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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:

AT HYDERABAD

O.A.No.1720 OF 1997.

DATE OF ORDER:16-6-1999.

BETWEEN:

- | | |
|-----------------------|--------------------------|
| 1. D.Sukumar. | 11. N.V.Ramanamurthy. |
| 2. K.S.Venkatesh. | 12. V.S.Hara Gopal. |
| 3. P.Veera Reddy. | 13. B.Durga Prasada Rao. |
| 4. S.S.Shastry. | 14. M.S.Sivaraman. |
| 5. K.Ram Reddy. | 15. P.Gopi. |
| 6. K.Nagaraja Rao. | 16. N.Ram Reddy. |
| 7. P.Rosi Reddy. | 17. A.Satyanarayana Rao. |
| 8. J.Balarama Murthy. | 18. B.Nagendra Rao. |
| 9. A.Chandrasekharam. | 19. Ajit Indurkar. |
| 10. K.Saraschandra. | 20. K.Yubandhar. |
| | 21. G.A.Noorani. |

.....Applicants

a n d

1. Union of India, rep. by Secretary,
Ministry of Finance, Dept. of Revenue,
New Delhi.
2. The Commissioner of Customs &
Central Excise, Lal Bahadur Stadium Road,
Basheerbagh, Hyderabad.
3. The Commissioner-I,
Central Excise Headquarters, Hyderabad.

.....Respondents

COUNSEL FOR THE APPLICANTS :: Mr.N.Ram Mohan Rao

COUNSEL FOR THE RESPONDENTS :: Mr.V.Bhimanna

CORAM:

THE HON'BLE SRI R.RANGARAJAN, MEMBER (ADMN)

A N D

THE HON'BLE SRI B.S.JAI PARAMESHWAR, MEMBER (JUDL)

: O R D E R :

ORAL ORDER (PER HON'BLE SRI R.RANGARAJAN, MEMBER (A))

Heard Mr.N.Ram Mohan Rao, learned Counsel for the
Applicant and Mr.V.Bhimanna, learned Standing Counsel
for the Respondents.

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2. There are 21 applicants in this OA. They are OC category employees. Their All India seniority in the cadre of Superintendents of Central Excise, Group-'B' was issued by letter C.No.II/37/20/96-Estt.7, dated: 20-11-1996(Annexure.A-2, page.88 to the OA). The post of Superintendent Group-'B' in the Central Excise Department is filled from the feeder category by promotion of Inspectors of the Central Excise. The seniority of the Inspectors of the Central Excise, of the applicants and others was issued by Memorandum No.C.No.II/34/3/93-Estt, dated: 30-4-1993, (Annexure.A-1, page.14 to the OA). It is an admitted fact that the applicants herein are seniors to many of the reserved community candidates. But when they were promoted to the Group-'B' Superintendent cadre, the applicants have become juniors to the reserved community candidates who were their erstwhile seniors in the lower grade of Inspectors due to filling up of roster points reserved for SC/ST candidates.

3. The submission of the applicants are that,

i) While considering them for promotion to the higher grade above that of Superintendent Group-'B', the revision of seniority of the Group-'B' list should be prepared showing them above the reserved community candidates who were earlier promoted to the Superintendent Group-'B' cadre due to the roster system. The applicants who were promoted later in their normal turn against general quota should be shown above them for

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consideration for promotion to the higher grade. They rely on the Judgment of the Apex Courtⁱⁿ (i) AJIT SINGH JANUJA & OTHERS Vs STATE OF PUNJAB & OTHERS (reported in AIR 1996 SC 1189);

ii) Reported case in AIR 1996 SC 448 in UNION OF INDIA & OTHERS Vs VIRPAL SINGH CHAUHAN, and also the (iii) Constitutional Bench reported case reported in 1995(2) SCC 745 in R.K.SABHARWAL & OTHERS Vs STATE OF PUNJAB & OTHERS.

