



12.02.2008**OA No. 546/2003**

Mr. S.K. Jain, Counsel for applicant.
 Mr. Anupam Agarwal, Counsel for respondent Nos. 1 to 3.
 None present for other respondents.

Learned counsel for the applicant submits that he has prepared only one case i.e. OA No. 431/2007 and he has not prepared this case. Though it pertains to the year 2003, he prays for a short adjournment.

Let the matter be listed on 13.02.2008.


 (J.P. SHUKLA)
 MEMBER (A)


 (M.L. CHAUHAN)
 MEMBER (J)

AHQ

13-2-2008

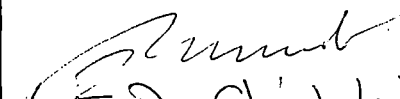
Mr. S.K. Jain, Counsel for applicant


Mr. Anupam Agarwal, Counsel for respondents
 Nos 1 to 3

None present for other respondents

Heard learned Counsel for the
 parties.


Order Reserved.


 (J.P. Shukla)
 M(A)


 (M.L. Chauhan)
 M(J)

15.2.2008

order pronounced today
 in the open court by
 the above said Bench.

 15/2/2008
 C.O.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 15th day of February, 2008

ORIGINAL APPLICATION No.546/2003

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR. J.P.SHUKLA, MEMBER (ADMINISTRATIVE)

1. Zahid Hussain s/o Shri Mohd. Hussain, r/o
H.No.208, Bajaj Khana, Kota, Sr. Goods Guard.
2. S.N.Bhardwaj s/o Sshri Mange Ram, r/o Chopra
Farm, Road No.5, Kota Jn. Sr. Goods Guard.
3. Mohd. Amin s/o Shri Mohammed Amin, r/o Green
House, Vikas Colony, Dadwara, Kota, Sr. Goods
Guard
4. Mukesh Jain s/o late Shri Madan Lal Jain, r/o
39, Railway Employees Housing Society, Mala
Road, Kota Jn., Sr. Goods Guard
5. Sanjeev Mishra s/o Shri V.P.Mishra, r/o 16,
Samradhi Model Town, Civil Lines, Kota, Sr.
Goods Guard
6. Hridesh Chaturvedi s/o Shri K.C.Chaturvedi, r/o
803A, Railway Colony, Kota, Sr. Goods Guard
7. A.J.Khan s/o Dr. S.R.Khan, r/o Alpha Public
School, Gali no.2, Sanjay Nagar, Kota Jn.
Senior Goods Guard
8. Govind Prasad Gupta s/o Shri Devilal Gupta,
r/o Behind Emminual School, Kota Jn., Sr. Goods
Guard
9. Kishan Singh Rajawat s/o Shri B.S.Rajawat, r/o
Near Dadwara Post Office, Rangpur Road, Kota-2
Sr. Goods Guard
10. Man Singh Jadon s/o Shri Mahendra Singh, r/o
Adarsh colony, Mala Road, Kota Jn. Sr. Goods
Guard.

11. Aziz s/o Shri Chhote Khan, r/o P.No.19, Behind Akashwani, Nayapura, Kota, Sr.Goods Guard.

.. Applicants

(By Advocate: Shri S.K.Jain)

Versus

1. Union of India through the General Manager, West Central Railway, Jabalpur.
2. Senior D.O.M., West Central Railway, Kota Division, Kota.
3. The Divisional Railway Manager, West Central Railway, Kota Division, Kota.
4. Ram Dayal, Senior Goods Guard
5. Dhanalal Bairwa, Senior Goods Guard
6. Roop Singh Koli, Senior Goods Guard
7. Jagdish Koli, Senior Goods Guard
8. Prem chand, Senior Goods Guard
9. Dinesh Kumar, Senior Goods Guard
10. Hari Kishan S., Senior Goods Guard
11. Magan Lal, Senior Goods Guard
12. Heera Lal, Senior Goods Guard

R4 to R12 through Sr. DOM, West Central Railway, Kota Division, Kota.

... Respondents

(By Advocate: Shri Anupam Agarwal)

O R D E R

Per Hon'ble Mr. M.L.Chauhan.

The applicants have filed this OA thereby praying for the following reliefs:-

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- i) That by an appropriate order or direction, the impugned order dated 3.6.2003 Annexure A/1 and the impugned seniority list dated 19.2.2003 Annexure A/2 be quashed and set aside.
- ii) That the respondents be directed to reconstitute the seniority list on the basis of the base grade seniority and then consider promotion for higher posts on the basis of the based grade seniority for the vacancies arising out during the period ending January, 2003.
- iii) Any other relief which this Hon'ble Tribunal deems fit may also be granted to the humble applicants, looking to the facts and circumstances of the present case.

