

N  
CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH  
ORIGINAL APPLICATION NO: 755/98  
831/98 and 77/99  
DATED THE 30 DAY OF March 2001

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

Applicant and Respondents in OA-755/98.

J.P. Shoke,  
Working as  
Senior Service Engineer  
(Special Works)  
Central Railway,  
Kalyan. ... Applicant

By Advocate Shri S.V. Marne

V/s.

1. Union of India, through  
Secretary,  
Railway Board,  
Ministry of Railways,  
Rail Bhavan,  
New Delhi
2. The General Manager,  
Central Railway,  
Head Quarters Office,  
Mumbai C.S.T.,  
Mumbai - 400 001.
3. The Chief Personnel Officer,  
Central Railway,  
Head Quarters Office,  
Mumbai C.S.T.,  
Mumbai - 400 001.
4. The Divisional Railway Manager,  
Mumbai Division,  
Central Railway,  
Head Quarters Office,  
Mumbai C.S.T.  
Mumbai - 400 001.
5. The Divisional Railway Manager,  
Bhusawal, Division,  
Central Railway,  
Bhusawal, Dist: Jalgaon. ... Respondents

By Advocate Shri M.I. Sethna alongwith  
Shri S.C. Dhawan.

Applicants and Respondents in OA 831/98

1. Mrs. Rama Chandrakant Surwade  
Matron
2. Ms. Asha P. Lokhande  
Matron In-Charge
3. Ms. V.S. Pawar  
Matron

... Applicants

All working under the Chief  
Medical Superintendent,  
Central Railway Hospital,  
Bhusawal.

By Advocate Shri S.V. Marne

V/s.

1. Union of India, through  
The Secretary,  
Ministry of Railways,  
Railway Board,  
Rail Bhawan,  
New Delhi.
2. General Manager,  
Central Railway,  
Head Quarters Office,  
Mumbai C.S.T.,  
Mumbai - 400 001.
3. The Chief Medical Director,  
Medical Services,  
Central Railway,  
Head Quarters Office,  
Mumbai C.S.T.,  
Mumbai - 400 001.
4. Divisional Railway Manager,  
Central Railway,  
Bhusawal Division,  
Bhusawal.

5. The Chief Medical Superintendent,  
Central Railway Hospital,  
Bhusawal.

... Respondents.

By Advocate Shri M.I. Sethna  
alongwith Shri S.C. Dhawan.

Applicants and Respondents in OA 77/99.

1. Shri Rajendra Kumar Raj  
Sr. Section Engineer (Construction)
2. Shri Ram Jaruria  
Sr. Section Engineer (Works)
3. Shri Omkar Singh Rankoshal  
Sr. Section Engineer (Works)
4. Shri V.P. Temburkar  
Sr. Section Engineer (Works)

5. Shri Ramdas  
Sr. Section Engineer(Works)
6. Shri A.P.Arya  
Sr. Section Engineer (P.Way)
7. Shri M. Ganesh  
Chief Draftsman
8. Shri Tularam Dohare  
Sr. Section Engineer (P.Way)
9. Shri Jagdish Prasad Ahirwar  
Sr. Section Engineer (P.Way)
10. Shri C.P.Kuldeep  
Section Engineer (P.Way)
11. Shri D.R. Bharati  
Sr. Section Engineer (P.Way)
12. Shri Harcharan Lal Rawat  
Section Engineer (P. Way)
13. Shri T.K.Sarkar  
Section Engineer (Works)
14. Shri S.K.Biswas  
Sr. Section Engineer (P.Way)

... Applicants

By Advocate Shri S.V.Marne

V/s.

1. Union of India, through  
Secretary,  
Railway Board,  
Ministry of Railways  
Rail Bhawan,  
New Delhi.
2. The General Manager,  
Central Railway,  
Head Quarters Office,  
CST Mumbai,  
Mumbai - 400 001.
3. The Chief Personnel Officer,  
Central Railway,  
Head Quarters Office,  
CST Mumbai  
Mumbai - 400 001.
4. The Chief Engineer,  
Central Railway,  
Mumbai CST.
5. The Divisional Railway Manager,  
Mumbai Division,  
Central Railway,  
CST Mumbai,  
Mumbai 400 001.
6. The Divisional Railway Manager,  
Nagpur Division,  
Central Railway,  
Nagpur.

