Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 2379 OF 2005

K. Manorama ...Appellant

Versus

Union of India rep. by Genl. Manager
Southern Railway & Ors. ...Respondents

JUDGMENT

Gokhale J.

This appeal seeks to challenge the judgment and order dated 28.1.2003 rendered by the Madras High Court allowing Writ Petition No. 1311of 1999 filed by the Respondent Nos. 1 and 2, and setting aside the order passed by the Central Administrative Tribunal dated 27.11.1998 which had allowed the Original Application No. 891 of 1996 filed by the appellant herein.

The O.A. filed by the appellant thus stood dismissed by the impugned judgment and order of the High Court.

2- Short facts leading to this appeal are as follows:-

At therelevant time in November 1994, the appellant was working as a Chief Law Assistant which was a Group-`C' post in the Southern Railways. The post higher to this post is that of the Assistant Law Officer which is a Group-`B' post. At the relevant time the total cadre strength of Assistant Law Officers in Southern Railway was three. Initially when `Assistant Law Officer' was a single post cadre, in the year 1991, it was filled by an open category candidate. Subsequently, when two more posts were created in the year 1994, reservation was applicable. The posts were to be filled on the basis of seniority-cum-suitability. A notification holding 10 senior most candidates eligible for being considered for the two posts was issued on 10.11.1994.(The second respondent herein is the Chief Personal Officer of Southern Railways). To determine their suitability, a written examination was held. Eight Law Assistants obtained qualifying marks and became eligible for being called for the interview (one out of them opted out). The concerned committee

recommended Respondent Nos. 3 and 4 for those two posts. Out of them, Respondent No. 3 is a Scheduled Caste candidate. Accordingly, the promotion order for both of them was issued on 26.5.1995.

3. The appellant also belongs to a Scheduled Caste and was of the view that the Respondent No. 3 (Mr. M. Siddiah), was promoted to the post of Assistant Law Officer on his merit and not because he was a Scheduled Caste candidate. It was her contention that instead of Respondent No. 4 (Mr. K. Rajagopalan Nair) belonging to the open category, she should have been promoted to the post of Assistant Law Officer on the basis of her status as a Scheduled Caste candidate. She, therefore, represented to the Chairman of the Railway Board on 14.2.1996 but there was no response. She, therefore, filed the above referred O.A. in the Central Administrative Tribunal (hereinafter referred to as Tribunal) at Chennai. The respondents Nos. 1 and 2 filed their reply statement before the Tribunal and pointed out that as per the Railway Board's decision dated 29.7.1993 in small cadres having less than 4 posts, reservation had to be provided as per the 40 point roster when no SC/ST candidate was available in the Cadre. As per model 40 point roster the first point will have to be filled by a Scheduled Caste candidate, and the next two points were to be treated as unreserved. In para 1 & 2 of their reply the Respondent Nos. 1 and 2 stated as follows:-

> "In this selection, the roster points to be filled up for the two vacancies were point Nos. 2 and 3. Both the points are UR (i.e Un-Reserved) points. As the first point which was a SC point was filled up by an UR candidate, being a single vacancy, out of the two vacancies for which notification was issued, one post was treated as SC."

4. The appellant submitted before the C.A.T. that if a Scheduled Caste candidate competes for a non-reserved post and i selected, he should not be counted against the quota reserved for Scheduled Castes. According to the appellant, if the senior most among eligible candidates belongs to a Scheduled Caste, on being promoted, he should be treated as an open category candidate and should not be counted against the quota for Scheduled Castes. The judgment of a Constitution Bench of this Court in R.K. Sabharwal and Ors. vs. State of Punjab and Ors. [1995 (2) SCC 745] was relied upon in support.

5. The Central Administrative Tribunal accepted this submission and noted that the preposition in the R.K. Sabharwal and Ors. (supra) had been reiterated in para 11 of Ajit Singh Januja and Ors. vs. State of Punjab and Ors. [1996 (2) SCC 715], wherein after referring to the judgment in R.K. Sabharwal (supra) a bench of 3 Judges had observed that if a Scheduled Caste candidate has been appointed / promoted on his own merit, than such candidate shall not be counted towards the percentage of reservation fixed for them as stated in R.K. Sabharwal's case.

6. The Tribunal therefore, allowed the O.A. by its order dated 27.11.1998. It declared that the selection of Respondent No. 3 was in an unreserved vacancy on his own merit. It directed Respondents Nos. 1 and 2 to empanel the appellant in the reserved category provided that she was qualified according to the marks and seniority in the selection made, and if there was no SC candidate above her either on marks or in seniority. The Selection of Respondent No. 4 was held to be erroneous. However, since he had retired in the meanwhile, the emoluments received were directed not to be disturbed. The Tribunal further directed that the appellant if found fit, will be deemed to be entitled to the seniority in the service from the date of selection of Respondent No. 3, though she will not get the salary till the date she actually assumed charge of the higher post.

