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THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

O.A. No. 112/97  
T.A. No.

200

DATE OF DECISION 04.06.03

Shaitan Singh Banjara

Petitioner

S. C. Sethi

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

U. D. Sharma

Advocate for the Respondents(s)

**CORAM:**

The Hon'ble Mr. Justice G. L. Gupta, Vice Chairman.

The Hon'ble Mr. G. C. Srivastava, Administrative Member.

(G. C. SRIVASTAVA)  
MEMBER (A)

(G. L. GUPTA)  
VICE CHAIRMAN

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH : JAIPUR.

Date of Order ; 04-06-03

O.A. No. 112/1997.

Shaitan Singh Banjara S/o Shri Shreeji Ram Ji, age 50 years, at present posted as Principal (Headmaster) Railway Senior Secondary School, W. Rly. Ganganagar City, Kota Division.

... APPLICANT.

v e r s u s

1. Union of India through the General Manager, Western Railway, Bombay.
2. Chief Patron, Railway Schools, Cum Chief Personal Officer, Western Railway, Church Gate, Bombay.
3. Shri Mahaveer Singh, Principal, Railway Higher Secondary School, Bandikui, (Jaipur Division).

... RESPONDENTS.

Mr. S. C. Sethi counsel for the applicant.  
Mr. U. D. Sharma counsel for the respondents.

CORAM

Hon'ble Mr. Justice G. L. Gupta, Vice Chairman.  
Hon'ble Mr. G. C. Srivastava, Administrative Member.

: O R D E R :  
(per Hon'ble Mr. G. C. Srivastava)

The applicant who is working as Head Master Railway Higher Secondary School, Gangapur City (Kota Division) of Western Railway is aggrieved inter alia on account of his non promotion to the post of Principal in preference to respondent No.3 and has prayed for the following reliefs :-

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"(A) That the order down grading the post of Principal (Gr.A) to that of Head master (Gr. B) from the date of joining of the applicant Annexure A/1 dated 13.05.1996 and order of promotion of the Resp. No.3 dated 22.7.96 Annexure A/2 be declared illegal, unconstitutional null and void and non est.

(B) That the letter Annexure A/7 dated 4.11.96 rejecting the representation of the applicant be declared illegal arbitrary and against the rules.

(C) That the applicant be declared to be eligible for promotion to the post of Principal (Gr.A) from the date his juniors and Resp. No.3 are promoted, and the applicant be ordered to be paid all the consequential benefits i.e., pay and other benefits admissible had he been promoted to the post of Principal by virtue of his seniority on the post of Headmaster (Gr.B).

(D) That the post said to have been reserved for the SC candidate be ordered to be clubbed with the post of ST candidate quota because the SC candidate is not available.

(E) That because the applicant was called for selection to the post of Head Master (Gr.B) along with senior and Junior General candidates and he has completed with them and secured the position No.1 be declared eligible for promotion along with general candidates.

(F) Because further vacancies of Principals (Gr.A) are occurred, the next vacancy be reserved for the applicant and he be directed to be promoted against the ensuing vacancy and no promotion be allowed to General candidate superseding the applicant.

(G) That any other relief which the Hon'ble Tribunal deem fit in the circumstances of the case may kindly be allowed to the applicant.

(H) That the cost and expenses of the petition Rs.3500/- may be allowed to the applicant."

2. According to the applicant he was initially appointed as Assistant Teacher (Rs.1200-2040) on 3.11.76, promoted as Junior Teacher (Rs.1400-2600) on 11.3.81, as Sr. Teacher (Rs.1640-2900) on 28.5.82 and

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as Head Master (Rs.2000-3000) w.e.f. 13.9.94 vide order dated 12.09.94 (Annexure A-1). He was transferred and posted in the same capacity at the Railway Higher Secondary School GGC by down grading the post of Principal in the higher scale of Rs.3000-4500 to that of Head Master vide order dated 13.5.96 (Annexure A/1). Thereafter as per order dated 22.7.96 (Annexure A/2) respondent No.3 has been granted promotion as Principal thereby superseding the applicant though he is senior to him. His representation has been rejected vide order dated 4.11.96 (Annexure A/7). Aggrieved by this, he has approached this Tribunal.

3. The official respondents have contested the OA and have filed detailed reply. The private respondent no.3 has also filed detailed reply.

4. We have heard Mr. S. C. Sethi and Mr. U. D. Sharma the learned counsel for the applicant and the respondents respectively and have carefully gone through the pleadings and the material produced on record. We have also examined the comparative chart of posts held by the applicant and respondent no.3 produced by the learned counsel for the parties.

