

FREE COPY UNDER RULE 22
OF C.A.T. (PROCEDURE) RULES

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.617/2001

Date of order: 13.9.2002

1. Rajesh Kumar, S/o Ram Lekhan, TNCR, Western Railway, Jaipur Station, Jaipur.
2. Ganpat Lal, S/o Nimba Ram, HTTE, Western Railway, Jaipur.

...Applicants.

O.A No.438/2000

1. Sedu Ram Meena, S/o Sh.Badri Narain Meena, TNCR, Western Railway, Jaipur.
2. Tophan Singh, S/o Sh.Aanaram Meena, TTE, Western Railway, Jaipur.
3. Ganpatram Banzara, S/o Nimbaram, HTTE, Western Railway, Jaipur.
4. Rajesh Kumar, S/o late Shri Ram Lekhanji, TNCR, Western Railway, Jaipur.

...Applicants

Vs.

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai
2. Divisional Railway Manager, Western Railway, Jaipur.

...Respondents.

Mr.Nand Kishore - Counsel for applicants.

Mr.S.S.Hasan - Counsel for respondents

CORAM:

Hon'ble Mr.H.O.Gupta, Administrative Member

Hon'ble Mr.M.L.Chauhan, Judicial Member.

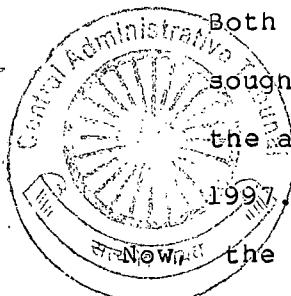
PER HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)

In these two O.As since the sole question which require determination is regarding regularisation of services of the applicants to the post of HTTE in the scale Rs.5000-8000 based on the panel dated 9.1.97 is involved, as such both these O.A

are being disposed of by a common order.

2. O.A No.617/2001 Initially when this O.A was filed, there were two applicants. When the case was listed for hearing on 6.9.02, this Tribunal passed the following order:

"The counsel for the applicants during the course of arguments submitted that he will not press for relief No.8(ii) so far as applicant No.2 is concerned. The prayer is accepted, therefore, no relief is sought in respect of applicant No.2. It is further ordered that the name of applicant No.2, since no relief is sought, be deleted from the array of the applicants.



Both the parties agree that notwithstanding the relief sought, to day the only question remains with regard to the applicant, is his regularisation based on the panel of

"1997."

Now, the case is confined only to regularisation of the applicant No.1 based on the panel of 1997 as is apparent from our order. This panel of 9.1.97 was earlier under challenge in O.A No.29/97, Ashok Kumar Gupta Vs. Union of India & Ors, decided on 2.2.01 in which the applicant was also one of the respondents. While disposing of this O.A, this Tribunal issued the following directions:

"(i) The official respondents are directed to grant promotions to the applicants in O.A No.390/2000 on the basis of panel dated 9.1.97 with effect from the date their immediate junior candidates in the said panel were promoted with all consequential benefits.

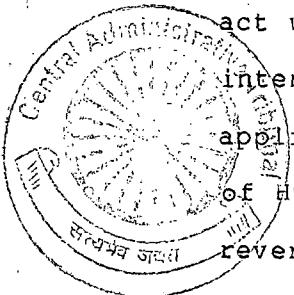
(ii) The official respondents are also directed to re-check the quota for SC & ST candidates in terms of rules and the law laid down by the Apex Court in the cases mentioned in the preceding paragraph and take further

44

action accordingly."

2. In compliance to the aforesaid directions given by this Tribunal in O.A No.29/97, provisional seniority list was published, objections were called from the affected employees and after considering the reply to the objections, final seniority list in the grade Rs.4000-6000 was published on 8.8.01. The applicant Rajesh Kumar (SC) who was earlier given promotion in the scale Rs.5000-8000 on jumping the que on ad hoc basis. After redetermination of the seniority on the basis of the judgment of this Tribunal in O.A No.29/97, being juniormost in the base grade was reverted back to the post of TC/TTE scale Rs.4000-6000 vide the impugned order Anxx.A1. However, by way of interim direction issued by this Tribunal vide order dated 15.1.2002 the respondents were directed not to act upon the order dated 7.12.2001, till the next date and the interim direction so given is still continuing. As such, the applicant is still working on ad hoc basis on the higher post of HTTE scale 5000-8000. Since, we are not concerned with the reversion of the applicant to the lower post and the challenge in this application is confined only to regularisation of the applicant to the post of HTTE scale Rs.5000-8000, as such the matter is being examined only on this point.

