

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 704/92
MAX NO.

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DATE OF DECISION 5.7.93

Bhagwan Singh Petitioner

Mr. J. K. Kaushik Advocate for the Petitioner (s)

Versus

Union of India & Ors. Respondent

Mr. Manish Bhandari Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. B. B. Mahajan, Member (Adm.).

The Hon'ble Mr. Gopal Krishna, Member (Judl.).

- 1. Whether Reporters of local papers may be allowed to see the Judgement ?
- 2. To be referred to the Reporter or not ? *Yes*
- 3. Whether their Lordships wish to see the fair copy of the Judgement ?
- 4. Whether it needs to be circulated to other Benches of the Tribunal ? *Yes*

G. Krishna
(Gopal Krishna)
Member (Judl.)

B. B. Mahajan
(B. B. Mahajan)
Member (Adm.).

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CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH
JAIPUR.

O.A.NO. 704/92 : Date of order: 5.7.93
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Bhagwan Singh : Applicant.
Mr.J.K.Kaushik : Counsel for the applicant.

VERSUS

Union of India & Ors. : Respondents.
Mr. Manish Bhandari : Counsel for the respondents.

CORAM

HON'BLE MR. B.B.MAHAJAN, ADMINISTRATIVE MEMBER

HON'BLE MR. GOPAL KRISHNA, JUDL.MEMBER

PER HON'BLE MR. B.B.MAHAJAN, ADMINISTRATIVE MEMBER

Applicants Bhagwan Singh and Shiv Charan have filed this application under Section 19 of the Administrative Tribunals Act, 1985, against the order dated 3/17-10-1986 (Annex.A/3), by which S/Shri Manik Chand and Ram Kishan respondents Nos. 4 & 5 have been shown as senior to them in the seniority list for the post of Head Signallars and promoted to the post of Inspector Telegraph Traffic (I.T.T., for short) w.e.f. 1.1.84 superseding the applicants.

2. The applicants Bhagwan Singh and Shiv Charan Sharma were promoted as Asstt. Head Signallars w.e.f. 1.8.56 and 1.4.61 respectively. In the seniority list the names of respondents

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were shown as Signallars scale Rs. 110-200 at serial no. 15 and 32 vide Annexure A.1. Shri Ram Kishan, respondent No.5 was appointed as Signallar w.e.f. 13.10.57 and Manik Chand respondent No.4 was promoted as Signallar from 27.4.60. Both of them are members of the Scheduled Caste. Shri Manik Chand was promoted as Assistant Head Signallar scale Rs. 330-560 on 25.9.1976 and Ram Kishan as Assistant Head Signallar on 29.1.77 against ~~vacancies~~ reserved for S.C. They were subsequently promoted as Head Signallar w.e.f. 15.2.78 and 30.5.80 respectively against vacancies reserved for S.Cs. Subsequently on upgradation of the posts, the applicants as well as respondents No. 4 & 5 were regularised as Head Signallars from 1.1.84 but respondents No. 4 & 5 were shown as Senior to the applicants and were promoted as I.T.T. w.e.f. 1.1.84. The applicants have challenged the position assigned to the respondents No.4 & 5 in the seniority list of Head Signallar Gr. Rs. 425/640, on the ground firstly that they were senior to the respondents in the Cadre of Head Signallar Gr. Rs. 150-240 and secondly that by allowing promotion to respondent No. 4 & 5 as Head Signallars Gr. Rs. 425/640 officiating basis from 15.2.1978 and 30.5.80 respectively the Department had allowed three out of five posts of Head Signallars

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Gr. Rs. 425-640 to be occupied by these officers belonging to S.C. against the reserved quota of 15 per cent and 7½ % respectively and have allowed both the posts of I.T.T. to be occupied by these officers belong to S.C.

3. The respondents have explained in their reply that the respondent No. 4 & 5 had been promoted as Head Signallars Gr. Rs. 425-640 against the reserved vacancies w.e.f. 15.2.1978 and 30.5.80, respectively, while the applicants were promoted against these posts only from 1.1.1984 and respondent No. 4 & 5 were, therefore, Senior to the applicants as Head Signallars Gr. Rs. 425-640 and have correctly been assigned seniority as such in (Annex.A/3), subsequently since these were two vacancies of I.I.T. as well on upgradation, these have been filled by promotion of Respondent Nos. 4 & 5 on the basis of their general seniority as Head Signallar Gr. Rs. 425-640 and not against any ~~any~~ other point.

4. We have heard the counsel for the parties. The learned counsel for the applicants has not been able to show that Respondents Nos. 4 & 5 had been promoted to the post of Head Signallars Gr. Rs.425-640 w.e.f. 15.2.78 and 13.5.1980 respectively against fortuitous vacancies or without following the procedure prescribed by Rules. He has only stated that

they should not get any benefit of this officiating promotion for the purpose of seniority and since the applicants as well as these respondents were promoted on regular basis as Head Signallars Gr. Rs. 425-640 from the same date viz. 1.1.84 applicants ranked senior to respondents Nos. 4 & 5, on the basis of their higher seniority as Assistant Head Signallars Gr. Rs. 150-240 as per Annexure. A/1. There is, however, no force in this contention. It has been held by Hon'ble Supreme Court in Direct Recruits Class II Engineering Officers' Association vs. State of Maharashtra 1990 (2) SLR SC 769 that once an incumbent is appointed to a post according to rules his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The respondent Nos. 4 & 5 have thus been correctly shown Senior to the applicants in the seniority list of Head Signallars in Gr. Rs. 425-640 in (Annex.A/3), as they had been promoted to this Gr. earlier than the applicants. The fact that they were regularised from the same date would not make any difference. Once it is held that the Respondents Nos. 4 & 5 have correctly been shown as Senior to the applicants as Head Signallers Gr. Rs. 425-640, they would have to be considered for promotion to the next higher post of I.I.T. in the Gr. Rs. 550-750 earlier than the applicants by

virtue of their general seniority. So far as the contention of the applicants that by the promotions of respondents Nos. 4 & 5, the proportion of SCs in the Cadre of Head Signallers + I.I.Ts will exceed the prescribed per cent of 15% is concerned, the Rule that the percentage of S.C. and S.T. should not exceed 15 per cent and 7.5 per cent of posts in the promotional grade is relevant only for the purpose of promotions against reserved vacancies according to roster. It has no application to the promotions made on the basis of general seniority. The officers belonging to S.C. and S.T. cannot be denied consideration for promotion on the basis of their general seniority on the ground that by their promotion the percentage of S.C. and S.T. will exceed the prescribed percentage.

We thus find no merit in the O.A. The same is accordingly dismissed. Parties to bear their own costs.

Gopalkrishna
(GOPAL KRISHNA)
Judl. Member


(B.B. MAHAJAN)
Adm. Member

Anil