

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA No. 2065/2004

New Delhi, this the ^{31st} day of May, 2005

HON'BLE MR. SHANKER RAJU, MEMBER (J)
HON'BLE MR. M.K. MISRA, MEMBER (A)

Sudershan Kumar & Ors.
(By Advocate: Shri B.S. Mainee)

...Applicants

-versus-

Union of India & Ors.
(By Advocate: Shri R.L. Dhawan)

...Respondents

1. To be referred to the Reporter or ~~not~~? *yes*
2. To be circulated to other Benches of the Tribunal or ~~not~~? *yes*

S. Raju
(Shanker Raju)
Member (J)

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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA NO. 2065/2004

New Delhi, this the 3rd day of May, 2005

Hon'ble Mr. Shanker Raju, Member (J)
Hon'ble Mr. M.K. Misra, Member (A)

1. Sudershan Kumar
s/o Sh. Bhagwan Das
Parcel Supervisor,
Under Station Supdt.,
Northern Railway, Ludhiana.
2. Param Pal Singh
s/o Sh. Gurdev Singh,
Head Parcel Clerk,
Under Station Supdt.,
Northern Railway, Ludhiana.
3. Jai Bhagwan
s/o Sh. Richpal,
Parcel Supervisor,
Under Station Supdt.,
Northern Railway, Ludhiana.
4. Sukhminder Singh
s/o Sh. Kultar Singh,
Head Parcel Clerk,
Under Station Supdt.,
Northern Railway, Ludhiana.
5. Pradeep Kumar
s/o late Sh. Nandan Lal,
Head Parcel Clerk,
Under Station Supdt.,
Northern Railway, Ludhiana.
6. Keshav Chander
s/o Sh. Rikhi Ram,
Head Parcel Clerk,
Under Station Supdt.,
Northern Railway, Ludhiana.
7. Roshan Lal Bhasin
s/o Sh. Raj Paul Bhasin,
Head Parcel Clerk,
Under Station Supdt.,
Northern Railway, Ludhiana.

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8. Lalit Kumar
s/o Sh. Ram Lakhan,
Head Parcel Clerk,
Under Station Supdt.,
Northern Railway, Ludhiana.
 9. Gurbinder Singh
s/o Shri Jaswant Singh,
Senior Parcel Clerk,
Under Station Supdt.,
Northern Railway, Ludhiana.
 10. Sunil Kumar Vaid
s/o Sh. Bansilal,
Head Parcel Clerk,
Under Station Supdt.,
Northern Railway, Ludhiana.
 11. Tarlochan Kumar
s/o late Sh. Panna Lal,
Head Parcel Clerk,
Under Station Supdt.,
Northern Railway, Ludhiana.
 12. Darshan Kumar
s/o Sh. Mallu Ram,
Head Parcel Clerk,
Under Station Supdt.,
Northern Railway, Ludhiana.
- ...Applicants

(By Advocate: Shri B.S. Mainee)

-versus-

Union of India through:

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
 2. The Divisional Railway Manager,
Northern Railway,
Ferozepur Cantt (Punjab).
- ...Respondents

(By Advocate: Shri R.L. Dhawan)

ORDER

By Mr. Shanker Raju, Member (J)

Applicants, through this O.A., have sought for the following reliefs:

“8.1 That this Honorable Tribunal may be pleased
to allow this O.A. and direct the respondents to fill

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up the upgraded posts of Chief Booking Supervisors/Chief Parcel Supervisors on the basis of separate seniority list of the two categories as is being done by all other Divisions of the Northern Railway.

8.2 That this Honorable Tribunal may be further pleased to direct the respondent No. 2 to keep the two cadres of Booking Supervisors and Parcel Supervisors separate at the level of grade Rs. 6500-10500 as is being done in the other four lower levels.

8.3 That any other or further relief, which this Honorable Tribunal may be deem fit and proper under the circumstances of the case may also be granted in favour of the applicants.

8.4 That cost of the proceedings may also be granted in favour of the applicants."

2. To understand the controversy, a brief factual matrix is relevant to be highlighted.
3. Applicants were initially appointed as Booking Clerks and were absorbed in the cadre of Parcel Clerks. On the coaching side of Railways, two categories exist – one is dealing with the booking and delivery of parcels - they are called Parcel Clerks and those who are booking the passengers, issuing tickets etc. are called Booking Clerks. Applicants are Parcel Booking Clerks and have risen in their category to the hierarchy of Senior Parcel Clerks, Head Parcel Clerks and Parcel Supervisors by way of promotion. Presently they are working as Head Parcel Clerks/Parcel Supervisors in the grade of Rs. 5000-8000/- and Rs. 5500-9000/- respectively. Next promotional avenue to which the applicants are eligible is the post of Chief Parcel Supervisor in the grade of Rs. 6500-10500/-.
4. A selection process was initiated for promotion to the post of Chief Parcel Supervisor in 2000 and it was sought to merge the seniority of cadres of Booking Clerks as well as Parcel Clerks. An earlier decision

taken in 1993, it was stipulated that those who were appointed prior to 1993, cadres would be operated separately but for those who were appointed post 1993, cadres would be merged. As a result of initiation of selection of Booking Clerks have been placed senior in the zone of consideration as compared to the Parcel Clerks because the cadre of Parcel Clerk is much smaller than the Booking Clerks. The Booking Clerks, who are junior to the applicants, would have resulted in stealing a march over Parcel Clerks. This had been represented but was not responded to and, therefore, this led to filing of OA No. 19/2001, which was disposed of on 3.1.2001 with a direction to the respondents to consider the said representation. An order passed on representation by the General Manager on 10.4.2001 in compliance with the directions, laid down as under:

"Ref: Your letter No. 757-E/172/PIA dated 12.2.2001 and letter dated 16.2.2001.

Under this Office letter No. 752-E/592/IV/CP dated 8.4.1988 a combined channel of promotion for Booking/Parcel/Luggage Clerks designated as Coaching Clerks was issued. After issue of the above instructions DRM/FZR/UMB and DLI were instructed vide this office letter No. 752-E/552/PQ/EIC dated 29.11.1991 to confirm whether instructions dated 8.4.1988 in regard to the Coaching Staff have been implemented on their divisions. Your office vide letter No. 757-E/172/PIA dated 3.1.1992 had confirmed that the channel of promotion of Coaching Clerks have since been implemented as per this Office letter dated 8.4.1988. Similar confirmation were also given by DRM/URB and DLI.

In case the above instructions are implemented properly there should be no problem in holding the selection for CBS/CPS grade 6500-10500.

However, from your letters under reference it appears that perhaps the instructions dated 8.4.1988 have not actually been implemented on FZR division due to which the present problem has arisen. It may be noted that either the cadres have to be separate or joint at all levels. It cannot be separate upto the level of 1600-2660 and then combined at the level of

CBS/CPS grade 2000-3200 as it would result in bias in favour of one of the categories.

You may take suitable action accordingly.

This has the approval of CPO.

Sd/-
For General Manager (P)

5. In above view of the matter, selection was cancelled. Since a number of Booking Supervisors have already stolen a march over the applicants, a representation was preferred but was not responded to.

6. Vide Railway Board's notification dated 9.10.2003, restructuring of group 'C' & 'D' cadres was ordered and posts have been upgraded which are to be filled up in order of seniority by conducting modified procedure of selection. As the aforesaid implementation was to be carried on by combining the seniority of Parcel Supervisors and Booking Supervisors to upgrade the post of Chief Parcel Supervisors/Chief Booking Supervisors in the grade of Rs. 6500-10500/-, a representation was preferred.

7. By an order passed on 21.5.2004 addressed to the General Manager from Ferozepur Division, the matter was sent for clarification to the Headquarters i.e. competent authority to decide. The said letter is reproduced as under:

"Subject: Channel of promotion of Booking/Parcel Clerks in all grades.

Ref: i) This office letter of even no. dated 16.2.2001.
ii) Your office letter no. 752-E/549/II/REP/EIC dated 10.04.2001.

As per channel of promotion in the category of Booking/Parcel Clerks appointed prior to 1.11.1993, both the categories are not merged till grade 1600-2660/5500-9000, but in the selection of CBS/CPS their seniority is merged and the selections are finalized on the basis of this merged seniority.

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In this connection it is pointed out and is a fact that parcel clerks though very senior in the initial grades but due to small cadre they remain backward till reaching grade 1600-2660/5500-9000 and as a result they become very junior to the booking clerks appointed later on in the initial grades, their cadre being large.

As per Rly. Boards orders, the Booking clerks appointed after 1.11.1993 have been designated as Commercial Clerks and their seniority is clubbed at all level, thereby leaving no chance of discomfort to any category.

The issue is raised by the biased Booking/Parcel clerks appointed prior to 1.11.1993 that their seniority should remain separate at all levels. Since Rly. Board has issued clarification for the persons of this category appointed after 1.11.1993 but there is no instruction/clarification what sort of action is to be taken for the persons of this category appointed prior to 1.11.1993. In the past, the matter was referred to Hd.Qrs.office vide this office letter of even no. dated 16.2.2001. IN reply of which it was only intimated that it cannot be separate upto the level of 1600-2660/5500-9000 and then combined at the level of CBS/CPS Gd. 2000-3200/6500-10500 as it would result in bias in favour of one of the categories and this office was advised to take action accordingly. The clarification received was not clear what action is to be taken for this category of staff.

You are therefore requested to please call for the papers already dealt with in this case and after getting the decision of competent authority now, this office may be advised about the action to be taken for the staff of this category to avoid any resentment.

A comparative statement of parcel/booking cadre with their date of appointment is attached herewith for ready reference.

Sd/-
For Divisional Railway Manager,
N.Railway, Ferozepur.

DA/Copy of comparative Statement.

8. In the above letter Headquarters has been requested to issue certain instructions because at Ferozepur Division, the cadres were treated separate up to the grade of Rs. 5500-9000 but at the next stage

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i.e. Rs. 6500-10500 the seniority was merged as a result of which Parcel Clerks had been adversely affected.

9. Meanwhile, during the pendency of the OA, by an order dated 17.11.2004, certain Booking Clerks have been placed in the panel to the grade of Rs. 6500-10500 and giving implementation to the restructuring, they were promoted by order dated 3.12.2004. However, orders have been provisional and were subjected to any change and cancellation as per the directions of the Court. This connotes that their promotion on upgradation has been made subject to final outcome of the OA.

10. Respondents i.e. the General Manager, Headquarters' Office vide letter dated 2.12.2004, referring to clarification sent on 21.5.2004 from the Ferozepur Division, decided as follows:

"Sub: OA 2065/04 & MA NO. 1763/2004 filed by Sh. Sudarshan Kumar s/o Bhagwan Dass, Parcel Supervisor, Ludhiana and 11 others vs. UOI & Ors.

Ref: Your office letter no. 698-E/716-CAT/04/NDLs.

In reference to your office letter No. 757-E/172/PLA dated 21.5.2004. Your attention is drawn towards this office letter no. 752-E/549/II/REP/EIC dated 10.04.2001 wherein it was clearly informed that in the instant matter, channel of promotion had already been issued vide this office letter No. 752-E/552/IV/CP dated 8.4.1988 and as confirmed vide your office letter No. 757-E/172-PIA dated 3.1.1992 this channel of promotion was being implemented in your division. Therefore, there should be no problem, if this channel of promotion is following properly.

It is also intimated that this channel of promotion is being followed in UMB, LKO & MB division i.e. separate seniority for Goods cadre and Coaching cadre (booking & parcel) as such there is no any problem. As regards DLI division. They are maintaining seniority separately in each stream i.e. Booking, Parcel and Goods as such there is also no such problem as created on FZR division. However, as per extent instructions in initial grade Rs. 3200-4900 there is common seniority of commercial clerks who

are appointed on or after 1.11.1993. For maintaining seniority of commercial clerks appointed prior to 1.11.1993, detailed instructions have already been issued as per PS No. 10841.

Now draft written statement prepared by Rly. Advocate has been submitted by you for vetting to headquarter office. It is not understood that when the matter exclusively pertains to the division then why written statement has been sent to this office.

