

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 1.6.2001

OA No.401/1996

1. All India Soshit Karamchari Sangh through R.D.Pathi, its Secretary, 14-A, Kumawat Bari, Hhatipura Road, Jaipur.
2. D.S.Dukey, TNER, Scale of Rs. 1600-2660, Western Railway, Jaipur.
3. K.L.Mehra, TNER, Scale of Rs. 1600-2660, Western Railway, Jaipur.
4. C.P.Sharma, TTI, Scale of Rs. 1600-2660, Western Railway, Jaipur.
5. D.K.Tiwari, TNER, Scale of Rs. 1600-2660, Western Railway, Jaipur.
6. M.D.Sharma TTI, Scale of Rs. 1600-2660, Western Railway, Jaipur.
7. Manchar Lal Sharma, TNER, Scale of Rs. 1600-2660, Western Railway, Jaipur.
8. Onkar Singh, TTI, Scale of Rs. 1600-2660, Western Railway, Jaipur.
9. Ravi Shankar, TTI, Scale of Rs. 1600-2660, Western Railway, Jaipur.
10. Sultan Singh, TTI, Scale of Rs. 1600-2660, Western Railway, Jaipur.
11. D.L.Vyas, TNER, Scale of Rs. 1600-2660, Western Railway, Jaipur.
12. Prithvi Singh, TTI, Scale of Rs. 1600-2660, Western Railway, Jaipur.
13. S.P.Gupta, TTI, Scale of Rs. 1600-2660, Western Railway, Jaipur.

..Applicants

Versus

1. Union of India through the Chairman, Railway Board, Rail

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Bhawan, New Delhi.

2. The General Manager, Western Railway, Churchgate, Mumbai.
3. The Divisional Railway Manager, Western Railway, Jaipur Division, Jaipur.
4. Shri Iswari Prasad (SC), TTI, Western Railway, Bandikui.
5. Shri Suraj Mal Meena (ST), TTI, Western Railway, Jaipur.
6. Shri Komal Prasad (SC), TTE, Western Railway, Jaipur.
7. Shri Madan Lal Meena (ST), TTI, Western Railway, Jaipur.
8. Shri Ram Singh (SC), TTI, Western Railway, Jaipur Division c/o CTI, Ajmer
9. Shri Nand Lal K.(SC), TTI, Western Railway, Jaipur.
10. Shri Om Prakash Meena (ST), TTI c/o CTI Bandikui.
11. Shri Sedu Ram (ST), TTI, Western Railway, Jaipur.
12. Shri J.P.Meena (ST), TTI, c/o CTI Western Railway, Sikar
13. Shri G.L.Meena (ST) TTI, Western Railway, Jaipur
14. Shri Kalyan Sahai Meena (ST) Retired Head TTE, Western Railway, Jaipur.
15. Shri Behari Lal, Retired TTE, Western Railway, Jaipur.
16. Shri Onkar Singh (SC), TTI, Western Railway, Jaipur.

.. Respondents

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

Mr. Manish Bhandari, counsel for respondents No.1 to 3

Mr. Vinod Goyal, counsel for respondent No.5

Mr. Nand Kishore, counsel for respondent No.12 and 13.

CORAM:

Hon'ble Mr.Justice B.S.Raikote, Vice Chairman

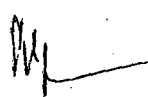
Hon'ble Mr. Gopal Singh, Administrative Member

ORDER

PER HON'BLE MR. JUSTICE B.S.RAIKOTE, VICE CHAIRMAN

This application has been filed by the Association. /All

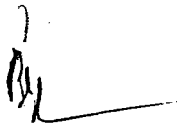
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India Shosit Karamchari Sangh and other private persons. It is stated that this Association is the Association of general category candidates. This Association earlier in OA No.717/93 contended that in case of upgradation, the Department wrongly applied the reservation principle and certain candidates belonging to reserved category have been promoted by way of upgradation by applying reservation as against senior candidates of general category. This Tribunal vide order dated 20.10.1994 disposed of the said OA, No.717/93, directing the respondents to consider the representation filed by the applicants. Accordingly, applicants filed one representation dated 5.1.1995. The applicants also filed a separate Contempt Petition No.101/95 which was disposed of by directing the respondents to consider such representation. The Department accordingly disposed of such representation by passing the impugned order dated 8.2.1996 vide Ann.A10, by which, representation filed by the applicants is rejected, stating that the seniority of the employees was determined on the basis of the date of promotion and on that basis, the promotion orders in the upgradation/restructuring schemes were issued. Therefore, the grievance of the Association is without any basis. Assailing this order, the present OA, No.401/96, is filed.

