IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESCOT ROAD, BOMBAY-1

OA Nos. 727; 484; 485; 487; 571; 596; 622;
680; and 703 of 1993

1.	L C Awasthi	..Applicant in OA 727/93
2.	G M Sharma & Ors	..Applicants in OA 484/93
3.	L P Mishra & Ors	..Applicants in OA 485/93
4.	H R Samant	..Applicant in OA 487/93
5.	D M Karona	..Applicant in OA 571/93
6.	M J Gajjar & Ors	..Applicants in OA 596/93
7.	Mrs. R R Samarth & Ors.	..Applicants in OA 622/93
8.	Mrs. B. Gajjar & Ors	..Applicant in OA 680/93

V/s

Union of India
through General Manager
Western Railway & Ors. ..Respondents in all above Orirgal applications

Coram: Hon.Shri Justice M.S.Deshpande, V.C.
Hon.Shri M Y Priolkar, Member (A)

APPEARANCE:

Mr. G S Walia, counsel
for applicants in OA Nos.484; 485; 487; 571 of 93

Mr. M S Ramamurthi, counsel
for applicants in OA Nos. 727 & 596 of 1993

Mr. G.K. Masand, counsel
for applicant in OA No. 680 of 1993

Mr. A.L. Kasture, counsel
and
Mr. N K Srinivasan, counsel
for the respondents

Mr. D.V. Gangal, counsel
for the intervenors.

TRIBUNAL'S ORDER: DATED: 5.10.1993
(PER: M.S.Deshpande, Vice Chairman)

We had passed an interim order in some cases earlier staying all appointments and promotions pending further orders.

2. We heard the learned counsel appearing for the petitioners and respondents at length and also the learned counsel for the intervenors i.e., All India Scheduled Castes & Schedules Tribes (Railways) Association (for brievity, Association) and directed the intervenors to be joined as a party respondent.

3. The first decision was rendered by the Allehabad High Courtin J.C. MALLIK V. UNION OF INDIA 1978(1) SLR page 842 where the learned judges held that the Railway Board circular dated April 20, 1970 made reservation to the extent of 15 per cent in favour of Scheduled Castes in respect of appointment to the posts and not to the vacancies which may occur in the cadre of posts. There the respondents nos. 4 to 8 had been selected by the Selection Committee for promotion to the post of A-Grade Guards on the basis of an erroneous interpretation of Railway Board's circular dated 20.4.1970.

It was held there that

4. /if the circular was correctly followed and if the reservation quota was confined to the posts in that event respondents nos. 3 to 8 could not have been considered for selection for appointment to the posts of A Grade Guards and that the selection was not in accordance with law as their selection has been made in excess of the 15 per cent quota fixed for Scheduled Castes candidates. When the matter went up to the Supreme Court in Civil Miscellaneous Petition No. 26627 the Supreme Court passed the following

order on 24.9.1984:

> "We clarify our order dated Feb. 24, 1984, by directing that the promotions which may be made hereafter will 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 have been made after Feb. 24, 1984 otherwise than in accordance with the judgment of the High Court such promotions shall be adjusted against the future vacancies. CMP is disposed of accordingly."

5. In a petition filed under Article 32 before the Supreme Court - Writ Petition nos. 17386 to 17393 of 1984 GIRDHARI LAL & ORS. V. UNION OF INDIA & ORS - the Supreme Court directed that pending notice the promotions which may be made hereafter will be strictly in accordance with the judgment of the High Court in Civil Writ Petition no. 1809 of 1972 and if any such promotions have been made otherwise than in accordance with the judgment of the High Court, such promotions shall be adjusted against the future vacancies.

6. When a similar matter came up before this Bench in a group of applications, this Bench passed an order on 24.4.1987 to the following effect:

> (1)The promotions which may be made hereafter by the respondents will be strictly in accordance with the judgment of the Allahabad High Court in Civil Misce.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 final result of the cases. If any promotions have been so far made otherwise than in accordance with the judgment 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 decisions 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.

