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RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 414 of 1987

N.K. Saini & others Applicants.

Versus

The Director General, RDSO, & others Respondents.

Connected with

Registration (O.A.) No. 468 of 1987

N.K. Verma Applicant.

Versus

Director General, RDSO, Lucknow & others ... Respondents.

Connected with

Registration (O.A.) No. 432 of 1987

M.L. Jhamb & others Applicants.

Versus

Director General, RDSO, Lucknow & others ... Respondents.

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Hon'ble Ajay Johri, A.M.
Hon'ble G.S. Sharma, J.M.

(Delivered by Hon. Ajay Johri, A.M.)

In these applications received under Section 19 of the Administrative Tribunals Act XIII of 1985, a common question of law is involved, hence these are being dealt with under a single judgment.

2. The applicants in all these applications are Senior Design Assistants (SDA) working in the Research Designs & Standards Organisation (RDSO) of the Indian Railways at Lucknow. Some of them are working as Chief Design Assistants (CDA) in the various Directorates of RDSO on ad hoc basis. They have by these applications challenged the order No.389 of 1985, dated 20.9.1985 and Order No.424 of 1986, dated 28.10.1986 promoting reserved community candidates on the basis of reservation in the restructured posts

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giving effect to the orders with effect from 1.7.1985. They have sought relief of setting aside these orders and issue of direction to the respondents to make promotions in accordance with law laid down in Registration (O.A.) No. 385 of 1986, V.K. Sirothia v. Union of India.

3. The facts of these cases are that on 3.7.1985 the Railway Board issued orders regarding restructuring of the posts of Scientific Staff in RDSO. By these orders the posts of Scientific Staff in RDSO were restructured on percentage basis - 60% being put in CDAs grade and 40% in SDA's grade. This restructuring came into force with effect from 1.7.1985. In terms of instruction issued by the Railway Board vide their letter No.E(P&A)II/83/RS.8 of 2.8.1983, where the restructuring resulted in upgradation of certain posts reservation will not apply but if it resulted in creation of additional posts it would be applicable. There were originally 29 posts of CDAs and 80 posts of SDAs. The restructuring changed these proportions to 65 posts of CDAs and 44 posts of SDAs, ~~The restructuring changed~~ thus putting 36 posts of SDAs in the grade of CDAs. Orders promoting SDA's were issued ^{at} various times and reservation roster was applied promoting certain junior SC/ST officers, some of whom had not completed 3 years service on the crucial date. The applicants represented against the promotion of the juniors. They relied on the judgment given by this Bench on 1.10.1986 in Registration (O.A.) No. 384 of 1986, V.K. Sirothia v. Union of India, as they felt that their case was similar to the case of the petitioners in the relied on case.

4. The private respondents 2 to 4 while opposing this application have said that the claims of the applicants are hypothetical, wishful and illegal. According to them respondents 2 and 3 have been duly selected and approved for promotion as CDAs and respondent no.4 has worked for a period in excess of the minimum prescribed period for ad hoc promotion. They belong to Scheduled

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Castes and have been promoted against reservation points of the 40 point roster in terms of Railway Board's orders vide No.E(SCT) 64 CM 1 5/1 of 16.1.1964 as revised by their letter of 29.4.1970. For promotion within class III the rules lay down that in non-safety categories the number of candidates called will be 3 times the number of vacancies and upto two grades below the grade of selection. They have further said that as a result of restructuring the total posts were redistributed in grades of CDAs and SDAs and a total of 36 additional posts were created in the grade of CDAs. There is reservation for SCs/STs in these posts as these are only partial upgradation and the Railway Board's instructions lay this out clearly. According to them it is not enmasse upgradation and this Tribunal has no jurisdiction to make any special provision or grant exemption to the applicants. Only 36 posts have been upgraded and they cannot be said to be enmasse. They further claim ^{that} ~~that~~ ad hoc working for a long period without any break is regular service. Ad hoc arrangement does not exist beyond 6 months. ^{Those} working in excess of 18 months become regular. The reservation is available on vacancies/posts/grades. For these 36 posts the roster will apply as these are additional posts. In such cases seniority is not material. They have alleged that the claims of the applicants are a naked practice of untouchability and is ^{an effort} ~~an effort~~ to prevent them from getting their due and they and others concerned will prosecute the applicants separately before lawful authorities against their commission of criminal offences under the law of the land. They have further said that the judgment in Sirothia's case (supra) has no application to this case because in RDSO the cadre restructuring has been done in 1986 and the ^{view} ~~view~~ held by this Tribunal that reservation is not-applicable where it is mass upgradation is repugnant to the statutory rules and not supported by any rules, and the exercise in para 6 of the judgment does not have any backing of rules. There has been only partial upgradation of the cadre and it is neither

