Central Administrative Tribunal
Principal Bench

OA No. 2001/2004
OA No. 2008/2004
&
OA No. 2010/2004

New Delhi, this the 31st day of January, 2006

Hon'ble Mr. V.K. Majotra, Vice Chairman (A)
Hon'ble Mr. Shanker Raju, Member (J)

All India Station Masters' Association
(Delhi Division Branch of Northern Railway)
No. 7, Anand Ram Dairy,
Sector – 13, R.K. Puram,
New Delhi – 110 066
& Ors. ...Applicants

-versus-

Union of India through & Ors. ..Respondents

Presence: Shri B.S. Mainee, counsel for applicants in OA No. 2001/2004.

Shri Manish Sharma, counsel for applicants in OA No. 2008/2004.

Shri Yogesh Sharma, counsel for applicants in OA No. 2010/2004.

Shri R.L. Dhawan, counsel for respondents in all the OAs.

1. To be referred to the report or ~~not~~? yes

2. Whether it needs to be circulated to other Benches of the Tribunal? yes.

S. Raju

(Shanker Raju)
Member (J)

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Hon'ble Mr. V.K. Majotra, Vice Chairman (A)
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OA No. 2001/2004

All India Station Masters' Association
(Delhi Division Branch of Northern Railway)
No. 7, Anand Ram Dairy,
Sector – 13, R.K. Puram,
New Delhi – 110 066
Through

1. Shri G.B. Bhat,
   President,
   213/392, Vasundra
   Sahibabad,
   Distt. Ghaziabad.

2. Shri R.D. Swamy,
   (General Secretary),
   Asstt. Station Master,
   Tilak Bridge,
   New Delhi.

3. Shri Mohd. Inam,
   Asstt. Station Master,
   Delhi Safdarjung,
   New Delhi.

4. Shri N.L. Verma,
   Station Superintendent,
   Delhi Safdarjung,
   New Delhi.

5. Shri L.P. Gupta,
   Dy. Station Superintendent,
   Railway Station,
   New Delhi.

...Applicants

-versus-

Union of India through

1. The Secretary,
Railway Board,
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

OA No. 2008/2004

1. All India Station Masters Association,
Ferozepur Division,
Northern Railway,
Ferozepur Cantt, Punjab
Through its President Sh. Ajay Kumar Sawhney.

2. Parmatma Singh,
Asstt. Division Secretary,
Ferozepur Division,
Northern Railway,
Ferozepur Cantt., Punjab. ...Applicants

Versus

1. Union of India through
Secretary,
Ministry of Railways,
New Delhi.

2. Railway Board,
Through Secretary,
Rail Bhawan,
Raisina Road,
New Delhi.

3. The General Manager,
Northern Railway,
Baroda House, New Delhi.

4. The Divisional Railway Manager,
Northern Railway,
Ferozepur Cantt., Punjab.

5. The Sr. Divisional Personal Officer,
Northern Railway,
Ferozepur Cantt.,
Punjab. ...Respondents

OA No. 2010/2004

1. Pawan Kumar,
Working as Traffic Inspector,
N. Railway Station,
Samili.

2. Dalbir Singh,
Working as Traffic Inspector,
N. Railway Station, Rohtak.

3. Vijay Singh,
Working as Traffic Inspector,
N.Railway Station, Sonipat.

4. S.N. Sharma,
Working as Traffic Inspector,
N. Railway Station, Rohtak. ...Applicants

-versus-

1. Union of India through
The General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. The Secretary,
Ministry of Railway,
Railway Board,
Rail Bhawan,
New Delhi.

3. The Divisional Railway Manager,
Northern Railway,
DRM Office,
Near New Delhi Railway Station,
New Delhi. Respondents

Presence: Shri B.S. Mainee, counsel for applicants in OA No. 2001/2004.

Shri Manish Sharma, counsel for applicants in OA No. 2008/2004.

Shri Yogesh Sharma, counsel for applicants in OA No. 2010/2004.

Shri R.L. Dhawan, counsel for respondents in all the OAs.

O R D E R

By Hon'ble Shanker Raju, Member (J):

In all these Original Applications an order passed by the respondents on 23.07.2004 upholding the restructuring effected in group `C' cadre vide order dated 9.10.2003 in the category of Station Masters, Assistant Station Masters, Yard Masters and Traffic Inspectors (for short, SMs, ASMs, YMs and TIs) unifying into the cadre of SMs/ASMs, is impugned. As cause of action and relief sought are identical, in order to avoid multiplicity of decisions, these O.As are being disposed of by this common order.