Therefore, it is advised to take action at your end as per extant instructions and policy.

Sd/-
For General Manager (P)"

11. In the above conspectus of the matter, Shri Mainee, learned counsel for the applicant, stated that the earlier decision taken vide Board's letter dated 16.12.1993 under PS 10841 dated 30.12.1993 which is applicable to the officers who were in the cadre and appointed on regular basis before 1.11.1993, the combined cadre would be operative w.e.f. 31.10.1993 and either the entire cadre is to be combined i.e. upto the basic pay of Rs. 6500-10500 treating the cadre separately in lower scales and then combining at the highest level, whereas in Lucknow, Ambala and Moradabad Division as well as in Headquarters at Delhi, the pre-appointee 1.11.1993 have been treated differently maintaining seniority separately. The earlier decision of the Railways is, therefore, arbitrary, discriminatory and in violation of Articles 14 & 16 of the Constitution of India.

12. Shri Mainee states that in the light of order dated 10.4.2001, a clarification has been sought that either cadres have to be treated separate at all levels or combined at all levels. Combining the level of Chief Booking Supervisors/ Chief Parcel Supervisors in the grade of Rs. 2000-3200 is without any object sought to be achieved and this

differential treatment does not pass the twin test laid down under Article 14 & 16 of the Constitution of India.

13. Shri Mainee further contended that once a clarification has been sought and it is the Headquarters only who has to clarify finalizing the panel of 2.12.2004. Without waiting the outcome of the Headquarters' decision dated 2.12.2004, it shows a great haste and in the light of earlier order dated 1.4.2001, 1998 instructions, where the cadres are to be either treated separately or combined at all levels, has not been adhered to. As such, the decision of the Ferozepur Division is certainly against the rules and cannot be countenanced.

14. As regards non-impleadment of the parties, it is stated that OA has been filed when no panel was formed. As such, when a principle has been assailed, non-impleadment of affected parties is not necessary.

15. On the other hand, respondents' counsel Shri R.L. Dhawan has vehemently opposed the contentions and took a preliminary objection that the OA is barred under Section 20 of the Administrative Tribunals Act, 1985 as after the promotion order, no representation has been filed. It is also stated that the letter dated 10.4.2001 and 2.12.2004 are only inter-office communications, which do not confer upon the applicants a cause of action.

16. Learned counsel states that earlier representations have been preferred without indicating the date and it was only to mislead the court as the earlier order in 2001 was assailed in 2001, hence filing of this OA in 2005 would be beyond limitation.

17. Learned counsel states that a policy decision taken by the Railway Board cannot be assailed unless the same is mala fide or violative of

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Articles 14 & 16 of the Constitution of India. It is stated that in Ambala, Lucknow and Muradabad Divisions, Coaching cadre has been combined i.e. Booking and Parcel and a separate scheme for Goods cadres is also maintained. As such, contention of the applicants is wrong and in Delhi treating the cadre separate at all levels is a decision at Delhi Division whereas the scheme of Commercial Clerks who were appointed prior to 1.11.1993 has been rightly treated as combined at the level of grade of Rs. 6500-10500 as per PS10841. The following cases have been relied upon to substantiate the plea:

1. 1990(2) ATJ SC 435 – Vijay Kumar Verma vs. The State of Bihar & Ors.
2. 2002(2) SCC 333 – BALCO Employees' Union (Regd.) v. Union of India.
3. 2000(10) SCC 664 – Narmada Bachao Andolan vs. Union of India & Ors.

18. Another objection raised is that those who were placed in the panel and were given the benefit of restructuring, being the necessary parties, have not been impleaded and to support the contention, following reliance has been placed:

1. 1974(1) SCSLR 594 – Padam Singh vs. Union of India & Ors.
2. 2000(10) SCC 474 – M.V. Ravindranath & Ors. Vs. UOI & Ors.

19. Learned counsel for the applicants, in the rejoinder, stated that only policy laid down is circular of 1988 and decision taken by the Headquarters on 10.04.2001. As such, either the cadre is to be combined at all levels for seniority or to be treated separately, respondents cannot pick and choose one cadre at the level to be merged. It is contended that there is no such policy, other than the policy laid down in Railway Boards decision taken in 1988.

