

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

O.A./T.A./C.P./R.A./M.A. No. 1300 of 2008.

Date of Decision 12.4.2011.

Anil Kumar Bhasin and others Applicant(s)

CIA Ms. Islam Ahmed Counsel for the
Applicant(s)

V E R S U S

Union of India Respondents(s)

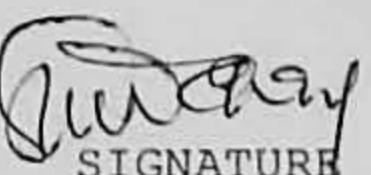
C/R Mr. P.N. Rai Counsel for the
Respondents(s)

CORAM :

Hon'ble Mr. Justice S.C. Shrivastava, Sr. Member (J) / HOD.

Hon'ble Mr/Mrs. Manjulika Gautam Member (A).

- ✓ 1. Whether Reporters of local News Papers may be allowed to seen the Judgment?
- ✓ 2. To be referred to the Reporters or not?
- ✓ 3. Whether their Lordship wish to see the fair copy of the judgment.
- ✗ 4. Whether to be circulated to all the Benches.


SIGNATURE

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD**

Original Application No. 1300 of 2008

Allahabad this the, 12th day of April, 2011

**Hon'ble Mr. Justice S.C. Sharma, Member (J)
Hon'ble Mrs. Manjulika Gautam, Member (A)**

1. Anil Kumar Bhasin son of Mr. Bal Krishna Bhasin. Resident of 350 Nanak Ganj, Post Office Sipri Bazar, Jhansi City (at Sl. No. 317 in the Seniority List Dated 31.3.2004).
2. Achchey Lal son of Mr. Lakhpat Ram (at Sl. No. 362).

All posted at Chief Crew Controller, North Central Railway, Jhansi Division, Jhansi.

Applicant

By Advocate: Mr. Islam Ahmad

Vs.

1. The Union of India through its General Manager, North Central Railway, Allahabad.
2. The Divisional Railway Manager (Ministerial/Personnel), Northern Central Railway, Jhansi.

Respondents

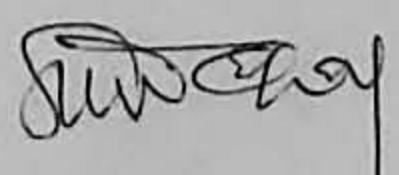
By Advocate: Mr. P.N. Rai

O R D E R

By Hon'ble Mr. Justice S.C. Sharma, J.M.

Instant O.A. has been instituted with the following relief (s): -

- "i) The respondent no. 2 may be directed to up-grade alike respondent no. 3 to 6 on Grade-4,000 to 6000 Rs. By setting aside the impugned order dated 18.9.2008.
- ii) To direct to respondent no. 2 to give all the benefits in pursuance of up-gradation alike respondent no. 3 to 6 within fortnight from the direction of this Hon'ble Tribunal.



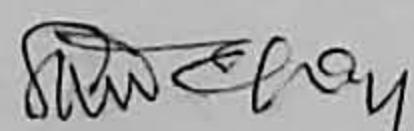
iii) This Original Application may also be allowed in the light of Hon'ble Supreme Court and Hon'ble Tribunal."

2. The facts of the case may be summarized as follows: -

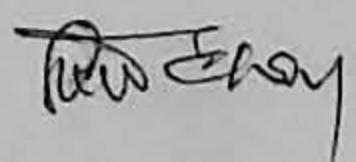
That the seniority list including the applicants was prepared and published on 31.03.2004 of Assistant Loco Pilot (DSL/Elect.) Grade Rs. 3050-4590, and there is up gradation from the seniority list as below: -

