

15A

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CHANDIGARH BENCH**

...  
(Reserved on 14.08.2015)

**O.A No. 060/00417/2014      Date of decision – 21.08.2015**

...

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)  
HON'BLE MS. RAJWANT SANDHU, MEMBER (A)**

...

Pawan Kumar Jain, Senior Divisional Accounts Officer(Retired), aged about 61 years, son of Sh. Rameshwar Dass Jain and R/o House No. 13432, Street No. 2, Thakur Colony Bathinda.

**...APPLICANT**

**BY ADVOCATE:** Sh. Shashi Bhushan Gautam.

**VERSUS**

1. Union of India through Comptroller and Auditor General of India, 10, Bahadur Shah Zafar, New Delhi.
2. Accountant General (A&E), Punjab, Sector 17, Chandigarh.
3. Sh. H.S. Rakesh, Sr. DAO (Retired), House No.8C, Green Park, Jalandhar.
4. Sh. Parkash Ram, Sr. DAO (Retired), House No.88A, Nagar Enclave, New Officers Colony, Patiala.
5. Sh. Ram Krishan Narwal, Sr. DAO (Retired), House No.C-908, Princess Park Apartments, Ahimsa Khand to Indirapuram, Gaziabad (U.P.).

**...RESPONDENTS**

**BY ADVOCATE:** Sh. Barjesh Mittal, counsel for respondent no. 1 & 2.  
None for respondent no. 3 to 5.

**ORDER**

**HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J):-**

The present Original Application filed under Section 19 of the Administrative Tribunals Act, 1985, is directed against an order dated 24.03.2014 whereby representation of the applicant for removal of anomaly has been rejected. The applicant seeks quashing of the Government of India, instructions dated 21.01.2002 with a further prayer to grant him promotion as Divisional Accounts Officers ( in short 'DAO') Gr. I (Level 3) and Senior Divisional Accounts Officer (Level 4) post ahead of the private respondents in terms of DoPT instruction dated 30.01.1997 by applying the principle of catch up rules.

2. The facts, which led to filing of the present Original Application, are the applicant initially joined as Sub Divisional Clerk (under training) on 10.06.1974. He was selected and appointed as Divisional Accountant (on probabtion) on 01.02.1983 after clearing the departmental examination and he was confirmed as such. In Gradation List of 'Divisional Accountants' issued on 01.03.1992, the applicant was placed at S.No. 37 whereas respondents no. 3, 4 & 5 were placed at S. No. 39, 40, 51 respectively. The respondents no. 3 & 4 were promoted as DAO-II (Level II post) in the month of December, 1993 and respondent no. 5 was also promoted in the month of June 1994 against the reserved post of SC/ST whereas

the applicant was promoted as DAO-II on 26.08.1996. It is the case of the applicant that the respondents have not applied the catch up rules in terms of the decision rendered in case of **Union of India Vs. Virpal Singh Chauhan**, JT 1995 (7) SC 231 and the applicant has to be promoted prior to the private respondents, who have been given benefit of reservation. He submitted a representation to grant him promotion from the date granted to the private respondents but same was turned down by the respondents by passing the impugned order in violation of the settled law. Hence, the present O.A.

3. The respondents have resisted the claim of the applicant by filing a detailed written statement wherein they have admitted the fact that the applicant entered into service prior to the date of appointment of private respondents. They were also given promotion as Divisional Accounts Officer Grade II w.e.f. 13.12.1993 and 14.12.2013 i.e. prior to the promotion of the applicant. They were also promoted to the post of Divisional Accounts Officer Grade I prior to the applicant by virtue of reservation for the SC/ST candidates. It is also submitted that since the private respondents were promoted at earlier point of time by virtue of reservation, therefore, their pay was also fixed from the date when they assumed the charge of higher post but the grievance of the applicant to step up his pay at par with the private respondents

cannot be accepted. It is also submitted that O.M. dated 30.01.1997 issued by the Government of India, was subsequently, withdrawn vide O.M dated 02.01.2002 from the date of its issuance itself. Therefore, applicant cannot get benefit as claimed in the present case.

4. The applicant has filed a rejoinder.

5. We have heard Sh. Shashi Bhusan Gautam, learned counsel for the applicant and Sh. Barjesh Mittal, learned counsel for the respondents.

6. Sh. Shashi Bhusan Gautam, learned counsel for the applicant submitted that once it has been held by the various court of law that benefit of seniority on accelerated promotion or reservation itself cannot be extended until, a survey is conducted by authorities showing that there is inadequacy in representation of the State SC & ST category as laid down by the Hon'ble Supreme Court in case of **M. Nagaraj & Others Vs. Union of India** 2006(8) SCC 212, which the respondents have admittedly not carried out any survey, therefore, private respondents are not entitled for grant of benefit of accelerated promotion with seniority, thus, impugned order is totally arbitrary, illegal and liable to be set aside.

7. Sh. Barjesh Mittal, learned counsel for respondents vehemently opposed the prayer of the applicant and submitted that the applicant cannot be granted the benefit as claimed in the O.A

19A

for the simple reason that earlier O.M dated 30.01.1997 was subsequently withdrawn vide O.M dated 02.01.2002 from date of its issuance. Therefore, the applicant cannot get any benefit. He submitted that catch up rule is to be applied from the date when judgment was rendered by the Hon'ble Supreme Court in case of Virpal Singh Chauhan (supra) and promotion made earlier cannot be upset. To buttress, he placed reliance upon the judgment passed by the Hon'ble Jurisdictional High Court in CWP No. 8914-CAT-2004 titled **Devinder Kaur Vs. Rani Chadha & Ors** decided on 07.04.2011.

8. We have given our thoughtful consideration to the entire matter and perused the pleadings of the parties as available on record with the able assistance of respective counsels.

9. The solitary contention at the hands of the applicant is that the respondents have to apply the catch up rule to the those who were promoted prior to the issuance of the instruction issued by the Government of India, in pursuance of the judgment of passed in case of Virpal Singh Chauhan (supra). Concededly, the private respondents, who belong to reserved category, were promoted to the next level/higher post in the month of December, 1993 and June 1994 i.e. much prior to the issuance of the instruction issued by the Government of India which is in furtherance of the direction of the Hon'ble Supreme Court in case of Virpal Singh Chauhan

2014

(supra). Even their lordship in its judgment dated 10.10.1995 passed in case of Virpal Singh Chauhan (*supra*) have held that instruction will be effective prospectively and it will not have retrospective effect i.e. same were made applicable from the date 10.02.1995 when for the first time catch up rule was introduced. Even otherwise vide O.M dated 21.01.2002, earlier O.M dated 30.01.1997 was withdrawn also. Since, the private respondents were already promoted prior to the issuance of the instruction, where catch up rule was made applicable w.e.f. 10.02.1995, therefore, their promotion cannot said to be contrary to the law and in their case principle of catch up rule cannot be applied. Our view also finds support from the judgment passed by the Hon'ble Jurisdictional High Court in case of Devinder Kaur (*supra*) where similar issue was considered by the Hon'ble High Court. For ready reference, relevant para 5 where similar arguments were raised and para 8, 9, 10, 11 & 12, are reproduced below.

5. Mr. H.S. Sethi, learned counsel for the petitioner has vehemently argued that the instructions dated 03.07.1986 (R-2) did not have any provision regarding 'Catch-up principle'. According to the learned counsel the 'Catch-up principle' was incorporated for the first time on 30.1.1997 in the instructions dated 3.7.1986 on the basis of the judgment of Hon'ble the Supreme Court rendered in the case of *Union of India v. Virpal Singh Chauhan*, 1995(4) S.C.T. 695 : (1995) 6 SCC 684. Mr. Sethi has maintained that once the 'Catch-up principle' has been adopted on 30.01.1997, it would not govern the promotion of the original applicant vis-a-vis the petitioner on the post of Senior Assistant, which was earned by the petitioner w.e.f. 1990 on a roster.

Likewise it would not be available to the original applicant respondent No. 1 who become Senior Assistant in the year 1994. Mr. Sethi has maintained that in any case, the judgment in Virpal Singh Chauhan's case (supra) is prospective in nature and it would not apply to the promotions already earned in the year 1990 by the petitioner vis-a-vis the promotion of original applicant- respondent No. 1 made in 1994. He has relied upon paras 30 and 31 to argue that the judgment in Virpal Singh Chauhan's case (supra) is prospective and not to have a retrospective effect. The date of operation of 'Catch-up principle' fixed in the aforesaid paras is 10.02.1995 which again does not adversely affect the promotion of the petitioner made in the year 1990 on the post of Senior Assistant and that of the original applicant-respondent No. 1 made in the year 1994.

