(40)

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

O.A.NO. 249/93. DATE OF JUDGMENT: 14-08-95.

BETWEEN:

1. S.N. Raju
2. A.S.Ramachandran
3. A.Palakondaiah
4. K.A.Raman
5. K.V.Ramana Rao
6. C.Raghavendra Rao
7. B. Suryanarayana
8. K.G.Janardhana Rao
9. Smt. V.L.Chakka
10. I.N.Mony .. Applicants.

Vs

1. Union of India, Rep. by the Secretary, Railway Board, Rail Bhavan, New Delhi.
2. Chief Personnel Officer, SC Rly, Rail Nilayam, Secunderabad.
3. Controller of Stores, SC Rly, Rail Nilayam, Secunderabad.
4. Smt. P. Lakshmi Kantamma
5. Sri N. MOHAN RAJ
6. Sri V.Veeraiah
7. Sri P. Nagaraju
8. Sri M.L.A.Varma .. Respondents.

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

COUNSEL FOR THE RESPONDENTS: SHRI N.R. Devaraj, Sr.CGSC.
Mr B-Thaskaran for R 4 to 7

CORAM:

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

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

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O.A.No.249/93. Date: 14-8-1995.

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 promotions of the SC & ST employees in the post of Office Superintendent Gr.I 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 the Respondents 4 to 8 who are SC and ST employees be regulated strictly in accordance with the judgment of Allahabad Bench of the Tribunal in Veerpal Singh Chauhan Vs. Union of India [ATR 1987(2) CAT 71] and promote the applicants as Office Superintendent Gr.I in the scale of Rs.2000-3200 while effecting promotions of Office Superintendents Gr.I 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 Office Superintendents Gr.II due for promotion to the post of Office Superintendent Gr.I on the basis of initial grade seniority by declaring that the seniority list published by the Chief Personnel Officer, South Central Rly., Sec'bad in proceedings No.P.612/Stores/EC/92 dt.1.10.1992 (pg.13 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

...3/-

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

4. An interim order was given in this OA dt. 3.5.1993. The operative portion of the said order reads as follows:-

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

5. 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 relied in this OA.

6. 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 candidates is promoted to the cadre as against the vacancy at the reserved point as per the roster is becoming senior to the OC candidates who is promoted latter eventhough that OC candidates is senior to the reserved candidate in the lower cadre.

...4/-

Accordingly, the seniority list published by the letter dt. 1.10.1992 in regard to Office Superintendent Gr.II 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 Cahauhan 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 subpending 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 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 appliants 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.

...5/-

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 10.2.1995 the percentage of reservation has to be made applicable only 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 Office Superintendent Gr.II published vide letter dt. 1.10.1992 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 reg rd to the same.

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

(R.Rangarajan)
Member(Admn.)

(V.Neeladri Rao)
Vice Chairman

Dated 16th Aug., 1995.

Deputy Registrar(J)CC

Grh.

To

1. The Secretary, Railway Board, Rail~~xxxx~~ Bhavan, Union of India, New Delhi.
2. The Chief Personnel Officer, S.C.Rly, Railnilayam, Secunderabad.
3. The Controller of Stores, SC 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 copy to Library, CAT.Hyd.
7. One spare copy.

pvm.

THPED BY CHECKED BY

COMPARED BY 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 ---14-8-- 1995.

~~ORDER~~/JUDGMENT:

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

in
OA.No. 249/93.

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