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mass upgradation nor enmasse upgradation. That in defining "mass upgradation" the Tribunal has reached illegal conclusion. The scheme of Cadre Restructuring was not aimed to provide relief to the stagnated staff. According to the respondents these are additional posts and reservation should be applicable to this upgradation.

5. This application has^{31/ abc} been opposed by the Government respondent. They have said that there are four inter-related Articles in the Constitution of India which govern^{31/} the principles of reservation. Article 335 lays down that the claim of the members of the Scheduled Castes and Scheduled Tribes shall be taken into consideration consistently with the maintenance of efficiency of administration in the making of appointments to services and posts in connection with the affairs of the Union or of a State. Article 16(i) lays down that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Article 16(4) lays down that nothing in this Article shall prevent the State from making any provision for the reservation^{31/ in} of appointments^{31/} or posts in favour of any backward class of citizens which in the opinion of the State is not adequately represented in the services under the State, and Article 46 which lays down that the State shall promote with special care the educational and economic interests of the weaker sections of the people and in particular of the Scheduled Castes and Scheduled Tribes and shall protect them from social injustice and all forms of exploitation. Thus the Government has an obligation to provide SCs/STs with equal opportunities of employment by way of reservation. The word 'appointment' covers not only the appointments made by direct recruitment but also appointment by other^{31/} various methods, i.e. promotion, deputation, transfer, etc. According to them at present the principle of reservation is confined to posts filled by the method of direct recruitment and promotion only. It is within the competence of the Government to decide in which type of appointments the reservation would apply. In the case of General Manager, Southern

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Railway v. Rangachari (1962 (2) SCR 586) and the case of C.A. Rajendran v. Union of India and others (1986 (1) SCR 721) the competence of the Government to introduce or to withdraw the principles of reservation in different types of appointments by a review of the position has been recognised. So the Government reviews the position from time to time taking into account the over all position and introduces and withdraws reservation in respect of various groups and classes of posts. They have further said that once the Government has decided, on the basis of review, the reservation has to be provided irrespective of whether SCs/STs are already duly represented or not. The reservation was first introduced in direct recruitment in 1950 but the post connected with Scientific Research, etc. and promotional appointments were kept out of the pervue of the reservation then thereafter in 1957 reservation was extended to certain types of posts filled by promotion on the basis of departmental competition examination. In 1959 reservation was extended to certain other types of posts filled by promotion on the basis of selection. It was these orders of 1959 which were challenged by Rangachari in the Madras High Court. The Madras High Court upheld the contention of Rangachari. On an appeal to the Supreme Court it was held that the Government had the right to extend the principles of reservation in appointments made by promotion also. In 1963 the Government withdrew reservation in class I and class II posts filled by promotion through competition, selection, etc. but introduced it in the selection post in class III and IV services of all departments of the Railway. The respondents ^{go on to} ~~continued~~ to say that in 1972 the Government of India reviewed the position of representation of SCs/STs in posts filled by promotion on the basis of seniority-cum-suitability and rules were introduced in November, 1972 providing reservation in this category as well.

