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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.No. 1330/96

Date of Order : 8.12.98

BETWEEN :

1. P.S.Charan

2. Ch.Umamaheswara Rao

.. Applicants.

AND

1. Union of India, rep. by
General Manager, S.C.Rly.,
Rail Nilayam, Secunderabad.

2. Divisional Railway Manager,
S.C.Rly., Vijayawada
Krishna District.

3. P.Babu Pratap.

4. B.Sankara Rao

5. J.Babu Rao

6. N.Prakasa Rao

.. Respondents.

— — —

Counsel for the Applicants

.. Mr.G.Ramachandra Rao

Counsel for the Respondents

.. Mr.N.R.Devraj

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CORAM:

HON'BLE SHRI R.RANGARAJAN : MEMBER (ADMIN.)

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

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

Mr.G.Kamachandra Rao, learned counsel for the applicants and Mr.N.R.Devraj, learned standing counsel for the official respondents. Notice has been served on private respondents were R-3, 4 and 5. They called absent.

2. The short facts of this case are as follows :-

There are two applicants in this OA. They are working as Head Parcel Clerks in the scale of pay of Rs.1400-2300 in Vijayawada Division, S.C.Railway. Applicant No.1 was promoted as Head Parcel Clerk/Head Commercial Clerk on 3.7.88 and Applicant No.2 was promoted to that grade on 13.8.88. Their next promotion is to the grade of Commercial Supervisor/Commercial Inspector in the scale of pay of Rs.1600-2660.

3. A notification was issued for formation of panel for the ^{posts} grade of Commercial Supervisor/Commercial Inspector in the scale of pay of Rs.1600-2660 by the notification No. B/P 608/I/1/CS/Vol-III dated 28.8.94 (A-1). There were 38 assessed vacancies. The applicants were called for the test. The respondents 3 to 6 who belonged to SC community were also called for the test and the selection proceedings i.e. the final panel was issued by memo No.B/P-608/I/1/Cs/Vol-III, dated 21.3.95 (A-3). In that final list ~~the~~ R-3

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is at Sl.No.4, R-4 is at Sl.No.5, R-5 is at Sl.No.25 and R-6 is at Sl.No. 26. The applicants submit that all the 4 respondents who belonged to SC community have joined the post of Commercial Clerk later than them and hence they are junior to them. But they admit that they were promoted to the post of Head Clerk earlier to them in view of the reservation. Hence as they joined later than them in the initial grade of Commercial Clerk they are/juniors to them while considering the private respondents were the cases for further grade of Commercial Supervisor even though promoted to Head Clerk earlier to them. For this he relies on the judgement of the Supreme Court reported in 1996 (2) SIR 71 (Ajit Singh Januja and others v. State of Punjab and others). Relying on this judgement the learned counsel for the applicant submits even though the applicants and the private respondents were promoted in 1989 their seniority should be recast by bringing down the seniority position of R-3 to 6 as they were promoted as Head Clerk in reservation quota and the applicants should be considered first for promotion to the post of Commercial Clerk earlier to consideration of the cases of the private respondents R-3 to 6.

4. The only point for consideration in this OA is whether the seniority list in any cadre where promotions were given to the reserved candidates against roster point has to be recast in view of the judgement referred to above.

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5. There are three relevant judgements in this connection issued by the Apex Court. They are

(1) reported case of Supreme Court reported in 1995 (1) SIR 791 (R.K.Sabharwal and others v.

State of Punjab and others). This is a 5 Member Bench case.

(2) reported case of Supreme Court reported in 1995 (5) SIR 400 (Union of India and others v.

Virpal Chowhan). This is a 2 Member Bench case.

(3) Supreme Court case relied upon by the applicant is reported in 1996 (2) SIR 71 (Ajit Singh Januja and others v. State of Punjab and others).

6. In Sabharwal's case the following principles are laid down :-

(1) The reservation is on the basis of the cadre strength if and not on the basis of the vacancy. Hence the cadre comprises of 15% of SC candidates and 7½% of ST candidates the reservation rule is complied with.

(2) Once the reservation rules are complied with the roster is to be abandoned and after that the promotion is on the basis of the employee who vacates the post i.e. if an OC employee vacates the post that will be filled by an OC employee and if SC employee vacates the post that post will be filled by SC candidate.

