by the Association in the OA. The said grounds have already been considered by the Hon'ble Supreme Court in the case of R.K. Sabharwal and others V/s State of Punjab and others {1995 (1) SLR 791}. In para 4 and 5 to 7 the Hon'ble Supreme Court has observed as follows:

4. When a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserve points, it has to be taken that the posts shown at the reserve points are to be filled from amongst the members of reserve categories and the candidates belonging to the general category are not entitled to be considered for the reserve posts. On the other hand the reserve category candidates can compete for the non-reserve 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. Article 16 (4) of the Constitution of India permits the State Government to make any provision for the reservation of appointments or posts in favour of any backward class of citizen which, in the opinion of the State is not adequately represented in the Services under the State. It is, therefore, incumbent on the State Government to reach a conclusion that the backward class/classes for which the reservation is made is not adequately represented in the State Services. While doing so the State Government may take the total population of a particular backward class and its representation in the State Services. When the State Government after doing the necessary exercise makes the reservation and provides the

extent of percentage of posts to be reserved for the said backward class then the percentage has to be followed strictly. The prescribed percentages cannot be varied or changed simply because some of the members of the backward class have already been appointed/promoted against the general seats. As mentioned above the roster point which is reserved for backward class has to be filled by way of appointment/promotion of the member of the said class. No general category candidate can be appointed against a slot in the roster which is reserved for the backward class. The fact that considerable number of members of a backward class have been appointed/promoted against general seats in the State Services may be a relevant factor for the State Government to review the question of continuing reservation for the said class but so long as the Instructions/Rules providing certain percentage of reservations for the backward classes are operative the same have to be followed. Despite any number of appointees/promotees belonging to the backward classes against the general category posts the given percentage has to be provided in addition. We, therefore, see no force in the first contention raised by the learned counsel and reject the same.

5. We see considerable force in the second contention raised by learned counsel for the petitioners. The reservations provided under the impugned Government instructions are to be operated in accordance with the roster to be maintained in each department. The roster is implemented in the form of running account from year to year. The purpose of "running account" is to make sure that the Scheduled Caste / Schedule Tribes and Backward Classes get their percentage of reserved posts. The concept of "running account" in the impugned instructions has to be so interpreted that it does not result in excessive reservation. "16% of the posts are reserved for members of the Scheduled Caste and Backward Classes. In a lot of 100 posts those falling at serial numbers 1, 7, 15, 22, 30, 37, 44, 51, 58, 65, 72, 80, 87 and 91 have been reserved and earmarked in the roster for the Scheduled Castes. Roster points 26 and 76 are reserved for the members of Backward Classes. It is thus obvious that when recruitment to a cadre starts then 14 posts earmarked in the roster are to be filled from amongst the members of the Scheduled Caste. To illustrate, first post in a cadre must go to the Scheduled Caste and thereafter the said class is entitled to 7th, 15th, 22nd and onwards upto 91st post. When the total number of posts in a cadre are filled by the operation of the roster then the result envisaged by the impugned instructions is achieved. In other words, in a cadre of 100



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posts when the posts earmarked in the roster for the Scheduled Castes and the Backward Classes are filled the percentage of reservation provided for the reserved categories is achieved. We see no justification to operate the roster thereafter. The "running account" is to operate only till the quota provided under the impugned instructions is reached and not thereafter. Once the prescribed percentage of posts is filled the numerical test of adequacy is satisfied and thereafter the roster does not survive. The percentage of reservation is the desired representation of the Backward Classes in the State services and is consistent with the demographic estimate based on the proportion worked out in relation to their population. The numerical quota of posts is not a shifting boundary but represents a figure with due application of mind. Therefore, the only way to assure equality of opportunity to the Backward Classes and the general category is to permit the roster to operate till the time the respective appointees/promotees occupy the posts meant for them in the roster. The operation of the roster and the "running account" must come to an end thereafter. The vacancies arising in the cadre, after the initial posts are filled, will pose no difficulty. As and when there is a vacancy whether permanent or temporary in a particular post the same has to be filled from amongst the category to which the post belonged in the roster. For example the Scheduled Caste persons holding the posts at Roster-points 1, 7, 15 retire then these slots are to be filled from amongst the persons belonging to the Scheduled Castes. Similarly, if the persons holding the post at points 8 to 14 or 23 to 29 retire then these slots are to be filled from among the general category. By following this procedure there shall neither be short-fall nor excess in the percentage of reservation.

6. The expressions "posts" and "vacancies", often used in the executive instructions providing for reservation, are rather problematical. The word "post" means an appointment, job, office or employment. A position to which a person is appointed. "Vacancy" means an unoccupied post or office. The plain meaning of the two expressions make it clear that there must be a 'post' in existence to enable the 'vacancy' to occur. The cadre-strength is always measured by the number of posts comprising the cadre. Right to be considered for appointment can only be claimed in respect of a post in a cadre. As a consequence the percentage of reservation has to be worked out in relation to the number of posts which form the cadre-strength. The concept of 'vacancy' has no relevance in operating the percentage of reservation.

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7. When all the roster-points in a cadre are filled in required percentage of reservation is achieved. Once the total cadre has full representation of the Scheduled Castes / Tribes and Backward Classes in accordance with the reservation policy then the vacancies arising thereafter in the the cadre are to be filled from amongst the category of persons to whom the respective vacancies belong.

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7. The decision of Hon'ble Supreme Court is prospective and effective from 10.2.1995.

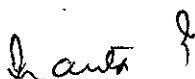
8. On the basis of the decision of the Hon'ble Supreme Court the DOPT has issued instructions in October 1997. The Railway Board has also issued certain instructions on these lines.

9. The respondents shall now consider whether any change is necessary in the impugned letter dated 12.11.1993. They must take a decision in the light of the decision of the Hon'ble Supreme Court.

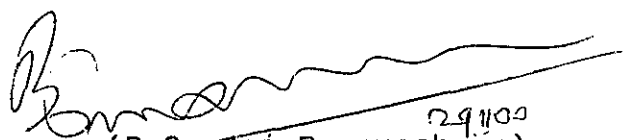
10. After taking the decision the respondents shall inform the Association the decision within four months from the date of copy of the order.

11. We make it clear that any promotion on account of restructuring made between 12.11.1993 and 9.2.1995 shall not be disturbed.

12. With the above observations the OA is disposed of. No order as to costs.



(Ms. Shanta Shastri)
Member(A)


29/11/00
(B.S. Jai Parameshwar)
Member(J)