

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 218/95
T.A. No.

199

DATE OF DECISION 10.4.2000

Dileep Sharma and Ors. Petitioner

Mr. P.V.Calla Advocate for the Petitioner (s)

Versus

Union of India and ors. Respondent


Mr. Manish Bhandari Advocate for the Respondent (s)

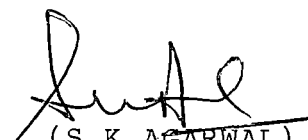
CORAM :

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 ? *yes*
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *yes*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *yes*


(N.P.NAWANI)
Adm. Member


(S.K.AGARWAL)
Judl. Member

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 10.4.2000

OA No.218/95

1. Dileep Sharma S/o Shri Gehimal Sharma, aged 55 years, resident of 249/20, Sheeshakhan, Ajmer.
2. Ratan Lal Agarwal S/o Shri Nathu Lal, aged 54 years, resident of 11/44, Brahampuri, Ajmer.
3. Ashok Garg S/o Shri P.D.Garg, aged 53 years, resident of 16, Main Street, Gandhi Chowk, Nasirabad.
4. Shri Kailash Chand Agal s/o Shri Ram Gopal Agal aged 39 years, resident of 69, Nagina Bagh, Ajmer.

.. Applicants

Versus

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. FA&CAO, Western Railway, Churchgate, Mumbai.
3. S&AO, Western Railway, Ajmer.

.. Respondents

Mr. P.V.Calla, counsel for the applicants

Mr. Manish Bhandari, counsel for respondents

CORAM:

HON'BLE MR. S.K.AGARWAL, JUDICIAL MEMBER

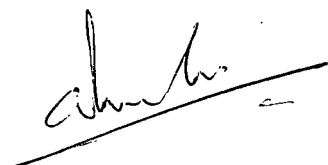
HON'BLE MR. N.P.NAWANI, ADMINISTRATIVE MEMBER

ORDER

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

In this Original Application filed under Section 19 of the Administrative Tribunal Act, 1985, the applicants pray for declaring the notification dated 5.5.1995 alongwith eligibility list enclosed therewith as illegal and direct the respondents to act upon and make process of selection on the basis of the notification dated 8.3.1994 (Ann.A2) treating the eligibility list enclosed therein as correct. It has also been prayed that the respondents may be directed not to accord promotion to the members of the Scheduled Castes and Scheduled Tribes from the post of Head Clerk Scale Rs. 1400-2300 to the post of Chief Clerk scale Rs. 1600-2660 in excess of the quota i.e. 15% and 7½% to the members of the SC and ST respectively as the prescribed quota is already full.

2. The facts, as stated by the applicants, are that they

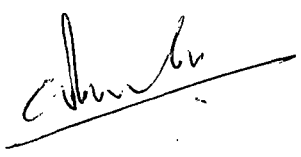


are working as substantive Head Clerks and are eligible to be considered for the post of Chief Clerk, which is a selection post to be filled up by positive act of selection consisting of written test and interview; that after 1986 seniority of the post of Chief Clerk is being maintained separately in all the 3 Compilation Offices located at Ajmer, Delhi (Kishanganj) and Mumbai; that the process of selection and the control over posting and transfer etc. is being carried out after the approval of the competent authority i.e. FA&CAO, Churchgate, Mumbai who is the Head of the Department in so far as Compilation Offices are concerned; that the total strength of the cadre of Chief Clerk under the control of respondent No.3 is 23 of which 3 posts are reserved for SC and 2 for ST candidates against which 3 SC candidates and 4 ST candidates are already occupying the posts of Chief Clerks at the time of issuance of the notification dated 8.3.1994; that 2 more persons, S/Shri J.P.Verma and B.L.Tanwar were promoted on ad-hoc basis to the post of Chief Clerk and thus 9 persons belonging to reserved categories were occupying the posts of Chief Clerks; that in comparison only 5 (4 ad-hoc and one regular) Chief Clerks of general category were working at the time of issuance of the said notification; that there were 13 vacancies required to be filled up from amongst general category candidates as the percentage of the members of the reserved categories were completed; that the competent authority vide memo dated 8.3.1994 (Ann.A2) had proposed to conduct a selection enclosing therein a list of eligible candidates containing two parts, there being 42 candidates in all in list A and 14 candidates in list B as per the rules, the memorandum itself mentioning that eligibility list has been prepared and got approved by the competent authority i.e. FA&CAO (WST) Churchgate, Mumbai; that it will appear from the aforementioned eligibility list that names of the reserved category candidates are shown at Sl Nos. 16,19,20,21,29,31,37 and 39 in list A and at 6,7,8,10 and 13 in list B; that even though it was mentioned in Ann.A2 that the date of written examination will be declared later on and vide letter dated 23.6.1994 it was informed that written test will be held on 11.7.1994, the said date for written examination was cancelled vide letter dated 5.7.1994 adding that next date will be informed later; that such cancellation of the date of the