2. In OA No. 2001/2004, All India Station Masters' Association, Delhi Division Branch along with others, have assailed merger of categories of SMs, ASMs, YMs and TIs with a relief to quash para 10.1 of the Notification dated 9.10.2003 and Board's letter dated 23.7.2004 or in the alternative to give effect to para 10.5 dated 9.10.2003 from prospective date.

3. Likewise in OA No. 2008/2004 filed by the All India Station Masters' Association along with one other, a challenge has been made to the restructuring order dated 9.08.2004 whereby the request of the applicants contained in the representation has been turned down.

4. In OA No. 2010/2004, four applicants working as TIs have assailed the restructuring and para 10.1 of the Notification with a further prayer to quash the seniority list published in result thereof.

5. Earlier the applicants had preferred OA No. 1472/2004 regarding merger of SMs, ASMS, YMs and TIs, which had been disposed of on 8.6.2004 with a direction to the respondents to pass a reasoned order which culminated into an order passed on 23.7.2004 where it is stated that the decision for merger of certain categories has been taken with an objective to introduce concept of making multi-skilling and for making optimum and efficient utilization of the existing man-power resources in view of changing functional, operational and administrative requirements of railway system. The restructuring will not adversely affect any railway employees in their career progression.

6. At the outset a Division Bench of this Tribunal at Madras had an occasion to deal with an issue raised by All India Station Masters' Association, which was directed against consequent action taken by the respondents pursuant

to cadre restructuring in the categories of SMs, ASMS, YMs and TIs ibid. Though restructuring ordered on 9.10.2003 was not challenged, the Madras Bench of this Tribunal basically dealt with the only issue of non-compliance of the statutory medical standard being relevant to the safety of railway operations and observed that a progressive measure inculcates and encourages efficiency on modernization and in the wake of substantial number of YMs having satisfaction of A-2 category applicable to SMs and ASMs, further examination of satisfaction of A-2 category medical standards was done away with and the OA was dismissed.

7. Learned counsel for the applicants Shri B.S. Mainee vehemently relied upon a decision of the Apex Court in ***Sisir Kumar Mohanty & Ors. vs. State of Orissa & Ors.***, 2002(3) SC SLJ 154 and ***Hydro-Electric Employees Union, U.P. & Ors. vs. Sudhir Kumar Sharma & Ors.etc.***, 1999(1) SC SLJ 152 , to contend that method of recruitment and eligibility qualifications why are different in the merging cadres, the cadres could not be merged and while merging cadres, principle of functional similarity and equal responsibilities must be considered. Learned counsel would contend that while taking a decision to merge three categories together in the restructuring, there has been a discrimination as earlier merger, which took place in 1993 in Commercial cadre of Railways, had been given effect to prospectively while the merger effected vide order dated

9.10.2003 is retrospective, which would be detrimental to the employees altering their service conditions that too without affording an opportunity to them and even if it is a policy decision, if the same is not inconformity with the constitutional provision of equality enshrined under Articles 14 & 16 of the Constitution of India and is mala fide, has to be set aside.

8. Learned counsel for the applicants further contended that the qualification and training for the post of ASM/SM being different from the training prescribed for YM/TI and medical classification being also lower in these categories, the seniority of staff working in SM category would be prejudicially affected to their detriment as ASMs, who were initially appointed as YMs and now on merger of the cadre, have been placed much senior to those who were their erstwhile seniors. It is also contended that promotion of the staff working as SMs will be delayed by number of years but those are working as YMs and TIs, would march over them in the matter of promotion.

9. It is also stated that ASMs/SMs, who are to be considered for promotion in the current year or next year, would be considered after about five years because of this merger. As the applicants have fundamental right vested in them to be considered for advancement in their own cadres, change of cadre not only damages the career of the

applicants but would also be against the interest of railway administration.

10. While merging, discrimination as to the restructuring done in Commercial Department on 6.8.1993, it is stated that those employees, who were appointed on regular basis to any of the three categories i.e. Parcel Clerk, Booking Clerk as well as Goods Clerks upto 31.10.1993 and had continued and progressed in their respective cadres, an option had been sought to come over to the new unified cadre but the principle had not been followed, which is an illegality.

