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

O.A.NO. 52/89

DATE OF JUDGMENT: 27.4.95

BETWEEN:

1. M.Nageswara Rao

2. S.V.Ramana

.. Applicants.

A N D

1. Secretary (Establishment),
Railway Board, Rail Bhavan,
New Delhi.

2. General Manager,
South Central Railway,
Rail Nilayam, Secunderabad.

3. Chief Personnel Officer,
South Central Railway,
Rail Nilayam, Secunderabad.

.. Respondents

4. Smt. M.Padmavathi.

COUNSEL FOR THE APPLICANT: SHRI V.Venkateswara Rao

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

CORAM:

HON'BLE SHRI JUSTICE V.NEELADRI RAO, VICE CHAIRMAN

HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

CONTD....

(29)

O.A.NO.52/89.

JUDGMENT

Dt:27.4.95

(AS PER HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.))

Heard Shri V.Venkateswara Rao, learned counsel for the applicants and Shri N.R.Devaraj, learned standing counsel for the respondents 1 to 3.

2. There are two applicants in this OA who belong to OC community and they are senior Clerks in the office of the Chief Operating Superintendent (Power), South Central Railway, Secunderabad. They prayed for ~~direction that~~ declaration that the filling up of the vacancies of the posts of Head Clerks of the office of the Chief Operating Superintendent (Power), South Central Railway, Secunderabad, in the scale of Rs.1400-2300 (RSRP) by the candidates belonging to SCs and STs community in excess of the reservation of 22½% in that cadre under the constitution, and quash the 40 point roster being followed for filling up of the posts of each cadre and also the Office Order No.17/88 communicated vide letter No.P.535/TP/Clerk/Vol.III & IV, dated 21.12.1988 issued by R-3 promoting the 4-th respondent as Head Clerk, as illegal, arbitrary, unconstitutional, with all consequential benefits such as seniority, promotions, and arrears of salary and allowances etc.

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3. The relevant portion of the interim order dated 25.1.1989 ~~xxx~~ passed in this OA reads as under:-

"during the pendency of this OA, the vacancies available from time time in regard to filling of posts of Head Clerks in the office of the COPS (Power), SC Railway, Secunderabad will be filled-up in accordance with the 40 point roster system subject to the condition that the posts held by the members of SC and ST do not exceed 15% and 7½% respectively at any given point of time and that if a person belonging to SC/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 ~~xxxxxx~~ excluded while computing the required percentage."

4. The learned counsel for the applicant relied on the judgment of the Allahabad High Court in 1978(1) SLR 844 (J.C.Malik Vs. Union of India) which was being followed by Madhya Pradesh High Court and also Punjab and Haryana High Court. The principle underlining the Malik's case was approved by the Constitutional Bench of the Apex Court in 1995(1) SCALE 685 (R.K.Sabharwal Vs. State of Punjab).

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5. It was held by the Apex Court in Sabharwal's case 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 the 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.

6. This OA in regard to the challenge of promotion of R-4 being in excess of 15% of the posts, has to be dismissed, for the judgment in Sabharwal's case which was disposed of on 10.2.1995 is declared to be prospective, so that the settled matters cannot be settled.

7. Basing on the same, TA 872/86 (WP 1871/85) was dismissed.

8. As it is observed by the Apex Court that the judgment 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.

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9. As such, the interim order dated 25.1.1989 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 in accordance with the principle enunciated in Sabharwal case.

10. The OA is ordered accordingly. No costs. /


(R. RANGARAJAN)
MEMBER (ADMN.)


(V. NEELADRI RAO)
VICE CHAIRMAN

DATED: 27th April, 1995.
Open court dictation.

 23/5/95
Dy. Registrar (Judl)

vsn

Copy to:-

1. Secretary (Establishment),
Railway Board, Rail Bhavan, New Delhi.
2. General Manager, South Central Railway,
Rail Nilayam, Secunderabad.
3. Chief Personnel Officer,
South Central Railway, Secunderabad.
4. Smt. M. Padmavathi, Head Clerk, O/o C.O.P.S. (P),
South Central Railway, Rail Nilayam, II Floor,
Secunderabad-500 371.
5. One copy to Shri V. Venkateswara Rao, Advocate, CAT, Hyd.
6. One copy to Shri N.R. Devaraj, Sr. CGSC, CAT, Hyd.
7. One ~~extra~~ copy to Library, CAT, Hyd.
8. One spare copy.

kku.

OA 52/89

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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 27/4 1995.

ORDER/JUDGMENT:

M.A./R.A./C.A.No.

OA.No. in 52/89

TA.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

