

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 819 of 2002

Cravialox, this the 8th day of December, 2004

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

1. Ku. B. Lalita, Head Clerk,
S. DPO's Office, South Eastern
Railway, Bilaspur (CG).
2. S.K. Mouria, S/o.
Head Clerk, S.DPO's Office,
South Eastern Railway,
Bilaspur (CG).
3. Smt. Ayesha Alam, Head Clerk, O/o.
APO (W)/BIA, South Eastern Railway,
Bhilai, District Durg (CG).
4. P.T. Rao, Head Clerk, S.DPO's office,
South Eastern Railway, Bilaspur
(CG).

... Applicants

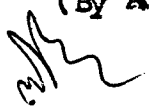
(By Advocate - Shri S. Paul)

V e r s u s

1. Union of India, through General
Manager, South Eastern Railway,
Garden Reach, Kolkata-43.
2. Chief Personnel Officer, South
Eastern Railway, Garden Reach,
Kolkata - 43.
3. Divisional Railway Manager, South
Eastern Railway, Bilaspur (CG).
4. Sr. Divisional Personnel Officer,
South Eastern Railway, Bilaspur
(CG).
5. N.K. Nayak (ST), Office Superinten-
dent Gr. II/Sr. DPO's Office,
Bilaspur.
6. Kishore Ram Raj (ST), Office
Superintendent Gr. II/Sr. DPO's
Office, Bilaspur.
7. M.K. Girwal, Office Superintendent
Gr. II (ST), Sr. DPO's Office,
Bilaspur.
8. D.J. Karunakaran (SC), Office
Superintendent Gr. II(ST), Sr.
DPO's Office, Bilaspur.

... Respondents

(By Advocate - Shri M.N. Banerjee for official respondents)



O R D E R

By M.P. Singh, Vice Chairman -

By filing this Original Application the applicants have claimed the following main reliefs :

"(b) quash the order issued by the respondent No. 4 for removal of the applicants from the panel dated 1.4.2002 Annexure A-23 and reversion of the applicants No. 1 & 2 vide order dated 1.4.2002 Annexure A-24-A,

(c) direct the respondents to cancel the revised seniority list dated 18.6.1999 Annexure A-12 of the private respondents allowing them upward position,

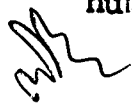
(d) direct the respondents to restore the original panel and postings dated 23.3.1999 Annexure A-10 & A-11,

(e) direct the respondent No. 4 for giving promotion to applicants Nos. 3 & 4 from the date of vacancy occurred,

(f) direct the respondents to produce the relevant records before the Tribunal,


(g) direct the respondents to quash the reversion order of the applicants and promote them as OS Gr.II."

2. The brief facts of the case as stated by the applicants are that the applicants were holding civil posts and were working with the respondents Nos. 3 & 4 i.e. DRM, Bilaspur and Sr. DPO, Bilaspur. All the applicants had got promotions to the post of Senior Clerk/Head Clerk (non-selection post) by virtue of seniority and suitability. The applicants are eligible for the next promotion to the higher grade of Office Superintendent Grade-II in the pay scale of Rs. 5500-9000/-. The Post of Office Superintendent Grade-II is a selection post. The private respondents Nos. 5 to 8 belong to SC and ST community, were initially promoted to the post of Head Clerk on different dates during the year 1987 and 1988 against the reserved posts on vacancy based Roster. Subsequently, in terms of Railway Board instructions issued by letter dated 16th June, 1992 circulated by CPO, SE Railway, Kolkata vide Estt. Sr. No. 110/92, it was inter-alia stated that the number of allowable reserved posts should be calculated



by applying percentage of 15% for SC and 7½% for ST on the total number of sanctioned posts in the category and grade.

