

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

REVIEW PETITIONS NO. 30, 31, 35, 37 & 38/2001
IN
ORIGINAL APPLICATIONS NO. 755, 831/1998 & 77/99

THIS THE 19TH DAY OF APRIL, 2002

CORAM: SHRI JUSTICE BIRENDRA DIKSHIT. VICE CHAIRMAN
SMT. SHANTA SHASTRY . MEMBER (A)

Union of India & Others.

Applicants

Versus

J.P. Shoke & Others

Respondents

O R D E R

Hon'ble Smt. Shanta Shastry. Member (A)

The review petitions No.30, 31 & 35/2001 have been filed in OA No.755, 931/98 and 77/99 which were decided by a common order dated 30.3.2001. The review petitions No.37 & 38/2001 were also filed by intervenors who were not parties to the OAs, but were affected by the decision in the OA. Therefore, all these review petitions are being considered and are being disposed of by a common order. The review petition No.30/2001 has been dealt with in details in the following paras for purpose of illustration.

2. This review application has been filed by the respondents in the Original Application against the order dated 30th March, 2001 in OA No.755/98. The applicants in the OA had prayed for including them in the eligibility list for selection to the post of Assistant Engineer, which is a Group 'B' post by

quashing and setting aside the order dated 07.8.98 by which a fresh selection was notified. The applicants had also challenged the validity of Railway Board's letter dated 15.5.1998 and to quash and set aside the same.

3. The OA was allowed and the impugned orders dated 11.7.98, 07.8.98 and 02.9.98 were quashed and set aside and the respondents were directed to give a supplementary test to the applicants for selection to the post of Junior Engineer and to consider them for promotion if found suitable. This was to be done within a period of three months. The respondents had sought extension of time for implementation of the judgment. Thereafter, the present review petition has been filed.

4. According to the review petitioners, the five Judges Bench in Ajit Singh-II's case held that promotions already made in excess of the roster can be protected, but not the seniority vis-a-vis the general candidate. But the Tribunal took the view that the non-protection of seniority applied only in the case of promotees promoted in excess of the reserved quota. According to the petitioners, the Tribunal has not considered and noted the findings of the Hon'ble Supreme Court in proper perspective.

5. The review petitioners also have pointed out

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that the Principal Bench had passed orders in OA No.1491/98 on 10.8.2000 upholding the validity and legality of the Railway Board's letter dated 15.5.98 which had been challenged by the applicants in OA 755/98. The review petitioners also contended that the Tribunal's observation that there was no finality to the judgment and order of the Tribunal dated 05.5.98 in a number of OAs only because a writ petition was pending in the High Court though no order of stay or contrary orders had been passed by the High Court, is not correct. The judgment dated 05.5.1998 has to be taken as binding and the action based on the said judgment is legal and valid. Thus, the review petitioners' contention is that in the light of the above mentioned patent errors, a review is called for of the order dated 30th March, 2001 in OA No.755/98.

6. The review was allowed in circulation taking note of the judgment of the Principal Bench in OA No.1491/98 dated 10.8.2000 and was directed to be placed for hearing. Since it was allowed in circulation, the applicant in the OA filed a Writ Petition in the High Court and the High Court quashed and set aside the order passed on 30th August, 2001 on the review application No.30/2001 35/2001 and 31/2001 and directed notices to be issued to the petitioners and other applicants of the original application and decide the review application.

7. In the meantime, the applicants in OA filed Contempt Petition against the respondents for non-compliance of the directions of the Tribunal dated 30.3.2001. The respondents also filed MP No.934/2001 to stay the order and judgment dated 30.3.2001 till the disposal of the review petition.

8. As per the direction of the High Court, notices were issued on the review petition and the matter was heard. Some of the parties, who were affected by the order dated 30.3.2001, who were not parties to the OA also filed MP seeking intervention. Finally, the MP was allowed and the intervenor were allowed to intervene in the matter. They too were heard.

9. The learned counsel for the respondents Shri Dhawan argued on the lines of the grounds taken in the review petition as already mentioned above. According to them although the promotion of the reserved category candidates i.e. applicant in OA No.755/98 can be protected in terms of the judgment in the case of Ajit Singh-I and Ajit Singh-II the accelerated seniority is not protected. This part has been overlooked by the Tribunal. The Tribunal, according to the review petitioners failed to consider the judgment of the Supreme Court in proper perspective. So also the Tribunal did not consider the judgment in OA No.1491/98 upholding the circular of 15.5.98 of the Railway Board.