4. This OA is filed to declare that the seniority list issued by the Proceedings No.C.No.II/34/20/96. Estt.7, dated:20-11-1996,(Annexure.A-2, page.88 to the OA), is bad in law being arbitrary, illegal, violative of Articles 14 and 16 of the Constitution, and for a consequential direction to the respondents to recast the entire seniority list following the principles laid down in the office Memorandum No.20011/1/96-Estt(D) of the Ministry of Personnel, Public Grievances & Pensions, dated:30-1-1997 (Annexure.A-3, page.292 to the OA), whereby the seniority of the SC/ST Officers promoted earlier vis-a-vis general candidate promoted later on the basis of the reported Apex Court cases quoted above and follow that seniority list for the purpose of further promotion as Assistant Commissioner of Central Excise & Customs.

5. A reply has been filed in this OA. The respondents claim that the seniority list issued by

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the impugned Proceedings is in order and is in accordance with the DOP & T Circular dated:30-1-1997.

6. From the above submissions, the point for consideration is whether the seniority list prepared fixing the seniority of the reserved community candidates and the other candidates promoted earlier to the issue of the Circular dated:30-1-1997, requires revision in accordance with the Circular dated:30-1-1997.

7. Before analysing this, the implication of the prayer made in this OA has to be appreciated. It is not necessary for us to compare the seniority of all the 21 candidates, who are the applicants in this OA vis-a-vis the reserved community candidates whose names find place in the seniority list dated:20-11-1996. It is enough ^{if} the seniority of ~~one~~ of the applicants is compared ~~vis-a-vis~~ one of the reserved community candidates finding a place in that impugned seniority list dated:20-11-1996.

8. In the case of the applicant no.1 viz., Sri D.Sukumar, his name finds a place in the impugned seniority list at Serial No.2587, whereas one of the reserved community candidates viz., Sri V.R.Gyaneshwar, is finding a place at Serial No.679 of that seniority list. It is stated that the applicant no.1 viz., Sri D.Sukumar, is shown senior to Sri V.R.Gyaneshwar, a reserved community candidate in the lower feeder

category of Inspectors. However, Sri V.R.Gyaneshwar, was promoted to the cadre of Group-'B' Superintendent against the reserved Scheduled Caste quota earlier to the applicant no.1. The applicant no.1 being an OC community candidate was promoted to the higher grade of Group-'B' Superintendent ^{in his turn} /from the lower grade of Inspector later than Sri V.R.Gyaneshwar. Hence, taking the date of entry as the criterion for fixing the seniority, the applicant no.1 viz., Sri D.Sukumar is shown below that of Sri V.R.Gyaneshwar, a Scheduled Caste Community candidate. It is to be noted that the date of regular appointment as Superintendent Group-'B' / Deemed date of appointment as Superintendent / Date of appointment as Inspector is shown in Column no.3 of the said seniority list. It is seen from that Column that the applicant no.1 viz., Sri D.Sukumar, was appointed as Superintendent Group-'B' on 10-8-1992, deemed date of appointment as Superintendent is also 10-8-1992, and the date of appointment as Inspector was on 1-8-1977. In the case of Sri V.R.Gyaneshwar, the date of regular appointment as Superintendent Group-'B' is 14-4-1989, deemed date of appointment as Superintendent is also 14-4-1989, and his appointment as Inspector is 7-9-1971.

9. With the above details, the case has to be considered on the basis of the reported Apex Court Judgments indicated above.

10. The first Judgment of the Apex Court which needs to be seen is that of the SABHARWAL's case reported in 1995(2) SCC 745.

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11. In that case the Principles laid down are as follows:-

i) The reservation is only against the cadre strength and not on vacancies. That means, a cadre should comprise of the required percentage of Scheduled Caste and Scheduled Tribe candidates. For example, if a cadre consists of 100 posts then it could provide reservation for SCs to the extent of 15 posts and for STs to the extent of 7 posts. More number of SC/ST against the reservation cannot be done. No-doubt the SC/STs who come up on their own merit can be promoted irrespective of the fact that the cadre consists of sufficient number of SC/ST community candidates as per reservation roster;

ii) When the quota of reservation is fulfilled to the extent as per rule, then the roster deemed to have been closed. There is no further running of the roster. The roster register should be closed;

iii) In case there is shortage of reserved community candidates then the vacancy that arises should be filled to that extent that the rule of reservation is to be adhered to;

iv) After the rule of reservation is fully complied with, then the vacancy that arises thereafter will be filled by the same category of the employee who vacates^s the post. That means, an OC candidate if he vacates

