

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 71/98 -

~~XXXXXX~~

~~XXX~~

DATE OF DECISION 26-08-02

M.C. Pandey Petitioner

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

Versus

Union of India and three others Respondent (s)

Mr. U.D. Sharma Advocate for the Respondent (s)

CAM :

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

The Hon'ble Mr. Gopal Singh, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
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*

May kind Sir
Agree
G.L. Gupta
Vice Chairman.
23/8

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR.

Original Application No. 71/98.

M.C. Pandey
S/o Late Gauri Shankar
r/o Lakhan Kotri
Surat Ram's Chowk
Ajmer : Applicant

rep by Mr. P.V. Calla : Counsel for the applicant

-versus-

1. The Union of India
through the General Manager,
Western Railway,
Church Gate
Mumbai.
2. The Divisional Railway Manager(E)
Western Railway
Ajmer Division
Ajmer.
3. Shri Lazman Ram (M)
Chief Clerk in the
office of the D.R.M.(E)
Western Railway
Ajmer.
4. Shri Sujan Chand Chomia
Chief Clerk in the
office of the D.R.M. (E)
Western Railway
Ajmer.

: Respondents.

rep. by Mr. U.D. Sharma : Counsel for the respondents.

CORAM: The Hon'ble Mr. Justice G.L. Gupta, Vice Chairman
The Hon'ble Mr. Gopal Singh, Administrative Member.

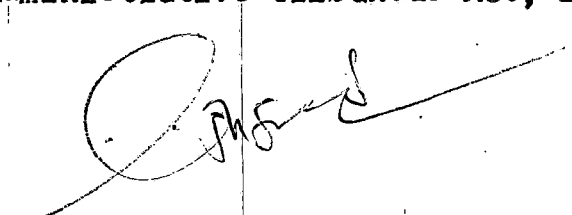
Date of
the order

26-8-02

Per Hon'ble Mr. Justice G.L. Gupta,

ORDER

Through this application under Sec. 19 of the
Administrative Tribunals Act, 1985, the applicant seeks the



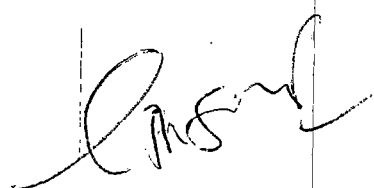
following reliefs:

- i) That direct to the official respondents to restore the position of the applicant as Chief Clerk as shown in the Annex. A.1 when further modification that the name of the applicant in the panel dated 15.6.93 may be shown at appropriate place.
- ii) The respondents be directed to make full compliance of the directions given by this Hon'ble Tribunal in O.A. No. 62/86 and so long the directions are not complied with the official respondents may be restrained not to conduct the selection for the post of Chief Clerk.
- iii) That by an appropriate order/direction the official respondents may be directed to treat the applicant as regular Chief Clerk with effect from 15.6.93. Further official respondents may be directed not to compel the applicant to appear in the selection test.
- iv) Any other relief to which the applicant may found entitle, be given in the interest of justice.

2. The applicant has averred facts about his initial appointment and promotion to the posts of Senior Clerk, Head Clerk. It is not necessary to state those facts for the purpose of deciding the controversy involved in this case.

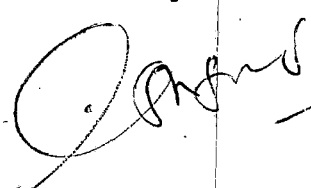
The grievance of the applicant is that his name was included at Sl. No. 17 in the panel published vide letter dated 15.6.93 for the post of Chief Clerk in the scale of pay of Rs. 1600-2660, but the respondent authorities vide order dated 3.11.93, modified the panel dated 15.6.93 deleting his name.

It is averred that Smt. Hamida Banoo and Shri Jaswant Mali, who are juniors to the applicant have been retained in the panel. The applicant made representation to the authorities



against the action of the respondents but the same was not accepted. It is further stated that for the preparation of the subsequent panel, the applicant had appeared in the written test but he could not take up the viva-voce due to his illness and the respondent authorities did not allow him to appear in the supplementary test. It is also stated that the respondents have not complied with the directions given by this Tribunal in O.A. No. 62/86.

