

Date of order: 25.11.1997

OA No.266/95

1. Nem Raj S/o Shri Brij Lal employed on the post of Head Clerk, office of the Deputy Controller Stores, Ajmer.
2. Roop Chand S/o Shri Bheru Lal, at present employed on the post of Head Clerk, under Deputy Controller of Stores, Ajmer.
3. Pooran Chand S/o Shri Warain employed on the post of Head Clerk under Deputy Controller of Stores, Ajmer.

.. Applicants

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai
2. The Chief Personnel Officer, Western Railway, Mumbai.
3. Deputy Controller of Stores, Western Railway, Ajmer.

.. Respondents

Mr. Shiv Kumar, counsel for the applicants

None present for the respondents

CORAM:

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

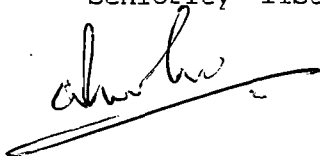
Hon'ble Mr. N.P.Nawani, Administrative Member

ORDER

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

Applicants, in this Original Application pray that the respondents may be directed to consider the case of the applicant for grant of benefits/promotion to the post of Chief Clerk, scale Rs. 1600-2660 under restructuring scheme according to their general seniority based on entry in the grade against unreserved vacancies and allow them all consequential benefits at par with the next juniors. Further, the respondents may also be directed to implement their own orders dated 5/12 September, 94 (Ann.A4) and 12.12.94 (Ann.A5).

2. Briefly stated, the facts of the case are that the applicant were employed on the post of Head Clerks w.e.f. 1984; they belong to ST (as per seniority list at pages 24 and 25 they appear to be belonging to SC



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community); the Railway Board vide its letter dated 27.9.93 has issued restructuring scheme for certain Group C and D cadres under which benefits to be given by adopting modified selection procedure based on the seniority and service records; that as per the seniority list issued on 13.12.1993 (Ann.A3), that names of the applicant appear at Sl. Nos. 10,14 and 15 whereas that of their juniors S/Shri S.C.Soni, Radhey Shyam Garg, P.C.Soni and Hem Chand Gupta appear at Sl Nos. 11,22,23 and 24 respectively; that the above named four junior persons have been promoted to the post of Chief Clerk, scale Rs. 1600-2660 w.e.f. 1.3.1993 under the restructuring scheme vide impugned order dated 14.5.1993 (Ann.A1); that juniors had been promoted in spite of the fact that the applicants were within consideration zone as per their general seniority to be reckoned from the date of their entry into the grade on the unreserved post; that this issue has already been settled by the order dated 22.10.1992 of the Jodhpur Bench of this Tribunal in OA No.326/89 wherein it has been held that "if a person belonging to SC or ST is promoted on his own merit and not in a reserved vacancy then such appointment will be excluded while computing the required percentage..... the official belonging to SC and ST will be considered against general unreserved vacancies in accordance with their seniority"; that applicants have come to know that respondents are not considering the case of applicants and other SC/ST candidates on the pretext that the quota of 15% and 7½ % of SC/ST is already full, in spite of Headquarters having clarified the matter to all DRMs vide letters dated 5/12.9.94 and 16.12.95 Ann.A5 and Ann.A6 and the Board having directed all the GMs to consider the matter in the light of the judgment delivered by the Hyderabad Full Bench of this Tribunal and that the case of applicant has not yet been considered in spite of what all has been stated hereinbefore.

3. The respondents in their reply have admitted that the applicants were within the zone of consideration as per their general seniority, as it was existing prior to 10.2.95 and were, therefore, fully protected as per law laid down by the Apex Court in the case of Akhil Bhartiya Shoshit Karamchari Sangh, JT (1996) SC 274. It has also been stated that due to lack of clarity of understanding of the earlier decision of various Benches of the Tribunal and the Supreme Court on seniority, if any omission has taken place, it will be rectified and the SC/ST candidates who have been left over due to the non-observation of Railway Board's instructions dated 16.6.92 will be considered for proforma promotion/seniority over the candidates who have already been promoted to ensure justice to the applicant and others whose promotions were omitted.

4. We have carefully perused the records and have heard the learned counsel for the applicants on 17.11.1999. The learned counsel for the

Chandra

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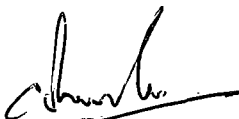
respondents has been given opportunity to file written submissions within a week, if he so desires. The case is being decided since the written submissions from the learned counsel for the respondents have not yet been received.


5. We have given our serious thoughts to the pleadings and contentions of the learned counsel for the applicants. In fact, the respondents have not contested the Original Application at all. Further, the seniority of the applicants, prior to 10.2.95 has to be admittedly protected. The seniority position as indicated in para 4.5. of the Application has been cross-checked with the list dated 31.10.92, a copy of which is at Ann.A3. The seniority position has also not been disputed by the respondents. It is thus clearly established that the applicant No.1 Shri Nem Raj at Sl. No. 10 of the seniority list was senior to all the four persons given promotion through the impugned order dated 14.5.93 (Ann.A1) and applicant No.2 to 4 were senior to the rest of the 3 persons promoted and figuring at Sl. Nos. 9 to 11 of the said impugned order. In view of this, the respondents must consider the case of promotion of all the four applicants as assured by them in their own reply specially para 4.5. of the reply.

6. The OA accordingly succeed and is disposed of with a direction to the respondents to consider, within a period of two months from the date of receipt of copy of this order, cases of promotions of the applicants alongwith all consequential benefits.

7.

No order as to costs.


(N.P. NAWANI)
Adm. Member


(S.K. AGARWAL)
Judl. Member