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(RESERVED on 27.3.2012)

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

Allahabad, this the 13th day of April, 2012, 2011

admitted as per order
passed in no. 1848/2012
Lb. Secy

Hon'ble Mr. Sanjeev Kaushik, Member-J
Hon'ble Mr. Shashi Prakash, Member-A

Original Application No.641 of 2007
(U/s 19 of Administrative Tribunal Act, 1985)

Budh Prakash aged about 62 years, retired Loco Inspector,
N.E. Railway, Pilipbhit R/o Kannu Mohalla, P.O. & District-
Bareilly.

..... **Applicant.**

By Advocate : Shri T.S. Pandey

V E R S U S

1. Union of India, through General Manager, N.E. Railway, H.Q. Gorakhpur.
2. Chief Personnel Officer, N.E. Railway, Headquarter Office, Gorakhpur.
3. Divisional Railway Manager, N.E. Railway, Izatnagar, District-Bareilly.

..... **Official Respondents.**

4. Shri Dhanraj Ram, Ex-Loco Inspector C/o DRM, N.E. Railway, Varanasi.
5. Shri Shanker Ram, Ex- Loco Inspector through DRM, N.E. Railway, Varanasi.
6. Shri Prem Singh, Loco Inspector through DRM (Mech.), N.E. Railway, Lucknow.
7. Shri Har Swaroop, Ex-Loco Inspector, 68-B Civil Lines, Anathalaya Ka Pichhwada, Islamia College Ka Ground, Bareilly.
8. Shri Babu Ram, Ex-PNL, Mohalla-Vasant Bihar, Plot No.18, Izatnagar By-Pass, Bareilly.

..... **Private Respondents**

By Advocate : Sri S.K. Anwar

ORDER

Delivered by Mr. Sanjeev Kaushik, Member-J

By way of the instant Original Application filed under section 19 of the Administrative Tribunals Act 1985, the applicant seeks quashing of impugned orders dated 5.1.2006 (Annexure A-3) and

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order dated 4.12.2006 (Annexure A-4) with further prayer to partly quash impugned promotion order dated 11/16.11.2004 (Annexure A-1) and 7.2.2005 (Annexure A-2) passed by General Manager (P), N.E. Railway, Gorakhpur in respect of promotion of private respondents only, still further prayer to direct the respondents to convene a review DPC to consider and promote the applicant as Loco Inspector Grade Rs.7450-11500 (RSRP) with retrospective effect from 1.11.2003.

2. The facts are not in dispute. The only arguments raised by learned counsel for the applicant Shri T.S. Pandey that the basis of the impugned order is the judgment passed in the case of ***Union of India Vs. Pushpa Rani and Others reported as (2008) 9 SCC 242*** is bad as the judgment in the case of Pushpa Rani is per-incurium and not applicable to the facts and circumstances of the case of the applicant. Because while passing the said judgment the Hon'ble Supreme Court has not considered the judgment passed earlier on this subject, therefore, the question arise before us for determination is whether the judgment in the case of Union of India Vs Pushpa Rani and others (Supra) is per-incurium and subsequently whether the impugned orders are legal and valid. Shri T.S. Pandey learned counsel for the applicant vehemently argued that the impugned order firstly implementing the reservation policy even in the re-structuring cadre and subsequently granting promotion to the private respondents are illegal, arbitrary and against the verdict of the Hon'ble Supreme Court and thus the same is liable to be set aside. He argued that under the re-structuring of cadre the respondents cannot be allowed to give benefit of reservation on the resultant vacancies,

therefore, the impugned promotions of the private respondents are liable to be set aside. He further argued that the judgment in Pushpa Rani case (Supra) is per incurium and cannot be made applicable qua other as the same has been passed without considering the judgment on the same subject while delivering the same. He urged that in view of the judgment in the case of **Official Liquidator Vs. Dayanand and Others reported as (2008) 10 SCC 1**, if the judgment is passed without considering the earlier judgment then the same is not having the binding effect as per Article 141 of the constitution of India. On the other hand, Shri Anwar learned counsel representing the Railways submitted that the arguments advanced by the applicant is mis-placed as the Hon'ble Supreme Court while deciding the Pushpa Rani case (Supra) have considered the same very circular dated 9.10.2003 which has been questioned in the present original application. Therefore, the judgment in Pushpa Rani Case is having a binding effect and cannot be said to be per incurium. It is the judgment in rem.

3. We have considered the submissions and have gone through the record as well as the judgment cited by learned counsel for the respective parties with their able assistance. The Railway Board vide their circular dated 9.10.2003 issued re-structuring of certain group 'C' and 'D' cadres. As per clause 14 of the circular reservation has also been given to the resultant vacancy after re-structuring of cadre. Clause 14 reads as under:-

"14.Provision of reservation: The existing instructions with regard to reservation of SC/ST wherever applicable will continue to apply."

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After applying the reservation the respondents have given promotion to the private respondents. The circular dated 9.10.2003 came up for interpretation before the Hon'ble Supreme Court in the case of Union of India Vs. Pushpa Rani and others (Supra). The Hon'ble Supreme Court in para no.17 of the judgment have considered the policy/circular and thereafter given his findings in para no.21, 28 and 29 of the judgment. It is held that the respondents have rightly applied the reservation as envisaged in para 14 of the said circular and ultimately accepted the SLP and quash the orders of Hon'ble High Court as well as of the Tribunal and recorded its findings in para no.59 which reads as under:-

"59.....At the cost of repetition, we consider it necessary to emphasise that restructuring exercise envisaged in Letter dated 9.10.2003 resulted in creation of additional posts in most of the cadres covered by the policy and the Government had taken a conscious decision to fill up such posts by promotion from amongst eligible and suitable employees and the promotees were burdened with duties and responsibilities of greater importance. Therefore, the Tribunal and the High Court were not justified in treating it as a case of upgradation of posts simpliciter. Consequently, the decision of the Tribunal to quash Para 14 of Letter dated 9.10.2003 and direction given for making appointments dehors the policy of reservation are legally unsustainable."

Once the Hon'ble Apex Court considered the same very circular and have uphold the circular, therefore, the same is having a binding effect upon the respondents as the judgment of the Hon'ble Apex Court is having a binding effect as per Article 141 of the constitution of India. The arguments of the learned counsel for the applicant that earlier judgment having been considered has no relevancy as we have seen those are only orders, therefore, the same cannot be termed in any way as the judgment which is having a binding effect as per Article 141 of the constitution of

India, they are judgment in personam. The judgment in the case of Pushpa Rani (Supra) is directly dealing the circular dated 9.10.2003 and after considering the facts the Hon'ble Supreme Court have given the detailed judgment which is binding upon the respondents. The judgment in the case of Puspha Rani is judgment in rem which is binding upon the respondents.

4. In view of the above, the original application is dismissed being devoid of merits. The question posed is decided in favour of the respondents having binding effect upon the respondents as per Article 141 of the Constitution of India. No Costs.


Member-A

/ns/


Member-J