

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

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O.A. 936/96.

Dt. of Decision : 08-09-98.

M. Rama Rao

..Applicant.

Vs

1. The Divl. Rly. Manager,  
SC Rly, Vijayawada.
2. The General Manager,  
SC Rly, Rail Nilayam,  
Sec'bad.
3. Smt. N. Keumudi Kumari

..Respondents.

Counsel for the applicant : Mr. G. V. Subba Rao

Counsel for the respondents : Mr. D. F. Paul, SC for Rlys.

CCRAM:-

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

THE HON'BLE SHRI B. S. JAI PARAMESHWAR : MEMBER (JUDL.)

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ORDER

ORAL ORDER (PER HON'BLE SHRI R.RANGARAJAN : MEMBER (ADMN.)

Heard Mr.G.V.Subba Rao, learned counsel for the applicant.  
None for the respondents.

2. The applicant in this CA was promoted as OS Gr-I post of regularly on 1-3-93. R-3 was promoted to the Headclerk on 1-11-83 and the applicant was promoted to that post on 1-1-84. In view of the above seniority of Headclerk, R-3 should have been promoted earlier to the applicant to the post of OS Gr-II i.e., earlier to 1-3-93. The date of entry of R-3 as OS Gr-II is not indicated and our presumption may be incorrect in view of the promotion of R-3 as Headclerk earlier to the applicant herein. The next promotion of the applicant is to the post of OS Gr-I. The OS Gr-I is a non selection post, decided on the basis of seniority-cum-suitability. The applicant submits that in the grade of OS Gr-I there are excess representation of SC and ST i.e., more than 22½% and hence no reservation should be followed in promotion to the post of OS Gr-I. As R-3 was promoted as OS Gr-II against the reserved quota, she should be deemed to have been junior to him in the OS Gr-II and hence he should be promoted first as OS Gr-I by the revision of seniority. For this the applicant relies on the judgement in R.K.Sabharwal's case reported in 1995(1)SCALE 685 and Virpal Singh Chauhan's case reported in SLJ 1996 (1) 65.

3. This CA is filed praying for a direction to R-1 to revise the seniority of the applicant vis-a-vis R-3 as per the judgement of the Apex Court in UOI Vs. Vir Pal Singh Chauhan' case and promote the applicant as OS Gr-I in the scale of Rs.2000/-3200/- by declaring that non revision of the seniority of the applicant in accordance with the Supreme Court judgement is illegal, arbitrary and unconstitutional and violative of Articles 14 and 16 of the constitution.

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4. An interim order was passed in this OA dated 8-8-96.

As per the interim order if the vacancy of OS Gr-I is filled, the same is subject to further orders in this OA.

5. A reply has been filed in this OA. The main contention of the respondents is that the seniority list published earlier to the date of issue of the judgement in Sabharwal's case will not be altered and hence as the applicant and R-3 were promoted earlier to that date, the seniority is decided on the basis of the date of entry as OS Gr-II. Even if R-3 was promoted as OS Gr-II against the reserved quota, that will not stand in the way of R-3 to get her seniority from the date of her entry as OS Gr-II as that promotion was done earlier to the decision of the Sabharwal's case. The Virpal Singh Chouhan's case followed the Sabharwal's case and it was held that those who were promoted against the reserved quota after 10-2-95 then their seniority will be decided on the basis of the earlier seniority, ~~vis-a-vis~~ <sup>vis-a-vis a senior</sup> LCC is promoted later than a reserved candidate due to the reservation rule.

6. The only point for consideration in this OA is whether the revision of seniority of the applicant vis-a-vis R-3 is required in view of the fact that both are promoted earlier to the issue of the decision in Sabharwal's case viz., 10-2-95.

7. In Sabharwal's case the Apex Court had held that the reservation is against the post, and not against the vacancy. After the issue of the judgement i.e., after 10-2-95 if there are more than 15 and 7½% reservation for SC and ST in the cadre respectively, then the roster should be kept suspended. Till such time roster confirmed to the constitutional provision of reservation of 22½% i.e., 15½ for SC and 7½% for ST, no reservation will be done on the basis of the roster. If a reserved candidate is promoted to the higher grade after 10-2-95 against the reservation <sup>quo</sup> then the CC senior candidate promoted to the grade later will get the seniority as indicated in the basic lower grade.

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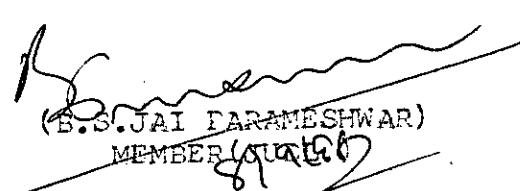
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8. The Virpal Singh Chouhan's case is a continuation of Sabharwal's case and the Virpal Singh Chouhan's case also deals with the promotions for reservation on the same basis as indicated above.

9. Bearing the above decision in mind, the OA has to be looked into. In the present case the applicant and R-3 were promoted to the post of OS Gr-II earlier to 10-2-95. Hence, their seniority as OS Gr-II will be decided on the basis of the entry into OS Gr-II irrespective of the fact that the applicant and R-3 were promoted against the reservation or against the general quota. For promotion to OS Gr-I, the entry into OS Gr-II will decide the seniority position. R-3 will be promoted to OS Gr-I first in view of her higher seniority in OS Gr-II even if she is an SC. But if promotion is to be made after 10-2-95 if the roster is suspended in view of the Sabharwal's case, then no rule of reservation should be resorted to and if the rule of reservation is resorted to due to the less representations of SC and ST, then SC or ST candidates promoted to the higher grade after 10-2-95 will not get the seniority from the date of entry on the basis of reservation. A senior CC promoted later will rank senior to the SC or ST if the SC or ST is promoted not against the general seniority but against the reservation quota.

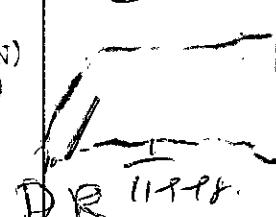
10. In view of what is stated above, we do not find any merits in this CA as both the applicant and R-3 were promoted as OS Gr-II earlier to 10-2-95 and the date of entry as OS Gr-II will decide their seniority.

11. The OA is dismissed. No costs.

  
(B.S. JAI PARAMESHWAR)  
MEMBER (QUOTA)

  
(R. RANGARAJAN)  
MEMBER (ADMN.)

Dated : The 8th Sept. 1998.  
(Dictated in the Open Court)

  
DR 11998

Copy to:

1. The Divisional Railway Manager, South Central Railway, Vijayawada.
2. The General Manager, South Central Railway, Rai Inilayam, Secunderabad.
3. One copy to Mr.G.V.Subba Rao, Advocate, CAT, Hyderabad.
4. One copy to Mr.D.F.Paul, SC for Rlys, CAT, Hyderabad.
5. One copy to D.R(A),CAT, Hyderabad.
6. One duplicate copy.

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II COURT

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R.RANGARAJAN : M(A)

AND

THE HON'BLE SHRI B.S.JAI PARAMESHWAR :  
M(J)

DATED: 8/9/98

ORDER/JUDGMENT

M.A/R.A/C.P.NO.

in

C.A.NO. 936/96

ADMITTED AND INTERIM DIRECTIONS  
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS

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