

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 325/2002
T.A. No.

199

DATE OF DECISION

7th Feb, 2005

Champa Lal Meghwal

Petitioner

Mr. Nand Kishore

Advocate for the Petitioner (s)

Versus

Union of India and ors.

Respondent

Mr. Tej Prakash Sharma

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. M.L.CHAUHAN, MEMBER (JUDL.)

The Hon'ble Mr. A.K.BHANDARI, MEMBER (ADMV)

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 ?
4. Whether it needs to be circulated to other Benches of the Tribunal ? Yes


(A.K.BHANDARI)
Member (A)


(M.L.CHAUHAN)
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 7th day of February, 2005

ORIGINAL APPLICATION No. 325/2002

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR.A.K.BHANDARI, MEMBER (ADMINISTRATIVE)

Champa Lal Meghwal
S/o Shri Bheru Lal,
Section Engineer (Works)
In DRM office, Western Railway,
Ajmer, aged about 34 years,
r/o C/1/A, GLO Colony,
Near Ticket Printing Press,
Mal Road, Ajmer.

.. Applicant

(By Advocate: Shri Nand Kishore)

Versus

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

.. Respondent

(By Advocate: Shri Tej Prakash Sharma)

ORDER

Per M.L.Chauhan, Member (J)

The applicant has filed this Original Application
thereby praying for the following reliefs:-

"By an appropriate order or direction Hon'ble Tribunal may kindly call for the entire record, concerning to the case and after examination of the same be pleased to order that the name of the applicant may be included in the panel dated 18.7.2000 (Ann.A1) against the deficiency being carried forward for SC or alternatively against the ST in accordance with Board's directive dated 21.8.97 Annexure A/10 para 9. The respondents may be further directed to promote the applicant on the post of Assistant Engineer on the strength of the said panel (Ann.A/1)."

2. At this stage, relevant facts which may have bearing in this case may be noticed. Pursuant to notification No. E(G)1024/5/2 (LDCE) dated 29.11.1999 notified through D.R.M. (E) Ajmer letter No. E/E/1024/3 Volume-4 (LDCE) (1) dated 3.12.1999, respondents notified 27 vacancies of Assistant Engineers (AENs) Group-B Civil Engineering Department. Out of 27 vacancies, 4 were reserved for SC and 2 for ST. The selection was to be made on the basis of Limited Departmental Competitive Examination against 30% of vacancies for promotion to Group-B post. In response to this notification, the applicant who was working in Group-C category, applied for the same vide application dated 13.12.1999. The selection was to be made on the basis of written examination as well as viva-voce test. The applicant was declared qualified in written test held on 4.3.2000 vide letter dated 26.5.2000 (Ann.A4). The selected candidates were called for viva-voce. On the basis of their performance in the written examination and viva-voce and on the basis of records of service, a panel was

prepared. The name of the applicant was not included in the panel dated 18.7.2000 (Ann.A1). Consequently, the applicant submitted a representation to the General Manager (E) CCG on 24.7.2000 (Ann.A5), followed by reminders. It was stated in the said representation that the name of the applicant did not find mention in the panel published vide letter dated 18.7.2000 (Ann.A1) probably on the ground that sufficient SC quota has been achieved but at the same time, no ST candidate has been placed in the panel, as such, in terms of Railway Board's letter No. (SCT) 73 CM/15/13 dated 17.8.74 and 77-E (SCT) 15/34 dated 10.6.77, exchange in same year is permissible. Under these circumstances, it was requested that his case may be kindly be considered against ST vacancies.

2.1 The applicant has further stated that there were deficiencies of SC and ST category, as requisite number of candidates of these categories were not filled in the year 1995, 1996 and 1998. The total deficiencies were of 9. On account of which, 5 posts has to be filled from SC category and 4 from ST category. It is further averred that in the event of adequate number of SC and ST not being available in a particular year, these posts can be exchanged between the candidates of SC and ST and vice versa within the same year of the recruitment itself as per Railway Board's letter dated 21.8.1997 (Ann.A10). It is on the basis of these averments the applicant has prayed that

the name of the applicant be included in the panel dated 18.7.2000 (Ann.A1) against the deficiencies carried forwards for SC and in the alternative against category of ST in accordance with the Railway Board circular letter dated 12.9.97/22.10.97 as circulated vide letter dated 21.8.97 and further circulated vide letter dated 5.5.1998 (Ann.A10).

3. Notice of this application was given to the respondents. The respondents have filed reply. In the reply, it has been stated that the applicant could not be empanelled because he could not get qualified marks as per merit of their selection. Further, it is stated in the reply that there was deficiency of ST candidates in the year 1995 i.e. 2 SC and not of 5 SC candidates. The respondents have also submitted year-wise chart. It is further stated that the applicant appeared in the selection in the year 2000 and at that point of time only 4 posts of SC and 2 of ST were kept reserved as per percentage prescribed for this category. Accordingly, 4 SC candidates were empanelled and if the applicant was to be considered against ST point, it would have exceeded the prescribed percentage of SC which will be in violation of the judgment of Hon'ble CAT, Mumbai.

