

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
CIRCUIT COURT SITTING AT INDORE
Original Application No. 308 OF 2002

Bilaspur, this the 3rd day of February, 2005

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr. Madan Mohan, Judicial Member

1. A.K. Gupta
S/o shri Pyare Lal Gupta
Aged about 45 years,
R/o 102, Birla Ground
Mandir Railway Colony,
Nagda, Ujjain – 456 331.
2. Jagdish Prasad Verma
S/o Shri Sher Singh
Aged about 50 years,
R/o T-36 A, Birla Ground
Railway Colony,
Nagda, Ujjain-456331

Both the applicants are working as
Station Superintendent, Nagda,
District Ujjain

Applicants

(By Advocate – Shri M.K. Verma)

VERSUS

1. Union of India through
Chairman Railway Board,
Railway Bhawan,
New Delhi.
2. General Manager, Western Railways
Church Gate, Mumbai.
3. Divisional Railway Manager,
Western Railways, Do Batti Chauraha
Ratlam.
4. Bhu Dev Prasad
5. Nand Lal K.
6. Dariyab Singh.
7. Ram Singh Meena
8. J P Jhariya



9. M.D. Meena.

10. R.K. Meena

Respondents Nos. 4 to 10 are working as
Station Superintendent under the Senior
DOM, Ratlam.

Respondents.

(By Advocate – Shri M.N. Banerjee)

ORDER

By M.P. Singh, Vice Chairman -

By filing this Original Application, the applicants have sought the following main reliefs :-

“8.1 to quash the seniority list dt. 26.5.2000 in the interest of justice.

8.2 to quash the penal dt. 18.2.2002(Annexure A-7) in the interest of justice.

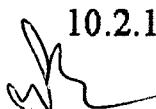
8.3 to direct the respondent department to refix the seniority positions of applicants in accordance with the Railway Board circular dt. 15.5.98 as directed by the Ahamadabad Bench of this Hon'ble Tribunal also.”

2. The brief facts of the case are that the applicants were initially appointed in the grade of Rs. 330-560 as Assistant Station Master. On 31.1.1995 a list of eligible candidates was declared by the respondents for the purpose of holding selection for the post of Station Superintendent. In the said selection, the applicants were not called by the respondents. The said selection was challenged by one Shri Girish Gaur before the Ahamadabad Bench of this Tribunal in OA 214/96 and the Tribunal vide its interim order dated 17.7.1996 directed the respondents that “ if they have not already finalized the panel they shall do so only after taking into account the judgement of the Hon'ble Supreme Court in the cases of J.C. Mallick, Sabarwal and Virpal Singh, and Ajit Singh Juneja”. The aforesaid OA 214/1996 was finally decided vide order dated 30.7.1998 by directing the Railway administration to revise the seniority of the lower cadre in accordance with the latest instructions of the Railway Board and then to take further action for selection to the higher grade of Station



Superintendent. The respondents-department, however, issued a seniority list on 26.5.2000 without following the Railway Board's instructions contained in order dated 15.5.1998. The applicants being aggrieved by the seniority position of private-respondents 4 to 10, submitted their representation on 24.9.2000. The representation of the applicants was not decided by the respondent-department and the private-respondents, who were junior to the applicants, were again called for promotion to the post of Station Master in the pay scale of Rs.7450-11500 vide letter dated 18.2.2002. The applicants have been selected to the post of Station Superintendent in the month of February, 1998 and, therefore, they were the senior most Station Superintendent to be placed higher in the seniority list dated 26.5.2000. Therefore, the applicants were liable to be called for the selection test of Station Master held on 18.2.2002 as per Railway Board's instructions dated 15.5.1998 fixing their seniority as per recruitment grade. Since the respondents have not called them for selection to the grade of Rs.7450-11500 the applicants have filed this Original Application, claiming the aforementioned reliefs.

