

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 1074 OF 1995

31st, THE 01st DAY OF July, 2001

SHRI KULDEEP SINGH ... MEMBER (J)
SHRI SHANTA SHASTRY ... MEMBER (A)

C.B. Garware,
Dy. Shop Superintendent,
residing at MSRB-3,
Building No.116, Room No.5,
Kurla (East), Bombay-400 024. ... Applicant

By Advocate Shri Marne

Vs.

1. Union of India,
through General Manager,
Central Railway,
Bombay.
2. Chief Works Manager, (PR),
Central Railway, Parel,
Bombay-400 012.
3. Shri S.T. Monde,
Dy. Shop Superintendent,
Office of the CWM, Parel,
Bombay-400 012. ... Respondents

By Advocate Shri V.S. Masurkar for R1 and R2.

O R D E R

Smt. Shanta Shastry. ... Member (A)

The applicant has filed this OA with the prayer to set aside and quash the memo dated 27th June, 1995 and to direct the first respondent to consider the applicant for inclusion in the panel for appointment to the post of Dy. Shop Superintendent on regular basis as per order dated 27th January, 1993 regarding restructuring of cadres.

2. The brief facts are that the applicant joined service with the second respondent as a Skilled Worker Grade-III with effect from 16th September, 1975. He was promoted to Skilled Worker Grade-II with effect from 10.10.1977 and Skilled Grade-I with effect from 11th September, 1978. He was further promoted as Chargeman-B against the SC quota with effect from 19th April, 1983 and to the post of Chargeman-A with effect from 9th April, 1986 as per general seniority. He was then promoted as Dy. Shop Superintendent on adhoc basis with effect from 27th April, 1993. The applicant represented against the memo dated 4th May, 1994 to the respondents on 11th May, 1994 requesting to empanel ^{him} for appointment to the post of Dy. Shop Superintendent (also known as Assistant Shop Superintendent). The respondents, instead of redressing the grievance of the applicant, issued another memo dated 27th June, 1995 again omitting the applicant from the list of panel for promotion to the post of Dy. Shop Superintendent. The ~~third~~ respondent who is a rank ^{The applicant} junior to the applicant was considered for promotion. ~~7/95~~ again represented on 16th July, 95 to incorporate his name in the memo dated 27th June, 1995. The respondents replied to the same on 18th July, 95. The respondents also directed the applicant to appear for a written test to be conducted on first September, 1995. The ~~applicant~~ again sent notice on 21st August, 95 to reconsider the position and to put up his case before Selection Board for inclusion of his name in the panel prepared on 28th April, 94 and 18th May, 1995 for regular appointment to the post

of Dy. Shop Superintendent. However, there was no response, also the written test scheduled for first September, 95 could not be held and was postponed to 11th September, 1995.

3. It is the contention of the applicant that all along he was senior to the third respondent since recruitment in the Skilled Worker Grade-III and in all subsequent promotions in selection and non-selection grades. A statement showing the service position of the applicant and third respondent has been produced by the applicant at Annexure 12. In the seniority list of Assistant Shop Superintendent published by second respondent, the applicant was at S.No.15 and he was shown senior to third respondent. The third respondent was promoted to the post of Dy. Shop Superintendent on adhoc basis on 11th July, 94 and therefore he was not considered even for seniority list of Assistant Shop Superintendent/Dy. Shop Superintendent published on 29th September, 1993. He cannot, therefore, be allowed to supersede the applicant. According to the Railway Board in the restructuring of certain groups in "C" & "D" modified selection procedure has to be a one time exception by special dispensation applicable to vacancies existing on first March, 93 only and not to those arisen after first March, 1993. Even in restructuring, the applicant has to find a place in general category by virtue of his seniority. The respondents seem to have given benefit of 25% selection and absorption to S/Shri Balse and Monde in Chargeman Grade-B conveniently forgetting that thereafter

there was a seniority list of higher grade i.e. Chargeman-A wherein these two general candidates were placed below the applicant. Once the benefit of 25% quota earmarked for artisans was made available in Chargeman Grade-B cadre to the third respondent, he cannot be given the same benefit in the case of higher cadre of Chargeman-A and Dy. Shop Superintendent.

4. The respondents submit that the applicant belongs to the SC community and he had got the promotion to highly skilled Grade-I and Chargemen Grade-B against SC quota. Since the applicant got accelerated promotion, he cannot get seniority over and above the general candidates. Further, there were interim orders of this Tribunal dated 5.10.93 and 11.10.94 ~~staying promotions on the basis of accelerated~~ ~~he was not high in the general seniority~~ seniority in the base grade. There was no SC shortfall also as on 1.3.1993 and since the applicant was not eligible for consideration as per the general seniority, he was not selected for promotion. In short, the stand of the respondents is, because the applicant was all along promoted against the SC quota and because of that he had gained accelerated seniority when it came to the filling up of general category post, the applicant would have no claim to be considered, as in the general seniority list, he was placed much lower. The respondents, have further submitted that seniority of Dy. Shop Superintendent published on 29.9.93 erroneously included the name of Chargemen-A working as Dy. Shop Superintendent on adhoc basis. Further the third respondent was selected as an intermittent apprentice mechanic against 25% quota open to

artisans ~~of~~ all grades. After successful completion of training, ~~he~~^{he} was absorbed as Chargeman Grade-B with effect from 21.12.84. But applicant cannot compare his general seniority position with the third respondent as he had been selected through different channel. The respondents maintain that the applicant was not due for empanelment/promotion to Dy. Shop Superintendent as per general seniority against restructuring post.