2. The counsel appearing for the applicants submitted that while promoting certain persons vide Ann.A2 dated 31.8.1984, vide Ann.A3 dated 11.1.85 and Ann.A1 dated 15.11.1984, certain persons belonging to reserved category have been promoted by applying reservation principle in the upgradation. He submitted that these promotions have been made on the basis of Railway Boards letter dated 2.8.1983 vide Ann.A1 according to which in case of partial upgradation on the basis of percentage distribution of posts, the existing rules and orders governing reservation for ST/ST would apply against the additional number of higher grade posts which become available as a result of cadre restructuring on the basis of existing rules and



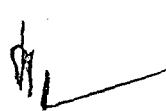
orders providing for reservation for SC/ST. The learned counsel for applicants contended that in any kind of upgradation, whether partial or total, the roster principle would not apply as held by Hon'ble the Supreme Court in the judgment dated 19th November, 1989 in Civil Appeal No. 3622 of 1995 (Union of India v. V.K. Sirothia) connected with Civil Appeal No. 9149 of 1995. Therefore, the impugned policy of the Board vide Ann.A1 and also the impugned promotions vide Ann.A2, Ann.A3 and Ann.A4 were illegal and are liable to be declared as illegal including the impugned letter dated 8.2.1996 issued to the applicants vide Ann.A10 by rejecting their representations.

3. The contention of the respondents is that claim of the applicants regarding promotions of the year 1984 and 1985 vide Anns. A2, A3 and A4 is barred by time. They have also contended that in the earlier OA, No. 717/93, the applicants did not challenge these orders also. In these circumstances, this OA is liable to be dismissed as barred by time. The learned counsel for the respondents also contended that by reading of those promotion orders of the years 1984 and 1985 vide Ann.A3 and A4, it is clear that they were not the cases of restructuring, but actually were promotions to which the roster principles very much applied. Therefore, this application is liable to be dismissed. As against this, the learned counsel for the applicants referring to the promotion orders of the year 1984 vide Ann.A2 invited our attention to the bracketed portion in the reference part of the order as 'restructuring' and contended that Ann.A2 was a promotion by restructuring and for such promotion roster principle could not have been applied. He also submitted that even the other promotion orders vide Ann.A3 and A4 were, in fact, promotion by upgradation, though it is not specifically written in those orders, therefore, are liable to be set-aside. He also further contended that in the impugned order vide Ann.A10 the official respondents have not specifically considered

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the case of the applicants that the reservation principle did not apply to upgradation. Therefore, the said order is liable to be set-aside for considering the issue involved in the case.

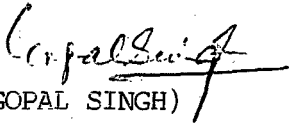
4. On the basis of the contentions and pleadings of both the parties, we find that this application, so far it relates to the year 1983 vide Ann.A1, to the year 1984 vide Ann.A2 and to the year 1985 vide Ann.A5 and another order of the year 1985 vide Ann.A4, is barred by time. Accordingly, the application is liable to be dismissed. It cannot be disputed that as per the law declared by Hon'ble the Supreme Court vide judgment/order dated 19.11.1989 in Civil Appeal No.3622 of 1995 and connected Civil Appeal No.9149 of 1995, the principle of roster reservation does not apply to the promotions by upgradation. Assuming an illegality is committed in the year 1983, 1984 and 1985 on the basis of the impugned orders, nothing prevented the affected persons to challenge the same within one year under Section 21 of the Administrative Tribunals Act. Even taking also that this illegality on the basis of impugned orders vide Ann.A1, A2, A3 and A4, committed in the year 1984, and certain persons were wrongly promoted in excess of the quota meant for them, as per the law declared by Hon'ble the Supreme Court in Ajit Singh-I and Ajit Singh-II (which we have relied, amongst others, in OA No.387/99 vide our judgment dated 29.3.2001), such excess or illegal promotion made prior to 10.2.1995 are protected, however, subject to the rights of the general candidates to catch-up with the reserved candidates at the promotional level and seek their seniority on the basis of the 'catch-up principle' enunciated by Hon'ble the Supreme Court. In this view of the matter, the impugned orders of the year 1983, 1984 and 1985 cannot be set-aside by re-opening the matter, since they were all alleged excess promotions made prior to 10.2.1995. Therefore, applicants are not entitled to any relief. It is always open to the senior general



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candidates to seek restoration of the seniority of the base level at the promotional level after they catch-up with the reserved junior candidates on the basis of their normal course of promotion. Therefore, the alleged promotions made in the year 1984 and 1985, assuming that they were excess promotions by applying roster principle to upgradation, being prior to 10.2.1995, do not call for any interference at this stage, and accordingly we have no option but to pass the order as under:-

"Application is dismissed but without costs."


(GOPAL SINGH)

Adm. Member


(B.S. RAIKOTE)

Vice Chairman