

(2021) 12 CAT CK 0012

In the Central Administrative Tribunal

Case No : Original Application No. 1636 Of 2016

Madhu Arora & Others

APPELLANT

Vs

General Managar, Northern Railway & Others

RESPONDENT

Date of Decision : 22-12-2021

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Orissa Reservation Of Vacancies In Posts And Services (For Scheduled Castes And Scheduled Tribes) Act, 1975 — Section 10
Constitution Of India, 1949 — Article 16(4A), 335

Citation : (2021) 12 CAT CK 0012

Hon'ble Judges : Manjula Das, J; Mohd. Jamshed, Member (A)

Bench : Division Bench

Advocate : Amit Anand

Final Decision : Allowed

Judgement

Manjula Das, J

1. In the present OA, filed under Section 19 of the Administrative Tribunals Act, 1985, the applicants have prayed for quashing the impugned Notice dated 22.04.2016 [Annexure A-1 (Colly)], whereby their seniority has been depressed, with a further direction to the respondents to prepare a seniority list on the basis of 'catch-up' rule, as has been held in a catena of decisions of Hon'ble Supreme Court and of various other judicial fora.

2. Brief facts of the case, as narrated in the instant OA, are that the applicants were appointed as Nurse Staff between 1995 and 1999 whereas the private respondent nos.4 & 5 were appointed on the said post in the year 2007. Accordingly, a seniority list dated 31.10.2003 (Annexure A-2) was circulated wherein the names of private respondent nos. 4 & 5 did not find place, as they were not borne on the cadre till that date. The applicants were subsequently appointed/promoted on the post of Nursing Sisters in the grade of Rs.5500-9000 during the years 2003 to 2006, whereas the private respondents were so

appointed/promoted in the year 2010. A provisional seniority list dated 24.06.2010 (Annexure A-3) was circulated in which the applicants' figured at sr. no.10, 12, 11, 13 & 14 respectively, whereas the private respondents were shown at sl. No.41 & 42. It is further submitted by the applicants that since the next promotional post, i.e., Chief Matron is a selection post, a panel was formulated, vide letter dated 10.05.2012 (page 44 of the paperbook) whereby a provisional panel for the said post was prepared for seven persons based on suitability. In the said panel, the applicants are shown at sl. nos.1 to 5, whereas private respondent nos.4 & 5 are shown below the applicants i.e. at sl.Nos.6 & 7, and were promoted to the post of Chief Matron in the year 2012. However, a Notice dated 06.03.2014 (Annexure A-5) pertaining to provisional seniority of Chief Matron was issued showing the private respondents above the applicants i.e. at sl. no.66 & 67 whereas the applicants' name appeared from sl. Nos.68 to 72. Objections, if any, were directed to be submitted within 30 days from the date of issuance of the said provisional seniority list. According to the applicants, in consideration of their objections, the respondents issued a revised seniority list dated 21.06.2014 (Annexure A-6) whereby the private respondents were shown below the applicants correctly.

3. It is stated by the applicants that on receipt of representation of private respondent nos. 4 & 5, the official respondents examined the said representation in view of the instructions contained in NRPS No.12397/2002, and issued a Notice dated 19.02.2016 whereby the aforesaid seniority list of Chief Matron was partially modified to the extent that the seniority position of the private respondents no.4 & 5 was further revised as per their date of assumption as Chief Matron, i.e., on 10.05.2012 and accordingly they were assigned seniority at sl. No.65A and 65B i.e. below Smt. Kunta Rani and above applicant no.1 Madhu Arora, who had joined her duty on 01.06.2012 i.e. after assumption of duty by private respondent nos.4 & 5. Thereafter, the applicants submitted a representation dated 22.02.2016 against the aforesaid Notice dated 19.02.2016, alleging therein that the action of the respondents was clearly wrong inasmuch as seniority would depend upon the position in the panel, and not on the basis of assumption of duty of the said post, since all the applicants and the private respondents were appointed/promoted from the same panel. The applicants again submitted their representation dated 23.03.2016 against the aforesaid Notice, whereby seniority of the applicants has been depressed vis-à-vis the private respondents, vide impugned order dated 22.04.2016 (Annexure A-1). Hence, the present OA has been filed by the applicants challenging the fixation of their seniority below the private respondents.

4. Pursuant to notice issued by this Tribunal, the official respondents have filed their counter reply stating that the provisional panel for promotion to the post of Chief Matron in respect of the applicants and private respondents was issued on 10.05.2012. It is further stated that private respondent nos. 4 & 5 had been promoted to the said post on 10.05.2012 against the existing SC vacancies, i.e., earlier to the applicants, who had been promoted on 01.06.2012, 06.08.2012,

01.11.2012, 01.12.2012 and 01.01.2013 respectively. They have further stated that the seniority has to be assigned as per the date of promotion and in terms of IREM Paras 302 to 310, according to which earlier promotees would be senior to the candidate(s) who is/are promoted later. However, since the seniority of the applicants and the private respondents was wrongly assigned, vide seniority list dated 21.06.2014, the same was rectified/modified upon receipt of representation from the private respondents and corrected the same in terms of instructions contained in NRPS No.12397/2002, vide Notice dated 19.02.2016 whereby private respondents had been assigned seniority at sl. Nos.65A & 65B i.e. below Smt. Kunta Rani and above applicant no.1.

