CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

...

Original Application No. 637/2000
&
Original Application No.1105/2000

Jabalpur, this the 26th day of February, 2004.

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri G.Shanthappa, Judicial Member

OA 637/2000

1. Anandilal Sihote,
s/o Galbalia Sihote, aged about 59 years,
Head Clerk, CWS,
Jabalpur.

2. All India Scheduled Caste and
Scheduled Tribes Railway Employees
Association through
Divisional Secretary,
Shri S.K.Dagor, Opp. Hindi Section,
Divisional Railway Manager's office,
Jabalpur.

...Applicants

(By Advocate: Shri S.Paul)

-versus-

Union of India through

1. Secretary,
Ministry of Railway
(Railway Board),
New Delhi.

2. Divisional Railway Manager,
Central Railway,
Jabalpur (MP).

3. Senior Divisional Personnel Officer,
O/O Divisional Railway Manager,
Central Railway,
Jabalpur (MP).

4. Kamta Prasad Rai,
Head Clerk,
C/o Divisional Railway Manager,
Central Railway,
Jabalpur,

...Respondents

(By Advocate: Shri M.N.Banerjee)

OA 1105/00

1. Smt. Rukmani Gupta,
W/o Sh. Santosh Gupta,
Head Clerk, P/o Sr No.R.E.P.B-II
1 B, Katni Junction,
Katni.

2. Sh. Yadram Kanwar
s/o Sh. Phoolji Kanwar,
Head Clerk, R/o Rly.Qr.No. RB II 174 B
SKP Colony, New Katni Junction,
Distt. Katni.

3. Shri Shivlal Maravi
s/o Sh. Somilal Maravi
Head Clerk,
R/o LIG 55, Govind Bhawan,
South Civil Lines,
Jabalpur,

4. Shri Tejilal,
s/o Sh. Rambharose,Bhalani
Head Clerk,
R/o H.No. 1008,
Amanpur, Madan-Mahal,
Jabalpur.

5. Shri Vijay Kumar
s/o Sh. Ram Nath Giri,
Head Clerk,
R/o Rly Qr.No. RB II
72 "B" New Katni Junction,
Distt. Katni.

-- Applicants

(By Advocate: Shri S.Paul)

-versus-

1. Union of India through
Secretary,
Ministry of Railways,
Railway Board,
New Delhi.

2. The General Manager,
Centrail Railway,
Mumbai CST, Mumbai.

3. The Divisional Railway Manager,
Central Railway,
Jabalpur Division,
Jabalpur.

4. The Sr. Divisional Personnel Officer,
O/o Divisional Railway Manager,
Central Railway,
Jabalpur.

5. Shri Balram Namdeo,
Head Clerk,
O/o Sr. D.M.E. (Diesel),
Central Railway,
New Katni Junction,
Katni.

6. Shri Eslamul Haque,
Head Clerk,
O/O D.R.M. Office,
Central Railway,
Operating Branch,
Jabalpur.

...Respondents

(By Advocate: Shri H.B.Shrivastava for official respondents and Shri L.S.Rajput for respondent no. 6).

O R D E R

By G.Shanthappa, Judicial Member -

Since the issues involved in both the O.As are identical, both the O.A. are being disposed of by a common order.

2. The applicants in O.A. No. 637/2000 seek the following relief:

a) summon the entire relevant records from the respondents for its kind perusal;
b) to set aside the entire selection pursuant to the Notification dated 22.3.2000;
c) to set aside the orders dated 19.4.2000, 19.4.2000 and 19.7.2000;
d) to commant the respondents to conduct the selection strictly as per 3X formula under the provisions of IREM permitting the reserved category candidates/applicants to participate in the proceedings for selection to the post of OS Grade-II against the general posts;

3. The brief facts of the case are that applicant no. 1 is working as Head Clerk. He was appointed on 15.08.1959 in a Group 'D' post. Subsequently he was promoted as Head Clerk on 1.1.1994. The second applicant is an Association of SC/ST employees working in the Railways, which is recognized by the Railway Board.

