

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

OA/021/00910/2013

Date of CAV : 29-10-2013
Date of Order : 01-11-2018

Between :

1. B. Pitchaiah S/o B.Subbaiah,
Age about 58 years,
Occupation : Sr. Section Officer (Accounts),
O/o The Financial Adviser and Chief Accounts Officer,
(Traffic Accounts), Lekha Bhavan, Uppal, Hyderabad.
2. V. Jaipal S/o Veeraiah,
Aged about 53 years,
Occupation : Sr. Section Officer (Accounts),
O/o Sr. Divisional Financial Manager,
Vijayaawada.
3. J. Satyanarayana S/o J. Subba Rao,
Aged about 55 years,
Occupation : Sr. Section Officer (Accounts),
O/o General Manager, S.C. Railway, Sec'bad.
4. D. Nageswar Rao S/o D. Sriramulu,
Aged about 53 years,
Occupation : Sr. Section Officer (Accounts)
O/o The Financial Advisor and Chief Accounts
Officer, Traffic, Lekha Bhavan, S.C. Railway,
Sec'bad.
5. Y.R. Sujatha D/o Y.M. Rajalingam,
Aged about 54 years,
Occupation : Sr. Section Officer (Accounts),
O/o The Financial Advisor and Chief Accounts Officer,
S & W, Lekha Bhavan, S.C. Railway, Sec'bad.
6. K. Kotaiah S/o K. Gopalu,
Aged about 58 years,
Occupation : Sr. Section Officer (Accounts),
Workshop Accounts Office, Guntupalli,
Vijayawada.

....Applicant

AND

1. The Union of India
Represented by the Secretary,
Railway Board, Rail Bhavan,

New Delhi.

2. The South Central Railway,
Represented by the General Manager,
Railnilayam, Secunderabad.
3. The Financial Advisor & Chief Accounts Officer,
South central Railway, Railnilayam,
Sec'bad.

...Respondents

Counsel for the Applicant: Mr. Siva

Counsel for the Respondents : Mr.S.M. Patnaik, SC for Rlys

CORAM :

THE HON'BLE MR.B.V.SUDHAKAR, ADMINISTRATIVE MEMBER

THE HON'BLE MR.SWARUP KUMAR MISHRA, JUDICIAL MEMBER

(Order per Hon'ble Mr.Swarup Kumar Mishra, Judicial Member)

This application is filed under section 19 of the A.T.Act, 1989, to

- (a) Call for all the relevant and records relating to the proceedings No.AAD/SL/CS, dt.29.4.2013 of the 3rd Respondent and AAD/FINSEN/VOL.II, dt.29.4.2013 of the 3rd Respondent and set aside holding it as arbitrary, illegal, unjust and violative under Articles 14, 16 & 16A of the Constitution of India.
- (b) Consequentially declare that the applicants are entitled to have their seniority reckoned from the date of their regular promotion as Section Officer and Sr. Section Officer (Accounts) and accordingly direct the Respondents to consider their cases for promotion to the Class-II (Group-B) Asstt. Accounts Officer;
- (c) Further direct the Respondent to release all consequential benefits that would flow from and out of setting aside of the impugned orders and grant of the declaration and directions prayed for herein and pass such other and further order or orders as are deemed fit and proper by this Tribunal under the circumstances of the case.

2. The brief facts of the case are that, they were attracted by the notification issued by the Railway Recruitment Board calling for applications from candidates suitable for filling-up the vacancies of Clerk Grade-I in the office of Financial Advisor & Chief Accounts Officer. They have been found suitable and have been appointed during 1983-84. By virtue of their seniority and also in compliance with the constitutional requirement of providing reservations, they earned their promotions. It would be necessary to point out that personnel working in Accounts Department will be required to pass examination called as Appendix-3A before being eligible for promotion to the post of Section Officer (Accounts). The applicants herein have all cleared said examination between 1987-1989.

3. That the persons before being promoted to either of the three categories ie Section Officer (Accounts), Traffic Inspector (Accounts and Inspector of Stores (Accounts) will have to clear the Appendix-3A examination as per the Indian Railway Establishment Manual (hereinafter referred to as IREM). It is also relevant to point out that all the three streams would become feeder category for the purpose of promotions to the Group-B Asst. Accounts Officer posts.

4. That, based on the seniority and principles of reservation applicable would be promoting them to the higher cadre of Senior Section Officer (Accounts) / Traffic Inspector (Accounts) / Inspector of Stores (Accounts). Only at the stage when they are to be considered for promotion to the Group-B Asst. Accounts Officer post, the combined seniority list would be

prepared. In the present case, such a list has been prepared.

5. The stream of Section Officers would not get vacancies as frequently as the other streams would have. Therefore, in respect of Section Officers they will not be getting promotion on clearing the Appendix-3A examination while in other streams, the promotion would almost be got in the same batch of passing the examination. The seniority of an individual would have to be determined based on the date of entry into the higher post on a regular basis.