5. The applicants have also filed their rejoinder to the counter reply filed by the official respondents, reiterating the averments made in the OA. However, they have stated that the impugned action of the respondents depressing their seniority is based on the recommendation letter dated 07.11.2014 issued by National Commission for Scheduled Castes.

6. During the pendency of the OA, the applicants filed MA No.2809/2018 for implementation of the private respondent nos. 4 & 5, which was allowed by this Tribunal, vide order dated 10.02.2021.

7. Pursuant to notice from this Tribunal, the private respondents have also filed their counter reply in which they have stated that they belong to SC category and have been promoted to the post of Chief Matron by the respondent no.3 on 10.05.2012, while they were eligible to be promoted on the said post on 21.01.2012 as the vacancy of reserved candidates had fallen vacant in the years 2009 and 2010, and against those two existing vacancies, the respondent nos. 4 & 5 became eligible w.e.f. 21.01.2012. The private respondents have further submitted that the official respondents later on accepted that the process of filling up of two existing SC vacancies was started in February, 2012, which took 5 months' time to fill up the said reserved vacancies, hence the private respondents, who belong to SC category, have been deprived of their right of promotion. On the other hand, the applicants, who belong to unreserved (UR) category, had been promoted on different dates against the anticipated vacancies as and when UR vacancies fell vacant. It is further submitted that they had represented on many occasions to the respondents for their promotion to the post of Chief Matron at an appropriate time, and even approached the National Commission for Scheduled Castes in this regard. It is lastly submitted that the claim of the applicants is not tenable in the eyes of law, and the OA deserves to be dismissed.

8. We have heard Sh. Amit Anand, learned counsel for the applicants. Though none was present on behalf of either the official or private respondents, but they have filed their respective written submissions. We have also perused the pleadings available on record.

9. Sh. Amit Anand, learned counsel for the applicants has reiterated the

submissions as have already been recorded above. However, in support of the claim of the applicants, the learned counsel submitted that their case is covered by the catch-up rule, which, inter alia, provides that if a reserved category person is appointed before a general category person, and a general category person thereafter catches up with the earlier promoted reserved category person, then the general category person catches up (regains seniority over the reserved category person). In support of his argument, he has placed reliance on the decision of the Hon'ble High Court of Madhya Pradesh at Jabalpur in Writ Petition No.1942/2021 and other connected cases, titled R.B. Rai vs. State of Madhya Pradesh etc. decided on 30.04.2016, and also of the Hon'ble Apex Court in Civil Appeal No.3240/2011 titled Pravakar Mallick & Anr. Vs. The State of Orissa & Ors. decided on 17.04.2020. He has also relied upon the judgment of the Ernakulam Bench of this Tribunal in M.A. Verghese vs. Union of India & Ors. (OA No. 351/2012 decided on 09.10.2012) wherein the decision of the Hon'ble Supreme Court in M. Nagarajan's case has also been relied upon.

10. Learned counsel for the official respondents in his written submissions filed on 08.12.2021 has reiterated the contents of the counter reply filed on behalf of the respondents.

11. Having heard the learned counsel for the parties and gone through the pleadings, as well as judgments cited, we find ourselves in agreement with the applicants that their case is covered by the decision of the Hon'ble Apex Court in Pravakar Mallick (supra) wherein it has been held as under:-

"4. The respondent-writ petitioners were appointed to Orissa Administrative Service-II (OAS-II) posts pursuant to selections made by the Orissa Public Service Commission. They were recruited during the years 1983, 1984 and 1987. They were assigned different ranks in the merit list for their respective batches prepared by the Public Service Commission. In the above said merit list, persons belonging to SC/ST category, who were appointed against the reserved vacancies were placed below the writ petitioners. Thus, the writ petitioners were senior to appointees belonging to SC/ST category. The respondent-writ petitioners were subsequently promoted and appointed in the next higher category, i.e., Orissa Administrative Service-I (OAS-I)(JB) vide Government Notification dated 26.08.2000. The appellants and some others belonging to SC and ST category, recruited along with the respondent-writ petitioners in subsequent batches, were given promotion to the rank of OAS-I(JB) against reserved vacancies during the year 1995 and 2000 as provided under Orissa Reservation of Vacancies in Posts and Services (For Scheduled Castes and Scheduled Tribes) Act, 1975 and the rules made thereunder. The seniority of reserved categories and unreserved categories, including that of the respondent-writ petitioners was not finalised by the Public Service Commission since the principles determining seniority, inter se, was the subject matter of several litigations. The original seniority position in the cadre of OAS-II prepared by the Public Service Commission was retained without any changes in view of the judgment of this Court in the C.A.Nos.3240 of 2011

