

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.1047/1995

Dated this, _____, the 27th Day of July, 2001.

Shri Ramesh Shankar Kone & Anr. Applicants
(Applicants by Shri D.V. Gangal, Adv.)

Versus

UOI & Ors. Respondents
(Respondents by Shri V.S.Masurkar, Adv.)

CORAM:

HON'BLE SMT. LAKSHMI SWAMINATHAN, VICE CHAIRMAN (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. ✓

Shanta Sh.
(Shanta Shastry)
Member (A)

sj*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No.1047/1995

Dated this, 27th, the th Day of July 2001

CORAM: HON'BLE SMT. LAKSHMI SWAMINATHAN, VICE CHAIRMAN
HON'BLE SMT. SHANTA SHASTRY, MEMBER (A)

1. Shri Ramesh Shankar Kone,
(Working as Chargeman A
at Machine Shop, Machinist
Trade, Loco Workshop, Parel)
Res. at:

C.Rly Qtr. R.B/III-26717
Dr. Ambedkar Road, Parel,
Bombay.

2. Shri Vilas Shankar Tivlekar
(Working as Chargeman A
at Machine Shop, Machinist
Trade, Loco Workshop, Parel)

Res. at:

Nitin Raj, A Wingham,
Katemanavli, Kalyan East
Dist. Thane.

(Applicants by Shri D.V. Gangal, Adv.)

..... Applicants.

vs.

1. Union of India
through: The Secretary
Ministry of Railways
Railway Board
New Delhi.
2. The General Manager
Central Railway
Bombay V.T.
3. The Chief Workshop Manager,
Locomotive Workshop
Central Railway
Parel, Bombay 12.
4. Shri J.P.Keni
(Working as Dy.1 Shop Sudpt.
at Loco Workshop, Parel)
5. Shri C.R. Rassay,
(Working as Dy.Shop Sudpt.
at Loco Workshop, Parel)..,

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6. Shri S.R. Naidu,
(working as Dy. Shop Supdt.
at Loco Workshop, Parel) Respondents.
(Respondents by Shri V.S. Masurkar, Adv.)

O R D E R

[Per: Smt. Shanta Shastry, Member (A)]:

The Applicants were working as Chargemen 'A' in the Machinist Trade of the Loco Workshop, Central Railway, Parel, Mumbai at the relevant time. They claimed to be eligible and entitled to be promoted to the post of Deputy Shop Superintendent (DSS for short), Machinist Trade. They have been denied this promotion. Therefore, they have challenged the panel for appointment to the post of ASS/DSS dated 4.5.1994 at Annexure A.2, further, the Panel dated 22.6.1995, the notice confining the selection post for the post of DSS Machinists dated 9.8.1995 at Annexure A.6 and the reply of the Respondents dated 27.5.1995 at Annexure A.9. After Chargeman 'A', the next promotion is to the post of DSS, which is a selection post.

2. The Railway Board issued an order on 27.1.1993, on restructuring of certain Group C and D Cadres. The detailed instructions were issued for filling up the restructured post. The selection method was modified and instead of a Written Test and a viva voce test, the modified selection procedure required the employees to be promoted in their order of seniority. A seniority list was published on 5.1.1994 as on 31.12.1993. In the seniority list the applicants are shown at Sr Nos.2 and 6, respectively. As per the restructuring orders 8 posts of DSS became available. The Railway administration instead of

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following the procedure laid down for selection on restructuring resorted to the normal procedure of selection i.e. prescribing Written Tests and viva voce tests. Accordingly, a meeting of the Selection Board was held on 28.4.1994 and a Panel of employees was approved vide letter dated 4.5.1994 Annexure A.2. In this, against the unreserved general vacancies, one Shri S.R. Naidu who is junior to the applicants was empanelled. Thereafter again further selection was made on 27.6.1995 wherein Shri Mahendra Singh (SC), Shri S.R. Naidu and Shri C.R. Rassey were placed in the Panel for appointment to the posts of ASS/DSS. It was also stated that these panels were provisional. In both these letters it was also clarified that the panel was prepared as per the modified selection procedure in terms of Railway Board's letter dated 27.1.1993. Again the applicants did not figure in this list. Later both the applicants were appointed to officiate as DSS on adhoc basis, vide letter dated 9.11.1994 of the Respondents. Thereafter a notice was issued on 9.8.1995 for selection for the post of DSS in Machinist Trade, Loco Workshop, Parel wherein it was clearly stated that a Written Test had been fixed on 1.9.1995 at Annexure A.6. Along with this a list of eligible candidates brought under the zone of consideration for selection to the post of DSS was also enclosed. The applicants names were not included in this list of eligible candidates but many of their juniors were included.

