

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

18

O.A.21 of 1995

Dated this Monday the 31st day of November, 2001
Hon'ble Smt.Lakshmi Swaminathan - Vice Chairman (J) Ans
Hon'ble Shri B.N.Bahadur - Member(A)

I.S. Patel,
Chief Clerk,
Divisional Railway Manager's Office,
Western Railway,
Bombay Central,Bombay - Applicant

(Advocate Shri G.S.Walia)

VERSUS

1. Union of India
through the General Manager,
Western Railway,
Churchgate, Bombay - 400 020.
2. Divisional Railway Manager,
Bombay Division,
Western Railway,
Bombay Central, Bombay.
3. Smt.Juliana Fernandes,
Office Superintendent (Estt.),
D.R.M.'s Office,
Bombay Central,
Bombay 400008. - Respondents

(By Advocate Shri V.D.Vadhavkar for respondents 1 & 2)

O R D E R

Hon'ble Mr.B.N.Bahadur - Member (A) -

The applicant in this case Shri I.S.Patel, challenges two impugned orders the first dated 28.12.1994 bearing Nos.E/D/839/2/1 Vol.XVII and the second D.O.S.O.O. No.154, which according to the applicant deprived him of his legitimate right with regard to his next promotion from the post of Chief Clerk (Rs.1600-2600) to the post of Office Superintendent (Rs.2000-3200). The applicant is aggrieved, in that a junior employee has been promoted to the post of Office Superintendent ignoring his claims.

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2. The facts of the case as put forth by the applicant are that the applicant was appointed as Junior Clerk in July, 1978 in the pay scale of Rs.260-400/- in the Office of General Manager, Central Railway, Bombay, V.T. As per his request he was transferred to Western Railway on mutual exchange basis and has been working as Chief Clerk after being promoted on the basis of selection. The applicant claims that he has had a meritorious and unblemished service record, and was further promoted as Head Clerk from 1984 in which post he worked till February, 1993.

3. In the selection process notified for promotion to the post of Chief Clerk it was stated that there was no reservation for SC/ST (since percentage had already been achieved). The applicant states that he was surprised to find that his name was not included in the list of 36 employees short listed on the basis of seniority as being eligible to appear for the aforesaid selection. His (applicant's) name was however published in List 'B' of the said notification with clear instructions that employees in the 'B' list will be called only to the extent required against those from list 'A', who give unwillingness to appear for the selection. The name of the applicant is shown at serial no.20 of the 'B' list.

4. The applicant states that he is severely aggrieved with the non-inclusion of his name in list 'A' and alleges that this to be a 'pick and chose' policy'. The applicant states that he brought this to the notice of respondents through his representation as a result of which respondents realised their

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mistake and issued a fresh note deleting some names from 'A' list and including the applicant's name therein. The applicant states that he appeared for the written test, was declared as passed, and thereafter called for viva-voce test. Finally a panel was drawn up and published vide memorandum dated 21.10.1991 wherein the applicant's name was listed at serial no.11. The applicant states emphatically that he was empanelled as a general candidate as there was no reservation for the post of Chief Clerk and hence there was no relaxation made for him. The applicant was thereafter promoted as Chief Clerk in the pay scale of Rs.1600-2660/- w.e.f. 15.3.1992, where he is working.

5. Now the applicant further states that the next post by way of promotion is that of Office Superintendent in the pay scale of Rs. 2000-3200/- which is a non-selection post. In December, 1994 by the impugned order, vacancies were filled up out of which one post was filled on transfer basis in order to accommodate, as alleged by applicant, one Shri R.S. Solanki. Applicant alleges that he is victimised and promotional rules have been violated, in that respondent no.3 was promoted as Office Superintendent and applicant, though senior, was denied promotion.

6. Two written statement of replies have been filed by the official respondents (Respondents 1 and 2) - one, a preliminary written statement and the second, a full written statement. In these replies, the stand is taken that respondent no.3 i.e.

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Mrs. Juliana Fernandez was senior to the applicant but had become junior on account of applicant's accelerated promotion to the post of Head Clerk. The respondents further take stand on the basis of certain judgments of the Hon'ble Supreme Court. It is important in this direction to note the first reply of the respondents is filed in July, 1995 and the second one is dated 9.8.1999. It is stated in the second reply that the applicant's seniority has been fixed as per directions of this Tribunal given in April and November, 1987 and that later on, different law was laid down by the Hon'ble Supreme Court. The ratio of the decision in the case of Union of India & others Vs. Virpal Singh Chauhan, [JT 1995 (7) SC 231] has been depended upon in the stand taken by the respondents. It is stated that the applicant Shri Patel was allowed to appear in selection of Chief Clerk held in 1991 on the basis of his seniority of Head Clerk grade and placed in the panel above Mrs. Juliana Fernandez. However, as per extant instructions, seniority of applicant was revised in view of directions of the Tribunal.