3.1. The post of OS Grade II is a selection post, the Head Clerk is the feeder post from which appointment is made to the post of OS Grade-II. The procedure for selection to the post of OS Grade-II is in accordance with clause 215 to 221 of the Indian Railway Establishment Manual, 1989 (For short IREM) Part-I. The respondents have issued the final seniority list dated 7.4.1999 which shows the position of HeadClerks as on 7.4.1999. The name of the applicant no. 1 is placed at serial no.1 in the seniority list of Head Clerks. The other reserved category candidates such as Chhotelal Sobalal is at serial no. 2, Puranlal Ben is at sl. No. 3, Jagdish Prasad Dahia is at sl. no. 5. The name of the private respondents Shri Kamta Prasad Rai is at sl.no.38 of the said seniority list. The said seniority list is final which has not been altered, modified or changed.

3.2. The official respondents have issued a Notification dated 22.3.2000 thereby 10 posts of OS Gr.II for personnel cadre in the pay scale of Rs. 5500-9000/- were published. Alongwith notification the list of 30 eligible candidates were also published. In the said list of eligible candidates, namesof applicant no. 1 and other reserved category candidates were not mentioned. By applying 3X formula, the respondents were bound to call 10x3=30 candidates strictly according to their seniority from the seniority list dated 7.4.1999.

3.3. The applicant's submission is that the seniority position acquired by applicant no.1 Shri Anandilal Sehote; Shri Puranlal Ben and Shri Jagdish Prasad Dahia is based on their general seniority acquired on the basis of merits. Thus, there was no justification in not considering and bringing them in zone of consideration for the purposes of selection to the post of OS Gr.II.

3.4. Aggrieved by the inaction of the official respondents, the applicants have submitted their representations for bringing their grievance on record. The said representation was replied by a cryptic order. The second applicant has preferred one more representation vide Annexure A/10. In the meantime, in the written examination which was conducted on 16.4.2000 and supplementary on 23.4.2000, applicant no. 1 and other similarly situate reserved category candidates were not permitted to appear in the said examination and the result was declared on 20.07.2000, followed by viva voce to be held on 1.8.2000 for the post of OS Gr.II. The respondents did not permit the applicant no. 1 and other reserved category candidates to participate in the selection procedure, which act of the respondents violates their fundamental rights. The applicants have relied on a judgement of the Hon'ble Apex Court rendered in the case of R.K.Sabharwal in which it is held that a reserved category candidate [illegible]

valuable right to be considered against a General post but general category candidate cannot be considered against a reserved post. Hence the applicant no. 1 who belongs to reserved category has a valuable legal right to be considered against the general category post on merit. The objection of the applicants is that the official respondents have not considered the Railway Board's order dated 24.6.1999 and they are sitting tight over the matter and not answering the representations of the applicants. Hence impugned orders dated 19.4.2000, 19.4.2000 and 19.7.2000 are illegal and the same are liable to be quashed and further the Notification dated 22.3.2000 is also liable to be quashed. Since the respondents have not followed the reserved quota while deciding the case of the applicants, the first respondent has considered the SC/ST candidature against the general post. Under the said order dated 24.6.1999, the points raised was as to whether all the eligible SC/ST who are coming within the zone of consideration and fulfilling the eligibility conditions can be considered for selection against non-reserved post if there are no reserved posts earmarked for them? In this connection, attention is drawn towards the instructions contained in para 2(ii) of Annexure-I of RailwayBoard's letter No. 92-E(SCT)I/ 49/5(Pt.) dated 16.6.1992 which lays down that in case

SC/ST candidates available in the list so prepared are according to 3X formula or more, all the candidates may be called for the selection. Attention is also drawn to example 3 of this Annexure which illustrates the position in this regard in detail.

4. Per contra, the respondents have filed their reply denying the averments made in the O.A. The applicants have got accelerated promotion being S.C. employees in each grade against reserved quota. Consequently their names appeared on the top in the seniority list. The applicant and other claimants were promoted to the higher grade post against reserved vacancy earlier than their seniors general/OBC railway servants, who were promoted to such higher grade post later than the applicant and other claimants. The principle inherent [illegible] in Railway Board's letter dated 28.2.1997. When the notification for the said post of Office Superintendent (P)-I was issued, the candidates from the seniority list were called as 1 x 3 formula i.e. 30 numbers of candidates called for 10 number of posts. No pick and choose policy was accepted. The candidates were called as per seniority basis only. The candidates who obtained the accelerated seniority over the general/OBC candidates by virtue of their promotion and under reservation policy were omitted as per principle laid down under the Railway letter dated 28.2.1997. However, the fact was not supported the applicant/claimant as this discrimination and