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10. The respondents in the review petition i.e. the original applicants argued that there was no error apparent on the face of the record. It is not that the Tribunal did not apply its mind to the judgments in the case of Virpal Singh Chauhan, Ajit Singh-I and Ajit Singh-II. The Tribunal had rightly interpreted the observations made by the Supreme Court in para 89 of the judgment in Ajit Singh-II. The non-protection of seniority gained by accelerated promotion was in the context of those SC/ST candidates, who had received accelerated promotion in excess of the quota reserved for the SC/ST, it was not for those who had been promoted within the quota reserved for SC/ST. The applicant was promoted to the grade of Rs.700-900 which is the base grade from 01.01.1984, whereas the private respondents i.e. general candidates had been promoted much later between 1989 and 1991. Further, the applicant was promoted to the next higher grade in 1997 and therefore, for selection to be held in 1998 for the post of Assistant Engineer, the general candidates could not be restored to their seniority as the applicant had already gone one level higher.

11. The learned counsel for the applicants also contended that even though the Principal Bench of the Tribunal had held the Railway Board's letter dated 15.5.98 as valid, the Railway Board itself had issued another letter dated 27.8.98 reiterating the principle

laid down in OA No.1469/97 decided on 31.3.98 by the Principal Bench that the five lines in the newly added para of 319 (A) are valid. Further, even in the letter of DOP&T dated 30th January, 1997 which was issued in pursuance of the judgment in the case of Union of India Vs. Virpal Singh Chauhan and which was the basis for the letter dated 28.02.97 of the Railway Board, it had been provided that the seniority gained upto 10.02.95 should not be revised or disturbed. Therefore, also since the applicant had gained the seniority much prior to 10.02.95 the seniority could not be revised. The applicant could not be held ineligible for appearing in the selection which was to be held in 1998.

12. During the course of the arguments, the learned counsel for the applicant also stated that the review petition had become infructuous in view of the 85th amendment of Constitution of India by which Article 16 (4) (a) is amended to provide for consequential seniority to SC/ST candidates in the matter of promotion. The applicant produced a copy of the amendment along with MP No.2001 filed on 24.01.2002 by this amendment, an enabling provision was allowed to be made to negate the effect of OM dated 30th January, 1997 of DOP&T with retrospective effect from 17.6.95.

13. The learned counsel for the review petitioners however, argued that this amendment was only an enabling

provision and cannot be relied upon by the applicants in the OA. The learned counsel for the applicants again mentioned about orders dated 21.01.2002 having been issued by the DOP&T in terms of the amendment to the Constitution negating the effect of the OM dated 30th January, 97 and produced a copy of the same. The review petitioners however, were not willing to accept the aforesaid OM. They took the stand that the DOP&T OM could not be applied in the case of the Railways. Judgment was reserved on the R.P. on 05.3.2002. Before the judgment could be delivered, the applicants produced Railway Board's letter dated 08.3.2002 issued on the same lines as the DOP&T OM dated 21.01.2002 deciding that the SC/ST Railway servants on their promotion by virtue of rule of reservation/ roster are entitled to consequential seniority also and the decision shall be effective from 17th June, 1995. The provisions contained in para 319 (a) of the IREM Volume-I as introduced under letters dated 28.02.97 and 15.5.98 shall stand withdrawn and cease to have effect from 17.6.95. In view of this position also the review petition has become infructuous and therefore deserves to be rejected.

14. The learned counsel for the review petitioners once again filed MP pointing out that even if it is to be admitted that the Railway Board have issued the letter dated 08.3.2002 nullifying the effect of the

orders issued earlier on 28.02.97 and 15.5.98, still even in the present letter dated 08.3.2002 the Railway Board have prescribed the procedure for reviewing of the seniority and giving consequential benefits and there is a time frame laid down, and therefore, no order can now be passed by the court until the procedure laid down is followed.

15. We have heard the learned counsel for the review petitioners and the respondents and also the interveners. The interveners' stand is almost the same as that of the review petitioners. The review petitioners have opposed the reliance on the Constitutional amendment and the subsequent letters issued by the DOP&T and the Railway Board on the ground that these were not available when the review petition had been filed. Therefore, the arguments have to be restricted only to the grounds taken in the review petition and the grounds raised in the OA. No new facts can now be considered in the review and even if they were to be considered, still, in view of the procedure laid down by the Railway Board and the time frame set, it would be premature to consider it at this stage. No doubt, these developments were not there when the review petition had been filed. Since the review petition was listed for hearing and had not been decided, the new fact of Constitutional amendment, though a later development needs to be noted. It being a Constitutional mandate, we cannot ignore it. It is very

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relevant and vital to the case as the amendment has been given effect from a retrospective date of 17.6.1995 and has a direct bearing on the R.P. This development certainly makes the R.P. infructuous.

