

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 396/2001 199
T.A. No.
XXXX

DATE OF DECISION 16.4.2004

All India Equality Forum & Anr. Petitioner

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

Versus

Union of India and ors. Respondent

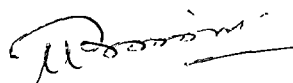
Mr. U.D.Sharma Advocate for the Respondent (s)
Mr. Nand Kishore


CORAM :

The Hon'ble Mr. J.K.KAUSHIK, MEMBER (JUDL)

The Hon'ble Mr. M.K.MISRA, MEMBER (ADMV)

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


(M.K.MISRA)
Member (A)


(J.K.KAUSHIK)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Date of Order : 16.4.2004

Original Application No.396/2001.

1. All India Equality Forum through its Divisional Secretary, Shri Mukesh Kumar Vashishtha, 22, Indra Puri, Khatipura Road, Jhotwara, Jaipur.
2. Shri S. N. Sharma son of Late Shri B. L. Sharma, aged about 42 years, at present working on the post of Chief Telephone Operator in the office of Senior Section Engineer (Telecommunication), Jaipur Division, Western Railway, Jaipur, resident of Plot NO.33, Devi Nagar, New Sanganer Road, Sodala, Jaipur.

... Applicants.

v e r s u s

1. The Railway Board through its Chairman, Rail Bhawan, New Delhi.
2. The Union of India through the General Manager, Western Railway, Jaipur.
3. Divisional Railway Manager (Estt), Western Railway, Jaipur Division, Jaipur.
4. Senior Divisional Signal & Telecommunication Engineer, Western Railway, Jaipur Division, Jaipur.
5. Shri Raj Kumar S/o Shri Nathu Lal 410, Barkat Nagar, Tonk Phatak, working as Chief Telephone Operator DRM Office, Jaipur Division, Jaipur.

... Respondents.

Mr. P. V. Calla counsel for the applicants.
Mr. U. D.Sharma counsel for respondent No.1 to 4.
Mr. Nand Kishore counsel for respondent No.5.

CORAM

Hon'ble Mr. J. K. Kaushik, Judicial Member.
Hon'ble Mr. M. K. Misra, Administrative Member.



: O R D E R :
(per Hon'ble Mr. J. K. Kaushik)

All India Equality Forum and another has file this Original Application under Section 19 of the Administrative Tribunals Act 1985, wherein the following reliefs have been sought :-

" It is, therefore, prayed that the Hon'ble Tribunal may kindly call for and examine the entire records relating to this case and by an appropriate order or direction the impugned letter dated 10.08.2001 (Annexure A/2) may kindly be declared illegal and further by an appropriate or direction the railway administration may kindly be directed to adhere to the direction given by the Hon'ble Apex Court and consequently the railway administration may kindly be directed to extend the benefit of the judgement passed by the Hon'ble Apex Court, as followed by the Hon'ble Tribunal, and consequently Annexure A/3 dated 14.8.2001 may also kindly be declared illegal.

It is further prayed that the railway administration may kindly be directed not to take any further action pursuant to the letter dated 10.8.201 (Annexure A/2) and in case any order during the pendency of this Original Application is passed, the same may also kindly be declared illegal.

Any other relief to which the applicant is found entitled, in the facts and circumstances of the present case, may also be granted.

The Original Application may kindly be allowed with costs."

2. Filtering out the superfluities, the material facts necessitating filing of this application may be narrated in nut shell. The applicant No.1 is a registered forum under Co-operative Societies Act, having its Head Office at Bikaner and one Branch at Jaipur. Its main object is to protect the rights of members from unequal treatments. Applicant No.2 is one of the affected person who belongs to Signal and Telecommunication Department of Railway and holding the post of Chief Telephone Operator in the office of Sr. SE (Telecom) Jaipur Division, North West (Erstwhile Western) Railway. Applicant NO.2 is senior to one Shri Raj Kumar (Respondent No.5) as per the basic grade seniority. The applicant No.2 belongs to general category whereas the respondent No.5 belongs to reserve category.

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Both of them have got the promotion to the post of Chief Tele Operator in the pay scale of Rs.1600-2660 w.e.f. 22.11.1994/23.07.1997 and 27.2.1994, respectively. The respondent No.5 has marched over the applicant due to the benefit of accelerated seniority on account of promotion under roster reservation by jumping the queue.