7. A similar order was passed by the Hyderabad Bench and was extracted by the Full Bench of this Tribunal in V. LAKSHMINARAYANAN v. UNION OF INDIA & ORS. CASES reported in 1993(24) ATC Full Bench 420 and it was on the same lines on the order passed by this Bench. The order reads:

"We have considered these rival contentions, Having regard to the orders of the Supreme Court in directing Allahabad High Court's Judgment shall be implemented and the orders passed by the Bombay High Court and the Madras Bench of the Central Administrative Tribunal to which a reference has been made in foregoing paras, we direct that the interim direction given by the Madras Bench of the Central Administrative Tribunal should also be made applicable to the instant case."

7.We accordingly direct that the vacancies available, from time to time in the Office Superintendent's branch will be filled up in accordance with 40 Point Roster system subject to the condition that the post held by the members of the Scheduled Castes and Scheduled Tribes do not exceed 15% and 7½% respectively at any given point of time and if a person belonging to the Scheduled Caste or Scheduled Tribe is promoted on his own merits and not in a reserved vacancy, then for the purpose of this interim order such appointment will be excluded while computing the required percentage. Any promotion that could be made in pursuance of this order will, however, be subject to the result of main application."

(Emphasis supplied).

The Bench thereafter made a reference to the Full Bench and the matter came to be considered in quite some detail by the Full Bench. However having done so the Full Bench observed pending decision of the Supreme Court in MALLIK's case Tribunals are bound to pass interim orders on applications challenging reservation on the basis of 40 point roaster and promotion of SC&ST candidates consistent with the interim order already passed by the Supreme Court in MALLIK's case dated 24.9.1984 as extracted above. They approved the interim order passed by the Division Bench ~~in this case dx reference to order~~ oh 16.5.88 as one having been passed in terms of the interim order passed by the Supreme Court in MALLIK's case. and directed that in similar cases the Tribunal shall pass similar orders taking into account the directions of the Supreme Court. If the Tribunal had already passed any order not in conformity with the order of the Supreme Court inadvertently, such order was to be recalled and fresh orders passed in terms of the order of Supreme Court so that conflicting directions and interim orders by various Tribunals can be avoided.

8. What is of consequence is that in para 49 the Full Bench observed that though they had discussed the contentions urged before them by the parties based on the arguments advanced by them they accepted the request of learned Additional Solicitor General Shri V.R. Reddy, who appeared on behalf of the Railway, and refrained from expressing their final conclusions on the issues arising in the case which shall have to await the decision of the Supreme Court in MALLIK's case.

9. Reference was made extensively to the observationof the Full Bench, before us for the purpose of enabling us to take an appropriate view of the matter. But since the Full Bench itself has not given any conclusions which are final we are constrained to observe that none of the observations made by the Full Bench could be accepted as ratio of the decision of the Full Bench so that it would have a binding effect on smaller Benches, as practically nothing was finally decided and the controversy on the points of law had not been set at rest. We might, however, mention here that none of the parties have taken exception to the interim orders which were passed in accordance with the directions given by the Supreme Court. When the matter came up before a Division Bench at Bombay Bench to which one of us (Shri M Y Priolkar, Member(A)) was a party, it pointed out that the interim direction given by this Bench was in conformity with the direction given by the Supreme Court as well as the Hyderabad Bench of the Tribunal and there was no conflict and that the interim order passed by this Bench of the Tribunal would be on the same terms as passed by the Hyderabad Bench. So far as the parties to the present petition are concerned the position remains that they still have to obey the directions given pursuant to the final order by the Full Bench so for as the matter of reservation is concerned.

