

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 589 of 1994

Date of Decision: 06.2000

Bina K. Mehaboobani & Ors.

Applicant.

Shri G.S. Walia

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri V.S. Masurkar.

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri.L. Hmingliana, Member (A)

Hon'ble Shri. Rafiquddin, Member (J)

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

(2) Whether it needs to be circulated to
other Benches of the Tribunal? No

[Signature]
2362000

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI.

REGISTRATION NO. OA - 589 of 1994

DATE OF ORDER : 22.06.2000

1. Bina K. Mehaboobani, working as Hindi Office Superintendent, H.Q. Office, Churchgate, Western Railway, Bombay 400 020.
2. Mrs. Asha Idnani, working as Hindi Assistant Gr. I, H.Q. Office, Churchgate Western Railway, Bombay-20.

....APPLICANTS.

By Advocate Shri G.S. Walia.

VERSUS

1. Union of India through the General Manager, W.R. Churchgate, Bombay - 20.
2. Chief Personnel Officer, W.R. Churchgate, Bombay-20.
3. Hiralal, Hindi (Office Superintendent), D.R.M.'s Office, Baroda Division, Western Railway, Baroda.
4. Ramchandra Yadav, Hindi Assistant Gr. I, Ajmer D.R.M.'s Office, Rajasthan.

.....RESPONDENTS.

By Advocate Shri V.S. Masurkar.

C O R A M

Hon'ble Mr. L. Hmingliana, Member (A)

Hon'ble Mr. Rafiquddin, Member (J)

O R D E R

L. Hmingliana, Member (A):-


We heard this matter along with OAs 801/98 and 1048/98, as a common order is impugned in all the three matters. However, we are passing separate order in the three matters.

2. The two applicants were in the feeder cadres for promotion as Assistant Hindi Officers - Group 'B',

when they jointly filed the OA on 6.5.1994, the applicant No. 1 as Hindi Office Superintendent and the applicant No. 2 as Hindi Assistant Gr. I in the head quarters office of the Western Railway (WR) at Churchgate. Their prayers are for deletion of the names of respondents No. 3 and 4 from the panel dated 29.3.1994 of ~~the~~ group 'C' staff for promotion to group 'B' of Assistant Hindi Officers, and for their own inclusion in the panel and subsequent promotions.

3. The applicants belong to the general category of government servants, while the respondents No. 3 and 4 belong to Scheduled Castes. It is the case of the applicants that the two respondents had reached the feeder cadre, for promotion as Hindi Officer on their promotions in the reserved quota, and they are not entitled to seniority over them or to inclusion in the panel.

4. At the start of the hearing, Shri G.S. Walia, learned counsel for the applicants stated that notice of the hearing had not been issued to respondent No. 3, and he asked for adjournment because of that. But Shri V.S. Masurkar, learned counsel for W.R. stated that the respondent No. 3 was very well aware that the matter was pending hearing, and in fact, he had given in writing to the railway administration that he was not ~~given~~ going to appear at the interview for selection of candidates

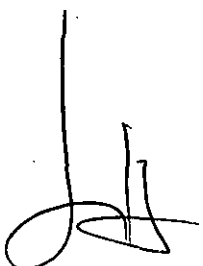


for appointment, as Assistant Hindi Officer, because of the pendency of the matter. Shri Kedar Harsha, APO, W.R. was present at the hearing, and the learned counsel made the statement on his instructions. Shri Masurkar and Shri B.V. Gangal, learned counsel for the respondents No. 4 opposed the request for adjournment. In view of the unequivocal statement of the learned counsel for the railway, we proceeded with the hearing.

5. MP 770/98 filed by respondent No. 4 for vacating the interim relief granted to the applicants and for recalling the admission of the OA has remained undisposed of. His learned counsel wanted to raise preliminary objections to the hearing, and to ask for recall^{of} the admission of the OA and its immediate disposal at the stage of admission. Though hearing was proceeded with and concluded without first hearing Shri Gangal's preliminary objections, we consider it necessary to deal with the points raised in MP 770/98 first.

6. MP 770/98 begins with the following statement;

"It is a tragedy that the Original Application 589 of 1994 has progressed, and has been admitted and stay has been granted and continued without even a notice to this petitioner- respondent No. 4. The entire proceedings are thus taken against the provisions of law and Rules. On this count



alone the orders of admission and interim order dated 13.5.1994 and subsequent orders continuing the same are required to be recalled.

