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CENTRAL ADMINISTRATIVE TRIBUNAL : PRINCIPAL BENCH

OA 523/2004,
OA 524/2004,
OA 525/2004 and
OA 1029/2004

New Delhi, this the 29th day of October, 2004

Hon'ble Sh. Shanker Raju, Member (J)
Hon'ble Sh. S.K.Malhotra, Member (A)

OA 523/2004

S/Sh.

1. P.M.Saxena
   S/o Late Sh. S.B.L.Saxena

2. Nagendra Tiwari
   S/o Sh. B.D.Tiwari

3. Ram Dutt Sharma
   S/o Sh. G.L.Sharma

4. Deepak Bhandari
   S/o Late Sh. K.K.Bhandari

5. Rajeev Kumar
   S/o Sh. Devender Kumar

6. Ashok Keuthus
   S/o Sh. Ram Behari

7. H.K.Arora
   S/o Sh. Jagdish Lal

8. A.K.Bhardwaj
   S/o Sh. D.P.Bhardwaj

9. Prem Chand
   S/o Sh. Kishan Lal

10. Anwar Khan
    S/o Late Sh. Manjoor Khan

11. Rameshwar Lal
    S/o Sh. Rati Ram

12. Pyar Singh Meena
    S/o Sh. Ram Kishan Meena

13. B.M.Meena
    S/o Sh. Leela Ram Meena

14. P.M.Jaupuriya
    Late Sh. Maujiram

15. Suke Ram Meena
    S/o Sh. Bhola Ram Meena

16. Baboo Lal
S/o Sh. Mohar Singh

17. D.R.Meena
S/o Sh. Ram Kumar Meena

18. Rias Ahmed
S/o Sh.Abdul Azia Khan

19. Ram Dayal Meena
S/o Sh. Raghunath Meena

20. D.P.Meena
S/o Sh. Radhakrishan Meena ...Applicants

OA 524/2004

S/Shri

1. Munim Meena
S/o Sh. Shivlal Meena

2. Chand Meena
S/o Sh. Amar Singh

3. Sanjay Kanjoia
S/o Sh. Prem Chand Kanjoia

4. K.K.Saini
S/o Sh. Deshraj Singh

5. G.D.Aggarwal
S/o Late Sh. Balkishan Aggarwal

6. R.S.Sandhu
S/o Sh. Joginder Singh

7. Ashok Kumar Dixit
S/o Sh. O.N.Sharma

8. Ram Prakash
S/o Sh. Baldev Singh

9. Rajendra Prasad Srivastava
S/o Late Shri R.B.Srivastava

10. Gyandra Pal Singh
S/o Shri Radhey Shyam

11. Sanjay Kumar Chaturvedi
S/o Sh. O.P. Chaturvedi

12. Brij Mohan Gupta
S/o Late Sh. Kashi Ram

13. Ashok Kumar Singh
S/o Late Sh. A.N.Singh

14. Baljeet Singh
S/o Sh. Daulat Singh

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15. Charan Singh
S/o Late Sh. Racharan Singh

16. Jitendra Singh
S/o Sh. Moolchand

17. Devendra Kumar
S/o Sh. Shyam Lal

...Applicants

OA 525/2004

S/Sh.

1. Raghubar Dayal
S/o Sh. Jai Kishan

2. Pramod Kumar Goutam
S/o Sh. Pyarey Lal

3. H.K.Sharma
S/o Sh. R.L.Sharma

4. Seva Ram
S/o Sh. Ramchandra

5. M.K.Lavania
S/o Sh. C.B.Lavania

6. Ram Gopal Singh
S/o Sh. Mangal Singh

7. Avdesh Kumar Agarwal
S/o Sh. Raj Kumar Aggarwal

8. Gulshan Jeet Singh
S/o Sh. (Late) Kuljeet Singh

9. H.C.Aggarwal
Late Sh. Devika Prasad

10. Shri Nivas
S/o Sh. Chandra Bhan

...Applicants

OA 1029/2004

S/Sh.

1. Ajay Kumar Sharma
ASM

2. M.D.Gupta
ASM

3. K.K.Nagar
ASM

4. Udai Pratap Singh
T.E.

5. Narain Singh
ASM

6. D.K.Mudgal
ASM

7. K.C.Aggarwal
ASM

8. R.B.Sharma
Yard Master

9. Jagdish Prasad Niraj
ASM

...Applicants

(By Advocate Sh. B.S.Mainee in all the above cases)

VERSUS

Union of India through

1. The General Manager
Central Railway, CST Mumbai.

2. The General Manager, N.Central Rly. Allahabad

3. The DRM, North Central Railway, Jhansi

4. The DRM, North Central Railway, Agra.

...Respondents

(By Advocate Sh. H.K.Gangwani with R.L.Dhawan
in all the above cases)

ORDER

Mr. Shanker Raju, Member (J):

Facts of these OAs give rise to a common question of law. To avoid multiplicity these OAs are being disposed of by this common order.

2. A common question of law which is pitted for our consideration is that on restructuring introduced from 1.11.2003 whether panels prepared in a selection for

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promotion are to be given effect to before restructuring is effected, particularly after re-organization of the Division in the Railway.?

3. In OA-524/2004 applicants who had been working as Senior Ticket Collectors/TTEs at Mathura and Agra under DRM Jhansi on a selection process initiated to fill up 158 posts of Head Ticket Collectors (hereinafter referred to as HTTEs) a written examination was held on 8.3.2003. Applicants have qualified in the same vide result dated 15.5.2003. Viva voce was held in June, 2003 of which result was declared on 7.7.2003. This selection was initiated by DRM Jhansi and result was declared by DPO, North-Central Railway, Jhansi. Applicants were empanelled and placed in the list at different serial numbers. By an order dated 31.7.2003 62 Senior Ticket Collectors have been promoted. They preferred a representation which was not responded to. Jhansi and Agra Divisions on reorganization fell under the control of headquarter of North-Central Railway.

4. A cadre review was ordered by which restructuring was to take place. The percentage of higher grade post in several categories has been upgraded.

5. In OA 523/2004 applicants working as Senior Ticket Collectors participated in the selection ordered at Jhansi, qualified in the written as well as viva voce and on empanelment had not been promoted whereas their juniors have been promoted. On re-organization, they had come

within the jurisdiction of Agra Division. Representations made, when not responded to, led to filing of the O.A.

6. In OA 525/2004 applicants working as Senior Ticket Collectors had qualified the selection as well as interview and were empanelled but were not promoted and were brought within the jurisdiction of Agra Division.

7. In OA-1029/2004 the facts are slightly different but with a common question of law. Applicants who had been working as Assistant Station/Yard Masters in the Jhansi Division on selection had qualified written examination as well as viva voce and were empanelled. They were promoted but later on reverted as they had come under the jurisdiction of Agra Division.

8. Learned counsel for applicants Sh. B.S. Mainee contended that it is trite law in the light that vacancies had arisen prior to restructuring interview and written examination held at Jhansi merely because applicants on re-organisation had moved to Agra Division would not curtail or affect their right of promotion by operating the panel which had already been operated in the case of persons who had remained at Jhansi Division. It is in this conspectus stated that these persons who had been promoted in the matter of seniority are juniors to applicants.

9. Learned counsel assails invidious discrimination violative of Articles 14 and 16 of the Constitution of India by

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citing two examples where one Akhilesh Kumar, ASM Grade who had been placed on the provisional panel even on reorganization has been promoted by the NCR region at Delhi. Another example of one Ganga Prasad, who belonged to Group D', was promoted on selection in Group `C` at Agra Division. In this conspectus it is stated that meeting out differential treatment to applicants without any intelligible differentia and objects sought to be achieved is an infraction to the principle of equality.

10. Learned counsel contended that at the time of interview permission has been accorded vide letter dated 31.5.2003 to applicants who have been relieved to appear in the viva voce. It is in this conspectus stated that virtually the promotion of applicants has been approved by the General Manager, NCR, as such denial by DRM who is a lower authority cannot be countenanced. It is stated that Agra Division as well as Headquarter (P) were aware of sparing of applicants for interview. By referring to a decision of the Apex Court in ***Pratap Singh vs. Union of India,*** 1991(1) SLJ 60, it is stated that once the panel is operated it has to be operated fully and cannot be left in lurch. Relying upon another decision of the Apex court in ***Shyam Sunder vs. Union of India***, AIR 1969(SC) 212, it is contended that as per para 1091 of IREM-I panel once formed cannot be cancelled. It is also contended that vacancies are still existing.

11. In so far as prejudice to others is concerned, it is stated that even at Jhansi Division various other persons have come from other division on reorganization. Once the panel has been operated, in such an event operating the same at Agra Division having the conditions identical would be in consonance with law.

12. Learned counsel for the applicants further states that whereas Railway Board's letter issued on 6.12.1996 regarding calling option from staff to serve in Headquarter in the New Railway Zones and determination of seniority, Para 7 though provides that till un-operated panel in respect of residual zonal Railways on 1.4.2003 will not be operated yet these instructions are impliedly overridden by Railway Board's letter dated 6.1.2004 regarding restructuring of the cadre whereas Para 4.1 in so far as normal vacancies existing on 1.11.2003 are concerned, the panels already approved before 1.11.2003 and current on that date shall be first operated and given effect to and thereafter the restructuring would be processed which is by way of one time measure on modified selection. In this view of the matter, it is stated that it is incumbent upon the respondents to first operate the panels and then give effect to the restructuring.

13. It is further stated that in a judicial review the policy of the Government is amenable to challenge if it is malafide or violative of Articles 14 & 16 of the Constitution of India.

14. As regards reversion of applicants in O.A. No. 1029/2004, it is stated that once the panel has been given effect to in reorganized divisions, reverting applicants and undoing their positive act respondents are estopped from acting to their detriment. Moreover, once a civil consequence ensued it has to be preceded by reasonable opportunity to show cause which has not been complied with depriving reasonable opportunity to applicants and infraction of principles of natural justice.

15. Respondents represented through Shri R.L. Dhawan and Shri H.K. Gangwani vehemently opposed the contentions. In reply by respondents nos. 1 to 3 it is contended that the post of HTTE is a divisional controlled post. Accordingly Jhansi Division has issued promotion of those who were working in that division and in the case of applicants who were working in Agra Division that division has to pass the order. It is further reiterated by stating that vide letter dated 6.8.2003, DRM Jhansi Division has written a letter to Agra Division to promote applicants within their administrative control.

16. Shri Dhawan contended that once on reorganization the post of HTTE is a divisional controlled post, those who were at Jhansi were promoted but applicants who had been in Agra their promotion is to be made on selection by that Division whereas others who have joined the Agra Division are given equal participation otherwise according promotion to applicants would adversely affect their seniority and due

to their non-impleadment being affected parties, OAs are not maintainable.

17. In the reply of respondent no. 4 i.e. Agra Division represented through Shri H.K. Gangwani, it is contended through un-numbered MA filed on 25.10.2004, which we take on record, that circular dated 6.12.1996 of the Railway Board clearly provides that after 1.4.2003 promotion would not be as per the progression in the original cadre but would be division-wise at Agra and un-operated portion of panel would not be operated. Learned counsel stated that applicants who had been working in Jhansi Division upto 31.3.2003 from 1.4.2003 on formation of Agra Division were made part of it. The channel of promotion is after passing the due selection and the newly created Agra Division having its own cadre and seniority absorbed in that Division 'as is where is' basis. The selection conducted by the Jhansi Division without considering the cadre and vacancies based on post-based roster as on 1.4.2003 of Agra Division would adversely affect the right of others.

18. As regards letter dated 26.8.2003 issued by DRM(P) Jhansi, it is stated that the same is not applicable to Agra Division and accordingly has not been operated upon.

19. In the rejoinder applicants have reiterated their pleas and propagated a case of discrimination.

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20. On careful consideration of rival contentions to ascertain and adjudicate the common issue what is admitted is that selection held both in the cadre of senior TE and ASM/Yard Masters pertained to the vacancies arising before effect of reorganization as well as before restructuring of Group 'C' and Group 'D' cadres. Admittedly the selection process was initiated before the cut off date on 1.4.2003 and was completed before 1.11.2003 i.e. the effective date of restructuring.

21. Para 4.1 to para 4.3 of Railway Board's letter dated 6.1.2004 provide as under:-

> "4.1 Normal vacancies existing on 01.11.2003 except direct recruitment quota and those arising on that date pending this cadre restructuring including chain resultant vacancies should be filled in the following manner:
>
> (i) From panels approved on or before 01.11.2003 and current on that date;
>
> (ii) and the balance in the manner indicated in para above.
>
> 4.2 Such selections which have not been finalized on 01.11.2003 should be cancelled/abandoned.
>
> 4.3 All vacancies arising from 02.11.2003 will be filled on normal selection procedure."