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In 1974 the principle of reservation was further extended to the lowest rung of class I and class II posts filled by promotion. These instructions on reservation have been held valid in the judgment delivered by the Hon'ble Supreme Court in the case of Akhil Bharatiya Soshit Karamchari Sangh v. Union of India (AIR 1981 S.C. 298). The respondents further said that on 2.8.1983 they clarified that where cadre restructuring resulted in en masse upgradation of posts the question of providing reservation will not arise, but where partial upgradation on the basis of percentage distribution was made existing rules will apply against the additional number of higher grade posts which became available as a result of the restructuring. "En masse", according to the respondents, has been defined in the Oxford Dictionary as "in a mass; all together" and the words has been used in this ^{of sense} ~~sense~~. In such a situation all the incumbents in the lower grade irrespective of whether they belonged to reserved or unreserved community get promoted and since reservation has already been provided in the lower grade there would be no necessity to provide the same in the higher grade. In partial upgradation the restructuring of cadres assumes the character of promotion with all attendant features of promotion such as increase in the emoluments of those promoted to the upgraded posts and the competition of capturing the limited number of posts by a larger number of SC/ST generally remaining at the end of the seniority list. So if SC/STs are to be given a share in the upgraded post which are to be filled by the method of promotion reservation has to be resorted to. The respondents ^{so further} ~~continued~~ to say that the primary objective of upgradation is betterment of chances of promotion and removal of stagnation and this is equally applicable to SC/ST, who cannot normally avail himself of these chances without being propped up by reservation. According to the respondents the Ministry of Railways restructure the cadres at intervals and all the posts in the lower grade are never upgraded. Only

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a limited number of posts are upgraded. Therefore, all the incumbents cannot be accommodated. The filling up vacancies assuming the character of promotion reservation comes into play as per extent instructions. In this application most of the staff were stagnated due to non-availability of the next higher grade for further promotion and to remove this stagnation the restructuring was ordered by the letter of 3.7.1985. Therefore, 36 posts of SDAs were upgraded as CDAs. Apart from these 36 posts there were 4 vacancies as on 1.7.1985 in CDA grade thus making a total of 40 posts. According to them the position before upgradation and after upgradation in respect of strength of reserved community candidates was that out of 65 CDAs 6 belong²⁴ to reserved community and out of 44 SDAs 3 belong³⁴ to the reserved community and since reservation had to be applied 3 SC candidates who were working as SDAs were considered fit and promoted as CDAs. These 3 are included in the strength of 6. Prior to this upgradation when the strength was 29 for CDA and 80 for SDA the reservation of SC/ST candidates against CDA posts was 3 and against SDAs post 6. ³⁹ They ~~they~~ have said that respondents 2 & 3 have already been promoted against the upgraded post of CDA while respondent no.4 has not yet been promoted. They have also referred to the Railway Board's letter of 2.8.1983 laying down that in en masse upgradation no reservation was to be applied but in partial upgradation reservation shall apply and since this was only partial upgradation reservation was correctly applied by them³⁴. In regard to the Railway Board's letter of 19.2.1987 they have said that it is not applicable in this case because these restructuring orders were issued on 3.7.1985. In regard to the minimum condition of 3 years of service they have said that no-doubt there is such a provision but the Director General, RDSO, can relax the condition and since the action taken by the answering respondents ³⁴ as was ¹ per extent rules they have concluded that the application is devoid of merit and there are no grounds for interference by this Tribunal.

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6. In ^{the} reply to the application by the Additional General Secretary of the All India SC/ST Railway Employees Association, who were permitted to be impleaded as one of the respondents, the main points brought out are that the applicants have not exhausted the remedies available under Section 21 of the Act as they had not sought departmental remedy. The upgradation of posts ^{as was done} ~~was done~~ as a result of cadre restructuring but all the posts of CDAs which were to be filled did not pertain to upgradation. According to them it is irrelevant whether the number of posts of the two categories, i.e. SDAs and CDAs remains the same. The reservation rule applies on posts, vacancies and categories, hence the rules will apply on the new post of CDAs which were created after restructuring. These promotions were to be controlled by the 40 point roster and the promotions of respondents 2 & 3 have been made in accordance with this roster and even respondent no.4 can be promoted against the last vacancy as he has worked in the post in excess of 18 months and, therefore, he is entitled to his promotion to the post of CDA. According to respondent no.5 the judgment in the case of V.K. Sirothia has no application in this case. According to them the basis taken in deciding the Sirothia's case was incorrect as in this upgradation there is no en masse upgradation but only partial upgradation. Respondent no.5 has further said in the reply that respondent no.1 has always been unfair towards SCs/STs and their legitimate benefits and has acted ³ ~~partially~~ and arbitrarily against them and appointment of reserved community candidates against reserve points on the basis of 40 points roster has not been made despite the eligible departmental reserved community candidates being available.