3. In their reply, respondents 1 & 2 have resisted the claim of the applicant. It is stated that the applicant has not challenged the order dated 3.11.93, by which his name was deleted from the panel dated 15.6.93 and therefore the application is liable to be dismissed. It is further stated that the impugned order was passed on 15.6.93 whereas the present O.A was filed in March 1998, which is clearly barred by limitation. With regard to the averments of keeping the names of Smt. Hamida Banoo and Shri Jaswant Mali on the panel, the case for the respondents is that Shri Jaswant Mali had been transferred from another division in 'public interest' and therefore his seniority was to be kept in-tact as per rules and for Hamida Banoo, it is stated that she was appointed under the sports quota and she had been given higher seniority and was placed between Shri Ram Narain and Shri Kailash Chand vide notification dated 6.5.92. It is stated that the said notification was given wide publicity and as the applicant did not raise any objection, he is now estopped from challenging her empanelment. The further case for the respondents is that in the panel published on 15.6.93, 3 posts were ear-marked for SC community, one for the ST community and 17 posts were to be filled from the General



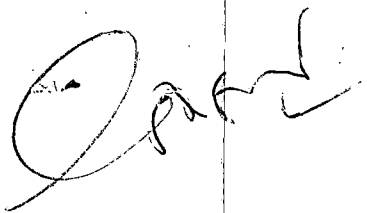
category persons. The name of the applicant was placed at Sl. 17 in the general category list but on re-examination it was found that Shri Kailash Chand and Shri K.L. Verma who belonged to SC category were eligible in their own right on the basis of their higher seniority in the base grade and therefore they were entitled for promotion as Chief Clerk under the general category and hence vide order dated 3.11.93 their names were included in the said panel as general category candidates at Sl. Nos. 16 and 17 which resulted in the deletion of the names of Smt. Phool Mala and the applicant.

It is further stated that because of the empanelment of S/Shri Kailash Chand and K.L. Verma as general category candidates, the names of S/shri Laxman Ram and Sugan Chand Chomiya, respondent Nos. 3 & 4 in this O.A were included in the panel as S.C. category candidates. It is averred that before deletion of the name of the applicant, a show cause notice was issued to him vide letter dated 26.10.93.

4. In the separate reply filed by respondent Nos. 3 & 4, similar contentions have been made.

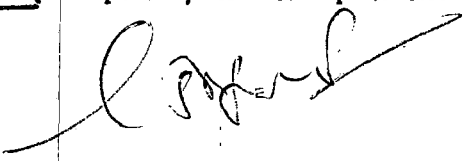
5. In the rejoinder, the applicant has reiterated the facts stated in the O.A. It is averred that the promotion given to S/Shri Kailash Chand and K.L. Verma cannot be termed as promotion as general category candidates. It is further stated that this Bench of the Tribunal in the case of Shamsuddin had held that reservation cannot be applied in the case of upgradation of posts and the same was upheld by the Apex Court also.

6. We have heard the learned counsel for the parties and perused the documents placed on record.



7. Mr. U.D. Sharma, the learned counsel for the respondents has raised a preliminary objection with regard to the maintainability of this O.A. He invited our attention to the order of this Tribunal dated 26.11.99, wherein it was clearly stated that this O.A was admitted subject to the objection of limitation. His contention was that when an application is found to be barred by limitation it should not be decided on merits. In support of his contention he placed reliance on the cases of Secretary to Government of India and others vs. Shivram Mahadu Gaikwad (1995-30-ATC-635); Ramesh Chand Sharma vs. Udham Singh Kamal and others (2000-SCC- (L&S)- 53. His further contention was that the applicant has not challenged the order dated 3.11.93, whereby his name was deleted from the panel and therefore he cannot succeed in this O.A.

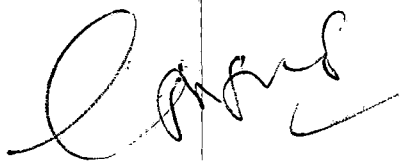
8. Mr. P.V. Calla, the learned counsel for the applicant contended that the O.A should not be dismissed on the ground of limitation. His contention was that when the order dated 15.6.93 has been challenged it amounts to challenging the order of deletion dated 3.11.93. He further contended that in the matter of upgradation of posts, there could not be any reservation and the respondents have erred in changing the panel published on 15.6.93 on the grounds stated in the reply. In support of his above contention he cited the decision of the Apex Court in the case of All India non-SC/ST Employees Association (Railway) vs. V.K. Agarwal and others (in Contempt Petition (Civil) No. 304/99 in C.A. No. 1481/96 decided on 17.1.2002) Union of India vs. V.K. Sirothia (Civil Appeal No. 3622/95 decided on 19.11.98). His contention was that if any decision has been rendered by the Central Administrative Tribunal against the law laid down in the case of V.K. Sirothia (supra) it is per incuriam.