11. Learned counsel would contend that service conditions cannot be changed unilaterally and on merger, YMs and TIs, who are not possessing the requisite qualification of training and skill to work and for ASM/SM, graduation being minimum academic qualification, the decision to allow them to continue to work on merger in their cadres till such time they acquire qualification, training and skill to work would be prejudicial to the interest of railways because of having allowed incompetent and unqualified persons on the roll of railways.

12. Learned counsel would also contend that the National Federation of Indian Railways Men had opposed the multi skilling and merger of SMs, ASMS, YMs and TIs vide their letter dated 8.5.2004.

13. On the other hand, Shri Yogesh Sharma, learned counsel for TIs contended that their pivotal role in maintaining safety in train operation having selected, promoted and passed the written test from feeder post which included ASM, on merger they would be in a way demoted. They are on the higher profile among the non-gazetted staff.

14. As TI cadre was separately maintained, their change of service conditions retrospectively would not be in consonance with law.

15. Shri Manish Sharma, another counsel representing applicants had almost taken the same pleas stating that the ASM/SM would have to be placed below the YM and qualification and job requirements of categories are different. Mere placement in the higher grade would not lead to change in the seniority, which has to be decided as per initial appointment. It is also stated that the decision taken on representation had not dealt with all the contentions of the applicants.

16. Learned counsel of the applicants further highlighted a letter written by the Gene4ral Manager on 7.5.2004 where on agreement with the grievances of the applicants, it has been written to the Railway Board for review. However, without taking a consent of the Union P 16 training which is relevant has not been imparted from Chandosi to other cadres whichever now being treated at par with ASM/SM.

17. While commenting upon the decision delivered by the Madras Bench, it is stated that the same is per incurium as statutory rules and law on the subject has not been considered. It is further stated that there was no challenge to restructuring order before the Tribunal. It is stated that one who does not possess qualification required for the post of ASM/SM on acquirement of qualification later, the seniority already rendered in another cadre would not be reckoned towards the seniority in the merged cadre. The Madras Bench has not considered the Supreme Court's decision (supra) on merger of different cadres with different requirements. There is no finding as to other functional dissimilarities.

18. On the other hand, respondents' counsel Shri R.L. Dhawan vehemently opposed the contentions. Learned counsel would contend that a well settled machinery of cadre restructuring Committee on agreement with the Associations representing Group `C' and `D'employees of Indian Railways, the review of various cadres have been carried out, which is an important mechanism of manpower management and rationalization of cadre with an object to introduce multi skilling while undertaking cadre restructuring exercise changing functional requirement but modernization, computerization, technical upgradations had been kept in view. In the above backdrop, while referring to the decision of the Apex Court in ***Narmada Bachao Andolan vs. Union***

of India, 2000(10) SCC 664 and ***S.S. vs. Union of India***, 1999 (SCC) L&S 1318, it is stated that courts in exercise of its jurisdiction would not transgress into the field of policy decision, which is not debatable in judicial forum.

19. Learned counsel stated that exercise of restructuring has been done with regard to nature of its responsibilities, promotional opportunities in the grades with internal relativity of educational qualification. The posts in higher grades have been increased. In view of instructions dated 9.10.2003, as per revised percentage of distribution of posts each member of the cadre will have to be equipped with necessary skills and these categories would be merged by integrating their seniority in respective grades. The categories of SMs, ASMS, YMs and TIs, their recruitment and promotion pattern for category of SM/ASM would be followed in the merged cadre though till acquirement of necessary skill, the three categories would be working in their respective erstwhile cadres itself and would retain their designation but at a later stage they would be merged into one single cadre.

20. On the other hand it is also stated that cadre restructuring is to achieve an efficiency in the administration with betterment of promotional aspects. It is further stated that post of YM is a supervisory post like Traffic Inspector with a difference that TI supervises the Station whereas the

YM supervises the Yards. The post of YM is filled from the ASM and the post of TI is also filled from ASM. It is also stated that P-16 training is prescribed pre-qualification training before appointment as YM among the feeder category of ASM. It is also stated that when a decision is taken in agreement with Union no notice is required and it is vehemently contended that mere chances of promotion is not a condition of service. As YM's cadre is diminishing while referring to para 125 of IREM Volume-I, it is stated that for common cadre for ASM/SM/YM/TI graduation is prescribed as minimum qualification and a pre-condition of passing P16 course. Majority of the YMs have come to ASM category that 15% of the AMSs, all are feeder cadre for YMs and all of them need not be graduate under the promotional quota. It is also stated that safety aspect has been kept in mind.

21. Learned counsel would contend that 9.10.2003 order for restructuring had been approved by the President in consultation with staff side. It is stated that as per para 311 of IREM Volume-I, seniority, on merger, would be the date of appointment in the grade in non-fortuitous service.

22. Learned counsel has also attached with an additional affidavit where it is averred that posting order in pursuance of restructuring and also selection panel.

23. Shri Dhawan stated that in the matter of selection for the post of YM, one has to pass T19 course and a P7 course,

which is pre-condition. It is stated that vide an order dated 23.12.2005, pre-requisite condition for passing P16 course has been shifted to grade 1600-2600 under the category of Station Master. By placing reliance on channel of promotion of SM, it is stated that the feeder category may not be a graduate and in the channel of promotion of TI, 40% of the posts are from the feeder category of ASM with passing of P16 course. In this manner, he further stated that for YMs category, ASM is the feeder category.

24. In the rejoinder, learned counsel would contend that only when other categories are fully equipped after qualifying the test etc. for the post meant for ASM/SM only then the occasion for medical fitness would arise. Whereas for the direct recruit cadre of ASM 60% of the posts are to be filled among graduate candidates. RR2 with the rejoinder, the objection raised by the Association on 8.8.2004 has been highlighted.

25. Learned Counsel Shri Mainee would contend that like restructuring in commercial department for railways held in 1993 the same has to be operated prospectively i.e. only fresh appointee in the cadre the conditions would apply. It is in this backdrop that unqualified cannot steal march a march and there is no stagnation for YMs and TIs cadre, ASM/SM cadres are stagnating.

26. Shri Yogesh Sharma contended that in TI cadre, which is a supervisory post, direct recruitment to this post, there has been a change of service conditions.

27. Shri Mainee stated that there is direct recruitment in the category of ASM whereas there is no direct recruitment in the cadre of YMs/TIs. Those who are risen from Group `D' post to ASM to these categories are not competent and qualified to shoulder the responsibilities of the post of ASM/SM.

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

29. At the outset, restructuring ordered on merger in the category of Booking Clerks, Goods Clerk and Parcel Clerks by railway Board's letter issued in 1993 these cadres had been merged but all the employees appointed on regular basis in any of these three existing cadres upto 31.12.1993 had been allowed to continue to progress in their respective cadres. However, those who are fresh recruits, the merger would be operative for them. In nutshell, earlier restructuring was prospective in nature.

30. Restructuring ordered of Group `C' was in consultation with the staff side with an underlying object of strengthening and rationalizing safety pattern of railways. Paras 10 and

10.1 of restructuring order dated 9.10.2003 are re-produced hereinbelow:

> "10. The concept of Multi-skilling is to be introduced by merging the different categories as mentioned hereunder. While the revised percentage distribution of posts as indicated in the annexures to this letter should be implemented in the unified cadres based on the integrated seniority list, the duties, responsibilities and functions being performed by the employees of the respective cadres will be combined in a phased manner. Each member of the cadre will have to be equipped with necessary skills and functions through proper training and development. The categories indicated herein will be merged by integrating the seniority of the employees working in respective grades with reference to length of non-fortuitous service in the relevant grade keeping the inter-se seniority in the respective group intact.
>
> 10.1 The category of Station Masters/Assistant Station Masters, Yard Masters and Traffic Inspectors should be merged into one unified cadre of SM/ASM. The recruitment and promotion pattern as prescribed for the category of SMs/ASMs should be followed in the merged cadre. In the initial stage of the merger, efforts should be made to post the employees in the categories in which they have been working. Accordingly, while the staff belonging to the erstwhile three categories will be working and enjoying the benefit of the unified cadre of SMs/ASMs, on their posting in the Yard, they will perform the duties of Yard Master retaining their designation as applicable to the category of Yard Master. Similarly, while performing the inspectorial job they will retain their designation as applicable to Traffic Inspectors. But at a later stage, when they are made fully equipped to discharge all the functions hitherto being discharged by SMs/ASMs, YMS & TIs, administration will have the flexibility to post a person as per the administrative requirement. While redefining the duties and functions, Railways may also review and rationalize the

cadre keeping in view the administrative requirement.