7. The Divisional Railway Manager,  
Central Railway,  
Bhopal.
8. The Divisional Railway Manager,  
Central Railway,  
Jhansi
9. The Divisional Railway Manager,  
Central Railway,  
Jabalpur

... Respondents

By Advocate Shri M.I.Sethna\*  
alongwith Shri S.C.Dhawan

(ORDER)

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

The issue raised and the law point involved in all these OAs are the same. Accordingly we have decided to proceed to dispose them off by a common order. For illustrative purpose the OA 755/98 is discussed below:-

OA 755/98

The applicant belonging to Scheduled Caste in this OA was initially appointed as Inspector of Works III apprentice on 6.7.1981 in the Civil Engineering Department. After completion of apprenticeship he was finally absorbed as 10W III w.e.f. 6/1/82. He was promoted to 10W.Gr.II w.e.f. 14/3/83 and as 10W Gr.I w.e.f. 1/1/84 due to restructuring of the cadre. He was further promoted as Chief IOW in 1986 on ad hoc basis and was reverted in 1989, thereafter, again he was promoted in 1996 as CIOW for a short period.

His appointment and promotions were against reserved quota.

2. In the year 1997-98 the respondents decided to hold selection for group 'B' service i.e. a class II post of Assistant Engineer. Accordingly the vacancy position was assessed upto 31/1/2000 and total vacancies were worked out to 81 out of which 70% were earmarked for LEG (i.e. 57 posts) and 30% for LDCE (24 posts). Accordingly a notification was issued on 19/3/1998 for selection to 57 posts alongwith a list of eligible candidates in terms of Railway Board's letter dated 28/2/1997. The applicant's name was included in the list. A written test and supplementary written test were held on 25/4/98 and 23/5/98. The applicant appeared in the test.

3. Thereafter the aforesaid selection was cancelled by the respondents vide letter dated 11/4/1998 on the ground that due to a revised policy regarding seniority of SC/ST employees the zone of consideration of SC/ST was required to be changed. A fresh assessment was made in view of the letter dated 15/5/1998 of the Railway Board. The total vacancies were reduced to 53 i.e. 37 for the LEG and 16 for LCDE. A fresh notification was issued on 7/8/98 alongwith list of eligible candidates for test to be held on 5/9/98. For purposes of determining eligibility an integrated seniority list of all six streams forming the feeder grade was prepared. The respondents relied on the judgement of this Tribunal dated 5/5/98 in a group of OAs. The applicant's name was not included in the eligibility list. He made a representation on 27/8/98 calling upon them to publish a common integrated seniority list of all the six streams of feeder cadre and to allow him to appear for selection in general category.

4. The respondents replied on 2/9/98 stating that integrated list was already published.

5. It is the grievance of the applicant that he was eligible till the cancellation of selection on 11/7/98 and within one month thereafter he is declared not eligible vide notification dated 7/8/1998. According to him being the seniormost person in the stream of IOW he is eligible to appear for the selection. He has therefore prayed as follows:-

- i) to quash and set aside the impugned orders dated 11/7/98, 7/8/98 and 2/9/98;
- or alternatively
- ii) to hold and declare him eligible to appear for class II/ Group 'B' selection impugned herein.
- iii) to hold and declare that the respondents should publish integrated seniority list of all the six streams of Civil Engineering Department for promotion to class II/Grade B selection before ordering group 'B' selection.
- iv) to hold and declare that the selection called vide notification dated 19/3/98 is legal and valid.
- v) To hold and declare that the letter dated 15/5/98 is illegal and void ab initio and be quashed and set aside.

6. The learned counsel for the applicant contends that the respondents are not justified in cancelling the selection. The applicant is at the top of the seniority list in his cadre. He had also topped in the ZTs examination.

According to the applicant the respondents failed to publish integrated seniority list. As per the recruitment model

time table prescribed by the Railway Board making an integrated seniority list has to precede the issuing of notices of selection. This has not been done. Because of this the applicant could not assert his exact position among the other eligible candidates. He also denies that the respondents published such a list:

Further he contends that he being at the top of seniority list in his cadre he should have been included as a general candidate.

7. He submits that after the judgement of the Hon'ble Supreme Court in the case of Virpal Chauhan's case (1993(6)SCC 885) the Railway Board issued letter dated 28/3/1997 by which para 319A was inserted in the Indian Railway Establishment Manual. It was provided that if a railway servant belonging to SC/ST is promoted to immediate higher post/grade against a reserved vacancy earlier than his general/OBC Railway servant who is promoted later to the said immediate higher post/grade, the general/OBC Railway servant will regain his seniority over such earlier promoted SC/ST Railway servants. This was however made subject to the condition that in respect of selection posts the overriding principle that a Railway Servant borne in an earlier panel will rank senior to the Railway servant borne in a later panel, will be observed. The earlier notification of 19/3/98 was based on this letter. By the subsequent letter of 15/5/98 the last proviso of the newly added para 319A in the Indian Railway Establishment Manual has deleted the following lines from the said para:-

"This will however, be subject to the condition that in respect of selection post the overriding principle that a Railway Servant borne in an earlier panel will rank senior to a Railway servant borne in a later panel will be observed."