started representation through their Association which was replied to them. The judgement of Apex Court in R.K.Sabharwal's case upon which applicants have replied upon, to the present case in as much as in Sabharwal's case the Hon'ble Apex Court has not directed that reserved category candidates should be considered against general category post beyond the zone of consideration as in the present case. The applicant did not come within the zone of consideration, because, they had acquired accelerated seniority over their seniors general colleague by the virtue of their accelerated promotion under reservation policy as such reserved candidates who acquired accelerated seniority are considered as junior to those candidates who are promoted later against general seniority. The rule and Board's policy adopted on date, as such the applicants were not called for selection examination. The respondents have thus not violated the rule during the selection procedure. The rights of the applicants under Articles 14 & 16 of the Constitution have not been violated since the official respondents have followed the correct procedure. The respondents have relied upon the clarification in para 319-A of IREM Vdume -I , 1989 vide Annexure R/II and on the basis of the said rule position, the official respondents have prepared the list of upgraded Head Clerks(P) Gr. Rs. 4500-7000/- and the promotion/transfer orders were issued vide Annexure R/III. The official respondents have also assigned the general seniority to SC/ST employees

for ~~appearing~~ appearing in the selection to the post of OS(P) II from Rs. 500-9000/- vide letter dated 10.4.2000 (Annexure R/IV). Alongwith the said order they have enclosed a letter dated 19.4.2000 in which they have clarified that the employees were promoted (in1978) over and above the 33 1/3% departmental quota not only worked as Jr. Clerk but most of these persons were further promoted as Sr. Clerk, Head Clerk and Chief Clerk during the year 1978 to 1983.

5. Subsequent to filing the reply, the applicants have submitted their rejoinder in which they have submitted that they have not been given any accelerated promotions. Neither the name of the applicants find place in the top of seniority list because of any accelerated promotion. Vide Railway Board's letter dated 21.6.1999, it is specifically clarified that the railway servant belonging to SC/ST community is promoted to an immediate higher post/grade against the reserved vacancies earlier than their in senior general/OBC railway employees who have promoted subsequently / later to the immediate higher post/grade, the general /OBC railway servant will regain his seniority above such earlier promoted railway servant belonging to SC/ST in the immediate higher post/ grade. In the circular referred no criteria has been prescribed that how the seniority is to be reckoned for this purpose either on the basis of the date of appointment to the bottom grade of the cadre or from the grade from where the promotion is to be given. If the seniority

of general/OBC employees qua SC/ST employees from the date of appointment in the initial grade i.e. from date of his initial appointment. As such the respondents have shown the discrimination amongst the applicants and otherpersons who are promoted as OS GrII by adopting the pick and choose policy which action of the respondents is liable to be quashed and set aside.

OA No. 1105/2000

6. The reliefsclaimed by the applicants in this O.A. are as under:-

i) summon the entire relevant record from the respondents for its kind perusal.

ii) set aside the notification dated 6.12.2000.

iii) command the respondents to bring the applicants name within the zone of consideration for the post of OS-II and consider their cases in accordance with law for the post of OS-II.

iv) Consequently direct the respondents to provide all consequential benefits to the applicants as if their names are included since beginning in the notification dated 6.12.2000 with all consequential benefits.

7. The brief facts of the case are that the applicants are presently working as Head Clerks under respondents no. 3 and 4. Private respondents are also working under these respondents. The applicants have submitted a chart as per Annexure A-1 showing the service particulars of the applicants and the private respondents. The applicants No. 1 to 4 belong to ST community and applicant no. 5 belongs to SC community. The chart at Annexure A/1 shows the seniority position of the applicants and the private

respondents as per seniority list dated 12.5.1999 for the post of Head Clerks. After publication of the seniority list dated 12.5.1999, no other seniority list has been published nor the position of the Head Clerks shown in the seniority list has been altered.