3. The main contention of the counsel for the applicant is that vacancy of SC/ST has not been worked out correctly in terms of the judgment of this Tribunal in O.A No.29/97. According to the counsel for the applicant, as per the order of this Tribunal dated 2.2.01, the respondents were directed to re-check the quota for SC/ST candidates in terms of rules and law laid down by the Apex Court in the case of Ajit Singh Juneja II. According to the counsel for the applicant, in the



cadre of HTTE, scale 5000-8000, there are in all 90 posts out of which 14 posts are meant for SC and 7 posts are reserved for STs. Out of 14 posts for SCs, only 12 posts had been filled-in. As such, according to the counsel for the applicant there were vacancies of HTTE scale Rs.5000-8000 under SC quota and under such circumstances, there was no occasion for the respondents to revert the applicant and he could have been regularised based on the panel of 1997, w.e.f. 21.6.99, the initial date of his ad hoc promotion.

4. Per contra it was argued by the counsel for the respondents that all the post of HTTE scale Rs.5000-8000 under SC quota were filled and occupied by the following persons who are admittedly senior to the applicant and thus he was rightly reverted and not entitled for regularisation on the basis of panel of 1997.

1. Shri Ram Babu Bairwa
2.
13. Shri Bhoop Singh
14. Shri Ganpat Lal"
5. We have considered the matter carefully and gone through the pleadings of the parties.

6. It is not disputed that in the cadre of HTTE scale 5000-8000, there were 14 posts reserved for SCs and 7 for STs. The panel dated 9.1.97 for the post of HTTE was under challenge in O.A No.29/97. During the pendency of the O.A, interim direction was issued to the effect that all other employees except SC/ST be given regular promotion. O.A No.29/97 was decided on 2.2.01 wherein the Tribunal directed the respondents to re-check the quota for SC & ST candidates in terms of rules laid down by the Apex Court in the case of Ajit Singh Juneja II. In terms of the direction given by the Tribunal, the quota of SC & ST

candidates was rechecked; after calling objection from the affected parties, final seniority was issued and based on this seniority list it was found that the applicant was promoted in excess to the quota as he was junior the base grade and as such he was reverted from the post of HTTE vide Annx.A1.

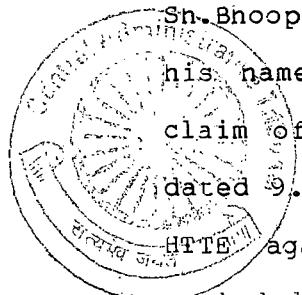
7. Thus, from the narration of facts as stated above one thing is clear that though the general candidates whose name find mentioned in the panel dated 9.1.97 for the post of HTTE were regularised but SC & ST candidates could not be regularised by virtue of interim stay dated 17.1.97 granted by this Tribunal in O.A No.29/97. As such all the SC & ST candidates whose name find mentioned in the panel dated 9.1.97 and are not in excess of their respective quota can be promoted from the date of vacancy, as per panel dated 9.1.97, in terms of the judgment of this Tribunal dated 2.2.01.

8. Now, the question which requires to be answered is whether can it be said that the appointment of the applicant is in excess of the quota of SC & ST and as such he was rightly reverted and thus he is not entitled for regularisation in the scale Rs.5000-8000 in terms of decision in O.A No.29/97. Our answer to this question is negative. The applicant has placed on record the panel dated 9.1.97 (Annx.A3). The panel contains 29 names. Name of the applicant is at Sl.No.29 of the panel. The respondents in the reply has stated that there are 14 posts reserved for SCs and against the vacancies 13 and 14, S/Sh. Bhoop Singh and Ganpat Lal have been promoted on ad hoc basis. There is no dispute that these persons are senior to the applicant and belong to SC category. However, according to the learned counsel for the applicant, name of Sh.Bhoop Singh, does not find mentioned in the panel dt 9.1.97 as such he could not

(b)

have been ~~reserved~~ ^{promoted} against the vacancy of SCs based on the panel though name of Sh.Ganpat Lal is there at Sl.No.28 of the panel Anxx.A3. According to the learned counsel for the applicant, Sh.Bhoop Singh has not qualified the written examination and as such he was rightly not placed in the panel dated 9.1.97. According to him, he could not have been promoted over and above the applicant whose name find mentioned in the panel.

9. We have perused the panel Anxx.A3 dated 9.1.97. This panel contains certain notes. We are concerned with Note-4 which indicates that Sh.Bhoop Singh (SC) TTE, Bandikui, was promoted on trial basis for five months and his further continuation on the promoted post was subject to his satisfactory performance on the promoted post, on the basis of the report for the last six months. Thus, from the above, it is quite evident that Sh.Bhoop Singh was promoted as HTTE on ad hoc basis even though his name does not find mentioned in the panel ignoring the claim of the applicant who was admittedly there in the panel dated 9.1.97. As such, Sh.Bhoop Singh was wrongly promoted as HTTE against vacancy No.13 and the applicant was wrongly excluded as having been promoted in excess of the quota meant for SCs. As already held above that since the name of Sh.Bhoop Singh was not there in the panel whereas the applicant who qualified the test and his name figured at Sl.No.29 in the panel dated 9.1.97, could not have been ignored ^{Thus} and it cannot be said that the applicant was reverted in terms of the order of this Tribunal in O.A No.29/97 dated 2.2.01, being promoted in excess of the quota. Accordingly we hold that the applicant was not promoted against excess quota for SC candidates and as such he is entitled for regularisation based on his panel position dated 9.1.97 from the date the vacancy is available.