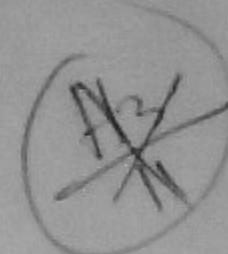
7. In their replication the applicants have said that reservation to the extent of 15% for SC and 7 1/2% for ST community is allowed. To enforce these provisions the Railway Board has been issuing instructions from time to time. According to them a stage

has now been reached when the Union of India must review the over all position and should strike down the provisions where the reservation is being misused. They have also ^{reiterated} ~~reiterated~~ the applicability of V.K. Sirothia's case in their favour and that there are no additional posts. The post which have been given benefit are only as a result of upgradation and according to them no reservation should be granted against upgraded posts.

3/ 8. We have heard the learned counsel for the parties. The learned counsel for the applicants relied on the case of Dr.A.K. Srivastava v. Union of India (1987 (3) ATC 385), a case decided by the Jabalpur Bench of this Tribunal and the case of V.K. Sirothia v. Union of India (Registration (O.A.) No. 384 of 1986), a case decided by this Bench of the Tribunal. His main contention was that respondents 2 & 3 have been incorrectly promoted and that there should be no reservation in posts which have been upgraded due to restructuring. In one of the other two cases being Registration (O.A.) No.468 of 1987, N.K. Verma v. Union of India and others, respondent no.3, who was promoted has since died and in Registration (O.A.) No. 432 of 1987, M.L. Jhamb and others v. Director General RDSO, Lucknow, there is no private respondent, therefore, according to him the only question involved was the incorrect promotion of respondents 2 & 3 in Registration (O.A.) No. 414 of 1987, N.K. Saini & others v. Director General, RDSO, Lucknow & others. Sri A.V. Srivastava, learned counsel for the respondents submitted that since this was only partial upgradation, therefore, in terms of the Railway Board's letter of 2.8.1983 reservation would apply in the case of these promotions and that once the required percentage is reached in the posts that are for CDA & SDA groups the roster will naturally not apply. Sri Ghairana, learned counsel for the private respondents opposed the application and contended that it was not en masse upgradation and, therefore, reservation had to be applied to these posts. He has relied on the case of Yashvir Singh v. Union of India (1987 (3) S.L.J. 233).

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9. In Dr. A.K. Srivastava's case, which was decided by the Jabalpur Bench of this Tribunal, the ~~advice~~³ challenged² to the impugned order was on the ground that when a cadre restructuring takes place and not only mass upgradation has occurred but all the post of ADMOs are upgraded and replaced by an equal number of post in the higher grade then no promotion takes place and there are no fresh appointments and, therefore, reservation orders are simply not applicable. It was this challenge that was examined by the Jabalpur Bench. The Jabalpur Bench has also relied on the decision given by this Bench in Registration (O.A.) No. 384 of 1986, V.K. Sirothia v. Union of India and on the case of N.G. Prabhu v. Chief Justice, Kerala, (1973 (2) SLR 251. On the basis of these judgments it was argued that such mass upgradation does not tantamount to a promotion. It is automatic elevation to a better pay scale and so the policy of reservation cannot be applied where no fresh appointments are involved nor promotions are made as the reservation policy is applicable only to fresh appointments and later on it was introduced to the promotional posts also. The Railway Board's letter of 2.8.1983 dealing with en masse upgradation states that where cadre restructuring results in en masse upgradation reservation would not be applicable. The Jabalpur Bench, therefore, was of view that the mass upgradation of ADMOs to the exactly equivalent number of post in the higher grade is a case of ³¹ ~~there~~¹ being simply placed in the higher scale and no selection was involved and cannot be considered to involve any process of promotion or fresh appointment. In the Full Bench decision of the Kerala High Court in N.G. Prabhu's case it was held that if the upgradation relates to all the post in a category naturally there is no sense in calling it a promotion of all the persons in that category. Parties continue to hold the same posts but get a higher scale of pay. The Full Bench further observed that it may be that it is not all the post in a particular category that are so upgraded but only