7.1. The post of Head Clerk carries pay scale of Rs. 5000-8000. The next promotional post for the post of Head Clerk is OS Gr. II. The post of OS-II is a selection post which carries the pay scale of Rs. 5500-9000/-. The selection posts in the respondents department are filled up by following the procedure laid down in para 215 of IREM Part-I, 1989. They have issued the notification dated 9.11.2000 in which they have declared that nine posts of O.S.-II are to be fulfilled by way of selection. Out of nine posts, seven were earmarked for general category and two were for scheduled caste. The procedure laid down in para 215 of IREM, 21 persons shall be within the statutory zone of consideration. In the letter dated 9.11.2000, the zone of consideration was also published. In the said zone of consideration the name of all applicants were not shown. Being aggrieved by the said action of the respondents, the Association of applicants has filed representations. As per three times the number of vacancies 21 Head Clerks are to be considered for the post of OS-II as per para 215 of IREM. The action of the respondents is illegal as they have not followed the judgement of the Hon'ble Supreme Court while considering the vacancies against the general category post. Hence the rights

of the applicants under Articles 14 & 16 of the Constitution have been violated by the respondents. The respondents are committing a great error in law as they are considering SC candidates only against the reserved category post of SC. The SC candidates who are well within the zone of consideration within 24 no. of position in the seniority list dated 12.5.1999 are being considered against the SC category post of O.S.II. Against the said action of the respondents, the applicants submitted a representation pointing out that the applicants have a right for consideration to the post of OS Grade-II and their names should be included. As per the Notification dated 6.12.2000 the written test for O.S. GrII will be held on 30.12.2000 followed by a viva-voce test. The respondents are sitting tight over the matter and have not included the names of the applicants. The stand taken by the respondents is arbitrary, unjust, unreasonable, unfair and infringes their fundamental right flowing from Chapter-III of the Constitution of India. Hence the applicants are entitled for the relief as prayed for in the Original Application.

7.2. The applicants have also relied on the order of Ministry dated 24.6.1999.

8. Per contra, the respondents have filed their reply denying the allegations and averments made in the O.A. They have mentioned in their reply/preliminary submissions that the applicants belong to SC/ST community. Since no post for ST candidates was vacant hence none

from this community was called to negotiate the selection. All the applicants have reached the present grade of Rs. 5000-8000 as Head Clerk with accelerated relaxed standard promotion against roster points and hence not entitled to be considered as general candidates and accordingly they were not called to appear as general candidates. As per the Railway Board's letter dated 21.08.1997, the reservation of jobs for backward classes SC/ST/OBC should apply to the posts and not to the vacancies. It has further been held that the vacancy based roster can operate only till such time as the representation of the persons belonging to the reserved categories, in a cadre, reaches the prescribed percentage of reservation. Thereafter the roster cannot operate and vacancies released by retirement, resignation, promotion etc. of the persons belonging to the general and the reserved categories are to be filled by the appointment of the persons from the respective category so that prescribed percentage of reservation is maintained.

8.1. The respondents have not considered the applicants as general category on the ground that they have been given accelerated promotion with relaxed standard in lower grades and promoted against roster points. No incumbent junior to them in that category has been considered. The applicants cannot avail promotion as well as seniority position by virtue of their accelerated promotion as several general candidates were due for promotion in higher grades and were not promoted earlier as the appli-

cants were promoted on roster points earlier than the general candidates. No separate seniority list is maintained community-wise. However, the seniority of SC/ST candidates is required to be adjusted for further promotion without reverting them from the present post. This is as per directives given in several cases decided by the Hon'ble Apex Court. The notification dated 9.11.2000 was not cancelled as a result of representation made on behalf of the applicants. The notification was cancelled on 27.11.2000 as seniority of staff eligible to be called for selection was not correctly assigned. Subsequently, notification dated 6.12.2000 was published.

8.2. The Hon'ble Supreme Court has also held that seniority of SC/ST candidates should be adjusted as far as further promotion are concerned without reverting them from the present post occupied by them. The seniority of the applicants has accordingly been adjusted and their names deleted from the zone of consideration. The applicants were given accelerated relaxed standard promotion against roster points and hence not entitled to be considered for further promotion compared to their seniors who could not be promoted on their turn compared to SC/ST candidates. Since no vacant post for ST candidates was existed for the selection grade as notified, no employee from ST community was been considered, likewise all the SC candidates were called for are senior to applicant no. 5 hence applicant no. 5 is not eligible as well.