7. Respondent no.3 - Mrs. Juliana Fernandez has also filed a short written statement resisting the claims made by the applicant. Her main contention is that she was far ahead in seniority compared to the applicant. Both of them were employed as Junior Clerks and as such, she was much senior having been appointed in 1972 as compared to the applicant who was appointed in 1978 in the same post. They both passed the test for promotion for the post of Senior Clerk together and here too, she was far ahead in seniority being at serial no.28 compared to the

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applicant's listing at serial no.88. Respondent No. 3 further contends in her written statement that applicant's contention that she was senior, as Head Clerk, at given point of time does not alter/affect applicant's seniority.

8. We have heard both the learned counsel viz. Shri G.S. Walia for the applicant and Shri V. D. Vadhavkar for the official respondents. None appeared for respondent no. 3 though we have considered her written statement.

9. The learned counsel for the applicant Shri Walia took us over the facts of the case and referred us to the various documents on record highlighting, first, the fact that Notification first issued for the promotion clearly stated that there would be no reservation and as such the applicant had competed with others in General category. Even otherwise, the roster did not operate. It was the grouse of the applicant that respondent no.3 was promoted earlier, though applicant was senior.

10. Shri Walia also took the stand that the promotion order has been issued in 1994 which is earlier in time to the pronouncement in the well known case of R.K.Sabharwal and others Vs. State of Punjab and others, [1995 SCC (L&S) 548]. He also drew the attention of the Bench to Paras 4 and 11 in the judgment of Union of India Vs. Veerpal Singh, (supra) to make the point that the operation of the orders were prospective.

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11. The learned counsel referred to the cases decided by this Tribunal viz. OA 1047/95 (Ramesh Shankar Kone & ors. Vs. UOI & ors.) dated 27.7.2001 and OA 1074/95 (C.B.Garware Vs. Union of India & ors.) decided on 31.7.2001. In the former judgment, the respondents were directed to reconsider the promotion of the applicant and promote them from the date their juniors were promoted, if found fit. In the second case viz. OA 1074 of 1995, the respondents were directed by this Tribunal to reconsider the case of the applicant therein according to his seniority in the basic grade.

12. Arguing the case on behalf of the official respondents, their learned counsel Shri V.D.Vadhavkar also drew our attention to the two orders dated 28.12.1994 and 21.10.1991 (copies at page 16 and 23 of Paper Book) and made the point that the Select List in the former was declared provisional subject to final decision in the case of J.C.Malik Vs. Union of India, (1978) 1 SLR 844 and other cases before CAT, Mumbai. In the latter case also he argued that the panel was provisional and subject to the result of the writ petition "pending in the Supreme Court regarding reservation for SC/ST against roster point." He first made the point that the applicant had not made any representation against the impugned order i.e. order dated 28.12.1994, which, interalia, respondent no.3 was placed in the Select List and had come to this Tribunal directly in early 1995.

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13. The learned counsel for Respondents pointed to the various judgements of the Hon'ble Apex Court that had come about subsequently. He reiterated the point that the applicant was far junior to Respondent No. 3 from the initial stage, and was promoted to the post of Head Clerk against ST quota, the Head Clerk being the feeder post to that of the post of Chief Clerk. The learned counsel referred to the principle laid down and crystallised in the judgment of Ajit Singh Vs. State of Punjab, 1999 SCC (L&S) 1239 in regard to catch up principle and also referred importantly to the recent judgement of the Hon'ble Supreme Court in the matter of M.G. Badappanavar V/s. State of Karnataka, [2000 SCC (L&S) 489]. Thus cases were strongly depended upon on behalf of the respondents.

14. We have gone through the papers in the case and have carefully considered the arguments advanced by learned counsel on both sides. It must be recalled in this case that the O.A. has been filed in the year 1995 and the important case law in this regard developed after the judgment of the Hon'ble Supreme Court in the matter of R.K. Sabharwal (supra) and subsequent judgments in the matter of Veerpal Singh Chauhan (supra) and Ajit Singh (supra). Needless to say we will have to take into consideration the law on the subject as has importantly developed after the case was filed. In fact, this point was taken cognizance of during the arguments made by the learned counsel on both sides and the learned counsel for the applicant had made the point that the applicant was entitled to the relief sought even considering the latest case law in view of the facts and circumstances of the case.