5. The main ground advanced by Mr. Sethi for the applicant is that the applicant is senior to respondent no.3 as would be evident from the seniority list of Sr. Teachers in the scale of Rs.1640-2900 (Annexure A-3) and the statement A and B attached

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with the Headquarter Notification Dated 11.7.94 (Annexure A-4) where he appears at Sl. No.5 as against respondent No.3 appearing at Sl. No. 10 and Sl. No.5 of Statement A as against respondent No.3 appearing at Sl. No.1 of Statement B. He has contended that in this panel for promotion to the post of Head Master notified vide order dated 7.9.94 (Annexure A-5) he is at Sl. No.1 while respondent No.3 is at Sl. No. 3 and hence he is eligible for promotion to the post of Principal as the same is to be filled up by seniority cum suitability. According to him in the aforesaid panel he appeared along with the General Candidates and secured the first place and he was not promoted to the post of Head Master on the basis of accelerated promotion against ST reservation point. He has further contended that one post of Principal was reserved for SC which could not be filled up as no SC candidate was available and hence the vacancy ought to have been exchanged with ST candidate in terms of Para 9.5 of Chapter of Swamy's Compilation on Reservations and Concessions. In that situation the applicant being a ST candidate should have been promoted. He has further submitted that if respondent no.3 cannot be reverted to the post of Head Master the next vacancy which is going to occur shortly be reserved for the applicant and he be promoted. He has conceded that the applicant has since been given ad hoc promotion as Principal in the year 2003 but he has claimed that he should be given the same with effect from the date from which respondent No.3 was promoted.

6. On the contrary, Mr. U. D. Sharma, for the

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rspondents, has contended that the post of Junior Teacher is the initial post and as such the base grade would normally be reckoned as the grade of Junior Teacher. However, in the instant case the applicant was appointed as Assistant Teacher on 3.11.76 and thereafter promoted on reservation basis as Junior Teacher on 23.3.81. According to him respondent no.3 was appointed as a direct recruit Junior Teacher vide order dated 2.3.77 (Annexure R-2), he joined as Junior Teacher on 4.3.77 and was confirmed in that position w.e.f. 14.10.77 vide order dated 26.3.83 (Annexure R/3). Hence with reference to the base grade seniority of Junior Teacher he is senior to the applicant who was promoted to the said post on 11.3.81 on the basis of reservation. As regards placement of the applicant and respondent no.3 at Sl. No.1 and 3 respectively in the panel for promotion to the post of Head Master (Annexure A/5), the same was based on their seniority as indicated in the seniority list of Senior Teachers (Annexure A-3) and not based on base grade seniority as Junior Teacher. According to him, the post of Principal was reserved for SC and there was no post available for ST in the roster and hence there was no question of exchange of SC with ST and accordingly the vacancy had to be filled up by a General Candidate. He has contended that since there were other senior candidates eligible for consideration for promotion as Principal as per the eligibility criteria, there was no question of considering the applicant for promotion as Principal. According to him the seniority list (Annexure A-3) and the eligibility list (Annexure A-4) reflect the

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seniority in the grade of Senior Teacher and not the base grade seniority in the grade of Junior Teacher. He has contended that as per base grade seniority of Junior Teacher the respondent No.3 is senior to the applicant and since he was not eligible for promotion as Principal at that time the post of Principal, Gangapur City (Kota) was rightly down graded in order to accomodate him there as Head Master. He has relied on the judgement of this Tribunal in OA No. 387/99 and OA No. 419/99.

7. We have carefully examined the rival contentions. The question to be decided is whether the applicant is senior to the respondent no.3 for being eligible for promotion to the post of Principal in 1996 and whether the promotion of the latter vide order dated 22.7.96 ignoring the claim of the former is valid. It is not in dispute that the applicant initially joined as Assistant Teacher on 3.11.76 and was promoted as Junior Teacher on 11.3.81. It is also not in dispute that respondent no.3 joined as a direct recruit Junior Teacher on 4.3.77. The case of the respondents is that for promotion to the post of Principal the base grade seniority is to be reckoned from the date of appointment/promotion to the grade of Junior Teacher and since the respondents no.3 was directly recruited as a Junior Teacher on 4.3.77 whereas the applicant was promoted as Junior Teacher on 11.3.81, the former is undisputedly senior to the latter so far as the question of consideration of promotion to the post of Principal is concerned. No rejoinder has been filed by the applicant and the above position about base