22. In the light of the above, we find that earlier the order of reorganization issued by the Railway Board on 6.12.1996 which provides un-operated portion of panel to scrap and normal progression would be valid till operation of the Zonal Railways i.e. up to 1.4.2003 has been impliedly over ridden by these instructions. These instructions if read in the context of grammatical and literal interpretation with a

purposive interpretation which is to remove stagnation on reorganization of the divisions of Railways nowhere provides operation of panel approved before 1.11.2003 to be division-wise. What has been provided is that normal vacancies which had existed on 1.11.2003 in promotion quota has to be filled up from panels approved before 1.11.2003 current on that date and thereafter the restructuring would be given effect to. However, an exception to it is when selection could not be finalized by 1.11.2003 would have to be cancelled. As one time measure, this restructuring is limited to the vacancies existing as on 1.11.2003 and from 2.11.2003 the normal selection procedure would have to be adopted. The cardinal principle of law is that while interpreting the intent of the legislature and rule making authority cannot be supplemented or substituted by an interpretation which is different from what has been intended to. From the perusal of the above, we have no doubt in our mind that para 4.1 of the Restructuring Scheme has provided operation of already approved panels before 1.11.2003 before giving effect to the restructuring. Our view is fortified by the fact that in similar circumstance cases which had been referred to in the body of the order i.e. a case at Delhi Headquarter and a case at Mathura where Group –IV employees on selection and empanelment to Group C was promoted leaves no doubt in our mind that panels have been operated. Not following the aforesaid in the present cases is a deviation from the course adopted by the Railways which has to be justified either on intelligible differentia or reasonable nexus with the objects sought to be achieved.

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23. Invidious discrimination is an anti thesis to concept of equality. Fairness in administrative action is a sine qua non which is in consonance with the role model conduct of the Executive Authorities.

24. A discrimination where two equals are treated unequally forming same class without any reasonableness in action and object sought to be achieved with a reasonable nexus is to be deprecated and is not sustainable under the Constitution of India. The concept of equality has been meticulously gone into by the Apex Court and laid down in an effective manner in ***D.S.Nakara vs. Union of India*** , 1983 SCC(L&S) 145 with the following observations:

> "11. The decisions clearly lay down that though Article 14 forbids class legislation, it does not forbid reasonable classification for the purpose of legislation. In order, however, to pass the test of permissible classification, two conditions must be fulfilled, viz. (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group; and (ii) that that differential must have a rational relation to the objects sought to be achieved by the statute in question (see Ram Krishna Dalmia v. Justice S.R. Tendolkar, 1959 SCR 279). The classification may be founded on differential basis according to objects sought to be achieved but what is implicit in it is that there ought to be a nexus i.e. casual connection between the basis of classification and object of the statute under consideration. It is equally well settled by the decision of this Court that Article 14 condemns discrimination not only by substantive law but also by law of procedure.
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> .....
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> 14. Justice Iyer has in his inimitable style dissected Article 14 in Maneka Gandhi case as under at SCR p.728: (SCC p. 342, para 94)

That article has a pervasive processual potency and versatile quality, egalitarian in its soul and allergic to discriminatory diktats. Equality is the antithesis of arbitrariness and ex cathedra ipse dixit is the ally of demagogic authoritarianism. Only knight-errants of 'executive excesses'- if we may use current cliché – can fall in love with the Dame of despotism, legislative or administrative. If this Court gives in here it gives up the ghost. And so it is that I insist on the dynamics of limitations on fundamental freedoms as implying the rule of law : Be you ever so high, the law is above you.

Affirming and explaining this view, the Constitution Bench in Ajay Hasia V. Khalid Mujib Sehravardi held that it must, therefore, now be taken to be well settled that what Article 14 strikes at is arbitrariness because any action that is arbitrary must necessarily involve negation of equality. The Court made it explicit that where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is, therefore, violative of Article 14. After a review of large number of decisions bearing on the subject, in Air India V. Nergesh Meerza the Court formulated propositions emerging from an analysis and examination of earlier decisions. One such proposition held well established is that Article 14 is certainly attracted where equals are treated differently without any reasonable basis".

25. If one has regard to the above, the only object which is apparent and highlighted by the respondents to be achieved is that after reorganization of divisions, the seniority has to be determined division-wise and the promotion would be amongst the persons in the division and no other division can promote a Railway servant who is beyond its administrative control.