2. The applicants represented to the concerned authorities stating that their seniority cannot be overlooked and it was not necessary to have a Written Test for purposes of selection on

restructuring what was important was the seniority. However, the Respondents gave a reply to applicant No.1 on 29.1.1995. Stating that since the applicant and other similarly placed persons were not due for empanelment/selection as per the general seniority as reiterated in SPO (M)/BBVT's letter they could not be empanelled against general quota unless they became due for the same as per the general seniority.

3. It is the contention of the applicants that they belong to the ST community and they have been discriminated against in that they have not been granted similar treatment as was granted to the SC employees. They were bypassed. Though according to the modified selection procedure no written test or viva voce test is to be held for promotion to the posts of DSS on restructuring and the panel is to be declared on the basis of seniority, the Respondents held separate selection as per other procedure and declared the panel ignoring the claims of the applicants who are senior. The Respondents have erroneously stated that the applicants could not be promoted against the general quota. They were not within the zone of consideration in the general seniority. According to the applicants this is wrong because in respect of the other Trades, such as fitter, welder, diesel mechanical trade etc. the SC/ST candidates were considered against the General quota according to their seniority. There is only one seniority list published on 5.1.1994. The applicants submit that their seniority cannot be overlooked. They are further relying on the judgements of the Full Bench of this Tribunal, Hyderabad Bench in the case of *V.Lakshminarayana and Ors. vs. UOI and Ors* decided on 27.2.1992

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[AT Full Bench Judgements 1991-913] and the Full Bench judgement of Calcutta decided on 21.2.1994 in O.A.No.854/90 in the case of *Durgachanran Halder & Ors vs. UOI and Ors* and a Group of OAs. [Administrative Tribunal Judgements 1994 (1)] It was held by both the Full Benches that seniority is to be granted on the basis of the date of promotion and there is nothing like accelerated seniority and accelerated promotion. In fact the Railway Board issued order dated 5.4.1994 in pursuance of the aforesaid judgements confirming that seniority is to be based on the date of promotion. The Respondents have ignored this. The applicants submitted the representations on 30.5.1994 against alleged hostile discrimination. According to the applicants the general category posts are open to all employees as per their seniority. Even in the judgement of the Supreme Court in *R.K. Sabharwal vs. State of Punjab [1995 (2) SCC 745]*, also it was laid down that reserved candidates can also compete against non reserved posts on their own merit besides competing for reserved vacancies. Not calling the applicants for selection is contrary to Rule 216 of the Indian Railway Establishment Manual which requires candidates to be called for selection according to seniority. The applicants thus contend that they had been denied promotion both on restructuring as well as by way of regular selection. They made further representations also on 1.6.1995 and 2.6.1996.

4. The Respondents in the reply have stated that the applicants were not eligible to be considered for empanellment for the post of DSS as they were not within the zone of consideration, these post being unreserved for general category. The applicants had all along been promoted to higher posts

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against the reservation quota, they were not senior enough in the seniority list as per their seniority in the base grade. They were empanelled as Chargeman 'A' on 1/11/1982 and 18.11.1985, respectively. They were no doubt appointed on adhoc basis to officiate as DSS against existing vacancies w.e.f. 9.11.1994. At the time selections were held, an Interim Order had been given by this Tribunal in some other OAs involving similar issue of seniority on 5.10.1993 not to promote those SC/ST candidates who had acquired accelerated seniority on account of accelerated promotion. This Interim Order was further confirmed on 11.10.1994 by this Tribunal and therefore, the Respondents followed these Interim Orders and did not consider the Applicants for selection and promotion. However, later the Hon'ble Supreme Court laid down in the case of *UOI vs. Virpal Singh Chauhan* [1995 (6) SCC 684] decided on 10.5.1995 that the seniority of SC/ST had to be reckoned with reference to the which panel position of Chargemen 'B', a selection post. Therefore, the Applicants would be allowed seniority as per law laid down by the Apex Court in the case of *Virpal Singh Chauhan* (supra). The selection for the post of DSS was held as per the seniority determined in terms of the Interim Orders of this Bench of the Tribunal dated 5.10.1990 and 11.10.1990. This interim order was subject to final outcome of the case of *J.C. Mallick* in the Supreme Court. However, now in view of the judgement in the case of *Virpal Singh Chauhan* (supra), the seniority of these Applicants would be refixed with reference to their panel position as chargeman 'B'.

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5. The Applicants submit that they would have been satisfied if the respondents fixed their seniority accordingly. However, even after a period of 5 years, the Respondents have done nothing.