written examination without the approval of the competent authority was improper and it was incumbent on respondent No.3 to take the selection within the same year; that apparently certain correspondence was exchanged between respondent No.3 and the Headquarters office although the applicants are not aware of the contents; they understand that in order to bestow favour to the members of the reserved category, the eligibility list prepared vide notification dated 8.3.1994 has been changed and a fresh notification was issued without obtaining approval of the competent authority enclosing therewith a fresh eligibility list informing that the written examination was to be held on 30.5.95 and that a perusal of the eligibility list enclosed with the impugned letter dated 5.5.1995 will show that the names of the reserved category candidates which appeared on various number below Sl.No.15 in the eligibility list annexed with Ann.A2 were now brought up at Sl.Nos. 1 to 7, 16, 26, 43 and 48 and the names of the general category candidates who were earlier between 1 to 15 have been lowered down qua the members of the reserved category candidates.

3. It is the contention of the applicants that they are aggrieved by the cancellation of the selection process initiated earlier and placing of names of the reserved category candidates over them in the eligibility list enclosed with the impugned letter dated 5.5.1995 (Ann.A1) because those candidates appearing at higher places in the list will get extra points for seniority and also because the reserved category candidates have been given higher placings based on the benefit of reservations which is against law laid down in Veerpal Singh Chauhan by the Allahabad Bench of the Tribunal and the law has finally settled by the Apex Court in the case of R.K.Sabharwal. The members of the staff working in Compilation Office, Ajmer sent a representation through proper channel to respondent No.1, the General Manager, Western Railway, Churchgate, Mumbai stating that in the case of J.C.Malik pending before the Apex Court (SLP No.565/93), the railway administration had given a written undertaking that the administration will maintain 15% and 7½% reservation prescribed for SC and ST respectively and consequently the members of the Compilation Office, Ajmer had requested through their representation Ann.A5 that appropriate orders/directions may be



issued by respondent No.1 to respondents Nos. 2 and 3 not to provide any promotion to reserved category candidates in excess of their quota. The applicant have based their case essentially on the ground that the changes in the eligibility list brought about by the impugned notification dated 5.5.1995 (Ann.A1) not only violated the standards of efficiency as provided in Article 335 of the Constitution but in view of the fact that the quota for reserved candidates in the promotional post was full, proposing to promote the SC/ST employees against the posts/vacancies which will be over and above the prescribed quota and contrary to the scheme of the Constitution of India and the law laid down by the Apex Court and the notification dated 5.5.1995 is, therefore, liable to be quashed and set-aside. It has also been contended that the reserved category candidates who are working presently in the feeder posts have come up through the process of reservation as against merit, they may supercede meritorious and efficient employees belonging to general category and cannot, therefore, be treated as eligible for further promotions. In the present case, not only the reserved candidates have been included in the eligibility list but they have been given higher stage so that they could get the advantage of merit for seniority for which they are not otherwise entitled. Finally, it has been contended that respondents must ensure that no action is taken which is contrary to the law laid down by the Hon'ble Apex Court in the case of R.K.Sabharwal.