8.3. The respondents have referred the Model Roster for cadre strength upto 14 posts as per Railway Board's order dated 21.8.1997. The reservation rosters-posts based - Group 'C' and 'D' posts of promotion category- Implementation of the Supreme Court's judgement of R.K.Sabharwal vs. State of Punjab (AIR)1995 SC 1371, Union of India v. Virpal Singh Chauhan, (AIR) 1996-SC442) and Union of India vs. J.C. Malik, The sixth respondent, who is a private respondent, has also submitted his reply denying the averments made in the O.A. The sixth respondent has relied on Rule 313 (a)(ii) of IREM Vol.I, 1989, regarding rule regulating seniority of medically unfit railway servant and also Rule 319-A of IREM Vol.I, 1989 and also the judgement of Hon'ble Supreme Court in the case of Union of India vs. Virpal Singh Chauhan. In view of the said rule position, the respondents have considered the name of the 6th respondent and assigned the seniority.

9. In pursuance to the reply submitted by the respondents, the applicants have filed the rejoinder. In the rejoinder the applicants have relied on the Railway Board's letter dated 1.9.1997 regarding reservation roster, posts based - Group 'C' and 'D' and notification dated 21.2.1983 and also the statement showing the differences of facts admitted/denied by the respondents in OA No. 72/1993 and OA 266/1995.

10. We have heard the learned counsel for both the parties and have carefully perused the pleadings and other relevant material available on record.

11. On the facts of the case, the applicants have relied in O.A. 637/2000, on the letter dated 22.3.2000 (Annexure A-2) regarding formation of panel for the post of Office Superintendent-II Grade Rs. 5500-9000 (RSRP) for Personnel Branch. Under the said letter, "it was proposed to formulate a panel for the post of O.S. Gr.II (Personnel) Branch as follows :-

General	10
S.C.	Nil
S.T.	Nil
Total	10

The written test for above selected was to be held on 15.4.2000. The list of candidates is also enclosed with the said letter." According to the said letter, there is no reserved quota in excess. Accordingly, by applying 'X' formula, 30 employees were called for written test for the post of O.S. Gr.II in Jabalpur Division as on 15.4.2000. The factual position is admitted on either side, but the rule position has to be decided by this Tribunal.

11.1. The Government of India has amended Article 16(4A) of the Constitution right from the date of its inclusion in the Constitution i.e. from 17th June, 1995, with a view to allow the Government servants belonging to SCs/STs to retain the seniority. In other words, the candidates belonging to general/OBC category promoted later will be placed junior to the SC/ST Government servants promoted earlier even though by virtue of the rule of reservation, they already, the Ministry of Railway have issued RBE No. 33/2002 (ERC) Vol.2, SC/ST(Cat.II) dated 08.03.2002, laying down the principles for determining the seniority of staff belonging to SC/ST promoted earlier

vis-a-vis, General/OBC staff promoted later. These instructions have been given effect to from 17th June, 1995.

11.2. The learned counsel for the applicants stated that the issue involved in this case has already been decided by the Mumbai Bench of the Tribunal in OA No. 755/1998 and other connected matters, decided on 30th March, 2001. The relevant portion of the said judgment is extracted below :

> "18. We have heard the learned counsel for the applicants and the respondents carefully.
>
> The entire issue relates to the letter of 15.5.1998 issued by the Railways which has deleted the portion relating to a person promoted in an earlier panel being senior to one promoted on a later panel. There have been several judgments pronounced on not exceeding the reserved quota, the seniority of SC/STs acquiring accelerated seniority vis-a-vis the seniors promoted later and restoring their seniority etc. The respondents have relied on the judgement dated 5.5.98 which is one of the latest judgements on the issue in consideration. The judgement has taken into account the judgement in Jagdish Lal's case as well as all the other relevant judgements. The case has been distinguished. The ratio laid down is that accelerated promotion cannot grant accelerated seniority to SC/STs. All the cases we find that in those various judgements the actions taken, initiated in the past has been protected. In Ajit Singh II's V/s. State of Punjab also while discussing about the prospectivity of the judgement in Ajit Singh Juneja dated 1.3.96 it was observed in conclusion that while promotions in excess of roster made before 10.2.1995 are protected, such promotees cannot claim seniority which has no element of immediate hardship. So the reference is to cases where promotions have been granted in excess of the quota. That does not appear to be the case here. The applicant was promoted in 1984 against reserved quota. It is not stated that the applicant was promoted in excess of the quota. This being so the applicant's seniority of 1984 remains. Therefore in our view, the applicant deserves to be included in the eligibility list for selection to Class II post as per his Seniority in his cadre irrespective of the letter dated 15.5.1998. Also it cannot be ignored that the Principal Bench also had ruled at interim stage against the deleting of the five lines incorporated in the amended para 319-A of IREM. Considering in at the judgement of 5.5.1998 has been challenged in the High Court there is no finality about it. In the facts and circumstances of the case we quash and set aside the impugned orders dated 11.7.99, 7.9.1998 and 2.9.98 and direct the respondents to give a supplementary test to the applicants for selection to Class II post/grade 'B' and consideration for promotion