7. Being aggrieved by this judgment and order Respondent Nos. 1 and 2 filed Writ Petition No. 1311 of 1999 in the High Court of Madras. The High Court allowed the Writ Petition and set aside the order of the Tribunal. Being aggrieved thereby, the appellant has filed the present appeal.

8. The main-stay of the argument of the appellant was, as stated earlier, that since Respondent No. 3 had been selected on merits he should not be considered as occupying a Scheduled Caste seat. The Scheduled Caste vacancy must therefore go to the next Scheduled Caste candidate as per the order of merit, and the appellant was that next candidate. Respondent No. 4 (Mr. K. Rajagopalan Nair) should not have been therefore promoted as an open category candidate and that post should have been allotted to the appellant. The appellant relied upon the Railway Board order dated 29.7.1993 in this behalf, which was issued to implement a full-bench decision of the Tribunal at Hyderabad, which states that where ST/SC candidates were promoted on their own merit, their seniority should not be

counted as reserved candidates. The relevant part of the Railway Board's letter dated 29.7.1993 clarifies as follows in para (VI):-

> "(VI) Whether a person belonging to SC/ST promoted on his own merit and seniority should be treated as reserved candidate for counting available SC/ST candidates-
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> As per judgment of the Full Bench of Central Administrative Tribunal/Hyderabad, the SC/ST candidates who have been promoted on their own merit and seniority should not be counted as reserved candidates. It has further been laid own in Board's letter dated 16.06.1992 that SC/ST candidate an be placed on the panel/select list even in excess of the reserved quota in case such candidates qualify against general posts on merit/seniority. These SC/ST candidate should be excluded for the purpose of counting the available SC/ST candidates while computing the reserved quota."

9. Now, as far as this aspect is concerned, Respondent Nos.1 and 2 had made it clear that where the posts were less than 4, the 40 point roster was expected to be applied. As per that roster the first point was meant for a Scheduled Caste candidate and second and third points were meant for candidates from unreserved category. There is a note below this model roster which reads as follows:-

> "Note--If there are only two vacancies to be filled in a particular year, not more than one may be treated as reserved and if there is only one vacancy, it should be treated as unreserved. If on this account, a reserved point is treated as unreserved, the reservation may be carried forward to the subsequent three recruitment years."

10. It was submitted on behalf of Respondent Nos. 1 and 2 that in view of this note, and the first vacancy in the year 1991 having been treated as unreserved, when two vacancies occurred subsequently, one out of them was being treated as reserved. This was as per the above note which stated that where the reserved point is treated as unreserved, the reservation is to be carried forward. Respondent Nos. 1 and 2 therefore, had to treat one of the two vacancies as a reserved vacancy.

11. In our view, the submission of the respondents Nos. 1 and 2 is well taken. They had to treat one out of the two vacancies which occurred in the year 1994 as reserved. This is because the first point in the roster was otherwise meant for a reserved candidate. Since, in the year 1991, it was a single post cadre, it had been treated as unreserved. When the single post cadre became a multi-post cadre, and consequently two seats became available in 1994, they had to treat one out of the two seats as a reserved seat. The selection of Mr. Siddiah, therefore, as a Scheduled Caste candidate cannot be faulted.

12. The submission of the appellant was that Respondent No. 3 had been selected on his merit and that Mr. K.Rajagopalan Nair was placed in the panel contrary to the Railway Board letter dated 14.4.1983. Respondents Nos. 1 and 2 had denied this averment in para 10 of their additional reply before the Tribunal. In para 14 of its order the Tribunal observed as follows:-

> "14. Reference made in paragraph 10 have no bearing on the point for decision in this case. It is also the contention on behalf of the respondents that since respondent No. 3 is the senior most in the SC quota he is empanelled. The question is, he has obtained the highest number of marks in the said selection. Therefore, the question of he being the SC candidate is evaporated on account of his being the meritorious candidate in the entire selection. If respondent No. 4 has come up in the marks over that of respondent No. 3 and the question of the respondent 3 being the senior in the SC candidates, then respondent No. 3 would have been justified being empanelled in the reserved vacancy. But that was not the case here.

13. Respondents Nos.1 and 2 point out that this finding is erroneous on facts. The chart of the marks obtained by the candidates has been produced before us. The chart reads as follows.

