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

C.A.NO.248/93.

DATE OF JUDGMENT: 14-08-95.

BETWEEN:

1. K.Bhagoji Rao
2. D.Ramu
3. P.Satyanarayana
4. K.L.N.Murthy
5. M.C.Hessing
6. G.N.M.Raju
7. Smt. Jayaratna
8. J.Srinivasulu

.. Applicants.

Vs

1. Union of India rep. by the Secretary,  
Railway Board, Rail Bhavan, New Delhi.
2. The Chief Personnel Officer, SC Rly,  
Rail Nilayam, Secunderabad.
3. The Controller of Stores, SC Rly,  
Rail Nilayam, Secunderabad.
4. Sri T.K.S.Kodandapandi
5. Smt. K.Umadevi

.. Respondents.

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

COUNSEL FOR THE RESPONDENTS: SHRI N.R.Devaraj,  
Sr/Asst. CGSC.

CORAM:

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

J U D G M E N T

[ as per Hon'ble Sri R.Rangarajan, Member(Administrative) ]

Heard Sri G.V.Subba Rao, learned counsel for the applicants and Sri N.R.Devaraj, learned Standing Counsel for the respondents.

2. This OA is filed praying for a direction to the respondents that the promotion of SC & ST employees in the post of Office Superintendent Gr.II be regulated in accordance with the principles laid down by the Supreme Court in its order dt. 24.9.1984 and further that the seniority of the applicants vis-a-vis R-4 & 5 who are S.C. candidates be regulated strictly in accordance with the judgment of the Allahabad Bench of the Tribunal in Veerpal Singh Chauhan Vs. Union of India [ 1 AFR 1987(2) CAT 71 ] and promote the applicants as Office Superintendent Gr.II in the scale of Rs.1600-2660 while effecting promotion of Office Superintendent Gr.II in the existing as well as restructured vacancies that arose with effect from 1.3.1993.

3. In other words the applicants in this OA prays for a direction to recast the seniority of Head Clerks due for promotion to the post of Office Superintendent Gr.II on the basis of initial grade seniority by declaring that the seniority list published by the Chief Personnel Officer, South Central Railway, Secunderabad in Proceedings No.P.612/Stores/HC/92 dt. 9.2.1993(pg.12 of material papers) is illegal, arbitrary and violative of Articles 14 & 16 of the Constitution of India and for a further direction to the respondents not to promote the SC/ST candidates over and above 22½% of the posts as prescribed under the Constitution

and to direct the respondents to promote the applicants on the basis of his seniority by taking into consideration the date of their initial appointment with all consequential benefits.

4. An interim order was given in this O.A. dt. 3.5.93. The operative portion of the said order reads as under:-

"We direct that the vacancies available from time to time in the category of O.S. Gr.II have to be filled up in accordance with 40 points roster system that the posts held by the Members of SC/ST should not exceed 15% and 7½% respectively at any given point of time. However if a person belonging to Scheduled Caste or Scheduled Tribe is promoted on his own merits and not in reserved vacancy, then for the purpose of this interim order, such appointment will be excluded while computing the required percentage any promotion that is made in pursuance of this order will, however, be subject to the result of the main applicant."

4. It is held by the Apex court in JT 1995(2) SC 351 (R.K.Sabharwal Vs. State of Punjab ) that the percentage of reservation is only in posts but not in vacancies, and at the same time it was ordered that promotions made on the basis of percentage of reservation in the vacancies prior to 10.2.1995 should not be disturbed. As such, similar order has to be passed in this OA also in regard to that portion of the relief in this OA.

5. The seniority in each promotional cadre is being prepared on the basis of the date of entry into the cadre, and as such the SC/ST candidate who is promoted to the cadre as against the vacancy at the reserved point as per the roster is becoming senior to the OC candidate who is promoted later even though that OC candidate is senior to the reserved candidate in the lower cadre. Accordingly, the seniority list published by the letter dt. 9.2.1993 in regard to the

Head Clerks of this unit was prepared. But it was held by the Allahabad Bench of Central Administrative Tribunal reported in [ ATR 1987(2) CAT 71 - Virpal Singh Chauhan and Ors. Vs. Union of India] that the seniority in the initial grade should reflect even in the promotional cadre if the reserved candidates are promoted to the cadre as against the vacancies at reserved point as per the roster. The appeal thereon is pending in the Apex court. No order was passed suspending operation of the judgment in Vir Pal Singh Chauhan's case.

6. But Their Lordships of the Supreme Court held in AIR 1989 SC 261 (Karam Chand Vs. Haryana State Electricity Board) that the entry into the cadre is the basis for fixation of seniority in the promotion cadre even in a case where reserved candidates got promotion not on the basis of seniority but as against vacancies reserved for SC/ST candidates as per the roster. Hence, the judgment of the Allahabad Bench in Vir Pal Singh Chauhan case has to be held as per-incurium. As such, the relief claimed on that basis has to be rejected.

7. But the learned counsel for the applicants submitted that in the case the appeal as against the judgment in Vir Pal Singh Chauhan case is going to be dismissed, the applicants may be given liberty to move this Tribunal by way of Review of this order. It is just and fair submission.

8. In the circumstances, this OA is ordered as under:-

The interim order passed on 3.5.1993 in this OA is confirmed.

For consideration for promotion on or after 10.2.95, the percentage of reservation has to be made applicable only

...5/-



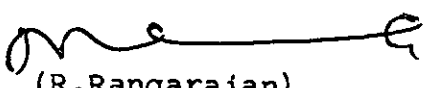
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in the posts but not in the vacancies and the principles laid down in Sabharwal case in regard to the same have to be followed;


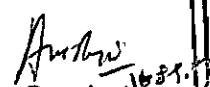
9. This OA in regard to the challenge of the seniority list of Head Clerks published vide letter dt. 9.2.1993 is dismissed. But in case the appeal as against the judgment in Vir Pal Singh Chauhan case is going to be dismissed, then the applicants are free to move this Tribunal by way of review of this order. However, this judgment will not debar the applicants from filing an M.A. for implementing the interim order and restoration of C.P. in regard to the same.

10. The OA is ordered accordingly. No costs.

  
(R. Rangarajan)  
Member (Admn.)

  
(V. Neeladri Rao)  
Vice Chairman

  
Dated <sup>14<sup>th</sup></sup> Aug., 1995.

  
  
Deputy Registrar (J)CC

Grh.

To

1. The Secretary, Railway Board,  
Union of India, Railbhavan, New Delhi.
2. The Chief Personnel Officer, S.C.Rly,  
Railnilayam, Secunderabad.
3. The Controller of Stores, S.C.Rly,  
Railnilayam, Secunderabad.
4. One copy to Mr. G.V. Subba Rao, Advocate, CAT. Hyd.
5. One copy to Mr. N.R. Devraj, SC for Rlys, CAT. Hyd.
6. One spare copy.

pvm.