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(3) Till the whole cadre position stabilises i.e. the cadre fulfills the requisite percentage for SC and ST candidates effort should be met to readjust the cadre strength so that there is no excess or shortfall for any community candidates.

7. ^{Singh} The Supreme Court in Virpal Chowhan case concurred with the principle laid down in Sabharwal's case. But the recasting of the seniority of an OC if promoted later than an SC promoted against the reserved quota will come into force from the date of issue of the judgement in Sabharwal's case i.e. from the date of 10.2.95.

8. In Ajit Singh Januja case no such date was indicated. However it has been said in para-16 of the judgement that "the 3 Member Bench concurred with the view in Virpal Chowhan case and observed that seniority between the reserved category candidates and general candidates in the promoted category shall continue to governed by the panel position that is with reference to the inter-se seniority in the lower grade". It is also to be noted that the judgement was given when Punjab & Haryana High Court judgement was challenged in Apex Court. That dates back earlier to 10.2.95.

9. The learned counsel for the applicant submits that in view of the judgement in Ajit Singh Januga's case the seniority position when promoting the applicant to R-3 to 6 to Commercial

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Supervisor the revision of seniority is necessary and the initial seniority of the applicant should be retained above that of the private respondents R-3 to 6.

10. We heard both sides. If Ajit Singh Januja's case is to be adhered to then whenever promotion takes place it may necessitate revision of seniority which was issued earlier to 10.2.95 even in some cases where the seniority was finalised in late 1960 or early 1970. That would mean unsettling of the settled seniority position. It was not the intention of the Supreme Court in Virpal Chowhan's case. It has held by the Supreme Court in Virpal Chowhan's case that to avoid unsettling of the settled seniority the revision of the seniority position as laid down that case was to be done from the date of issue of the judgement in Sabharwal's case. Even though no date has been mentioned in Ajit Singh Januja's case we are of the opinion that the date laid down in Virpal Chowhan is very essential for avoiding seniority disputes in future. This view is taken as in Januja's case the Apex Court had concurred with the judgement Virpal Chauhan's case. This is the view we have taken in an earlier case also i.e. in OA.1597/95 decided on 8.7.98 (Mrs. G.T. Samson and others v. Chief Personnel Officer) We feel that the cut off date 10.2.95 is essential for avoiding the seniority disputes when the seniority has been finalised much earlier to 10.2.95. Hence we feel that the present seniority dispute having arisen earlier to 10.2.95 the

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date of entry into the Head Clerk grade will decide the seniority of the applicant and private respondents R-3 to

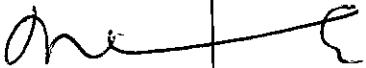
6. As the private respondents R-3 to 6 had entered the cadre of Head Clerk earlier to 10.2.95 their seniority position will be fixed in that cadre as per the date of entry into the cadre, for consideration for promotion to higher post of Commercial Supervisor. In that view the applicants will rank junior to private respondents R-3 to 6. for further promotion to the grade of 1600-2660.

11. In view of what is stated above there is no need to recast the seniority for promotion to the post of Commercial Supervisor in the scale of pay of Rs.1600-2660 on the basis of Ajit Singh Januja's case.

12. In the result, we find no merit in this OA. Hence the OA is dismissed. No costs.

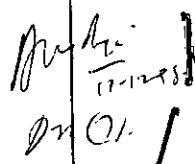

(B.S. JAI PARAMESHWAR)
Member (Judl.)

8/12/98


(R.RANGARAJAN)
Member (Admn.)

Dated : 8th December, 1998
(Dictated in Open Court)

sd


M. H. M. I.
On OI.

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OA.1330/96

Copy to :-

1. The General Manager, S.C.Rly., Rail Nilayam, Secunderabad.
2. The Divisional Railway Manager, S.C.Rly., Vijayawada.
3. One copy to Mr. G.Ramachandra Rao, Advocate, CAT., Hyd.
4. One copy to Mr. N.R.Devaraj, Sr.CGSC., CAT., Hyd.
5. One copy to D.R.(A), CAT., Hyd.
6. One duplicate copy.

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II COURT.

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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

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

AND

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

DATED: 8/12/98

ORDER/JUDGMENT

MAY/R.A./C.P. No.

in
DA. NO. 1330/98

ADMITTED, AND INTERIM DIRECTIONS ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

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केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
प्रेषण / DESPATCH

22 DEC 1998

हैदराबाद आयोग
HYDERABAD BENCH