20. We have carefully considered the rival contentions of the parties and perused the material on record.

21. As regards preliminary objection of non-making of a representation, applicants have approached this Tribunal against merging the cadres at the level of Rs. 6500-10500 for consideration of restructuring the benefit, which is against the Railway Board's letter dated 8.4.1988. At the time when this application was filed, no proposal was there to form the panel for implementing the restructuring order by the Railways. It is during the pendency that the restructuring was effected to but as in the order dated 3.12.2004, the orders which not only included formation of panel but promotion as provisional and is liable to be cancelled as per the directions of the courts, this empanelment and promotion has been made subject to the outcome of the OA. As such, we do not find this infirmity as effect of dismissal of OA. Moreover, the Apex Court in **A. Janardhana vs. UOI**, 1983 (3) SCC 601 observed as under:

"In this case, appellant does not claim seniority over any particular individual in the background of any particular face controverted by that person against whom the claim is made. The contention is that criteria adopted by the Union Government in drawing-up the impugned seniority list are invalid and illegal and the relief is claimed against the Union Government restraining it from upsetting or quashing the already drawn up valid list and for quashing the impugned seniority list. Thus, the relief is claimed against the Union Government and not against any particular individual. In this background, we consider it unnecessary to have all direct-recruits to be impleaded as respondents. We may in this connection refer to *General Manager, South Central Railway, Secundrabad & Anr. Etc. vs. A.V.R. Sidhanti and Ors. Etc.* Repealing a contention on behalf of the appellant that the writ petitioners did not implead about 120 employees who were likely to be affected by the decision in this case, this Court observed that the respondents (original petitioners) are impeaching the validity of those policy decisions

on the ground of their being violative of Arts. 14 & 16 of the Constitution. The proceedings are analogous to those in which the constitutionality of a statutory rule regulating seniority of government servants is assailed. In such proceedings, the necessary parties to be impleaded are those against whom the relief is sought, and in whose absence no effective decision can be rendered by the court. Approaching the matter from this angle, it may be noticed that relief is sought only against the Union of India and the concerned Ministry and not against any individual nor any seniority is claimed by anyone individual against another particular individual and therefore, even if technically the direct recruits were not before the Court, the petition is not likely to fail on that ground. The contention of the respondents for this additional reason must also be – negative.”

22. If one has regard to the above, as the principle of according seniority which has not been undertaken by the Railways in true letter and spirit of the tenor of letter dated 8.4.1988 and combined the cadre only at one level, the principle^h being assailed, there is no legal requirement^h to implead^h the parties to be affected.

23. However, before taking any adverse action, to put a due notice to the concerned individuals shall satisfy the principle of natural justice and reasonable opportunity. Accordingly, the objection stands overruled.

24. As regards not filing the representation, as the applicants have approached this Court on an action to fill up the upgraded post of Chief Booking Supervisors/Chief Parcel Supervisors on the basis of combined seniority and not taking a decision on clarification by the Headquarters and having filed a detailed reply where the reasons have already been assigned to adopt such a procedure, filing a representation would be useless formality. In exceptional circumstances and in an emergent situation, nothing precludes the Tribunal to entertain the application without exhausting the available remedy of filing representation in

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consonance with Section 20 of the AT Act, 1985. Accordingly, this objection also stands overruled.

25. As regards limitation, in a case where fundamental right^u of consideration for promotion on upgradation is involved, limitation would not attract. Moreover, when the action is void ab initio and is null & void keeping in light the earlier policy decision, as panels are formed and promotion accorded gives a continuing cause of action. Hence, this OA is within limitation.

26. As regards non-challenge of policy decision, nothing precludes in judicial review to examine a policy decision of the Govt. in case it is contrary to the statutory provisions or a mala fide exercise which is discriminatory^u in violation of Articles 14 & 16 of the Constitution of India. The policy decision can be examined and set aside by the Tribunal. The relevant observations made in **Balco's case** (supra), are highlighted as under:

"92. In a democracy, it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot per se be interfered with by the court."