10. The question raised on behalf of the intervenors Association was about seniority. The contention was that for a candidate who got his promotion on the basis of reservation to the higher post his seniority in the promotional cadre must count from the date on which he came

into the cadre and that his seniority would not be on the basis of seniority in the lower cadre from which he rose to the higher cadre although he came to be promoted on the basis of the reservation policy. This proposition was not accepted by a Division Bench of this Tribunal in VIR PAL SINGH CHAUHAN v. U.O.I. & ORS. 1987(4) ATC 685 and it was held that where a junior belonging to a reserved category jumps over the senior, due to reservation for SC&ST, such juniors will have to wait for their turn for further promotion. The same view was taken by another Division Bench of this Tribunal at Patna in KAMESHWAR SHARMA v. U.O.I. & ORS. 1990(12) ATC 26 and it was held that if an employee has got accelerated promotion from Grade 'C' to Gr. 'B' by virtue of reservation, he cannot be granted the benefit of seniority in Gr.'B' for next promotion to Gr. 'A' and for promotion to Gr. 'A' his seniority in Gr.'B' will have to be determined with reference to seniority in Gr. C irrespective of longer length of service rendered in Gr. 'B' due to accelerated promotion.

11. These decisions were followed also by this Bench in Tr.A.No. 16/89 D G BALIWANT v. U.O.I. & ORS. to which one of ~~our~~ us (Shri M Y Priolkar, Member (A)) was a party. A similar question arose in Tr.A. No. 147/87 P M KHADE & ANOTHER v. WESTERN RAILWAY, decided on 6.7.93 and we followed the decision in BALIWANT's case as no new point was presented before us. We, therefore, took the view that the case was fully covered by the decision in BALIWANT's case.

12. This was the catena of cases in which what was described as leap frogging was not permitted.

13. Shri Gangal, learned counsel for the intervenors, however, pointed out to us that in OA No. 326/89 - ALL INDIA NON SC&ST EMPLOYEES ASSOCIATION (RAILWAY) BIKANER & ORS v. U.O.I. & ORS. a Division Bench at Jodhpur and a division bench sitting at Jabalpur - OA No. 358/90 RAMLAL B. VERMS & ORS v. U.O.I. & ORS. - took a contrary view relying on KARAM CHAND v. HARYANASTATE ELECTRICITY BOARD & ORS V. U.O.I. 1989 SC 261 and the observations of the Full Bench at Hyderabad and held that the seniority of officials belonging to SC&ST in any cadre will be reckoned from the date of promotion to a grade and not from a date of entry into the grade from which he was promoted.

From whatever source an employee has been promoted, he occupies the place with the seniority normally available along with others irrespective of whether he got the benefit of reservation or otherwise, and he cannot be later classified on the basis of his original appointment or promotion and ~~/~~ denied further promotion if he is qualified otherwise on the ground that he acquired the promotion on the basis of reservation only. There is nothing as accelerated promotion in service jurisprudence.

14. That Division Bench also observed that since the matter had been referred once to the Larger Bench and the Full Bench had expressed its view which ~~is~~ was in accordance with KARAM CHAND's case there ~~be~~ was no point in referring the case again to the Larger Bench, as the decision of the Supreme Court is binding on the Tribunal under Article 141 of the Constitution.

15. Had the dispute rested there there would not have been any difficulty in following the decision in RAMLAL'S case. But a Division Bench at Bombay in M.P. No. 447/89 in certain Transferred and Original Applications beginning with Tr.A. No.154/86 decided on 15.9.89(to which one of us Shri M Y Priolkar Member(A) was a party)took note of the decision in KARAM CHAND's case and after going through the judgment felt that it was not an authority on the point as to whether a person who has been promoted on the basis of reservation would be entitled to a promotion in the higher cadre irrespective of the fact as to whether the quota reserved for SC/ST is already achieved or not in the higher cadre, and then referred to KAMESHWAR SHARMA & ORS. V. U.O.I. in Tr.A.No. 385/86 decided on 9.8.89 by Patna Bench of the Tribunal as an authority on the point mentioned above.

