

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Misc. Petition No.453/95
in
O.A. No. 287/95

S
Amardeep Singh & Anr. .. Applicant

-versus-

Union of India & Ors. .. Respondents

Coram: Hon'ble Shri B.S.Hegde, Member(J)

Hon'ble Shri M.R.Kolhatkar, Member(A)

Appearances:

1. Mr.G.S.Walia
Counsel for the
Applicants.
2. Mr.V.S.Masurkar
Counsel for the
Respondents.

Tribunal's order:

Date: 18.7.95

(Per M.R.Kolhatkar, Member(A))

Misc. Petition No.453/95 is filed by the respondents, Railway administration, to vacate the interim relief granted by this Tribunal in relation to the promotions and appointments to certain posts in the Railways. The order dated 16-3-95 which was admitted ~~ex parte~~, being the date on which notice was issued, was on following terms:

"Pending hearing and disposal of this application, the respondent may be restrained from declaring the results of the selection held pursuant to office order dt. 12-12-94 and further not to promote any persons on the basis of such selection."

The matter was adjourned to 24-3-95 i.e. after only eight days of the first hearing. The respondents had not put in their appearance. On 24-3-95 when the matter was admitted and the case was listed before the Registrar for completion on pleadings was to be placed on sine-die list. on 30-5-95 and then

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However, regarding interim order it was stated that "Interim order passed on 16-3-95 is modified in that the respondent may declare the result but would not make any appointments based on the result so declared." So even the modification of interim relief was defacto ex-parte. Reading the interim reliefs together the respondents are allowed to declare the result but are not to make the appointments.

2. On 30-6-95 the Tribunal passed the following order :

"Mr.G.S.Walia,counsel for the applicant. Mr.V.S.Masurkar, counsel for the respondents. The case be fixed for order on M.P.No.453/95 on 14-7-95 along with O.A.Nos.485/93 and 487/93 as the same issue arises in the group of cases."

3. On 14-7-95 when all the matters had come up together, the present O.A. along with M.P. was found listed at Sr.No.25 of the Board and remaining cases were listed at Sr.No.26 and 27. Although Shri Walia appeared for the applicant in those latter cases, another counsel appeared for the Railways and those cases were adjourned by consent to 1-9-95 and in the absence of Shri Masurkar, counsel in the instant case, we had adjourned this case also to 1-9-95. Shortly thereafter Shri Masurkar appeared and stated that the case with which he is concerned viz. MP 453/95 in O.A.287/95 is quite different from other cases and he may be heard in respect of the M.P. Accordingly we heard the parties viz. Mr.G.S.Walia for the applicant and Shri V.S. Masurkar for the respondents in the Afternoon. Shri Walia raised the preliminary objection that this bench is not competent to review the orders of another bench which decided to consider all

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three cases together. We note this argument but we are not impressed by the same because that Bench had not taken into account and not recorded the fact that the MP 453/95 in O.A.287/95 ^{was} for vacation of interim relief and there was no ^{such} interim relief in the remaining OAs. In our view, therefore, we are not reviewing the orders of the Bench dated 30-6-95 when we are taking ^{up} the limited question of continuance or otherwise of the interim relief by hearing the parties in MP 453/95 in O.A.287/95.

4. Mr.V.S.Masurkar argued that there are 14 posts of Assistant Commercial Superintendents involved in this case and the interim order, by preventing the Railways from filling the posts would adversely affect the day-to-day functioning of the Railways. He has also raised certain other issues viz. that the applicants are junior in the integrated seniority list, that the applicants are not coming within the zone of consideration, that the applicants are from Kota and Baroda which are outside the jurisdiction of this Tribunal and some other points which are not material for decision on the MP. Shri Walia for the applicant forcefully argued that this Bench has consistently taken the view ^{that} while making selections by promotion, the quota of 15% for SC's and 7½% for ST's is not to be exceeded and action of the Railways is required to be in accordance with J.C.Mallick's case. He referred to the latest judgment in the Supreme Court case R.K.Sabharwal and Others vs. State of Punjab and others, 1995SCC(L&S)548 which has upheld, by reference, the judgment of the Allahabad Bench in J.C.Mallick's case. He ^{has} extensively quoted from the judgment. The basic contention is that quota of SC/ST's is overfilled, the

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seniority attained by the SC candidates is by dint of reservation and the vacancies vacated by the general candidates are required to be filled in only by general candidates. He also produced order dated 7-6-95 to show that seven candidates out of 14 belonged to SC/ST candidates. Later on statistics were produced to make out that 13 out of 35 promotional posts are held by SC/ST candidates.

