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**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI**

- 1) O.A. NO.524/2005  
M.A. NO.492/2005  
M.A. NO.1081/2005  
M.A. NO.1353/2005
- 2) O.A. NO.1735/2004  
M.A. NO.76/2005  
M.A. NO.1130/2005
- 3) O.A. NO.1220/2005  
M.A. NO.1072/2005
- 4) O.A. NO.525/2005  
M.A. NO.493/2005
- 5) O.A. NO.2061/2004

This the 26<sup>th</sup> day of August, 2005.

**HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)**

**HON'BLE SMT. MEERA CHHIBBER, MEMBER (J)**

- 1) **O.A. NO.524/2005  
M.A. NO.492/2005  
M.A. NO.1081/2005  
M.A. NO.1353/2005**
1. **Rajesh Kumar Aneja S/O Bhagwan Dass,  
J.E., under Divisional Railway Manager,  
Delhi.**
2. **Sanjay Kumar S/O Lela Dhar,  
J.E., Sr. Section Engineer,  
Pahar Ganj, Delhi.**
3. **S.K.Chaudhary S/O V.P.Chaudhary,  
J.E., S.E.(W), N.Railway,  
New Delhi.**
4. **Anil Kumar Rajpoot S/O Jagdish Singh,  
J.E., Sr.S.E.(W), Northern Railway,  
Delhi Kishan Ganj-I, Delhi.**
5. **O.P.Nagpal S/O J.D.Nagpal,  
J.E., under DRM, Northern Railway,  
New Delhi.**
6. **G.S.Naulakha S/O J.S.Naulakha,  
J.E., J.E.(W), Northern Railway,  
New Delhi.**

Applicants

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1. Union of India through  
Secretary, Railway Board,  
Ministry of Railways,  
Rail Bhawan, New Delhi.
2. General Manager,  
Northern Railway,  
Baroda House, New Delhi.
3. Divisional Railway Manager,  
Northern Railway,  
State Entry Road, New Delhi.

... Respondents

- 2) **O.A. NO.1735/2004**  
**M.A. NO.76/2005**  
**M.A. NO.1130/2005**

1. Kanwar Pal Singh,  
Jr. Engr-I, N.C. Railway,  
Ballabgarh.
2. Suresh Chand Gautam,  
Section Engr.,  
N.C. Railway, Mathura.
3. Shyam Sunder Gupta,  
Section Engr.,  
N.C. Railway, Mathura.
4. Vijay Kumar Sharma,  
Jr. Engr-I, N.C. Railway,  
Agra Cantt.
5. Biney Kumar,  
Jr. Engr-II, N.C. Railway,  
Mathura.
6. Rakesh Kumar Sharma,  
Jr. Engr-II, N.C. Railway,  
Mathura.
7. Pramod Kumar, Jr. Engr-II,  
N.C. Railway, Agra Cantt.
8. Manoj Kumar Jain, Jr. Engr-II,  
N.C. Railway, Agra Cantt.
9. Shamim Ahmed Khan, Jr. Engr-II,  
N.C. Railway, Agra Cantt.

... Applicants



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1. Union of India through  
Secretary, Railway Board,  
Ministry of Railways,  
Rail Bhawan, Raisina Road,  
New Delhi.
2. General Manager,  
North Central Railway,  
Allahabad.
3. Divisional Railway Manager,  
North Central Railway,  
Agra Cantt.
4. All India Scheduled Caste & Scheduled Tribe  
Railway Employees Association through its  
General Secretary, 171-B/C, Basant Lane,  
Railway Colony, New Delhi.

... Respondents

3) **O.A. NO.1220/2005**  
**M.A. NO.1072/2005**

1. All India O.B.C. Employees Association  
(Northern Railway) through  
Shri Dariyav Singh, Branch Secretary,  
Head Goods Clerk, Northern Railway,  
Shakurbasti, Delhi.
2. Chaman Lal,  
Head Goods Clerk,  
Northern Railway,  
Shakurbasti, Delhi.