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15. It may be recalled that the applicant who joined as Junior Clerk in 1978 was promoted as Head Clerk in January, 1984 and was promoted as Chief Clerk w.e.f. 15.3.1992. The important point made here is that selection as Chief Clerk was made as a General candidate and not as a reserved candidate. Now the question that has to be determined is whether the Select List that has been drawn for promotion to the post of Office Superintendent vide Memorandum dated 28.12.1994 is ~~legally~~ correct or not. The stand taken by the respondents is that Mrs. Juliana Fernandez was actually senior to the applicant, and had become junior to the applicant ~~only~~ in view of the applicant's accelerated promotion to the post of Head Clerk. The applicant's stand is that the Headquarter had clarified that in terms of CAT's interim orders dated 24.4.1987 and 17.11.1987, the seniority should be reckoned as existing in the base grade. Judgments in this regard have been explained in the written statement. Now once it is clear that in view of the judgments of the Hon'ble Supreme Court made in the important cases referred to above and as explained in Ajit Singh's case to that base grade seniority, it will have to be held that the action in taking Mrs. Fernandez as being senior to the applicant cannot be objected to. The stand taken by the applicant is that his selection to the post of Chief Clerk was made as a General candidate and that as such this ensures that his seniority will therefore be taken on the basis of his listing in the seniority list in this rank. However, the contention of the respondents is that he had reached this level only in view of the

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the accelerated promotions and this stand of Respondents cannot be brushed aside. Only base grade seniority can be taken for promotion, which in this case will be the seniority relevant for promotion to the post of Office Superintendent.

16. The learned counsel for the both sides referred to two cases decided by this Tribunal namely the case in OA 1047 of 1995 decided on 27.7.2001 and the second one in OA 1074/95 decided on 31.7.2001. We have gone through both these cases. In the first one namely OA 1047/95, the decision has come in the shape of a direction to the respondents to reconsider the promotion of the applicant. In the light of the judgments of the Hon'ble Supreme Court, paras 12 and 13 are relevant. It is not as though the principle has been settled in a manner that could help the present case of the applicant. In O.A. 1074/95 the judgement has also come on the basis of the Hon'ble Supreme Court's decision that accelerated seniority cannot be claimed for promotion against general posts. In the judgement in second O.A. quoted namely O.A. No. 1074/95, we find that the decision has been given in the facts and circumstances in that case with reference to the date and timing cited. It has been held that judgement in Ajit Singh's case was not applicable to that case and that the Applicant had been senior to the third Respondent from the beginning. In the present case, although it is stated that promotion in the scale of Rs. 2000-3200 has been against regular quota, it cannot be gain said that the original elevation to that level in respect of Applicant came only due to accelerated promotions in view of reservation.

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17. The matter has been clarified in very clear terms in the recent judgement referred to on behalf of both sides, namely the judgement of the Hon'ble Supreme Court in the matter of M.G. Badappanavar & Another v/s. State of Karnataka & Others reported at 2001 SCC (L&S) 489. The Headnote reads as follows :

"Seniority-Quota-rota rule - Reserved category (roster point) promotees vis-a-vis general category promotees - As per Ajit Singh II, the general candidates who were senior to the reserved candidates at Level 2 were promoted to Level 3 before the reserved candidates reached Level 4, have to be treated as senior at Level 3 also, even though they had reached Level 3 later than the reserved candidates. If seniority is given to the roster point promotees contrary to this rule, that will violate the equality principle which forms part of basic structure of the Constitution - This rule laid down in Ajit Singh II case applied to the facts of the present case - Directions issued by way of relief following Ajit Singh II case for reserved and general candidates including those who had retired and were denied promotion - Karnataka Government Servants (Seniority) Rules, 1957, Rr. 2(c), 4, 4-A - Constitution of India, Arts. 14, 16(1), (4) & (4-A)"

A reading of the full judgement clarifies issues, and on the basis of this judgement we find that the Applicant in the present O.A. does not have a case.

18. Under the circumstances, this O.A. fails and is hereby dismissed with no order as to costs.

B. N. Bahadur

(B. N. BAHADUR) ..
MEMBER (A).

Lakshmi Swaminathan

(Smt. LAKSHMI SWAMINATHAN)
VICE-CHAIRMAN.

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