5. Mr. Masurkar on the other hand produced a letter dated 13-6-95 which shows that atleast one general candidate has been interpolated in the list.

6. Shri Walia also invites our attention to the fact that in a similar case the interim relief was granted by CAT and the SLP against the same was dismissed by the Supreme Court vide All India Scheduled Caste Scheduled Tribes Railway Employees Association vs. N.J.Thind SLP No.8619 of 87. He also states that only on 14-7-95, the Bench continued interim relief about not exceeding reserved percentage vide B.K.Mahboobani's case - O.A.589/94.

7. We have considered the arguments advanced by the rival counsel very carefully. There is much substance in what is urged by the counsel for the original applicants and especially the reliance placed by counsel on R.K.Sabharwal's judgment but that is a matter of merit. So far as Mahboobani's case was concerned, it related to posts of Hindi Officers and the interim relief sought and granted was in terms different.

The MP for vacation of interim relief was also

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in general terms and failed to address significant issues raised by applicant in relation to successive interim reliefs passed by this Tribunal. Mahboobani's case is, therefore, distinguishable. We are, however, required to consider the present matter in a very different context viz. whether day-to-day functioning of the Railways and the movement of the commercial traffic should be allowed to be affected adversely by keeping as many as 14 posts vacant till the case is finally decided which might be 1 - 2 years from here. We are not inclined to do so and in our view considerations of public interest as well as balance of convenience warrants further modification of the interim order. At the same time the interests of the two applicants also need to be protected. We, therefore, dispose of the Misc. Petition by passing the following order :

O R D E R

The M.P. is allowed. The interim relief granted by this Tribunal by its order dated 16-3-95 read with order dated 24-3-95 is modified to the extent that Railways are allowed to fill the posts in question on the basis of selection already made by them. The officiation of the selected candidates till disposal of O.A. would be on a purely ad-hoc basis and the whole selection would be subject to the final outcome of the O.A. In view of our general reasons, Mr we do not think it necessary to direct

A keeping two posts vacant for the two applicants whose interest are otherwise ~~are~~ well protected by what we have stated above.

The matter as earlier listed may be put up along with cognate cases viz. O.A.No.485/93 and O.A.487/93 on 1-9-1995.

M.R.Kolhatkar

(M.R.KOLHATKAR)
Member(A)

B.S.Hegde

(B.S.HEGDE)
Member(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO: 287/1995
DATED THE 26th DAY OF July 2001

CORAM: HON'BLE SMT. SHANTA SHAstry, MEMBER(A)
HON'BLE SHRI SHANKAR RAJU, MEMBER(J)

1. Amar Deep Singh;
Working as
Divisional Comm. Inspector,
Western Railway,
Kota.
2. S.K. Shukla,
Working as
Divisional Comm. Inspector,
Western Railway,
Baroda. Applicant

By Advocate Shri G.S. Walia

V/s.

1. Union of India, through
General Manager,
Western Railway,
Head Quarters Office,
Churchgate,
Bombay - 400 020.
2. Chief Commercial Manager,
Western Railway,
Head Quarters' Office,
Churchgate,
Bombay - 400 020. Respondents

By Advocate Shri V.S. Masurkar

(ORDER)

Per Smt. Shanta Shastry, Member(A)

The applicants are aggrieved that their names were not included in the eligibility list for selection/promotion to the post of Assistant Commercial Manager, Commercial Department, Western Railway published alongwith the notice for selection dated 12/12/1994.

2. The brief facts are:

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The applicants are working in the Commercial Department Western Railway as Divisional Commercial Inspectors(DCMI) in the pay scale of Rs.2375/- 3500 (RPS). They are posted at Kota and Baroda respectively. The next promotion post is that of Assistant Commercial Manager, a group 'B' post. It is filled up on the basis of selection conducted by General Manager, Western Railway. The selection consists of a written test as well as interview.

70% of the vacancies are required to be filled in on the basis of regular selection and 30% of the vacancies through Limited Departmental Competitive Examination. In the present case the applicants are concerned with the regular selection for 70% vacancies. For this selection an eligibility list of persons belonging to different feeder categories viz. Chief Booking Clerks, Chief Goods Clerks, Chief Ticketing Inspectors, Office Superintendents of Commercial Departments and Commercial Inspectors is prepared on the basis of an integrated seniority list based on the seniority in the feeder grade of Rs.2000-3200(RPS)/Rs.700-900(RS).