5. The learned counsel for the applicant submits that though the applicant got accelerated seniority the accelerated seniority could not be disturbed as per the interim orders in the case of B. Laxminarain & Others Vs. UOI & Others decided by the Full Bench at Hyderabad reported in 80 Full Bench judgments 1991-93 158. This was further confirmed by the Full Bench at Calcutta that SC/ST candidate who secured accelerated promotion by virtue of reservation order is entitled to count his seniority from the date of his regular promotion for further promotion. The learned counsel for the applicant also refers to another judgment of this Tribunal delivered on 30th March, 2001 in OA Nos. 758/98, 831/98 and 731/98. In this order the Tribunal held that action which has been taken prior to 10.2.1995 could not be disturbed and whatever seniority had been gained prior to that ~~date~~^{date} should be allowed to continue.

6. Learned counsel for the private respondents vehemently argued that the applicant could not be considered for the general category post as he was all along granted promotion against the reservation quota. In

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terms of the judgments in the case of UOI Vs. Veerpal Singh Chauhan (1995 (6) 684) R.K. Sabarwal Vs. State of Punjab (1995 (2) SCC 745), Ajit Singh Januja Vs. State of Punjab (1996 (2) SCC 715 as well as Ajit Singh & Others Vs. State of Punjab & Others (1999 (7) SCC 209, the SC/ST candidates who had got accelerated seniority could not claim the said seniority for purpose of further promotion against the general post. Only the base grade seniority should be taken into consideration for such promotion. Besides, the Tribunal had granted stay order on 5.10.93 and confirmed the same on 11.4.94 and therefore, the applicant is not entitled to be considered for promotion to the post of Dy. Shop Superintendent, which is general post.

7. Learned counsel for the applicant, however harped on the fact that various judgments cited by the respondents were applicable only with prospective effect from 10.2.95 and any seniority gained prior to that date cannot be disturbed even as per the judgments cited by the respondents.

8. We have heard the learned counsel for both the parties and have given careful consideration to the pleadings. We have also perused the various judgments referred to the by both parties.

9. The entire issue in this case is whether the applicant, who got accelerated seniority because of his belonging to SC category can claim further promotion against the general

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quota on the basis of the said seniority. We find ^{that} in the chart given by the applicant that ~~x~~right from the beginning the applicant has been shown senior to Shri S.T. Monde i.e. Respondent No.3. Respondent No.3 ~~was~~ promoted to Chargeman-B on 21.12.1984 vide ~~order~~ dated 5.1.85. This was against the artisan quota. The applicant was promoted much earlier, to the post of Chargeman-B on 19.4.1983. Though the applicant and the 3rd respondent came to be promoted to Chargeman Grade-B, they were promoted through different channels. That cannot be a reason for not considering the seniority of the applicant above third respondent. Third respondent's date of promotion to Chargeman Grade-B cannot be changed. By that date the applicant had already put in almost one year's service. Therefore, third respondent cannot be given the seniority of 19.4.1983, which the applicant got. Further, the applicant and the third respondent both were promoted to the post of Chargeman-A on 9.4.86. Therefore, the applicant's seniority cannot be changed now. Not only that, he was further given adhoc promotion from 27.4.93. Whereas the third respondent was given the same from 11.7.1994. It can thus be seen that at all levels, the applicant had been senior to the third respondent. In our considered view, the stand of the respondents is not correct. The applicant having got the seniority way back in 1986, cannot be denied consideration for promotion to higher post against general quota. This is prior to 10.2.1995. Therefore also his

seniority cannot be disturbed now. The learned counsel for the respondents argued that in Ajit Singh's case, it was made clear that while the promotion already granted can be protected, such seniority on other grounds cannot be protected. We do not agree what is stated ^{there} in that seniority cannot be protected if the employee has been promoted against SC/ST quota in excess of the quota. That is not the case here. The applicant was promoted against the regular quota. Therefore, the judgment in Ajit Singh's case cannot be made applicable in the present case. It is very clear, the applicant has been senior to the third respondent from the beginning and therefore, in our considered view, the applicant deserves to be considered for empanelment for promotion to the post of Dy. Shop Superintendent as the applicant had gained seniority much prior to the cut off date of 10.2.1995. The applicant should have been considered for empanelment by the order issued on 4th May, 1994. Recently also the Supreme Court has ruled that while accelerated seniority cannot be claimed for promotion against general post, the ratio will apply with prospective effect from 1.3.1996 onwards only. This being the position, we direct the respondents to reconsider the case of the applicant according to his seniority in the basic grade either as Skilled Grade-III or as Chargeman-A and if found fit to grant him promotion from the date his juniors were promoted with all consequential benefits. ^{O.A. is allowed.} No order as to costs.

Shanta Shastri
(SHANTA SHASTRY)
MEMBER (A)

Kuldip Singh
(KULDIP SINGH)
MEMBER (J)