2.1 In accordance with the above circular/instructions, the seniority list of Head Clerks was published on 11.11.1992/24.11.1992 (Annexure A-2). As per para 6 & 7 of the above seniority list the services of 10 reserved candidates were treated as fortuitous because they were promoted against reserved posts in excess of the prescribed quota. Thereafter, the order was issued on 5.8.1994 (Annexure A-3) in which services of six candidates out of 10 were treated as non-fortuitous service from 1.3.1993 instead of their date of original promotion. A fresh seniority list was also issued for the category of the Head Clerk on 8.8.1994 (Annexure A-4), wherein private respondents were placed against Sr. No. 29, 81, 84 according to the dates of non-fortuitous service from 1.3.1993. The private respondents had accepted the above position in the seniority list and therefore, did not ^{make} ~~make~~ any representation against the seniority position allowed to them. Thereafter another seniority list was published by the respondent No. 4 on 30th September, 1997 which was based on the instructions contained in Est. Sr. 110/92, 108/93946/97 consisting of 134 candidates. While publishing this seniority list, the fortuitous service rendered by the private respondents No. 5 to 8 was ignored and they were given actual place in the seniority list on the basis of their actual position made in excess of the quota. Since the provisions of Railway Board's directions in regard to counting the fortuitous service for the reserved candidates promoted in excess of the prescribed quota was not followed, the aggrieved staff submitted a joint representation against the above seniority list on 16.2.1998.



2.2 In the meantime, instructions were issued by the Railway Board vide their letter dated 28th February, 1997 (Estt. Sl. No. 46/1997) in terms of the judgment of Apex Court in the matter of Union of India Vs. Virpal Singh Chowan etc. in which principle of determining the seniority of staff belonging to SC/ST promoted earlier vis-a-vis general/OBC staff promoted later was decided. The representation submitted by the staff including the applicants was considered and the seniority position of private respondents Nos. 5 to 7 were revised ^{downwards} on the grounds of fortuitous service vide revised order issued on 13.4.1998. In terms of Sr. DPO, Bilaspur, notification dated 29.9.1997 (Annexure A-9), selection for the promotion to the post of Office Superintendent Grade-II in the scale of pay Rs. 5500-9000/- of Personnel Branch of BSP Division for ³⁹~~30~~ posts (35-JR + 2-SC + 2-ST) was proposed to be conducted as per the then existing seniority list. Since the post of OS Gr. II is a selection post, 3-X formula was adopted for calling the candidates in written examination held on 21.2.1998 and 7.3.1998. Consequent upon the above selection, a panel of 39 candidates was approved on 16.3.1999 by the competent authority i.e. ADRM and the panel was published vide Sr. DPO's letter dated 23.3.1999 (Annexure A-10). In this panel there was no identification about the candidates empanelled against the reserved posts. ² However, The applicants found place in the panel against Sr. No. 36, 37, 38 and 39 by virtue of their ability and seniority. However, posting orders of 37 candidates out of 39 were immediately issued on 23.3.1999 itself. Accordingly, the applicants Nos. 1 & 2 were promoted as OS Gr. II from the same date i.e. 23.3.1999 alongwith other candidates. While applicants Nos. 3 & 4 did not get promotion order and have been awaiting for the same anxiously. The panel was made as provisional because of pending case in the Hon'ble Supreme Court in the matter of J.C. Mallick Vs. Union of India and

others. The case of J.C. Mallick and others has ^{since} been decided long back. Baring the above two candidates the panel was to be made as final. However, after the panel and posting was finalized, the respondents have against issued a revised seniority changing the position of the private respondents belonging to reserved community and issued a fresh seniority list on 18.6.1999 (Annexure A-12). In this revised seniority the position of private respondents underwent change. Thereafter vide order dated 1st April, 2002 (Annexure A-23) the aforesaid panel as approved on 15th March, 1999 and issued on 23.3.1999 has been amended by adding the names of the private respondents Nos. 5 to 8 and the names of the applicants have been removed from the panel after expiry of currency of the panel. The amendment of the panel by the DRM which was originally approved by the ADRM is without jurisdiction as DRM and ADRM both are Senior Administrative Officer. Hence, this Original Application.