Selection Posts	Up-gradation Posts
A. Assitt. Loco Pilot (Grade ₹ 3050 to 4590)	A. Sr. Asstt. Loco Pilot (Grade ₹ 4000-6000)
B. Shunting Loco Pilot (Grade – 4000-6000 ₹)	B. Sr. Shunting Loco Pilot (Grade ₹ 5000-8000)
C. Goods Loco Pilot (Grade 5,000-8000 ₹)	C. Sr. Goods Loco Pilot (Grade 5,500 to 9,000 ₹)

That the reservation is applicable in selection of promotive post but in the case of up gradation reservation is not applicable. In spite of the fact that Mahesh Kumar S/o Mr. Brindavan- at serial No. 397, Mr. Haidas S/o Mr. Sumar Singhat at serial No. 400, Mr. Dinesh Kumar S/o Mr. Sidhawi at serial No. 411 and Mr. Prem Kumar Verma at serial No. 413 in the seniority list dated 31.03.2004 have been up graded on the post of Senior Assistant Loco Pilot ₹ 4000-6000 while all the applicants come prior to their seniority serial No. 411, annexure-1 is the seniority list. It is stated that the Railway Board clarified this aspect vide letter dated 07.08.2002 and 20.06.2003 circulated by the Director, Establishment (Res.) II that the

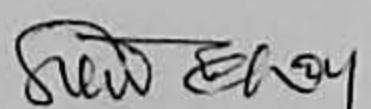


reservation shall not be applicable in the case of non selection promotion i.e. up gradation. In spite of specific guide lines of the Railway Board, the respondent No. 2 illegally has given promotion to the four SC/ST candidates by ignoring the applicants who are prior to their serial in the seniority list. Being aggrieved, the applicant preferred a joint representation to the respondent No. 2 on 27.04.2007. It is stated that the respondent No. 2 relying on wrongly ancient letter No. 82 dated 31.08.1982 of the Railway Board and letter dated 01.08.2006 of the General Manager (P) and on the basis of the aforesaid letter of the Board, the promotion was given and the applicant cited the current Railway Board's letters dated 07.08.2002 and the copy has been circulated in the department. But the respondent No. 2 willfully suppressed the then current letter for the sake of extraneous consideration from SC/ST candidates. It is stated that the representation of the applicant was rejected by respondent No. 2 vide letter dated 27.04.2007 by the common order and that order was challenged in O.A. No. 608 of 2008. And, the Tribunal directed the respondents to decide the representation by a reasoned and speaking order vide Order dated 16.07.2008. It is stated that the representation was sent in pursuance of the Order of the Tribunal on 25.07.2008, annexure-4 is the copy of

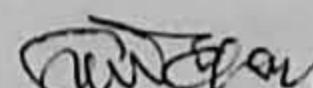


representation. The representation was again rejected by respondent No. 2 but the order cannot be said a speaking order. It is an arbitrary order. In identical matter, Jabalpur Bench of the CAT has clearly decided in the case of *V.K. Sirothia Vs. The Union of India*, and the Hon'ble Supreme Court in *Union of India Vs. V.K. Sirothia* 1999 SCC (195) 938 hence, identical order ought to have been passed by the respondents. It is expected from this Tribunal that the identical order be passed in their case.

3. The respondents filed the Counter Reply. It has further been alleged that the order dated 18.09.2008 under challenge in the O.A. is a speaking order passed by the competent authority in compliance of the Tribunal's order dated 16.07.2008 in O.A. No. 608 of 2008. It is wrong to allege that the representation was rejected arbitrarily in violation of the direction of the Tribunal. It is stated that the issue involved in the present O.A. had already been challenged in the earlier two Original Applications i.e. O.A. No. 608 of 2008 and O.A. No. 31 of 2008. Both the Original Applications were decided by the Tribunal at the admission stage directing the respondents to decide the representation and the respondents duly decided the representations vide order dated 25.07.2008 and 27.04.2007 respectively by a speaking order. Hence,

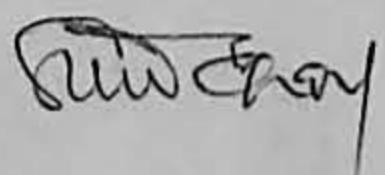


the present O.A. is barred by principle of resjudicata. Copies of para-1 and para-8 of earlier Original Applications have been annexed as annexure CA-1 and annexure CA-2 respectively. It is stated that the up gradation list dated 19.05.2006 is time barred. It is also submitted that the reservation is applicable on each and every stage of selection or promotion, be it by way of normal channel, restructuring or up gradation selection or non-selection, as has been mentioned in the Board's Circular letter No. RBE-177/2003 dated 09.10.2003, annexure-CA -3 is the copy of the circular letter of the Railway Board. The North Central Railway Headquarter also issued a clarification in support of this issue by letter-dated 01.11.2006 (annexure CA-4). It is stated that the names given by the applicants are of the candidates of reserved community hence their comparison with the applicant is not fair. It has also been mentioned in the Board's letters dated 07.08.2002 and 20.06.2003 about the treatment of SC/ST candidates promoted on their own merits and not about the applicability of reservation for SC/ST candidate in non-selection post. It is wrong to allege that the Railway Board letter dated 31.08.1982 is not correct. The Judgment delivered by the Jabalpur Bench is not applicable in the present case and O.A. is liable to be dismissed.

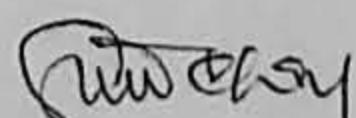


4. We have heard Mr. Islam Ahmad, Advocate for the applicant and Mr. P.N. Rai, Advocate for the respondents and perused the entire facts on record.

5. It has been argued by learned counsel for the applicant that in view of Railway Board's Clarificatory letter dated 07.089.2002 and 20.06.2003 circulated by the Director Establishment (Res.) II that the reservation shall not be applicable in case of non-selection promotion i.e. up gradation, and that the respondent No. 2 illegally had given promotion to four SC/ST candidates by ignoring the claim of the applicants who are prior to their serial in the seniority list and in violation of the specific guide lines of the Railway Board. It is also stated that the respondent No. 2 also wrongly placed reliance on the circular letter No. 82 dated 31.08.1982 of the Railway Board and letter dated 01.11.2006 of General Manager (P). It is the main contention of learned counsel for the applicant that in the matter of non-selection post on promotion and up gradation the reservation law is not applicable. It is stated that the Railway Board has also issued different circulars in this connection. From perusal of the speaking order passed on the representation of the applicant, it is evident that principle of reservation is applicable in each category, grade and post in view of roster introduced w.e.f.

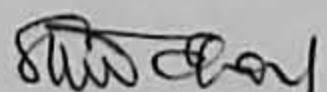


10.02.1995. Learned counsel for the applicant filed the copy of the circular letter of the Railway Board issued on 01.11.2006 and on the strength of this circular letter it has been argued that in promotion to non-selection post which are made on the basis of seniority cum fitness, the concept of merit is not involved and the instructions contained in Board's letter dated 7.8.2002 and 20.06.2003 do not apply to the promotions made by non-selection method. It has further been clarified that by the Board's circulars letter dated 31.05.1982 and 31.08.1982, the post of SC/ST candidates on promotion to non-selection post should also be done as per the reserved policy on the roster and staff including safety category will be required to put in a minimum of two years of service in each grade before promotion to higher grade. Hence, perusal of this circular letter shows that the reservation of SC/ST candidate on promotion to non-selection post, point of reservation is also applicable. At page No. 16, speaking order passed by the respondents dated 18.09.2008 is also material and it has been mentioned in this speaking order passed on the representation of the applicant that submission of the applicant that the reservation is not applicable on promotion to non-selection posts and on up gradation, is not acceptable because as per post based rosters introduced w.e.f. 10.02.1995, the reservation is



applicable in each category, grade and post. Hence, it is the definite case of the respondents that the principle of reservation is applicable in the case of promotion and up gradation on a non-selection post. The Railway Board issued a further circular letter dated 01.11.2006 and it has been laid down in this circular letter that as promotion to non-selection posts which are made on the basis of seniority cum fitness, concept of merit is not involved and instructions contained in Board's letter dated 07.08.2002 and 20.06.2003 do not apply to the promotions made by non-selection method. The Board's letter dated 07.08.2002 and 20.06.2003 speaks about the treatment of SC/ST candidates promoted on their own merit and not about the applicability of reservation for SC/ST candidate in non-selection post.