3. Numerous cases were filed all over the country challenging the rule for granting accelerated seniority on account of promotions by applying reservation roster. As a result of which the SC/ST candidates marched over is wholesale in seniority over their erstwhile seniors. The matter was adjudicated and settled by the Supreme Court in case of Ajit Singh-II vs. State of Punjab (7) SCC 209 and seniority catch up principle was introduced whereby one would not lose his seniority ; rather he would gain his original seniority when he gets his promotion to the post his junior reserve candidate has been earlier promoted. Various benches of Tribunal including this very Bench allowed the application on the similar lines, primarily directing the authorities to implement the judgement of Apex Court and recast the seniority with certain protection regarding reversion of SC/ST candidates promoted prior to 1-4-97, in excess as a result of seniority.

4. The Railway Board also issued orders for implementing the same and the applicant No.2 in particular and other employees of S&T Department in general were allowed their due seniority and other benefits. The seniority list was issued on dated 4.5.2001 (Annexure A-15) and the name of applicant No.2 is placed at Sl. No.1 i.e. above Shri Raj Kumar respondent NO.5. Applicant No.2 was also allowed further promotion.

5. The further facts of the case are that HQrs issued order dt. 10.8.2001 (Annexure A-2) & 14.08.2001 (Annexure A-3) whereby the judgement of this Bench of Tribunal was directed to be implemented only in respect of departments whose employees filed cases. Incidentally, none of the employee from S&T Department of Jaipur Division had gone into litigation. Due to both the said orders, the




respondents started snatching away his legal dues and these are primarily challenged in this case. The OA has been filed on diverse grounds mentioned in para 5 and its sub-paras which we shall deal in later part of this order.

6. The respondents have resisted the claim of applicants ^{and} filed their separate replies i.e. one by official respondents and other respondent No.5. The facts and grounds narrated in the OA have been contraverted. The respondents have placed on records certain orders which have been passed by the Supreme Court in a Writ Petition wherein the 85th Constitution Amendment has been challenged. As per the orders certain protection has been granted as well as benefits as per the 85th Constitution amendment are also ordered to be extended. An order dt. 26.2.2002 has also been placed on record at page 145 of paper book whereby the applicant has been reverted and respondent No.5 has been promoted vice him. In reply of Respondent No.5, it has been averred that order at Annexure A-2 is valid and judgement passed by this Tribunal would apply to the parties thereto and not to any other person.

7. We have heard the elaborate arguments advanced on behalf of all the parties and have anxiously considered the pleadings and the records of this case.

8. The learned counsel for the applicant has reiterated the facts and grounds mentioned in OA. Most of them we have noticed above. He has submitted that the basic direction to adhere to the seniority catch up principle was the mandate of Supreme Court and the various Benches of the Tribunals have only issued orders for granting the same. He has endeavoured to persuade us that it is also not the case of respondent that the one who has filed a case and went into litigation, is only to be given the benefits their case is that there was no one from S&T department who filed the case and that is the reason the benefits has been denied. It may be noted that from other departments the cases were filed in representative capacity and benefits have been extended to all even if



anyone from a particular department has been entered into litigation. He has further contended that there can be no reasonable classification based as the impugned orders at Annex. A2 and A3 are intended to make. By such classification the respondents have offended the equality clause. The learned counsel has also submitted that had the applicant No.2 been given the benefits of catch-up rule as per verdict of the Supreme Court in Ajit Singh-II's case (supra), he would have not faced any adversity including that of his reversion. His reversion is the result of withdrawal of benefits or seniority which was required to be protected. Therefore, in case the Annex. A/2 and A/3 are declared illegal and set aside, he would get his position and all such subsequent developments could not be incorporated in the OA so as to avoid prolixity in disposal of the case.

10. Per contra, the learned counsel for the respondents have vociferously opposed the contention submitted on behalf of applicants. The subsequent developments have been emphasised and it has been argued that the applicant has not challenged his reversion order and now 85th constitutional amendment has come into effect, therefore, the OA has also become iniructuous. We were taken through the various orders passed by the Supreme Court in the case wherein 85th amendment has been challenged.

11. We made specific query as to whether all those who were given benefits of catch-up principle, are enjoying the protection of their promotion. The learned counsel for applicants replied in affirmative but the counsel for respondents expressed their inability to answer the same.

