

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 17 August, 2001

OA No.319/2001

1. R.K.Kashyap s/o Shri K.C.Kashyap r/o M-18, Madhuvan Colony, Tonk Phatak, Jaipur at present posted as O.S.Grade-II in the Estt. Branch, D.R.M.Office, Western Railway, Jaipur.
2. Nirmal Kumar Jain s/o Shri U.S.Jain r/o E-720, Vaishali Nagar, Jaipur at present posted as O.S. Grade-II in the Estt. Branch, D.R.M.Office, Western Railway, Jaipur

..Applicants

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager, Western Railway, Jaipur
3. Sr. Divisional Personnel Officer, Western Railway, Jaipur
4. Shri. Ramesh Kumar Kaloriya, O.S.Grade-I, c/o Sr. Divisional Personnel Officer, Western Railway, Power House Road, Jaipur

.. Respondents

Mr. Virendra Lodha, counsel for the applicants

Mr. Manish Bhandari, counsel for the respondents Nos. 1 to 3

Mr. Nand Kishore, counsel for respondent No.4.

CORAM:

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

Hon'ble Mr.Gopal Singh, Administrative Member

ORDER

Per Hon'ble Mr. Gopal Singh, Administrative Member

In this application under Section 19 of the Administrative Tribunals Act, 1985, applicants, R.K.Kashyap and Nirmal Kumar Jain, have prayed for declaring the impugned order dated

*(Signature)*

16.7.2001 (Ann.A1) as null and void so far as it relates to the promotion of respondent No.4 in the post of Office Superintendent Grade-I, scale Rs. 6500-10500 and further that earlier order dated 6.7.2001 be declared as valid and accordingly directions be issued to the respondents for reversion of respondent No.4 to the post of Office Superintendent Grade-II. It has further been prayed that since the model roster issued by the Railway Board on 21.8.2000 has been set-aside, the respondents be directed to follow the correct model roster for filling up the posts in small cadres.

2. Undisputed facts of the case are that in pursuance to the judgment of this Tribunal dated 29.3.2001 passed in OA Nos. 111/2000, 171/2000 and 189/2000 as also the judgment of Hon'ble the Supreme Court in the case of Ajit Singh-II, the official respondents revised the seniority list of various posts in the clerical grade vide their letter dated 27.4.2001 (Ann.A2). In the seniority list of Office Superintendent Grade-I (for short OS-I) pay scale Rs. 6500-10500, there are in all names of 16 persons of which persons at Sl.No.12, 15 and 16 belong to Scheduled Caste (for short SC) category and they had been declared in excess of the prescribed quota. It has also been pointed out that Sl.No.12 was promoted prior to 1.4.1997 and, therefore, he would be adjusted against the next available vacancy. It has further been provided therein that it is proposed to revert Sl.Nos. 15 and 16 who have been promoted after the cut-off date of 1.4.1997. Accordingly, the respondents had issued the order dated 6.7.2001 (Ann.A3) reverting S/Shri Ramesh Kumar Kaloriya and Raghuvir Singh to the post of Office Superintendent scale Rs. 5500-9000. Simultaneously, Shri R.P.Yadav and Shri R.K.Kashyap (applicant No.1) were promoted against the vacancies caused by reversion of Shri Ramesh Kumar Kaloriya and Shri Raghuvir Singh. The respondent Department further vide their letter dated 16.7.2001 (Ann.A1) promoted Shri Ramesh Kumar

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Kaloria to the post of OS-I scale Rs. 6500-10500 against the existing vacancy reserved for SC category. In the same order Shri R.K.Kashyap (applicant No.1) had been promoted in the leave vacancy of Shri R.P.Sharma, Chief Office Superintendent scale Rs. 7450-11500. It is the contention of the applicants that the cadre of Office Superintendent Grade-I consists of 9 posts and in the seniority list issued by the respondents vide Ann.A2, 3 persons namely S/Shri Devi Lal, Ramesh Kumar Kaloriya and Raghuveer Singh were indicated to be in excess of the SC quota and accordingly Shri Ramesh Kumar Kaloriya and Shri Raghuveer Singh were reverted. Since Shri Devi Lal was also in excess of the prescribed quota for SC, in the next available vacancy reserved for SC, Shri Devi Lal could have been adjusted. Instead, the respondents had issued promotion order vide Ann.A1 of Shri Ramesh Kumar Kaloriya. Thus, there are 4 persons belonging to SC category available in the cadre of 9 posts. It is contended by the applicants that had Shri Ramesh Kumar Kaloriya not been promoted against the post, applicant No.1 would have got this regular post and applicant No.2 would have been promoted against the leave vacancy of Shri R.P.Sharma. Feeling aggrieved, the applicants have filed this application.

3. In the counter, the official respondents have stated that Shri Devi Lal was promoted as OS-I on the basis of seniority and not as per reservation roster and, therefore, in the next point available for SC in the cadre of OS-I, Shri Ramesh Kumar Kaloriya was promoted. It has, therefore, been averred by the respondents that there is no irregularity or infirmity in the action of the respondents and therefore, the application is liable to be dismissed.