6. Learned counsel for the applicants argued that in view of circular letters of the Railway Board as well as the Judgment of the Hon'ble Apex Court, the principle of reservation is not applicable to the up gradation as a consequence of restructuring. The respondents have also not disputed this fact. Learned counsel for the applicant placed reliance on a Judgment of the Hon'ble Apex Court reported in *1999 Supreme Court Cases (L&S) 938 Union of*



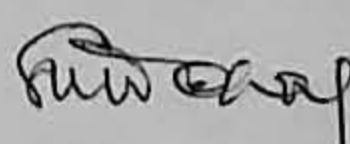
India vs. V.K. Sirothia. Following has been held by the Hon'ble Apex Court: -

"The finding of the Tribunal that the so-called promotion as a result of redistribution of posts is not promotion attracting reservation on the facts of the case, appears to be based on good reasoning. On facts, it is seen that it is a case of upgradation on account of restructuring of the cadres, therefore, the question of reservation will not arise. We do not find any ground to interfere with the order of the Tribunal."

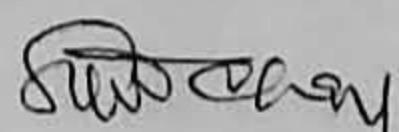
Hence, in view of the Judgment of the Hon'ble Apex Court, now it is settled position that the promotion as a result of redistribution of posts is not promotion and hence principle of reservation is not applicable. Learned counsel for the applicant also placed reliance on the Judgment of the Apex Court reported in *AIR 2002 SC page 2875 All India Non SC/ ST Employees Association (Railway) vs. V.K. Agarwal and others.* The Hon'ble Apex Court held as under: -

".....it was clarified that the principle of reservation does not apply if as a result of reclassification or re-adjustment there is no additional post which is created. It was clarified that if as a result of reclassification and re-adjustment having been effected any post is created then the principle of reservation would be applicable. It was noticed that the present case was restricted only to existing employees who were re-distributed into different scale of pay as a result of this upgradation."

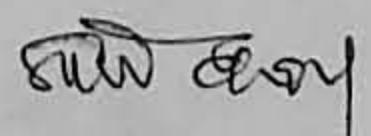
We have to decide whether in the present case, the dispute is regarding up gradation or reclassification as a consequence of restructuring. If the existing posts reclassified or up graded as a result of restructuring then



the principle of reservation shall not be applicable. Learned counsel for the applicant argued that applicant had been working as Assistant Loco Pilot and a seniority list was prepared and published on 31.03.2004 of the Assistant Loco Pilots. But learned counsel for the applicants also argued that the post of Assistant Loco Pilots was up graded as Senior Assistant Loco Pilots, and that the junior persons were promoted earlier to the applicants in the scale of ₹ 4000-6000. But even then it has also been alleged that the respondent No. 2 illegally has given promotion to the 4 SC/ST candidates by ignoring the applicants who are prior to their serial in the seniority list. It is further alleged that Mahesh Kumar-at serial No. 397, Mr. Haidas at serial No. 400, Mr. Dinesh Kumar at serial No. 411 and Mr. Prem Kumar Verma-at serial No. 413 in the seniority list have been shown, and they have been up graded on 31.03.2004 on the post of Senior Assistant Loco Pilot grade ₹ 4000-6000/-. There is a Railway Board letter dated 01.11.2006 in which it has been provided that in promotions to non-selection post which are made on the basis of seniority-cum-fitness, the concept of merit is not involved and the instructions contained in the Board's letter dated 07.08.2002 and 20.06.2003 do not apply to the promotion made by non-selection method. Further also held in this circular letter

