

IN CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH AT ALLAHABAD

Original Application No. 974/2006

Reserved on: 8.2.2012

Date of order: 27-4.2012

Coram

Hon'ble Mr. Sanjeev Kaushik, Judicial Member
Hon'ble Mr. B.K.Sinha, Administrative Member

1 Hari Om Prakash Singh, Section Engineer

2. Anunay Kumar, Junior Engineer-II

3. Shailendra Prasad, Junior Engineer-I

4. Brijesh Gupta, Junior Engineer-I

All are working in Shell Welding Mechanical Workshop, NE Railway, Gorakhpur.

5. Anil Kumar Singh, Junior Engineer-I

6. Ananjay Rai, Junior Engineer-II

Both are working in Welding Shop, Mechanical Workshop, NE Railway, Gorakhpur.

... Petitioners

(By Advocate Mr. S K. Om)

Vs.

1. Union of India, through General Manager, NE Railway, Gorakhpur.

2. Chief Workshop Manager, Mechanical Workshop, NE Railway, Gorakhpur.

3. Chief Personnel Officer, NE Railway, Gorakhpur.

.. Respondents

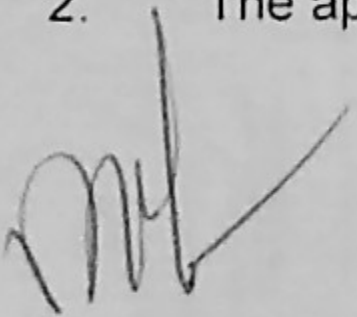
(By Advocate Mr. Ravi Ranjan)

ORDER

Per: Mr. B.K.Sinha, Administrative Member

The instant O.A is directed against the order of the competent authority dated 1.10.2004 cancelling an earlier order dated 1.11.2003 allocating the posts of Technical Supervisors in different pay scales in the Mechanical Workshop of Gorakhpur and Ijjatnagar of North Eastern Railway Memo No.210/8/Mech/Mechanical Workshop/03/Nom dated 9/10-6-2004 and 21/23-7-2004 for reasons beyond control.

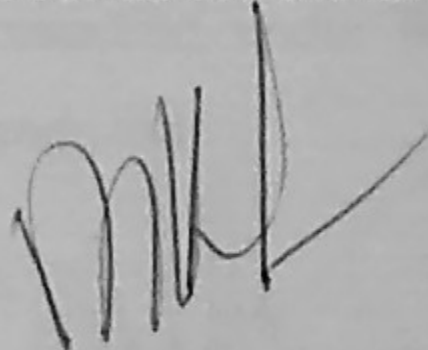
2. The applicants have pressed for the following reliefs in para 8 of their OA:



- (i) *To issue a writ, order or direction in the nature of certiorari quashing the orders dated 1.10.2004 passed by respondent No.3 (Annexure Nos. A/1 and A/2 respectively to Compilation-I)*
- (ii) *To issue a writ, order or direction in the nature of mandamus commanding the respondents to promote the petitioners in the next higher grade w.e.f. 1.11.2003 in pursuance to the Railway Board's Circular dated 9.10.2003.*
- (iii) *to grant all the consequential relief which the petitioners are entitled for.*
- (iv) *To grant any other relief which this Hon'ble Court may deem fit and proper under the circumstances of the case.*
- (v) *To award the costs.*

3. The facts of the case in brief are that the petitioner No.1 and seven others are working in the Welding Trade of Mechanical Workshop of North Eastern Railway as Section Engineer, Junior Engineer I and Junior Engineer II respectively. All these posts are in supervisory category in different pay scales. The Railways issued a Circular vide Railway Board letter No. PC-III/2003/CRC/6 dated 9.10.2003 for restructuring of Group C and D cadres with a view to '**strengthening and rationalizing the staff pattern on Railways**'. [A3] to be implemented with effect from 1.11.2003. In pursuance to this Circular the respondent No.2 issued a restructuring order vide his order dated 9.10.2004 [A5] containing a comparative chart of sanctioned posts as on 1.11.2003 and the proposed sanctioned strength after restructuring in pursuance to A1. This order indicated that there were 27 supervisory posts in Welding trade in the mechanical workshop and 13 posts in Izzatnagar. However, before this order could be implemented it was cancelled vide A.1 issued by R.3 for 'reasons beyond control'. On the same day ie 1.10.2004, R3 issued another order dated 1.10.2004 showing the strength of the mechanical workshop Gorakhpur as 17 thereby reducing the cadre strength of the welding trade from 27 to 17. The applicants submitted a representation dated 11.10.2004 with the respondents [A6] to which, the applicants claim, there has been no response. The applicants further claim to have had a personal interview with respondent No.3 [R3] who assured them that the needful would be done in consultation with R2. However, as there has been no suitable response from the respondents, they have filed the instant O.A.