4. The applicant has filed rejoinder, thereby reiterating that the applicant has qualified the

written test as can be seen from the letter dated 2.3.2001 and 21.1.2002 (Ann.A6) which clarify that the applicant has qualified for empanelment of AEN (LDCE) but could not be placed in panel because carry forward vacancies have not been taken into consideration.

5. At this stage, it may be relevant to notice that initially the matter was heard and vide judgment dated 22.4.2004, the OA was dismissed on the ground that though the applicant has obtained 60% marks in written test (181/200) but in aggregate taking into account the marks obtained in the viva-voce and written test and record of service, the applicant has obtained only 216 marks out of 400. Thus, in aggregate the applicant has not obtained 60% of qualified marks and his name was not rightly placed in the select list vide letter dated 18.7.2000 (Ann.A1), as such, he could not be empanelled. Subsequently, the applicant filed review application thereby stating that 216 marks obtained by the applicant were out of 350 marks and not 400 marks. As such, he has obtained 60% qualified marks both in written test and in aggregate and the OA could not have been dismissed on that ground. This Tribunal after summoning the record found that in fact the applicant has obtained 216 marks out of 350 and thus he has obtained 60% qualifying marks both in written test and in aggregate. As such the Review Application was allowed and the OA was restored

to its original number. Thereafter, the matter was adjourned from time to time and listed for final hearing on 3.2.2005.

6. We have heard the learned counsel for the parties and gone through the material placed on record.

7. It cannot be disputed that the Railway Board had conducted a written examination for filling up 27 vacancies of AENs Group-B in Civil Engineering Department through LDCE (30%), out of which 4 posts were kept reserved for SC and 2 for ST. A notification on this behalf was issued vide letter dated 29.11.1999 (Ann.A3), where this fact find mention. The applicant has appeared pursuant to the said notification in the written examination. Thus, he cannot be permitted to contend that vacancy for SC and ST category has not been intimated correctly. Further, it is also not the case of the applicant as can be seen from his representation followed by some reminders (Ann.A5) that less number of the vacancies for SC and ST have been notified. The case of the applicant as can be seen from his representations (Ann.A5) and also can be seen from the pleadings made in this OA is that only 5 SC candidates have qualified and 4 of them have been adjusted against SC quota, as such, he should have been also adjusted against the post of ST candidate in

view of the Railway Board's letter dated 21.8.97 where the exchange in the same year is permissible. Thus, we are not required to examine the question whether the post reserved for SC and ST category were not correctly notified vide Ann.A3. As already stated above, the grievance of the applicant is that once he has qualified the written examination and as per letter of the General Manager (E) addressed to the Secretary, Railway Board Ann.A6, the applicant's case was recommended for consideration to the Railway Board, as such, he should have been given appointment against the vacancy meant for ST category.

8. We have given thoughtful consideration to the matter and we are of the view that the applicant is not entitled to any relief. As already stated above, the Railway Board had conducted a written examination for filling up of 27 vacancies of AEN, Group-B, in Civil Engineering Department through LDC (E) (30%), out of which 4 posts were kept reserved for SC and 2 for ST. It has come on record that on the basis of written examination, 44 candidates including 5 SC were qualified in both the papers and were called for viva-voce. On the basis of their performance in written examination and viva-voce and on the basis of service record only 25 candidates could be placed on the panel in the order of merit which included 4 SCs. The

applicant was the alone SC candidate who could not be empanelled as there was no post of SC available against which he could have been promoted. Thus, according to us, his name was not rightly placed in the select list dated 18.7.2000 and as such he could not be empanelled.

9. Now let us examine the alternative submissions made by the learned counsel for the applicant whereby he has contended that once the applicant has qualified the written test and obtained 60% marks in aggregate and his case was recommended for consideration to the Railway Board by the General Manager (E) as can be seen from letter written to the Secretary, Railway Board (Ann.A6), he should have been given appointment against the vacancy meant for SC category and for that purpose the applicant has drawn assistance from para 9 of the Railway Board letter dated 21.8.1997 as circulated vide letter dated 5.5.98 (Ann.A10). At this stage, it will be useful to quota para 9 of the said circular which reads thus:-

"9. Post reserved for SC/ST should not be dereserved and should be carried forward as per extent rules. The reserved posts may also continue to be exchanged between SCs and STs in the 3rd year of carry forward as per extent orders. Thus, there may be a situation where a SC may be occupying a post earmarked for STs and vice versa then such a situation will arise, the combined reservation shall not exceed more than 22.5%. However, whenever either Scheduled

Caste(s)/Schedules Tribe(s) is/are occupying post(s) meant for the STs or SCs as case may be, the possibility of filling up of the post by SCs or STs as the case may be, at the earliest opportunity against a subsequent reserved post may be kept in view."