12. We have considered the rival contentions raised on behalf of all the parties. There is hardly any querral as far as the factual matrix of the case is concerned. We also find that it is also admitted that the applicant had to face reversion since his benefits of seniority granted by applying catch-up principle have been withdrawn since

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none from his department entered into litigation. It is also true that all those who enjoyed the said benefits also did not file their individual cases. It is also true that the principle of catch-up rule has been propounded by the Apex Court and the Tribunal only gave direction to adhere to the same.

13. The primary question for us to answer is of seminal significance. It is as to whether there can be any classification based on one litigating and other not litigating. The ancillary question may be as to whether the judgment in rem is to be implemented in respect of the parties thereto or to the similarly situated persons or else the law laid down by the Supreme Court under Article 141 is to be applied in respect of all affected persons or only to the specific parties to the litigation.

14. Before examining the aforesaid issues, we would ascertain the factual aspect relating the Annex. A/2 and A/3. As regard the Annex. A/2 is concerned, it was directed by the Railway Board that the judgment delivered by this Bench of the Tribunal was to be implemented in respect of categories covered by judgment dated 29.3.2001. It has nowhere said that no such benefits are to be extended to other similarly situated persons. It also did not touch upon the other aspect that if any benefit of the same have been extended to other similarly situated employees, the same was to be withdrawn. Rightly so, there could have been no such intendment since the Railway Board was only concerned with the compliance of the order of the Tribunal and perhaps had no knowledge that the same had already been complied with.

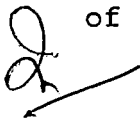
15. As regards the Annex. A/3, the authority seems to have overstepped its jurisdiction and inferred from Annex. A/2, the benefits of the judgment therein were to be withdrawn from the employees belonging to a department from whom none of employees entered into litigation. While we agree that a very high degree of wisdom may not be expected from subordinate authorities but once the benefits were already granted to applicants and the whole

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Issue was settled by the highest Court of this country, the least could be expected that the factual aspect ought to have brought to the notice of the Railway Board. Unfortunately, it was also not considered expedient but at least a show-cause notice would have been given to the applicants before withdrawing the benefits of seniority.


16. Now we shall examine the various issues involved in the instant case. As far as the first is concerned, we are bound to answer in negative. A reasonable classification is permissible under equality clause but such classification should be based on intelligible differentia and there should be a nexus in such differentia with the object sought to be achieved. All like should be treated alike, in like circumstances and conditions. Undoubtedly, the law of catch-up principle has been evolved by the Supreme Court. The seniority is required to be determined as per the rules in force and it is not an individual concept as far as the rules of its determination are concerned. It cannot be different for a person who has gone into litigation than those who have not so gone. Thus, the action of respondents in treating the applicants a separate class is arbitrary and therefore the impugned orders Annex. A/2 and A/3 so far they deprive the employees of S&T department of Jaipur Division, cannot be sustained.

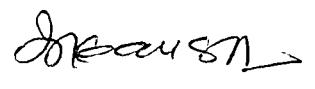
17. As far as the other questions are concerned, we notice from the perusal of judgment of the Apex Court in Ajit Singh-II case (supra), general principle of assignment of seniority by applying catch-up rule has been laid down. And the law laid down by the Supreme Court under Article 141 of the Constitution, is the law of country and binding on all courts and authorities. The judgment in said case of Ajit Singh-II was a judgment in rem and was to be applied in respect of all the affected/related employees. No discrimination can be made on the basis of one litigating and one not so litigating. Both the issues are answered accordingly. Therefore, none of the impugned order can be sustained.



18. Before parting with this case, we make it clear that in this case, we are only concerned with examining the validity of the impugned orders by applying the law in existence at the relevant time. As far as the subsequent development relating to the constitutional amendment and cases filed thereon are concerned they shall have their own repercussions. Our concern would be only to restore the position of applicants independent of the subsequent developments.

19. In the circumstances of the aforesaid discussion, we reach to an inescapable conclusion that action of the respondents in withdrawing the benefits of seniority assigned to the applicant vide letter dated 04.05.2001 (Annex. A/5) can not be sustained and the impugned order dated 10.8.2001 (Annex.A/2) (to the extent of depriving the benefits of catch-up rule) and order dated 14.8.2001 (Annex.A/3) stand quashed. The applicant No.2 in particular and other similarly situated employees belonging to S&T Department in General shall be entitled to all consequential benefits. This order shall be implemented within a period of three months from date of receipt of a copy of the same. Costs made easy.


(M.K. MISRA)
MEMBER (A)


(J.K. KAUSHIK)
MEMBER (J)