

SUPREME COURT OF INDIA

K. Ameer Khan

Vs.

A. Gangadharan

C.A.No.10589-10590 of 1996

(S. Rajendra Babu and Brijesh Kumar JJ.)

04.08.2001

JUDGMENT

Rajendra Babu, J.

1. These appeals arise out of an order made by the Central Administrative Tribunal, Madras Bench [hereinafter referred to as the Administrative Tribunal] in which the selection against 30% quota for the post of Assistant Controller of Stores in the Stores Department of the Southern Railway through limited Departmental Competitive Examination held in June 1994 was challenged on the ground that no reservation for Scheduled Caste/Scheduled Tribe had been made as required. The Railway Board had instructed by its letter sent on 16.6.1992 that while computing the reserved quota such of the employees belonging to the said class already in the grade had to be taken and if it was more than the prescribed percentage, no reservation shall be provided and if such quota was less, reservation must be provided. A clarification was subsequently issued on 29.7.1993 to the effect that Scheduled Caste/Scheduled Tribe candidates who have been promoted on their own merit and seniority should not be counted as reserved candidates and this has been the declaration of law made by this Court in *R.K. Sabharwal Ors. vs. State of Punjab Ors.*¹, and *Union of India Ors. vs. Virpal Singh Chauhan Ors.*². However, in the selections made by the second respondent the requisite number of posts had not been reserved for Scheduled Caste and Scheduled Tribe candidates. Out of 7 posts at least 2 posts should have been reserved for them which was available against 30% quota. Therefore, the Administrative Tribunal gave certain directions to off-set the imbalance caused by the wrong application of the instructions issued by the Railway Board. Thus the view stated by the Administrative Tribunal appears us to be correct and calls for no interference.

2. However, in the application of the decision certain factors will have to be taken note of in the present case. The appellants have been selected quite sometime back and the first appellant has been promoted to a higher grade. The appellants were not responsible for the wrong computation of vacancies done by the second respondent. After the empanelment and appointment of the appellants, it is brought to our notice that there have been fresh promotions to the post of Assistant Controller of Stores at least on two occasions in June,

1995 and May, 1997. In a new selection 5 Scheduled Caste candidates and 4 Scheduled Tribe candidates have been selected. The appellants could not participate in the same as they had already been promoted to the higher grade. Now, when the appellants have been working in the higher grade from 1994 onwards, it would not be equitable to disturb their promotions. However, the second respondent will have to enlarge the panel in order to accommodate two more candidates belonging to Scheduled Caste/Scheduled Tribe in the next recruitment that may take place and appropriate seniority be given to suitable candidates whether already promoted or now to be promoted with effect from 17.8.1994 when the first appellant was promoted as Assistant Controller of Stores. In such an event equity would stand balanced.

3. Therefore, while upholding the order made by the Administrative Tribunal which is consistent with the view taken by this Court in several decisions, including *R.K. Sabharwal Ors. vs. State of Punjab Ors.* (supra) and *Union of India Ors. vs. Virpal Singh Chauhan Ors.* (supra), we direct as stated above.

4. The appeals stand disposed of accordingly. However, in the circumstances of the case, there shall be no order as to costs.

¹*1995 (2) SCC 745*

²*1995 (6) SCC 684*