31. If one has regard to the above restructuring, which has merged three cadres, is retrospective in nature as due to multi skilling each member of the separate cadre first has to be equipped with necessary skills and functions through proper training and development and the recruitment and promotion pattern of SM/ASM would be followed in the merged cadre. Though on the initial stage due to lack of skilling and equipment for the post for want of training the employees had been posted in the categories in which they had been working but at a later stage on being fully equipped to discharge all the functions discharged by SM/ASM, these officers are to be posted on re-defined duties and functions.

32. The decision of Madras Bench of the Tribunal in **T. Karunakara Reddy & Ors. Vs. U.O.I. & Ors.** (OA No. 644/2004) decided on 12.08.2005, though All India Station Masters Association challenged the effect on their promotional avenues by merger to YM/TI with their cadres, there had been no challenge to the restructuring ordered on 9.10.12003 and the only grievance was related to non-observance of statutory medical standards, which have been possessed by ASMs/SMs and are not possessed by to other categories of YMs/TIs. The only adjudication was as to satisfaction of A-2 medical standards for other two categories on the ground that all progressive measures in the wake of

modernization should have the implicit support of judicial forum for want of material by the applicants to substantial that other two categories do not possess the required medical stands, OA was turned down.

33. It is trite law that a decision which has not as a ratio decidendi adjudicated and determined the issue rather in ignorance of the statutory rules and the law settled on the subject would always be a decision per incurium and has no precedent value. The Apex Court in **Harish Verma Vs. Ajay Srivastava & Ors.** (2004 (SCC) L&S 512 and also in **State of Bihar vs. Kalika Kuer** , 2003(5) SCC 448 reiterated the aforesaid as a dicta.

34. Moreover, in Madras decision of the Tribunal, it has been categorically observed that there has been no challenge to the restructuring dated 9.10.2003.

35. As such now in the present OA when restructuring order has been challenged, there is no impediment for this coordinate Bench to deal with this issue and adjudicate the matter which is sub silentio in the earlier OA.

36. In ***Sisir Kumar Mohanty's*** case (Supra), the Apex Court while dealing with merger of cadres, observed as under:

> "16. In fine, therefore, it appears that prior to the framing of the aforesaid recruitment rules, the field was covered under executive

instructions and by reason of the methodology of recruitment and the qualifications being different for appointment for the two categories mentioned above, the distinction thus between the two sets of officers have always been maintained.

17. The learned advocate for the State further drew our attention, during the course of hearing, as regards the pay scales of the two categories but in the view we have taken as noticed hereinbefore, we do not deem it fit to further dilate thereon. Suffice it to note that the same also lends credence to the submissions of the State.

18. In that view of the matter, question of fusion of two erstwhile cadres of Ministerial Staff at the DG/IG of Police and in the districts does not and cannot arise and the subsequent framing of Rules under Article 309 lends credence to such an observation."

37. What is discerned from the above is that when erstwhile cadres required different methodology for recruitment and qualification, being different, merger of these distinct cadres would not be legal.

38. In **Hydro-Electric Employees Union's** case (supra) while dealing the issue of merger of the cadres, the following observations of the Apex Court:

"17. From the rival submissions made before us we find that the only contention which may require little consideration is that of Mr. Dwivedi, the learned senior Counsel, that whether in clubbing together different posts under the Regulation the Board has in fact borne in mind the principle of functional similarity and co-equal responsibility. The power of the Board as employer to constitute a cadre by amalgamating different posts under the Board is undoubtedly very wide. But in exercise of such power if it is established that