etc. case of Union of India & Ors. v. Virpal Singh Chauhan & Ors. 2. Irrespective of getting promotion in subsequent years, the inter se seniority of the respondent-writ petitioners and the SC/ST roster point promotees in the rank of OAS-I was maintained in the seniority list prepared on 16.05.2001. Article 16(4A) of the Constitution of India was amended by 85th amendment, enabling the State to grant benefit of promotion with consequential seniority to SC/ST reserved category officers. By Constitution (85th) Amendment Act of 2001, Article 16(4A) was amended and for the words, "in matters of promotion to any class", the words, "in matters of promotion with consequential seniority to any class" were substituted. In the judgment of this Court in the case of M. Nagaraj¹ a Constitution Bench of this Court, while upholding the Constitution (85th) Amendment Act of 2001 held that, the State is not bound to make reservation for SCs/STs in matter of promotions. However it was held that, if they wish to exercise their discretion and make such provision, the State has to collect quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment in addition to compliance with Article 335 of the Constitution of India. It is further made clear that even if the State has compelling reasons, the State will have to see that its reservation provision does not lead to excessiveness so as to breach the ceiling of 50% or obliterate the creamy layer or extend the reservation indefinitely. In the case of Virpal Singh Chauhan², this Court has held that reserved 2 AIR 1996 SC 448 = (1995) 6 SCC 684 C.A.Nos.3240 of 2011 etc. promoted candidates are not entitled to seniority in the promoted post and if the general category candidate reaches the said post, he is entitled to seniority over the promotees to reserved vacancies. Subsequently, a three-Judge Bench judgment of this Court in the case of Jagdish Lal & Ors. v. State of Haryana & Ors. 3 has held that reserved promoted category candidates are entitled to seniority, in the promoted posts and not as per the feeder cadre. Subsequently, a Constitution Bench of this Court in the case of Ajit Singh & Ors. (II) v. State of Punjab & Ors.⁴ has overruled the judgment in the case of Jagdish Lal³ and upheld the principle, viz., "Catch Up Rule", as mentioned in the judgment in the case of Virpal Singh Chauhan².

5. In view of the "Catch Up Rule" evolved by this Court in the case of Virpal Singh Chauhan², which is approved by this Court, subsequently in the case of Ajit Singh (II) 4, the seniority list dated 16.05.2001, of officers of OAS-I(JB Cadre) has been prepared. In such list, the roster point promotees belonging to SC/ST category, who were given promotion to OAS-I(JB) against reserved vacancies earlier, irrespective of their original seniority in the feeder cadre, were shown below the respondent-writ petitioners. It is not in dispute that after 85 th Constitution Amendment amending Article 16(4A) of the Constitution, the State of Orissa has neither issued any executive order nor enacted any legislation for conferring benefit of seniority for officers belonging to SC/ST category who are promoted against reserved vacancies. 3 (1997) 6 SCC 538 4 (1999) 7 SCC 209 C.A.Nos.3240 of 2011 etc. Referring to instructions issued by the Government of India, the State of Orissa has issued Resolution dated 20.03.2002 issuing

instructions to all the departments of the Government to extend the benefit of seniority for scheduled caste and scheduled tribe government servants on promotion by virtue of rule of reservation. Pursuant to such Government Resolution dated 20.03.2002, Gradation List dated 03.03.2008 was prepared by altering the seniority of the respondent-writ petitioners, contrary to the list dated 16.05.2001.

....13. Further, the submission of the learned counsel -Sri A. Subba Rao - that the benefit of reservation in promotion is given in the services of OAS-I for scheduled caste and scheduled tribe officers as per Section 10 of Orissa Act 38 of 1975, but same cannot be countenanced for the reason that such Act was enacted by the State of Orissa in the year 1975 but no provision is brought to our notice in such Act for giving the benefit of seniority for the promotees who were promoted in reserved vacancies. In absence of any provision in the said Act for conferring the benefit of seniority, and in absence of any amendment after Constitution (Eighty-Fifth) Amendment Act of 2001, by which Article 16(4A) was amended, benefit of seniority cannot be extended relying on Section 10 of the Act. In view of the stand of the respondent-State in the counter affidavit filed in the writ petition and further in view of the submission made by the learned counsel for the State of Orissa that no benefit of seniority was extended by any State Act or by any executive order by examining adequate representation in terms of Article 16(4A) of the Constitution, we do not find any merit in this appeal so as to interfere with the well reasoned judgment of the High Court. The judgment of this Court rendered in the case of Jarnail Singh relied on by the learned counsel for the appellants also would not take any further the case of the appellants. In the said judgment also for giving the benefit of promotion with consequential seniority, the need to examine adequate representation in posts in terms of the judgment of this Court in the case C.A.Nos.3240 of 2011 etc. of M. Nagaraj is maintained. As such, the said judgment would not render any assistance for the case of appellants."

12. In view of the facts and circumstances of the case and also the legal position on the subject, the instant OA is allowed and impugned orders dated 22.04.2016 and 19.02.20216 are quashed. Accordingly, the respondents are directed to prepare a fresh seniority list having regard to the judgment of the Hon'ble Supreme Court in Pravakar Mallick (supra), within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs.