

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

ALLAHABAD.

Original Applications No. 304 of 1992,
527 of 1994, 696 of 1994 and 962 of 1994
Civil Contempt Applications No. 95 of 1994
and 138 of 1994

Allahabad this the 30th day of April 1996

Hon'ble Dr. R.K. Saxena, Member { Jud. }
Hon'ble Mr. D.S. Bawej, Member { Admn. }

Original Application No. 304/92

1. Akhil Bhartiya Soshit Karmchari Sangh through its Secretary Sri M.K. Chaturvedi, A/a 35 years, S/o Sri H.P. Chaturvedi, R/o 291/B, New Model Railway Colony, Izzat Nagar, Bareilly.
2. R.S. Bisnoi, D.S.K. II, A/a 56 years, S/o Sri Ram Saran Vishnoi, R/o C-459, Rajendra Nagar, Bareilly.

APPLICANTS.

By Advocate Sri T.S. Pandey.

Vs.

1. Union of India through the General Manager, N.E. Railway, Gorakhpur.
2. Divisional Railway Manager, N.E. Railway, Izzat Nagar, Division, Bareilly.
3. Chief Personnel Officer, N.E. Railway, Gorakhpur.
4. Cheif Works Manager, N.E. Railway, Izzat Nagar, Bareilly.
5. Divisional Controllers of Stores, N.E. Railway, Izzat Nagar, Bareilly.
6. A.S. Rana, D.S.K. Ist, C/o D.C.O.S., N.E. Railway, Izzat Nagar, Bareilly.

RESPONDENTS.

By Advocate Sri V.K. Goel

Original Application No. 527 of 1994

1. A.K. Srivastava S/o Late Rameshwar Prasad Lal, R/o Quarter No. 544 A Gaya Colony, Mughalsarai, District Varanasi.
2. J.N. Prasad S/o Sri Jagdish Prasad, R/o Quarter No. 1033 AB, Gaya Colony, Mughalsarai, Varanasi.
3. J.K. Singh, S/o Late R.P. Singh R/o New Shastri Colony, Quarter No. 1186 AB, Mughalsarai, Varanasi.
4. B.K. Singh, S/o Late B.P. Singh, R/o Quarter No. 751 B, New Central Colony, Mughalsarai, Distt. Varanasi.

APPLICANT

APPLICANTS.

By Advocate Sri T.S. Pandey

Vs.

1. Union of India through General Manager, Eastern Railway, Calcutta
2. Divisional Railway Manager, Eastern Railway, Mughalsarai, Varanasi.
3. Senior Div. Personal Officer, Eastern Railway, Mughalsarai, Varanasi.
4. S.D. Prasad, Passenger (Guard), Mughalsarai, Varanasi.
5. Vikram Ram, Passenger Guard, Mughalsarai, Varanasi.
6. E. Hembrum, Passenger Guard, Eastern Railway, Mughalsarai, Varanasi.

RESPONDENTS.

By Advocate Sri A.K. Gaur &
Sri S.K. Misra.

Original Application No. 696/94

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1. All Indian Non S.C./S.T. Association Kota Divisiona, Western Railway through its Secretary (Divisional) Sri Raj Kumar Thakur, A/a 28 years, S/o Sri Ram Prasad, R/o House No.201, Tadwada, Kota.
- 2.9 Ashok Sharma, A/a 37 years, S/o Sri J.P. Sharma, R/o T 227/C, Railway Hospital Compound, Eedgah, Agra (Senior Goods Clerk).

APPLICANTS.

By Advocate Sri T.S. Pandey

Vs.

1. Union of India through Secretary, Ministry of Railways, Parliament Street, New Delhi.
2. General Manager, Western Railway, Church Gate, Bombay-20.
3. Divisional Railway Manager, Western Railway, Kota
4. Senior Divisional Personnel Officer, Western Railway, C/o D.R.M. Office, Kota.

RESPONDENTS.

By Advocate Sri G.P. Agrawal.

&

Original Application No. 962 of 1994

1. R.K. Singh, A/a 56 years, S/o Late Sheoden Singh, R/o Kali Mohal, Chaturbhujpur, Moghal Sarai, Varanasi, Guard Passenger, Eastern Railway, Maghal Sarai, Varanasi.
2. D.N. Singh Yadava, A/a 41 years, S/o Sri Deoraj Singh Yadava, R/o Village and Post Deoria, Distt. Ghajipur, Guard Passenger, Eastern Railway, Maghal Sarai, Varanasi.

APPLICANTS.

By Advocate Sri T.S. Pandey.