SELECTION FOR THE POST OF ASSISTANT LAW OFFICER IN SCALE RS. 2000-3500 VIVA VOICE ON 27.04.1995
NUMBER OF VACANCIES 2 (SC-1: UR-1)
COMMITTEE MEMBERS:
1. SDGM

2. FA & CAO

3. CPO

4. CELE SHRI R. MOHANDAS

S. No	Name	Date of Birth	Date of appointment	Qualification	Designation	Date of promotion to present grade
1-	M. SIDDAIAH	04-08-43	16-6-65	B.Sc.LLB	SCCLA	09-5-85
2-	K. RAJAGOPALAN NAIR	24-08-39	16-11-63	B.Sc.LLB	ASST/SEC (ADHOC)	01-4-87
3-	V SUBRAMANIAN	10-03-40	31-05-62	DIPLOMA IN LAWAS	LO (ADHOC)	23-11-87
4-	MR. ABDUL KHADER	01-11-43	11-09-64	B.A, LLB	CLA/DPO	01-4-90
	K. MANORAMA (SC)	22-12-60	13-11-81	B.A,LLB	CLA	024-7-90
6-	R. MUTHU SAMY	05-05-55	22-12-79	BSC, LLB	CLA	03-4-91
7-	T P BHASKAR	26-8-55	24-7-91	MA,LLB	CLA	31-7-91

S. No	Total Remarks	Professional Ability	Record of service	Personality address &leadership/Academic Technical/Qualification	
	200	(150)	(25)	(25)	
Marks Obtained					
1-	M. SIDDAIAH	91	15	18	124 TOTAL
2-	K. RAJAGOPALAN NAIR	92	18	17	127 TOTAL
3-	V SUBRAMANIAN	91	15	16	122 TOTAL
4-	MR. ABDUL KHADER	91	16	17	124 TOTLA
5-	K. MANORAMA	91	15	16	122 TOTAL

	(SC)				
6-	R. MUTHU SAMY	91	16	17	124 TOTAL
7-	T P BHASKAR	95	15	15	125 TOTAL

(R. MOHANDAS) (V. NATARAJAN) (P.MURUGAN)

14. As can be seen from this chart it was Respondent No. 4 who had obtained the highest marks i.e. 128. Mr. V. Subramanian and Mr. T.P. Bhaskar are next to him with 127 and 125 marks respectively. Thereafter, there are other candidates i.e. Mr. Siddaiah, Mr. Abdul Khader and Mr. Muthusamy who all get 124 marks. Mr. Siddaiah has been selected out of them, essentially because it was a Scheduled Caste vacancy which came to be allotted to him keeping aside other candidates. Not only that, but he was placed at number one and respondent No. 4 (having higher marks) was placed at number two. The Tribunal held that if Respondent No. 3 got marks lesser than that of Respondent No. 4, only then he can be said to be selected against Scheduled Caste point. The Tribunal did not realize that the third Respondent had in fact got marks lesser than the fourth Respondent, and his selection was basically because he was a Scheduled Caste candidate. In view of this position, there is no occasion to apply the instruction contained in Railway Board's letter dated 29.7.1993 nor the propositions in R.K. Sabharwal's judgment (supra) to the present case. Even otherwise, the principle that when a member belonging to a Scheduled Caste gets selected in the open competition field on the basis of his own merit, he will not be counted against the quota reserved for Scheduled Castes, but will be treated as open candidate, will apply only in regard to recruitment by open competition and not to the promotions effected on the basis of seniority-cum-suitability.

15. The appellant had argued before the High Court that the candidates who obtained 80% marks or above are to be placed at the top indicating that they are to be selected irrespective of the community factor. In appellant's submission Mr. M. Siddiah, had to be considered as one such candidate. Now the two relevant rules 204.8 and 204.9 read as follows:-

"204.8 The successful candidates shall be arranged as follows:

(1) Those securing 80% marks and above graded as `Outstanding'.

(2) Those securing between 60% marks and 79% marks graded as `Good'.

204.9 The panel should consist of employees who had qualified in the selection, corresponding to the number of vacancies for which the selection was held. Employees securing the gradation `Outstanding' will be placed on top followed by those securing the gradation `Good' interse seniority within each group being maintained.'

It is to be noted, as seen from the marks which have been referred to earlier, that none of the candidates obtained more than 80% marks, and therefore, could not be considered as outstanding to be eligible on that footing. On this count also Mr. M. Siddiah's selection cannot be considered as one only on merit irrespective of the community factor.

16. In the circumstances, there is no error in the judgment and order rendered by the High Court. The appeal is, therefore, dismissed. Original Application, filed by the first respondent before the Administrative Tribunal, shall stand dismissed.

.....J.
(R.V. Raveendran)

.....J.
(H.L. Gokhale)

New Delhi
Dated : September 29, 2010