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OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD**

Original Application No.509 of 2005.

Allahabad, this the 05th day of April ,2006.

Hon'ble Mr. K.B.S. Rajan, Member-J
Hon'ble Mr. A.K. Singh, Member-A

Dr. Rubi Majumdar aged about 45 years, D/o late S. Majumdar,
R/o D-36/250, August Kunda, Varanasi.

....Applicant.

(By Advocate : Shri K.K. Misra)

Versus

1. Union of India, through the General Manager, N.E.R., Gorakhpur.
2. D.R.M, N.E.R., Varanasi.
3. Sr. D.P.O., N.E.R., Varanasi.

.....Respondents.

(By Advocate : Shri A.V. Srivastava)

ORDER

BY K.B.S. RAJAN, MEMBER-J

Hitting at the Bull's eyes : In restructuring, two posts of Personal Inspector Grade I (pay scale 6,500 - 10500 were available, one of which went to a general candidate and the other allotted for a reserved category. There was however, no eligible persons in the feeder grade in the reserved category to be considered for that post. The applicant is eligible for general category post and she would have been promoted to the said

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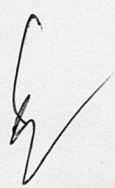
grade in the second post, had the second post been also earmarked for general category.

2. The claim of the applicant is that there is no reservation in the case of up gradation, as the same, as per the Apex Court does not constitute promotion, vide judgment in the case of *Union of India v. V.K. Sirothia*, 1999 SCC (L&S) 938 wherein the Apex Court has held :

2. The finding of the Tribunal that "the so-called promotion as a result of redistribution of posts is not promotion attracting reservation" on the facts of the case, appears to be based on good reasoning. On facts, it is seen that it is a case of upgradation on account of restructuring of the cadres, therefore, the question of reservation will not arise. We do not find any ground to interfere with the order of the Tribunal.

3. In addition, by a recent judgment dated 10-08-2005 of a Full Bench in the case of P.S. Rajput & two others vs Union of India and others, (OA 933/2004) it has been held that there is no reservation in respect of restructuring. The reference made in before the Full Bench and the answer of the Full Bench are as under:-

".....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?

 "The upgradation of the cadre as a result of the restructuring and adjustment of existing staff will not be termed as promotion attracting the principles of



reservation in favour of Scheduled Caste/Scheduled Tribe."

4. The respondents do concede to the above position but have contended that there has been no order from the Railway Board in this regard.

5. Once the Apex Court has laid down the law, the Railway Board has the least say against it. The reasons for delay in implementing the same are not known. It is fairly expected that the Railways would act bonafide and with the expected sense of responsibility and fairness to ensure that the orders of the Tribunal are carried out within a reasonable time.

6. The OA succeeds. Respondents are directed to consider the case of the applicant for positioning her as Personal Inspector Grade I in the scale of Rs 6,500 – 10,500 w.e.f. 01-11-2003 against the second post available as a result of restructuring and pay the arrears of pay and allowances arising out of such positioning. Time calendared for this purpose is three months from the date of communication of this order. No cost.


MEMBER-A


MEMBER-J

GIRISH/-