2. The petitioner states that somehow or the other he has been able to procure the copy of the Original Application No. 589/94 by applying for certified copy and the same is issued to him."

7. The statement cannot be dismissed lightly, as we are ^{going} ~~given~~ to see in the progress of the OA behind the back of the two respondents.

8. The OA first came up before ^a ~~the~~ Single Member Bench of the Tribunal on 13.4.1994, and ~~the~~ interim relief was granted in terms of para 9 (a) of the OA which is as follows;

" (a) Pending hearing and final disposal, the Railway Administration may be restrained from promoting SC/ST employees in excess of 15 % and 7 ½ % quota reserved for them."

The prayer for interim relief at para 9 (a) is followed by the prayer at para 9 (b), which is as follows;

" (b) Ex-parte and interim stay order in terms of (a) above."

9. It can be immediately seen that the applicants succeeded in obtaining interim relief in the absence of the two respondents.

10. Then, when the matter came up before ~~the~~ the Division Bench on 27.5.1994, the Division Bench passed



~~the~~ order as follows;

"After hearing the counsel for the applicants, we are convinced that the interim order already passed should be continued until further order. The respondents are directed to file reply by 15.6.1994."

11. Needless to say ~~that~~ the interim order passed by the Tribunal barred the promotion of the two private respondents as Assistant Hindi Officers on the basis of the impugned panel, in which their names were included. Neither of them was present at the hearing, and the order of the Division Bench was also passed behind their back, and in fact, no notice was served on them, and they were not notified even of the filing of the OA, not to speak of the hearing at the admission stage. Shri Gangal contended that the interim relief granted to the applicants became inoperative after the lapse of 14 days as per Section 24 of the Administrative Tribunals Act, 1985, as the orders were passed behind the back of the private respondents, who were not even notified of the filing of the OA.

12. Then the applicants filed MP 4/95, praying for implementation of the interim orders passed by the Tribunal on 15.10.1993 and 11.10.1994, and for inclusion of their names in the impugned panel dated 29.3.1994.

The interim reliefs on which the applicants tried to get reliefs were not granted in the present OA, but in some

other OAs , which were not mentioned in the MP, but the copies of interim order dated 5.10.1993 in OA 727/93 and 8 other OAs, and interim order dated 11.10.94 in group cases of 30 matters (TA 226/86 etc.) both granted by the Tribunal were annexed to the MP as Ext. 'D' & 'E'. The applicants' learned counsel stated before the Tribunal, when the matter came up on 28.2.96, that there were two vacancies available in the post of Hindi Officers, and the Tribunal directed the respondents to consider the applicants and dispose of their case, keeping in view the ratio in J.C. Mallick case. Even on that occasion, respondents No. 3 and 4 were not present.

13. And it has transpired that, as we have said, respondents No. 3 and 4 were not even notified of the filing of the OA, not to speak of the filing of the MP, and the date of hearing by the Tribunal. We are told at the final hearing that the applicant No. 1 has actually been given promotion by the respondents by order dated 3.7.1997 in implementation of the interim order of the Tribunal, and that was without her being included in the impugned panel for promotions and without hearing respondents No. 3 and 4 who were in the panel all along. It would have been understandable if the interim order of the Tribunal ^{was to make the} for promotion of the two private respondents, ^{if made,} subject to the outcome of the OA. We need say no more.

14. It has to be mentioned that the railway administration did not promote applicant No. 1 after immediately even the interim relief in MP 4/95 was granted by the Tribunal. At the hearing on 13.9.1996, it was noted by the Tribunal that Shri Walia, learned counsel for the applicants had filed contempt petition No. 76/96, and direction was given by the Tribunal to issue notice to the respondents. On 22.11.1996, the Tribunal gave the last opportunity to the respondents to implement the order. But when the matter came up again on 2.5.1997, there was no appearance for the respondents, and the Tribunal directed the Secretary of the Railway Board and the C.P.O. , W.R. to be present on the next date, if the Tribunal's order was not implemented. Then on 21.7.1997, the learned counsel for the applicants stated before the Tribunal that the respondents had implemented the order, and the contempt petition was discharged. All this, while respondent No. 4 who was at distant Ajmer was unaware of what was going on against him in the Tribunal at Mumbai.