27. If one has regard to the above, if a policy decision is taken in blatant infraction of statutory provisions or guidelines laid down and the action smacks of arbitrariness, mala fide and meeting differential treatment to similar circumstance, the same cannot stand scrutiny of principle of equality enshrined under Articles 14 & 16 of the Constitution of India.

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28. It is no more res integra that vide notification issued on 8.4.1988, a combined channel of promotion for Booking/Parcel/Luggage Clerks designated as Coaching Clerks was issued. It was decided that either the entire cadre at all levels is to be treated separate for the purpose of seniority or combined the same at all levels. When a clarification was sought by the DRM, Ferozepur Division from the Headquarters, the rule making authorities i.e. the Headquarters, who are competent to take policy decisions and to give clarification to the policy decisions, gave clarification that the merger of cadre for the purposes of seniority cannot be separated up to the level of 1640-2660 and to combine at the level of Chief Booking Supervisors/Chief Parcel Supervisors in the grade of 2000-3200. Despite this, Ferozepur Division has not meticulously considered this aspect of the matter in tune and in true letter and spirit of the letter dated 8.4.1988. This had led to another clarification sought from Headquarters by Ferozepur Division where parcel clerks who were appointed prior to 1.11.1993 and an issue was raised that whether their seniority would be treated separate at all levels. A clarification to this regard was issued by the Headquarters i.e. the competent authority on 2.12.2004, where it has been stated that in Lucknow, Moradabad and Ambala Divisions a separate scheme for goods cadres and coaching cadres which not only included booking and parcel, a separate seniority has been maintained and as regard Delhi Division each stream i.e. booking, parcel and goods has been treated separately. However, on a decision by the Railways in 1992 that common seniority of commercial clerks who were appointed after 1.11.1993, is to be reckoned but maintaining seniority of pre-appointees of 1.11.1993 under PS 10841,

following decisions has been taken:

"Copy of G.M.(P) NDLS's letter no. 752-E/552/PO/EIC dated 16.12.93 to All DRMS N.Rly. etc. etc.

Sub: Merger of certain non gazetted cadres in Commercial Department.

A copy of the Railway Board letter No. B(NG)11/33/CD/1 dated 6.8.1993 on above subject is sent herewith for information and further necessary action please. Compliance of the orders may be reported to this office.

Copy of Rly. Board's letter as referred to above.

Sub: As above.

INTRODUCTION:- The question of merging different cadres of commercial staff into a single cadre had been under consideration of the Board for some time past in view of the flexibility and the convenience in posting and transfers which such an arrangement would provide. After discussion at a meeting with some of the CPOs/CCSs of Railways held in Board's office in August, 1988 and in the light of further deliberations, Board had earlier decided that as an experiment measures, all cadres of commercial staff (like commercial clerks whether on the coaching side or the goods side, commercial inspectors and enquiry-cum-reservation clerks). Other than Ticket checking and catering should be merged on central and S.G. Railways into one unified cadre as per the scheme outlined in Board's letter of even number dated 16.10.1989. The question was to be considered further on receipt of feedback from the two Railways in regard to the implementation of Board's orders.

2. Meanwhile, this issue was discussed in the recent CRC meeting in Board's office on 20.1.1993, wherein it was noted that on most of the railways, the three cadres of commercial clerks viz. Goods, Booking and Parcel Clerks are already combined, but on a few railways these cadres are separate.

BASIC SCHEME:

3. With a view to have uniformity, Board have decided that the above three cadres should be merged into the one combined cadre of commercial clerks in respect of new entrants on the railways where they are not already combined.

DATE OF COMMENCEMENT:

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4. This scheme will come into force with effect from 1.11.1993. In other words w.e.f. 1.11.1993 no appointments shall be made to the lowest grades in any of the three cadres mentioned above whether by direct recruitment, promotion or otherwise and the same shall instead, be made only to the unified cadre.

4.1 All Indents on Railway Recruitment Board's for direct recruitment and notices for Group D to Group C promotion should be modified for recruitment/promotion to the unified cadre.

