

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 25th day of May 2006.

Original Application No. 805 of 1999.

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

Ashok Kumar Srivastava, S/o Shri R.P. Srivastava,
R/o 227/334, Turaram Bagh,
Distt: Allahabad.

.....Applicant

By Adv: Sri A.N. Shukla

V E R S U S

1. Union of India through General Manager,
Northern Railway, Baroda House,
NEW DELHI.
2. Divisional Railway Manager, Northern Railway,
Allahabad.
3. Divisional Superintending Engineer (Civil),
Northern Railway,
Allahabad.
4. Maunas alleged through Draftsman (Chief),
D.R.M's Office,
Northern Railway,
Allahabad.

.....Respondents

By Adv: Sri G.P. Agarwal &
Sri S.N. Yadav

O R D E R

The applicant has, in this OA claimed the
following relief(s):

- "a. The proposed matter of Modified selection
dated 25.06.1999 which is scheduled to
held on 24.07.1999 may be set-aside.
- b. The promotion of the respondent No. 4 vide
letter dated 12.01.1999 may be set aside
as he is junior to the applicant who has
promoted.



- c. The applicant may be promoted on the post of Chief Draftsman and all alongwith all benefit from the date he was illegible.
- d. Any other relief which may deem fit and proper in the facts and circumstances of the case."

2. The facts of the case as per the OA and the retort from the Official respondents and the private respondents as per their CAs are as under:-

(i) Brief contents of the applicant in the OA are:

a. The applicant was promoted as Senior Draftsman in the Grade of Rs. 1400-2300.

b. The applicant had to undergo lockup/Jail from 31.07.1985 to 16.08.1985 and later on he was acquitted Disciplinary Proceedings started.

c. The Disciplinary Authority imposed the penalty of reduction in the pay viz. reducing the applicant's pay from Rs. 1440 to Rs. 1400 postponing future increments for a period of two years in the grade of Rs. 1400-2300 of senior draftsman. The applicant after exhausting available remedies moved the Tribunal which passed certain orders but that is not directly related to the issue involved in this case.

d. A seniority list of Head draftsman was prepared. The applicant's name stood



at serial No. 1. None has filed objection to the seniority list.

e. Ignoring the rules and regulations and seniority list, an order dated 12.01.1999 was passed and junior to the applicant, respondent No. 4 (Maunas) and others have been promoted on the post of Chief Draftsman.


f. The applicant filed representation, but the respondents have not decided the same.

g. The respondents issued a letter dated 23.06.1999 for written test scheduled to be held on 24.07.1999.

h. The applicant has moved representation on 05.07.1999 against modified selection system and against the promotion of junior to the applicant. As no response was there, this OA is filed.

(ii) Brief contents of Official respondents' CA are:


a. The promotion to the staff who were empanelled through modified selection, have been made as per extant rule and procedure. The respondent No. 4 was also considered by the selection committee in Modified Selection and accordingly he was promoted as Chief Draftsman.



b. A written examination was held for promotion on the post of Chief Draftsman Grade Rs. 6500-10500 (RSRP) and all eligible staff including the applicant was called to appear in the written test in which the written test in which the applicant did not appear.

(iii) Brief contents of Private respondent's CA are that the applicant has no concern with the promotion of respondent No. 4. The applicant is ST. The seniority list of the SC category is prepared separately. The applicant was senior most in his category. There is a policy of reservation in the appointment and promotion under the reservation policy being senior most candidate of his category.


4. Opportunity was given to the parties to file written submission and applicant's counsel who was present in the court on the date of hearing was also heard. The applicant has filed the written submission while others had not. However, their submissions in the entire counter had been taken into consideration.



5. The main arguments of the applicant as contained in the written submission are summarized below:-


- "a. The combined seniority list (of General category as well as reserved category) was prepared by DRM Allahabad on 01.07.1998. In the said seniority list applicant's name stood on serial No. 1 and name of respondent No. 4 stood at serial No. 2 and the said seniority list dated 01.07.1998 became final for all purposes in the department.
- b. Ignoring the seniority list dated 01.07.1998 as well as Rules and Regulation respondent No. 1 to 3 promoted to respondent No. 4 Mr. Manas vide order dated 12.01.1999 w.e.f. 14.09.1994.
- c. In identical matter, one OA V.S. Kushwaha Vs. Union of India and others. The directed the Railway to grant promotion as basis of modified selection procedure vide order dated 09.09.2002.

6. The case has been considered. The restructuring took place only in 1993 and the promotion of respondent No. 4 took place in 1999 though with retrospective effect from March, 1993 while the applicant along with others were called for written examination in the later part of 1999. The first question to be considered is whether the above promotion of respondent No. 4 and the selection process conducted in later part of 1999 were with reference to the vacancies available in the wake of restructuring which in fact took place in 1993. Since all such vacancies arising out of



re-structuring had to be filled up with effect from a particular date in 1993 (if need be by giving retrospective effect, if such promotion took place at a later date) and in the instant case the selection/promotion took place as late as in 1999, it is to be construed that the promotion of respondent No. 4 effective from 01-03-1993 was with reference to the restructuring scheme as specifically mentioned in the impugned order dated 12-01-1999 and in the promotion, in all, as many as 7 candidates were promoted, and the private respondent is one of them.

7. In so far as the other selection process in which various persons including the applicant was called for to participate in the written examination is concerned, the same goes to show that the vacancies were not in the wake of re-structuring. Had they been on account of restructuring there was no need to wait for such a long time, nor for holding written test as modified selection procedure and not the normal one is to be adopted for filling up of vacancies arising out of re-structuring. Thus, in so far as the selection process was concerned no fault could be located. And the applicant having not participated therein, there was no question of the selection process or selection being held as invalid.



8. What is to be seen is whether the selection of respondent No. 4 under re-structuring was in order. Admittedly the said respondent No. 4 belongs to scheduled caste and presumably his promotion, to the exclusion of the applicant, who stands senior to the private respondent, was on account of reservation being accorded while filling up the vacancies caused due to re-structuring. (There has been no specific averment as to whether the promotion of respondent No. 4 under the modified selection procedure was by way of according reservation to the vacancies).

9. In a recent case of P.S. Rajput vs. Union of India in OA No. 933 of 2004 decided by the full Bench of this Tribunal on 10-08-2005, it has been held that there is no reservation while filling up the vacancies caused due to re-structuring. This decision being a clarification is operative retrospectively, as a clarification even by way of executive instructions acts retrospectively as held by the Apex Court in the case of *O.P. Lather v. Satish Kumar Kakkar*, (2001) 3 SCC 110 wherein it has been held as under:-

"9. Normally, the rules framed under the proviso to Article 309, cannot be amended except in accordance with the procedure laid down therein. But in the instant case, the question is whether a clarification issued by the Government could be construed as an amendment to the Rules. Even under the Rules, it is specifically stated that a degree or diploma in Electrical Engineering from a recognised university or its equivalent would be the requisite qualification for promotion to the cadre of Executive Engineer. In the Rules, some of the recognised universities are also mentioned and admittedly, these institutions


are not awarding any diploma. The Rules say that equivalent qualification also would be considered. There is nothing wrong in the appointing authority issuing a clarification as to what would be the equivalent qualification for the purpose of appointment. When the universities do not offer the diplomas prescribed under the Rules, the rule itself becomes meaningless and nugatory. Under the Rules, the candidates are asked to produce a certificate which is neither in existence nor awarded. It was at this juncture that the Government issued a clarification that the diploma awarded by recognised institutions, which are affiliated to the State Board of Technical Education in Haryana, would be considered as equivalent.

10. In view of the above, the promotion of respondent No. 4 presuming availability of reservation in re-structuring is not exactly correct. But then, at this distance of time, to upset the same would also amount to injustice meted to the said respondent No. 4. The applicant was at serial No. 1 as per the seniority list. As such, since no reservation is available in respect of vacancies arising out of re-structuring, it would be appropriate to consider the applicant for promotion under the modified selection procedure against the seventh vacancy and if found fit to accommodate the applicant. In that event, the applicant would be entitled to notional fixation of pay only as per the existing Rules contained in Rule 228 of IREM. Actual pay shall be from the date of his assuming the higher responsibilities. At the same time, his seniority shall be along with the other six candidates who were promoted to the post of Chief D'Man vide Annexure II to the O.A.



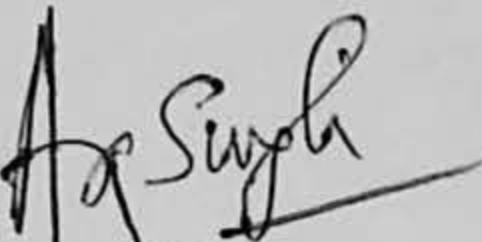
11. Coming to the case of the private respondent, it is by now more than 7 years that the said respondent had got his promotion and though not specified in the promotion order, as the caption of the same would show, the promotion was retrospective i.e. from 01-03-1993. Thus, by now 12 years have passed and since the full Bench judgment was delivered only in August, 2005, for his continuation in the said post, neither the respondent could be blamed nor for that matter the official respondents. As such, interest of justice would be met by allowing the said private respondent to have the benefit of his promotion already afforded to him continued but subject to the condition that his seniority shall be only with effect from a date when a regular vacancy in the reserved category arose after his promotion became effective. If need be the respondents may consider creation of supernumerary post to avoid reversion of any of the promoted Chief Draftsman, by taking up the matter at the appropriate level for sanction of such supernumerary post.


12. In so far as the consideration of the applicant for promotion to the post of Chief Draftsman, as observed above, the exercise shall commence within a period of three months from the date of communication of this order and if found fit,



necessary promotion orders be issued within three months thereafter.

13. Under the above circumstances, there shall be no orders as to cost.


Member (A)


Member (J)

/pc/