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a part of it. Normally the benefit of such upgradation would go to the seniors in the category. They would automatically get a higher scale of pay because though their posts³⁴ continue in the same category a higher scale of pay is fixed for those posts. It was further said that it was, therefore, appropriate to say that the seniors have been nominated to the higher grade which has been so created by upgradation and the phenomenon does not differ from the case where all the posts are upgraded and, therefore, they concluded that it cannot be said that those who get the higher ~~grade have been promoted because here again there was no question of appointment from one post to another. They continue to hold the same post.~~³⁵

10. In V.K. Sirothia's case this Bench has held that the restructuring of posts was done to provide relief in terms of promotional avenues. No additional posts were created. Some posts out of existing total were placed in higher grade to provide these avenues to the staff who were stagnating. The placement of these posts could not, therefore, be termed as creation of additional posts. We had held that there were definite number of posts and the total remained the same. The only difference was that some of these ~~were~~³⁶ ~~now placed~~ in a higher grade. We had further said that upgradation of cadre by distribution of post will lose its primary objective if it is taken ³⁷ ~~as~~ ^{as} generation of additional posts in the upgraded posts which it rightly was not. The keynote thought behind the exercise, we continued to observe, was the improve prospects, remove stagnation and provide avenues.

11. Relying on the above two cases the Jabalpur Bench were of the view that in the case of upgradation of ADMOs neither selection nor promotion was involved. It was simply nomination or placing the seniors to the upgraded post with better pay scale on the basis of seniority subject to suitability and it did not amount

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to fresh appointment by promotion and the person so nominated did not leave behind vacant their earlier posts.

12. In the instant case these ingredients are very much present. It has been said by the Government respondents that in partial upgradation the restructuring of cadres assumes that the promotion with all attended feature of promotion such as increase in the emoluments of those promoted to the upgraded post and due share in the upgraded post has to be given to the reserved community candidates. They have gone on to say that the primary objective of upgradation is better chance of promotion and removal of stagnation and since this is equally applicable to SC/ST candidates who cannot normally avail themselves of this chance without being proped up by reservation. According to the Government respondents the Ministry of Railways restructures the cadres at intervals and all the posts are never upgraded, only a limited number of ~~upgraded~~ posts were upgraded. Therefore, all the incumbents cannot be accommodated and the filling up of vacancies assumes the character of promotion which brings reservation into play. They have further said that in this application most of the staff were stagnated due to nonavailability of the next higher grade for further promotion and to remove this stagnation restructuring was ordered.

13. One thing is very clear and that is that once the Government takes a decision to restructure a cadre to relieve stagnation and to provide better chances of promotion to those who constitute the cadre it cannot result in creation of new posts. As was rightly observed by the Full Bench of the Kerala High Court this phenomenon of partial upgradation does not differ from the case where all the posts were upgraded. The philosophy behind upgradation being that of removal of stagnation. Stagnation can only be at the senior ³¹ level ³¹ *on the basis of length of service in the grade* where persons have reached or equally reached the maximum of the grade and start stagnating without getting any further increments. We are, therefore, of view that in upgradation a promotion is not involved at all. It is only giving a higher scale of pay to

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the incumbents of the posts without creation of additional posts as the total number of post in the cadre does not change and no vacancies are created. ³¹ ~~and~~ Therefore, there will not be in the ³¹ ~~literal~~ ^{literal} sense any promotion. It is fitting of the senior people in the new scales of pay by the process of seniority-cum-fitness.