... Applicants

Versus

1. Union of India through  
Secretary, Railway Board,  
Ministry of Railways,  
Rail Bhawan, Raisina Road,  
New Delhi.
2. General Manager,  
Northern Railway,  
Baroda House, New Delhi.
3. Divisional Railway Manager,  
Northern Railway,  
State Entry Road, New Delhi.

... Respondents

4) **O.A. NO.525/2005**  
**M.A. NO.493/2005**

1. Harpreet Singh, J.E.Gr.-III,  
Northern Railway,  
Sonapat.

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2. Jashvir Singh, J.E.Gr.III,  
Northern Railway, DKZ-II.
3. Surinder Kumar, J.E.Gr.III,  
Northern Railway,  
Jullundur.
4. Jagdish Kumar Arora, J.E.Gr.III,  
Northern Railway,  
KUN (Karnal). ... Applicants

Versus

1. Union of India through  
Secretary, Railway Board,  
Ministry of Railways,  
Rail Bhawan, Raisina Road,  
New Delhi.
2. General Manager,  
Northern Railway,  
Baroda House, New Delhi.
3. Divisional Railway Manager,  
Northern Railway,  
State Entry Road, New Delhi. ... Respondents

5) **O.A. NO.2061/2004**

K.K.Sharma S/O R.K.Sharma,  
Head Clerk (P),  
Office of Station Manager,  
N.C.Railway, Agra Cantt. ... Applicant

Versus

1. Union of India through  
Secretary, Railway Board,  
Ministry of Railways,  
Rail Bhawan, Raisina Road,  
New Delhi.
2. General Manager,  
North Central Railway,  
Allahabad.
3. Divisional Railway Manager,  
North Central Railway,  
Agra Cantt. ... Respondents

Shri B.S.Mainee, Advocate for Applicants in all the OAs.

Shri Narain Bhatia; Shri V.S.R.Krishna; Shri Vishvender Verma proxy  
for Shri N.S.Verma; and Shri Rajinder Khatter, Advocates for respondents.

**ORDER**

**Hon'ble Shri V.K.Majotra, Vice-Chairman (A):**

As the applicants involved in these OAs belong to Group 'C' posts of Railways and seek promotion on upgraded posts in order of seniority under the restructuring scheme of the Government of India issued by RBE No.177 of 2003 dated 9.10.2003 without applying the policy of reservation, and as the issues involved in all these OAs are identical, they are being disposed of by this common order.

2. For the sake of convenience the facts have been culled out briefly from OA No.1735/2004. Applicants in this OA are Junior Engineers (TRD) appointed between 1978 and 1991. They have been earning promotions at times and are presently working as Section Engineers in grade Rs.6500-10500 or Junior Engineers-I in grade Rs.5500-9000 or Junior Engineers-II in grade Rs.5000-8000. Vide RBE No.177 of 2003 dated 9.10.2003 (Annexure A-2) Railways have issued orders for restructuring of certain Group 'C' and 'D' cadres. Under these restructuring orders, a large number of posts in various cadres have been upgraded with a view to remove the stagnation among these cadres and further orders have been issued that such upgradation should be effected without holding normal selection by just scrutinizing the service records, i.e., strictly in order of seniority, subject to rejection of unfit. It is claimed that nine posts of Section Engineers are to be upgraded as Senior Section Engineers in grade Rs.7450-11500, eleven posts of Junior Engineers-I are to be upgraded to the level of Section Engineer in grade Rs.6500-10500, and several posts of Junior Engineers-II are to be upgraded as Junior Engineers-I. However, the total number of posts at different levels has remained 150. The restructuring orders have included paragraph 14 as under:

"14. The existing instructions with regard to reservation of SC/ST wherever applicable will continue to apply."



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3. Through these OAs applicants have sought quashing of the aforesaid paragraph 14 of the notification dated 9.10.2003 and direction to respondents to fill up the upgraded posts in order of seniority without application of the policy of reservation.

