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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH ::: GUWAHATI-5.

O.A. NO. 129 of 1994
T.A. NO.

DATE OF DECISION 12.6

Smt Sakuntala Basumatary

(PETITIONER(S))

Shri N. Dutta and Shri D.K. Das

ADVOCATE FOR THE
PETITIONER (S)

VERSUS

Union of India and others

RESPONDENT (S)

Shri B.K. Sharma, Railway Counsel

ADVOCATE FOR THE
RESPONDENT (S)

THE HON'BLE SHRI G.L. SANGLYINE, MEMBER (A)

THE HON'BLE SHRI D.C. VERMA, MEMBER (J)

1. Whether Reporters of local papers may be allowed to see the Judgment ? ✓
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordships wish to see the fair copy of the judgment ? +
4. Whether the Judgment is to be circulated to the other Benches ? +

Judgment delivered by Hon'ble Member (J)

A

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.129 of 1994

Date of decision: This the 12th day of June 1996

The Hon'ble Shri G.L. Sanglyine, Member (Administrative)

The Hon'ble Shri D.C. Verma, Member (Judicial)

Smt Sakuntala Basumatary,
Sr. Clerk,
Office of the Controller of Stores,
N.F. Railway, Maligaon,
Guwahati.

.....Applicant

By Advocate Shri N. Dutta and Shri D.K. Das.

- versus -

1. The Union of India,
Through the General Manager,
N.F. Railway, Guwahati.
2. The Chief Personnel Officer,
N.F. Railway, Guwahati.
3. Shri Mrinal Sarma,
Head Clerk,
Office of the Controller of Stores,
N.F. Railway, Guwahati.
4. Shri Ananta Baruah,
Sr. Clerk,
Office of the Controller of Stores,
N.F. Railway, Guwahati.
5. Shri Gajen Bardoloi,
Sr. Clerk,
Office of the Controller of Stores,
N.F. Railway, Guwahati.

.....Respondents

By Advocate Shri B.K. Sharma, Railway Counsel.

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O R D E R

D.C. VERMA, MEMBER (J)

Smt Sakuntala Basumatary, Sr. Clerk in the office of the Controller of Stores, N.F. Railway, Maligaon, Guwahati, has filed this original application with a prayer that she be promoted as Head Clerk in the Controller of Stores Office against the ST reserved point with effect from 6.1.1994 with consequential monetary benefits with interest at the rate of 18% per annum and that her seniority as Sr. Clerk in the



Controller of Stores office should be fixed correctly above respondent Nos.3, 4 and 5 in the seniority list dated 31.3.1993 and further that she be given all consequential service benefits including promotion.

2. As per the applicant's case she was initially appointed as Jr. Clerk with effect from 13.2.1980 and posted in General Manager (Construction), N.F. Railway's Office with lien in X.E.N., Pandu's Office (Open Line). The applicant offered her candidature for recruitment to the post of Sr. Clerk against the $13\frac{1}{2}$ % posts reserved to be recruited by Railway Recruitment Board from amongst the Graduate Railway Employees and was selected. The applicant being ST candidate was ordered for posting in Controller of Stores Office as Sr. Clerk against Graduate quota of serving employees. She joined with effect from 16.4.1987. The other vacancy of SC/ST remained unfilled for want of such candidates. Mrinal Kanti Sarma (respondent No.3), Ananta Baruah (respondent No.4), Gajen Bardoloi (respondent No.5) all unreserved candidates were working in Controller of Stores Office as Jr. Clerks and they could not be promoted as Sr. Clerk in the office of Controller of Stores as there was no vacancy for general candidates. Though M. Sarma, respondent No.3, was given promotion as Sr. Clerk in a department other than Controller of Stores Office, respondent No.3 was eager to remain in Controller of Stores Office and kept waiting for such a vacancy and the applicant who was in a different office came on promotion in the office of Controller of Stores and joined on 16.4.1987. Subsequently, however, by a subsequent order respondent No.3 joined as Sr. Clerk with effect from 12.10.1987 for training against 20% vacancy of direct recruitment of graduates vide Annexure-A dated 24.4.1987. Respondent No.4, A.K. Baruah, was posted as Sr. Clerk in the office of the Chief Mechanical Engineer and respondent No.5, G. Bardoloi, was also promoted as Sr. Clerk outside Controller of Stores Office vide order dated 31.3.1987. These two respondents also did not resume as Sr. Clerks and were waiting for promotion in the Controller of Stores Office itself. According to the applicant's case the respondent Nos.3, 4 and 5 were promoted against reserved quota in the Office of the Controller of Stores where they joined on 12.10.1987 vide Annexure-B dated 12.10.1987.



