

(7) (1)

Reserved:

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
THIS THE ¹⁷/₇ DAY OF MAY, 2005
Original Application No. 933 of 2004

CORAM:

HON.MR.JUSTICE S.R.SINGH,V.C.
HON.MR.S.C.CHAUBE, MEMBER(A)

1. P.S. Rajput, s/o Late Lakhan Singh
Working as J.E.-1 (Works) Allahabad
2. A.K. Verma, S/o Raja Ram Verma
Working as J.E-1 (Works), Allahabad.
3. Durga Das, S/o Shri Uma Shanker
Prasad, working as J.E.-1 (Works)
Mirzapur.

All under Administrative Control
of Divisional Railway Manager,
North Central Railway, Allahabad.

.. Applicants

(By Adv: Shri. S.K. Om)

Versus

1. Union of India, through the General
Manager, North Central Railway, Allahabad.
2. The Railway Board, Ministry of Railways
Rail Bhawan, New Delhi, through its Secretary.
3. The Divisional Railway Manager, North
Central Railway, Allahabad.
4. The Sr.Divisional Personnel Officer
North Central Railway, Allahabad.
5. M.M.Meena, S/o Sri H.R. Meena, working as
J.E.I (Works) Fatehpur.
6. Kailas Ram, son of Dev Karan working as
J.E.I (Works) Kanpur.
7. Dharam Pal, S/o Kali Charan, working
as J.E.I (Works) Chunar.

Nos. 5 to 7 under Administrative control
of Divisional Railway Manager, North

Regd

Central Railway, Allahabad.

... Respondents.

(By Adv: Shri A.K.Gaur)

Along with Original Application No. 778 of 2004

1. Mohd. Niyazuddin, S/o Mohd. Qamruddin.
2. P.K.Sharma, son of Shri Gopal Sharma
3. Sarfaraz Ahmed, son of Shri Bashir Ahmed.
4. Mohd. Ahmad son of Shri Murtuza Hussain.
5. S.K.Dubey son of Shri C.N.Dubey
6. Lallan Verma son of Shri Kapil Deo Verma
7. Ajit Kumar Singh son of Shri Ram Singh.
8. Iliyas Ahmad son of Shri Ansar Ahmad
9. Asok Kumar son of Kitas Singh
10. Pankaj Mishra son of Shri M.P. Mishra
11. Jayesh Sharma son of Shri M.L.Sharma

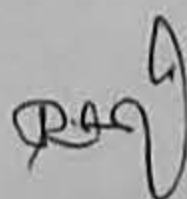
All are working as P.Way Supervisors under the
Divisional Railway Manager, North Central
Railway, Allahabad.

..Applicants.

(By Adv: Shri S.K. Om)

Versus

1. Union of India, through the General Manager,
North Central Railway, Allahabad.
2. The Railway Board, Ministry of Railways,
Rail Bhavan, New Delhi.
3. The Divisional Railway Manager,
North Central Railway, Allahabad.
4. The Sr.Divisional Personnel officer,
North central Railway, Allahabad.
5. Pushpendu Ram, S/o Ram Layak Ram
6. S.C.Meena, S/o P.R.Meena
7. Bobby Kumar, S/o Kishori Lal Sonkar
8. K.K. Meena, S/o B.L. Meena
9. T.R.Meena, S/o R.P. Meena
10. Ram lakhani Meena, S/o B.L. Meena
11. Udit Narain, S/o not known
12. Mukul Kumar, S/o Ram Adhar.
13. Munna Lal, S/o Banshi
14. Rajendra Prasad, S/o Janki prasad
15. Munshi Lal, S/o not known



(8) (3)

All are working as P.Way Supervisors under
D.S.E (Cord), N.C.Railway, Allahabad.

.. Respondents.

(By Adv: Shri A.K. Gaur)

ORDER(Reserved)

JUSTICE S.R.SINGH, V.C.

The common question of law involved in these two original applications is as to whether upgradation of a cadre as a result of restructuring and adjustment of existing staff in the upgraded cadre can be termed to be a promotion attracting the principle of reservation in favour of SC/ST?. The only difference in these two cases is that the applicants in OA No.778/04 are Permanent Way Supervisors in the grade of Rs.4500-7000 which post has been upgraded and redesignated as JE-II(PW) in the grade of Rs. 5000-8000, while the applicants in OA No.933/04 are existing Sub Overseer Mistries in the grade of Rs.5500-9000 and the post has been upgraded and redesignated under restructuring scheme as Section Engineer in the grade of Rs.6500-10000/-.