26. Another thing which has been stressed is that those who had come to the division where applicants are working, if applicants are promoted by operating the panel would be deprived of their promotion and would be adversely affected in the matter of seniority.

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27. To clear this concept, we may observe that these persons before reorganization had been working in various divisions where selection to the post of HTTE was held. These persons had participated but not qualified. Now in the matter of seniority giving effect to the reorganization would obliterate the efforts of applicants where they had qualified the selection and on merits have been due for promotion. There may be cases where despite opportunity these persons had not participated in selection or in some cases the incumbents were not eligible their comparison with the applicants is misconceived and would be irrational. They do not form the same class.

28. A hostile discrimination and treating equals differently is an anti thesis to enshrined principle of equality in the Constitution of India. If the intention of the Railway Board was to scrap the panels which had been in existence on 1.4.2003 then operating the panels by promoting incumbents at Jhansi where selection has been held is illogical and irrational too. Adopting a different criteria to place where the panel has been formed to the incumbents who had opted for the same place but denying operation of the panel to those who had moved out of the division where the selection process was completed and panel formed has no reasonable nexus with the object sought to be achieved in restructuring and this differentia is neither intelligible nor based on any rationality. Merely because after the panel has been formed a railway servant might have been placed in another division his right is protected under para 4.1 of the

restructuring scheme before it is given effect to, acting to his detriment is certainly an offence to the principle of equality enshrined under Article 14 of the Constitution of India.

29. We may now observe at this stage that one has no indefeasible right to be appointed or promoted even if figured in the panel, yet in Pratap Singh case (supra) Apex Court has clearly ruled that once the panel has been formed and operated in case of few others cannot be denied promotion especially when vacancies exist which is not disputed.

30. We have to see the intention in framing para 4.1 by the Railway Board in their clarification to the restructuring issued on 6.1.2004. On clarification as a trite law relates back to the date of the original order and is part and parcel of it, in the light of the decision of the Apex Court in **S.S. Grewal v. State of Punjab**, 1993 SCC (L&S) 1098 Certainly the intention was to safeguard the interest of those employees in whose cases their selection had attained finality and panels were framed and approved before 1.11.2003. Irrespective of the Division to which they had been absorbed would not waive of or acquiesces their right of being promoted. Accordingly, modification has come and in absence of any stipulation as to operating panel division-wise the panel formed in another division has to be given effect to before restructuring takes place.

31. As regards right of others incumbents, as these panels pertain to normal selection and seniority separately maintained at other divisions would not affect the seniority of those who had come from various divisions in the division where the panel is to be operated. They are not at all equals to be meted out the same treatment. We do not see any prejudice caused to them and the action of operating the panel under para 4.1 is in consonance with Articles 14 and 16 of the Constitution of India.

32. We have not come across any reason or explanation of the respondents in so far as similar treatment meted out to various incumbents by operating the arbitrariness in action of the respondents to deprive applicants their legitimate rights, which cannot be countenanced in law.

33. As regards case of applicants in OA-1029/2004 (A.K. Sharma & Others), on the same analogy the ratio laid down mutatis mutandis applies to their cases and rather they are on a better footing as despite re-organisation applying para 4.1 panels were operated and the incumbents were promoted, their reversion is not justifiable and by not following the due process of law the same is in violation of principles of natural justice, depriving them a reasonable opportunity. Moreover, as the promotions were made in accordance with rules and law and the incumbents had altered their positions advantageous to them taking any contrary action the respondents are estopped from acting as such on the basis of principle of promissory estoppel.

34. The doctrine of legitimate expectation in a welfare State when respondents are model employer has application. Applicants who had qualified the selection, brought on merit and empanelled, promoting juniors superseding seniors is not in consonance with law.

35. In the result, for the foregoing reasons, OAs are allowed. Respondents are directed to operate the panel of Head TTE/Head Ticket Collectors and consider promoting applicants from the date when their juniors had been promoted and in that event they would be entitled to all consequential benefits.

36. As regards OA-1029/2004, the same is also allowed by quashing the impugned orders and directing respondents to restore applicants as Station Masters, Traffic Inspectors and Yard Masters with all consequential benefits and any amount recovered from them shall be refunded to them.

37. The aforesaid directions shall be complied with by the respondents within a period of three months from the date of receipt of a copy of this order. No costs.

38. Let a copy of this order be placed in the case file of each OA.

(S.K. Malhotra)
Member (A)

(Shanker Raju)
Member (J)

'San.'