

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,
JAIPUR.

O.A. No.158/93

Dt. of order: 15-12-93

All India SC & ST Railway : Applicants
Employees Association, Jaipur,
and Another.

VS.

Union of India & Ors. : Respondents

Mr. R. N. Mathur : Counsel for applicants

Mr. Manish Bhandari : Counsel for respondents

CORAM:

Hon'ble Mr. Justice D.L. Mehta, Vice Chairman

Hon'ble Mr. B.B. Mahajan, Member (Adm.).

PER HON'BLE MR. B.B. MAHAJAN, MEMBER (ADM.).

All India SC & ST Railway Employees Association
Jaipur Division alongwith another has filed this application
under Sec. 19 of the A.Ts Act, 1985, with prayer
that the following directions may be issued to the
respondents:

- (i) That the vacancies available from time to time
in various categories (in promotional cadres)
shall be filled-in on the basis of general seniority
even if quota prescribed for SC/ST of 15% and
7½% respectively has been fulfilled. If a person
belonging to SC/ST community is entitled to get
promotion on his own merit and not in reserved
vacancy then such appointment/promotion will be
excluded while computing the required percentage.
- (ii) That the seniority of the employees belonging to
SC's/ST's in any cadre shall be governed by the
general rules provided in the IREM as modified
from time to time by the rules made by Railway
Board under Rule 123 of the Indian Railway Establishment
Code, the officials belonging to SCs/STs
may be considered and promotion will be given to
them against general unreserved vacancies in accordance
with the seniority as per their appointment/
promotion in the promotional cadre and according to
the normal rules of the service.

2. The reply has not been filed by the respondents. However, we have heard the learned counsel for the parties. The issues raised in this O.A. have been substantially decided in the order of the Jodhpur Bench of the Tribunal dated 20.10.92 in O.A. No. 326 of 89 All India Non-Scheduled Castes/Scheduled Tribes Rly. Employees Association (Bikaner) Vs. Union of India & Ors. In para 11(iv) of that order, it was held as under:

"The seniority of the officials belonging to Scheduled Castes and Scheduled Tribes in any cadre is to be governed by general rules of seniority laid down in the Manual, as modified from time to time by the Rules made by the Railway Board under Rule 123 of the Code. For this purpose, the promotions made against reservation quota cannot be considered as fortuitous as these are made in accordance with the instructions issued by the Railway Board. The officials belonging to SCs and STs will be considered against general unreserved vacancies in accordance with their seniority as prepared under the normal rules of seniority."

So far as prayer number one is concerned, it was held as under:

"The vacancies available from time to time in various cadres will be filled up in accordance with 40 point roster system subject to the condition that the posts held by the member of SCs/STs in the cadre of promotional posts do not exceed 15% and 7½% respectively at any given point of time. If a person belonging to SCs or STs is promoted on his own merit and not in a reserve vacancy then such appointment will be excluded while computing the required percentage. This will, however, be subject to any orders that Hon'ble Supreme Court may make in the Special Leave Petition pending against the judgment of Allahabad Bench in J.C. Malik's case (supra) or in any other cases."

3. The restriction that the posts held by members of SCs/STs in the cadre of promotional posts does not exceed 15% and 7½% respectively obviously operates only when promotion has to be made on the basis of reservations against the roster point. Where an official belonging to SC/ST becomes due for consideration for promotion according to his general seniority, and not on the basis of any reservation, ^{he} it cannot obviously be denied consideration only on the ground that the number of SCs/STs

in the promotion cadre would exceed the prescribed percentage. It will amount to discrimination against officials belonging to SCs/STs which would ^{be} hit Article 16 of the Constitution of India..

4. In view of the above, we allow this application and direct that if an official belonging to SC/ST community is entitled to be considered for promotion on the basis of his seniority and not against reservation quota, he shall be duly considered for promotion in accordance with his seniority even if the number of officials belonging to SCs/STs in the cadre of promotional post exceeds or would thereby exceed the prescribed strength of 15% and 7.5% respectively. We also direct that the seniority of the employees belonging to SCs/STs in any cadre shall be governed by the general rules provided in the Indian Railway Establishment Manual as modified from time to time by the Railway Board under Rule 123 of the Indian Railway Establishment Code and for this purpose the promotions made against reservation quota cannot be considered as fortuitous as these are made in accordance with the instructions issued by the Railway Board.

5. Parties to bear their own costs.


(B.B. Mahajan)
Member (A)


(D.L. Mehta)
Vice Chairman.