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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

O.A. No. 169/93
T.A. No.

199

DATE OF DECISION 5.5.2000

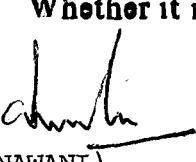
Chunni Lal **Petitioner**
Mr. Shiv Kumar **Advocate for the Petitioner (s)**
Versus
Union of India and ors. **Respondent**
Mr. T.P. Sharma **Advocate for the Respondent (s)**

CORAM :

The Hon'ble Mr. S.K.AGARWAL, JUDICIAL MEMBER

The Hon'ble Mr. N.P.NAWANI, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?


(N.P.NAWANI)
Adm. Member


(S.K.AGARWAL)
Judl. Member

2. The applicant submitted the SC certificate dated 5.6.1986 issued by the Tehsildar, Ajmer to the respondents on 18.4.1988. The Railway Board vide circular dated 18.11.1983 has issued

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 05.05.2000

OA No.169/93

Chunni Lal s/o Shri Gajanand, aged 56 years, at present employes on the post of JSS in 30 Smith Shop, Carriage and Wagon Shop, Western Railway, Ajmer.

.. Applicant

Versus

1. The Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. The Dy. Chief Mechanical Enginner (Carriage and Wagon), Western Railway, Ajmer.
3. The Chief Works Manager, Western Railway, Ajmer.
4. Chander Shekhar Mathur, Sr. Chargeman, 30 Inspection Carriage and Wagon Shop, Western Railway, Ajmer.

.. Respondents

Mr. Shiv Kumar, counsel for the applicant

Mr. T.P.Sharma, counsel for the respondents

CORAM:

Hon'ble Mr. S.K.Agarwal, Judicial Member

Hon'ble Mr. N.P.Nawani, Administrative Member

ORDER

Per Hon'ble Mr. N.P.Nawani, Administrative Member

In this Original Application the controversy lies in a limited compass - whether the Scheduled Caste (Koli Caste) Certificate (Ann.A6) submitted by the applicant, Chunni Lal, on 18.4.1988 was required to be accepted by the respondents and consequently all the available benefits of being a Scheduled Caste person were to be extended to the applicant. This having not been done by the respondents, the applicant had to file this OA.

2. The applicant submitted the SC certificate dated 5.6.1986 issued by the Tehsildar, Ajmer to the respondents on 18.4.1988. The Railway Board vide circular dated 18.11.1983 has issued instructions that employees are eligible to get the benefit of SC/ST reservation from the date the Caste Certificate is submitted in the department. In the service records of the applicant, his gotra "Mahawar" has been mentioned as caste. In the medical certificate, he has signed as Chunni Lal Biloniya. As there were apparent contradictions regarding caste in three different

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documents, clarification was sought, which he supplied (Ann.A8 and A9). The respondents also deputed a Welfare Inspector to verify the Caste Certificate from the office of Tehsildar, Ajmer but "Tehsildar, Ajmer replied that record of the said period was not available". As such, the respondents decided that the contention of the applicant that he is a member of SC community is disputed and since the burden of proving that the applicant belongs to SC community lied on him and he did not produce any other record, he was not given benefit of reservation when regular promotion to the post of JSS were made. It has been admitted that the applicant was posted as JSS purely on ad-hoc basis vide order dated 15.3.1991 but was required to vacate the post when regularly selected candidate was available.

3. The immediate fall out of the non-acceptance of the Caste Certificate of the applicant was that he was considered as a general caste candidate when he appeared for the selection of JSS in the scale of Rs. 2000-3200 (RP) which is a selection post required to be filled up on merit-cum-suitability whereas the respondents state that it is filled up on promotion by conducting the written test and viva-voce. The applicant also contends that the cadre strength of JSS is 30 and 1 post is required to be reserved to SC candidate and further that no SC regular candidate was holding the post of JSS except he himself holding a post on ad-hoc basis. Further, as a reserve category candidate, the applicant was required to obtain only 10 out of 35 marks to qualify and he was not declared successful since he was treated as general candidate for whom the qualifying marks were 21 of 35. On the other hand, according to the respondents, 3 posts were to be filled up and no post was reserved for SC/ST and as such there was no question of relaxation of marks for the SC candidate. The respondents have also stated in their reply "that Hon'ble Supreme Court has held that reservations do not apply to promotion" and the applicant has failed to mention how many marks he got in the written test.

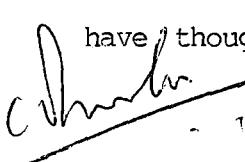
4. It has also been urged by the applicant that respondent No.4 was not eligible having not completed 2 years of service in the feeder grade, yet he was allowed to appear in the selection process and having qualified, given promotion which resulted the applicant's reversion. The official respondents have denied that respondent No.4 was ineligible and having duly passed the selection test, was promoted and the applicant had to be reverted.