3. The respondents in their reply have stated that the applicants Nos. 1 & 4 were promoted as Head Clerk in 1991, whereas the private respondents were promoted in 1985, 1987 and 1988. Hence, they became senior to the applicants. In terms of Estt. Sl. No. 87/1994 and 46/1997 ^{seniority of} those SC/ST candidates who were promoted to higher grade before 10.2.95 were counted from the date of regular promotion in that grade. The services of the private respondents were declared as fortuitous in terms of Estt. Sr. No. 110/92 but was rectified in view of the instructions contained in Estt. Srl. No. 87/1994. Hence, the allegation made in joint representation regarding counting of the seniority from the date of regular promotion without mentioning the contents & concept of Estt. Srl. No. 87/1994 is specifically denied. It is also submitted by the respondents that the instructions were issued by the Railway Board vide their letter dated 28.2.1997 in pursuance

of the decision of the Hon'ble Supreme Court in the case of Union of India Vs. Virpal Singh Chouhan. In this case, the cut off date for seniority was 10.2.1995 which will not be disturbed. Therefore, the private respondents who belonged to SC & ST category will get seniority from the date of regular promotion as they were promoted to the post of Head Clerk prior to 10.2.1995 and were senior to the applicants. The instructions contained in Estt. Sl, No. 110/92 was issued in accordance with the order passed on 12.3.1992 by the Calcutta Bench of the Tribunal and Hon'ble Allahabad High Court in the case of J.C. Mallik and others Vs. Union of India. It was specifically mentioned in 4(J) of the circular that the instructions are provisional and subject to the decision of the Hon'ble Supreme Court. Subsequently on the basis of the judgment of the Full Bench of the Calcutta Bench of the Tribunal the earlier circular Estt. Sl. No. 110/92 was modified in terms of Estt. Sl. No.87/1994. The interim order circulated vide Estt. Sl, No. 110/92 was in respect of reservation of posts in Government service and not on seniority. It is further submitted by the respondents that ^{the said}

judgment forwarded along with

the Estt. Srl. No. 87/1994, inter-alia stipulates as follows:

"23. The argument of the applicants that on promotion of an employee belonging to SC & ST community based on reservation he should rank junior to general community employees in accordance with seniority in the lower feeder cadre is not supported by any principle or precedents.....

24. We do not find any force in the contention. The constitutional provisions do not envisage such limitations. Normally, the seniority should be fixed with reference to the date of selection whether an employee comes in service through the reservation quota or otherwise. That is to say, an earlier appointee shall be senior to a late entrant in a cadre. Once an employee is promoted against a vacancy on regular basis he should be considered as senior in that grade

to all others who come later by promotion for all purposes.

.....

25. Justice Madan, in Controller and Auditor General Vs. K.S. Jaganathan, AIR 1987 SC 537 held that the reservation in favour of backward classes of citizens including the members of the SC & ST as contemplated by Article 16(4) can be made not merely in respect of initial recruitment but also in respect of posts to which promotion are to be made.....

The Supreme Court in Karamchand Vs. Haryana Electricity Board, AIR 1989 SC 261 held that seniority of SC & ST employees will be reckoned from the date of his promotion to a grade and not from the date of his entry into grade from which he was promoted. From whatever source an employee had been recruited or promoted he occupies a place in that post with the seniority normally available alongwith others irrespective of whether he got the benefit of reservation or otherwise and he cannot be later classified on the basis of his original appointment or promotion and denied further promotion if he is fully qualified otherwise, on the ground that he acquired posting or promotion on the basis of reservation quota. There is nothing like accelerated seniority in service jurisprudence." Accordingly, the seniority of the private respondents were correctly interpolated as they were promoted in 1985, 1987, 1988 whereas the applicants were promoted in the year from 1991.

4. For the reasons made above the Original Application is bereft of any merit and is liable to be dismissed.

5. Heard the learned counsel for the parties at great length and also perused the records carefully. We have given careful consideration to the rival contentions of both the parties. The admitted facts of the case are that the applicants Nos. 1 and 2 were promoted to the post of Head



