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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.122/93

Date of order: 30.7.1997

1. All India Scheduled Castes & Scheduled Tribes Railway Employees Association, Workshop Branch, Ajmer, through its Secretary, Shri Balwant Singh Jyotiana, S/o Shri S.S.Jyotiana, Chief Clerk, Loco Workshop, Western Railway, Ajmer, residing at Nag Bai, Ajmer.
2. Shri Prabhati Lal, S/o Shri Gyarsi Lal, Chief Clerk, Loco Workshop, Western Railway, Ajmer, residing at House No.729/28, Bhagwan Ganj, Ajmer.
3. Shri Inderlal Choudhary, S/o Shri Mansing, Head Clerk, Loco Workshop, Western Railway, Ajmer, residing at House No.837/32, Srinagar Road, Ajmer.
4. Shri Amarchand, S/o Shri Dayal, Head Clerk, Carriage & Loco Workshop, Western Railway, Ajmer, residing at House No.419/30, Pratap Nagar, Ajmer.

...Applicants.

Vs.

1. Union of India, through the General Manager, Western Railway, Church Gate, Bombay.
2. Chief Works Manager (Loco), Western Railway, Ajmer.
3. Senior Personnel Officer (Workshop), Western Railway, Ajmer
4. Shri P.H.Gaur, Office Superintendent, Loco Workshop, Western Railway, Ajmer.
5. Shri Kanhaiyalal Sharma, Office Superintendent, Carriage & Wagon Workshop, Western Railway, Ajmer.
6. All India Non-Scheduled Caste & Scheduled Tribe Railway Employees Association, Ajmer.

...Respondents.

Mr.Shiv Kumar : Counsel for applicants
Mr.Manish Bhandari : Counsel for respondents

CORAM:

Hon'ble Mr.O.P.Sharma, Administrative Member

Hon'ble Mr.Ratan Prakash, Judicial Member.

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FOR HON'BLE MR.O.P.SHARMA, ADMINISTRATIVE MEMBER.

In this application under Sec.19 of the Administrative Tribunals Act, 1985, the All India Scheduled Castes & Scheduled Tribes Railways Employees Association, Workshop Branch, through its Secretary and three others, S/Shri Prabhari Lal, Inderlal Choudhary and Amarchand, have prayed that orders Anxx.A1 dated 3.2.1993 and Anxx.A2 dated 23.12.92 may be quashed and the applicants Nos.2,3 & 4 alongwith 15 other persons mentioned in para 1 of the O.A may be declared eligible for promotion according to their notified seniority. They have further prayed that while implementing the restructuring scheme ~~scheme~~ as in Anxx.A21 dated 27.1.93, promotion may be ordered strictly in accordance with the notified seniority list, Anxx.A3. There is yet another prayer to the effect that the Tribunal may declare that the reservation is against vacancies and not against posts.

2. By order Anxx.A1 dated 3.2.93, promotions on the basis of restructuring and in accordance with the scheme Anxx.A21 dated 27.1.93 have been granted to certain persons including respondents Nos.4 & 5, S/Shri R.M.Gaur and Kanhaiyalal Sharma who the applicants claim are junior to them. Notification Anxx.A2 dated 23.12.92 is for the purpose of granting promotion on the basis of regular selection. Apparently, selection on the basis of Anxx.A2 dated 23.12.92 was not held and promotions were granted on the basis of restructuring by Anxx.A1 dated 3.2.93. Therefore, the real challenge of the applicants is to Anxx.A1 in the application. Names of 15 persons have been mentioned at page 3 who are also stated to be members of the Association and have therefore claimed relief through this O.A. It was stated during the arguments by the learned counsel for the applicants that barring the person at Sl No.15 in the list of 15 persons all the other 14 persons were senior to

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respondents Nos.4 & 5.

3. The case of the applicants is that as per their seniority position, they are senior to respondents Nos.4 & 5. The Railway Board vide their circular dated 26.2.85 have stated that SC & ST employees who are due for promotion under the upgradation scheme in their turn by virtue of their general seniority should be promoted irrespective of the fact whether the prescribed quota of 15% and 7½% for SC & ST candidates respectively has already been achieved. Therefore, they are entitled to promotion on the basis of restructuring even on the basis of their general notified seniority. Accordingly, grant of promotion to respondents Nos.4 & 5 ignoring the seniority position of applicants Nos.2,3,4 and the first 14 persons whose names have been given at page 3 of the O.A, is not proper.