Vs.

1. Union of India through Secretary Railways

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Parliament Street, Ministry of Railway, New Delhi.

2. General Manager, Eastern Railway, Fairly Place, Calcutta.
3. Divisional Railway Manager, Eastern Railway, Moghal Sarai, Varanasi.
4. Senior Divisional Personnel Officer, Eastern Railway, Moghal Sarai, Varanasi.
5. Sri Ranjan Kumar, Guard Passenger, Eastern Railway, Moghal Sarai, Varanasi.

RESPONDENTS.

RESPONDENTS.

By Advocates Sri S.K. Ley,
Sri S.K. Misra,

&

Civil Contempt Application No. 95 of 1994

IN

IN

Original Application No. 304 of 1992

Akhil Bhartiya Shoshit Karmchari Sangh through
its Secretary, Sri M.K. Chaturvedi.

APPLICANT

By Advocate Sri T.S. Pandey.

Vs.

1. V.K.Garg, Divisional Railway Manager, Northern-Eastern Railway, Izzat Nagar, Division, Bareilly.
2. Anjani Kumar, Distt. Controller of Stores, Northern-Eastern Railway, Izzat Nagar, Division, Bareilly.

OPP. PARTIES / RESPONDENTS.

By Advocate Sri V.K. Goel

&

Civil Contempt Application No. 138 of 1994

In

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Original Application No. 962 of 1994

1. R.K. Singh, A/a 56 years, S/o Late Shivedani Singh, R/o Kali Mohal, Chaturbhujpur, Moghal Sarai, Varanasi.
2. D.N. Singh Yadava, A/a 41 years, S/o Sri Deoraj Singh Yadav, resident and village and post Deoria District Ghajipur, Guard Passenger, Eastern Railway, Moghal Sarai, Varanasi.

APPLICANTS.

By Advocate Sri T.S. Pandey.

Vs.

1. J.K. Kohali, Divisional Railway Manager, Eastern Railway, Moghal Sarai, Varanasi.
2. Sunil Sharma, Sr. Divisional Personnel Officer, Eastern Railway, Moghal Sarai, Varanasi.
3. Asst. Upadhyay, Senior Divisional Operating Manager, Eastern Railway, Moghal Sarai, Varanasi.

O-PP. PARTIES / RESPONDENTS.

By Advocate Sri A.K. Gaur.

ORDER

By Hon'ble Dr. R.K. Saxena, Member (J)

These 4 O.A.s number 304 of 1992, 527/94
696 of 1994 and 962 of 1994, were filed by
the different applicants involving one and the
same question of reservation to Schedule Caste
and Schedule Tribe employees on promotion and
determination of their inter-se seniority. Since
the common question of law involved in all the
cases, they were taken up together for decision.

The civil contempt application no. 95 of 1994
arising out of O.A. 304 of 1992 and civil

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contempt application no. 138 of 1994 arising out of O.A. 962 of 1994, are also taken up jointly with the O.A.s. Thus, all these O.A.s and C.C.A.s referred to above are being disposed of by one common judgment.

to deal with the
facts of the cases in seriatum and thus, they are
being narrated case-wise.

1.O.A. 304/92 Akhil Bhartiya Soshit Karmchari Sangh
and another Vs. Union of India and Others.

3. This O.A. has been filed by two applicants namely Akhil Bhartiya Soshit Karmchari Sangh through its Secretary-Sri M.K. Chaturvedi and Sri R.S. Bisnoi, D.S.K., challenging the promotion of A.S. Rana, respondent no.6 and seeking direction in the nature of mandamus commanding the respondents no.2 to 5 to promote the applicant no.2 to the post of D.S.K.-I. The other relief claimed was that the respondents no.2 to 5 be directed not to operate the rooster for filling up the vacancies of S.C./S.T. employees if the required percentage is already achieved. It was also claimed that the respondents be directed not to give accelerated seniority to S.C./S.T.

employees in any grade, cadre or scale and the seniority be directed to be restructured. The letters dated 26/3/91 and 12/3/91, annexures are sought to 6 and 7 respectively, to be quashed.

4. The facts of the case in brief are that the applicant no.1 is the registered association of the railway employees of all categories and grades belonging to non-S.C. and non-S.T. employees; and the registered Headquarter of the association is at Ajmer. Sri M.K. Chaturvedi, is the elected Secretary of the association. The said association looks after the interest of the railway employee of the said categories. The applicant no.2 is the person aggrieved of the order of promotion dated 26.2.91 annexure-6, which was issued by the respondents no.2 to 5 to in contravention of the settled principles of law. The applicant no.2 had submitted representation but, with no result. The applicant no.1 had made representation on behalf of all the members of the association but that too yielded no result.

5. It is averred that the respondents no.2 to 5 are trying to make their own Constitution

so far as the reservation policy was concerned.

The judgments which were pronounced by various High Courts and the Administrative Tribunals, have been deliberately avoided to be implemented.

6. The case related to applicant no.2,

has been described in para 4(XIX) of the O.A.

It is transpired that the applicant no.2 joined

as Junior Clerk on 04.12.1956 and was promoted

as Senior Clerk on 01.4.1966. He was made D.S.K.

III on 16.10.78 and D.S.K. II on 24.3.89. The

respondent no.6-A.S. Rana was initially appointed

in the department as Junior Clerk on 30/10/83 and

was promoted as Senior Clerk on 16/8/84. He was

further promoted as D.S.K. III on 26.11.86 and

D.S.K. II on 08.10.1987. The promotions which

were given to respondent no.6, were made ~~giving~~ ^{ignoring}

the seniority of applicant no.2 and superseding

him in the guise of reservation. It is pleaded

that Sri A.S. Rana, respondent no.6 has been

illegally promoted as D.S.K.-I on 26/2/91. The

applicants, therefore, challenge the out of turn

promotion given to the S.C./S.T. employees and

then to determine the accelerated seniority.

By this act of the respondents no.1 to 5, anomaly

has been created and the candidates belonging

to general category have been put to disadvantageous position and great injustice has been done ^{to} by them. Hence, this O.A. with the reliefs mentioned above is mentioned above.

7. The respondents no:2 to 5 contested the case by filing a counter-reply of Sri Padam Singh, District Controller of Stores, Izzatnagar.

It has been pleaded that the respondents had promoted the eligible employees in accordance with the rules and regulations framed by the Railway Board. It is denied if the directions given by the different Benches of the Tribunal, have been flouted.

8. The respondents have pleaded that the registered office of applicant no. is at Ajmer and thus, the O.A. filed at Allahabad, was not maintainable. It is also pleaded that the promotion dated 26.2.91 and the seniority list dated 01.4.90 are under challenge while the O.A. was filed beyond the period of limitation. The respondents have come with the contention that the application which is filed by a Sangh, is not maintainable for the simple reason that the applicant no.1 had failed to disclose the class, grade, category of the

Specifically
employees specially on whose behalf the application was filed. In filing this application, Rule 4(5)(b) of Central Administrative Tribunal (Procedure) Rules, 1987 have been violated and, therefore, the O.A. was liable to be dismissed.

9. The respondents pointed out that the O.A. 759/87 Laxmin Narain Vs. Union of India and Others and O.A. no. 292/88 Neela Kanta Reddy and Others Vs. General Manager (Southern Central Railway) and 14 others, were instituted before the Hyderabad Bench and the matter was referred to Full Bench. The points which were referred for consideration of Full Bench were, whether the application of 40 point roaster system with carry-forward Rule on promotional posts results in giving excess posts of SC and ST candidates. The other question referred to was, whether the S.C. and S.T. candidates who have been promoted out of turn on account of reservation and should rank junior to those employees of general categories who were senior and were subsequently promoted. The third point was whether the employee who secured accelerated promotion on account of reservation, was entitled to count his seniority from the date of his promotion.

The same questions arose in the case 'Durga Charan Haldhar and others vs. Union of India and Others

before the Calcutta Bench and the decision was rendered on 21.2.94 and it differed from the view taken by the Hyderabad Bench.

10. The respondents claimed that out of turn promotion of S.C./S.T. candidates and determination of seniority, was done in accordance with the rules and regulations. As regards the case of Sri A.S. Rana ~~is concerned~~, it has been averred that Sri Rana was promoted as Senior Clerk against reservation quota. Since there was no S.T. employee available except Sri Rana, and, therefore, he was promoted against one post which was reserved for the said category. It is furthered that on account of promotion against reserved quota of D.S.K.II, Sri A.S. Rana got seniority on the basis of the date of promotion and thus, there was no illegality anywhere.

11. The applicants filed rejoinder in which it was asserted that promotion by way of reservation confers only a benefit of promotion but it did not confer the person so promoted any seniority. About maintainability of the O.A. on behalf of the applicant no.1, it has been averred that the persons who were affected by any order of the respondents and were working or living in the territorial jurisdiction

of Allahabad Bench of the Tribunal, they would certainly file the case before the Allahabad Bench. Besides, it is also stressed that the association is a registered association and is duly empowered to represent the employees who are its members. Other facts are the same which were given in the O.A.