4. Applicant in OA No.2061/2004 has been working on promotion on the post of Head Clerk in grade Rs.5000-8000 since 1992. He seeks promotion to the post of Office Superintendent Grade-II in grade Rs.5500-9000. It is averred that as a result of restructuring of Group 'C' cadres in terms of notification dated 9.10.2003, ten posts of Office Superintendent have to be filled on upgradation. In this OA, not only that paragraph 14 of RBE No.177 of 2003 dated 9.10.2003 has been sought to be quashed, office order Annexure A-1A dated 4.8.2004 has also been sought to be quashed alleging that promotion orders to the post of Office Superintendent Grade-II (P) have been passed without resorting to the modified procedure of selection, i.e., by scrutiny of service records only in order of seniority.

5. The learned counsel of applicants Shri B.S.Mainee, relying on the decision of the Chandigarh Bench of the Tribunal in *Unreserved Employees Association (Registered), Rail Coach Factory, Kapurthala through its President and Ors. etc. v Union of India and Ors.*, 2005 (1) ATJ 1 contended that paragraph 14 of the restructuring scheme issued vide RBE 177 of 2003 dated 9.10.2003 has been declared *ultra vires* and set aside with an observation that in the matter of restructuring reservation would not apply. He further stated that decision of the Chandigarh Bench has been affirmed by the High Court of Punjab and Haryana in CWP No.3182/2005 which has although been assailed by the respondents in CC No.6536/2005, the High Court's orders have not been stayed and as such, the decision of the Chandigarh Bench as affirmed by the High Court of Punjab & Haryana has to be followed in the present case. He has further relied on order dated 18.11.2003 passed by the High Court of Delhi in CW 6090/2002 in

*Union of India v All India Non SC/ST Railway Employees Association*, wherein decision of the Tribunal holding that there could be no reservation in the upgraded posts created as a result of restructuring, was upheld.

6. On the other hand, the learned counsel of respondents Shri Narain Bhatia drew support from *R.K.Sabharwal & Ors. v State of Punjab & Ors.*, (1995) 2 SCC 745, contending that reservation principle has to be followed when additional posts have been created in various grades. He, however, admitted that the total number of posts in various grades has remained the same but in certain grades number of posts has been added while in other grades they have been reduced.

7. Shri V.S.R.Krishna, learned counsel of respondents in OA No.1735/2004 supplemented the arguments of Shri Narain Bhatia, stating that the restructuring orders have been issued by the Railway Board on the basis of negotiations and agreement reached between the Railway employees trade union and the management. Under the agreement certain number of posts were to be added at different levels. This arrangement of restructuring had been accepted by both sides and is binding on both. The condition of application of reservation for SC/ST would thus be applicable even in restructuring.

8. In rejoinder, Shri Mainee, learned counsel of applicants, stated that the restructuring scheme does not contemplate the process of regular selection while filling up the posts at different levels, modified procedure of upgrading the eligible employees on the basis of their service records with due regard to their seniority has to be adopted for filling up posts on restructuring. As such, he maintained when regular procedure of selection has not to be followed on filling up restructured posts, the question of reservation would not arise. He further stated that even if reservation for SC/ST had been made applicable for filling up restructured posts on the basis of consultation between the staff side and the

22 A management, reservation would not be applicable as the same has been declared invalid by judicial pronouncements referred to above. Shri Mainee also relied on DOP&T memorandum No.36012/8/2003-Estt.(Res.) dated 25.10.2004 wherein referring to the decision in the case of *Union of India v V.K.Sirothia*, Government have issued directions to implement the directions of the Hon'ble Supreme Court and not to apply reservation while filling up posts upgraded on account of restructuring, by existing employees.

9. We have considered the respective contentions of parties as also the material on record. It is useful to reproduce Government of India instructions issued vide memorandum dated 25.10.2004. They are as follows:

“Subject: Restructuring of Group ‘C’ and Group ‘D’ cadres in the Railways – Application of reservation for Scheduled Castes/Scheduled Tribes.