the Board has not applied its mind to the relevant criterias and thereby grossly dissimilar posts have been brought together and constituted into one cadre it may be possible for a Court to interfere with such amalgamation and formation of a unified cadre. But the question for consideration is whether really there exists any such illegality in the case in hand? Our examination in this connection should be in respect of three categories of posts, namely, the Meter Readers, the Switch Board Attendants and the Sub Station Operators as before the High Court challenge has been made essentially in respect of these three categories. The very history of the employees of the aforesaid categories, as reflected through different earlier judgements noticed earlier in this judgment, makes it clear that right from the inception these three categories of people have often interchanged among themselves and as has been observed bythe High Court many of the Metere Readers were initially appoi9nted either for doing the job in the sub station or at the Switch Board. To satisfy ourself as to really whether exists any differentiation so far as their respective duties are concerned, we have also scrutinized the relevant materials indicating the duties of these three categories of employees and we find that in fact there is not much of dissimilarity. The Meter Readers while are called upon to discharge their duties on the meters fixed for the domestic consumers, the Switch Board Attendants and Sub Station operations are required to perform similar duties either at the Sub Station or at the Switch Board, as the case may be. The qualification required in entering into such posts is also similar. The pay scale attached to the post is similar in fact they have been discharging similar functions. In this view of the matter it is difficult for us to hold that the Board had grouped dissimilar post into a unified cadre. We are in the fact not examining the other category of posts which have been brought under the Regulation into one cadre since no factual matrix have been brought on record and in fact no contest has been made on this score. Mr. Dwivedi's contention that the post of Junior Electrician, Junior Centrifugal Mistry and Meter Tester and Meter

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Repairers are posts which are highly skilled posts and should not have been clubbed with Meter Readers. Sub Station Operators and Switch Board Operators may be of some substance on the anvil of dissimilarity of their respective job requirements but we are not examining the same in the proceeding as such grievances, if any, is taken care of by sub-regulation (2) of Regulation 38. Under the said sub-regulation a member of the service can be transferred from one place to another if the qualification of the two post and the scale of pay of the two posts is the same and further there does not exist any need of any past experience or competence to hold the transferee post. But we do not think it necessary to deal with this aspect in any further detail as the parties before the High Court have primarily contested the legality in relation to the posts of Meter Readers, Switch Board Operators and Sub-Station Operators having been brought into one unified cadre. We do not see any legal infirmity with the Regulation framed by the Board in exercise of powers under Section-79 (c) of the Supply Act in bringing these posts into one unified cadre and the conclusion of the High Court on this score remains unassailable. In Reserve Bank of India case (1976) 4 SCC 838, when the Bank had amalgamated different posts into one cadre and evolved a Scheme for determining the combined seniority, the same had been challenged by the employees being violative of Articles 14 & 16 of the Constitution and this Court had observed: "that Articles 14 & 16 do not forbid the creation of different cadres for Government service. And if that be so, equally these two Articles cannot stand in the way of the State integrating different cadres into one cadre. It is entirely a matter for the State to decide whether to have several different cadres or one integrated cadre in its service. This is a matter of policy which does not attract the applicability of the equality clause. The integration of non-clerical with clerical services sought to have effectuated by a combined seniority scheme cannot in the circumstances be assailed as violative of the Constitutional principle of equality".

39. The above does not leave any doubt as to merger of two distinct cadres being unconstitutional.

40. While dealing with merger of Chief Booking Clerks and Chief Parcel Porter Supervisor, a Division Bench of this Tribunal in **Sudershan Kumar and Ors. Vs. Union of India and Ors.** (2005(2) ATJ 538) with regard to policy decision, following is the observation:

> "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, as (sic no) 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. Upto 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 of the instructions would have to be complied with in true letter and spirit. Either the combination would have to

be at all levels of 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 Ferozpur Division.

30. We also find that there has been an undue haste in deciding the panel as when the Ferozpur 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 Ferozpur Division on 2.12.2004, yet the order passed on 3.12.2004 has not whispered about the aforesaid action."

41. No doubt, in **K. Narayani Hegde Vs. State of Karnataka and Others** (2000(9) SCC 175 on re-organization of two departments and the issue of loss of chances of promotion as a consequent thereof the Apex Court ruled that it is imperative for the Tribunal or the Court to direct to make rules by way of subordinate legislation with retrospective effect.

42. In the matter of a policy decision, which inter-alia includes conditions of service and also merger as two posts in **P.U. Joshi & Ors. vs. Accountant General, Ahmedabad and Others** (2003(2) SCC 632, the Apex Court rules as under:

"10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern,

> nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/substraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgmate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing the existing cadres/posts to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.

43. If one has regard to the above, there would not be a blanket or a charter to the Government to act in a manner in the guise of framing policy which would be either unconstitutional or smacks of mala fide action or arbitrariness in the action to the prejudice of one class in

such an event nothing precludes the Courts to examine the validity and legality of the decision of the Government in judicial review.