16. We would however, still like to consider this review petition on merits also. The review petitioners have argued that the Tribunal has failed to appreciate the judgments of the Supreme Court in the case of Virpal Singh Chauhan, Ajit Singh-I and Ajit Singh-II. In our considered view, it is not so. The Tribunal had taken full note of the various judgments and the principles laid down in those judgments. In this connection para 18 of the judgment may be seen. Even Ajit Singh-II has been referred to and it has been stated that non-protection of seniority would apply when promotion of the SC/ST was in excess of the quota reserved for them. Even if this view is not acceptable to the review petitioners, this cannot be a ground for review as the review petitioners had been given ample opportunity to argue this point. Now they cannot reargue the same through this review petition.

17. As regards the letter dated 15.5.98 of the Railway Board being upheld by the Principal Bench of the Tribunal it is to be noted that while a mention had been made about some judgment having been passed by the Principa Bench in OA No.1491/98 during the course of the

hearing of the OA, the copy of the judgment had not been produced. What was before the Tribunal, was only the ad-interim order issued by the Tribunal staying the Railway Board circular dated 15.5.98. Therefore no cognizance is required to be taken of the judgment which has been produced after the OA was decided. However, OA No.755/98 was decided by Hon'ble Shri Kuldip Singh, Member (J) and one of us (Smt. Shanta Shastri, Member (A)). Shri Hon'ble Kuldip Singh also happened to be a Member of the Bench which decided the OA No.1491/98 and therefore, we cannot ignore it.

18. We take note of the judgment of the Principal Bench in OA No.1491/98 decided on 10.8.2000 holding the circular of the Railway Board dated 15.5.98 as valid. It is to be seen whether the aforesaid judgment would make any difference to the decision dated 30.3.2001 in the OA.

19. After the judgment of the Supreme Court dated 10.10.95 in Union of India Vs. Virpal Singh Chauhan, the DOP&T issued OM dated 30.01.1997 wherein it was decided that even if the SC/ST candidate is promoted earlier by virtue of rule of reservation/ roster than his senior general candidate and the senior general candidate is promoted later to the said higher grade the general candidate regains his seniority over such earlier promoted SC/ST candidate. Based on this letter

of DOP&T the Railway Board also issued letter dated 28.02.1997 which has been reproduced in para 4 of the judgment in OA 1491/98. Para 4 of this letter reads as follows: "This will have effect from 10.02.1995 and will not disturb the seniorities decided earlier as per the rules in force at the relevant time". Thereafter, a portion of this letter was amended by the circular dated 15.5.98 which has also been reproduced in para 6 of the same judgment. Para 4 of this circular also reads as follows: "This will have the effect from the date of effect of original orders contained in this Ministry's letter dated 28.02.1997 and 10.02.1995". What was sought to be amended by this circular letter was only to do away with the distinction between the selection post and non-selection post. The rest of the letter of 28.02.1997 was not deleted, only the last five lines of para 4 of the letter were deleted. Thus, there was a specific advice not to disturb the seniority decided earlier to 10.02.1995. Even the OM dated 30.01.1997 of the DOP&T was made effective from the date of issue. Therefore, even though the circular of 15.5.98 had been upheld by the Principal Bench in the judgment in OA No.1491/98, it cannot change the decision in the OA. It does not make any difference as the applicant had already been senior to the general candidate prior to 10.02.1995.

20. More over as pointed out by the applicant in an

earlier judgment dated 31.3.98 in OA No.1469/97 of the Principal Bench of which Hon'ble Shri S.R. Adige was one of the Members the Tribunal had clearly declined to interfere with the letter of 28.02.1997 holding that it was in conformity with the judgments of the Supreme Court. It had been pointed out therein that the judgment in the case of Jagdishlal had taken into consideration the judgment in the case of Virpal Singh Chauhan and Ajit Singh-I. At that relevant time the judgment in Ajit Singh-II had not been pronounced. The judgment was pronounced only on 16.9.99 much after the selection for the post of Assistant Engineer was to be held. This has been endorsed by the Railway Board in their letter dated 27.8.98. Thus the judgment in OA No.1491/98 which has now been produced along with the review petition, does not affect the judgment in the OA.

22. Therefore, in the light of the discussion and reasons recorded above, in our considered view, even on merits, no review is called for and the review petitions deserve to be dismissed and are dismissed accordingly. The MPs No.934, 972 & 964/2001 for staying the order and judgment dated 30.3.2001 are also dismissed. The review petitioners shall implement the judgment and order dated 30.3.2001 within a period of ^{two} one months from the date of receipt of a copy of this order.

(SMT. SHANTA SHASTRY)
MEMBER (A)

(BIRENDRA DIKSHIT)
VICE CHAIRMAN

Gajan

dt. 19.4.2002
Order/Judgment despatched
to Applicant/Respondent (s)
on 30.4.2002

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