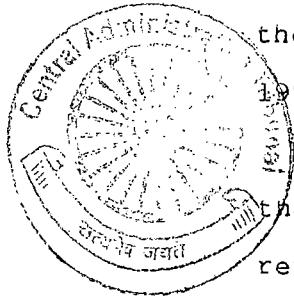
10. O.A No.438/2000 was initially filed by four applicants with the prayer that the reversion of applicant No.2, Tophan Singh, as ordered vide order dated 22.8.2000, be set aside and the applicants may be regularised in accordance with their panel position.

11. The matter was listed on 6.9.02 and this Tribunal passed the following order:

"The learned counsel for the applicants submits that he will restrict his relief and prayer to applicant Nos.2 & 3 since so far as applicant No.1 is concerned, the relief has been given to him and so far as applicant No.4, his case is covered in O.A No.617/01. Sh.Tophan Singh is an ST candidate and the contention of the learned counsel for the applicant is that Sh.Sedu Ram Meena who was promoted against ST vacancy has now been regularised against General vacancy and has been treated as General candidate and Sh.Tophan Singh has to be regularised from the date the vacancy is released i.e. from the earlier panel of 1997.

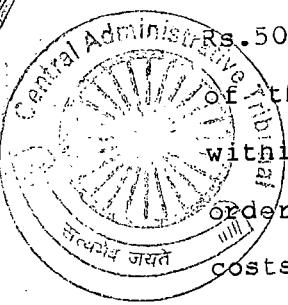
Further, the learned counsel for the applicants submits that the applicant No.3 is promoted on ad hoc basis as per reply of the respondents and in similar manner as in the case of Sh.Rajesh Kumar, he is also required to be regularised as per the panel of 1997."

12. Thus, the only question which survives now is regarding regularisation of services of applicants Nos.2 & 3, against ST/SC category based on the panel dated 9.1.97 in the category of HTTE. As stated above though the general candidates whose name find mentioned in the panel dated 9.1.97 for the post of HTTE in the scale Rs.5000-8000 were regularised but the SC/ST candidates could not be regularised by virtue of the interim



direction dated 17.1.97 issued by this Tribunal in O.A No.29/97. Now, O.A No.29/97 has been decided vide order dated 2.2.01 and directed the official respondents to grant promotion to the persons on the basis of panel dated 9.1.97 and the respondents were further directed to recheck the quota of SC/ST candidates in terms of rules and law laid down by the Apex Court. Based on these observations and material placed on record as reproduced above, it is not disputed that name of applicant No.2 find mentioned at Sl.No.24 against ST category whereas name of applicant No.3 find mentioned at Sl.No.28 against SC category in the panel dated 9.1.97. It is also not disputed that applicant No.3, Gopal Lal was allowed to continue as HTTE in the scale Rs.5000-8000 on ad hoc basis and vacancy for him was also available but could not be regularised because of the interim direction issued on 17.1.97 in O.A No.29/97. In view of the admitted position applicant No.3 is entitled for regularisation against the post of HTTE in the scale 5000-8000 against SC quota from the date the vacancy is available as per panel dated 9.1.97. Similarly, applicant No.2, who was earlier reverted vide order dated 21.8.2000 (Annex.A1) on account of ST vacancy was not available, is also entitled for regularisation against the ST vacancy which has fallen vacant on account of promotion and regularisation of Sh.Sedu Ram Meena, applicant No.1 against general category, from the date the vacancy is released/available as per panel dated 9.1.97.

13. In view of what has been stated above, both these O.As are allowed and the applicants are entitled to regularisation as HTTE in the scale Rs.5000-8000 in their respective categories against the vacancy position based on panel dated 9.1.97. The respondents are directed to take further steps in regularising the services of the applicants on the post of HTTE in the scale



Rs.5000-8000 against SC/ST quota based on the vacancy position of the panel dated 9.1.97 and such exercise shall be done within two months from the date of receipt of a copy of this order. Both the O.As stand disposed of with no order as to costs.

SL
(M.L.Chauhan)

Member (J)

SL
(H.O.Gupta)

Member (A).

Copy of the order dated 16.9.2002
acc. to the copy of the letter dated 16.9.2002
As in The Case of the No. *OSR 612/2001*
And dated 16.9.2002 The Motion Objecting
Thereof have been Legally and Lawfully
disposed with no Modification.

PLC/16
16.9.2002
Copy of Clerk Section Officer(Judicial)
C.A.T. Jaipur Bench