

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

(17)

ORIGINAL APPLICATION NO. 797 OF 2005

ALLAHABAD THIS THE 01 DAY OF Dec , 2006

HON'BLE DR. K.B.S. RAJAN, J.M.
HON'BLE MR. M. JAYARAMAN, A.M.

1. D. K. Pachauri,
Presently working as Junior Inspector of Tickets
(J.I.T.) At Kanpur, Railway Station.
2. Ramesh Chandra,
Presently working as Junior Inspector of Tickets
(J.I.T) at Tundla Railway Station.
3. Jameel Ahmad,
Presently working as Junior Inspector of Tickets
(J.I.T) at Tundla Railway Station.
4. Z. A. Siddiqui,
Presently working as Junior Inspector of Tickets
(J.I.T) at Allahadad, Railway Station.
5. N. B. Gupta,
Presently working as Junior Inspector of Tickets
(J.I.T) at C.N.B.
6. Riti Ram,
Presently working as Junior Inspector of Tickets
(J.I.T.) at Tundla.

.....Applicants

By Advocate: Shri S. K. Pandey

Versus

1. Union of India
through the Secretary,
Ministry of Railway Board,
New Delhi.
2. The General Manager (N.C.R.), Allahabad.
3. The Divisional Railway Manager (N.C.R.),
Allahabad.

.....Respondents

By Advocate : Shri A. K. Dwivedi

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O R D E RHON'BLE DR. K.B.S. RAJAN, J.M.

A settled matter is sought to be resettled by the respondents in this case and the applicants challenge the same.

2. The brief facts of the case are as under:

- (a) Applicants are Junior Inspector of Tickets (JIT) in the pay scale of Rs.5500-9000 under normal circumstances the promotion is governed by the method of the selection for which requisite specification of two years minimum service in the feeder category is required under the provision of the Railway Establishment Manual.
- (b) With a view to removing stagnation in Group C and D employees the Railway Administration has been issuing policy decision by restructuring by taking under consideration, the total strength of all categories in to one unified cadres, redistribution of the vacancy to avoid stagnation in one part or in one grade and in such process reservation of scheduled castes and S.T. was strictly to be avoided because reservation is already followed to the extent of 15% and 7.5%.
- (c) Restructuring process for upgradation in higher grader had been followed ^{from time to} time on 1.1.1979, 1.10.1980, 1.1.1984 and 1.3.1993.
- (d) Against grant of reservation in restructuring several original applications have been filed in different Tribunals including the Jodhpur Bench in O.A. NO.326/89 as well as Hon'ble Chandigarh Tribunal whereby the aforesaid Tribunal has decided that there is no reservation in upgradation through restructuring process (a) 4.14. Letter dated 25.10.2004 issued by the Government (Annexure

NO.3) referring to S.C. decision V.K. Sirothia also bars such reservation.

- (e) Railway Board by its circular No. P.C.-III/2003/C.R.C/6 dated 9.10.2003 issued its circular for restructuring for certain Group C and D cadres, there is no clear cut instruction for providing reservation policy.
- (f) The Divisional Railway Manager (N.C.R.) wrongly interpreted para 14 of the aforesaid circular and panel list dated 30.6.2004 has been prepared.
- (g) The Hon'ble Supreme Court held in the Civil Appeal NO.3622/95 Union of India Vs. V.K. Sirothia, "the finding of the Tribunal that the so called promotion as a result of redistribution of posts in not promotion attracting reservation on the facts of the case it appears to behest an good reasoning on facts it is deem that it is a case of upgradation on account of interfere with the order of the Tribunal the Civil Appeal is dismissed no costs".
- (h) The Railway Administrative can not be allowed to give double benefit to reserved category employee i.e. by granting benefit of reservation in the basic cadres before the restructuring and granting reservation in the restructured cadres ignoring the facts that such reserved category did get reservation in the lower cadres of the cadres prior to restructuring and they can not by given double benefit".

3. The respondents' contentions are as under:

"(a) This Hon'ble Tribunal in Full Bench judgment dated 10.08.2005 has held that 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

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Scheduled Caste/Scheduled Tribe vide full Bench judgment dated 10.08.2005.

(b) The policy of reservation has been incorporated in the cadre restructuring scheme as per constitutional mandate. It is further submitted that the scheme of cadre restructuring is an exception to the general rule under service jurisprudence and is meant to remove the stagnation of staff in various grades and it is undertaken periodically and no specific provisions of Indian Railway Establishment Manual or any Labour Law are involved. The general principles of resemblances are taken care of in such scheme and care is taken that the over all staff cadre is benefited.

4. Arguments were heard. The counsel for the applicant submitted that when the Division Bench of various Benches of the Tribunal have held that there cannot be any reservation in respect of restructuring, when the Full Bench has held that such reservation cannot be provided for in restructuring, when the Apex Court has held that reservation is not permissible in restructuring, and when the Railway Board were advised by the Ministry of Personnel, on the basis of the law laid down by the Apex Court vide order dated 25-10-2004 to implement the orders of the Apex Court, there is no scope at all for the D.R.M. NCR to afford reservation in matter of restructuring and as such, the impugned order dated 30-06-2004 is a flagrant violation of the directive of the Apex Court and as such the same is liable to be quashed and set aside and the respondents should be directed to strictly adhere to the law laid down by the Apex court in the case of Sirothia(supra) and duly followed by the Full Bench and ensure that the promotion under restructuring does not provide for any reservation. Para 14 of the order dated 09-10-2003, the counsel argued, is liable to be held as illegal and hence quashed and set aside.

(16)

5. The counsel for the respondents has submitted that there is no illegality in the said provision and reservation.

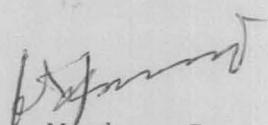
6. There is full substance in the contention of the counsel for the applicant. There is a full admission in the counter as extracted above that in matter of restructuring, the same ~~does~~ ^{shall} not be termed as promotion attracting reservation. Thus, the impugned order cannot be legally sustainable.

7. OA thus, fully succeeds. It is declared that para 14 of the order dated 09-10-2003 is quashed and set aside. Order dated 30-06-2004 passed by DRM (impugned in the OA) is also held totally illegal and hence quashed and set aside. The respondents are directed to pass fresh order of promotion without affording any concession of reservation. It may be possible that some of the general candidates who were entitled to be considered for such promotion under the restructuring scheme would have, by virtue of wrong decision by the Railways in affording reservation, been deprived of their promotion and in such cases perhaps such deprived candidates would not have undergone the selection process so far. In such cases, the respondents shall undertake necessary selection process and on being found suitable under the modified selection procedure, these should also be promoted. This process shall be commenced within a period of one month from the date of receipt of certified copy of this order and concluded within a period of two months thereafter. If the applicants are also the beneficiaries of the scheme, they shall be duly considered as stated above.

No cost.



Member-A



Member-J