Clerk on 25.7.1991, applicant No. 3 on 26.9.1991 and applicant No. 4 on 5.9.1991. The private respondents Nos. 5 to 8 were promoted on 05.12.1985, 5.2.1987, 29.10.1987 and 4.1.1988 respectively. The respondents have fixed the seniority of the private respondents Nos. 5 to 8 in terms of the Estt. Srl. No. 110/1992 (Annexure A-1). It provides that the seniority is to be fixed as per seniority position of the candidates in the panel/select list. However, if a SC/ST candidate has been promoted on or after 22.2.1985 in excess of the prescribed quota of 15% (SC) and 7.5% (ST) on the total number of sanctioned posts, his service in that promotional grade will be treated as fortuitous, and such promotions will be adjusted against the reserved points of future vacancies. His seniority will be reckoned from the date of such adjustment for the purpose of consideration of his promotion in the next higher grade. This procedure will be applicable for promotions made upto 11.3.1992. Since the ^{private respondents &} applicants were promoted during the period from 22.2.1985 to 11.3.1992, their seniority was fixed in terms of the Estt. Sl. No. 110/92 and accordingly the services of the private respondents Nos. 5 to 8 was treated as non-fortuitous in the category of Head Clerk in the scale of Rs. 1400-2300/- (pre-revised scale) against the reserved vacancy available from 1.3.1993 vide letter dated 5.8.1994 (Annexure A-3). Thereafter the Railway Board has issued another letter dated 14th July, 1994 (Estt. Sl. No. 87/1994), whereby the guidelines with regard to the reckoning of seniority of SC/ST employees have been issued. In this Sl. No. 87/1994 the reference of the Railway Board's earlier letter dated 16th June, 1992 has been mentioned. Therefore, the contention of the learned counsel for the applicant made during the time of final arguments that the instructions contained in Railway Board's letter dated 16th June, 1992 have not been superseded is not

correct and is accordingly, rejected. Now these instructions contained in Sl. No. 87/1994 inter-alia which are in supersession of instructions contained in Estt. 110/1992 dated 16th June, 1992 provided that in terms of the judgment of the Full Bench of CAT, Hyderabad Bench and Full Bench of CAT, Calcutta Bench, the seniority of SC/ST employees should continue to be fixed as per the extant rules irrespective of the fact that they are promoted against the reserved vacancies or on their own seniority/merit. In case the seniority of some of the employees has been fixed in a manner otherwise than as per the extant rules because of interim orders of any Division Bench of the CAT, their seniority may be refixed as per the judgment of the Hon'ble Full Bench, CAT, Calcutta and they be considered for promotion/proforma promotion as per extant instructions. It is also mentioned in this letter that the judgment of the Full Bench of CAT Calcutta Bench dated 21.2.1994 should be strictly adhered to. The Full Bench of CAT Calcutta Bench has relied upon the paragraphs 23, 24 and 25 of judgment of Full Bench of CAT, Hyderabad Bench. The Full Bench of CAT, Calcutta Bench in the case of O.A. No. 854/1990 and connected matters held as under :

"5.
In our view the findings in paras 23, 24 & 25 are not tentative. The Full Bench has not said so. On a careful reading of the judgment of the Full Bench we are satisfied that on the question of counting seniority of those SC/ST candidates who have secured accelerated promotions by virtue of reservation, in the matter of their further promotion, the Full Bench has expressed its final views in paragraphs 23, 24 & 25. It is on the other question whether reservation is of posts or vacancies that the Full Bench said that its views are tentative, as the same question was for adjudication by the Supreme Court in Malik's case. If the Hyderabad Full Bench decision was cited in these cases before the referring Bench, they would not have referred the same question to the Full Bench. As the questions referred are thus covered by the earlier Full Bench decision it has become unnecessary to examine the same question in this reference."

However, the seniority of the private respondents Nos. 5 to 8 was not refixed in terms of the instructions contained in

Railway Board letter dated 14th July, 1994 (Estt. Sl. No.

87/1994). Thereafter another Railway Board letter dated 28.2.1997 was issued (Estt. Sl. No. 46/1997) by which the Railway Board has laid down the principles for determining the seniority of staff belonging to SC/ST promoted earlier vis-a-vis, General/OBC staff promoted later. Para 2 of the said letter is reproduced below :

"2. The Supreme Court in its judgment dated 10.10.1995 in the Union of India Vs. Virpal Singh Chauhan etc. (JT 1995(7) SC 231) held as follows :

"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 through the general candidate is promoted later to that category."