15. In view of the clandestine manner in which the applicants managed to obtain the two interim orders behind the back of the respondents No. 3 and 4, who were adversely affected, they do not deserve any relief at all from the Tribunal. And we entirely agree with Shri Gangal that the two interim orders became



inoperative after the expiry of 14 days from the dates they were granted. We are bound to agree with the learned counsel, because of the inexorable provisions of Section 24 of the Administrative Tribunals Act, 1985, which is as follows;

24. Conditions as to making of interim orders-

Notwithstanding anything contained in any other provisions of this Act or in any other law for the time being in force, no interim order (whether by way of injunction or stay or in any other manner) shall be made on, or in any proceedings relating to, an application unless-

- (a) copies of such application and of all documents in support of the plea for such interim order are furnished to the party against whom such application is made or proposed to be made; and
- (b) opportunity is given to such party to be heard in the matter;

provided that a Tribunal may dispense with the requirements of clauses (a) and (b) and make an interim order as an exceptional measure if it is satisfied, for reasons to be recorded in writing, that it is necessary so to do for preventing any loss being caused to the applicant which cannot be adequately compensated in money but any such interim order shall, if it is not sooner vacated, cease to have effect on the expiry

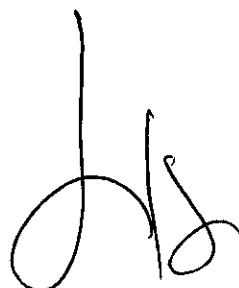


of a period of fourteen days from the date on which it is made unless the said requirements have been complied with before the expiry of that period and the Tribunal has continued the operation of the interim order."

16. The ad hoc promotion which the applicant No. 1 got in implementation of the second interim order dated 28.2.1996 was invalid right from the start, as the interim relief itself had already become inoperative, and the order of promotion will have to be quashed.

17. Before we pass the final order, we will mention briefly the arguments advanced by the learned counsel for both the sides. It is undisputed that the impugned panel was for promotion to general vacancies, And it is also undisputed that the reserved category candidates, which the respondents No. 3 and 4 were, are also eligible for promotion to general vacancies, provided they are entitled to promotion on the basis of their seniority in the feeder cadres.

18. Main contention of Shri Walia was that respondents No. 3 and 4 are not entitled to seniority over the applicants in the feeder cadres, as the two respondents were not promoted inspite of their inclusion in the impugned panel. He cited the judgement of the Constitution Bench of the Supreme Court in Ajit Singh and others II vs. State of Punjab and others, 1999 SCC (L&S) 1239, according to which the reserved



category candidates who had been promoted to the feeder posts in their roster points of reservation earlier than the general category candidates who were senior to them in the basic grade will lose their seniority in the feeder cadres once the general category candidates reach the feeder cadres before the reserved category candidates get further promotion. He also cited the judgements of the Tribunal in several matters- both TAs and OAs, in which it has been laid down that the reservation of Scheduled Castes and Scheduled Tribes cannot exceed 15 per cent and 7 ½ per cent respectively.

19. Shri V.S. Masurkar, learned counsel for the railway showed us a hand written statement, in which the dates of entry into the basic grade, namely, grade III of Hindi Assistant of applicant No. 1, respondent No. 3 and 4 and of applicant . in OA 801/98 are given. The dates of entry into grade III and of promotions to grade III and further promotion to grade I as indicated in the unsigned written statement are as follows;

	<u>1400-2600</u>	<u>1600-2600</u>	<u>2000-3200</u>
	Hindi Asstt.Gr.III.	H.A.Gr.II	H.A.Gr. I
Hiralal	27.9.1982	8.12.1987	27.4.1992
L.C.Yadav	27.1.1983	8.12.1987	29.3.1994
Smt.B.K.Mehboobani	-27.9.82	16.7.1991	29.3.1994
A.G. Desai	27.9.1982	29.7.1991	1.8.1995.

He stated that the applicant No. 1 entered grade III on the same date as the respondent No. 3, and that

she was promoted to grade II and grade I on 16.7.1991 and 29.3.1994 respectively, while respondents No. 3 and 4 were promoted to the grades on 8.12.1987 and 27.4.1994 and 29.3.1994 respectively.

20. It was the contention of both Shri Masurkar and Shri Gangal that the inclusion of the two private respondents in the impugned panel was in accordance with the law in force at the time and before the judgements of the Supreme Court in Ajit Singh II (Supra) and Union of India & Ors vs. Virpal Singh Chauhan and ors (1995) 6 SCC 684, which were decided on 16.9.1999 and 10.10.1995 respectively. He argued that the two respondents could have been promoted on the basis of the impugned panel had it not been for the OA, which they were unaware of.