44. In **Union of India and Others vs. K.S. Okkuta & Kannadigara and Ors.** (2002(10) SCC 226), in the matter of administrative decision when the action has not been found in accordance with law, the Apex Court ruled that the only direction that the Court could issue is re-consideration of the matter.

45. In the light of above case laws, a decision of the Government taken as a policy would not be legally warranted and sustainable if it violates any statutory rules or is mala fide in any manner.

46. In the present case, though an attempt has been made by the respondents to demonstrate that in the category of YM/TI, the former one is diminishing cadre, one of the feeder categories is ASM as such, there is no dissimilarity in the erstwhile three categories as such merger in no manner has affected any functional requirement or methodology of eligibility and recruitment. This cannot be countenanced. Before initiation of recruitment in ASM/SM pre-requisite are qualifications of graduation and imparting of training P16 which is specialized training then for the post of YM/TI if among other feeder categories a fraction of ASM being the feeder category would not mean that all those YMs and TIs

who are to be merged with ASM/SM only belong to the feeder category of ASM where they are fully equipped and technically skilled persons to shoulder the responsibilities of the merged cadres of ASM/SM. It is very difficult to such a person from others as amongst the merged category there would be other feeder categories from this group who do not possess the requisite qualifications – educational and technical as well as requisite training to be treated at par as ASM or SM. In such an event the recruitment rules for them being different and qualification at variance, merger of such a cadre would bring not only disharmony among the cadres but would be prejudicial to one of the class of ASM/SM.

47. It is relevant to note that being a model employer Government has to be consistent in their policy decisions. If earlier in 1993 the decision to merge three commercial cadres of Parcel, Booking and Goods Clerks has been operated prospectively i.e. those who were in position of the cadre are progressed in their own hierarchy, the new incumbent would be operated by the decision of merger. When such an issue was raised, the respondents in their reply to the representation taken a stand that the concept of multi skilling and making optimum and efficient utilization of existing manpower resources would make two grades merged earlier in 1993 and now in 2003 as non-comparable cannot stand scrutiny of law. It is also with an underline object in 1993 the railways has, in view of multi skilling and

optimum utilization of manpower resources, merged the three cadres yet the alteration of service conditions have not been effected retrospectively i.e. seniority and right of consideration to further promotion for merged cadres by progression in their own cadres had not affected them in any manner prejudicially whereas with the same underline object under the restructuring done not only raised unrest among the merged cadres but a particular cadre of ASM/SM has been effected in a manner that those who had a right of consideration for promotion in the hierarchy of their own cadre either would be demoted or deprived of their promotion. Any differential action, which is neither intelligible nor a reasonable nexus with the object sought to be achieved is certainly in violation of Article 14 of the Constitution of India. The reasons assigned to justify an action would determine the intelligible differentia. If the object sought to be achieved is through multi skilling making optimum and efficient utilization of existing manpower resources then the same holds good for commercial cadres merged in 1993 a different action taken may not be justified. No doubt Article 14 of the Constitution of India would have application if two categories form one class, unequals cannot be treated equally. However, in the matter of administration sine quo non of which is a fair action any deviation from the past without any reasonable basis when all the conditions are similar a differential action would be an invidious

classification as a class of merged categories with progression in their own cadres both commercial categories and those ASM/SM/YM/TI stand on a same footing forming one class for the purpose of their service benefits and such invidious discrimination fails to pass the twin test laid down under Article 14 of the Constitution of India in **D.S. Nakara and Ors. vs. Union of India**, a constitution Bench decision of the Apex Court, 1983 (SCC) 305, following observations are relevant to be quoted:

> "13. The other facet of Article 14 which must be remembered is that it eschews arbitrariness in any form. Article 14 has, therefore, not to be held identical with the doctrine of classification. As was noticed in Maneka Gandhi case in the earliest stages of evolution of the constitutional law, Article 14 came to be identified with the doctrine of classification because the view taken was that Article 14 forbids discrimination and there will be no discrimination where the classification making the differential fulfils the aforementioned two conditions. However, in E.P. Royappa v. State of T.N., it was held that the basic principle which informs both Article 14 and 16 is equality and inhibition against discrimination. This Court further observed as under: (SCC p. 38, para 85)
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> From a positive point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. 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, and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment.

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.

15. Thus the fundamental principle is that Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin test of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question".