6. The principles of reservation and even consequential seniority to those candidates belonging to Scheduled Caste / Schedule Tribes would have to be the same as governing a general candidate. In that view of the matter where a person belonging to Schedule Caste / Schedule Tribe gets promotion than their earlier seniors would be entitled to have their seniority from the date on which they have been promoted irrespective of the fact whether the seniority unreserved candidate gets his promotion at a later point of time. For a brief period, by virtue of the judgment rendered by the Hon'ble Supreme Court in Virpal Singh Chauhan Vs. Union of India followed by a Constitution Bench judgment rendered in Ajit Singh Januja where the principle of "catch-up" was prescribed. By virtue of this principles, as there was no comparison of inter-se merit between the Schedule Caste / Schedule Tribe candidate getting promoted to a reserved slot and his senior unreserved colleague, the seniority would have to be re-drawn based on the seniority position prevailing in the feeder

category. By virtue of this, the candidates belonging to Schedule Caste / Schedule Tribe would only be getting accelerated promotion and not consequential seniority.

7. The applicants aggrieved by the manner in which the seniority list was being prepared, submitted representations and sought for re-fixing the seniority duly taking into account the principle of consequential seniority being given to them. The 3rd Respondent has by an order No.AAD/SL/CS, dt. 29.4.2013 stated that the seniority assailed to Scheduled Caste / Schedule Tribe supervisory staff is as extant provisions and there is no change in the seniority position.

8. The fact that the authority has not applied itself to the entire issue would be evident from the reference to the para 319(A) of the IREM and reliance on IREM para 317 (a) and reference to para 319 (A) of the IREM would have no role to play in the present scenario after the 85th Amendment to the Constitution of India. Para 317 (a) and the latest advanced correction slip issued by the Railway Board would have no bearing on determination of seniority.

9. The 6th applicant has approached this Tribunal seeking to include his name in the zone of consideration for promotion in 2002. His contention was that since there was no Scheduled Tribe candidate in the zone of consideration or the extended zone of consideration ie 1:3 or 1:5, the Respondents have to go down in the list till such time they get the Schedule

Tribe candidates who fulfilled the minimum qualification prescribed in the rules. However, this Tribunal has not agreed with the said contention. It may be necessary to state that he has not raised any issue regarding the determination of seniority and as such the decision of this Tribunal may not have any bearing on the issue raised in the present OA.

10. The applicants herein have also moved OA No.1294/2010 when the Respondents were seeking to fill-up the vacancies of Group-B Asst. Accounts Officer. They have prayed that a direction be given to Respondents to call the Scheduled Caste / Schedule Tribe candidates down below in the seniority list and consider their cases for selection to the formulation of panels for promotion to Group-B posts in the Accounts Department against 70% quota of the vacancies and the vacancies assessed during the assessment period from 1-7-2010 to 31-12-2012 against reserved quota of Scheduled Caste / Schedule Tribe vacancies. An interim order was sought for to permit them to appear for the written examination as detailed for 22-11-2010. This Tribunal was pleased to grant the interim orders prayed for but selection took place only after dismissal of the OA however the selections never took place. The OA came to be finally dismissed placing reliance on the order passed by this Tribunal in the case of Sri K. Kotaiah referred to in the preceding paragraph. The efforts to get the said order judicially reviewed by final writ petition No.3572/2011 also was not successful as the Hon'ble High Court held that the order of the Tribunal warrants no interference. In spite of the fact that the applicants herein and also applicants in that OA has petitioners in WP No.3572/2011, they would

still have the locus and cause to institute and maintain the present OA for the simple reason that the relief sought for therein and the relief prayed for herein are not similar and identical.

11. The special provisions which were inserted in the IREM ie para 319 (A) having been deleted pursuant to the constitutional amendment, the general principle for determination of seniority would have to be applied. Para 320 of the IREM deals with the determination of the seniority and as per the said paragraph, a person who has been promoted earlier in point of time on a regular basis would stand senior to a person promoted later irrespective of community to which he belongs.

12. The Respondents have now issued a notification dt.27.5.2013 for preparing a panel for filling-up Class-II (Group-B) posts as Assistant Accounts Officers in the Accounts Department against 70% and 30% quota of vacancies. The applicants are liable to be considered against the 70% quota vacancies but for legally unsustainable seniority prepared. Their efforts to get that reviewed having not been successful and came to be rejected by the impugned orders. Hence this application.

13. Respondents have filed reply statement stating that the combined seniority is governed by para 320 of IREM (Vol.I)-1989 and Railway Board's guidelines issued from time to time. The principle of preparation of combined seniority is concerned, it is reckoned based on the provisions contained in Para 320 of IREM (Vol.I)-1989 ie based on the length of

non-fortuitous service in a grade. Further, in terms of Railway Board's guidelines issued from time to time in determining the Integrated / Combined seniority of employees coming from the various streams, the inter-se seniority of employees coming from the various streams should be maintained. In regard to determination of seniority with reference to the position occupied by SCs/STs who are promoted against reserved vacancies, it may happen that as per the normal procedure of assigning seniority, an SC/ST employee by virtue of getting posted as per roster point, may depress the seniority of general community employees with longer years of service who are otherwise senior and could have been placed on the panel but for the vacancies having to be reserved for SCs / STs. In such case, the SC/ST employee on the panel should be credited with the length of service of the general community candidates immediately below them on the panel.

