

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Date of Order : 28-04-04

1. OA No.613/2003.

- (i) Ranjan Dwivedi, aged about 41 years, S/o Shri Jagat Narain Dwivedi, resident of C-22/1, Singh Bhumi Colony, Khatipura, Jaipur, at present posted as Senior Section Engineer, Group-C, Carriage & Wagon, North-Western Railway, Jaipur in the pay scale of Rs.7450-11500.
- (ii) Saleem Sheikh, aged about 40 years, S/o Shri Mohd. Ismail, resident of 283, Arvind Nagar, Railway Station, Jaipur, at present posted as Senior Section Engineer (Group-C), Carriage & Wagon, North Western Railway, Jaipur in the pay scale of Rs.7450-11500.

... Applicants.

v e r s u s

1. Union of India through General Manager, North-Western Railway, Railway Station, Jaipur.
2. General Manager, Western Railway, Churchgate, Mumbai.
3. Divisional Railway Manager, North-Western Railway, Jaipur Division, Jaipur.

... Respondents.

Mr. Virendra Lodha counsel for the applicants.
Mr. V. S. Gurjar counsel for the respondents.

2. OA No. 14/2004.

Shri Dhruva Datta Sharma S/o Shri Tara Shankar Sharma aged about 55 years R/o Railway Quarter No.288/3, Road No.1, Ganpati Nagar, Railway Colony, presently posted as Senior Section Engineer (C&W) department, North West Railway, Jaipur.

v e r s u s

1. Union of India through General Manager, North West Railway, in front of Railway Hospital, Jaipur.

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2. General Manager, Western Railway, Church Gate, Mumbai.
3. Divisional Railway Manager, North West Railway, Jaipur.
4. Sr. Divisional Mechanical Engineer (Establishment) North West Railway, Jaipur.

... Respondents.

Mr. S. Srivastava counsel for the applicant.
Mr. V. S. Gurjar counsel for the respondents.

3. OA No. 17/2004.

Brijendra Kumar Sharma S/o Shri Dhuri Lal Sharma
aged about 40 years R/o S-12-A Amba Bari, Jaipur,
presently posted as Sr. Section Engineer under Sr.
D.M.E. (Establishment) N.W.R. Jaipur.

... Applicant.

v e r s u s

1. Union of India through General Manager, North West Railway in front of Railway Hospital, Jaipur.
2. General Manager, Western Railway, Church Gate, Mumbai.
3. Divisional Railway Manager, North West Railway, Jaipur.
4. Sr. Divisional Mechanical Engineer (Establishment) North West Railway, Jaipur.

... Respondents.

Mr. S. Srivastava counsel for the applicant.
Mr. S. S. Gurjar counsel for the respondents.


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Hon'ble Mr. M. L. Chauhan, Judicial Member.
Hon'ble Mr. A. K. Bhandari, Administrative Member.

: O R D E R :
(per Hon'ble Mr. M. L. Chauhan)

By this common order, we propose to dispose of these OAs (OA No.613/2003, 14/2004 & 17/2004), as common question of facts and law is involved in these cases.

2. The facts of the case are that the applicants who were the substantive holder of the post of Section Engineer in the pay scale of Rs.6500-10500 were promoted on ad hoc basis as Senior Section Engineers in the pay scale of Rs.7450-11500/- vide different orders dated 16.12.2002 & 14.03.2003 in the case of applicants in OA No.613/2003 and vide order dated 16.12.2002 in the case of applicants in OA Nos. 14/2004 & 17/2004, with a specific condition stipulated therein to the effect that the promotions were purely ad hoc and in the event of instructions received in reference to Scheduled Caste/Scheduled Tribe Roster or on account of any other reason having adverse effect on account of the purely ad hoc promotions made, then in that situation the applicants would be reverted to their substantive post without any notice. Subsequently, the respondents took steps to fill these posts on regular basis. Apprehending their reversion, two of the applicant in OA No.613/2003 approached this Tribunal and this Tribunal vide order dated 30.12.2003 granted interim stay ex-parte thereby directing the respondents to maintain status-quo qua the applicants til the next date. The ex-parte stay order was granted on the premise that according to the applicants in North Western Railway there are 16 posts of Senior Section Engineers (C&W). Out of these 16 posts, 11 posts are already filled in The Erstwhile Western Railway. Out of these 11 posts, 3 persons belongs to reserved category namely Neta Ram, Roop Chand Rajora and Laxmi Narain. Thus, no further reservation for SC in the category of Senior Section Engineer is required to be made. The interim stay so granted is continuing so far as the applicants in OA No.613/2003 are concerned. So far as the applicants in OA No.14/2004 and 17/2004 are



concerned, they approach the Tribunal after the passing of the order of reversion on 06.01.2004, as such, no interim relief was granted in their favour.