9. Mr. Shama, learned counsel for the respondents submitted that a Full Bench of this Tribunal has already considered the issue that in the matter of upgradation reservation is required to be done or not and the question has been answered in the affirmative. He cited the Full Bench decision in the case of M.L. Rajaram Naik & others vs. The Additional Director C.G.H.S. and others (2001-(2)-SLJ-(CAT)-215).

10. We have given the matter our thoughtful consideration. At the outset, it may be stated that there is much force in the preliminary contentions of Mr. Shama. This O.A was filed on 6.3.98. The order which has been challenged in this O.A was issued on 15.6.93 (Annex. A-1) It is obvious that the order has not been challenged within a period of one year which is the period of limitation prescribed under Sec. 21 of the Administrative Tribunals Act, 1985. Their Lordships of the Supreme Court have clearly held in Bamech Chand Shama's case (supra) that if an application is time barred and if no application has been filed praying for the condonation of delay under Sec. 21(3) of the Administrative Tribunals Act 1985, the Tribunal should not decide the matter on merits. The relevant observations made by their Lordships at para 7 of the report read as Under:

..... In our opinion, the O.A. filed before the Tribunal after the expiry of three years could not have been admitted and disposed of on merits in view of the statutory provision contained in Sec. 21 (1) of the Administrative Tribunals Act, 1985. The law in this behalf is now settled (see Sech. to Govt. of India vs. Shivram Mahadu Gaikwad) ---- Supra."



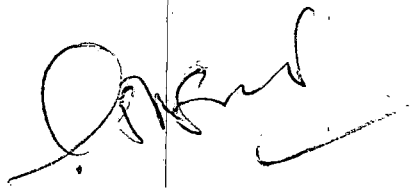
In the case of Shivram Mahadu Gaikwad (supra) it was held that relief cannot be granted when an application is filed after the expiry of period of limitation.

Evidently, this O.A, which has been filed after the expiry of period of limitation as prescribed under the Administrative Tribunals Act, 1985, is liable to be dismissed on the ground of limitation alone.

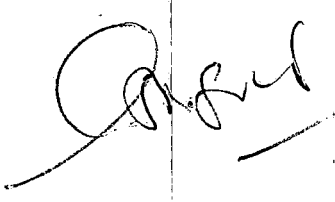
11. Even on merits, the applicant cannot succeed. The applicant has filed a copy of the order dated 3.11.93, wherein it is stated that the applicant's name appearing at Sl. No. 17 in the order dated 15.6.93, was deleted. This order was passed against the applicant. However, the applicant did not care to challenge the said order dated 3.11.93. What the applicant has prayed is that his name should be restored in the panel dated 15.6.93. The restoration of the name of the applicant can take place only when the order dated 3.11.93 is quashed. It is also seen that the order dated 3.11.93 was issued after a show cause notice was issued to him on 26.10.96. (Annex. A-8). In our opinion the applicant cannot succeed in the matter unless he challenged the order dated 3.11.93.

12. Further, the Full Bench in the case of M.L. Rajaram Naik, and others (supra) has already held that in the matter of upgradation also rules of reservation are to be followed. We read para 28 of the report hereunder:

Through the mechanism of grant of time-bound advancements to the higher scales of pay with different designations, or through appointments to posts which are upgraded with higher scales of



pay within a given cadre, entailing creation of additional posts or not essentially what takes place is a process of advancement/appointment to these higher scales of pay. We are convinced that this process can only be treated as promotion in the light of the principle laid down by the Hon'ble Supreme Court that an appointment to a higher scale of pay even at the same post and even without involving any additional responsibilities can still be a promotion. Even if in a given situation, the creation of the upgraded posts with higher scales of pay do not result in a net addition to the existing number of posts in that cadre, but is specifically and explicitly created to remove stagnation to follows that those upgraded posts involving higher scales of pay are in effect a substitute for promotion. It is so because either through a regular promotion in terms of the Cadre and Recruitment rules or through the creation of the upgraded posts in the same cadre with a higher scale of pay what is sought to be achieved is the provision of opportunities for career advancement which, in the circumstances, is synonymous with promotional opportunities. Once this basic objective for the creation of upgraded posts is understood and appreciated, we are of the firm opinion that such provisions for career advancement through appointments to upgraded posts cannot be treated for the purpose of reservation of special categories like SCs and STs differently from appointments to posts which are designated in particular as promotional posts. In our view, it is also absolutely immaterial as to whether the mode of appointment to these upgraded posts with higher scales of pay is by selection or by merely applying the criterion of seniority subject to fitness. In fact, it is evident that appointments to a number of posts which are specifically designated as promotional posts are also made on the basis of seniority cum fitness. Therefore, the adoption of that latter criterion for appointment to a upgraded post by itself cannot make such an appointment as non-promotional appointment. On this



score drawing a distinction between upgradation and promotion based on the nomenclature only does not appear to be tenable. "