14. In the case of State of Punjab v. Hira Lal and others, (AIR 1971 S.C. 1777) the Hon'ble Supreme Court had made the following observations :

"The mere fact that the reservation made may give extensive benefits to some of the persons who have the benefit of reservation does not by itself make the reservation bad. The length of the leap ³² to be provided depends upon the gap to be covered."

The Hon'ble Supreme Court had further observed :

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"It is true that every reservation under Article 16(4) does introduce an element of discrimination particularly when the question of promotion arises. It is an ³² ~~inevitable~~ ^{inevitable} consequence of any reservation of posts that junior officers are allowed to take a march over their seniors. This circumstance is bound to displease the senior officers. It may also be that some of them will get frustrated but then the Constitution makers have thought fit in the interests of the society as a whole that the backward class of citizens of this country should be afforded certain protection as observed by this Court in A. Peeriakaruppan etc. v. State of Tamil Nadu, (AIR 1971 NSC 171)."

15. We will like to emphasise that there is absolutely no dispute and the law is also very clear that in matters of promotion reservation would apply but the point is whether upgradation is promotion at all and we answer this in the negative. Upgradation is not a promotion and, therefore, if it is not a promotion the application of the roster in the case of upgradation as applied in the case of promotions would be incorrect. Upgradation whether en masse or partial is fitting of certain number of posts in the higher grade to remove stagnation and this benefit should go to those, who are suffering and not to those, who are very much junior, perhaps not even completed the minimum period of service required for promotion but who can take the advantage if reservation is applied, when in fact it should not be.



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16. The provisions contained in Article 16(4) of the Constitution were not in itself a fundamental right and it is open to the Government to withdraw the benefit or to continue it. The Hon'ble Supreme Court in the case of G.A. Rajendran v. Union of India and others, (AIR 1968 S.C. 507) had observed that Article 16(4) does not confer any right and there is no constitutional duty imposed on the Government to make a reservation either at the initial stage or at the stage of promotion. It is an enabling provision and confers a discretionary power on the State. His Lordship, Hon. Iyer, J. had, in the case of Akhil Bharatiya Soshit Karamchhari Sangh v. Union of India & others, (1980 SLJ 734), observed that the ~~Government~~ court functions under the constitution, and not-over it, interprets the constitution, not amends it, implements its provisions, not disputes it through personal philosophy projected as constitutional construction. Objective termed to constitutional wavelengths is court's functions and if-only it-constitutional guarantees have clearly been violated will the court declare as non'est such governmental projects as go beyond the mandates. If on a reasonable construction, the Administration's special provisions under Article 16(4) exceed the constitutional limits, it is the duty of the court to strike dead such projects. He further observed that even so while viewing the legal issues, judges should not forget what is elementary that law cannot do it alone but must function as a member of the sociological ensemble of disciplines. The Railway Board's letter of 2.8.1983 actually talks of no reservation in en masse upgradation while in partial upgradation of a cadre on the basis of percentage distribution it provides for the application of the rules governing reservation as the Board interpreted that such upgradation will give additional number of higher grade posts. This logic would not seem to be correct. We have already observed that if there are no additional posts created in en masse upgradation the adoption of the concept that in partial upgradation additional post get created would be

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wrong & fallacious. Upgradation cannot mean and does not mean the creation of additional posts. It is placing certain number of posts into the higher grade. If there was a creation of certain number of posts the total number of posts must have correspondingly increased but that does not happen. Therefore, we have no hesitation ^{to say} ~~that~~ ^{in ~~calling~~ ~~the~~ ~~clause~~} the clause in regard to application of reservation against the additional number of higher grade posts which become available as a result of cadre restructuring in Board's letter of ^{is uncalled for & against principles of upgradation} 2.8.1983. This qualification made by the Railway Board in their letter was uncalled for and is not in consonance with the aims and objects of the philosophy of upgradation and restructuring.

17. Article 16(1) of the Constitution speaks of equality of opportunity in matters relating to employment and promotion depends upon availability of vacancies by either a process of attrition or creation of additional posts. Therefore, if there is a group of persons available in a particular cadre a classification in this group amongst those who are seeking their further advancement to remove their stagnation will not have the same nexus as a classification when a promotion in the real term of work is involved and Article 16(4) comes into play.