16. It is, therefore, clear that there are two sets of decisions taking divergent and irreconcilable views and it is not possible for us being a coordinate Division Bench to decide upon the correctness of one or the other view and it will be for a the larger Bench to pronounce upon the correct legal position. We are told that J C MALLIK's matter is likely to be early decided by the Supreme Court when it starts hearing the appeal from the decision of the Allahabad High Court.

17. Shri Ramamurthi, learned counsel for some of the applicants stated before us that a SLP was filed before the Supreme Court against the decision of VER PAL SINGH's case and no stay had been granted, though the SLP was admitted.

18. Shri Gangal for the Association pointed that SLP was filed against the decision in OA 423/89 and it was directed that the matter be listed after summer vacation. When the decision in J.C. MALLIK's case referred to by the petitioners would be considered by the Larger Bench and that no interim direction sought by the appellants before the Supreme Court was necessary. The result is that both sets of decisions hold the field to-day and the learned counsel appearing for the respondents Railways contend that there is no uniform view of this Tribunal which can be followed except the decision of the Full Bench of the Tribunal.

19. In our view so for as the interim orders are concerned we shall have to be guided by the Full Bench's view that the directions of Hyderabad Division Bench was in conformity with the interim direction of the Supreme Court. We have already extracted the order of Hyderabad Division Bench and a proper reading of that order would be that the vacancies available shall be filled up in accordance with the 40 point roster system subject to the condition that the posts held by the members of SC&ST do not exceed 15 and 7-1/2 per cent respectively at any given point of time, with the rider that if a person belonging to SC&ST is promoted on his own merits and not a reserved vacancy then for the purpose of this interim order such appointments would be excluded while computing the required percentage. The requirement is that the candidate who competes for the general seat in excess of the quota for the reserved categories must not have got post on the basis of reservation. If he has got the post by virtue of reservation his promotion would fall within the

restricted quota and he would not be entitled to compete for the general vacancies. This, however, will not apply to the category or categories where the person belonging to the SC/ST is promoted on his own merit and not in reserved vacancy and any such excess posts would not count for the reserved category. We make it clear that we are not deciding any point of principle and we are not saying anything about the correctness of one or other view, but we are bound by the Full Bench's directions that Division Benches orders be in accordance with the interim orders of the Supreme Court.

20. The position so far as the interim orders which are required to be passed today is concerned is that the employees of SC/ST will not be entitled to claim seniority on the basis of his date of entry in the promotional cadre if he has got into the cadre on account of his belonging to SC/ST. It is only the other category which we have mentioned who would be entitled to compete for the general seats.

21. That takes us to the letter dt. 16-6-1993 Exhibit 'A' to O.A.No.596/93 M.J.GUJJAR & ORS. v. WESTERN RAILWAY which has been ~~xix~~ challenged as being contrary to the interim directions issued by the Full Bench. The Boards letter purports to show that it was being issued on the basis of the directions of the Full Bench and the orders of the Supreme Court in J.C.MALLIK'S case. The submission of Shri Ramamurthy learned counsel for applicant in OA No.596/93 was that though the Railway Board purported to act within the directions aforesaid, the instructions are contrary to the directions of the Supreme Court and the Full Bench. Exception was taken to Clause 3.1 which prescribed the manner of holding selection and confirming the panel because

it prescribed a relaxed standard in respect of SC/ST candidates even while competing for the post of general category. The language used is ambiguous though the learned counsel for respondent railways contended that the instructions in clause 3.1 were confined only to the manner in which the reserved posts are to be filled and there was no question of leap frogging. Our attention was drawn to clause 'd' of page 2 of the written statement in OA 680/93. Clause 'd' reads:

> "(d) It is submitted that for making good deficiencies of 15 and 7-1/2 per cent, the principle of 40 point roster will be applied and after making good this deficiencies, the normal rules of seniority will be applied wherein any employee in the higher grade are senior to all employees in the lower grade and the employees whose names are borne on the earlier panel are senior to all these employees, whose names are borne selected in the subsequent panel, irrespective of the facts that they have accelerated promotion or otherwise."