(II). O.A. 527 of 1994, A.K. Srivastava and Others

Vs. Union of India and Others

12. This O.A. has been filed by 4 applicants seeking the relief that the impugned order dated 24.3.94 (annexure A-1) and the letter dated 13.8.93 (annexure A-2) which deal with the list of Guards who were eligible to appear in the test for Mail/ Express Guard posts and about ^{their} seniority, be quashed and to direct the respondents to act in accordance with the circulars dated 27/2/89 and 16.6.92. The third relief claimed was that the interim order which was passed in 'O.A. 628/91 Rajiv Kumar Chakarvarti and other Vs. Union of India and Others', directing to follow the principle laid down in the circulars dated 16.6.92, be observed and the seniority list dated 30/3/88, 30/8/91 and 31.12.91, be quashed.

13. The facts of the case are that the applicants were working as Passenger Guards at Mughal Sarai. They belong to general category. They further averred that initial appointment on the post of various categories of Guards used to be made as Guard 'C'. The promotion was from Guard 'C' to Guard 'B' and next promotion was to the post of Guard 'A'. Subsequently, the nomenclature was changed and the posts of Guard 'C' were described as the post of Guard-Goods trains. Similarly, Guard 'B' category was known as Guard of Passenger trains while Guard 'A' category was known as Guard of Mail/Express trains. In the year 1972, the promotion to Guard Grade 'A' were required to be made. The applicants were working in 'B' Grade while the respondents no. 4 to 6 were working in 'C' grade. The applicants were not selected while the respondents no. 4 to 6 were selected against the reserved vacancies because they belong to the category of S.C. The quota of percentage of the reserved category was also increased. Thus, the case of the employees who belong to the general category, was adversely affected. The respondent no. 1, 2 and 3 ignored the dictum of Allahabad High Court in J.C. Maulick's case that the reservation was

related to the appointment as against the post or in the category but it was never connected with the vacancies.

14. The applicants contended that the benefit of 40 point roster should be given only at the stage of initial appointment but, the respondents are giving double benefits to the reserved category employees by fixing the posts at the initial stage of appointment and, thereafter, at the stage of promotion also. It is also contended that it was never the intention of the framers of the Constitution. Therefore, challenging all these points in general and annexure-1 and 2 in particular, this O.A. has been filed.

15. The respondents filed counter-reply of Chandrama Singh, D.P.O. and contested the case. The grounds taken are similar as were taken in the O.A. no.304/92. It is averred that the reservation quota which is determined keeping the ratio of population in view, has been adhered to at the stage of initial appointment as well as at the time of promotion. The out of turn promotion of S.C./S.T. candidates is supported on the point of extant rules. It is also averred that the seniority has been determined in accordance with

the Courts. The O.A. is said to have been filed after the limitation was over.

16. The applicants filed rejoinder, reiterating the facts as were disclosed in the O.A.

(III). O.A. 696/94 All Indian Non S.C./S.T.

Association, Kota Division and Others

vs. Union of India and Others.

17. Again in this case, the applicant no.1 is All Indian Non-S.C./S.T. Association while the applicant no.2 is a Senior Goods Clerk and a member of Association—the applicant no.1. The same questions of accelerated promotions of S.C./S.T. candidates and accelerated seniority is in dispute. The relief claimed in this case is that the seniority list dated 08.3.94 published by the respondent no.3 be quashed with a direction that it should be recast. The quashment of order dated 29.7.93 annexure-1, ^{is sought} be directed.

18. The applicants have come with the case that the respondents are deliberately issuing promotion orders of the employees belonging to S.C./S.T. community in violation of the orders

of the Tribunal and even of the Hon'ble Supreme

Court. Such an order is said to be annexure-7,

dated 25/11/93. Besides, the respondents have

also determined the seniority vide order dated

16/6/92 which was modified and corrected vide

letter dated 29/7/93. This seniority had been

recast ignoring the settled principles of law.

The said orders dated 29/7/93 and 28/9/93, have

been brought in the form of annexure-1. Hence,

this O.A. with the above mentioned relief, has

been filed.

19. The respondents contested the case

by filing the counter-reply in the name of Arjun

Tabiyar, Senior D.P.O. . The grounds taken are

that this Bench has no jurisdiction and that the

seniority list was prepared in accordance with

the decision rendered by Full Bench of the Tribunal

in the case 'V. Laxmi Nafayan and Others Vs. General

Manager S.C. Railway and Others 1993(24) A.T.C. 420'.

It is also contended that the association is not

a juristic person and an aggrieved party and thus,

the O.A. is not maintainable. It is, however, stressed

that there is no merit in the case and it be rejected.

No rejoinder was filed.

(IV). O.A. 962/94 R.K. Singh and Others Vs.

Union of India and Others.

20. Of these two applicants, the applicant no.1 was initially appointed as Guard grade 'C' on 16.1.64 while the applicant no.2 was appointed as ~~such on~~ ^{description of} 07.2.1978. The discrimination of different categories of Guards ~~were~~ changed on the recommendation of the Pay Commission, which was given effect to ~~on~~ ^{on} 01.1.1986. As disclosed earlier, these categories became Guards Goods train, Guards Passenger trains and Guards Mail/ Express trains. The reservation policy was given effect to but ignoring the decision in the case of J.C. Maulick's and of the Tribunal in Virpal Singh Chauhan's case. It is contended that inspite of aforesaid judgments, the respondents no.2 to 4 were continuously issuing the seniority list without following the principles of law. All the seniority lists dated 30/3/88, 30/8/91 and 31.12.1991 are fictitious and deserves to be quashed. The reason advanced is that the accelerated promotions were given and similarly was given accelerated seniority.

21. It is contended that the respondent no.5 who belongs to reserved community, is junior to the applicants yet, the respondents selected him

(respondent no.5) for the next promotion. The respondents were never required to appear in the examination/selection held interview of the letter dated 24/3/94. Consequently, the said letter dated 24/3/94 is violative of principle of natural justice and is hit by the Article 19 read with Article 14 of the Constitution. Feeling aggrieved by the said orders, this O.A. has been filed.

22. The respondents contested the case by filing the counter-reply. It is contended that the O.A. is misconceived, incorrect and time-barred. The promotions are claimed to have been made according to the rules. Similarly it is claimed that the seniority lists dated 30/3/88, 30/8/91 and 31.12.91 are made correctly and widely circulated. It is also pleaded that no doubt, the respondent no.5 was junior to the applicants as Goods Guard but when he was promoted as Passenger Guard, he became senior because the applicants failed in the selection for the promotion as Passenger Guard. In the subsequent selection which was held in the year 1989, the applicant no.1 qualified and selected but, applicant no.2 again failed. Ultimately he could be selected

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in the selection which was held in the year 1991. It is, therefore, contended that there is no illegality.

23. The respondent no.5 also filed the counter-reply supporting the legality of his promotion and of the seniority. No rejoinder was filed by the applicant.

(V) C.C.A. No. 95/94, Akhil Bhartiya Shoshit Karmchari Sangh through its Secretary
Sri M.K. Chaturvedi Vs. V.K. Garg and another

24. This C.C.A. arose out of O.A. 304/92 in which the order as regards the interim relief was passed on 27/4/92. The order is as follows;

"Issue notice to the respondents to show cause. Let counter-affidavit be filed within 4 weeks. Rejoinder, if any, may be filed within 2 weeks thereof. List this case for hearing on admission on 7th August, 1992.

By interim measures, it is directed that the promotions which may be made hereinafter will "not" be made beyond reservation quota of S.C. and S.T. so far this category is concerned all the promotions will be made in accordance with the directions, dated 20/4/84 given in the case of J.C. Malik Vs. U.O.I. and Others decided by Allahabad High Court reported in 1978-SLJ page 401."

It is said that because of the clerical error word 'not' could not be written in between 'made

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detected this mistake, it was ordered on 17/2/93 that the imposing word 'not' be added accordingly. The correction was, therefore, carried out on 18/2/93.

25. It is said that the opposite parties committed Contempt of Court by not obeying the order and promoting Sri Ram Surat, Office Superintendent II to the post of Office Superintendent I, vide order dated 31.5.93 and Bachchu Lal on 04.5.93. It is, therefore, urged that the opposite parties be punished for the contempt of the Tribunal.

26. The C.C.A. has been contested and opposite party no.2 filed the counter-affidavit denying the allegations. The different interpretation given by the different Benches of the Tribunal, have been pointed out. It has been urged that the Full Bench Judgment of Hyderabad and Calcutta Benches were there and the opposite party had done accordingly. It is, therefore, claimed that no contempt has been done.