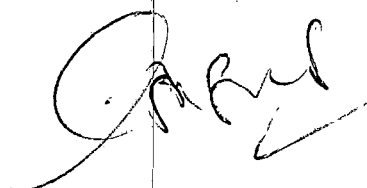
13. As to the cases relied on by the learned counsel for the applicant, it may be stated that in the case of V.K. Agarwal and others (supra), it has nowhere been laid down that in the matter of upgradation reservation principles are not to be followed. As to the case of V.K. Sirothia (supra) it is seen that the facts are not stated in the report. A copy of the order has been placed on record which reads as follows:

" Heard counsel on both sides.

The finding of the Tribunal that "the so called promotion as a result of re-distribution of posts is not promotion attracting reservation" on ~~the~~ facts of the case, appears to be based on good reasonings. On facts it is seen that it is a case of upgradation on account of restructuring of the cadres. Therefore the question of reservation will not arise. We do not find any ground to interfere with the order of the Tribunal.

The Civil Appeal is dismissed. No costs. "

It is evident from the reading of the order that the above case was decided on the basis of the particular facts of that case. It is significant to point out that this order of the Apex Court was taken note of by the Full Bench of this Tribunal while deciding the case of M.L. Rajaram Naik and others (supra). The above order of the Supreme Court has been re-produced at para 14 of the order of the Full Bench. The Full Bench after taking

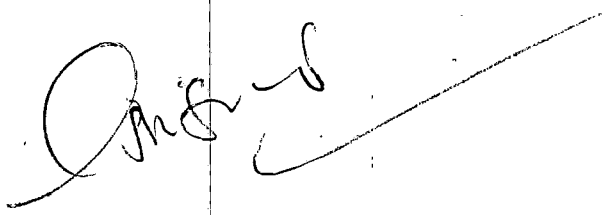


note of various decisions of the Supreme Court in the cases of Union of India and another vs. S.S. Ranade (1994-4-SCC-462) State of Rajasthan vs. Fateh Chand Soni (1996-1-SCC-562) Ram Prasad and others vs. D.K. Vijay and others (1999-7-SCC-251) has held that in the matter of upgradation also reservation principles are to be followed.

14. It is significant to point out that in the case of V.K. Sirothia (supra) the correctness of the Railway Board's letter dated 2.8.83 ~~was~~ questioned which inter alia stated that where cadre restructuring results in mass upgradation of posts in a particular category, reservation for Scheduled Castes and Scheduled Tribes would not be ordinarily applicable. It is obvious that in the Railway Board's letter dated 2.8.83, there was specific provision that reservation principle would not apply. In view of different fact situation the ruling of the Full Bench in M.L. Rajaram Naik's case (supra) cannot be said to be counter to the decision of the Apex Court in V.K. Sirothia's case

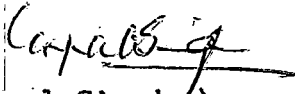
15. As to the case of Shamsudeen of Jodhpur Bench referred to in the rejoinder, it ~~may be stated~~ that it stands over-ruled by the Full Bench decision.

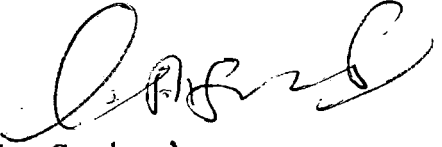
16. In the O.A the inclusion of the names of Hamida Banno and Jaswant Mali in the panel has been questioned. They have not been impleaded as respondents and therefore the correctness or otherwise of the inclusion of their name in the panel cannot be considered in this case. That apart, it is noticed that Shri Jaswant Mali was transferred from another division in public interest and therefore his



seniority has been kept intact and Smt. Hamida Banoo was appointed under sports quota in 1992 and was given higher seniority in 1992 itself, which was not challenged by the applicant.

17. For the reasons stated above, this O.A is liable to be dismissed and ^{is} hereby dismissed. No order as to costs.


(Gopal Singh)
Administrative Member


(G.L. Gupta)
Vice Chairman

-8-2002

jsv.