

(63)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:  
AT HYDERABAD.

O.A.NO. 185/89

DATE OF JUDGMENT: 5.5.95

BETWEEN:

1. Smt. P.Tarabai
  2. Sri H.F.Patrick
  3. Sri E.N.Phalguna
  4. Smt Iris. S.Nathniel
- .. Applicants.

A N D

1. Union of India, Rep. by Secretary (Estb),  
Railway Board, Rail Bhavan, New Delhi.
  2. The General Manager, S.C.Railway,  
Rail Nilayam, Secunderabad.
  3. The Sr. Divisional Commercial Superintendent,  
S.C.Railway, Secunderabad (BG) Division,  
Secunderabad.
  4. The Sr. Divisional Personnel Officer,  
S.C.Railway, Secunderabad (BG) Division,  
Secunderabad.
  5. Sri M.P.Deenadayalan, Head Clerk,  
O/o the Sr.Divisional Commercial  
Superintendent, S.C.Railway,  
Secunderabad (BG)Division,  
Secunderabad.
- .. Respondents.

COUNSEL FOR THE APPLICANT: SHRI G.V.Subba Rao

COUNSEL FOR THE RESPONDENTS: SHRI N.R.Devraj  
Sr./Adml.CGSC

CORAM:

HON'BLE SHRI JUSTICE V.NEELADRI RAO, VICE CHAIRMAN  
HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

CONTD....

(( As per Hon'ble Shri R. Rangarajan, Member (Admn.) X

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Heard learned counsel for both the parties.

There are 4 applicants in this OA who are working as Head Clerks under the control of R3 in the scale of Rs.1400-2300 (RSRP) and the next avenue of promotion to them is Chief Clerk in the grade of Rs.1600-2660 (RSRP). They all belong to OC community. Their prayer in this OA is for a ~~declaration that~~ the filling up of the post of Chief Clerk in grade Rs.1600-2660 (RSRP) by the candidates belonging to Scheduled Castes and Scheduled Tribes communities, in excess of the reservation of 22½% in the cadre as provided under the Constitution, as illegal, arbitrary, unconstitutional, violative of Articles 14 and 16 of the Constitution of India, and consequently direct the respondents to fill up the said vacancy and future vacancies in the cadre of Chief Clerks by promoting the applicants herein according to their seniority in the cadre of Head Clerks and also their initial appointment and not to implement the 40 point roster which is illegal and unconstitutional.


An interim order dt. 20.3.89 has been issued in this OA, relevant portion of which reads as follows:-

" It is directed that during the pendency of this OA, the vacancies available from time to time in regard to filling up of posts of Head Clerks in the pay scale of Rs.1400-2300 will be filled up in accordance with the 40 point roster system, subject to the condition that the posts held by the members of the Scheduled Castes and Scheduled Tribes do not exceed 15% and 7½% respectively at any given point of time. However, if a person belonging to SC or ST is promoted on his own merits and not in a reserved vacancy, then for the purpose of this interim order, such appointment will be excluded while computing the required percentage".

4. It was held by the Apex Court in Sabharwal's case (1995(1) SCALE 685) that the quota for SCs and STs is only in the number of posts and not in vacancies and hence, 40 point roster has to be followed for initial filling up of the posts of operated cadre strength and subsequent vacancies have to be filled up by the category which is referable to the category of the candidates in regard to whom the vacancies had arisen. It is further held that the principle enunciated in the said Judgement in Sabharwal case which was disposed of on 10.2.95 is prospective so that the settled matters cannot be unsettled.

5. As it is observed by the Apex Court that the Judgement in Sabharwal case which was pronounced on 10.2.1995 is prospective it follows that the promotions that were made till 10.2.1995 on the basis of the interim order cannot be held as illegal. Accordingly, the interim order has to be made as final order in this OA.

6. As such, the interim order dated 20.3.89 in the OA is treated as final order in this OA in regard to promotions that were made upto and inclusive of 10.2.1995. Promotions subsequent to 10.2.1995 shall be made in accordance with the principle enunciated in Sabharwal case. OA is ordered accordingly. No costs./

  
(R. RANGARAJAN)  
Member(Admn)

  
(V. NEELADRI RAO)  
Vice-Chairman

Dated: 5th May, 1995

  
Deputy Registrar(J)CC

Dictated in the open court

To

1. The Secretary(Estt.) Railway Board, Railbhavan, New Delhi.  
mvl
2. The General Manager, S.C.Rly, Railnilayam, Secunderabad.
3. The Sr.Divisional Commercial Superintendent, S.C.Rly, Secunderabad(BG) Division, Secunderabad.
4. The Sr.Divisional Personnel Officer, S.C.Rly, Secunderabad(BG) Division, Secunderabad.
5. One copy to Mr.G.V.Subba Rao, Advocate, CAT.Hyd.
6. One copy to Mr. ~~G.V.Subba Rao~~ N.R.Devraj, SC for Rlys, CAT.Hyd.
7. One copy to Library, CAT.Hyd.
8. One spare copy.

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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH AT HYDERABAD.

THE HON'BLE MR. JUSTICE V. NEELADRI RAO  
VICE CHAIRMAN

A N D

THE HON'BLE MR. R. RANGARAJAN: (M(ADMN))

DATED 5-5-95 1995.

ORDER/JUDGMENT:

M.A./R.A./G.A.No.

OA.No. <sup>in</sup> 185089

PA.No.

(W.P.)

~~Admitted~~ and Interim directions  
issued.

~~Allowed.~~

Disposed of with directions.

~~Dismissed.~~

Dismissed as withdrawn

Dismissed for default

~~Ordered/Rejected.~~

No order as to costs.

No spare copy

