

PETITIONER:
K. MANICKARAJ

Vs.

RESPONDENT:
U O I

DATE OF JUDGMENT: 02/04/1997

BENCH:
K. RAMASWAMY, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

PATTANAIK, J.

Delay condoned.

Leave granted.

This appeal by special leave is directed against the judgment of the Central Administrative Tribunal, Madras Bench dated 19.9.1995 in OA No. 267 of 1994. The Said application has been filed by the appellant for a direction to the railway administration to promote the appellant as Welfare Inspector Grade - II with effect from 2.4.1993 as one post was available in the reserved category.

The brief facts necessary for deciding this appeal are stated as under :

The appellant was appointed as Assistant Station Master in the scale Rs. 330-560 and was then promoted to a higher post in the scale of Rs. 425-640 with effect from 8.1.1985. He was further promoted as Welfare Inspector grade - III in the scale of Rs. 1480-2300 and joined the said post on 27.12.1991. The appellant admittedly belongs to Scheduled Caste. The cadre of Welfare Inspectors consisted of 3 categories: namely: Welfare Inspector Grade - I in the scale of Rs. 2000-32000; Welfare Inspector Grade - II in scale of Rs. 1600-2660 and Welfare Inspector Grade-III in the scale of Rs. 1400-2300. By Order dated 27th January, 1993 the cadre strength of the different categories of Welfare Inspectors was restructured and it was directed that 35% of posts would be in Grade - I, 40% in Grade-II and 25% in Grade - III. In view of the change of percentage of the different categories of posts, the appellant expected a promotion to Grade - II but the same having not been done, he filed the application before the Tribunal. It was averred in the application filed before the Tribunal that three posts from Grade-III having been upgraded to grade - II, total number of posts available in Grade-II is 26 as against the original number of 23 and since there is reservation of 15% for Scheduled Caste, the total number of posts available for the Scheduled Caste in Grade - II would work out at 4 but factually only 3 persons belonging to the Scheduled Caste are working in Grade - II, and therefore, the appellant was entitled to promotion to Grade - II. The

respondent in the counter-affidavit filed, however, contended that there has been no change in the strength of the post in grade - II which remained at 23 but for sports personnel some posts were upgraded from grade-III to grade - II and those upgraded posts cannot be taken into account for determining the number of posts available for reserved category as such upgradation was temporary in nature and is not a permanent addition to the number of posts, and therefore, can't be taken into account for computation 15% reservation in the said Grade - II. The Tribunal by the impugned judgment accepted the contention raised by the respondent and came to hold that the posts which have been upgraded having been borrowed from grade - III and being specially meant for sports personnel cannot be counted for determining the 15% reserved quota meant for Scheduled Caste, and therefore, the cadre strength of Grade - II being 23 only 3 persons from the Scheduled Caste would be promoted to the Grade - II and thus three persons having already been there the claim of the appellant cannot be allowed. With this conclusion the Tribunal having dismissed the application filed by the appellant, the present appeal has been preferred.

The question that arises for consideration, therefore, is whether the number of upgraded post from Grade - III to Grade - II meant for sports personnel can be taken into account for determining the number of reserved posts available for Scheduled Caste in Grade- II. It is admitted that total number of posts in grade- II was 23 and 3 posts from Grade - III were upgraded to that of Grade - II. The upgraded posts which were made as early as in August 1987, as per Memorandum dated 24.08.1987, still continues. It is, therefore, not possible for us to accept the contention of the learned counsel for the respondent that the alleged upgradation was made for a temporary period meant for sports personnel. The post which were upgraded in the year 1988 having continued still dated, the cadre strength of Grade - II inspectors must be held to have become 26 and not 23 as contended by the respondent. If 15% of the cadre is meant for reserve category people then it would work out at 4 and admittedly there are only 3 persons belonging to the Scheduled Caste in Grade - II. In that view of the matter the appellant was entitled to be promoted against the 15% reserved quota of posts in Grade - II to be 26. In our considered opinion Tribunal was in error in not taking into account the upgraded posts which have been upgraded from grade - III to Grade - II on the ground that it was meant for sports personnel. While computing the number of post available for reserved category, there is no justification to exclude the upgrade post which had continued from 1988 till date.

In the aforesaid premises the impugned judgment of the Tribunal is set aside and OA No. 267 of 1944 filed in the Central Administrative Tribunal, Madras stands allowed. The respondents are directed to consider the case of promotion of the appellant to a post in Grade-II, Welfare inspector, with effect from 1993. The appeal is allowed. There will be no order as to costs.