4. The learned counsel for respondent No.4 (Ramesh Kumar Kaloriya) has also filed written arguments and it has been contended

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that respondent No.4 had rightly been promoted as OS-I as he had passed the selection for the post of Chief Clerk and was placed at No.1 on that panel. Thus, on merit and seniority he was rightly considered for promotion on the next available vacancy in the cadre of OS-I. It has, therefore, been submitted by respondent No.4 that his promotion to the post of OS-I is in accordance with the law laid down by Hon'ble the Supreme Court in this regard.

5. We have heard the learned counsel for the parties and perused the record of the case carefully.

At this stage we would like to briefly summarise the law laid down by Hon'ble the Supreme Court in matters of reservation vide their judgment in Ajit Singh-II:-

- i) Vacancy based roster would continue to apply till the prescribed percentage of reservation in favour of SC/ST is reached. When prescribed percentage of reservation in favour of SC/ST is reached, vacancy based roster would cease to operate. Instead, post based roster would apply. Post based roster would imply that if the vacancy is caused by the general category candidate, it will be filled by general category candidate and, if it is caused by a reserved category candidate, it would be filled up by the reserved category candidate.
- ii) Promotions of reserved category candidates in excess of the prescribed percentage of reservation, prior to 1.3.1996 would not be disturbed. However, such reserved category candidates would be treated as on ad-hoc promotion and would be adjusted against future vacancies on their turn. This date of 1.3.1996 was further extended to 1.4.1997 by Hon'ble the Supreme Court. Thus, the reserved category candidates promoted in excess of

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the prescribed percentage after 1.4.1997 would be liable to be reverted.

iii) It has also been held that if a senior general category candidate is promoted to the next higher grade to which a junior reserved category candidate had earlier been promoted, then the senior general category candidate would regain seniority over the junior reserved category candidate promoted earlier provided the junior reserved category candidate had not been further promoted to the next higher grade.

6. In the instant case, the respondent Department had revised the seniority list based on the law laid down by Hon'ble the Supreme Court, as mentioned above. The cadre of OS-I is only of 9 posts and there is a reservation of 15% in favour of SC category. Thus, in a cadre of 9 posts, there can be only one post for SC candidate. The Government of India has prescribed 'L' type roster for implementation of roster reservation in respect of small cadres upto 13 posts. None of the parties have produced before us this 'L' type roster so as to work out number of posts reserved for SC and ST category. Therefore, applying the percentage of 15% in 9 posts, 1.35 posts come in favour of the SC category and 1.35 on rounding up would be only one post. It is admitted by the respondents that there were 3 candidates belonging to SC category already occupying 3 posts in this cadre and, therefore, 3 persons namely S/Shri Devi Lal, Ramesh Kumar Kaloriya and Raghuveer Singh were declared in excess of the prescribed percentage. It has already been pointed out above that in a cadre of 9 posts, there can at best be reservation of one post for SC and already there were 3 candidates available. In the eventuality of availability of one more post, the same should have gone to the General category candidate as the appointment of the SC candidate against that post

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would imply more than due reservation for the SC category. In this view of the matter, We are firmly of the view that Shri Ramesh Kumar Kaloriya was rightly reverted vide respondents' letter dated 6.7.2001 (Ann.A3). Further, his adjustment against the available post meant for SC category in the scale of Rs. 6500-10500 vide respondents' order dated 16.7.20001 (Ann.A1) is in violation of the principles laid down by Hon'ble the Supreme Court in this regard. The contention of private respondent, Ramesh Kumar Kaloriya, that he has passed the selection test for the post of Chief Clerk and placed at Sl.No.1 of the panel on his own merit, he was rightly promoted to the post of OS-I, is not sustainable. It is seen that as per the base grade seniority, he was much below the applicants. The applicants name figure at Sl.No. 3 and 4 of the seniority list of Office Superintendent Grade-II while that of respondent No.4 figures at Sl.No.15. Thus, as per the base grade seniority, the respondent No.4 would not have got this promotion to the post of OS-I. The contention of the official respondents is also not tenable, because there cannot be reservation of 3 posts for SC category in a cadre of 9 posts. It is also pointed out by the respondents that earlier the cadre was of 12 posts and 3 posts were reserved for SC category. This statement also is not tenable, as in 12 posts reservation for SC comes to  $12 \times 15/100 = 1.80$  i.e. maximum 2 posts. In the light of above discussions, we find much merit in this application and the same deserves to be allowed. Accordingly, we pass the order as under:-

The OA is allowed. The impuned order dated 16.7.2001 (Ann.A1) so far as it provides posting to Ramesh Kumar Kaloriya (respondent No.4) on the post of Office Superintendent Grade-I in the pay scale Rs. 6500-10500, is quashed and set-aside. The respondents are directed to consider the case of the applicants for promotion to

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the post of Office Superintendent Grade-I on the basis  
of their seniority. No costs.

*Gopal Singh*  
(GOPAL SINGH)

Adm. Member

*B.S.RAIKOTE*  
(B.S.RAIKOTE)

Vice Chairman