Grounds for the OA.



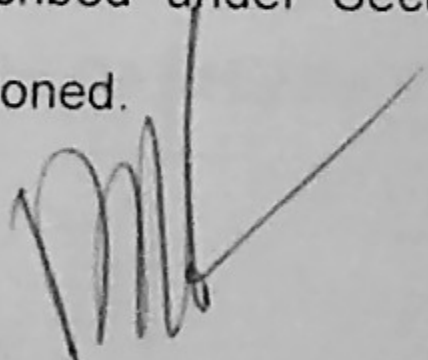
4. The applicants, on the basis of the pleadings in the OA and the submissions made in the rejoinder application as also the arguments placed during the hearing have relied upon the following grounds:-

- (i) That the restructuring circular issued by Railway Board at A3 clearly stipulates that restructuring would take place on the basis of cadre position as on 1.11.2003. The material on record establishes beyond doubt that the cadre strength as on 1.11.2003 was 27 and not 17 as has been done by the respondents in their order dated 1.10.2004. On the other hand there is nothing on record to show that the strength of the Welding Shop is 17 and not 27.
- (ii) The differential of 10 posts has been transferred to some other divisions without any justification whatsoever. The circular of the Railway Board dated 9.10.2003 clearly lays down that the cadre restructuring would be done on the basis of the sanctioned cadre strength as on 1.11.2003. This has not been complied with and the posts have been arbitrarily reduced without sufficient justification.
- (iii) The respondents have, by reducing the cadre strength of the Welding Shop, have allocated its percentage to some other shop **"in order to give benefit of restructuring to some selected persons with ulterior motives"**.
- (iv) The action of the respondents in cancelling the order dated is arbitrary and not reasons have been provided for the same. The impugned order [A1] does not assign any reasons for the same except to say the orders were being issued for 'unavoidable reasons'.
- (v) The respondents are alleged to have cancelled vide A1 another order dated 23.7.04. However, this order was never published and the applicants allege that the same is not within their knowledge despite their best efforts.

Stand of the Respondents

5. The respondents have filed their Counter Affidavit and have submitted the following in course of their arguments:

- (i) The instant OA is not maintainable as it has been filed beyond the limitation prescribed under Section 21 of the Act. The applicants have not had their delay condoned.



(ii) The respondents have strongly contested the assertion of the applicants that there were 27 supervisory posts in the Mechanical Workshop at Gorakhpur. They contend that there were actually 6 posts of Mistries in the pay scale of Rs. 45,00-7,000 included in this. "the allegations made in paragraph 4.7 of the original application were it is stated that that they are not admitted as stated, hence emphatically denied. In reply thereof it is stated that actually there were 21 posts of supervisors in mechanical workshop but after taking out 6 posts of Mistry the total number of posts were indicated as 27 of supervisors and there were 13 posts of supervisors in the welding trade at Izzatnagar."

(iii) After having taken out the 6 posts there were 21 posts remaining. Out of these there were 4 posts of Erecting + Foundry + Mechanical but were counted in the Mechanical trade. These 4 posts were again counted in their present trade resulting in the total number of posts being shown as 17.

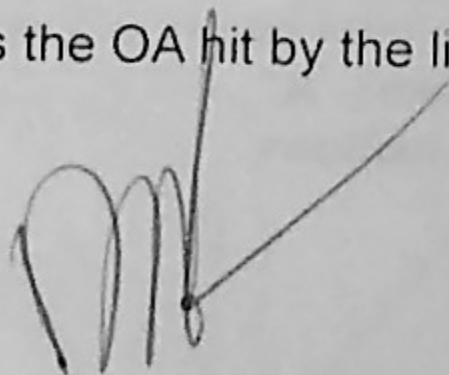
(iv) The respondents have strongly refuted the allegation made in paragraph 4.12 and 4.14 that the respondents have allocated the percentage due to the Mechanical trade to some other shops in order to give benefit to certain selected persons with ulterior motives in paragraph 16 of their CA. The distribution of posts of supervisors trade in mechanical workshop was done by the Chief Mechanical Engineer and communicated vide GM(P)/GKP's Memorandum No. Ka/210/8/Mech/MCM/03/IX dated 14.10.2004 where the number of posts in the welding trade is shown as 17 [CA 4].

(v) The respondents have further rebutted the allegation made in paragraph 4.15 of the OA that there was no reply given to the joint representation made by the applicants [paragraph 19 of the CA]. The joint representation was put up for orders and communicated vide Railway Board's letter no. Ka/210/8/Misc/WS/PT II dated 2-3 2005/3-3.2005 [CA5]. The respondents have also rebutted the allegation that the promotion prospects of the applicants have been mired on account of the issue of this order.

Facts-in-issue

6. After having gone through the pleadings, documents submitted by both the parties and having heard their arguments the following facts-in-issue emerge:

(i) Is the OA hit by the limitation as prescribed in Section 21(1) of the Act?



(ii)What is the purpose and scope of the restructuring exercise ordered by the Railway Board vide its letter no. PC-III/2003/CRC/6 dated 9.10.2003 for all Group C & D posts [A-3]?

(iii)What was the number of posts in the Welding Division 30.11.03?

(iv)Whether the impugned order of the respondents infringes the law of natural justice and mars the promotional prospects of the applicants?

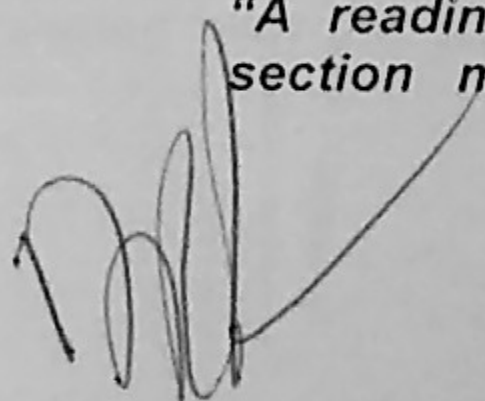
(v)What relief, if any, can be given to the applicants?

Whether the OA is barred by limitation

7. The instant OA has been filed 15.9.2006 against the cause of action which has arisen w.e.f. 1.10.2004 [A1]. Obviously the OA is barred by Section 21 (1)(a). However, the applicants have also filed an MA for condonation of delay which refers to Civil Miscellaneous Delay Condonation Application No.2600/2006 stating therein that the applicants have preferred a representation dated 11.10.2004 against the impugned order which is dated 1.10.2004. This representation was signed by all the affected staff. The petitioners further sought personal interview with respondent No.3. who assured them that the needful would be done after due consultation with the Chief Workshop Manager. The applicants have further submitted that with regard to the earlier restructuring they had filed another OA vide OA No.1519/03 (Rudramani Yadav Vs. Union of India) and in view of the assurance given by respondent No.3 in the interview they laboured under the impression that they would be given benefit of promotion the moment the earlier OA is allowed. It was on account of this reason that the applicants omitted to file another petition. However, their earlier OA was dismissed for non-prosecution and hence they came appeared before this court through the instrumentality of the instant OA. This has been opposed by the respondents on the ground that it is beyond the period of limitation and all the remedies have not been exhausted. (Para 7 of CA).

8. Reference is made in this regard to the decision of the Apex Court in the case of **D.C.S. Negi vs Union of India SLP 7956 of 2011 decided on 07-03-2011**, wherein, the Apex Court has held as under:-

"A reading of the plain language of the above reproduced section makes it clear that the Tribunal cannot admit an

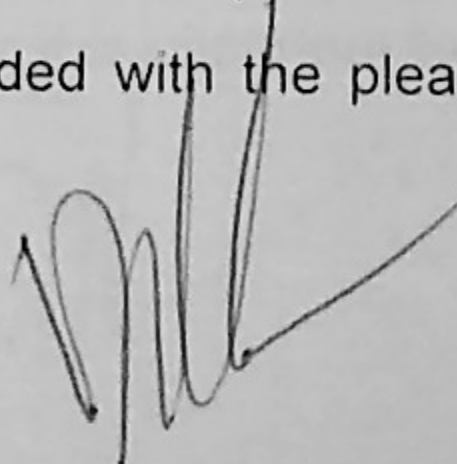


application unless the same is made within the time specified in clauses (a) and (b) of Section 21(1) or Section 21(2) or an order is passed in terms of sub section (3) for entertaining the application after the prescribed period. Since Section 21(1) is couched in negative form, it is the duty of the Tribunal to first consider whether the application is within limitation. An application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under Section 21(3)."

9. The period of limitation is one of the issues which ought to be decided ab initio before the OA is taken up for further consideration. Language of Section 21(1)(a) is perfectly clear that *"A Tribunal shall not admit an application—(a) in case where a final order such as is mentioned in clause (a) of sub-section(2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made."* From the perusal of the order sheet it appears from the order dated 25.2.2009 the issue of condonation of delay had been considered and the learned DB had recorded in respect of the MA 2600/06 *"to condone delay in filing CA plea shall be considered at the time of hearing, if raised."* Here the length of delay is also to be considered as raised by the respondents who have termed the same as hopelessly time barred. It is appropriate to Period of delay is normally not taken as a factor to reject or allow the application for condonation. In the case of **N. Balakrishnan vs M. Krishnamurthy** (1998) 7 SCC 129, the Apex Court has inter alia held as under:-

"Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse."

10. Considering the fact that the applicants are class III employees not well versed with the procedures governing disposal of cases, and also that the court proceeded with the pleadings and arguments, the same amounts to an act of

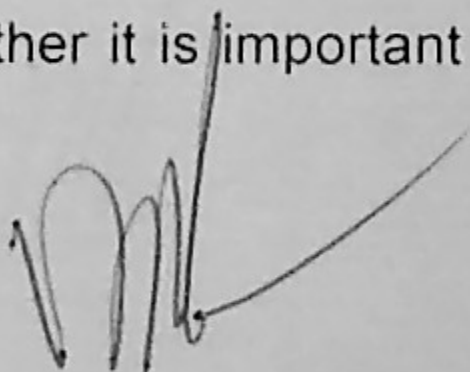


acquiescence. It is to be further considered that the order amounts to tacit condonation of delay. Having come till so far where the pleadings have been exchanged and the parties have argued their case does not appear feasible at this stage to reverse the process and dismiss the OA on grounds of limitation. Hence the point of limitation is waived in favour of the applicants.

Scope and Purpose of the Restructuring

11. It is necessary, at this stage, before we go into the issue of rights of rival parties to examine what is the scope and purpose of restructuring. The claim of both the parties arises from a circular of the railway Board vide No.TC-III/2003/CRC/6 dated 9.10.2003 (A3). The very purpose paragraph of the circular under reference states: *"The Ministry of Railways have had under review cadres of certain Group C & D staff in consultation with the staff side with a view to strengthening and rationalising the staffing pattern on Railways. As a result of the review undertaken on the basis of functional, operational and administrative requirements, it has been decided with the approval of the President that the Group C & D categories of staff as indicated in the Annexures to his letter should be restructured in accordance with the revised percentage indicated therein. While implementing these orders the following details instructions should be strictly and carefully adhered to."* It is to be marked that the purpose of this restructuring exercise is to strengthen and rationalize the staffing pattern on Railways. The proposal for restructuring is to be further carried out in accordance with revised percentages indicated therein. The term rationalising here would imply reduction from some and addition to others as per the load of work.

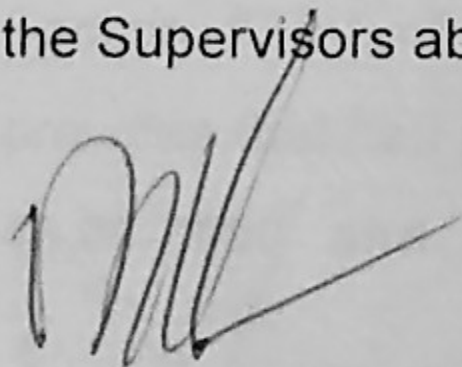
12. The circular further goes to prescribe a cut off date which shall be reference point to the sanctioned cadre strength. The benefit of the restructuring, as per the Circular is restricted to the persons who are working on a particular cadre on the cut off date. In the instant case the cut off date is 1.11.2003. Further it is important to note that restructuring is applicable with respect to the



regular cadres and excludes surplus and supernumerary posts of the line establishments including workshops and production units or to the ex-cadre and the work charged posts.

13. Para 7 of the circular further provides that the cadres detailed in this exercise are being restructured on functional, operational and administrative considerations, implying thereby that the posts being placed in the higher scale of pay as a result of the restructuring should include duties and responsibilities of greater importance. Para 13(a) further provides in pursuance to this ***"Subject to provisions of para 13,2 below, all the posts of Supervisors (erstwhile Mistries) in grade Rs. 4500-0700 (plus Rs.100 Special Allowance (excluding Supervisors (P.Way) should en bloc be upgraded to the posts of Junior Engineer Gr.II in the pay scale of Rs. 5000-8000 and merged with the respective cadre of Technical Supervisors with its special effect in higher grade Rs. 5500-9000, 6500-10500 & 7450-11500 as per the revised percentage distribution of posts prescribed for Technical Supervisors in these orders."*** This is qualified by the provision 13.1 which provides that the financial implications involved in the upgradation should be set off by surrender of posts of Supervisors of equivalent money value. Paragraph 18 further clarified that the financial implication is to be worked out in the revised fitment in the revised grade and matching service should be affected from the category itself. Wherever such saving is not forthcoming from the category itself, it should be from the Division.

14. The circular under reference further provides the procedure for fitment. The existing regular supervisors will be placed in the grade of Rs. 5000-8000 without undergoing the normal selection process on the basis of their service records. Others who do not get promoted were designed to continue holding this post in the lower scale of Rs. 5000-7000 plus Rs.100 SA as personal to them till the Supervisors above vacate the posts by way of retirement or promotion.

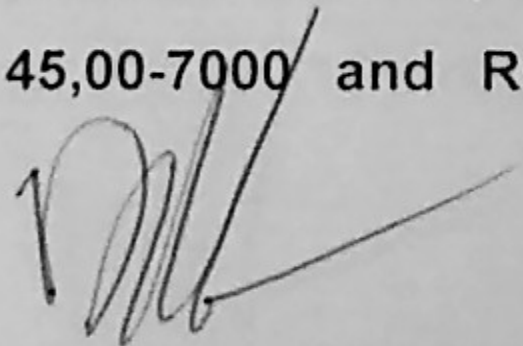


15. The circular also prescribes that the cadre strength of different divisions is provided in copy book as detailed in A4. For instance, in the welding trade there are three S.S.Es in the scale of Rs. 7450-11500, eight SEs in the scale of Rs. 6500-10500, four JEs-I in the scale of Rs. 5500-9000, Six JE -II (5000-8000) and six Mistries in the scale of Rs. 4500-7000, the total being 27 for Gorakhpur. For Ijjatnagar the corresponding figure is 1 SSE, 3 SE, 2 JD-I, 2 JE-II and 5 Mistries, the total being 13 the grant total being 40 for Gorakhpur and Ijjatnagar together. The entire restructuring exercise was to have done within the afore defined parameters.

What was the number of posts in the welding division 30.11.03

16. This brings us to the third and perhaps the most critical of the issues. While the applicants contend that there were 27 posts of Supervisors within the Welding Trade the respondents have contested this position holding that out of these 27 posts 6 were of Mistries in the scale of 4,500-7000 leaving behind 21 posts of Supervisors on the basis of the BoS [CA1][para 12 of the CA]. According to this BoS there were 92 posts of substantive posts of SSEs in the scale of 7450—11500 equivalent to 17%. According to the revised sanction on 1.11.03 the number of substantive posts in the rank of SSEs became 118 equivalent to 18%. Likewise the posts of SEs have been shown as 145 or 28% which was revised to 190 or 29%; the posts of JE-I's were revised from 133 or 25% to 158 or 24% and the posts of JE-II's from 119 or 30% to 190 or 29%. It is significant to note that there were 167 posts of Supervisors which does not find a place in the revised sanction and instead the posts have been added to other ranks. On the other hand copy of the order dated 23.7.2004 gives break up of 27 posts as SSEs, Ses, JE.s I and JE.s II totalling 27 in all. And in the revised trade wise list 3 post of SSEs, 5 posts of SEs, 4 posts of JE-I and 5 posts of JE-II and no posts of Supervisors, the total being 17. It is significant to note that revised list vide the order of restructuring gives in percentage terms the restructured posts. It is 18% for SSEs, 29% for SEs, 24% for JE-I and 29% for JE-II.