It may be stated that this circular was issued on the basis of the decision rendered by the Supreme Court in the case of R.K.Sabharwal Vs. State of Punjab (AIR 1995 SC 1371), Union of India vs. Virpal Singh Chauhan (AIR 1996 - SC 442) and the judgment rendered by the Allahabad High Court in Union of India vs. J.C.Malik, as can be seen from the subject of the letter where the reference has been made to these judgments.

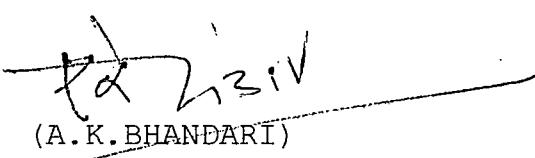
10. We have given thoughtful consideration to para 9 of the Railway Board circular referred to above, which has been quoted in extenso above. From reading of this para, it is clear that in case sufficient number of SC and ST candidates are not available for promotion against reserved vacancy, such vacancy cannot be de-reserved for the reason like non-availability of candidates of other categories to fill up the post and such vacancy which has remained unfilled will have to be carried forward to the next recruitment year. From reading of this para, it is also evident that reserved posts can be exchanged from SC and ST in the third year of carry forward as per extant orders. It has

been further clarified by the later portion of the para that, there may be a situation where a SC may be occupying a post earmarked for ST and vice versa then such situation will arise, the combined reservation shall not exceed more than 22.5 %. It is further clarified that however, when either SC or ST is/ are occupying post meant for SC/ST as the case may be, the possibility of filling up of post by SC/ST as the case may be, at the earliest opportunity against a subsequent reserved post may be kept in view. Thus, from the reading of the entire para it is clear that exchange is permissible only in a situation where the SC candidate has occupied the post of ST candidate or vice-versa and where on account of exchange of reservation between SC and ST candidates a number of posts filled by reservation by any category 'either by SC or ST candidate in a cadre' does not exceed the quota prescribed for that category. It is in this context that para 9 of the circular Ann.A10 has to be read. In case the contention of the applicant is accepted that exchange is permissible irrespective of quota prescribed for that category, it would be against the spirit of post based reservation and law laid down by the Apex court in the case of R.K. Sabharwal and Virpal Singh Chauhan (supra) and also the law declared by the Allahabad High court in the case of J.C. Malik (supra) which has been approved by the Apex Court in the case of R.K. Sabharwal. It may

also be stated here that principle of reservation between SC and ST was in vogue when the vacancy based roster was prevalent prior to decision rendered by the Apex court as well as by the Allahabad High Court in the aforesaid cases, but after the declaration of the law laid down by the Apex court in the case of R.K.Sabharwal and Virpal Singh Chauhan, the respondents have resorted to the post based reservation. The basic principle of post based reservation is that the number of posts filled up by reservation by any category in a cadre should be equal to the quota prescribed for that category. If exchange of reservation between SC and ST is permitted, the number of employees of one reserved category of employees appointed by reservation will go beyond the reservation prescribed for that category, which would be against the spirit of post based reservation. Therefore, after introduction of post based reservation, it is not permissible to fill up the post reserved for ST by SC candidate or vice-versa by exchange of reservation between ST and SC. If the matter is viewed on the basis of aforesaid principle which has been settled by the Apex Court in the aforesaid judgments, we are of the view that respondents have not committed any illegality whereby the applicant was informed vide letter dated 5th June, 2002 (Ann.A2) that Railway Board has advised that result of such exchange should not lead to excess

reservation of either SC or ST as per laid down percentages and the request of the applicant cannot be acceded to. Simply because reference was made by the General Manager (E) to the Secretary, Railway Board to seek clarification as to whether the post which was reserved for ST candidates and could not be filled due to non availability of ST candidates can be filled by SC candidate, based on the representation given by the applicant which, will not afford any cause of action in favour of the applicant that he should be adjusted against the post of ST ignoring the law laid down by the Apex Court. In that eventuality, the number of percentage prescribed for SC would go beyond reservation prescribed for that category. Thus, it would have been against the spirit of post based reservation as settled by the Apex Court and followed by the railway authorities. Thus, we are of the firm view that after introduction of the post based reservation it would not be possible to fill up the post reserved for ST by SC candidates by exchange of reservation by SC and ST, more particularly when reservation will go beyond the reservation prescribed for respective category, as in the instant case.

11. In view of above, the OA is bereft of merit and the same is accordingly dismissed with no order as to costs.



(A.K. BHANDARI)

Member (A)



(M.L. CHAUHAN)

Member (J)