6. xxxxxx xxxxx xxxxxx xxxxxx

7. xxxxx xxxxx xxxxxx xxxxxx

8. We have heard learned counsel for the parties and perused the paper book along with the record of the case. We firstly find it necessary to set out the instructions issued vide Office Memorandum dated 3.7.1986 (R-2), issued by the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions, Government of India, which is as under:-

"Subject: SENIORITY - Consolidated orders on. 3.7.1986. The undersigned is directed to say that instructions have been issued by this Department from time to time laying down the principles for determining seniority of persons appointed to services and posts under the Central Government. For facility of reference, the important orders on the subject have been consolidated in this Office Memorandum. The number and date of the original communication has been quoted in the margin so that the users may refer to it to understand fully the context in which the order in question was issued.

*Seniority Of Direct Recruits and Promotees*

(MHA O.M. No. 9/11/55-RPS dated 22.12.59).

2.1 The relative seniority of all direct recruits is determined by the order of merit in which they are selected for such appointment on the recommendations of the U.P.S.C or other selecting



authority, persons appointed as a result of an earlier selection being senior to those appointed as a result of a subsequent selection.

2.2 Where promotions are made on the basis of selection by a D.P.C., the seniority of such promotees shall be in the order in which they are recommended for such promotion by the Committee. Where promotions are made on the basis of seniority, subject to the rejection of the unfit, the seniority of persons considered fit for promotion at the same time shall be the same as the relative seniority in the lower grade from which they are promoted. Where, however, a person is considered as unfit for promotion and is superseded by a junior such persons shall not, if he is subsequently found suitable and promoted, take seniority in the higher grade over the junior persons who had superseded him.

2.3 to 5 xxx xxx xxx"

9. A bare perusal of the aforesaid Office Memorandum would show that the instructions issued by the Department of Personnel and Training from time to time laying down the principles for determining seniority of persons appointed to services and posts under the Central Government were, in fact, consolidated in the said office memorandum. In the instructions issued vide O.M. No. 9/11/55-RPS, dated 22.12.1959 or dated 3.7.1986, there was no 'Catch-up principle' because it was probably laid down for the first time by Hon'ble the Supreme Court in the case of Virpal Singh Chauhan (supra). It was only thereafter that the Department of Personnel and Training again issued instructions vide office memorandum dated 30.1.1997 (R-4). It would be profitable to read the instructions in extenso :

"Subject:- Seniority of SC/ST officers promoted earlier vis-a-vis general candidate promoted later. According to the general principle 5(i) contained in MHA OM No. 9/11/55-RPS dated 22.12.1959 and Para 2.2 in DOPT OM No. 22011/7/86-Estt. (D) dated 3.7.1986 read with DOPT OM No. 20011/5/90-Estt.(D) dated 4.11.1992, (copy enclosed) seniority of a person regularly appointed to a post according to rule would be determined by the order of merit indicated at the time of initial appointment and seniority of



23A

persons promoted to various grades shall be determined in the order of selection for such promotion. Thus, persons appointed through an earlier selection will enblock be senior to those promoted through subsequent selection.

2. The Supreme Court has in its judgment dated 10.10.1995 in the case of **Union of India v. Virpal Singh Chauhan etc., 1995(4) S.C.T. 695 : 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 though the general candidate is promoted later to that category."

3. Having regard to the above judgment of the Supreme Court, it has been decided to modify the existing policy of fixing seniority on promotion on the lines mentioned in para 2 above. Accordingly, it has been decided to add the following proviso to general principle 5(i) contained in MHA (now DOPT) OM No. 9/11/55-RPS dated 22.12.59 and para 2.2 of this Department OM No. 22011/7/86-Estt.(D) dated 3.7.1986 :-

*"Provided that if a candidate belonging to the Scheduled Caste or the Scheduled Tribe is promoted to an immediate higher post/grade against a reserved vacancy earlier than his senior general/OBC candidate who is promoted later to the said immediate higher post/grade, the general/OBC candidate will regain his seniority over such earlier promoted candidate of the Scheduled Caste and the Scheduled Tribe in the immediate higher post/grade."*

4. These orders shall take effect from the date of issue of this Office Memorandum." (emphasis added)

10. However, on 21.1.2002 (P-8) the said amendment made in the instructions dated 22.12.1959 and Office Memorandum dated 3.7.1986, was withdrawn w.e.f.