14. The Ministry of Railways have considered the matter and decided to negate the effects of Para 319 A of IREM (Vol.I)-1989 which was incorporated pursuant to the Hon'ble Supreme Court's judgment in Virpal Singh Chauhan's case. It is therefore decided that the SC/ST Railway employees determined in the light of para 319 A shall on their promotion by virtue of rule of reservation/roster, be entitled to consequential seniority also and this shall be effective from 17.06.1995.

15. The seniority for promotion in the rank of SO(A)/TIA/ISA in Accounts department is specifically governed by Para 317 (a) of IREM (Vol.I)-1989 only which purely deals with seniority of those Accounts staff qualifying the

Appendix-3A for promotion to the respective ranks. The seniority of SO(A)/TIA/ISA was never determined as per Para 319 A which was subsequently deleted.

16. The facts of the case in the present OA and as brought out in OA No.1294/2010 is one and the same wherein it has been sought that “the seniority of the applicants is not fixed properly in accordance with the date of their entering service into the cadre as per para 320 of IREM and that, due to wrong fixation of seniority of the applicants, the OC candidates are placed above the applicants and this was deprived their right to be considered for the higher post on promotion”.

17. The seniority for promotion to the rank of SO(A)/TIA/ISA in Accounts department is specifically governed by Para 317 (a) of IREM (Vol.I)-1989 only which purely deals with seniority of those Accounts staff qualifying the Appendix-3A for promotion to the respective ranks. The seniority of SO(A)/TIA/ISA was never determined as per Para 319 A which was subsequently deleted.

18. The stream wise seniority of SO(A), TIA & ISA is compiled as per the seniority prepared in terms of Para 317(a) of IREM (Vol.I)-1989 for promotion to those ranks to meet the requirement of preparing the Combined / Integrated seniority in terms of Para 320 of IREM (Vol.I)-1989 and Railway Board's instructions issued from time to time and also conforming the instructions contained in M.C.No.68 dated 30.03.2007 for

the purpose of conducting the selection to fill up higher grade post ie AAO (Group 'B') against 70% quota.

19. As per the combined seniority prepared conforming to the extant provisions/rules issued by Railway Board, the applicants are not falling in the field of selection to call for the selection against 70% quota. The Respondents have never violated or bye-passed any guidelines or instructions issued by DoPT and Ministry of Railways from time to time and never misinterpreted Rule of Reservation in pursuance of the 85th Constitution Amendment Act 2001. In view of these submissions, Respondents pray for dismissal of the OA.

20. We have heard Mr.Siva, learned counsel for the applicants and Mr.S.M.Patnaik, learned Standing Counsel for Respondents.

21. The learned counsel for the applicant had inter alia submitted that the catch-up principle as applied to the Un Reserved (UR) candidates cannot be applied to the candidates belonging to reserved category candidates and in case they get portion earlier to the candidates of General Category then their position in the seniority list should be maintained. That has not been done in this case. The learned counsel for the applicants had also drawn the attention of this Tribunal to Rule-320 of IREM and has submitted that the Respondents could not have relied upon Rule-317(a) of IREM for the purpose of giving seniority to other candidates. In this regard he had drawn the attention to the combined final seniority list dt. 6.5.2013. He had also contended that the Respondents have not mentioned in the

impugned order vide Annexure A 4, dated 29.04.2013 about passing of any examination. Learned counsel for the Respondents on the other hand submitted that the provisions contained as per Rule 317(a) of IREM is the general condition laid down which governs the field. He had also drawn the attention of this Tribunal to the fact that the three applicants were also petitioners before this Tribunal in earlier OA No.1294/2010 which has been disposed of by the judgment dated 31.1.2012. After going through the said judgment, this Tribunal is of the firm opinion that the petitioners in the said case had the scope and opportunity to challenge the seniority list in question. The petitioners having not done so, they are precluded from challenging the said interse seniority, as the said point could have been raised before the Tribunal on earlier occasion in that case. That being the position, the present case is not maintainable. The seniority list has been accepted and the matter has attained finality. The contention of the learned counsel for the applicants that the principle of reservation and seniority to those candidates belonging to reserved category would have been same as governing a general category need not be gone into in the facts and circumstances of the case. Learned counsel for the applicants also relied upon the decision of the Hon'ble Apex Court in the case of Jarnail Singh & Ors Vs. Lachhmi Narain Gupta & Ors (2018 SCC Online SC 1641), which, in our considered view is not applicable to the facts and circumstances of the present case.

22. Accordingly the OA is dismissed as devoid of merits. No order as to costs.

(SWARUP KUMAR MISHRA) (B.V.SUDHAKAR)
JUDICIAL MEMBER ADMINISTRATIVE MEMBER

Dated : 1st November, 2018.

vi