[Handwritten signature]

5. We have heard the learned counsel for the parties and examined the material on record.

6. The main controversy to be resolved is regarding non-acceptance of the Caste Certificate submitted by the applicant, which, as contended by the applicant, resulted in his non-selection and reversion. We have given our anxious consideration to the rival contentions in this regard. It is not disputed that the applicant submitted a Scheduled Caste certificate dated 5.6.1986 on 18.4.1988 in terms of R.B. circular dated 18.11.1983. However, since the applicant had mentioned "Mahawar" gotra against the caste column in his records and had written his name as "Chunni Lal Biloniya" in his Medical Certificate, such contradiction led the respondents to send the Welfare Inspector to the Office of Tehsildar, Ajmer but the "Tehsildar of Ajmer replied that record of the said period was not available". (emphasis supplied). It has to be appreciated that a Caste Certificate issued by a competent authority remains valid unless it is cancelled by the authority after due enquiry. The respondents have "discarded" the Caste Certificate submitted by the applicant in a very cavalier manner. Instead of making a written request to the Tehsildar, Ajmer to confirm the Caste Certificate, they sent a Welfare Inspector to the Office of the Tehsildar and the Tehsildar (not clear if himself) replied that records for the period are not available. This is not just acceptable and we have no hesitation in holding that the Schedule Caste certificate held by the applicant is valid unless cancelled by the competent authority and should not have been declared as disputed and consequently not accepted by the concerned authorities, resulting in the benefits given by the Railway Board letter dated 18.11.1983 being denied to the applicant.

7. As regards promotion to the post of JSS, we are of the opinion that once ^{we have} held that SC certificate issued by the Tehsildar, Ajmer was valid, it follows that the applicant has to be given the benefit of reservation, as and when the opportunity presents itself. The applicant has contended that the cadre strength of JSS is 30 and one post is required to be reserved for the SC candidate, whereas the respondents have stated that selection ^{was} held for 3 posts only and there was no vacancy available for SC candidates. The respondents have also stated that the Apex Court has held that reservation did not apply to promotion, they have though not stated which judgment of the Apex Court. This



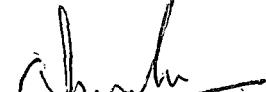
contention of the respondents is not acceptable, first because they have not cited the relevant judgment of the Apex Court and secondly, because to the best of our knowledge, there is no judgment of the Hon'ble Supreme Court which rules out reservation completely in all and every promotion. The respondents must follow the roster points, while determining whether a particular vacancy is reserved or not. Once the prescribed reservation is complete in a cadre, the vacancies caused due to retirement, resignation etc. at a particular roster point should be filled up by the candidates according to the category which had occupied that particular roster point. The respondents are advised to refer to the well known judgment of Hon'ble the Supreme Court in the case of R.K.Sabharwal v. State of Punjab and ors., 1995 (1) SLR 791, Ajit Singh-II, JT 1999 (6) SC 631 etc. which have laid down the law in this regard.

8. In view of above discussions, we dispose of this Original Application with following directions:

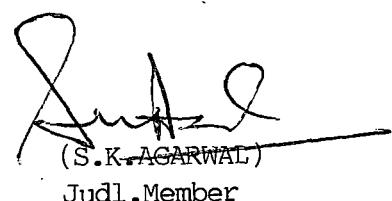
- i) The applicant should be treated as belonging to the Scheduled Caste (Koli) community on the basis of the Caste Certificate dated 5.6.1986 issued by the Tehsildar, Ajmer.
- ii) The question whether a vacancy ought to have been reserved for the Scheduled Caste candidate out of the 3 vacancies of JSS in the scale of Rs. 2000-3200 (RP) filled up by the selection process started with a written examination on 16.12.1992 should be re-examined and if it is found that one of the three vacancies related to a reserve point meant for SC candidate, the assessment whether the applicant qualified in the written examination or not should be re-done and if the applicant is found to have qualified in the written examination, his viva-voce test should be taken.
- iii) In case the applicant is found to have qualified for the promotion to the post of JSS, he should be treated as having been promoted to the post of JSS in the scale of Rs. 2000-3200 (RP) w.e.f. the date his junior has been so promoted with consequential benefits.

These directions may be carried out within a period of 6 months from the date of receipt of a copy of this order.

Parties to bear their own costs.


(N.P. NAWANI)

Adm. Member


(S.K. AGARWAL)
Judl. Member