2. Briefly stated, facts of the case are that the applicants were initially appointed as Goods Guard in the pay scale of Rs. 4500-7000 (old scale Rs. 1200-2040). The Seniority list for the above grade was issued vide order dated 24/30.3.93 (Ann.A4) whereby name of applicant Nos. 1 and 2 were shown at Sl.No. 225 and 226 and name of private respondents who belong to reserved category were shown below the applicants. On promotion in the grade of Rs. 5000-8000 on the post of Senior Goods Guard, the respondents issued a seniority list dated 26/27.6.2001 (Ann.A3) in which name of applicant Nos. 1 and 2 were shown at Sl.No. 55 and 56 whereas name of other applicants were shown as per the details given in schedule-A. However, the said seniority list Ann.A3 was subsequently changed vide seniority list dated 19.2.2003 (Ann.A2) where name of applicant Nos. 1 and 2 were shown at Sl.No.62 and 63. Similarly, there is a change of seniority position in respect of other applicants. In the impugned seniority

list dated 19.2.2003 (Ann.A2) name of private respondents were shown above the applicants. The case of the applicants in this OA is that private respondents who have been shown senior to the applicant vide impugned seniority list dated 19.2.2003 (Ann.A2) were junior to the applicants in the base grade post of Goods Guard Rs. 4500-7000, as can be seen from the seniority list dated 24/30.3.93. As such, they could not be shown senior to the applicants and such action of the respondents is contrary to the decision rendered by the Hon'ble Supreme Court in the case of Ajit Singh-II.

Further grievance of the applicants is that as per seniority list dated 26/27.6.2001 (Ann.A3), the applicants were senior to private respondents. It is stated that Constitutional Amendment Act of 2001 was under challenge before the Hon'ble Apex Court in Civil Writ Petition No.234/02. The Hon'ble Supreme Court vide its order dated 19.4.2002 while issuing notices on Writ Petition has directed to maintain status quo as of today. Thus, according to the learned counsel for the applicants, it was not legally permissible for the respondents to issue seniority list dated 19.2.2003 (Ann.A2) thereby changing the position which was prevalent as on 19.4.2002 when the stay was granted by the Hon'ble Apex Court. According to the learned counsel for the applicants, the seniority had to be determined on the basis of the base grade

seniority as per the decision of the Apex Court in Ajit Singh-II case and in any case interim order dated 19.4.2002 was withdrawn by the Apex Court on 11.11.2002, as such, the instructions issued by the Railway Board dated 28.1.2003 regarding seniority is prospective in nature and that could not have been given retrospective effect as was done by the railway authorities while issuing the impugned seniority list dated 19.2.2003. The learned counsel for the applicant has drawn our attention to para 4 (iv) of the OA and argued that cadre strength of Senior Goods Guard scale Rs. 5000-8000 was 73 only whereas in the impugned seniority list Ann.A2 names of 90 persons have been included. It is on the basis of these averments, the applicants have filed this OA thereby praying for the aforesaid reliefs.

3. Notice of this application was given to the respondents. The respondents have filed reply. In the reply, the official respondents have stated that the present OA is premature, inasmuch as, seniority list dated 19.2.2003 is a tentative seniority list issued in pursuance to the interim order of the Hon'ble Apex Court dated 19.4.2002 in Writ Petition No. 234/02. It is further stated that the communication dated 3.6.2003 vide which representation of the applicant was rejected is of no consequence as the seniority

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list was dependent upon final outcome of the Writ Petition.

On merits, it has been stated that prior to issuance of the impugned seniority list Ann.A2, the basis for determination of seniority was base grade seniority, but now by the said seniority list the seniority has been determined on the basis of entry into the grade. The same being completely provisional, as such, objections were invited. According to the respondents, the stay granted by the Hon'ble Apex Court has been vacated and the impugned seniority list has been issued as per interim order of the Hon'ble Supreme Court and directions of the Railway Board. Regarding showing names of 90 persons in the impugned seniority list Ann.A2 as against cadre strength of 73, the respondents have stated that excess employees in the cadre of Senior Goods Guard than the prescribed cadre strength were due to the fact that persons who were selected against the consequential vacancies of higher pay scale could not be promoted because of the stay granted by the Court and now the stay order so operating has been vacated and selection is under process, as such, the same cadre strength as was prior to grant of stay order would be maintained. In any case, according to us, incorporating names of 90 persons in the impugned seniority list Ann.A2 as against the cadre strength of 73 employees will not have any affect on the point in issue. In this case

the issue is whether the seniority has to be determined on the basis of entry into the grade or on the basis of base grade seniority.