4. Respondents in their reply have admitted that the cadre strength of the Chief Clerks in Ajmer office is 23 but with one post transferred, the strength went up to 24 and further with the temporary downgradation of 5 posts of Compilation Superintendents, there are now 32 posts (or 29) of the Chief Clerks. They have contested the bifurcation into SC and ST in the cadre and stated that no SC candidate is working on the post of Chief Clerk whereas 4 ST candidates are so working and have added that the SC/ST candidates cannot be precluded because seniority is being determined on the basis of entry into the grade from which eligibility list is prepared and it is incorrect to say that eligibility list has to be prepared on the basis of merit of the candidates and there exists no such rule. It has been clarified that so far as SC



candidates named at Sl.Nos. 5 to 7 in para 4(iv) of the OA are concerned, they were promoted on the basis of their own merit and seniority, hence these cannot be counted while determining the total strength of SC candidates who were given benefit of reservation, a principle that has been upheld by Jodhpur and Jaipur Benches of CAT, those working on ad-hoc basis cannot also be counted against the reservation quota. It has also been stated by the respondents that the examination notified on 8.3.1994 was not cancelled but only postponed because there were two views of the Benches of CAT regarding reservation policy and determination of seniority of such candidates based either on entry grade or base grade but Jaipur and Jodhpur Benches had taken a view supporting the seniority in entry grade and as such the eligibility list was modified though earlier to this the eligibility list was prepared on the basis of base grade seniority which was in conformity to the judgment of the Jaipur Bench. It was thus contended that the earlier eligibility list dated 8.3.1994 was erroneously prepared and corrected on 5.5.1995 and all the candidates who have been placed higher were promoted earlier on the post from which promotions have to be made. It has also been stated on behalf of respondents that no promotions in excess of the quota would be made by providing them benefit of reservation but if any SC/ST candidate gets promotion due to his merit and seniority, then the same cannot be considered against the quota of SC & ST candidates. As regards the alleged violation of Article 335 of the Constitution of India, it has been stated that by keeping lower minimum pass marks of 50% for SC/ST, it does not mean lowering the efficiency of administration in any way and such a measure is covered under Article 16 (4A) of the Constitution of India.

5. A rejoinder has been filed by the applicant, which has been taken on record and considered by us. It has also been stated therein, inter-alia, that it is not expected from the Railway Administration to take different views in different cases with same controversy. In OA No. 21 of 1990, it pleaded that the seniority to the reserved category candidates cannot be given when they got accelerated promotions due to reservation while on the other hand in the present OA, the administration is pleading that seniority to the reserved

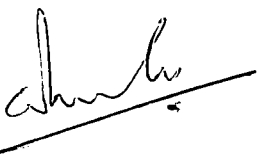
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candidates is to be given from the date of entering the grade from which promotion is to be made. It has, therefore, been stressed that in view of this, the reply offered by the Railway Administration deserves to be deprecated and the entire reply deserves to be ignored. The applicant have also placed on record a letter dated 20.7.1995 (Ann.A7) from the Headquarters, Churchgate, Mumbai addressed to the General Secretary, WREU-GTR wherein it is admitted, ~~xxxx~~ in the context of one Shri Shivhare a member of the SC community, that if a reserved category candidate attained the present position by virtue of reservation, he is not entitled for higher seniority in next cadre. In view of this also, it does not lie in the mouth of Railway Administration to say that the reserved candidate gets his seniority from the date when he entered the feeder or entry grade. It has also been stated that the reply of the official respondents that SC community officials named at Sl.Nos. 5 to 7 in para 4(iv) of the OA occupied the post of Chief Clerk on the basis of their own merit is factually incorrect as can be seen from the given details as to how they all had got accelerated promotions on account of reservation.

6. We have heard the learned counsel for the parties and have carefully examined all the material on record. It is quite clear that the only controversy in this case is regarding the manner in which the eligibility list is to be prepared for promotion to the post of Chief Clerks.

7. The contention of the applicant is that the respondents are required to follow the law laid down by the Apex Court in a catena of judgments since Union of India vs. Virpal Singh [1995 (6) SCC 685] and assign the seniority to the general category employees as per their base grade seniority when they catch up with the reserved category officials who got accelerated promotion(s) due to reservation and had reached the level of Head Clerk earlier than their senior general category colleagues. It is contended that this was exactly the way, the official respondents had pleaded their case in OA No.21 of 1990 decided by this Bench of the Tribunal. We find lot of force in this contention. It so happened that one of us was also a member of the Division Bench which had decided the said OA vide order dated 30.6.1999. However, in this OA, the very same