4. The respondents in their reply have taken certain preliminary objections to the maintainability of the O.A. One is that there is nothing on record to show that the Association which has filed this application is a recognised one and whether any resolution has been passed by its office bearers for joining together. As regards the merits of the case, the respondents have stated that the members of the Association on whose behalf the matter has been agitated have achieved their seniority position after jumping the queue on account of the benefit of reservation. All such employees cannot be given further promotion in the next grade particularly when the issue is not only pending before the various Benches of the Tribunal but also before the Hon'ble Supreme Court. Percentages prescribed for grant of promotion to the SC & ST cannot therefore be disturbed.

5. A reply has also been filed on behalf of respondent No.6, i.e. All India non-SC & ST Railway Employees Association, Ajmer in which it has maintained that the promotions granted to

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respondents Nos.4 & 5 are in order and the applicants are, therefore, not entitled to promotion by jumping over them.

6. We have heard the learned counsel for the applicants and the learned counsel for respondents Nos.1,2 and 3. None is present on behalf of respondents Nos.4,5 and 6. We have also perused the material on record. The challenge in this O.A is to the promotion granted by restructuring by Annex.A1 dated 3.2.93 in pursuance of the scheme Annex.A21 dated 27.1.93. S/Shri R.M. Gaur and Kanhaiyalal Sharma, whose promotion has been challenged by the applicants are at Sl.No.4 & 5 of the order Annex.A1. As per the existing seniority position the persons on whose behalf the matter is being agitated, except the person at Sl.No.15 at page 3 of the O.A, Shri Arjun Singh, are stated to be senior to respondents Nos.4 & 5. The claim of the applicants is that on the basis of their general seniority itself they are entitled to promotion by restructuring prior to the grant of promotion to respondents Nos.4 & 5, on the basis of the instructions of the Railway Board dated 26.2.85, referred to above. Even otherwise it is a well settled position that even a candidate belonging to a reserved category is entitled to be considered for promotion on the basis of his general seniority, even if as a result of such consideration for grant of promotion to him this would result in larger number of SC & ST candidates being granted promotion than the percentages of 15% & 7½% respectively prescribed for them. Therefore, on the basis of their general seniority position the persons on whose behalf the matter/being agitated would be entitled to promotion by restructuring on the basis of the general seniority.

7. However, there is a question of fixation of seniority of these persons. The matter relating to seniority of the reserved category candidates who have got accelerated promotions has indeed been agitated before various Benches of the Tribunal and

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also before the Hon'ble Supreme Court. The Railway Board's instruction regarding regulating the seniority of such persons were considered by the Hon'ble Supreme Court in its judgment in the case of Union of India & Ors etc. Vs. Virbal Singh Chouhan etc, JT 1995 (7) SC 231. The Hon'ble Supreme Court had upheld the Railway Board's instructions in this regard and has laid down how the seniority of such persons is to be regulated. The learned counsel for the respondents, during the arguments stated that an exercise to refix the seniority of officials concerned in accordance with the judgment in Virbal Singh Chouhan case has been undertaken and seniority position of officials at various levels in the light of this judgment is likely to be finalized shortly. Once the seniority position of the officials concerned has been finalized, the correct seniority position of the persons on whose behalf this matter has been agitated in this O.A would be available as on 1.1.93, i.e. the date from which the benefit of promotion by restructuring would be available.

8. In the circumstances, we direct that the respondents shall expedite the process of redetermination of seniority of the officials concerned in accordance with the judgment of the Hon'ble Supreme Court in Virbal Singh Chouhan case and thereafter consider the cases of the applicants for upgradation on the basis of their seniority position. It is expected that the exercise of finalisation of seniority position would be completed within 3 months and thereafter the persons on whose behalf this matter has been agitated here would be considered for promotion by upgradation within a period of one month in accordance with their seniority position if they are entitled to such promotion.

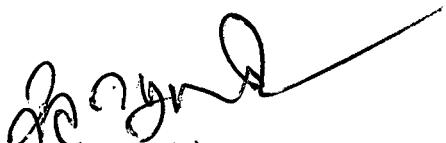
9. The application filed by the applicants for joining together and filing a joint application has already been allowed. Therefore, the objection of the respondents to the

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maintainability of the O.A on grounds relating to that does not survive. As regards the other reliefs claimed by the applicants, relief against Annex.A2 has not been pressed by the applicants. The learned counsel for the applicants also does not press the ground seeking a declaration that reservation is available against vacancies and not against posts.

10. The O.A stands disposed of. No order as to costs.


(Eatan Prakash)

Judicial Member.


(O.P. Sharma)

Administrative Member.