Accordingly, regular selection was announced vide letter dated 12/12/94 for promotion to Group 'B' post of Assistant Commercial Manager. Out of total vacancies of 20 assessed, 14 vacancies were worked out for regular selection. Out of 14, initially two vacancies were reserved for Scheduled Caste and One for Scheduled Tribe. However, in view of an interim order passed by Central Administrative Tribunal on 17/11/87, no vacancies were earmarked for Scheduled Caste/Scheduled Tribe. All were for general categories. A list of 44 eligible persons according to

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integrated general seniority on the basis of grade 'C' seniority list of Commercial Department was enclosed vide statement 'A'. Another statement 'B' containing 28 names of employees in order of general seniority was also enclosed. Objections/representations were called within three weeks. In both the lists the names of applicants 1 and 2 were not included. Majority of the persons figuring in the eligibility list happened to be persons from SC and ST categories. Only four persons belonged to the general category. A supplementary selection was fixed for 13/3/95.

When the applicants approached this Tribunal, interim relief was granted ex parte not to declare the result of the selection. The same was modified later to the effect that while the results may be announced, no appointments should be given until the decision on the OA.

The contention of the applicants is that the eligibility list was prepared wrongly and arbitrarily. The scheduled Caste /Scheduled Tribe candidates were included in excess of the quota reserved for them. The quota had already been achieved and is overflowing. Those Scheduled Caste/Scheduled Tribe persons who were included in the eligibility list obtained the benefit of reservation or promotion at every stage. They have not come up on the promoted post in the feeder category of Rs.2000-3200 on their own merit or general seniority in as much as they were promoted out of turn against reserved quota. They cannot be further promoted against the general vacancies to be filled by general candidates. All the 14 posts were vacated by General Community Employees.

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They submit that the Supreme Court in their judgement on 10/2/95 in the case of R.K.Sabharwal laid down that to ensure equitable distribution of posts among the general community employees and Scheduled Caste/Scheduled Tribe employees, the posts which fall vacant should be allotted to the respective employees belonging to General category and if scheduled caste/scheduled tribe employees retire the vacancy should be filled up from amongst scheduled caste/scheduled tribe employees. The roster cannot operate beyond stipulated limits. In short the reservation is to be based on the number of posts and not vacancies. The Hon'ble Supreme Court also approved the ratio laid down by the Allahabad High Court in the case of J.C.Mallik. The action of the respondents in preparing the eligibility list is against the ratio laid down by the Supreme Court.

The applicant have relied on the following judgements of the Supreme Court:

1. R.K.Sabharwal & Ors. V/s. State of Punjab
1995(2)SCC 745
2. Union of India & Ors V/s. Virpal Singh Chauhan
JT 1995(7)SC 23
3. Ajit Singh Januja & Ors. V/s. State of Punjab
1996(2) Scale 526 SC
4. Ajith Singh-II V/s. State of Punjab & Ors.
1999 SCC (L&S) 1239
5. Kameshwar Sharma & Ors. V/s. Union of India & Ors.
1990(12 ATC 26)
6. Chandrapal & Ors. V/s. State of Haryana
1997 SCC (L&S) 1620

3. . . In all these cases the following law has been laid down. The prescribed quota for the Scheduled Caste and Scheduled Tribe should not be exceeded. The reservation is to be based on the number of posts and not the number of vacancies. 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 belong. The rule of reservation gives accelerated promotion but it does not accelerate consequential seniority. If a scheduled caste/scheduled tribe candidate is promoted earlier because of the rule of reservation/roster and his senior belonging to the general category is promoted later to that higher grade, the general category candidate shall regain his seniority over such earlier promoted scheduled caste/scheduled tribe candidate. Further, only the promotion made earlier to the judgement in Ajit Singh-II (supra) is protected and not seniority.

4. Thus, the scheduled caste candidate who have come to the feeder grade on promotion against the reservation quota cannot be given accelerated seniority over their erstwhile seniors in the basic grade. The erstwhile seniors when promoted to the feeder grade shall regain their seniority. However, all these judgements take effect after 10/2/95. The actions taken prior to that though contrary to the ratio laid down in these judgements have been protected. In view of the settled law, the applicants feel that they have to be given seniority above the scheduled caste/scheduled tribe employees who got accelerated promotions. The applicants names should therefore be included in the eligibility list published on 12/12/94.