~~It is clear that though no exception can be taken in the language employed in clause (d),~~ What the respondent railways understand by the existing procedure is what is stated in clause (d) page 2 of the written statement, the effect of which will be to make eligible candidates who have come by way of reservation also to compete for the general posts which are to be filled on merit. Even the standard for filling the general category is not to be observed in their case but a relaxed standard would be applied when they compete for the post of general category. This will be contrary to the interim directions which were given by the Benches of the Tribunal in accordance with the order passed by the Full Bench and would not be permissible as long as an interim direction stands.

Examples 2 & 3 show that when they have to apply a 3X formula, the scales will be weighed in favour of the reserved category to the detriment of the general category and the reserved categories would make inroads on the posts which would otherwise be available for the non-reserved category. There cannot be any objection to a candidate from the SC/ST who has come by way of merit competing with the open categories on the basis of his own merit. There can be no limit to the vacancies being filled on the basis of merit even by the persons belonging to the SC/ST but the result of the instructions issued by the letter dated 16.6.92 would be to prefer the less meritorious to the meritorious beyond the reserved quota of 15 & 7-1/2 per cent respectively for the SC&ST and this would be contrary to the directions issued by the Tribunal in consonance with the observation of the Full Bench. The letter dated 16.6.1992 cannot be permitted to be enforced due to the preference as sought to be given and its operation shall have to be stayed until the final decision of these matters.

22. In OA No. 680/93 Bharti Gajjar v. Western Railway and in OA No. 727/93 Awasthi v. Western Railway the petitioners seek a direction to promote employees against additional vacancies/posts arising out of restructuring order of cadres without any reservation for SC/ST employees. The restructuring is based on the instructions dated 27.1.93, Exhibit 'A' to OA no. 727/93 and it does not result in creation of additional vacancies but upgradation of existing posts. Annexure A-iii gives the posi-

tion regarding the existing percentage and the revised percentage resulting in upgradation after the restructuring. In view of the decision of this Tribunal (Allahabad Bench) in OA No. 414/87 N.K. SARNI v. DIRECTOR GENERAL, RDSO decided on 31.5.88 the applicants would be entitled to ask for relief if reservation is sought to be introduced in the matter of upgradation of the existing posts. The learned members observed in para 15 that law is very clear that in matters of promotion reservation would apply but the point is whether the upgradation is promotion at all and this was answered in the negative by holding that upgradation was not promotion and that therefore the roster could not apply for filling the upgraded posts.

In the result we direct:

23. (i) that the vacancies available from time to time 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 while computing the required percentage. Any promotion that would be made in pursuance of this order will however be subject to the result of their applications and in the light of the clarification which we have given in the body of this judgment.

24. (ii) that while filling the upgraded posts on account of restructuring which do not involve expansion of the cadre, the reservation shall not be resorted to.

(iii) That the respondent railways are restrained from acting upon and giving effect to the instructions contained in Railway Board letter dated 16.6.1992 under General Manager's letter dated 1/20-7-92 and the further instructions of the General Manager(E) under letters dated 1.9.92 and 28.4.93 until further orders as they are not in conformity with the interim direction given by the Tribunal in pursuance of the Full Bench decision and the directionsof the Supreme Court in J.C. MALLIK's case.

(iv) All these matters are admitted and leave is granted to file joint applications.

Respondents to file written statement if they have not been filed already within 8 weeks from to-day.

Rejoinder, if any, within 3 weeks thereafter.

Matters be placed before Registrar for completion of pleadings on 4.1.1994 and thereafter in sine die list.

The all India Scheduled Casts & Scheduled Tribes (Railway) Association is allowed to intervene and the applicants are directed to join as a party respondent in all these petitions.

Copies of the application be furnished to Shri D V Gangal, counsel for the Association.

Sd/-

(M.Y. Priolkar)
Member(A)

Sd/-

(M S Deshpande)
Vice Chairman

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