8. The learned counsel submits that this action is in total violation of the judgement of the Principal Bench of the Tribunal in OA No.1469 of 1997 decided on 31/3/98 where the legality of the above mentioned provision was challenged by the general candidates. The Tribunal observed as follows:-

"We therefore find no justification to delete the impugned 5 lines in the Note and this argument is also rejected."

9. Further the Railway Board had issued a letter dt. 27/8/98 reiterating the principle laid down in OA No.1469 of 1997 that the 5 lines in the newly added para 319A are valid.

10. Also the Principal Bench of the Tribunal as well as the Jaipur Bench have already stayed the letter of 15/5/98. It is not correct that the respondents should have proceeded to conduct the examination on 5/9/98 and 27/9/98 in contempt of the stay order.

11. In another OA No.1142 of 1997 the Principal Bench of the Tribunal laid down in their judgement dated 24/7/97 that on a plain reading of the decision of the Supreme Court in Jagdish Lal's case we find that the ratio in Virpal Chauhan and Ajit Singh has not been overruled by the subsequent coordinate Bench --- Jagdish Lal's case being the latest judgement of a bench of 3 judges of the Supreme Court we are bound to abide by the ratio of this judgement.

12. The Supreme Court in Jagdish Lal have positively referred to the case of Virpal Chauhan as well as Ajit Singh and has held that the ratio of these two cases has now become inapplicable.

13. According to the learned counsel the judgement of the Bombay Bench of the Tribunal dated 5/5/98 cannot rule the field so long as Jagdish Lal's judgement stands.

14. Coming to the details of his merit, the applicant's learned counsel submits that the grade of Rs.700-900 is the grade which is required to be taken into consideration as a basic grade for promotion to class II posts and hence the date of promotion of applicant as 1/1/84 is the basic date on which the selection was called for but cancelled later. He is senior to many candidates called at Sr.No.60 onwards whose entry in the grade of Rs.425-700 is after 6/7/81 and in the grade of Rs.700-900 is after 1/1/84.

15. The applicant has also asserted that since he was promoted to the post of IOW Gr.I in 1984 his seniority cannot be disturbed as it was before 10/2/95 when the judgement in R.K.Sabharwal's case was pronounced by the Hon'ble Supreme Court. The applicant therefore maintains that the earlier selection should be held valid and the result should be declared and he be promoted. Alternatively he be allowed to appear in a supplementary test.

16. He also submits that the respondents have completed the selection process in pursuance of the impugned notification dated

7/8/98 and the panel has been declared. However there are still 22 vacancies remaining unfilled. Applicant should be promoted against these vacancies.

17. The respondents have filed a written statement dismissing the applicant's claim of being a general candidate. According to them he has all along been promoted on the basis of his belonging to scheduled caste. The respondents have relied on the judgement dated 5/5/98 of this Tribunal and the letter dated 15/5/98. According to them no junior to the applicant was called for selection. Those called for were very much senior to the applicant in that some of them had joined service in 1965 whereas the applicant joined in 1981. The applicant was promoted as CIOW only on local adhoc basis. There is no procedure to publish integrated seniority list in advance. The seniority in different categories has already been published before preparation of integrated seniority. The respondents harped on the fact that they have strictly followed the judgement of this Tribunal dated 5/5/1998 and there is nothing illegal about the letter dated 15/5/98. The applicant did not challenge the judgement of 5/5/1998 in the TA No.139/87 and other connected matters which had been filed by the All India Scheduled Caste Scheduled Tribe Railway Employees Association. They also filed a writ petition in the High Court challenging the order of 5/5/98 but no stay was granted. Neither in Virpal Singh Chauhan nor in Ajit Singh's case the seniority acquired prior to 10/2/95 has been protected. No doubt the applicant is senior in his cadre and he was promoted to the selection grade. His seniority in the integrated seniority for promotion to Class II it has been taken in terms of

the judgement dated 5/5/98 and the letter dated 15/5/98. The letter of 15/5/98 has been issued in consultation with the Department of Personnel and Training after taking into account the various judgements of the Supreme Court which have become final and are binding. The order passed by Principal Bench staying the operation of the letter dated 15/5/98 is only an interim order. Besides this, Tribunal in Mumbai has also not considered the stay granted by the Principal Bench while vacating the interim stay granted vide order dated 29/1/99. The respondents are justified in not including the applicant in the eligibility list for the notification dated 7/8/98 for fresh selection.