3. The respondents in their reply have stated that in the year 1995 the criteria for consideration for eligibility list for selection was entry into the grade and not on the basis of base grade seniority as no such Railway Board's policy was in existence at that relevant time. In pursuance of the directions given by the Ahmedabad Bench of this Tribunal, a fresh eligibility list dated 15.11.1996 was prepared keeping in view the base grade seniority of the employees, and as per the judgments of the Hon'ble Supreme Court. Further, as per the Railway Board's circular dated 28.2.1997, a seniority list dated 20.6.1997 of the Station Superintendent [Rs.2000-3200/ Rs.6500-10500(revised)] was published. The respondents have further submitted that the seniority at Annexure-R-2 was prepared as per the instructions contained in Annexure-A10 by which it has been clearly stated that the seniority of SC/ST employees promoted earlier vis-a-vis General/OBC employees promoted later, will not be disturbed prior to 10.2.1995 and accordingly the SC/ST employees promoted in scale



Rs.1600-2660/ Rs.5500-9000 prior to 10.2.1995 under reservation, their seniority was not required to be changed. They have further submitted that the applicants at the relevant time were even not promoted in scale Rs.2000-3200/ Rs.6500-10500, therefore, the question of calling them for the selection to the post of Station Superintendent does not arise. The seniority list of the grade of Rs.1600-2660 / Rs.5500-9000 was not required to be disturbed as per the instructions contained in Annexure-A-10 because the respondents 4 to 10 were already promoted prior to cut off date i.e. 10.2.1995 and the respondents 4 to 10 were senior to the applicants in the above grade. The applicants, later on in the year 1997-98, were called in the selection to the post of Station Superintendent [(Rs.2000-3200 / Rs.6500-10500 (revised))] according to their seniority position in the grade of Rs.5500-9000 and on being found successful were empanelled. Since the respondents 4 to 10 were promoted earlier to the applicants in the scale of Rs.5500-9000, they were further promoted earlier to the grade of Rs.6500-10500 as per their seniority in the grade of Rs.5500-9000. The respondents further submit that the seniority lists issued prior to 10.2.1995 were not required to be disturbed. Therefore, 'calling to the applicants on the basis of Annexure-A-9 of the O. A. does not arise at all and the applicants were rightly not called for according to their seniority in the selection for the post of Station Manager scale Rs.7450-11500, which was based on the seniority of scale Rs.6500-10500 in which their names were placed at serial nos.87 & 95 and the vacancies were 9. Therefore, only 27 employees were called for in which their names does not come within 27 senior employees according to their seniority position. In view of these submissions, the respondents have submitted that the present O. A. is liable to be dismissed.

4. Heard the learned counsel of both the parties and perused the records carefully.

5. In this case both the applicants belong to general category whereas the private-respondents 4 to 10 belong to SC and ST category. The Hon'ble Supreme Court in the case of Virpal Singh Chauhan etc., JT 1995 (7) SC 231 has held as under :



"Even if a Scheduled Caste/Scheduled Tribe candidate is promoted earlier by virtue of rule of reservation/ roster than his senior general candidate and the senior general candidate is promoted later to the said higher grade, the general candidate regains his seniority over such earlier promoted Scheduled Caste/Scheduled Tribe candidate. The earlier promotion of the Scheduled Caste/ Scheduled Tribe candidate in such a situation does not confer upon him seniority over the general candidate even though the general candidate is promoted later to that category".

6. The applicants who belong to general category are claiming the benefit of the aforesaid judgment of the Hon'ble Supreme Court and seeking a direction from the Tribunal to place them above the SC/ST candidates for promotion in the grade of Rs.7450-11500. They have also sought a direction to revise the seniority list of lower grade i. e. in the grade of Rs.5500-9000 and Rs.6500-10500 in accordance with the circular dated 15.5.1998 of the Railway Board by which advance correction slip no.44 was circulated and para 319A inserted vide Advance Correction Slip No.25 was corrected.