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the post, that post will be filled by an OC community candidate. If an SC/ST community candidate vacates the post, that will be filled by an SC/ST candidate. This would mean that the cadre at all times will consists of the required number of SC and ST community candidates as per reservation roster and it will not exceed the reservation roster percentage;

v) If suppose the SC/ST community candidates are not available to fill the roster then liberty is given to the Department to carry forward that unfilled reserved post to the later date in accordance with the rules.

12. It has been clearly stated in Para.11 of that Judgment that the findings of that Constitutional Bench comprising of five Hon'ble Judges will be operative only prospectively and not retrospectively. That Judgment was delivered on 10-2-1995. That means, the findings of that Judgment will be operative only on or after 10-2-1995, and not earlier to 10-2-1995.

13. The second Judgment to be noted is that of VIRPAL SINGH CHAUHAN's case reported in 1996 SC 448. This Judgment was delivered by a Division Bench of the Apex Court. Here this Judgment as is evident from the following extracted Paragraph followed the Principles laid down in the SABHARWAL's case. Para.28 of that Judgment is very relevant. This Para.28 reads

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as below:-

"28. The Constitution Bench has, however, made it clear that the rule enunciated by them shall operate only prospectively (vide Para.11). It has further been held in the said decision that the "percentage of reservation has to be worked out in relation to the number of posts which form the cadre-strength (and that) the concept of vacancy has no relevance in operating the percentage of reservation." (As a matter of fact, it is stated that this batch of cases were also posted for hearing before the Constitution Bench along with R.K.Sabharwal (1995 AIR SCW 1371) batch of cases but these cases were delinked on the ground that they raise certain other issues which did not arise in R.K.Sabharwal). Be that as it may, as a result of the decision in R.K.Sabharwal and the views/findings recorded by us hereinabove, the following position emerges:

(i) Once the number of posts reserved for being filled by reserved category candidates in a cadre, category or grade (unit for application of rule of reservation) are filled by the operation of roster, the object of rule of reservation should be deemed to have been achieved and thereafter the roster cannot be followed except to the extent indicated in Para-5 of R.K.Sabharwal. While determining the said number, the candidates belonging to the reserved category but selected/promoted on their own merit (and not by virtue of rule of reservation) shall not be counted as reserved category candidates.

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(ii) The percentage of reservation has to be worked out in relation to number of posts in a particular cadre, class, category or grade (unit for the purpose of applying the rule of reservation) and not with respect of vacancies.

(iii) So far as Railway Guards in Railway service are concerned that is the only category we are concerned herewith - the seniority position in the promoted category as between reserved candidates and general candidates shall be the same as their inter-se seniority position in Grade 'C' at any given point of time provided that at that given point of time, both the general candidate, and the reserved category candidates are in the same grade. This rule operates whether the general candidate is included in the same batch of promotees or in a subsequent batch. (His is for the reason that the circulars/letters aforesaid do not make or recognise any such distinction). In other words, even if a Scheduled Caste/Scheduled Tribe candidate is promoted earlier by virtue of rule of reservation/roster than his senior general candidate and the senior general candidate is promoted later to the said higher grade, the general candidate regains his seniority over such earlier promoted Scheduled Caste/Scheduled Tribe candidate. The earlier promotion of the Scheduled Caste/Scheduled Tribe candidate in such a situation does not confer upon his seniority over the general candidate even though the general candidate is promoted later to that category."