OPTION FOR EXISTING EMPLOYMENTS:

5. All the employees appointed on regular basis to any of the three existing cadres upto 31st October, 1993 will continue therein, and progress in their respective cadres as is the position at present. However, employees working in the lowest grade in any of the three existing cadres will be given an option to come over to the new unified cadre. This option should be exercised within two months from the date of issue of corresponding instructions by your railway. Option exercised within this period of two months will be deemed to be effective from 1.11.1993. Option once exercised shall be treated as final and no change will be permitted at a later date, and they will seek their promotion in the unified cadre in accordance with para 7 and 7.1 below."

29. If one has regard to the above, for merging different cadres of commercial staff into one cadre, those who were appointed on regular basis upto 31.10.1993 would progress in their respective cadres. However, for lower rung, an option has been sought. It is also made clear that three cadres should be merged into one combined cadre and percentage would be distributed in the matter of posts in revised cadres and for promotional prospectus, the aforesaid notification clearly shows that in the matter of combination of cadres this has to be done at all levels. Ferozpur Division has not adhered to either notification dated 8.4.1988 nor the instructions and clarification issued by the Headquarters on 2.12.2004 instead of treating either of the cadres at all levels, parcel clerks have not been treated for their seniority as separate

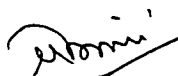
cadre nor combined cadre was operated at all levels. Up to the level of 5500-9500, the cadre of Parcel Clerks was treated separately but in the matter of 6500-10500 a combined seniority was issued. On combination of the cadre which has deprived the applicants for their next promotion and they have been adversely affected. In the matter of seniority as Booking Clerks, being a large cadre, were given this scale earlier to the applicants and despite the parcel clerks, being senior have been rendered junior and relegated in the seniority, had been accorded the benefit of upgradation. It is trite law that once instructions have been issued for merger of the cadres the instructions would have to be complied with in true letter and spirit. Either the combination would have to be at all levels or the cadre would have to be treated separately at all levels. As this has not been done, a declaration of panel is certainly in violation of policy laid down by the Railways and is also contrary to the clarification made by the Headquarters, which is binding on Ferozepur Division.

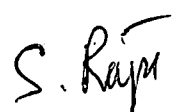
30. We also find that there has been an undue haste in deciding the panel as when the Ferozepur Division has itself sought a clarification from the Headquarters vide letter dated 21.5.2004, without waiting for the clarification, they have proceeded to finalize the panel on 17.11.2004 and if the decision of the Headquarters dated 2.12.2004 had been made available, the fate would have been different. We also find that whereas the Headquarters has sent a clarification on request of Ferozepur Division on 2.12.2004, yet the order passed on 3.12.2004 has not whispered about the aforesaid action.

31. In our considered view, the combined seniority should have either been operated at all levels or would have to be treated separately at all levels. The methodology adopted to merge the seniority and combine at

the level of 6500-10500 is not the true import ~~of~~ⁱⁿ tenor of letter dated 8.4.1988 and it is contrary to Headquarters' instructions. As the aforesaid policy decision is contrary to the statutory instructions and we find that in other Division like Delhi, a seniority has been made separate at all levels, being similarly circumstanced meeting out differential treatment to the applicants is without any reasonably nexus with the object sought to be achieved and this differential treatment is unreasonable and is against the principles of equality. Applicants have been relegated in the seniority and with the result their consideration for promotion has been marred.

32. In the result, for the foregoing reasons, we allow this O.A. setting aside the panel and promotion order vide letter dated 3.12.2004. Respondents are directed to restructure the panel strictly in the light of notification dated 8.4.1988 as well as clarification accorded by the Headquarters on 10.4.2001 and 2.12.2004. The cases of the applicants be considered for promotion as also the persons, who had already been promoted from booking cadre. However, if any adverse order is to be passed, the persons, who have been empanelled and promoted though it was subjected to the final outcome of the OA, shall be put to notice. The aforesaid exercise shall be completed within a period of three months from the date of receipt of a certified copy of this order. No costs.


(M.K. Misra)
Member (A)


(Shanker Raju)
Member (J)

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