vis-a-vis, General/OBC staff promoted later. These instructions have been given effect to from 17th June, 1995.

11.2. The learned counsel for the applicants stated that the issue involved in this case has already been decided by the Mumbai Bench of the Tribunal in OA No. 755/1998 and other connected matters, decided on 30th March, 2001. The relevant portion of the said judgment is extracted below :

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> The entire issue relates to the letter of 15.5.1998 issued by the Railways which has deleted the portion relating to a person promoted in an earlier panel being senior to one promoted on a later panel. There have been several judgments pronounced on not exceeding the reserved quota, the seniority of SC/STs acquiring accelerated seniority vis-a-vis the seniors promoted later and restoring their seniority etc. The respondents have relied on the judgement dated 5.5.98 which is one of the latest judgements on the issue in consideration. The judgement has taken into account the judgement in Jagdish Lal's case as well as all the other relevant judgements. The case has been distinguished. The ratio laid down is that accelerated promotion cannot grant accelerated seniority to SC/STs. All the same we find that in these various judgements the actions taken, initiated in the past has been protected. In Ajit Singh II's V/s. State of Punjab also while discussing about the prospectivity of the judgement in Ajit Singh Juneja dated 1.3.96 it was observed in conclusion that while promotions in excess of roster made before 10.2.1995 are protected, such promotees cannot claim seniority which has no element of immediate hardship. So the reference is to cases where promotions have been granted in excess of the quota. That does not appear to be the case here. The applicant was promoted in 1984 against reserved quota. It is not stated that the applicant was promoted in excess of the quota. This being so the applicant's seniority of 1984 remains. Therefore in our view, the applicant deserves to be included in the eligibility list for selection to Class II post as per his seniority in his cadre irrespective of the letter dated 15.5.1998. Also it cannot be ignored that the Principal Bench also had ruled at interim stage against the deleting of the five lines incorporated in the amendend para 319-A of IREM. Considering in at the judgement of 5.5.1998 has been challenged in the High Court there is no finality about it. In the facts and circumstances of the case we quash and set aside the impugned orders dated 11.7.98, 7.9.1998 and 2.9.98 and direct the respondents to give a supplementary test to the applicants for selection to Class II post/grade 'B' and consideration for promotion

if found suitable. This shall be done within a period of three months from the date of receipt of a copy of this order.

Accordingly the OAs are allowed. No costs."

12. As the facts are admitted by the learned counsel for the parties, ends of justice would be met if the respondents are directed to reconsider the matter in the light of the decision of the Mumbai Bench, referred to above and also the Railway Board instruction consequent to amendment in Article 16(4A) of the Constitution. We do so accordingly. However, the respondents are directed to comply with the aforesaid direction within a period of four months from the date of receipt of a copy of this order.

13. For the reasons stated above the Original Applications are disposed of. No costs.

14. The Registry is directed to place a copy of this order in the files of the above OAs for record.

-Sd-
(G. Shanthappa)
Judicial Member

(M.P. Singh)
Vice Chairman

"SA"

पृष्ठांकन सं ओ/ज्या.....जबलपुर, दि.....
प्रतिलिपि अग्रेषित:—
(1) ..., जबलपुर
(2) .....के काउंसल
(3) .....के काउंसल
(4)

उप रजिस्ट्रार