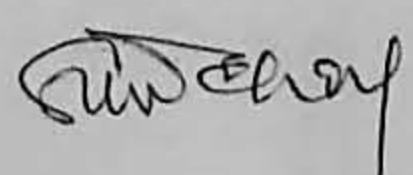


that the promotion to non-selection post should also be done as per reservation point on the roster. Other letters were filed by the applicants in which it has been alleged that in the case of promotion by non-selection method are made on the basis of seniority cum fitness and concept of merit is not involved in such promotion. The respondents in the Counter Reply has alleged that the reservation is applicable on each and every stage of selection and promotion be done by way of normal channel, restructuring or up gradation, selection or non selection in view of Railway Board's circular letter. But in view of the Judgment of the Hon'ble Apex Court in the matter of restructuring and up gradation on selection/non selection post, the principle of reservation is not applicable. It has also been admitted that in the O.A. names of the persons have been mentioned who have been given promotion and alleged that they are of reserved community. It has been provided in the Board's letter dated 07.08.2002 and 20.06.2003 regarding the treatment of SC/ST candidates promoted on their own merits and not on the applicability of reservation for SC/ST candidate in non-selection post. Annexure CA-3 is a circular letter dated 09.10.2003 of the Railway Board and it applies in the case of restructuring of certain Group 'C' and 'D' cadres. At para-14 of the Circular, it has been provided that existing instruction



with regard to reservation of SC/ST wherever will continue to apply. It has also been provided that in annexure CR-4 letter dated 01.11.2002 that promotion to non selection post which are made on the basis of seniority cum fitness the concept of merit is not involved and the instruction of the Railway Board's letters dated 07.08.2002 and 20.06.2003 do not apply to the promotion made by non-selection method. The stand of the respondents is also to the effect that in case of non-selection post, the principle of reservation is not applicable and employee concerned is to be promoted on the basis of seniority cum fitness, and merit is not involved.

7. It has been alleged by the applicants that a seniority list was issued of the Assistant Loco Pilot vide letter dated 31.03.2004 and the name of the applicant Anil Kumar is at serial No. 370 and Achche Lal at serial No. 362 in the seniority list. It has further been alleged that one Mahesh Kumar, Haidas, Dinesh Kumar and Prem Kumar Verma at serial No. 397, 400, 411 and 413 respectively in the seniority list. The respondents had not denied that these persons do not belong to SC/ST community and hence there can be no comparison of these persons with the applicants. Admittedly, the post of Senior Assistant Loco Pilot is a non- selection post and promotion is to be given

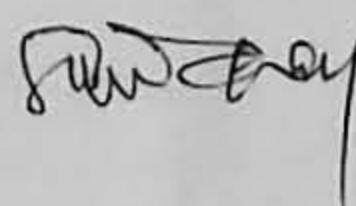


on the basis of seniority-cum-fitness and merit is not the criteria for giving promotion/up gradation. When according to the respondents this post was non-selection post and promotion is to be given on the basis of seniority-cum-fitness, then it has not been shown that as to why these persons were appointed earlier to the applicants who were senior to these persons. The respondents have alleged that in the matter of up gradation also on a non-selection post, the principle of reservation was followed and as these persons belong to SC/ST community, hence they were promoted prior to the applicants. When according to their own version of the respondents, the post is of non-selection post and the promotion is to be given on the basis of seniority. And no reason has been given that as to why these persons were promoted earlier to the applicants. The respondents tried to blow hot and cold on the same breathe. On the one hand, it has been alleged that in the matter of non-selection post, the promotion is not to be given on the basis of principle of reservation but it is to be given on the basis of seniority cum merit. It has been specifically alleged by the applicants that these posts were upgraded as a matter of restructuring of the railways hence the principle of reservation is not applicable. But, Hon'ble Supreme Court has held that in the matter of restructuring, the principle of reservation is not applicable