It is to be noted that in Sub.Para.(iii) of Para.28, it has been clearly stated that "even if a Scheduled



Caste/Scheduled Tribe candidate is promoted earlier by virtue of rule of reservation/roster than his senior general candidate and the senior general candidate is promoted later to the said higher grade, the general candidate regains his seniority over such earlier promoted Scheduled Caste/Scheduled Tribe candidate. The earlier promotion of the Scheduled Caste/Scheduled Tribe candidate in such a situation does not confer upon his seniority over the general candidate even though the general candidate is promoted later to that category. //

14. The third Apex Court Judgment is in the case of AJIT SINGH JANUJA & OTHERS Vs. STATE OF PUNJAB & OTHERS, (reported in AIR 1996 SC 1189). This Judgment was delivered by a three/^{Judge} Bench of the Apex Court. The law laid down by the earlier Judgments of the Apex Court has been followed in this case also and it has further explained the reservation procedure. It is evident from the various paragraphs of this Judgment that they followed the Judgment in R.K.SABHARWAL's case and VIRPAL SINGH CHAUHAN's case.

15. The learned Counsel for the Applicant submits that in AJIT SINGH JANUJA's case, it has been said that the seniority of the unreserved candidate promoted later to a reserved community candidate who were promoted earlier on the basis of the reservation/roster requires recasting in view of the AJIT SINGH JANUJA's case irrespective of the date of such promotion. This would




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mean that even the seniority list prepared earlier to 10-2-1995, the delivery of Judgment in R.K.SABHARWAL's case by a five member Constitutional Bench, need not be a bar to give them seniority from the date they joined service and later promoted to the various grades. They are also of the opinion that the Sub.Para.(iii) of Para.28 of the VIRPAL SINGH CHAUHAN's case also substantiate their case.

16. The above submission in our opinion needs elaborate discussion. The Supreme Court in the SABHARWAL's case has clearly laid down in regard to the appointment against the reserved points and also held that the reservation is only against the cadre strength and not on vacancy. The Apex Court further held that their findings is operative only prospectively. That means, that the posts which were filled against roster point in the cadre strength will in no way be affected because of the Judgment in SABHARWAL's case. Before issue of the SABHARWAL's Judgment, there may be excess in the case by promoting SC/ST candidates on the basis of vacancy. But the findings clearly give direction as to how to work out the excess, if any, and also to make good if there is any shortage. That exercise has to be done and the running roster has to be closed. If a view is not taken to hold that finding prospectively then there may be number of litigations to reduce the excess posts earlier to 10-2-1995 and also fill up the shortage, if any, earlier to 10-2-1995. That would mean,

the whole cadre will be upset and would lead to a confusion in the administration. Hence, it has to be held that the Apex Court's findings are only prospective and not retrospective.

17. The above view of ours is also the view of the Supreme Court in the reported case in BABURAM Vs. C.C. JACOB & OTHERS (reported in 1999 SCC(L&S) 682). The relevant portion in the Judgment is as follows:-

"The prospective declaration of law is a device innovated by the Apex Court to avoid reopening of settled issues and to prevent multiplicity of proceedings. It is also a device adopted to avoid uncertainty and avoidable litigation. By the very object of prospective declaration of law, it is deemed that all actions taken contrary to the declaration of law prior to the date of declaration are validated. This is done in the larger public interest. Therefore, the subordinate forums which are legally bound to apply the declaration of law made by the Supreme Court, are also duty-bound to apply such dictum to the cases which would arise in future only. In matters where decisions opposed to the said principle have been taken prior to such declaration of law, cannot be interfered with on the basis of such declaration of law. In the instant case, decision of DPC as well as of the appointing authority, being prior to the judgment in R.K.SABHAWAR case, the Tribunal was in error in applying this decision."

18. In VIRPAL SINGH CHAUHAN's case, it is stated that the SC/ST candidates promoted earlier due to the reservation will rank juniors to an OC community candidates who were their erstwhile seniors in the lower grade and who were promoted later to the same grade ^{by} ~~for~~ promotion to the higher grades. But that ruling cannot be read in isolation. It has to be read in conjunction with SABHARWAL's case as has been clearly pointed out by the Apex Court in VIRPAL SINGH CHAUHAN's case. If it is not done then once again there will be a revision of seniority not only between the SC/ST and OC community candidates promoted to the higher grade after 10-2-1995, but also earlier to 10-2-1995. That means, the whole seniority list needs revision right from the date when an employee joins service and promoted subsequently. That will be a disastrous condition for the administration and hence, it has to be held that the VIRPAL SINGH CHAUHAN's case is also prospective and that prospective date is decided in SABHARWAL's case viz., 10-2-1995.

