

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

O.A.No.174/1998

Date of order: 31/12/2002

Prabhu Dayal Jat s/o Shri Bhagwana Ram at present working as Chief Clerk in the pay scale of Rs. 1600-2660/BWSM O/o the Divisional Railway Manager, Western Railway, Jaipur

...Applicant

Vs.

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. The Divisional Railway Manager (E), Western Railway, Jaipur
3. Gopal Prasad Meena, Office Superintendent, O/o the Assistant Engineer, Western Railway, Alwar.

...Respondents.

Mr.P.V.Calla - Counsel for applicant

Mr. Hemant Gupta, proxy counsel to Mr. M.Rafiq, counsel for the respondents.

CORAM:

Hon'ble Mr.A.P.Nagrath, Administrative Member.

Hon'ble Mr.J.K.Kaushik, Judicial Member.

O R D E R

Per Hon'ble Mr. A.P.Nagrath, Administrative Member

The subject matter of this OA concerns interpretation and application of the policy of reservation in employment. The reservation has been provided to SC, ST and OBC categories under Article 16 of the Constitution. An extensive litigation has taken place and still this process is going on because of different interpretations given to the reservation policy not only by the different departments of the Government of India or the Governments of the States



but also because of varying directions given by different Courts and Tribunals. The matter appeared to have been finally settled with the judgment of the Hon'ble Apex Court in the case of R.K.Sabharwal, (1995) 2 SCC 745. Further, the principle regulating the seniority of SC/ST employees vis-a-vis General and OBC employees have been very recently laid down in the case of Ajit Singh Januja -II, AIR 1999 SC 3471 (Ajit Singh-II). These judgments were made effective from the dates specified therein i.e. February, 95 and March, 1996. By virtue of the judgment passed by the Hon'ble Supreme Court in the case of Jatinder Pal Singh- JT 1999 (6) SC 638, the order in respect of changing the seniority of those who were already promoted based on earlier policy of reservation prior to 1.4.97, were directed not to be disturbed.

2. In the face of such legal position, the present OA has been filed where the applicant has made a prayer that before promotion to the post of Office Superintendent (OS) grade Rs. 2000-3200, the seniority in the grade of Head Clerk and Chief Clerk vis-a-vis the seniority of respondent No.3 be recast keeping in view the principle established in the case of Ajit Singh-II. He has also assailed the order dated 6.3.98 (Ann.A12).

3. Undisputed facts of the case are that in the base grade seniority, the applicant is senior to respondent No.3. Even as a Senior Clerk, he was senior to respondent No.3. However, when promotions to the post of Head Clerk grade Rs. 1400-2300 were made, respondent No.3 got benefit of reservation, being an ST candidate and got promoted earlier

than the applicant. He was further promoted to the post of Chief Clerk grade Rs. 1600-2660 earlier than the applicant. For this reason and the ratio decided by the Hon'ble Apex Court (mentioned supra), the plea of the applicant is that before promotion to the post of OS is decided, the seniority list of Chief Clerks should be re-framed and based on entry into the ^{base} grade, he should be assigned seniority above respondent No.3 and thus promoted to the post of OS. According to him, promotions are being made against the General posts and not against the reserved vacancies.

4. The respondents have defended their action of considering respondent No.3 as senior to the applicant for the reason that in terms of the order dated 6.3.98 (Ann.A12) the person who was promoted to the grade (in this case the grade of Chief Clerk) on his own merit shall be treated as General candidate for the purpose of further promotion. Since respondent No.3 was promoted to the post of Chief Clerk earlier than the applicant, the respondents contend, the applicant has no cause of grievance.

5. We have heard the learned counsel for the parties and perused the entire record.

6. The learned counsel for the applicant, Shri P.V.Calla, while reiterating the position as per averments in the OA, also placed reliance on the orders of this Tribunal dated 29.3.2001 in a large batch of OAs starting from 495/93 and in OA No.387/99 and 419/99, wherein this Tribunal has gone into details of principle established in Ajit Singh-II case and have directed the respondents not to



give effect to any eligibility list or panel already prepared for the purpose of promotion to the next higher grade without revising the seniority in the lower grade. This has been done in the light of the 'catch-up principle' enunciated by the Hon'ble Supreme Court in Ajit Singh-II and Jatinder Pal Singh cases (supra).

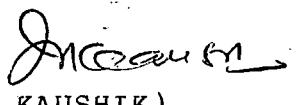
7. The learned counsel for the respondents apprised us about the further developments after the Hon'ble Apex Court decision in Ajit Singh-II and Jatinder Pal Singh cases and submitted that the policy of reservation has undergone further change because of recent amendment in the Constitution. By virtue of Article 16(4)(A) the legislature has decided to restore the position of seniority of SC/ST candidates who were promoted against the reserved vacancies, to the position which was obtaining prior to the judgment of the Apex Court in the case of R.K.Sabharwal (supra).

8. We have given anxious consideration to the submissions made before us by either side. As we have observed in the beginning that the reservation policy and its interpretation has been undergoing lot of changes ^{from} time to time, different interpretations have taken place either because of interpretation given by the Courts or the amendment in the Constitution relating to the reservation policy. Further, we would like to observe regarding the stand of the respondents that those of the ST/SC candidates who are promoted because of general merit shall not be adjusted against the reserved vacancies. This contention of the respondents is not as per law laid down and also as per the orders of the DOPT. This consideration that those who

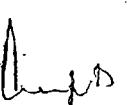
came on their own merit and seniority shall not be off-set against the reserved vacancies applies only in the case of direct recruitment and not in promotion. In this view, the instructions contained in the letter dated 6.3.98 (Ann.A12) which are apparently based on the Railway Board's letter dated 21.8.97 (enclosure to Ann.R1) are not sustainable legally and are liable to be quashed. Insofar as revising the seniority of the applicant vis-a-vis respondent No.3, we only direct the respondents to take into account the legal position as established consequent to Ajit Singh-II and also keeping in view any amendments in the Constitution based on which any further instructions, have been received by various Courts. The action shall be regulated only according to the latest position as obtaining.

9. In this background, we pass the following order-

The respondents are directed to take a final decision in respect of seniority of the applicant vis-a-vis respondent No.3 keeping in view the law laid down in the case of Ajit Singh-II and any further communication consequent to the constitutional amendment relating to the reservation policy. The decision shall be communicated to the applicant within a period of two months from the date of receipt of a certified copy of this order. Further promotion to the post of OS grade Rs. 2000-3200/6500-10500 shall be regulated as per the said position. No order as to costs.


(J.K. KAUSHIK)

Member (J)


(A.P. NAGRATH)

Member (A)