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grade seniority has not been disputed. The applicant's case is based on his claim for seniority over respondent no.3 with reference to their position in the seniority list of Senior Teachers and Panel for promotion as Head Master. However, as the promotion to the post of Principal is with reference to the base grade seniority in the grade of Junior Teacher, it would be evident that the applicant cannot claim seniority over respondent no.3 as the former was promoted as Junior Teacher on 11.3.81 on the basis of reservation, while the latter was appointed as Junior Teacher on 4.3.77 as a direct recruit. The principle of promotion with reference to the base grade seniority has been upheld by the Hon'ble Supreme Court in a recent case of M.G. Badappanavar and another vs. State of Karnataka and others 2001 SCC (L&S) 489. The facts of the instant case leave no room for doubt that respondent no.3 is senior to the applicant and the claim of the applicant in regard to his seniority over him based on the seniority list (Annexure A-3) and his position in the panel of Head Master (Annexure A-4) is misconceived and is rejected.

8. As regards the contention regarding exchange of SC vacancy with ST candidate Mr. Sethi has relied on Para 5 of Swamy's Compilation on reservation and concessions. Para 5 provides as under :-

5. Exchange of reservationss between SCs and STs.

Vacancies reserved for SCs and STs will continue to be treated as reserved for the respective communities while they are carried forward to the subsequent three recruitment years. When such a vacancy could not be filled

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by an SC or ST candidate even in the third recruitment year of carry-forward, the vacancy can be exchanged between these communities, i.e., an SC candidate can be considered for a vacancy reserved for ST and vice versa.

EXCEPTION 1. - Normally, the exchange is permissible only for the reservations which have been carried forward to the third year of recruitment; but in case of promotion by selection from Group 'C' to Group 'B', within Group 'B' and from Group 'B' to the lowest rung of Group 'A', where carry-forward of reservation is not permitted, vacancies can be exchanged between SCs and STs in the same year of recruitment.

(orders 20 and 22).

However, if a single vacancy is treated as unreserved it will be carried forward to three recruitment years and exchange between SC and ST would be allowed only in the third year.

(Order 108)

EXCEPTION 2. - In cases of promotion in posts/services under Mizoram and Arunachal Pradesh, Union Territories of Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli to which the scheme of reservation in promotion applies, the unutilized vacancies reserved for SCs in the respective categories of posts/services will be exchanged in favour of STs every year instead of only in the third year. However, the period of carry-forward of the remaining unutilized reserved vacancies, if any, after the exchange as stated above, will continue to be three years."

It would be seen from the above that exchange between SC & ST is permissible where reserved vacancies have been carried forward for three recruitment years and when such a vacancy cannot be filled up by SC/ST candidates even in the recruitment year of carry forward the same can be exchanged between SC and ST. It is not the case of the applicant that the vacancy of the Principal reserved for SC candidate was carried forward for three recruitment years and even then it was not exchanged by ST candidate. Respondents have clearly stated that

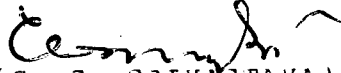
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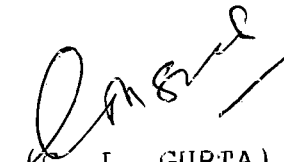
so far as the post of Principal is concerned reserved point for SC was only one and no point was reserved for ST candidates and therefore, there is no question of any exchange between SC and ST as claimed by the applicant. Further the promotion of the applicant to the post of Head Master was on the basis of roster and not on merit and that cannot give him a claim for seniority over respondent no.3.

9. As regards his grievance about posting him as Head Master at Gangapur City by down grading the post of Principal to that of Head Master we do not find anything wrong with the action of the respondents. This has been done only with a view to accommodate him at that place as he had not been promoted by that time as Principal. Upgrading/downgrading of posts is sometimes done in exigencies of service and the Tribunal would not like to interfere in such matters unless there are malafides in their action or some prejudice is caused to the person concerned. There is no such case here. Moreover, it has been pointed out by Mr. Sharma for the respondents that the first recruitment for the post of Principal after 22.7.96 when respondent no.3 was promoted was made on 28.3.2003 now when the applicant has been promoted as Principal. This is an admitted position.

10. In the light of the foregoing discussions, we are of the considered view that the OA is devoid of any merit and deserves to be dismissed.

11. In the conclusion the OA is dismissed with no order as to costs.

  
(G. C. SRIVASTAVA)  
MEMBER (A)

  
(G. L. GUPTA)  
VICE CHAIRMAN