19. In the third case i.e., AJIT SINGH JANUJA's case there is nothing particular to be explained except to state that the earlier directions given in SABHARWAL AND VIRPAL SINGH CHAUHAN's cases were repeated and on that basis certain directions were

given and those directions also may have to be read in conjunction with that of SABHARWAL AND VIRPAL SINGH CHAUHAN's cases. If that is read with the earlier two Judgments then it has to be held, then that Judgment also stipulates that cut-off date, i.e., the cut-off date given in SABHARWAL's case i.e., 10-2-1995 is to be followed.

20. The DOP&T has issued the Circular bearing No.20011/1/96-Estt.(J), dated:30-1-1997, to prepare the seniority list. The para.3 is very relevant. This para is reproduced below:-

"3. Having regard to the above judgment of the Supreme Court, it has been decided to modify the existing policy of fixing seniority on promotion on the lines mentioned in para.2 above. Accordingly, it has been decided to and the following proviso to general principle 5(i) contained in MHA (now No.9/11/55-RPS, dated:22-12-1959 and Para.2.2 of this department O.M.No.22011/1/86-Estt(D), dated:3-7-1986:-

"Provided that if a candidate belonging to the Scheduled Caste or the Scheduled Tribe is promoted to an immediate higher post/grade against a reserved vacancy earlier than his senior general/OBC candidate who is promoted later to the said immediate higher post/grade the general/OBC candidate will regain his seniority over such earlier promoted candidate of the Scheduled Caste and the Scheduled Tribe in the immediate higher post/grade."

This para is to be followed prospectively from 30-1-1997. Because of the reasons explained above, the DOP&T had correctly said that the Circular is effective only from 30-1-1997 and not earlier to that date. That means, the seniority of the OCs, SCs and STs promoted earlier to the date of 30-1-1997, will be on the basis of the entry into the cadre and not on the basis of the findings of the VIRPAL SINGH CHAUHAN's case. The applicants have not challenged this Circular and the applicants also request for adhering to those instructions without adhering to the cut-off date of 30-1-1997 stipulated in that Circular. We see no reason to take a different view than that of the contents of that Circular and hence there is no need to set aside that Circular.

21. A perusal of the seniority list of Superintendent Group-'B' clearly indicates that the applicants and other SC/ST community candidates in that seniority list had entered the grade of Superintendent Group-'B' earlier to 30-1-1997, and also earlier to 10-2-1995. Hence, their seniority has to be fixed on the basis of their entry into the cadre and not on the basis of the Circular issued by the DOP&T dated:30-1-1997.

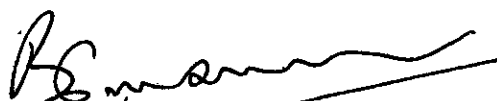
22. In view of the above, we do not find any reason to set aside the seniority proceedings issued by Memorandum No.C.No.II/37/20/96-Estt.7, dated:20-11-1996. However, for future, if any SC/ST community candidates are to be promoted against the reserved point and the OC community candidate is to be promoted later than them, then the rule laid down in the Circular dated:30-1-1997 is applicable.




23. Before we part with this OA, we would like to caution the Department that they should be very careful in preparing the seniority list in future in view of the Circular dated:30-1-1997. It is the normal rule for the Government to issue a seniority list every three years. But promotions takes place even within a short period. That means, if there is any variation required because of the frequent promotions then the seniority list may have to be issued more frequently and not as per the earlier instructions of issuing the seniority list. We will not like to say anything further except to state that the Department should act cautiously so as to avoid any seniority dispute in future.