27. Sri M.K. Chaturvedi filed rejoinder, reiterating the facts.

(VI) C.C.A. No. 138/94 in O.A. 962/94, R.K. Singh
and another Vs. J.K. Kohali and Others

28. This C.C.A. 138/94 arose out for

non-compliance of the order dated 01.7.94 which was passed in O.A. 962/94. The order which was passed is as follows;

"Heard Shri T.S. Pandey, learned counsel for the applicant on admission. Admit.

Issue notice to the respondents to file C.A. within 4 weeks. R.A., if any, be filed within 2 weeks thereafter. The counsel for the applicant states at bar that the respondents are going to make promotions in violation of the law laid down by this Tribunal in the case of V.P.S. Chauhan Vs. Union of India and Others in O.A. no. 647/86. If, that be so, the respondents shall be restrained for making promotions in violation of the principles enunciated in the said O.A.

List this case for order/direction on 26/8/94."

The applicants have filed this contempt application with the allegation that the opposite parties no.1 to 3 did not comply with the order and made illegal promotion of Ranjan Kumar and thus, liable for being punished.

28. The opposite party no.2-Sunil Sharma filed counter-affidavit, denying the allegations. One of the applicant Sri D.N. Singh filed rejoinder, reiterating the facts.

29. We have heard Sri T.S. Pandey on behalf of the applicants in all the cases and S/Shri V.K. Goel, A.K. Gaur, G.P. Agrawal and S.K. Misra on behalf of the respondents. We have perused the record as well.

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30. From the narration of the facts of all the cases except Civil Contempt Applications, it is revealed that the main question of dispute is as to whether the reservation policy is applicable in the matter of promotion. When accelerated promotions are given to the employees belonging to the reserved community, the question arises if such promoted persons ^{should} ~~do~~ get accelerated seniority. There is also the question if the reservation is against the vacancies or the posts and what shall be done to such promotees if the promotion is given in excess of the required percentage. It is also a question of dispute as to what should be the dead-line for the promotions beyond the prescribed percentage.

31. The technical objections ^{are} ~~are~~ that the cases are filed after the prescribed period of limitation; and two of them namely O.A. 304/92 and O.A. 696/94 about their maintainability on the ground of being filed on behalf of an association, are also taken. We shall dispose of these technical ^{objection} ~~objection~~ ^{or} questions first.

32. So far as the point of limitation is concerned, same question of perennial dispute and of great importance such as the reservation in

promotion, accelerated seniority if accelerated promotions are given, and the significance of the promotions if they were granted in excess of the prescribed percentage, have been raised in these O.A.s. These are the such matters for which no limitation can be prescribed. We are of the view that these O.A.s are not barred by the limitation.

33. The second objection raised is that in two of the O.A.s namely '304/92 Akhil Bhartiya Soshit Karmchari Sangh Vs. Union of India and Others' and 'O.A. 696/94 All Indian Non S.C./S.T. Association Vs. Union of India and Others' have been filed besides the aggrieved person, by the association, and since the compliance of Rule 4(5)(b) has not been done they are not maintainable. In this connection, we shall examine the words used in Section 19 of Administrative Tribunal Act, 1985. This section deals with the procedure of making applications to Tribunal. It reads;

"Application to Tribunals - (1) Subject to the other provisions of this Act, a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance."

The words "a person aggrieved" are of great importance because the interpretation of these

words will dispose of the controversy which has been raised. In this connection, the view expressed by Justice K.N. Goyal in his book, 'Commentaries on the Administrative Tribunals Act, 1985,' IIInd Edition 1990 page 324 may be of guidance. He had expressed the view in the first edition that sometimes, particularly in matters relating to seniority and promotion, where large numbers of officers are involved on one or both sides, it may entail considerable practical difficulty in impleading all the officers concerned by name. It may not be possible for the petitioners belonging to one category to contact all officers sailing in the same boat. In such cases, it may certainly be convenient to invoke the principle and procedure of Order I, Rule 8, CPC, even to applications under this Act. He had referred the decision of Supreme Court in the case 'Akhil Bhartiya Shoshit Karmchari Sangh Vs. Union of India (1981) 1 S.C.C. 246' in which the writ petition had been held maintainable even when filed by unrecognised associations. By the name of the petitioner in this case, it appears that it is the same association which had filed these two O.A.s namely O.A. 304/92 and O.A. 696/94 before the Tribunal. Once it is once held that the petitions may be filed and were held maintainable even if, they were instituted by unregistered association, we find no ... pg 25/-

force in the objection raised by the learned counsel for the respondents.

34. It has also been pointed out that compliance of Rule 4(5)(b) of Central Administrative Tribunal (Procedure) Rules, 1987 has not been complied with. The Rule 4 (5)(b) reads;

"(b) Such permission may also be granted to an association representing the persons desirous of joining in a single application provided, however, that the application shall disclose the class/grade/categories of persons on whose behalf it has been filed: (provided that at least one affected person joins such an application)."

A perusal of this rule points out that this condition is necessary to find out if the permission can be granted to such an association.

In the two O.A.s in which the association ^{was} ~~of~~ one of the applicants, it has been stressed that association was formed for the purposes of protecting the rights and interest of the members of the association belonging to general caste community against in-due privileges and benefits which are being given to the reserved community at the national level. It also clarifies that all classes of employees are the members of the association.

Thus, we do not see any rational behind raising objection that the two O.A.s namely O.A. 304/92 and O.A. 696/94 were not maintainable. We, therefore,

reject the technical objections raised on behalf of the respondents.

35. Now, we come to the basic issue which has been raised in all these O.A.s. Some of the points were not clear till the decision in the cases 'R.K. Sabharwal and Others Vs. State of Punjab and Others 1995(1) SLR 791' and 'Union of India and Ors. Vs. Virpal Singh Chauhan etc. 1996(1) A.I.S.L.J. 65' were rendered by their Lordships of Supreme Court. The determination of percentage of the reservation quota has been dealt with in Sabharwal's case and it is observed that it shall be related to the population of different communities. Thus, the reason of percentage of S.C. and S.T., cannot be made a ground by the applicants in their cases. It has also been clarified by their Lordships of Supreme Court that reservation shall be against the posts or cadre and not against the vacancies. The decision in R.K. Sabharwal's case was given on 10.2.95; and thus, this principle shall be applicable prospectively from that date. In such a situation even if ^{anything} ~~contrary~~ to the said principle was done prior to the said date, it will have to be forgotten. Similarly, the view was expressed that even any promotion was made in excess of the prescribed percentage, it has to be ignored. The reasons advanced

by their Lordships in Virpal Singh Chauhan's case
as follows;

"It is not possible for us to say, on the material before us, how and why the said situation has come about. It may be partly because the rule now enunciated in R.K. Sabharwal was not there and was not being followed. It may also be that such a result has been brought about by a combined operation of the factors mentioned in (i) and (ii) above. The fact remains that the situation assuming that it is what is described by the general candidates-cannot be rectified with retrospective effect now. The Constitution Bench in R.K. Sabharwal too has directed that the rule enunciated therein shall have only prospective operation. So far as the present appeals are concerned, it is sufficient to direct that the Railway authorities shall hereinafter follow Rules (i), (ii) and (iii) stated in para no. 28) with effect from the date of judgment in R.K. Sabharwal i.e., February 10, 1995."

In this way, the answer to the problem has been given by their Lordships and it is that we will have to sit contended whatever has been done prior to 10/2/95. This situation may arise so far as the reservation against vacancies and excess promotion to the prescribed quota ^{is} ~~are~~ related.

36. Before we deal with the other points raised in the matter, we would like to go through para 28 of the case of Vir Pal Singh Chauhan's case, which has been referred to by their Lordships in para 13. It would be better to reproduce para 28 of

of the said judgment in extenso so that the position may be made quite clear. It reads;

"The Constitution Bench has, however, made it clear that the rule enunciated by them shall operate only prospectively(vide para 11). It has further been held in the said decision that the "percentage of reservation has to be worked out in relation to the number of posts which form the cadre-strength (and that) the concept of 'vacancy' has no relevance in operating the percentage of reservation".(As a matter of fact, it is stated that this batch of cases were also posted for hearing before the Constitution Bench along with R.K. Sabharwal batch of cases but these cases were delinked on the ground that they raise certain other issues which did not arise in R.K. Sabharwal). Be that as it may, as a result of the decision in R.K. Sabharwal and the views/ findings recorded by us hereinabove, the following position emerges:

(i) Once the number of posts reserved for being filled by reserved category candidates in a cadre, category or grade(unit for application of rule of reservation) are filled by the operation of roster, the object of rule of reservation should be deemed to have been achieved and thereafter the roster cannot be followed except to the extent indicated in para-5 of R.K. Sabharwal. While determining the said number, the candidates belonging to the reserved category but selected/promoted on their own merit (and not by virtue of rule of reservation) shall not be counted as reserved category candidates.

(ii) The percentage of reservation has to be worked out in relation to number of posts in a particular cadre, class, category or grade (unit for the purpose of applying the rule of reservation) and not with respect to vacancies.