6. Learned Counsel for the Respondents submits that no doubt in the earlier reply the Respondents had stated that they would fix the seniority of the Applicants in the light of the judgement in the case of *UOI vs. Virpal Singh Chauhan*. However, thereafter there had been further developments and more judgements of the Supreme Court in regard to the *interse* seniority of the SC/ST who got accelerated promotions vis-a-vis general candidates who got the promotion later, have been pronounced. It has been held in *Ajit Singh Januja vs. State of Punjab [1995 (6) SCC 684]* that the accelerated promotion cannot give accelerated seniority. The same has been confirmed further in *Ajit Singh vs. State of Punjab (II) [1999 (7) SCC 209]* wherein the prospectivity of the ratio laid down in *Virpal Singh Chauhan's* case as well as *Ajit Singh (1)s* case was discussed. In *Ajit Singh (II)* it was laid down that while promotion can be protected seniority is not protected. In this context, the learned Counsel has produced a copy of the latest judgement of the Supreme Court in the case of *M.G. Badappannavar vs. State of Karnataka & Ors (2001 SCC (L &S) 489)*. In this judgement all the earlier judgements delivered to date have been taken into consideration and once again the principles laid down in *Ajit Singh (II)* (supra) have been upheld. The Supreme Court however, observed that those who were promoted

before 1.3.1993 contrary to the principles laid down in *Ajit Singh (II)* need not be reverted. Similarly those who were promoted contrary to the principles laid down in *R.K. Sabharwal's* case before 10.2.1995 need not be reverted. The Applicants' case will, therefore, have to be governed by these judgements.

7. The Applicants reiterated that their promotions were due prior to 10.2.1995 and 1.3.1996 and since restructuring was to take place in 1993 they were entitled to be considered for promotion on restructuring as well as in the selections held for the general posts by virtue of their seniority.

8. The learned Counsel for the Respondents also produced a comparative chart showing the position of the Applicants vis-a-vis those promoted earlier to the Applicants and who were made eligible for selection to the post of DSS earlier. It is seen from the Seniority List that the Applicants (1) and (2) were at Sr. No.2 and 6 respectively. This has been culled out from the seniority list published on 5.1.1994. The Respondents have also produced the same seniority list. The respondents reiterated that the applicants were junior to respondents Nos. 5 and 6 in the base grade. They had marched ahead of respondents Nos. 5 and 6 on account of accelerated promotion against SC/ST quota.

9. We have heard the learned Counsel for both parties and have carefully considered the pleadings.

10. We have seen the comparative chart produced by the respondents. It is not denied that the applicants were junior to the respondents 5 and 6 in the base grade. No doubt the

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applicants were promoted to higher levels against quota reserved for SC/ST. Even assuming this, it is to be noted that the applicants are shown quite high in the overall seniority list of 5.1.1994. There were six vacancies of DSS General category for which selection was to be held. The zone of consideration therefore would consist of 18 persons. Going by the seniority of the applicants as per the seniority list of 5.1.1994 the applicants would easily come within the zone of consideration irrespective of their accelerated promotions. This seniority list has neither been cancelled nor disputed by the respondents. The respondents were wrong not to include them in eligibility list. Therefore, in our considered view the applicants deserved to be placed in the eligibility list for consideration for selection to the post of DSS notified on 28.4.1994.

11. This apart, the applicants also ought to have been considered for promotion on restructuring in terms of the Railway Board's Circular dated 27.1.1993 which prescribed modified procedure for selection by doing away with written and viva voce tests. Both ways the applicants are entitled to be considered. The learned Counsel for the applicants also stressed that the applicants are opting to press for promotion on restructuring.

12. Coming to the various judgements relied upon by the applicants as well as the respondents law is now well settled that if SC/ST employees are promoted to higher level against reservation quota and the otherwise senior general category employee is promoted later to the same level then the general


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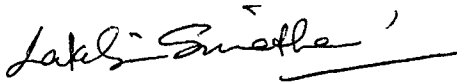
category employee regain his seniority. Accelerated promotion cannot give accelerated seniority. This has been further confirmed in the latest judgement of the Supreme Court in the case of Badappanwar (supra). However since the Hon'ble Court has also observed not to revert those who were promoted contrary to the principles laid down in the case of Ajit Singh I (Supra) and R.K., Sabbharwal (Supra) before 10.2.1995 and 1.3.1996, the applicant's case needs to be reconsidered in the light of the said Judgements because the selection was notified in 1994 and restructuring was ordered in 1993.

13. In the light of the above discussion we hereby direct the respondents to reconsider the promotion of the applicants to the post of DSS and if found suitable to promote them from the date their juniors were promoted with all consequential benefits. This exercise should be completed within a period of 3 months from the date of receipt of a copy of this order.

14. The O.A. is disposed of accordingly without any order as to costs.


(Smt. Shanta Shastry)
Member (A)

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(Smt. Lakshmi Swaminathan)
Vice Chairman