24. With the above observations, the OA is dismissed.
No costs.

Sri N.Ram Mohan Rao, learned Counsel for the Applicant assisted by Mr.Siva and Mr.V.Bhimanna, learned Standing Counsel for the Respondents had rendered valuable assistance in disposing of this case.

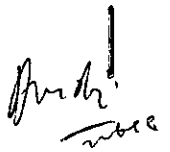

(B.S.JAI PARAMESHWAR)
MEMBER (JUDL)
16.6.99


(R. RANGARAJAN)
MEMBER (ADMN)

DATED: this the 16th day of June, 1999

Dictated to stenoin the Open Court

DSN



COPY TO:-

1. HON'BLE
2. HRRP M(A)
3. HBSJA M(J)
4. D.R.(A)
5. SPARE

1ST AND 2ND COURT

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD.

THE HON'BLE MR. JUSTICE D.H. NASIR
VICE - CHAIRMAN

THE HON'BLE MR. H. RAJENDRA PRASAD :
MEMBER (A)

THE HON'BLE MR. R. RANGARAJAN :
MEMBER (A)

THE HON'BLE MR. B. S. JAI PARAMESWAR :
MEMBER (J)

ORDER: 16-6-99

ORDER / JUDGEMENT

MA./RA./CP No.

in

OA. No. 1720/1997

ADMITTED AND INTERIM DIRECTIONS
ISSUED.

ALLOWED. -

C.P. CLOSED.

R.A. CLOSED.

O.A. CLOSED.

DISPOSED OF WITH DIRECTIONS.

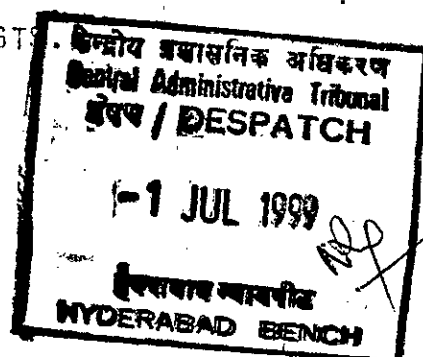
DISMISSED.

DISMISSED AS WITHDRAWN.

ORDERED / REJECTED.

NO ORDER AS TO COSTS.

SRR



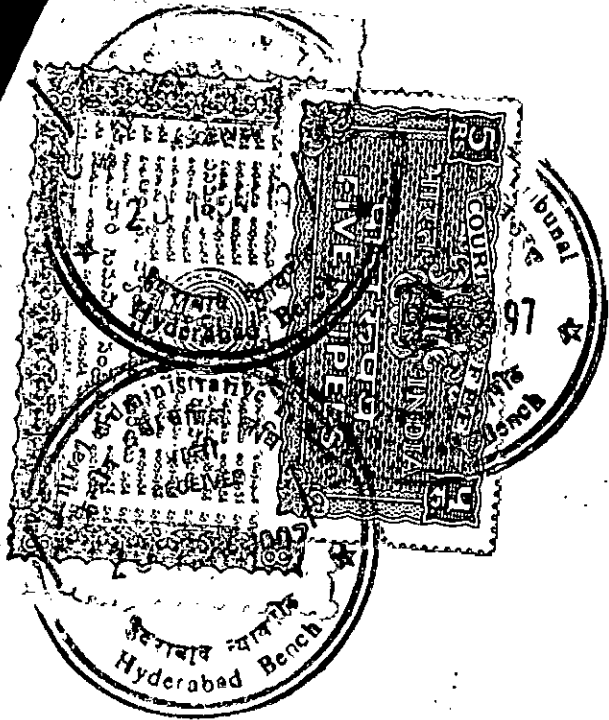
Hyderabad

DISTRICT

**In The central
Administrative Tribunal
HYDERABAD**

O. A. : No.

of 1997



VAKALAT

ACCEPTED

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Applicant
Advocate for Respondent

Date.....1997

M/s. N. RAMA MOHANA RAO
~~PRATAP NARAYAN SANGH~~
K.S.V. SUBBA RAO &
ABHINAND K. SHAVILI

Siva

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