3. Further the case of the applicant is that 9 posts of Chief Clerks were downgraded to Head Clerks and the seniormost Sr. Clerks were promoted on adhoc basis as Head Clerks. The applicant was one of the so promoted adhoc Clerks vide order Annexure-C dated 10.10.1991 for a period of 90 days. The said period was subsequently extended for other 90 days vide Annexure-D dated 10.4.1992 and their pay was accordingly fixed. By circular dated 31.3.1993 a provisional seniority list as on 1.4.1992 of Sr. Clerks of the Office of the Controller of Stores was circulated where respondent Nos.3, 4 and 5 were shown senior to the applicant (extract of seniority list Annexure-E). Against this the applicant made representation on 13.4.1994 (copy, Annexure-F). The said representation has not been decided so far.

4. The applicant's case further is that by office order dated 6.1.1994 twenty Sr. Clerks have been promoted as Head Clerks and the applicant being of ST community should have been promoted as per 40-Point Roster without waiting for promotion as per seniority. She further claims promotion on the basis of seniority as being senior to the respondent Nos.3, 4 and 5 as the applicant had joined the post of Sr. Clerk prior in time. The applicant, therefore, made a representation dated 14.1.1994 (Annexure-H) for promotion being ST candidate.

5. From the above facts two main points are for consideration. Firstly, that the representation of the applicant (Annexure-F) made against the provisional seniority list (Annexure-E) has not been decided, and the second is that the representation (Annexure-H) regarding claim of the applicant for promotion, being a ST candidate has also not been decided by the respondents.

6. The official respondents have filed written statement to which rejoinder affidavit has also been filed and exchanged between the parties. The private respondent Nos.3, 4 and 5 have not filed any written statement.

7. It is admitted by the respondents' counsel that the representation (Annexure-F) of the applicant made against provisional seniority

 list.....

list has not been considered. The main ground given in paragraph 8 of the written reply is that while publishing the seniority list of 31.3.1993 it was clearly mentioned therein that if any representation against the position shown in the seniority list is to be made, be made within one month from the date of issue of the seniority list after which no representation will be entertained. As the representation (Annexure-F) of the applicant was submitted after the scheduled period of one month the same was not considered. On this point the learned counsel for the applicant has drawn our attention towards paragraph 321 of the Indian Railway Establishment Manual Volume I (IREM for short). The same is quoted below:

"321. PERMISSION TO RAILWAY SERVANTS
TO PERUSE SENIORITY LIST :-

- (a) Railway servants may be permitted to see the seniority lists in which their names are placed, or if this cannot conveniently be arranged, they may be informed on request, of their place on the seniority list.
- (b) Staff concerned may be allowed to represent about the assignment of their seniority position within a period of one year after the publishing of the seniority list. No cases for revision in seniority lists should be entertained beyond this period."

(emphasis supplied)

The contention of the learned counsel for the applicant is that as per this provision the applicant was given time to make representation about the assignment of seniority position within a period of one year after publishing of the seniority list. The submission of the learned counsel for the respondents on this point is that as per practice only one months time is given for making representation against seniority position in a provisional seniority list. On a query from the Bench the learned counsel admitted that no ^{final} seniority list has been issued because as per the practice, if no representation is filed in time, the provisional seniority list is taken as final. The learned counsel submitted that in this case as no representation had been filed within one month from the date of issue there was no necessity to issue a final seniority list and the provisional seniority issued on 31.3.1993 has been taken as final. It is also admitted that even no office order to this effect was issued.

8. After hearing the counsel for the parties on the point we are unable to agree with the submissions made by the learned counsel for the respondents. When para 321 of IREM clearly provides that representation about the assignment of seniority position within a period of one year after the publishing of the seniority list can be made, the period cannot be curtailed by any practice unless the provision is amended (emphasis supplied). The other thing which very apparent is that as per provision 321 (Supra) one year period is to be counted from the date of publishing of the seniority list and not from the date of issue as mentioned in para 8 of the counter reply. As the date on which the seniority list was actually published has not come on record we are unable to calculate the period of one year. However, it is clear that the department was in some misconception about the period within which the representation can be made by an employee against assignment of seniority position. In these circumstances we feel that as the representation (Annexure-F) of the applicant still remains undecided the same should first be decided by the department as per the extant rules and regulations on the subject.