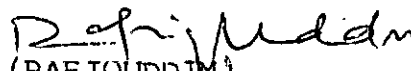
21. We do not consider it necessary to say as to whose arguments we agree with. Suffice it to say that the empanelment of respondents No. 3 and 4 was in accordance with the law prevailing at the time, as laid down by the Full Bench of the Tribunal sitting at Hyderabad in V. Saxmi Narayanana and ors etc. vs. Union of India & ors etc. in OA No. 759/87 and 15 other OAs.

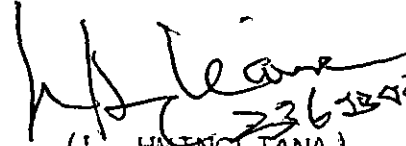
22. As we have already said, the applicants approached the Tribunal behind the back of the two respondents and without clean hands, and the interim orders they obtained from the Tribunal are inoperative, as the two



respondents were not heard. Then, in our opinion, the applicants do not deserve any relief from the Tribunal, and their OA has to be dismissed.

23. The application is dismissed. MP 770/98 stands disposed of. The ad hoc promotion given to the applicant No. 1 in implementation of the Tribunal's interim order dated 28.2.1996 is hereby quashed and set aside. There shall be no order as to costs.


(RAFIQUDDIN)
MEMBER (J)


(L. HMINGLIANA)
MEMBER (A)

/CBS/

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

R.P.7/2001 IN O.A.589/94

DATED: 11/4/2001

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

Smt.Bina Mehboobani

... Review Petitioner

V/s.

Union of India & Ors.

... Respondents

(ORDER)

Per Smt.Shanta Shastry, Member(A)

This Review Petition has been filed by the applicant in OA-589/94 which was dismissed by order dated 30/1/2001. The petitioner has approached for review inter alia on the grounds/errors apparent on the face of the record. The main grounds taken are that

i) No seniority list was issued by the Railway Administration in respect of General Candidates including SC/ST candidates excluding the benefit of accelerated promotions granted to them. Therefore there was no question of challenging any seniority list. The actual cause of action arose based on the so called seniority list at the time of formation of panel on 29/3/94. Therefore the so called seniority list should be deemed to have been challenged with the challenge of the Impugned order.

ii) It is well established that Respondent Nos.3 & 4 in the OA are junior to the Review Petitioner by virtue of their general seniority and therefore respondent nos.3 & 4 cannot be placed on the panel dated 29/3/94 as it is to be drawn on the basis of seniority as general candidates. Respondent Nos.3 & 4 did not obtain 80% marks in aggregate and accordingly they were not outstanding. Therefore they cannot be placed on the panel against the general post in preference to the petitioner. The Tribunal holding Respondent Nos.3 & 4 as having passed in the selection and therefore having not been rightly placed on the panel in preference of the petitioner against the general post is wrong and against the rules.

iii) According to the petitioner, the Tribunal cannot ignore the legal position pronounced by

...2.

the Hon. Supreme Court in the case of Ajit Singh V/s. wherein it has been clearly held that promotion of SC/ST candidates beyond 15% and 7 and 1/2% quota before 10/2/95 could be protected and not the seniority.

2. (iv) The respondents 3 & 4 were not actually promoted, they were only empanelled on 29/3/94 and therefore the cut off date of 10/2/1995 will not give them any benefit.

3. We have perused the grounds for review. In our view no new grounds have been raised by the applicant.

The seniority list was circulated vide letter dated 22/9/93. It was not challenged.

3. The post of Assistant Hindi Officer being a selection post the respondents 3 and 4 were considered on the basis of merit cum seniority and were placed in the panel of 29/3/94.

The panel of 29/3/94 was implemented in respect of all except for respondents 3 and 4 in the OA due to stay granted by the Tribunal. There was no other hitch to promote them.

4. The pronouncement in the case of Ajit Singh ^{II} has been duly referred to in the judgement. It was with reference to protection of seniority in cases where SC/ST employees got promoted in excess of the quota reserved for them. The respondents 3 and 4 were not included in the panel as reserved candidates. There was no question of exceeding the quota.

5. The above discussion would make it clear that all these points were taken into consideration while pronouncing the judgement. There is no error apparent or mistake. The applicant according to us is trying to reargue the case. Review application cannot be utilised for rearguing the case traversing the same ground.