48. In so far as contention that the decision taken on 9.10.2003 has been at the apex executive level in consultation with recognized labour federations is not correct. It has been demonstrated on record of the OA that one of the recognized Associations an FIR has already dissented and had raised objections in one of the cases even the General Manager vide its letter dated 7.5.2004 addressed to the Secretary, Railway Board on the representation of All India Station Masters' Association the policy decision is requested to be reviewed. This clearly shows that the respondents have never waived or acquiesced their right to challenge the restructuring.

49. We also find that on merger different entry grades have been considered whereas the seniority which has to be in principle decided inter se will only be applied in grade of Rs. 1400-2600 cannot be workable. As regards medical classification for TIs and YMs, the medical category is A3 whereas for ASM/SM is A2. It is being demonstrated from the records and rules that these categories exist as pre-requisite for appointment to these grades. As such, having different medical classification the merger would not be practicable in any manner. As regards educational qualification, the minimum qualification for ASM/SM is graduation but no minimum qualification is prescribed for YMs/TIs.

50. From para 10.1 of the restructuring, it transpires that the respondents were very much ware about the dissimilarity in functional requirement of the merged cadres. Accordingly, it has been decided on revising percentage distribution of posts to combine seniority on integration the duties responsibilities and once it is decided that each member of the cadre in context with the unified cadre of ASM/SM will have to be equipped with necessary skills and functions through proper training and development it is an indication to the fact that the category of YM/TI were different in all functional requirements and only when they are imparted necessary skills and functions through training and equipped accordingly would come at par with ASM/SM and till that time the decision to continue their own stream for functional requirement is res ipsa loquitor.

51. It is only when these two categories are fully trained and equipped then the unified cadre of ASM/SM for functional requirements would be operational. The medical category, which is a pre-requisite, it is only decided after one is fully equipped after training to hold the post of ASM/SM. In such an event, it is with point of time and stage that the medical category would be examined before that it cannot be doubted that these categories of TIs/YMs do not fulfill the requisite medical category as Madras decision of the Tribunal has not devolved on this issue for want of particulars of the private respondents as to medical category the same now being

reflected and apparent on the record does not leave any doubt in mind that all the cadres merged have different medical standards and without fulfilling the same prematurely these cadres have been unified which has led to administrative chaotic situation.

52. In case of merger, it is only those categories merged which have similarity in all functional requirements. The concept to the administrative law of merging those categories which are distinct with all requirements different and only by existence of some of the feeder categories being the feeder category cannot be a basis to merge the entire cadre as for others the unism would not be functionally identical.

53. Be that as it may, on going through the reply to the representation and the scheme of merger, the other ground of dissimilarity though not discussed but on these discussed grounds the decision of the railways to merge these categories is certainly unconstitutional and has altered the service conditions of the applicants retrospectively without affording an opportunity. No doubt Government as an administrative authority at its discretion and prerogative in the wisdom of policy may lay down any criteria declaring policy decisions, merger or de-merger of the cadres, but while doing so a rational and logical standard has to be maintained. The administrative action when tends to be

based on an unintelligible differentia the decision of the Apex Court in ***Hydro-Electric Employees Union, U.P. & Ors.*** as well as in **Sisir Kumar Mohanty** (supra) where a merger as a policy decision has been interfered on account of different qualification and recruitment process would hold the field.

54. However, as a Tribunal we can hold the action of the Government in a policy decision to be irrational unconstitutional but the only remedy is to remand the case back to the Government for re-consideration in the light of observations made by the Apex Court (supra). It is ultimately the wisdom of the Government acting in consonance with the Constitution of India to re-examine the matter and do the needful which not only reflects their being a model employer but also in the interest of the Government servants keeping in light their service conditions. As progression in society and to bring about effectiveness by policy decision is good but takes a bad shape when it results in a chaotic situation where rather the object underlined to achieve operational success rather leads to discontentment among the government employees through whom as a medium this progression has to be executed in reality.

55. In the result, for the foregoing reasons, all the three OAs are partly allowed and the order passed by the respondents on representation dated 23.7.2004 is set aside. Respondents are directed to re-examine the issue of merger

of these categories and pass a detailed, speaking and reasoned order in the light of our observations, within three months from the date of receipt of the certified copy of this order till then, the merger shall not be further given effect to. Any action taken in the past shall be subject to the decision of the respondents. No costs.

(Shanker Raju)
Member (J)

(V.K.Majotra)
Vice Chairman

31.1.08

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