

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 31.7.96

OA 196/95

Suraj Narain Modi

... Applicant

Versus

Union of India and another

... Respondents

CORAM:

HON'BLE MR. GOPAL PRISHU, VICE CHAIRMAN

HON'BLE MR. O.P. SHAFMA, ADMINISTRATIVE MEMBER

For the Applicant

... Mr. P.V. Calla

For Respondents No.1 and 2

... Mr. Manish Bhandari

For Respondents No.3 to 5

... Mr. Shiv Kumar

O R D E R

PER HON'BLE MR. GOPAL PRISHU, VICE CHAIRMAN

Applicant, Suraj Narain Modi, in this application u/s 19 of the Administrative Tribunals Act, 1985, has sought a direction to the respondents not to accord promotions to the members of the Scheduled Castes and Scheduled Tribes to the post of Office Superintendent grade Rs.2000-3200 on the basis of the seniority list dated 1.11.93, at Ann.A-1, as also for a direction to consider him for promotion to the aforesaid post w.e.f. 1.5.95, when Shri Amar Narain Mathur had retired from service.

2. We have heard the learned counsel for the parties and have carefully perused the records.

3. The contention of the applicant is that while working on the post of Head Clerk the process for selection to the next higher post i.e. Chief Clerk was initiated. At that time his position in the seniority list was at No.122 but members of the Scheduled Castes/Scheduled Tribes, who were appointed later than the applicant at the initial stage, were promoted with the aid of reservation policy by applying 40 Point Roster. The result is that the members of the Scheduled Castes/Scheduled Tribes were promoted in excess of the prescribed percentage of reservations and that such persons though appointed later than the applicant but on getting promotion right from the post of Clerk to the post of Senior Clerk and thereafter to the post of Chief Clerk, they superseded the applicant. The Hon'ble Supreme Court, in the case of P.K. Sabharwal and others v. State of Punjab and others, reported in 1995 (1) SLE 791 & (1995) 29 ATC 481, held as follows :-

Chien "The reservations provided under the impugned Government

instructions are to be operated in accordance with the roster to be maintained in each Department. The roster is implemented in the form of running account from year to year. The purpose of "running account" is to make sure that the Scheduled Castes/Scheduled Tribes and Backward Classes get their percentage of reserved posts. The concept of "running account" in the impugned instructions has to be so interpreted that it does not result in excessive reservation."

The Hon'ble Supreme Court further observed that;

"The numerical quota of posts is not a shifting boundary but represents a figure with due application of mind. Therefore, the only way to assure equality of opportunity to the Backward Classes and the general category is to permit the roster to operate till the time the respective appointees/promotees occupy the posts meant for them in the roster. The operation of the roster and the "running account" must come to an end thereafter. The vacancies arising in the cadre, after the initial posts are filled, will pose no difficulty. As and when there is a vacancy whether permanent or temporary in a particular post the same has to be filled from amongst the category to which the post belonged in the roster. For example the Scheduled Caste persons holding the posts at roster points 1, 7, 15 retire then these slots are to be filled from amongst the persons belonging to the Scheduled Castes. Similarly, if the persons holding the post at points 8 to 14 or 23 to 29 retire then these slots are to be filled from among the general category. By following this procedure there shall neither be shortfall nor excess in the percentage of reservation."

4. It is stated by the applicant that the persons named in the application in para 4(v) have earned promotion to the post of Office Superintendent by virtue of reservation and not by virtue of their own merit. It is also contended that in the cadre of Office Superintendent the representation of the members of the Scheduled Castes/Scheduled Tribes is in excess of the quota of reservation prescribed for them and in such a situation the 40 Point Roster cannot be applied. It is further contended that the aforementioned officials in para 4(v) have availed the benefit of reservation at initial and promotional stages and were never promoted on the basis of merit. It is also urged that the percentage of reservation at any stage should not exceed 15% in the case of Scheduled Castes and 7½% in the case of Scheduled Tribes. In the event of promotions in excess of the prescribed percentage the service prospects of the general category candidates are jeopardised.


5. On the contrary, the respondents have contended that the claim of the applicant will be considered alongwith others for promotion to the post of Office Superintendent against the existing/anticipated vacancies if he falls within the zone of consideration against the general post and fulfils the eligibility criteria. It is also stated by the respondents that the reservations of Scheduled Castes/Scheduled Tribes will be restricted strictly within the prescribed limit of 15% and 7½% respectively and those

C.K. Nair

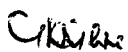
Scheduled Castes/Scheduled Tribes candidates who become eligible for consideration for promotion as Office Superintendent as general candidate due to their own seniority and merits will not be debarred for competing against the posts meant for candidates of general category. It has been categorically stated that reservations will be strictly regulated as per decisions of the Hon'ble Supreme Court on the subject and members of Scheduled Castes and Scheduled Tribes are also entitled to compete with the general category candidates if they are otherwise eligible as per their seniority. The applicant is an employee of the Railways. He belongs to the general category. The grievance of the applicant is with regard to fixation of seniority in the promoted cadre. It has been urged on behalf of the applicant that the benefit of accelerated seniority should not be available while considering the question of promotion to higher post.

6. The controversies raised in this case have been set at rest by decisions of the Hon'ble Supreme Court in the case of P.K. Sabharwal and others v. State of Punjab and others, reported in 1995 (1) SLR 791, and in the case of Ajit Singh Januja and others v. State of Punjab and others, reported in JT 1996 (2) SC 727. In view of the directions given by the Hon'ble Supreme Court in the cases cited supra, this application can be disposed of with a direction to the respondents to refix the seniority/promotion/reversion and take necessary suitable consequential steps in accordance with law laid down by the Hon'ble Supreme Court in the aforesaid cases within a period of three months from the date of receipt of a copy of this order. It is further clarified that it will be open to the applicant to make representation to the authority concerned pointing out the relevant decision of the Hon'ble Supreme Court laying down the law on this subject and the effect of the same on his seniority. If such representation is made within a period of one month from today, the same shall be taken into consideration by the authority concerned while complying with the directions contained hereinabove.

7. As per the aforesaid observations and directions, this application is disposed of finally. No order as to costs.


(G.P. SHARMA)

ADMINISTRATIVE MEMBER


(GOPAL KRISHNA)
VICE CHAIRMAN

VK