18. We have heard the learned counsel for the applicants and the respondents carefully.

The entire issue relates to the letter of 15/5/1998 issued by the Railways which has deleted the portion relating to a person promoted in an earlier panel being senior to one promoted on a later panel. There have been several judgements pronounced on not exceeding the reserved quota, the seniority of SC/STs acquiring accelerated seniority vis - a - vis the seniors promoted later and restoring their seniority etc. The respondents have relied on the judgement dated 5/5/98 which is one of the latest judgements on the issue in consideration. The judgement has taken into account the judgement in Jagdish Lal's case as well as all the other relevant judgements. The case has been distinguished. The ratio laid down is that accelerated promotion cannot grant accelerated seniority to SC/STs. All the same we find that in these various judgements the actions taken,

initiated in the past has been protected. In Ajit Singh II's v/s State of Punjab also while discussing about the prospectivity of the judgement in Ajit Singh Januja dated 1/3/96 it was observed in conclusion that while promotions in excess of roster made before 10/2/95 are protected, Such promotees cannot claim seniority which have no element of immediate hardship. So the reference is to cases where promotions have been granted in excess of the quota. That does not appear to be the case here. The applicant was promoted in 1984 against reserved quota. It is not stated that the applicant was promoted in excess of the quota. This being so the applicant's seniority of 1984 remains. Therefore in our view, the applicant deserves to be included in the eligibility list for selection to Class II post as per his seniority in his cadre irrespective of the letter dated 15/5/98. Also it cannot be ignored that the Principal Bench also had ruled ~~at~~ interim stage, against the deleting of the five lines incorporated in the amended para 319-A of IREM. Considering the judgement of 5/5/1998~~is~~ has been challenged in the High Court there is no finality about it. In the facts and circumstances of the case we quash and set aside the impugned orders dated 11/7/98, 7/8/1998 and 2/9/98 and direct the respondents to give a supplementary test to the applicants for selection to class II post/grade 'B' and consider them for promotion if found suitable. This shall be done within a period of three months from the date of receipt of a copy of this order.

Accordingly the OAs are allowed. No costs.

(SHANTA SHAstry)  
MEMBER(A)

(KULDIP SINGH)  
MEMBER(J)

abb

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

REVIEW APPLICATION NOS:30/2001, 35/2001  
and 31/2001 IN OA NOS.755/98, 831/98 & 77/99.

12/7/2001

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

Union of India and Ors.

... Review Petitioners

V/s.

Shri J.P.Shoke

... Applicants in OA No.  
755/98

Smt.R.C.Surwade and Ors.

... Applicants in OA No.  
831/98.

R.K.Raj & Ors

... Applicants in OA No.  
77/99

(ORDER)

Per Smt.Shanta Shastry, Member(A)

These review petitions have been filed by the original respondents in OA 755/98, 831/98 and 77/99 which were decided by a common order dated 30/3/2001 allowing the aforesaid OAs.

2. The main grounds advanced for review are that the Tribunal failed to appreciate the ratio laid down by the Hon. Supreme Court in the various judgements in the cases of Virpal Singh Chauhan, Ajit Singh-I and Ajit Singh-II in as much as the principles of catch up as mentioned in the said judgement had neither been considered nor noted. Also that in the case of selection or non selection post, the reserved \*candidate cannot count seniority on the basis of roster point promotion. Further, the Tribunal has overlooked the conclusions drawn by the Constitutional Bench of Supreme Court in the case of Ajit Singh - II wherein it was clearly laid down that while promotions made in excess of the roster before 10/2/95 can be protected, seniority cannot be protected.

:2:

3. The respondents acted in accordance with the judgement of this Tribunal dated 5/5/98. Also their action was in pursuance of the Railway Board's letter dated 15/5/98 which is in conformity with the judgement of the Hon. Supreme Court. The Tribunal also failed to take note of and to consider the order of Principal Bench dated 10/8/2000 in OA No.1491/98 wherein the validity and legality of the Railway Board's circular dated 15/5/98 has been upheld. The Tribunal held wrongly that the judgement dated 5/5/98 of the Tribunal had not reached finality because similar writ petition is pending in the High Court. However, no stay order or contradictory orders were produced before the Tribunal in this matter and therefore that judgement becomes binding.

4. The respondents have therefore prayed for a review of the order dated 30/3/2001 and to set aside the same and dismiss the OAs.

5. We have carefully gone through the grounds advanced by the respondents. It is not correct to say that the Tribunal did not take note of or ignored the ratio laid down in the various judgements of the Supreme Court as cited by the review petitioners. The Tribunal however had relied on the Interim order of the Principal Bench of the Tribunal in OA No.1491/98 whereby the Tribunal had directed to maintain statusquo as on that date i.e. on 3/9/98. Now that the review petitioners have

...3.

:3:

produced the judgement of the Principal Bench of the Tribunal in the aforesaid OA No.1491/98 wherein the Railway Board's circular letter of 15/5/98 has been upheld, we need to take note of this. Therefore, we direct the OAs to be restored to the file and notices to be issued to the parties concerned.

*Shanta S*

(SHANTA SHAstry)  
MEMBER(A)

*Kuldeep*

(KULDIP SINGH)  
MEMBER(J)

abp