3. The grievance of the applicants in these OAs is that since the posts meant for persons belonging to reserved category have already been filled by promoting such persons, as such, no further reservation for SC in the category of Senior Section Engineer (C&W) is required to be made. The applicants have submitted that the persons Shri Neta Ram, Roop Chand Rajora and Laxmi Narain have been promoted against reserved quota and they cannot be treated as general candidates and in case further posts are reserved for SC category, the same will be in excess of the quota meant for the said category. Besides, the same will jeopardise the interest of the applicants who are admittedly senior to the persons who have been promoted vide impugned orders dated 06.01.2004. It is on the basis of these facts, the applicants have filed these OAs.

4. In OA No.613/2003, the applicant has prayed that the respondents be directed to give regular promotion to the applicants on the post of Senior Section Engineer in the pay scale of Rs.7450-11500 forthwith and further to adhere the roster only from the point No.1, as according to the applicants on creation of new zone i.e. North Western Zone, Jaipur, the roster point will operate only from Point NO.1 and the respondents should adhere to this roster point and fill available 5 vacancies accordingly.

5. In OA No.14/2004 & 17/2004, which was filed after making the regular promotion of the reserved candidates and thereby reverting the applicants, the applicants have prayed that the impugned order dated 06.01.2004 whereby they have been reverted from the posts of Senior Section Engineer to the lower posts of

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Section Engineer be quashed and the respondents be directed to promote them on promotional post of Senior Section Engineer (C&W).

6. Notice of this application was given to the respondents. The respondents have filed reply. In the reply, it has been stated that the applicants were promoted purely on ad hoc basis on the post of Senior Section Engineer (C&W) in the pay scale of Rs.7450-11500 in accordance with the seniority. At the time when the applicants were granted ad hoc promotion, 4 candidates of SC in the pay scale of Rs.7450-11500 on the post of Sr. Section Engineer were also holding the posts. At the relevant time these posts were to be filled by the Head Office on the basis of seniority of all the 8 Divisions, since these posts were related with the railway safety section hence they could not be kept vacant. Since the service details of the 4 employees of S.C. holding the posts of Sr. Section Engineer were not available at the divisional level to ascertain the fact that whether these employees were accorded promotion on the basis of their own merit or against the reserved quota, they were treated in the reserved category at the divisional level keeping in view their seniority which was made purely on ad hoc basis. But the applicants could be promoted only keeping in view the Roster point providing for reservation to S.C. and S.T. Thus, the promotion at the relevant time of the employees of S.C. could be made only after definite information in reference to the availability of vacant post of reserved and unreserved categories.

6.1 It is further stated that earlier the posts carrying pay scale of Rs.7450-11500 were within the administrative control of the Head Office therefore these posts were filled at the divisional level on ad hoc basis but now these posts have been decentralized in view of Head Office letter dated 29.07.2003 (Annexure A/4) and hence these 2 posts are to be filled

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up by the Divisional Office.

6.2 The Respondents have further submitted that at Jaipur Division, the sanctioned cadre of Sr. Section Engineer consist of 16 posts and 1 post on work charge basis and 3 posts at Rewari Station (earlier in Bikaner Division) having been merged with Jaipur Division, thus total cadre of the posts now is 20.

6.3 Accordingly to Roster out of a cadre of 20 posts, 3 posts are reserved for S.C. (Point No.4,12 and 16) and 2 posts are to be reserved for S.T (Point No.8 and 20). Thus, out of cadre consisting of 20 posts total 5 posts are of the reserved cadre for S.T. and S.C., Out of these 5 reserved posts no employee of the reserved category is holding the post on regular basis. Out of 4 employees of S.C. one Shri Giriraj Prasad has been transferred to Agra Division and, therefore, he cannot be counted in Jaipur Division. The remaining members of S.C. have been promoted on the basis of their eligibility keeping in view their seniority etc. as is evident ^{by} Annexure A/7. Thus, keeping in view the dictum of the HOn'ble Apex Court of the land in case of R. K. Sabbarwal the candidates who have been promoted on the post on account of their own seniority merit cannot be counted towards the reservation quota.