B. N. Dey

but it has to be proved that whether the post existing on the date of restructuring were upgraded. Then automatically the persons who had been working in the lower grade, as a matter of restructuring due to up gradation then placed in a higher scale. The Hon'ble Supreme Court also held that the principle of reservation apply if by reclassification, re structuring and re adjustment, there is an additional post which is to be created but in case the posts are not being created as a result of restructuring or reclassification then the principle of reservation shall apply. The respondents have not clarified their stand. It has not been stated by the respondents that whether the posts were created as a result of restructuring/reclassification or whether the existing posts were upgraded, and in case the posts were upgraded then principle of reservation shall not be applicable and the promotion shall be made on the basis of seniority cum suitability. Merit is not only the criteria and the post in dispute is the post of Senior Assistant Loco Pilot. Admittedly, the post is a non-selection post and hence the principle of reservation shall not be applied.

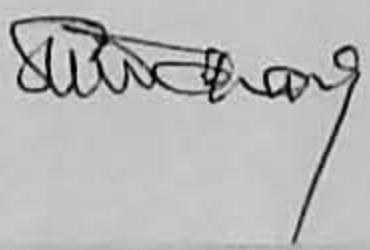
8. Under these circumstances, the applicants are also entitled to be promoted earlier to the aforesaid persons. Earlier Mr. Mahesh Kumar, Mr. Haridas, Mr. Dinesh



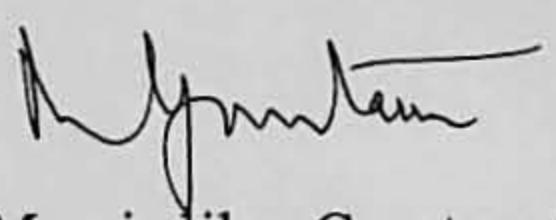
Kumar and Mr. Prem Kumar Verma were impleaded as respondent No. 3 to 6 to the O.A. but for the reasons best known to learned counsel for the applicants, later on name of these persons were deleted but the prayer of the applicants is not for reversion of these persons but the prayer is that these applicants must also be up graded like these persons in the scale of ₹ 4000-6000/-.

9. For the reasons mentioned above, we are of the opinion that the applicants are also entitled to be promoted in the grade of Senior Assistant Loco Pilot-a non selection post, and the promotion is to be made on the basis of seniority cum merit. The applicants were senior to the other persons Mahesh Kumar etc. belonging to SC/ST category hence the applicants ought to have been promoted prior to these persons on the basis of seniority. Moreover, in the matter of up gradation as a result of restructuring, principle of reservation is not applicable. O.A. deserves to be allowed.

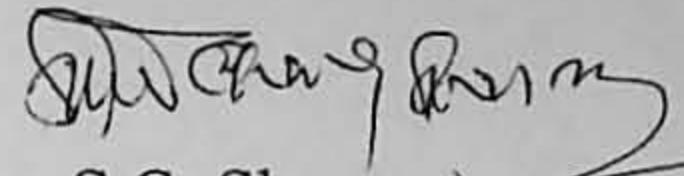
10. O.A. is allowed. The impugned order dated 18.09.2008 passed by respondent No. 2 is quashed and set aside. The respondents No. 1 and 2 are directed to promote the applicants in the scale of ₹ 4000-6000 as Senior Assistant Loco Pilot from the date when their

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juniors were promotion. Notional promotion shall be given to the applicants from that date. The respondents shall comply the order within a period of three months from the date when a copy of this order is produced before them. The applicant shall also produce the copy of this order before the respondents forthwith. No order as to costs.



(Manjulika Gautam)
Member - A



{Justice S.C. Sharma}
Member - J

/M.M/