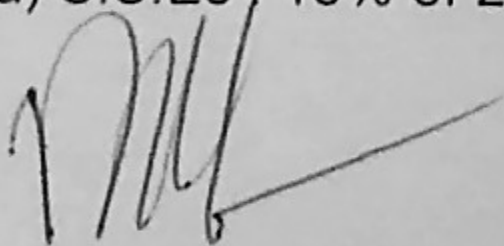
17. A key question in this regard is that what happens to the post of Mistries. Section 13(a) of the Memo of the Railway Board dated 9.10.2003 clearly provides that "all posts of Supervisors erstwhile Mistries in the grade of Rs 45,00-7000 and Rs.100 Special Allowance ... should be en block be



upgraded to the posts of Junior Engineers Grade II in the pay scale of Rs. 5000-8000 and merged with the respective cadre of technical supervisors with its spread effect in the higher grades of Rs. 5500-9000, 6500-10500 and 7450-11500 as per the percentage distribution of posts prescribed for Technical Supervisors in these orders". The effect of the circular is that the post of Mistri is not abolished but merely upgraded. The posts of Mistries remain but have merged with the total number of posts as on 1.11.2003. However, CA-I and also CA-III show that the posts of Mistries in the scale of Rs. 45,00-7,000 have not been included in the sanctioned strength. If the omission is consciously taken and if it uniformly applies to all the Trades, there cannot be any question as to why the post of mistries has been omitted. That is the prerogative of the Railways and the same cannot be criticized. Perhaps, omission of the same may be to ensure matching compensation as provide for in para 13.1 of the Memo dated 9.10.2003 provides that a financial balance is to be maintained and in order to financially mitigate the effects of the restructuring by surrendering an equivalent number of posts.

18. Then there is the contention of the respondents that 4 posts of Erecting, Foundry, Mechanical and Tool Room had also been included in the Welding Trade. These have also been excluded as a result of which the number of posts in the Welding Trade has further reduced to 17. In this regard if we were to look the substantive posts in the pre-structuring stage one finds that there there is no mention of the posts of Erecting, Foundry, Mechanical and Tool Room being included in this. Likewise, in the order of restructuring also there is no mention of these posts being there. It is only in the order dated 1.10.2004 the number of posts have been reduced to 17. Unless there is proper justification there is no scope of the posts being reduced from 21 to 17, as this is a matter of restructuring and there could be increase but not decrease in the total number of posts in the cadre. Now considering the allocation of 21 posts at the prescribed ratio of 18%, 29%, 24% and 29% respectively for S.S.Es, S.Es, J.E I and J.E. II, it works out to as under:-

(a) S.S.Es / 18% of 21 = 3.78 rounded of to 4



- (b) S.Es 29% of 21 = 6.09 rounded of to 6
 (c) J.E. I 24% of 21 = 5.04 rounded of to 5
 (d) J.E. II 29% of 21 = 6.09 rounded of to 6

As against the above, the number reflected in the impugned order for the abovementioned posts 3 post of SSEs, 5 posts of SEs, 4 posts of JE-I and 5 posts of JE-II. Thus, the requirement is to revise the total number of posts of S.S.Es, etc., as respectively 4, 6, 5 and 6. In that event, promotion shall take place according to the prescribed procedure of modified selection based on length of service and record of service. Thus, for the question Whether the impugned order of the respondents infringes the law of natural justice and mars the promotional prospects of the applicants, the answer shall be only to the effect that if they fall within the consideration zone then only their entitlement for upgradation would come into picture.

19. In view of the above, the OA is disposed of with the direction to the respondents to keep the total number of posts of SSEs etc., as hereunder:-

- (a) S.S.Es : 4
 (b) S.Es 6
 (c) J.E. I 5
 (d) J.E. II 6

Consequently, the above posts be also filled in accordance with the prescribed procedure.

20. This order shall be complied with, within a period of three months from the date of communication of this order.

21. Under the circumstances, there shall be orders as to costs.

(B.K.Sinha)
 Administrative Member

(Sanjeev Kaushik)
 Judicial Member