The undersigned is directed to refer to the Ministry of Railways U.O. Note No.2004-E(SCT)/I/25/1 dated 7<sup>th</sup> May, 2004 on the subject noted above and to say that the Supreme Court in the matter of *Union of India versus V.K.Sirothia* has held that reservation for SCs and STs will not be applicable when making promotions to the posts upgraded on account of restructuring of cadres. The Hon'ble Court in the Contempt Petition No.304 of 1999 [*All India Non SC/ST Employees Association versus V.K.Agarwal and others*] further clarified that where the total number of posts remained unaltered, though in different scales of pay, as a result of re-grouping, it would be a case of upgradation of posts and not a case of additional vacancy or posts being created to which the reservation principle would apply. If the case is restricted to all existing employees who were to be distributed into different scales of pay as a result of upgradation, there cannot be any reservation.

2. The matter has been examined keeping in view the observations of the Supreme Court. The Ministry of Railways are advised to implement the directions of the Supreme Court and not to apply reservation while filling the posts upgraded on account of restructuring, by the existing employees.”

In these instructions, the Supreme Court's decision in the case of *V.K.Sirothia* (supra) to the effect that reservation for SCs and STs is not applicable while making promotions to the upgraded posts on account of restructuring of cadres, has been referred and instructions have been issued to implement the directions of

the Supreme Court and not to apply reservation while filling up upgraded posts on account of restructuring.

10. Shri Narain Bhatia, learned counsel of respondents, relied on the ratio of *R.K.Sabharwal* (supra) stating that reservation principle has to be followed in the event of creation of additional posts. He admitted that while additional posts have been created at different levels in the cadre, there has been reduction of posts as well at other levels. The ratio in the case of *R.K.Sabharwal* is not specifically applicable to the posts added/reduced under restructuring. As such, respondents shall not be in a position to derive any benefit from the case of *R.K.Sabharwal*.

11. The point raised by Shri V.S.R.Krishna on behalf of respondents <sup>is</sup> that the restructuring orders having been issued on the basis of consultation and agreement between the staff side and the management, various principles including that of reservation for SC/ST employees while filling up the upgraded posts shall be applicable the whole hog. We are not ~~not~~ <sup>is</sup> impressed by this contention in the teeth of the judicial pronouncements being relied upon by us, which have settled the issue that the principle of reservation is not applicable while filling up the upgraded posts.

12. Furthermore, respondents have themselves through the aforesaid DOP&T memorandum dated 25.10.2004 decided to implement the directions of the Supreme Court not to apply reservation while filling up the posts upgraded on account of restructuring. Having taken a policy decision as above, respondents cannot deviate therefrom and violate the decision of the Apex Court as also their own instructions.

13. The Chandigarh Bench of the Tribunal while declaring paragraph 14 of the restructuring scheme dated 9.10.2003 *ultra vires* held that there cannot be reservation in the matter of restructuring and upgradation of posts. In this

28-A decision the Bench has also taken into account the aforesaid DOP&T instructions dated 25.10.2004.

14. The issue involved in the present case was considered by a Full Bench of this Tribunal at Allahabad in OA Nos.933/2004 and 778/2004 – *P.S.Rajput & Others v Union of India & Others*, etc., which was decided on 10.8.2005. The issue posed in the reference was, “whether upgradation of a cadre as a result of restructuring and adjustment of existing staff in the upgraded cadre can be termed to be promotion attracting the principles of reservation in favour of SC/ST?” The Full Bench took into consideration the following case law:

1. *R.K.Sabharwal* (supra);
2. *C.C.Padmanabhan & Ors. v Director of Public Instruction and Ors.*, AIR 1981 SC 64;
3. *Director, Central Rice Research Institution, Cuttack & Anr. v Shri Khetra Mohan Das*, JT 1994 (6) SC 482;
4. *Union of India & Anr. v S.S.Ranade*, 1995 (4) SCC 462;
5. *State of Rajasthan v Fateh Chand Soni*, 1996 (1) SCC 562;
6. *Indiana Council of Agricultural Research v Satish Kumar & Anr.*, 1998 (4) SCC 219;
7. *All India Non Scheduled Caste/Scheduled Tribe Employees Association (Railways) v V.K.Agarwal & Ors.* [Contempt Petition (Civil) No.304/1999 in Civil Appeal No.1481/1996, decided on 31.1.2001 – Supreme Court];
8. *M/s Kesho Ram and Co. & Ors. v Union of India & Ors.*, 1989 (3) SCC 151;
9. *Anil Kumar Neotia & Ors. v Union of India & Ors.*, AIR 1988 SC 1353;
10. *Spencer & Company Ltd. & Anr. v Vishwadarshan Distributors Pvt. Ltd. & Ors.*, 1995 (1) SCC 259;
11. *Samuel Paul Raj & Ors. v Union of India through Ministry of Law & Ors.*, 1998 (1) AISLJ (SC) 420;
12. *M.L.Rajaram Naik & Ors. v The Additional Director, CGHS, Bangalore & Ors.*, ATFBJ 1997-2001 p.194; and
13. *Unreserved Employees Association (Registered), Rail Coach Factory, Kapurthala* [Chandigarh Bench decision (supra)].

Resultantly, the reference was answered by the Full Bench as follows:

“The upgradation of the cadre as a result of the restructuring and adjustment of existing staff will not be termed as promotion attracting the principles of reservation in favour of Scheduled Caste/Scheduled Tribe.”

15. Later on, the same issue as involved in the present case, has been considered by the Principal Bench of the Tribunal in OA No.745/2005 – *Ram Sewak & Ors. v Union of India & Ors.* (decided on 23.8.2005) in which in addition, the decision of the Apex Court in *Islamic Academy of Education v State of Karnataka*, 2003 (6) SCC 697; Supreme Court’s decision in CA No.3622/1995 decided on 19.11.1998 in the case of *V.K.Sirothia* (supra); decision dated 31.1.2001 in CA No.1481/1996 in the case of *All India Non Scheduled Caste/Scheduled Tribe employees Association (Railways) v V.K.Agarwal*; and *K. Manickraj v Union of India*, 1997 (4) SCC 342, have been considered, and agreeing with the decision of the Full Bench as also the decision of the Chandigarh Bench of the Tribunal wherein paragraph 14 of the restructuring scheme has been set aside, the same has been followed. The facts and issues of the present case are no different than those of the case of *Ram Sewak* (supra).

16. It has been pointed out that decision of the High Court of Punjab & Haryana has been challenged in a writ petition before the Apex Court. It is trite law that unless a decision is overturned, reversed or modified, the decision of the High Court or the Tribunal remains as precedent and as per the decision of the Supreme Court in *S.I. Roop Lal & Anr. v Lt. Governor of Delhi & Ors.*, JT 1999 (9) SC 597, the doctrine of precedent has to be respected. We are bound by the decision of the Full Bench.

17. Resultantly, we follow the decision of the Full Bench as also the decision of the Chandigarh Bench of the Tribunal and the decision of the High

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Court of Punjab & Haryana which has also been followed in the matter of *Ram Sewak* (supra), where paragraph 14 of the restructuring scheme has been set aside. However, on availability of the final decision from the Apex Court, the law would take its own course.

18. Accordingly, for the foregoing reasons, these OAs are allowed. Paragraph 14 of the circular dated 9.10.2003 is declared *ultra vires* and impugned orders passed by respondents in pursuance of impugned circular dated 9.10.2003 are set aside. Respondents are directed to undertake filling up the upgraded posts on the basis of seniority, scrutiny of service records and without adopting the reservation policy. In the event of being found fit for upgradation, applicants shall be entitled to consequential benefits. Respondents are further directed to comply with the aforesaid directions expeditiously and preferably within a period of three months from the date of receipt of a copy of this order. No costs.

19. All MAs pending consideration also stand disposed of.

*Meera Chhibber*  
( Meera Chhibber )  
Member (J)

*V. K. Majotra*  
( V. K. Majotra )  
Vice-Chairman (A)

26/8/05

/as/