24A

31.1.1997 itself keeping in view the Constitution (Eighty Fifth) Amendment Act, 2001. The relevant portion of the instructions issued vide Office Memorandum dated 21.1.2002 (P-8) reads thus:

"3. The Government have now decided to negate the effects of the DOPT OM dated 30th January, 1997 by amending Article 16(4A) of the Constitution from the date of its inclusion in the Constitution i.e. 17th June, 1995 with a view to allow the government servants belonging to SC/STs to regain the seniority in the case of promotion by virtue of rule of reservation. 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.

4. Therefore, in pursuance of the aforementioned Constitution (Eighty Fifth) Amendment Act, 2001 it has been decided as follows :

(i) (a) SC/ST Government Servants shall, on their promotion by virtue of rule of reservation/roster be entitled to consequential seniority also and (b) the above decision shall be effected from 17th June, 1995.

(ii) The instructions contained in DOPT OM No. 20011/1/96 Estt (D) Dated 30.1.1997 as well as the clarifications contained in DOPT OM No. 20011/2/97-Estt(D) dated 21.3.1997 shall stand withdrawn w.e.f. 30.1.97 itself.

(iii) Seniority of Government servants determined in the light of OM dated 30.1.97 shall be revised as if that OM was never issued.

(iv) (a) On the basis of the revised seniority, *consequential benefits like promotion, pay pension etc. should be allowed to the concerned SC/ST Government Servants (but without arrears by applying principles of no work no pay).*

(b) *for this purpose, senior SC/ST Government servants may be granted promotion with effect from the date of promotion of their immediate junior general/OBC government servants.*

(c) Such promotion of SC/ST Government servant may be ordered with the approval of Appointing Authority of the post to which the Government

258

servant is to be promoted at each level after following normal procedure of DPC (Including consultation with UPSC).

(v) Except seniority other consequential benefits like promotion pay etc (including retrial benefits in respect of those who have already retired allowed to general/OBC Government servant by virtue of implementation of OM dated 30.1.1997 and/or in pursuance of the directions of CAT/Court should be protected as personal to them

5. xxx xxx xxx" (emphasis added)

11. Another aspect of the matter is that 'Catch-up principle' has been laid down in the case of Virpal Singh Chauhan (supra) and the judgment in that case has been made prospective w.e.f. 10.2.1995. From paras 30 and 31 the aforesaid position is absolutely clear, which reads thus :

"30. If the above three rules are observed and followed, there may not remain much room for grievance on the part of the general candidates. While in the very scheme of things, it is not possible to give retrospective effect to these rules - a fact recognised in R.K. Sabharwal (1995) 2 SCC 745 - the above rules, operated conjointly, should go a long way in maintaining a balance between the demands of merit and social justice.

31. Shri Rajeev Dhawan, learned counsel for the general candidates, pointed out, what according to him, are the inequitable and anomalous situations which would follow, if the candidate appointed/promoted on the basis of rule of reservation is not confined to reserved posts alone and is allowed to compete for general posts as well. In such a situation, he submits, the reserved candidate will enjoy yet another - third - advantage. Whenever, it is convenient to him, he will claim to be considered for a reserved post and where it is more convenient to him, he will claim to be considered for a general post, whereas a general candidate is restricted to general posts alone. In our opinion, however, the pleas of the learned counsel cannot simply be accepted; his submission flies in the face of the established law of the subject."

12. The view of the Tribunal needs to be examined in the light of the above facts and principles, namely, there was no 'Catchup principle' discernible from the instructions dated 3.7.1986. The Tribunal has obviously misread the instructions by ignoring the fact that 'Catch-up principle' was introduced by amendment only on 31.1.1997. Therefore, the view taken by the Tribunal is unsustainable in law. We are further of the view that the judgment of Hon'ble the Supreme Court in Virpal Singh Chauhan's case (supra) is prospective in its operation. Therefore, it would not govern the promotions and the question concerning determination of inter se seniority of the Scheduled Caste promotee on a roster point viz-a-viz her counterpart General category candidate who was senior in the lower cadre. Therefore, the judgment of the Tribunal is liable to be set aside.

10. In the light of the above, we see no reason to quash the well reasoned order. O.A stands dismissed accordingly being devoid of any merit.

11. No costs.

  
(SANJEEV KAUSHIK)  
MEMBER (J)

  
(RAJWANT SANDHU)  
MEMBER (A)

Dated: 21.8.2015

jk'