(iii) So far as Railway Guards in Railway service are concerned that is the only category we are concerned here with-the seniority

position in the promoted category as between reserved candidates and general candidates shall be the same as their inter-se seniority position in Grade 'C' at any given point of time provided that at that given point of time, both the general candidate and the reserved category candidates are in the same grade. This rule operates whether the general candidate is included in the same batch of promotees or in a subsequent batch. (This is for the reason that the circulars/letters aforesaid do not make or recognise any such distinction). In other words, even if a Scheduled Caste/ Scheduled Tribe candidate is promoted earlier by virtue of rule of reservation/roster than his senior general candidate and the senior general candidate is promoted later to the said higher grade, the general candidate regains his seniority over such earlier promoted Scheduled Caste/Scheduled Tribe candidate. The earlier promotion of the Scheduled Caste/Scheduled Tribe candidate in such a situation does not confer upon him seniority over the general candidate even though the general candidate is promoted later to the category.*

Reading of this observation dispels all the doubts and solves all the problems. It is important to note that Virpal Singh Chauhan's case is also a case of Railway guards. The same questions which have been raised in the O.A.s before us, were operating in the case of Virpal Singh Chauhan's case and thus, law laid down by their Lordships is binding on all of us. Since, the guide lines which have been laid down in the decision of R.K. Sabharwal's case are applicable with

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effect from 10/2/95, the legality or propriety of any action done prior to that, cannot be questioned. In the present cases before us where it is a question of promotion or of accelerated seniority, it relates to the period prior to 10/2/95. Thus, it becomes unquestionable. The result, therefore, is that no relief can be granted to any set of the applicants in any of the cases. Thus, all the O.A.s no.304/92, 527/94, 696/94 and 962/94, are dismissed at the stage of admission itself.

37. The Misc.application no.2571/95 was moved in the O.A. no.304/92 with the prayer that the order dated 27/4/92 be modified in the shape of the order dated 09.5.94 passed in O.A. 696/94 and be made applicable to North East Railway, Izzat Nagar, Bareilly.

38. We had postponed the disposal of this application till the matters were heard on merits. Now, we have finally disposed of the O.A. 304/92 itself and dismissed the same. This misc.application, therefore, becomes infructuous.

39. Now, we take up the C.C.A. No. 95/94 in O.A. 304/92. It has been contended that the opposite parties deliberately flouted the order which was passed

by the Bench on 27/4/92. The words of interim order are already given. The order, however, says that the promotion which may be made hereinafter, will not be made beyond reservation quota of S.C./S.T. So far as this category is concerned, all the promotions will be made in accordance with the directions dated 20.4.84 given in the case of J.C. Mallik's Vs. Union of India and others. In the case of J.C. Mallik's the view expressed by the Allahabad High Court, was that the reservation of S.C./S.T. candidates has to be worked out with reference to the posts and not with reference to the vacancies. This decision was appealed against before the Hon'ble Supreme Court. The point was, however, incidentally considered in R.K. Sabharwal's case and it was held that the reservation shall go with the post and not with the vacancy. This judgment was given on 10/2/95. In this way, the finality was given to the view only recently. Before the decisions which were rendered by the Hon'ble Supreme Court in R.K. Sabharwal and Virpal Singh Chauhan's cases, the actual position of law was fluid. In view of these facts, it would not be proper to start with the contempt proceedings against any person.

40. In the present case, the opposite parties have denied any contempt having been

committed by them. It has been asserted by them that they had been following the law which was laid down in various decisions of the Hon'ble Supreme Court, High Court and Tribunal. They have also pointed out about the divergent view being taken by the Full Benches of the Tribunal. It further supports that whether the certainty of law is not clear, it does not make out the case of contempt.

41. Similar is the case in C.C.A. 138/94. In this case also, interim order was passed on 01.7.94 restraining the respondents from making any promotion in violation of the principle enunciated in O.A. 647/96. Again it may have to be repeated that this question has been decided finally now in R.K. Sabharwal and Virpal Singh Chauhan's cases and the principles were made effective from 10/2/95; and thus, it would not be expedient in the interest of justice to take any action against the opposite parties particularly when the legal position was fluid. Both the C.C.A.s are, therefore, dismissed and the notices issued in both the C.C.A.s are discharged.

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42. On the consideration of the facts and circumstances of the case, we dismiss all the O.A.s no.304/92, 527/94, 696/94 and 962/94 and C.C.A.s no.95/94 and 138/94. The notices issued to the opposite parties in the C.C.A.s, are also discharged. No order as to costs.

Member (A)

Member (J)

/M.M./