6.4. It is further stated that prior to issuance of letter dated 06.01.2004, 20 posts in the pay scale of Rs.7450-11500 (Revised Pay scale) the following employees of S.C. and S.T. were working who were accorded promotion accordingly to their seniority merit, namely:-

- (1) Shri Netaram-Tikuram, SSE, Jaipur(SC);
- (2) Shri Nirmal Kumar-Joruram(SC), SSE Rewari;
- (3) Shri Luxminarayan-Sunderlal(SC), SSE, Kanakpura;
- (4) Shri Roopchand Rajora-narayanlal (SC), SSE, Jaipur.

In this reference, the communication dated 03.12.2003 issued by the Head Office (Annexure A/1) is already on record. Thus, in view of the details furnished hereinabove it is apparent on the face of record that no employee of SC and ST category is holding the post of SSE against the reserved quota but in view of the Office Order dated 06.01.2004, 2 employees of ST and 1 of SC have been accorded promotion in the pay scale of Rs.7450-11500 to the post of SSE. The applicants in OA No.613/2003 have not been reverted in view of the operation of the interim order dated 30.12.2003 passed by this Hon'ble Tribunal. A copy of the same has been annexed with the reply to the OA as Annexure R/1.

6.5 The fact that the applicants are senior to the persons who have been promoted against the post meant for reserved category has not been denied by the respondents.

7. Since the interim stay in one of the OA was operating, on the request of learned counsel for both the parties, the matter was taken for final hearing.

8. We have heard the learned counsel for the parties and gone through the material placed on record. The respondents have also brought the relevant record as per direction issued by this Tribunal.

9. The main contention of learned counsel for the applicants is that previously promotion to the post of Senior Section Engineer (C&W) were made on the basis of zonal seniority list from the grade of Rs.6500-10500. The new zone namely North Western Railway came into effect w.e.f. 01.10.2002 and on account of formation of new zone, now the promotion has to be made on the basis of seniority maintained at divisional level. As such, the roster has to be started from Point NO.1 as the

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promotion made in earlier zone namely Western Railway cannot be made applicable in the instant case. Learned counsel for the applicant has further argued that as can be seen from Annexure A-6, the persons who were earlier promoted as Senior Section Engineers and shown as belonging to reserved categories though promoted as per general seniority list but there was no shortfall in reserved category posts. As such contention of the respondents that there are shortfall in the categories of SC and ST as out of 5 posts meant for reserved categories in the cadre strength of 20, not even a single post had been filled in on the reservation basis cannot be accepted being contrary to what has been stated in Annexure A-6. Thus according to learned counsel for the applicant there was proper representation of reserved category in the cadre of Senior Section Engineers and there was not shortfall on that account.

10. We have given thoughtful consideration to the submissions made by the learned counsel for the applicants and we are of the view that the applicants in all these OAs have not made out any case for our interference. As can be seen from the facts as stated above, initially the cadre of Senior Section Engineer (C&W) in Western Railway consists of 16 posts. New zone namely North Western Railway was created on 01.10.2002 consisting of four divisions namely Jaipur and Ajmer Division which were previously part of the Western Railway and Jodhpur and Bikaner Division which were the part of the Northern Railway. It is also not disputed that presently the cadre strength of the Senior Section Engineers is 20 in North Western Railway as one post on work charge basis and 3 posts at Rewari Station (earlier in Bikaner Division) were merged with Jaipur Division. It can not also be disputed that according to the roster, out of cadre of 20 posts, 3 posts are required to be manned by SC candidates (Point No.14, 12 & 16) and 2 posts are to be manned by ST candidates (Point No.8 & 20). We have perused Annexure A-8 appended with OA No.613/2003. Alongwith this,

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Annexure, Gradation ^{list} of Senior Section Engineer in the grade of Rs.7450-11500 in respect of North Western Railway is also annexed. A perusal of this document shows that the sanctioned strength of Senior Section Engineer has been shown as 17+3-20. Further perusal of it also reveals that w.e.f 07.03.1993 till 17.04.2002, 15 persons have been appointed as Senior Section Engineer on different dates. Out of the 15 persons who are occupying the post of Senior Section Engineer except