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

5. According to us, the matter on this point is no longer res-integra. It may be stated here that pursuant to the judgment of the Hon'ble Supreme Court in case of Union of India and ors. vs. Virpal Singh Chauhan and ors., JT 1995 (2) SC 231 and Ajit Singh Januja and ors. vs. State of Punjab and ors., JT 1996 (2) SC 727 which led to issue of OM dated 30th January, 1997 and in Ajit Singh (II) and ors. vs. State of Punjab and ors., JT 1999 (7) SC 153 it was held that reserved candidates promoted on roster point could not claim seniority over the general candidates promoted later on. Accordingly, the OM dated 30.1.1997 was issued by the Government. Prior to these judgments, the Government servant belonging to SC and ST were enjoying the benefit of consequential seniority on promotion on the basis of rule of reservation. Consequently, the matter was considered by the Government and the Government reviewed the position by making amendment to Article 16 (4-A) of the Constitution by carrying out Constitution (85th) Amendment in 2001 and in Article 16 of the

Constitution in Clause 4-A for the words "in the matter of promotion to any class", the words "in the matter of promotion with consequential seniority to any class" were substituted. These amendments, besides other amendments, were challenged before the Apex Court in Writ Petition No. 234/02 and other Writ Petitions. The said Writ Petitions were finally disposed of by the Apex Court in the case of M.Nagaraj and ors. vs. Union of India and ors. JT 2006 (9) SC 191. The Apex Court has ^{up}held the validity of the Constitution (85th) Amendment Act, 2001 and other constitutional amendments. At this stage, it will be useful to quota para 77 of the judgment, which thus reads:-

"77. Reading the above judgments, we are of the view that the concept of 'catch-up rule and 'consequential seniority' are judicially evolved concepts to control the extent of reservation. The source of these concepts is in service jurisprudence. These concepts cannot be elevated to the status of an axiom like secularism, constitutional sovereignty etc. It cannot be said that by insertion of the concept of 'consequential seniority' the structure of Article 16(1) stands destroyed or abrogated. It cannot be said that 'equality code' under Article 14, 15 and 16 is violated by deletion of the 'catch-up' rule. These concepts are based on practices. However, such practices cannot be elevated to the status of a constitutional principle so as to be beyond the amending power of the Parliament. Principles of service jurisprudence are different from constitutional limitations. Therefore, in our view neither the 'catch-up' rule nor the concept of 'consequential seniority' are implicit in clauses (1) and (4) of Article 16 as corrected held in Virpal Singh Chauhan." (emphasis ours)


Further, the Hon'ble Apex Court in para 120 has held as follows:-

"120. The impugned constitutional amendments by which Articles 16 (4A) and 16 (4B) have been inserted flow from Article 16(4). They do not alter the structure of Article 16(4). They retain the controlling factors or the compelling reasons, namely, backwardness and inadequacy of representation which enables the States to provide for reservation keeping in mind the overall efficiency of the State administration under Article 335. These impugned amendments are confined only to SCs and STs. They do not obliterate any of the constitutional requirements, namely, ceiling-limit of 50% (quantitative limitation), the concept of creamy layer (qualitative exclusion), the sub-classification between OBC on one hand and SCs and STs on the other hand as held in Indra Sawhney, the concept of post-based Roster within in-built concept of replacement as held in R.K.Sabharwal."


Thus, from reading of aforesaid Paras, it is quite clear that the Apex Court had held the validity of the constitutional amendment to Article 16(4A) to which we are concerned in this case and has also held that deletion of 'catch-up' rule is not violative of Article 16 of the Constitution of India. The Apex Court has upheld the validity of Article 16 (4A) as amended by the Constitution (85th) Amendment Act, 2001 which provides for consequential seniority in the matter of promotion of SC and ST candidates who are not adequately represented in services under the State. As such, we see no infirmity in the action of the respondents whereby the respondents have prepared the seniority list on the basis entry in the grade

instead of base grade entry. Since the constitutional amendment to Article 16(4-A) had the retrospective effect, as such, contention of the learned counsel for the applicants that seniority list dated 26/27.6.2001 (Ann.A3) could not have been changed vide seniority list dated 19.2.2003 (Ann.A2) on the basis of instructions issued by the Railway Board dated 28.1.2003 is of no consequence and has to be rejected in the light of decision rendered by the Apex Court in the case of M.Nagaraj (supra).

6. The OA is, therefore, dismissed being devoid of merit with no order as to costs.


(J.P.SHUKLA)
Admy. Member

R/


(M.L.CHAUHAN)
Judl.Member