7. After careful perusal of the judgment of the Hon'ble Supreme Court and the instructions issued by the Railway Board, we find that the Railway Board has issued the following instructions vide their letter dated 28.2.1997:

"Advance Correction Slip No.25
In Section 'B' Chapter III of the Indian Railway Establishment Manual, Volume I (Revised Edition 1989) after the existing para 319 a new para 319A may be inserted as follows:

"319 A: Notwithstanding the provisions contained in paragraphs 302, 318 and 319 above w.e.f. 10.2.95 if a Railway servant belonging to the Scheduled Caste or Scheduled Tribe is promoted to an immediate higher post/grade against a reserved vacancy earlier than his senior General/ OBC Railway servant who is promoted later to the said immediate higher post/ grade, the General/OBC railway servant will regain his seniority over such earlier promoted Railway servant belonging to the Scheduled Caste and the Scheduled Tribe in the immediate higher post/ grade. This will, however, be subject to the condition that in respect of Selection post, the over-riding principle that a Railway servant borne in an earlier panel will rank senior to a



Railway Servant borne in a later panel, will be observed".

Thereafter, the Railway Board have issued another letter dated 15.5.1998 making modification in the instructions issued by them on 28.2.1997. By this modification, the last sentence starting with the word 'This' and ending with the word 'observed' has been deleted. However, in both the letters issued by the Railway Board i. e. dated 28.2.1997 and 15.5.1998 it has been stated that these instructions will have the effect from 10.2.1995 and will not disturb the seniority decided earlier as per the rules in force at the relevant time. In this case it is not disputed that private-respondents 4,5,6,7,8 & 10 were promoted to the grade of Rs.1600-2660 with effect from 1.3.1993 under restructuring scheme. Even respondent no.9 was promoted earlier to 1.3.1993 to the said grade, as is evident from letter dated 24.11.2000 (Annexure-R-4), whereas the applicant no.2 has been promoted to the grade of Rs.1600-2660 vide order dated 8.10.1993 and applicant no.1 has been promoted to the grade of Rs.1600-2660 vide order dated 22.9.1994. It is, therefore, clear that the private-respondents have been promoted to the grade of Rs.1600-2660/ Rs.5500-9000 before both the applicants were promoted to the said grade and became senior to them. All these promotions were made before the cut off date i. e. 10.2.1995. Therefore, the benefit of the judgment of Virpal Singh Chauhan (supra) and subsequent instructions of the Railway Board cannot be given to the applicants. In other words, the respondents 4 -10 became senior to the applicants for all purposes in the grade of Rs.1600-2660/ Rs.5500-9000 in the year 1993 itself and again in the subsequent grade of Rs.6500-10500 and have accordingly rightly been considered for the selection grade of Rs.7450-11500.

8. In view of the discussions made above, we do not find any illegality or irregularity committed by the official-respondents while placing the private-respondents 4 to 10 above the applicants in the seniority list and also considering them for promotion to the grade of Rs.7450-11500.

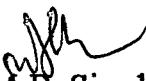
9. Before we may part, we may also observe that in pursuance of the constitutional amendment passed by the Parliament, the aforesaid



instructions dated 28.2.1997 and 15.5.1998 issued by the Railway Board have since been superseded by the Railway Board's letter No.E(NG)1-97/SRG/3 (Vol.III) dated 8.3.2002 which have been made effective from 17.6.1995.

10. In the result, for the reasons discussed above, the Original Application is dismissed, however, without any order as to costs.


(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman

rkv.

प्राप्तिकरण संख्या/ठारा..... असारु, दि.....
प्रतिलिपि अवृत्तिः—
(1) सचिव, उच्च न्यायालय वा एस.सी.एस.ल, जवाहरलाल
(2) आविद्या विभाग, वा एस.सी.एस.ल
(3) प्रत्यक्षी विभाग/कार्यालय, वा एस.सी.एस.ल
(4) विधायक, विधायिका, वा एस.सी.एस.ल
सूचना एवं आवश्यक कार्यालय, वा एस.सी.एस.ल

M.K. Verma 22/02/03
Dr. N. Basu 22/02/03
DN 22/02/03


Issued
On 14.2.03
RB