Neta Ram	Sl. No.1
Nirmal Kumar	" 10
Laxminarayan	" 14
Roopchand Rajora	" 15

Caste of all other persons have been shown as "General Category", Where as against these 4 persons below column of caste "SC" has been mentioned. Thus, out of the cadre strength of 20 posts, 15 posts were already filled in from the persons mentioned in gradation list appended with Annexure A-8 and regular promotion were required to be made for remaining 5 vacant posts of Senior Section Engineers. The respondents have stated in the reply that all these 4 persons who belongs to 'SC' category have been promoted on their own seniority list on merit basis and they were not promoted against the reserved posts. For this purpose, our attention was also invited to the letter dtd 03.12.2003 Annexure A-7 written by the General Manager (E) of Western Railway. This letter indicates that Shri Roopchand Rajoria (Sl.No.1), Shri Netaram (Sl.No.2) & Shri Laxminarayan (Sl. NO.4) were promoted on their own merit in general seniority. In respect of Laxminarayan it was stated that though he was given promotion on his own merit as per general seniority, but he had given refusal for his promotion. Regarding Nirmal Kumar (Sl. No.10) no material was placed on record by the respondents to indicate whether he was also promoted against general seniority. The

respondents have drawn our attention to the letter No.EM.839/8/36/Vol.VII dated 03.12.2003 written by the General Manager (E) to the Headquarter Office, Churchgate, Mumbai-20 (Forming part of record made available for our perusal). It will be useful to quote this letter, which reads as under :-

DRM (E)-JP

(kind attention : Smt. Anupam Ban, SrDPO-JP)

Sub : Promotion, Reversion & Transfer Of NG Staff JP, SSE (C&W), Scale Rs.7450-11500

Ref: This office letters of even no. dated 4/9/03

After verifying the records in this office, the position of the employees is shown as under.

1. Shri Roopchand Rajoria was promoted on his own merit in general seniority.
2. Shri Netaram was promoted on his own merit as per general seniority.
3. Shri Giriraj Singh was promoted against reservation point.
4. Shri Laxminarayan was promoted on his own merit as per general seniority, but he had given refusal for his promotion. Therefore, his name has not been shown in the cadre of SSE, scale Rs.7450-11500.

(k.k. Appus
for General Manager (E))

Thus, in view of the material placed on record it can safely be concluded that all the 15 persons who are occupying the post of Senior Section Engineer (C&W) in the scale of Rs.7450-11500 belongs to general category and they have not been promoted against reserved vacancies/posts. As such no infirmity can be found on the action of the respondents in case they have decided to fill the remaining post of Senior Section Engineers from reserved category, as according to post based roster the total cadre strength of posts

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are 20. 5 posts namely 3 from SC and 2 from ST are to be filled from the reserved category as per prescribed percentage. The contention of the learned counsel for the respondents that on formation of new zone namely North Western Railway, Jaipur, roster should start from Point No.1 cannot be accepted. The Apex Court in the case of Union of India & Ors. vs. J.C. Malik & Others, 1996 (1) SLJ 114 has held that reservation of SC/ST will apply on the total number of posts in the cadre and not on the basis of vacancies. In that case, High Court has held that reservation should be made on the basis of posts in the cadre and not on the basis of vacancies occurring during a particular year. The Apex Court has observed that this view of the High Court has been approved in the recent judgement by a Constitution Bench of this Court in R. K. Sabharwal vs. State of Punjab & Ors., 1995 (2) SCC 743 wherein it has been observed :-

"A Division Bench of the Allahabad High Court in J. C. Malik vs. Union of India interpreted Railway Board's circular dated 20.04.1970 providing 15% reservations for the Scheduled Castes. The High Court held that the percentage of reservation is in respect of the appointment to the posts in a cadre. On the basis of the material placed before the High Court it reached the conclusion that if the reservation is permitted in the vacancies after all the posts in a cadre are filled then serious consequences would ensue and the general category is likely to suffer considerably. We see no infirmity in the view taken by the High Court."

The Apex Court dismissed the appeal filed by the UOI having regard to the decision of Constitution Bench in the case of Sabharwal's (supra). Applying the ratio as laid by the Apex Court in the case of J.C. Malik's (supra), in the instant case also we see no infirmity in the action of the respondents thereby reserving the five posts of Sr. Section Engineer. As already stated above, the cadre strength of Sr. Section Engineer is 20. Out of these posts, 15 posts are meant for General categories. As per stand taken by the respondents none

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of these posts have been filled on the basis of reservation. Nothing has been brought to our notice that four SC candidates out of 15 were not promoted on the basis of general seniority but they were promoted on account of reservations. Thus action of the respondents thereby filling the remaining 5 posts of Sr. Section Engineer from reserved categories by making reservation on the basis of posts in the cadre cannot be faulted.

11. In view of what has been stated above, all these OAs (OA No.613/2003, 14/2004 & 17/2004) are dismissed with no order as to costs. The interim relief granted in OA No.613/2003 on 30.12.2003 shall stands vacat-

(A. K. BHANDARI)
MEMBER (A)

(M. L. CHAUHAN)
MEMBER (J)