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Railway Administration had taken an opposite stand and contended that the seniority to the reserved category candidates is to be given from the date of entry in the grade from which promotion is to be made to the post of the Chief Clerk. We also note that while in support of their present stand, the official respondents have, in their reply, mentioned some decisions taken by Jaipur, Jodhpur and Calcutta Benches of CAT, they have neither given the OA Nos. nor the titles. The case of Karam Chand v. HSED, AIR 1985 SC 261 has also been cited. In reply to the contention of the applicant that the quota for SC/ST candidates in the cadre of Chief Clerks is not only full but overflowing, the respondents have simply stated that those officials who have got promotions to the post of Chief Clerk on their own merit should not be included against the quota for SC/ST.

8. We have carefully considered the rival contentions and the arguments put forward by the learned counsel in support of their respective contentions. Before we proceed to discuss the legal position with regard to the controversy in hand, we have to take note of the fact that we have examined and decided the same controversy in our order dated 30.6.1999 in OA No. 21 of 1990, Prakash Chand Khundia v. Union of India and ors. The applicant therein had obtained accelerated promotions upto the level of Chief Clerk on account of reservations and had prayed that he should be promoted to the next higher post of Office Superintendent on the basis of his seniority in the grade of Chief Clerk. The very same Railway Administration, official respondents in that OA also, had opposed the prayer on the ground that the applicant had been promoted to the post of Senior Clerk and thereafter to the post of Chief Clerk against a roster point meant for ST candidates and having been promoted out of turn was not entitled to get benefit of accelerated seniority and was correctly assigned seniority in the cadre of Chief Clerks below the general category candidates who were senior to him in the base grade but had reached the level of Chief Clerk later than him. This Tribunal, with one of us being a member of that Division Bench had not accepted the prayer of the applicant therein and dismissed the said OA. Since then, the law in this regard has further been clarified by a Constitution Bench of Hon'ble the Supreme Court in Ajit Singh -

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II reported in JT 1999 (7) SC 153.

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In view of this/ we are bound to follow the conclusions we had reached in the aforementioned OA and accept the contention of the applicants in this OA, who are members of the general category and are aggrieved by the decision of the Railway Administration in changing the eligibility list as enclosed with the impugned notification dated 5.5.1995 (Ann.A1) to have it prepared on the basis of date of entry in the feeder grade, which has resulted in general category candidates, who were at higher places in the earlier eligibility list enclosed with the Notification dated 8.3.1994 (Ann.A2) being now placed below the reserved category officials.

9. The learned counsel for the respondents also argued that the basic grievance of the applicants was that the quota for SC/ST in the cadre of Chief Clerks was full and occupied and, therefore, all the vacancies should go to the officials of the general category. We are of the opinion that this issue comes up only after the eligibility list is amended and made up-to-date on the basis of seniority as per the law laid down and clarified by the 5-Judges Bench of the Apex Court in Ajit Singh-II (supra) providing that as and when the employees of the general category reach the level after their colleagues who had reached that level earlier on account of benefit of reservation, the seniority at the level of the feeder grade has to be reworked out, assigning higher seniority to the general category official if he was senior to those SC/ST officials at the base grade. We also note that whereas the applicant has contended that the quota of SC/ST in the cadre of Chief Clerks is not only full but "overflowing", the respondents had mentioned in their earlier Notification of 8.3.1994 that selection will be for 12 posts of General and 2 posts of SC category but in the later and impugned Notification of 5.5.1995, it has only been mentioned that selection will be for 32 posts (27 vacant + 5 on account of temporary downgradation of Compilation Superintendents) without mentioning if any post are to be filled up by officials from the reserved categories. We are, therefore, of the considered opinion that it is not necessary for us to go into these details since it is for the administration to work out correct factual position but what is

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more important is that the initial step is to work out the correct seniority list and then prepare the correct eligibility list accordingly.

10. The learned counsel for the respondents also raised the question of non-joinder of those officials whom the applicant wants to be placed at lower positions in the eligibility list especially those three who have been mentioned in para 3(1) to (3) of the rejoinder. We, however, feel that cases of certain officials have been mentioned by the applicants by way of illustration as to how they had got accelerated promotions on account of reservation and also since the question is regarding preparation of an eligibility list based on correct assignment of seniority and, therefore, we feel that the OA does not suffer from the vice of non-joinder of proper and necessary parties.

