

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 878/2003
with
OA 608/2003
MA 632/2003

New Delhi this the 24th day of October, 2003

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri Sarveshwar Jha, Member (A).

OA 878/2003

Shri S.J. Bahadur
S/O Late Sir Jung Bahadur,
resident of RZ 2007, Street
No. 32, T.K.D, Extension, New Delhi.

...Applicant

(By Advocates Shri T.S. Pandey
learned counsel with Shri H. Chakravorty)

VERSUS

1. Union of India through General
Manager, Northern Railway,
Baroda House, New Delhi.
2. Chief Personnel Officer,
Headquarters, Northern Railway,
Baroda House, New Delhi.
3. Medical Director, Northern Railway,
Central Hospital, New Delhi.
4. Sri Bishambhar Das Chitra,
Pharmacist II,
Central Hospital, Northern Railway,
Baroda House, New Delhi.

.. Respondents

(By Advocate Shri R.L. Dhawan, learned
counsel for the official respondents.)
(By Advocate Shri S.K. Sawhney, learned
counsel for pvt. Respondent No. 4)

OA 608/2003
MA 632/2003

1. Smt. Prakash Gupta
2. Sr. V.K. Bhatnagar both Office
Superintendent Grade I Operating
Branch Northern Railway, Head
Quarter Office Baroda House,
New Delhi.

..Applicants

(By Advocates Shri T.S. Pandey, learned
counsel with Shri H. Chakravorty)

VERSUS

1. Union of India through its General
Manager, Northern Railway,
Baroda House, New Delhi.

2

2. General Manager (F),
Northern Railway, Head Quarter
Baroda House, New Delhi.
3. Sri Ghanshyam Jarai
4. Sri R.C.Mina
5. Chandgi Ram all Chief Office
Superintendent Northern Railway
Head Quarter Office, Baroda House,
New Delhi.

..Respondents

(By Advocate Mrs. Meenu Mainee, learned
counsel for the official respondents)
(None for the other respondents)

O R D E R (ORAL)

(Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman (J)

After hearing learned counsel for the parties, we find that the issues raised in the aforesaid two OAs are similar. This is not seriously disputed by any of the learned counsel for the parties. Accordingly, these OAs are taken up together and are disposed of by a common order.

2. Shri T.S.Pandey, learned counsel has started his arguments in CA 578/2003. He has referred to the interim orders passed by the Hon'ble Supreme Court in M.Nagaraj and Ors Vs.Union of India and Ors (Writ Petition (Civil) No.51/2002) dated 5.4.2002 which has been continued by order dated 3.3.2003 (placed at page 9 of the rejoinder in CA 505/2003). The relevant portions of the aforesaid order dated 5.4.2002 read as under:

"A question of constitutional law arises. It is, therefore, appropriate that these petitions should be heard by a Constitutional Bench.

Insofar as interim relief is concerned. The respondents shall not revert the petitioners nor affect their standing in the seniority list and promotion, pay etc. at the same time, it shall be open to the respondents to promote those who are benefitted by the impugned amendment but so that it does not affect the petitioners in any manner and subject to the result of the writ petitions".

12

10

3. During the hearing, learned counsel for the parties have mentioned that the main issue raised in the aforesaid two OAs are with regard to the seniority in the grade of Office Superintendents/Pharmacists between general candidates and SC/ST candidates of Railway Administration, respectively. Learned counsel for the applicant in OA 878/2003 has submitted that the Railway Administration has ignored certain other Constitutional Bench judgements of the Supreme Court in AIR 1967 SC 52, AIR 1967 SC 1889 and AIR 1974 SC 1618, while proceeding in the matter, in terms of the aforesaid interim order dated 8.4.2002. He has submitted that SC/ST candidates who have already got the benefits while being recruited to a particular grade cannot get a second benefit of promotion which is contrary to the provisions of Article 16 (1) of the Constitution of India. He submits that by the impugned amendment, it does not affect the petitioners in any manner which is also subject of the result of the writ petition. Learned counsel has submitted that the applicants in the present OAs are general category candidates who are similarly placed as the petitioners before the Supreme Court. He has, therefore, contended that their benefits and rights will be affected by any action of the respondents.

4. The above averments have been controverted by the learned counsel for the respondents. Shri R.L.Dhawan, learned counsel for the respondents has relied on the order of the Tribunal in Ram Karan and Ors Vs. UOI and Ors (OA 3269/2002) decided on 19.9.2003, copy placed on record. He has prayed that similar orders may be passed. The issues raised in the above two OAs are sub-judice before the Hon'ble Supreme Court

V3



which has constituted a larger Bench to consider the issues. Learned counsel for the respondents has further submitted that the Constitutional Bench is likely to be constituted within the next two months. He has submitted that in any case, they are bound to implement the directions of the Hon'ble Supreme Court and have, therefore, prayed that the OAs may be disposed of as per the decision in the aforesaid Writ Petition pending before the Hon'ble Apex Court.

5. The main reliefs prayed for by the applicants in OA 578/2003 are for a direction to the respondents in the nature of certiorari to quash the seniority list issued by the respondents dated 17.4.2002 and promotion order dated 17.12.2002, with a further direction to recast and restructure the seniority list, assigning the correct seniority to the applicants over respondent No.4 who belongs to SC community. Similar reliefs have been prayed for in OA 508/2003. According to the respondents, the impugned seniority has been done by them in terms of the judgements of the Hon'ble Supreme Court, regarding reservation and other policies decisions/ instructions issued by them in pursuance of the Hon'ble Supreme Court orders from time to time. In any case, we note that the issues of seniority between the general candidates and SC/ST candidates at the time of recruitment/ subsequent promotion and related matters are sub-judice before the Hon'ble Supreme Court. In this view of the matter, we do not consider it appropriate that the Tribunal should at this stage deal with these very issues, particularly, having regard to giving effect to the

82

directions of the Hon'ble Supreme Court interim orders dated 8.4.2002 and 3.3.2003.

6. In view of the above, the aforesaid two OAs are disposed of with the following directions:

The respondents shall consider the reliefs prayed for by the applicants, in accordance with the decisions of the Hon'ble Supreme Court in the aforesaid pending Special Leave Petition and other relevant decisions and it is needless to say that the respondents shall strictly abide by those directions. No order as to costs.

8. Let a copy of this order be placed in OA 608/2003.

(Sarveshwar Jha)
Member (A)

(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

sk