18. In the case of Yashbir Singh & others v. Union of India & others, (1987 (3) SLJ 231), which has been relied upon by Sri Ghairana, learned counsel for the private respondents, the Hon'ble Supreme Court had decided that en masse upgradation was not a promotion. There is no dispute about this aspect. In our view not only en masse but any upgradation is no promotion and, therefore, the rules for reservation as in the case of promotions, will not be applicable to such upgradations.

19. The private respondents have commented on our judgment given in V.K. Sirothia's case. They have said that our views are not supported by rules and they have no backing of the rules and that we have reached illegal conclusions. Respondent no.5 has also similarly orchestrated. It may not be necessary to say that if the

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findings in Sirothia's case are incorrect the remedy is to go in appeal. In the words of His Lordship, Krishna Iyer, J. "judicial expansionism, like allowing the judicial sword to rust in its armoury where it needs to be used, can upset, Constitutional symmetry and damage the constitutional design of our founding documents". We cannot subscribe to the view that upgradation in fact is promotion.

20. In the words of Lord Denning "Law does not stand still. It moves continually. Once this is recognised then the task of the Judge is put on a higher plane. He must consciously seek to mould the law to serve the people and needs of the time. He must not be mere mechanic, a mere working mason, laying brick or brick without thought to the overall design".

21. In this case private respondents 2 & 3 were promoted by applying the roster point considering the upgradation as promotion. We have negated this conclusion. If no extra posts are created and no vacancies caused by movement of persons upwards and if it involves putting certain number of posts in the higher grade to relieve stagnation in respect of those who have reached near the maximum of the scale it cannot be a promotion in the literal sense of the word, whether upgradation is en masse or not, and no benefit would be available to those promoted on erroneous assumption that it was promotion. So the promotions of respondents 2 & 3 cannot be sustained and only the rightful incumbents have to be given the upgraded post.

22. In Registration (O.A.) No. 468 of 1987 opposite party no.3 who was promoted on 24.9.1986 with effect from 1.7.1985 has unfortunately died. So there remains none to be replaced.

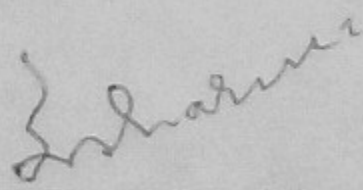
23. In Registration No.432 of 1987 the post of CDA has not been filled yet and the respondents were proposing to fill the posts by holding a selection and calling there in certain reserved community candidates from two grades below and the prayer made is that

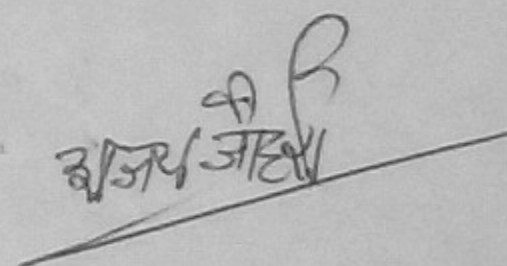
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the promotion be made from amongst the senior-most of the SDAs without holding a departmental selection.

24. CDA's post are selection posts, but when there upgraded posts are to be filled the principle of seniority subject to rejection of the unfit has to be applied. Under the circumstances holding of selections where 4x or 3x formula is followed will evidently not be proper and cannot be adopted as a procedure for filling up the upgraded post.

25. On the above considerations we allow this application and direct that the applicants will be considered for being put against these upgraded posts in accordance with the rule-seniority subject to rejection of the unfit-and no reservation will be applicable on these posts. Persons wrongly promoted will stand reverted but no recoveries be made from them for overpayments ^{& made} during the period they have officiated. The applicants would be provided proforma fixation with effect from the dates they should have been actually promoted i.e. 1.7.1985. They will not be entitled to any arrears on this account. The application is disposed of accordingly with no order as to costs.


MEMBER (J).


MEMBER (A).

Dated: May 3/8, 1988.

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