9. As regards the second point contended by the learned counsel for the applicant he has based his claim for promotion of the applicant against a quota reserved for ST on the basis of judgment of the Apex Court given in the case of Unin of India and others -vs- Virpal Singh Chauhan (AIR 1996 SC 448). Referring to para 27 of the Apex Court judgment the learned counsel has contended that even after the reserved ^{subsequent} quota is occupied fully as per the roster a vacancy whether permanent or temporary in a particular post has to be filled from amongst the category to which the post belonged in the roster. The learned counsel has based his claim on the decision of R.K. Sabharwal's case (1995 AIR SCW 1371), para 5 of which has been quoted in Virpal Singh Chauhan's case. The relevant portion relied on by the learned counsel for the applicant is quoted below:

"..... The vacancies arising in the cadre, after initial posts are filled, will pose no difficulty. As and when there is a vacancy whether permanent or temporary in a particular post the same has to be filled from amongst the category to which the post belonged in the roster. For example, the Scheduled Caste persons holding the posts at roster points 1,7,15 retire then these slots are to be

filled.....

filled from amongst the persons belonging to the Scheduled Castes. Similarly, if the persons holding the post at points 8 to 14 or 23 to 29 retire then these slots are to be filled from among the general category. By following this procedure there shall neither be shortfall nor excess in the percentage of reservation."

It, however, appears that the claim of the applicant on the above ground has not been pleaded in the O.A. and even the respondents have not replied to that in their counter affidavit or in the calculation made in Annexure-VIII to the counter affidavit which contains 40 point roster for promotion to the post of Head Clerk. As it is not clear whether there was any vacancy permanent or temporary in the ST category after the operation of the roster and the running account has come to an end, it is only the department which can find out whether there is any vacancy of ST after initial posts are filled up we are, in the absence of material on record, unable to examine this position. In the interest of justice we, therefore, find it necessary to direct the respondents to dispose of the representation (Annexure-H) of the applicant keeping in view all the observations of the Apex Court in para 5 of R.K. Sabharwal's case (Supra) and quoted in para 27 of Virpal Singh Chauhan's case (Supra).

10. By order dated 7.7.1994 this Tribunal has directed the respondent Nos.1 and 2, not to promote any Sr. Clerk to the post of Head Clerk in the Office of Controller of Stores, Maligaon, without leave of this Tribunal. It has been, however, also mentioned in the order that pendency of this application shall not be bar to the respondents to promote the applicant, Smt Sakuntala Basumatary (ST) to the post of Head Clerk if she is found suitable. In para 6 of their supplementary reply dated 29.5.1996 to the rejoinder filed by the applicant, the respondents have stated that now there have been vacancies of Head Clerk in the Controller of Stores Office against which the applicant and respondent Nos.4 and 5 may be given promotion provided found suitable in all respects in order of seniority as per seniority list of 31.3.1994. The learned counsel for the respondents has ~~on notice basis~~ submitted that the applicant's name can also be considered alongwith others against the available vacancies. As



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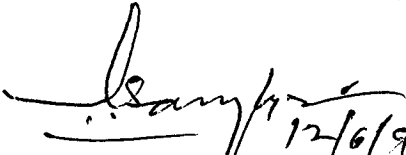
per the reply this will be in order of seniority list dated 31.3.1994.

11. We have, however, found that the seniority list issued on 31.3.1994 was provisional and no final seniority list has been issued thereafter. It is also found that no order confirming that the provisional seniority list issued on 31.3.1994 has become final, was issued by the department. It is also found that though the applicant had made a representation, the same was not considered as time barred though it was not so under para 321 of IREM. We have also found that the claim of the applicant with regard to her promotion to the post of Head Clerk against the ST vacancy occurring after operation of the roster came to an end, has not been examined by the respondents.

12. In view of our discussions made above this original application is disposed of with a direction to the respondent Nos.1 and 2 to decide the representation (Annexure-F) of the applicant with regard to seniority as per the extant rules, regulations etc. on the subject and issue and communicate final seniority list to the applicant. If after disposal of the said representation and issue of final seniority list any consequential benefit with regard to promotion etc. becomes available to the applicant she should be given the same. However, in case no such benefit is available the applicant shall not be entitled to that. The respondent Nos.1 and 2 are further directed to decide the representation (Annexure-H) of the applicant with regard to her promotion in view of the observations made above and communicate the decision to the applicant. Thereafter, in case the applicant or any other employee is found eligible and fit for promotion the same may be given with all consequential benefits which may be available as per rules, regulations and guidelines. Interim order stands modified accordingly.

13. The compliance of the above order be made within a period of three months from the date of communication of a copy of this order. Promotion to the post of Head Clerk shall not be made during this period unless the two representations, mentioned above, are disposed of by the respondents.

14. The original application is disposed of accordingly. No costs.


(G. I. SANGLYINE)
12/6/96


(D. C. VERMA)