The applicants have therefore prayed to quash and set aside the impugned action of the respondents in the publishing of the eligibility list and that they ought to be called for selection.

5. The respondents have raised preliminary objection that since the applicants are working at Kota and Baroda this Tribunal has no jurisdiction. However, the applicants point out that the seniority list / eligibility list is published by the Head Quarters, Western Railway at Mumbai, the selection is also held by the Head Quarter. Since the cause of action has arisen in Mumbai, this Tribunal has the jurisdiction. We agree with the applicants.

6. The respondents have opposed the claim of the applicants. They submit that when the seniority list /eligibility list was published representations were called for from aggrieved persons within three weeks. Instead of representing to the respondents, the applicants have rushed to the Tribunal. They have not exhausted all the available remedies. They have also made allegation /contentions about certain persons without making them as necessary parties.

7. Further, the applicants are simply not coming within the zone of consideration in the integrated seniority list prepared for conducting the selection. Neither of the applicants is senior to those candidates shown in the list 'A; and 'B' either in the base grade or feeder grade in Group 'C'. The applicant No.1 was appointed on 30/11/84 and entered the base grade Rs.1400-2300 on 8/12/84. The applicant no.2 was appointed on 10/8/82 and entered the grade of 1400-2300 on 30/9/84. Both of



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them were promoted to the feeder grade on 14/3/90. Those in the list 'A' were promoted to the feeder grade between 9/6/80 to 1/1/84, i.e. much before the applicants. The Respondents fully complied with the judgement of Supreme Court and kept all the 14 vacancies open for general category and did not provide for any reservation nor were the Scheduled Caste/Scheduled Tribe employees given any consideration by relaxing the standards. They by virtue of their base grade seniority were included in the eligibility list for consideration against general vacancies. The applicants therefore do not have a case at all.

8. The respondents have followed the procedure strictly. The contention of the applicants that the candidates shown as Scheduled Caste/Scheduled Tribe have reached the present grade by availing the benefit of reservation is not sustainable in view of the fact that these candidates entered the base grade earlier than the applicants. These candidates have therefore been treated at par with the general candidates without attaching the benefit of concession provided for scheduled caste/scheduled tribe. The respondents therefore have prayed to vacate the interim relief as they are justified in their actions.

9. We have heard the learned counsel for both sides and have given careful consideration to the arguments advanced. The contention of the applicants that the respondents have not acted correctly in including the scheduled caste/scheduled tribe candidates for selection to general category vacancies in violation of the ratio laid down by the apex Court is not supported. In our view the respondents have made it very clear that there is no quota for scheduled caste/scheduled tribe

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employees. They are included in the eligibility list purely on the basis of their base grade seniority and not on account of any accelerated seniority gained by them due to accelerated promotion. They have demonstrated that the applicants were appointed to the base grade much after the scheduled caste/scheduled tribe employees were promoted to the feeder grade.

8. There is no denying that law is now well established that accelerated promotion against reserved quota cannot give accelerated seniority. While promotions made prior to 10.2.95/1.3.96 are protected seniority cannot be protected as there is no reservation in seniority. The quota for Scheduled caste/scheduled tribe as prescribed can also not be exceeded. While agreeing with the same, we find that the situation in the present case is slightly different in that the applicants were not even appointed when the scheduled caste/scheduled tribe employees in the eligibility list had already been promoted to the feeder grade. Applicants cannot be given seniority prior to their date of appointment which is not disputed. They ahve not shown any material to prove that they are senior to the respondents in the base grade. The judgements cited by the learned counsel for the applicants cannot therefore be made applicable in this case though there is no denying that one has to abide by the judgement of the Supreme Court.

9. In the facts and circumstances of the case, the applicants cannot be above them. Had it been the case that the scheduled caste/scheduled tribe employees were promoted to the feeder grade against reservation quota and the applicants being

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senior in base grade promoted much later in normal course thus losing their seniority then perhaps applicants would have had a case for restoration of their seniority. But here their very entry into the base grade is much after the scheduled caste/scheduled tribe employees were promoted to the feeder grade. There can therefore be no comparison of seniority between respondents who entered basic grade much earlier than the applicants who have entered the feeder grade directly in 1984 and 1982 respectively. We cannot therefore hold that the respondents have erred in excluding the applicants from the eligibility list.

8. In the result, the OA is dismissed. We do not order any costs.

S. Raju

(SHANKAR RAJU)
MEMBER(J)

Shanta Shastray

(SHANTA SHAstry)
MEMBER(A)