11. The learned counsel for the respondents also argued that the law regarding the general category officials regaining their base level seniority on catching up with the reserved category officials who reached the level earlier due to accelerated seniority has been laid in the case of R.K.Sabharwal in the year 1995, the same should not be applicable on an eligibility list prepared earlier to that. The position in this regard will become clear when we discuss the judgment of the Apex Court in the case of Ajit Singh- II. It was also mentioned that the earlier Notification and eligibility list was cancelled and subsequent Notification enclosing the modified eligibility list issued in order to implement certain decisions of the Jaipur and Jodhpur Benches of CAT but no details, not even OA numbers, have been furnished. In any case, we have to see what law is holding the field at present and follow it.

12. In Ajit Singh -II (supra), the 5-Judges Bench, inclusive of the Hon'ble Chief Justice of India, in their judgment dated 16.9.1999, observed inter alia as under:

"At the outset we make it clear that in this judgment we are not concerned with the reservation policy of the State or with the validity of any procedure

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fixing roster points for purpose of promotion of reserved candidates. We are here dealing only with a limited question relating mainly to seniority of the reserved candidates promoted at roster points."

"Initially, in a case relating to the Indian Railways, a two Judge Bench of this Court in Union of India v. Virpal Singh JT 1995 (7) SC 271 (hereinafter referred to as Virpal) held that it was "permissible" for the Railways to say that reserved candidates who get promotion at the roster points would not be entitled to claim seniority at the promotional level as against senior general candidates who got promoted at a later point of time to the same level. It was further held that 'it would be open' to the State to provide that as and when the senior general candidate got promoted under the rules, - whether by way of a seniority rule or a selection rule - to the level to which the reserved candidate was promoted earlier, the general candidate would have to be treated as senior to the reserved candidate (the roster point promotee) at the promotional level as well, unless, of course, the reserved candidate got a further promotion by that time to a higher post. (This is described for convenience as the 'catch up' rule).

"It deserves to be noticed that the roster points fixed at Level 1 are not intended to determine any seniority at Level 1 between general candidates and the reserved candidates. This aspect we shall consider again when we come to Mervyn Continho v. Collector of Customs (1966 (3) SCR 600) lowerdown. The roster point merely becomes operative whenever a vacancy reserved at Level 2 becomes available. Once such vacancies are all filled, the roster has worked itself out. Thereafter other reserved candidates can be promoted only when a vacancy at the reserved points already filled arises. that was what was decided in R.K.Sabharwal v. State of Punjab."

" We, therefore, hold that the roster point promotees

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(reserved category) cannot count their seniority in the promoted category from the date of their continuous officiation in the promoted post, vis-a-vis the general candidates who were senior to them in the lower category and who were later promoted. On the other hand, the senior general candidate at the lower level, if he reaches the promotional level later but before the further promotion of the reserved candidate - he will have to be treated as senior, at the promotional level, to the reserved candidate even if the reserved candidate was earlier promoted to that level. We shall explain this further under Point 3. We also hold that Virpal and Ajit Singh have been correctly decided and that Jagdishlal is not correctly decided."

"One of the objections raised before us which appealed to the Full Bench in Jaswant Singh's case was that this 'catch up' principle would lead to frequent alteration of the seniority list at level 3. we do not find any difficulty in this behalf. The seniority list at Level 3 would have only to be merely amended whenever the senior general candidate reaches Level 3."

It has also been mentioned in the judgment of the Apex Court in Ajit Singh - II (supra) that the Indian Railways following the law laid down in Virpal issued circular on 28.2.1997 to the effect that the reserved candidates promoted at roster points could not claim seniority over the senior general candidates promoted later. It has not been pleaded before us that this circular has been withdrawn and if the said circular is still operative, as it appears to be, the Railways are even otherwise bound to follow and any pleadings made contrary to the principles laid down in the said circular have to be ignored. If the said circular has been, in the meantime, recalled, the Railway administration is bound to take note of the law clarified and laid down in Ajit Singh -II and issue fresh circular in consonance with the law laid down by the Apex Court.

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