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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No. 945 OF 2004
M.A. No. 792 OF 2004

New Delhi, this the 19th day of April, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER

1. Shri Bhupander Kumar
S/o Shri Moti Ram,
Power Controller
2. Shri Kishan Kumar
S/o Shri Sewa Ram,
Traction Loco Controller,
3. Shri Narendra Paul
S/o Shri Sant Singh,
Traction Loco Controller

All working under Divisional Railway Manager,
Northern Railway, New Delhi.

(By Advocate : Ms. Meenu Mainee for Shri B.S. Mainee)Applicant

Versus

Union of India : Through

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

....Respondents

ORDER (ORAL)

SHRI JUSTICE V.S. AGGARWAL:-

MA 792/2004

MA 792/2004 is allowed subject to just exceptions. Filing of a joint application is permitted.

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OA 945/2004

The applicants are general category candidates. By virtue of the present Original Application, they seek a direction to respondent NO.3 to put up their case to the competent authority for de-reservation in accordance with rules by sending requisition on prescribed format and further to respondent No.2 to consider the case for de-reservation keeping in view the fact that the said posts fall in safety category.

2. The precise grievance put forth is that the names of the applicants had been considered in the years 1995, 1997 and 2000 for promotion but they could not be so promoted for lack of posts being available. It is contended that if the posts are de-reserved and the same are given to the general category candidates, the applicants will get the right to be promoted and hence, the above said reliefs are being pressed. In support of their claim, the learned counsel for the applicants referred to the Office Memorandum of 6.11.2003 issued by the Ministry of Personnel P.G. & Pensions, Department of Personnel & Training to contend that posts could be de-reserved. The relevant extract of the same reads:-

"(1) In cases of promotion including promotion by selection from Group 'C' to Group 'B', within Group 'B' and from Group 'B' to the lowest rung of Group 'A', if sufficient number of SC/ST candidates fit for promotion against reserved vacancies are not available, such vacancies, may be dereserved as per prescribed procedure and filled by candidates of other communities."

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3. It is further contended that in accordance with the instructions, since the posts fall in the safety of trains operation category, they must be de-reserved.

4. We do not find any force in this submission. Reasons are obvious and not far to fetch. The person has a right to be considered for promotion. He has no such right that he must be promoted. Similarly, he cannot be taken to be having any right that the post must be de-reserved.

5. If the department de-reserves the posts, necessarily, right of consideration would only arise. If the department feels that the de-reservation is not required and they do not intend to fill up these posts by promotion, such a right cannot be claimed by the applicants.

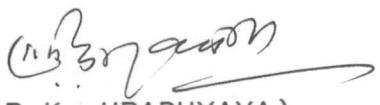
6. Learned counsel for the applicants relied upon the decision of the Supreme Court in the case of Harish Chandra Ram Vs. Mukh Ram Dubey in Civil Appeal No.1508 of 1994 decided on 18.2.1994. The facts in the cited case were that the appellant before the Supreme Court had become eligible for promotion as a Junior Section Head Typist. He was promoted with effect from 7.11.1981. For promotion as a Senior Selection Grade Head Typist, he was required to put in five years of service. When his turn came, as a reserved candidate, he was considered by the Promotion Committee and was



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promoted. The respondent was a general category candidate and he was initially appointed. He was also claiming promotion. When he approached this Tribunal on the first instance, a statement was made on behalf of the State that his case would be considered. Thereafter he had filed a Writ Petition in the Patna High Court. The appointment of the scheduled caste candidate was set aside by the Patna High Court. It was thereupon that the said schedule caste candidate had preferred an appeal before the Supreme Court, which was allowed. In the facts that came up before the Supreme Court, a different controversy as in the present case was raised. The controversy that is being raised by the applicant was not at all in consideration and the decision is patently distinguishable. No further argument is raised.

5. In the result, for the reasons stated in the preceding paragraphs, the present Original Application being without merit, must fail and is accordingly dismissed in limine.


(R.K. UPADHYAYA)

ADMINISTRATIVE MEMBER


(V.S. AGGARWAL)

CHAIRMAN

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