Learned counsel appearing for the applicants in these cases has submitted that upgradation of post as a result of restructuring and adjustment of the existing staff in the upgraded posts does not involve promotion and hence the principle of reservation in favour of SC/ST candidates would not apply.

For the respondents, on the other hand, it has been submitted that promotion to the upgraded cadre is not automatic and adjustment of existing personnel to the upgraded posts is subject to their suitability being adjudged by following the modified selection procedure according to which the selection would be based on scrutiny of service record and confidential report only and the personnel who do not get promoted to the upgraded post are required, under the scheme, to continue to hold the post in the existing grade

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as it stood before its up gradation. In the circumstances, therefore, proceeds the submissions of the counsel appearing for the respondents, adjustment of the existing personnel in the upgraded post involves promotion and therefore, principle of reservation in favour of SC/ST would apply.

For the applicants reliance has been placed on a two member bench decision of C.A.T. Jaipur Bench in OA No. 313/04 Raj Kumar Gurnani and Ors Vs. Union of India and 7 others connected with certain other original applications. Reliance has also been placed by them on a two member bench decision of CAT, Chandigarh Bench in OA No.124-PB of 2004 Employees Association through its President Kawaljeet Singh and Ors vs. Union of India and another connected with 12 other OAs decided by a common judgment dated 24.11.2004. The Chandigarh bench as also the Jaipur Bench in the cases referred to above have held that the principle of reservation in favour of SC /ST is not attracted in filling up the posts upgraded on account of restructuring scheme. The respondents, on the other hand, have placed reliance on the decision of Jodhpur bench of CAT in OA No. 86/92 (All India Non-scheduled caste/tribes Association (Railway) Bikaner and Ors vs. Union of India and Ors decided on 10.8.1993, the Bombay Bench decision of CAT in the case of Samuel Pal Raj decided on 31.3.1997 and the Lucknow bench decision of the CAT in OA No.46/04 Harish Chandra Vs. General manager etc decided on 26.7.04. besides the Constitution Bench decision of the Supreme Court in R.K. Sabharwal Vs. State of Punjab's case followed in Girdhari Lal Kohli Vs. Union of India & Ors, and the Jabalpur Bench decision of the CAT in Ashok Kumar Srivastava Vs. Union of India & Ors (1987) 4 ATC 385 wherein it has been held that upgradation of all posts in the cadre does not involve selection or promotion and hence policy of reservation would not apply.

(Signature)

We have given our anxious considerations to the questions involved and the submissions made across the bar. A perusal of the Railway Board's letter dated 9.10.03 addressed to the General Managers All India Railways and Production Units would indicate that as a result of review undertaken on the basis of functional, operational and administrative requirements it was decided by the Ministry of Railways, with the approval of the President, that the group 'C' and 'D' categories of staff as indicated in Annexures of the said letter 'should be restructured in accordance with the revised percentages indicated therein'. The letter lays down detailed instructions required to be adhered to in implementing the restructuring. Paragraphs 13(a), 13 (b), 13.1, 13.2 and 14 being relevant to the issue involved herein are quoted below:-

13 (a) Subject to provisions of para 13.2. below, all the posts of Supervisors(erstwhile Mistries) in grade Rs. 4500-7000 + Rs.100 Special Allowance (excluding Sypervisors (P.way) should enbloc be upgraded to the posts of Junior Engineer Gr.II in the pay scale of Rs. 5000-8000 and merged with the respective cadre of Technical Supervisors with its spread effect in higher grades Rs. 5500-9000, 6500-10500 and 7450-11500 as per the revised percentage distribution of posts prescribed for Technical Supervisors in these orders.

13 (b) In case of Supervisor (p.way), the posts being held by the erstwhile PWMs supervising more than one gang upto a maximum of 17.26% of the sanctioned cadre of PWMs shall be upgraded to and merged with the posts of Junior Engineer (P.way) Gr.II in the pay scale of Rs. 5000-8000 with its spread effect in higher grades of JE-1, SE & SSE in grades Rs.5500- 9000, 6500-10500 & 7450-11500 respectively, as per the revised percentages prescribed for Technical Supervisors in these orders.

13.1 The financial implications involved in the upgradation covered by (a) & (b) above should be off set by surrender of posts of

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Supervisors of equivalent monetary value.

13.2

The placement of the existing incumbents will be regulated as per the procedure given below:

(a)

The existing regular incumbents of the posts of Supervisors (including Supervisors/P. Way) will be based on scrutiny of service records and confidential reports only.

(b)

The Supervisors (other than P. Way) who do not get promoted to grade Rs.5000-8000 shall continue to hold the post in the existing grade Rs.4500-7000+ Rs.100 SA as personal To them.

To this extent, the posts upgraded to grade Rs. 4500-7000 + Rs. 100 SA till the existing incumbents vacate the same by way or promotion, retirement etc. On vacation of

the posts, the same shall automatically be operated in grade Rs.5000-8000.

14.

The existing instructions with regard to reservation of SC/ST where ever applicable will continue to apply.

A perusal of the related provisions of the restructuring scheme extracted herein above, would indicate that the posts of Supervisors (erstwhile Mistries) in the grade of Rs.4500-7000 + Rs.100 as Special allowance (excluding Supervisors (P.way) have been enbloc be upgraded to the posts of Junior Engineer Gr.II in the pay scale of Rs.5000-8000 and merged with the respective cadre of Technical Supervisors with its spread effect in higher grades Rs.5500-9000, 6500-10500 & 7450-11500 as per the revised percentage distribution of posts prescribed for Technical Supervisors in these orders. A combined reading of paragraphs 13(a), 13(b) and 14 of the Scheme would, however, make it abundantly clear that though the posts have been upgraded, adjustment of existing staff to the upgraded posts is not automatic. It is to be done on the incumbent being adjudged suitable by following the modified selection procedure according to which the selection will be based on scrutiny of service records and confidential reports

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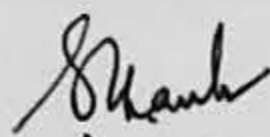
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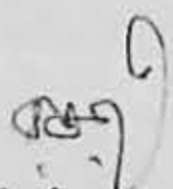
only and the Supervisors(other than Pway) who do not get promoted to grade 5000-8000 shall continue to hold the post in the existing grade Rs.4500-7000 +Rs.100 SA as personal to them. To this extent, the posts upgraded to grade Rs.5000-8000 will be operated in the lower grade Rs.4500-7000 + Rs.100 SA till the existing incumbents vacate the same by way of promotion, retirement etc. On vacation of the posts, the same shall automatically be operated in grade Rs.5000-8000. It cannot, therefore, be held that no element of promotion is involved in the adjustment of the existing staff on the post upgraded as a result of restructuring. Para 14 of the scheme makes it clear that existing instructions with regard to reservation of SC/ST where ever applicable will continue to apply. R.K. Sabharwal's case is an authority on the point that the reservation is to be made post wise and not vacancy wise. These provisions do not appear to have been dealt with by the Chandigarh Bench and Jaipur Bench in the cases relied on by the learned counsel appearing for the applicant. It may be pertinent to observe that the letter No.2004-E(SET-1/49/11, New Delhi dated 10.2.2005 addressed to the General Manager, Northern railway, Baroda House, New Delhi would indicate that though the DOPT vide O.M. dated 25.10.04 has advised not to apply reservation as per the Apex court's order in 'Union of India Vs. V.K. Sirothia but the Railway Board felt that the advice of DOPT has not taken into consideration certain facts and accordingly keeping in view the decision of the Apex court in 'R.K. Sabharwal's case and the one in 'Girdhari Lal Kohli's case and upon regard being had to wider implications of the reservation policy they may take back reference to DOPT and for that purpose, vide their OM dated 28.12.04, they have sought additional information along with the views of the Ministry of Law . The matter, it seems, is still under examination of the Railway Board in consultation with the Ministry of Law and the DOPT. However, the opinion of department may not be binding on the Tribunal and in view of the aforesaid discussion, we are of the view that an authoritative pronouncement by a larger bench is required on the issue involved in this case.

Having regard to the provisions contained in the scheme of restructuring as extracted herein above we are of the view that adjustment of existing staff to the posts

upgraded as a result of restructuring does involve promotion attracting the policy of reservation. But keeping in view the decisions of the co-ordinate benches of CAT Chandigarh and CAT Jaipur bench, we are of the considered view that it would be apt and proper to refer the following question for authoritative decision by larger bench; "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 principle of reservation in favour of SC/ST?"

Accordingly, the Registry is directed to place the papers before Hon'ble the Chairman for constituting a larger bench under Section 26 of the Administrative Tribunals Act, 1985 to answer the question aforesaid and decide these two cases in the light thereof.


Member (A)


Vice Chairman

Dated: May 4, 2005
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