Para 5 of the said letter also states that this will have effect from 10.2.1995 and will not disturb the seniorities decided earlier as per the rules in force at the relevant times. In the seniority list published ^{on} 30.9.1997 the private respondents have been given seniority from the date of fortuitous promotion instead of the dates on which their services were treated as non-fortuitous resulting that their names have come much above in the seniority list. The seniority list has again been revised vide office letter dated ^{services of} 13.4.1998 in which the private respondents have been treated as non-fortuitous from 1.3.1993, 11.10.1994 and 18.1.1995 respectively. In June, 1999 (Annexure A-12) again the seniority list was revised and the private respondents have been granted seniority with reference to the date of their actual promotion to the post of Head Clerk. The contention of the applicants is that in terms of the instructions in ^{Estt.} Sl. No. 110/1992, the seniority of the private respondents have been fixed correctly. After the judgment of the Hon'ble Supreme Court in the case of Virpal

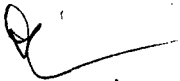
Virpal

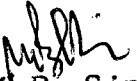
Singh Chohan (supra), the instructions ^{contained &} in Estt. Sl. No. 46/1997 have been issued. According to the learned counsel for the applicants the instructions contained in Estt. Sl. No. 110/92 have not been superseded by the instructions contained in Estt. Sl. No. 46/1997 and the instructions contained in Estt. Sl. No. 110/92 still holds good and the seniority of the private respondents have been correctly fixed as per this instruction contained in Estt. Sl. No. 110/92. The change of seniority vide circular dated 18th June, 1999 is not in accordance with the directions given by the Railway Board and therefore, this requires to be quashed and set aside. Further the respondents be directed to restore the panel and postings dated 23.3.1999 Annexure A-10 & A-11.

6. The question for consideration before us is whether the seniority list issued by the respondents vide their letter dated 18th June, 1999 (Annexure A-12) is in accordance with the rules and guidelines issued by the Railway Board or not. As mentioned earlier the private respondents have been promoted to the post of Head Clerk during the period from 1985 to 1988, whereas the applicants have been promoted in the year 1991 i.e. much later. By earlier instructions issued by the Railway Board, the seniority of the private respondents was required to be fixed in accordance with the instructions contained in letter dated 16.6.1992 in Estt. Sl. No. 110/1992, which was done by the Railway authorities correctly. Thereafter, this instructions have been superseded by the instructions dated 14.7.1994 in Estt. Sl. No. 87/94 and as per these instructions the order declaring the seniority fortuitous should have been withdrawn. However, this was not done by the Railway Board in time. Thereafter, another Railway Board circular in 1997 had been issued vide Estt. Sl. No. 46/1997, which has superseded the position of 1994. This circular specifically states that this will ^{have} effect

from 10th February, 1995 and will not disturb the seniorities decided earlier as per the rules in force at the relevant time. Had the respondents decided the seniority of the applicants well in time, the instructions issued by the Railway Board in Estt. Sl. No. 46/1997 would ^{have} not been applicable in the case of fixing the seniority of the private respondents because as per the instructions contained in Estt. Sl. No. 87/94 the seniority of the private respondents would have been fixed before 10th February, 1995. Instead of granting the correct seniority to the private respondents in accordance with the instructions contained in Estt. Sl. No. 87/1994 in time, the respondents have corrected their seniority much later i.e. by issuing the letter dated 18.6.1999 (Annexure A-12). We, therefore, do not find any illegality in the action taken by the respondents by fixing the seniority of the private respondents vide circular/letter dated 18th June, 1999 (Annexure A-12). Moreover, the instructions issued by the Railway Board vide Estt. Sl. No. 46/1997 have also ^{been} negated by the Railway Board after passing of the Eighty Fifth Amendment Act, 2001 by the Parliament. As on today, the circular dated 30th January, 1997 which is the basis of issuance of Railway Board's circular of 46/1997, stands withdrawn after the issuance of the OM dated 21.1.2002 by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training. Therefore, the position of 1994 has again been confirmed.

7. For the reasons recorded above, the Original Application is without any merit and is liable to be dismissed. Accordingly, the Original Application is dismissed. No costs.


(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman