

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

OA/554/93

Date of Decision: 11.08.2000

Shri A.C.Parikh : Petitioner (s)

Mr.M.S.Trivedi : Advocate for the petitioner(s)

Versus

Union of India & Ors. : Respondent(s)

Mr.P.K.Handa : Advocate for the Respondent(s)

CORAM

The Hon'ble Mr.V.Ramakrishnan : Vice Chairman

The Hon'ble Mr.P.C.Kannan : Member(J)

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgment?
4. Whether it needs to be circulated to other Benches of the Tribunal?

Dr

: 2 :

Shri A.C.Parikh,
Ex.Chief Goods Clerk,
Ahmedabad.

: Applicants

Advocate: Mr.M.S.Trvedi

Versus

1. Union of India, through:
The General Manager, Western Railway,
Churchgate, Bombay.
2. The Divisional Railway Manager,
Divisional Office,
Pratapnagar, Baroda.

: Respondents

Advocate: Mr.P.K.Handa

JUDGMENT
OA/554/93

Date: 11-8-2000

Per: Hon'ble Mr.P.C.Kannan : Member (J)

Heard Mr.M.S.Trivedi and Mr.P.K.Handa counsel both sides.

2. The applicant who worked as Chief Goods Clerk under the respondents aggrieved with the action on the part of the respondents to consider and promote the employees belonging to SC/ST in excess of 15% and 7 1/2 % respectively which is the prescribed quota fixed for them. He therefore, prays for quashing the instructions contained in the General Manager (E)'s letter dated 9.6.93 (Annexure A-3) and consequent issue of promotion order in respect of certain employees (Annexure A-5).

DN

3. The case of the applicant is that the applicant was working as Chief Goods Clerk in the pay scale of Rs.1600-2660. The applicant after completing 35 years of service under the respondents, retired on 31.7.93. The respondents issued instructions regarding restructuring of cadres in the grades of 'C' & 'D' of the various departments of Railway vide Circular dated 27.1.93 (Annexure A-1). In terms of the Circular, the restructuring of cadres will be effective from 1.3.1993. The applicant further stated that consequent to restructuring of cadres, the strength of posts in Goods Branch in the pay scale of Rs.2000-3200 will increase from 23 to 34. Consequently, the number of posts reserved for SC/ST employees would go up from 3 and 2 to 5 and 3 respectively. As the SC/ST candidates working in the said grade exceeded the above quota of posts, the applicant claims that no SC/ST can be promoted consequent to restructuring of the cadre. However, in violation of the interim orders of the Tribunal in a number of OAs in consequent to the judgment of the Supreme Court in Malik's case, the respondents promoted SC/ST candidates vide order dated 23.9.93 (Annexure A-5).

4. The respondents in their reply have denied that there were excess quota of SC/ST employees. The respondents further submitted that prior to restructuring the issue of order, the SC/ST employees in the promotion grade are not in excess. The respondents also stated that the interim orders passed by the Hon'ble Supreme Court and Central Administrative Tribunal in various cases were strictly followed and implemented. They have also stated that the Railway Board issued certain instructions vide their letter dated 16.6.92 and the same were kept in abeyance by the Head quarter office vide their letter dated 1.9.92. Subsequently vide letter dated 28.4.93, Head quarter office issued instructions to implement the Railway Board's instructions contained in letter dated 16.6.92 from 28.4.93. Keeping in view the

Dr

instructions of the Railway Board and the Head quarter office, orders of promotions were issued. The respondents categorically stated that there were no prohibition against the promotion of reserved community candidates on the basis of their own merit or seniority and such promotions when made cannot be considered to be against reservation quota. In the light of the above, the respondents stated that certain SC/ST candidates were promoted. They have also denied that the promotion of SC/ST employees were by way of reservation ignoring the claim of senior employees belonging to General Community. In the circumstances, they have submitted that the impugned action is not bad in law.

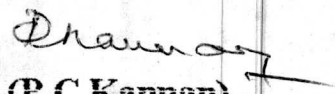
5. We have carefully considered the submissions of both counsel and examined the pleadings. The case of the applicant is that he is entitled to promotion w.e.f. in the scale of Rs.2000-3200 (Chief Goods Superintendent) consequent to the restructuring of the cadre vide Railway Board's order dated 27.1.93. The respondents have promoted S/Shri L.G. Sarvia and 180 others to the post of CGS in the scale of Rs.2000-3200 vide order dated 23.9.93 (Annexure A-5).


6. The applicant has challenged their promotion orders. However, the applicant has not chosen to implead them as party respondents in this OA. The Hon'ble Supreme Court in the case of Amin Tewari and Others vs. Zila Mansavi Shikshak Sangh & Others reported in 1998 Lab. I.C. 414 observed that selection and appointment without impleading the selected candidates is not maintainable. On this ground alone the decision of the Tribunal is vitiated. In view of the above, the OA is liable to be rejected.



7. On merits of the case, ^{also} the respondents have categorically asserted that the promotions of employees belonging to SC/ST are not in excess. The stand of the respondents have not been rebutted by way of filing of a rejoinder to the reply. The O.A. is, therefore, liable to be rejected.

8. In the facts and circumstances, the OA fails and accordingly, dismissed. No costs.


(P.C.Kannan)
Member (J)


(V.Ramakrishnan)
Vice Chairman

ab

CA/TA/RA/CP/ 554/93 of 200

Mr A.C. Parish

VERSUS

Q. 2 I & Ors

RESPONDENT (s)

I N D E X - S H E E T

| SR.NO. | DESCRIPTION OF DOCUMENTS | PAGE |
|--------|--------------------------|----------|
| 01. | - OA - | 1 to 48 |
| 02. | Annexure | 49 |
| 03 | Written statement | 50 to 55 |
| 04 | Judgement dt. 11.8.2000 | 5 page |
| | 1 c' part | 5 page |

Certified that the file is complete in all respects.

Signature of S.O. (J)

Signature of Dealing Hand.

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

Submitted :

C.A.T./Judicial Section.

Original Petition No 554

of 1993

Miscellaneous Petition No _____

of _____

Shri AC Parikh Petitioner(s)

versus

UOI 2025 Respondent (s)

This application has been submitted to the Tribunal by
Shri M.S. Tawich.

Under Section 19 of the Administrative Tribunal Act, 1985.
It has been scrutinised with reference to the points mentioned in
the check list in the light of the provisions contained in the
Administrative Tribunal Act, 1985 and Central Administrative
Tribunals (Procedure) Rules 1985.

The application has been found in order and may be given
to concerned for fixation of date.

The application has not been found in order for the reasons
indicated in the check list. The applicant advocate may be asked
to rectify the same within 14 days/draft letter is placed below
for signature.

ASSTT. Che
24/9.

S.O.(J)

D.R.(J)

Parikh
24-9-93

note, Co. Court no 2 has asked to circulate the
matter today at 1500 hrs.

Che
24/9/93

SO (J)
me
24/9/93

DR (J)

Parikh
24-9-93

OA No 527/93

Court-II

Filed by Mr. M.S. Trivedi
Learned Advocate for Petitioners
with second set of 2 copies
copies copy served/not served to
other side

copy for
By Registrar C.A.T.(I)
A'bad Bench
23/9/93

BEFORE THE HON'BLE ~~TRIBUNAL~~ CENTRAL ADMINISTRATIVE
TRIBUNAL AHMEDABAD BENCH AHMEDABAD.

Original Application No. 554 fo 1993.

Shri A.C. Parikh, &
C.G.C.W.Rly,
Ahmedabad.

.....Applicant.

V/s.

Union of India & others.

.....Respondents.

/ I N D E X /

1. Memo of Application 1 to 10.
2. Copy of Circular dtd.27.1.93 11 to 27
3. Copy of Allahabad H.C.and
other Judgments 28 to 43
4. Copy of letter dtd. 9.6.93 44
5. Copy of Interim order passed 45 to 48
in O.A. 369 of 1993.&
O.A. 426/93.

7. Copy of order dtd. 23/9/93
produced to dgr

24/9/93, Chl Adr
Date 23/9 1993.

Ahmedabad.

(M.S.Trivedi)

Advocate for the applicant.

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH AHMEDABAD.

Original Application No. 554 of 1993.

Shri A.C. Parikh,
Ex. Chief Goods Clerk,
Ahmedabad.

... Applicants.

Versus.

1. Union of India , through
The General Manager Western Railway,
Churchgate, Bombay.

2. The Divisional Rly.,
Manager Divisional Office,
Pratapnagar, Baroda.

... Respondents.

An Application u/s. 19 of A.T. Act.

1. APRTICULARS OF APPLICANT :-

- (1) Name of the Applicant :- Anmol Lal
- (2) Name of the Father of the applicant :- Chandulal
- (3) Designation and offices:- Ex. Chief Goods Clerk,
in which employees. Under respondent no.2.
- (4) Address of services of :- M.S. Trivedi,
all notices. Advocate,
E/4, Shivani Apartment,
B/H. Sahajanand College,
Nr. Azad Society Road,
Ahmedabad- 15.

2. PARTICULARS OF THE RESPONDENTS :- As stated in the title.

3. DETAILS OF IMPUGNED ORDER :-

This is an application challenging the action on the part of the respondents to consider and promote the employees to S.C./S.T. in excess of 15% and 7 $\frac{1}{2}$ % respectively which is the prescribed quota fixed for them.

At present
there is no
proactive copy
to be given
to the side because
M.S.C. have included
copy to accept advance
copy

24/9/93

1. Letter No. E/SCT/230/5/Vol-III/dtd. 9.6.'93

4. JURISDICTION :

The applicant declares that the subject matter of the order against which ^{the applicant} they wants redressal is within the jurisdiction of the Tribunal.

5. LIMITATION :-

The applicant further declares that the application is within the time limit prescribed under section 21 of A.T. Act.

6. FACTS OF THE CASE :-

The applicant humbly states that the applicant ^{is} ~~was~~ a permanent employees of Rly. Administration. It is further stated that the applicant had joined Railway Administration in the year 1956 as A.C.C. The applicant further states that thereafter the applicant was promoted and ^{thereafter} the applicant was working as C.G.C. (Chief Goods Clerk) in the pay scale of Rs. 1600-2660. The applicant further states that as far as service carrier and service record of the applicant is concern it is spotless and unblemished.

6.2 The applicant further states that the applicant had completed more than 35 years ^{of} service in Railway and retired on 31.7.1993 (A.O.H.). It is further stated that the respondent authority had issued one circular dtd. 27.1.1993 shown as Annexure A 1 to this application.

The applicant further states that as per the said circular the respondent authority had issued instructions regarding restructuring of cadres in the grade of C.& ^{Post 15} D of the

various departments of Railway. It is pertinent to note that as it was specifically mentioned in the said circular that the said circular will be ~~affix~~ effective from 1.3.1993. It is further stated that as it was mentioned ^{in that circular} that necessary ~~requirements were-completed~~ formalities were required to be completed on or before 1.3.1993 so that necessary orders can be issued before ~~on-or~~ 1.3.1993. ~~The-applicant~~

6.3 The applicant further states that the promotion avenues ^{Cleric cadre} in the Goods ~~Guard~~ are as under :-

1. A.C.C. pay scale
2. H.G.C. pay scale Rs. 1400-2300.
3. C.G.C. pay scale Rs. 1600-2660.
4. C.G.S. pay scale Rs. 2000-3200.

The applicant further states that the applicant belongs to General Community and ~~has~~ has come up to the post of C.G.C. by virtue of merit assessed through selection and general seniority. It is further stated that an employee for the purpose of being selected has to obtain more than 60% marks in the written test as well as in the aggregate for the ~~per~~ purpose of his companelment to the selection post. However this criteria or principle of obtaining 60% marks in the test is not applicable to S.C./S.T. employees who are to be adjusted against vacancies according to point Roster, wherein the reservation to the extent of 15% and 7½% of the posts is provided to the S.C./S.T. employee respectively.

6.4 It is further stated that now it is well settled principle that the concept of reservation cannot be implemented to scuttle the stifle the equal opportunities

in the matter of appointment and employment under the state to the member of general communities. Equal opportunities to the candidates mean that the percentage of reservation at any stage should not exceed 15% and 7½% at any stage as it would amount to unconstitutionality which will render the impugned action liable to be set aside. S.C./S.T. candidates cannot seek advancement at the cost of general community employees.

6.5 The applicant further states that due to restructuring of cadres the strength of posts in goods branch in pay scale of Rs. 2000-3200 will increase from 23 to 34. It is further stated that as per above details 11 vacancies will be increased in the same scale. But the actual position of S.C./S.T. and general community is as under :-

At Present:-

| | |
|-----------------------------------|----|
| Total No. of Posts | 23 |
| SC required according to SC quota | 03 |
| ST required according to ST quota | 02 |
| SC Actually working | 07 |
| ST Actually working | 03 |

After restructuring

| | |
|-----------------------------------|----|
| Total No. of Posts. | 34 |
| SC required according to SC quota | 05 |
| ST required according to ST quota | 03 |

Thus before restructuring the S.C./S.T. employees are in excess number. But now the authority had interpreted the instructions dtd. 9.6.1992 not properly and proposed to promote S.C./S.T. employees in excess quota.

6.6. Applicant further states and submits that the question of promoting persons belonging to S.C./S.T. community over and above of 15% and 7½% quota reserved for them, has been dealt with in the case of J.C. Malik's V/s. Union of India (S.L.R. 1978 (i) page 844) wherein it has been laid down that S.C./S.T. employees can not be promoted in excess of their prescribed quota. More over in this very matter, the Hon'ble Supreme Court has also ordered that all promotions which would be made after the date of that order would be explicitly in accordance with the judgment of Allahbad High Court in J.C. Malik's case. Copy of Allahabad High Court Judgment and Hon'ble Supreme Court's order dtd. 24.2.'84, 29.9.1981 and 7.1.1985 are annexed hereto and marked as Annexure : A2 to this application. It is further stated that these orders are still valid and have not undergone any change.

6.7 The applicant further states that as mentioned hereinabove the said circular dtd. 27.1.1993 was required to be implemented from 1.3.1993. It is significant to note that for the reasons which are best known to the department/respondent authority the said circular is not implemented till this date. It is pertinent to note that some of the employees of various branches of Railway Administration had approached this Hon'ble Tribunal by filing applications under section 19 of A.T. Act, and no any prohibitory orders are issued by the Hon'ble Tribunal in the said applications the authority had not issued any promotions orders of the ~~eligible~~ eligible employees. The applicant further states that the orders ought to have been issued ^{on or} before ~~one~~ 1.3.1993, but the orders are not issued. It is further stated that recently the respondent authority had issued one

instruction vide letter dtd. 9.6.1993 shown as Annexure:

A3
to this application. It is mentioned in the said letter ~~that~~ that the promotion which are required to be made due to restructuring of cadres as per the procedure prescribed vide letter dtd. 16.6.1992. Applicants therefore submits that the respondents are proposing to promote S.C./S.T. employees in excess of 15% and 7½% in the abovementioned category. The applicants further states that the respondents further states that the respondents cannot consider and promote the persons belonging to S.C./S.T. communities in excess of the prescribed quota of 15% and 7½% respectively in as much as the quota in the said categories is already full. The impugned order is therefore illegal and malafide. Moreover, the impugned action of the respondents is not only arbitrary, and unconstitutional but against and inviolation of the directions given by the Hon'ble Supreme Court in view of well known judgment of Malik's case, not only that it amounts to a Contempt of Court .

6.8 Applicant further stated that the vacancies have arisen as a restructuring of cadres with effect from 1/1/1993 and the vacancies will be immediately filled up as applicants are eligible and are also senior employees of general community. The respondents propose to promote S.C./S.T. employees who are occupying the present position by way of reservations, thereby ignoring the claim of senior employees belonging to general community. Thus the impugned action is highly contrary to the constitutional guarantee to the applicants as enshrined under Articles 14 and 16 of the Constitution of India.

6.9 The applicant further states that employees of reserved community who are presently working in the feeder posts have come up through the process of reservation as against merits and when the quota in the promotional posts is not only full but overflown, the persons belonging to S.C./S.T. community cannot be treated as eligible for further promotion. Treating it otherwise would amount to excessive reservation / promotion and is contrary to the Hon'ble Supreme Court's order referred herein above. It is therefore submitted that impugned action of the part of the respondents requires to be quashed and set aside. The applicant states that there is prima facie case in favour of the applicant and as far as balance of convenience is concerned it is also in favour of the applicant. If the aforesaid proposed promotions are not stayed a great harm prejudiced would be caused to the applicant and loss or damage which will be caused to the applicant cannot be compensated in terms of money.

6.10 The applicant further states that recently this Hon'ble Tribunal have given directions in the identical matters namely O.A. 289 of 1993 and 131 of 1993. It is further stated that the verified Hon'ble Tribunal have passed interim order on 3rd August, 1993 in one of the identical of the matter no. O.A. 369 of 1993. Copy of the said order is annexed hereto and marked as Annexure : *AR* to this application.

: 8 :

7. RELIEFS :-

In these circumstances and in the above premises the applicants therefore prays as under :-

- (1) that the Hon'ble Tribunal be pleased to Admit this application;
- (2) that the Hon'ble Tribunal be pleased to quash and set aside instructions issued vide letter dtd. 9.6.93 by the respondent authority.
- (3) that the Hon'ble Tribunal further be pleased to direct the respondent authority/its subordinates not to give promotions to S.C./S.T. employees to the higher post of category 1 over and 15% and 7½% respectively fixed for them in accordance with the J.C.Malik's case.
- (4) that the Hon'ble Tribunal pleased to declare and direct the authority to consider and promote the applicant to the said higher post as the applicant is eligible for the said promotion with all consequential benefits.
- (5) any other and further reliefs that the Hon'ble Tribunal may deem fit may be given to the applicant.

8. INTERIM RELIERS :-

- (a) pending hearing and final disposal of this application the respondent/its subordinates may be directed by an order of injunction

not to impliment the directions contained in letter dtd. 9.6.93 issued by the respondents/ and further direct the respondents/ its subordinates to to complete the process of resturcring of categories perscribed/ as per circular dtd. 27.1.1993 with effect from 1.3.1993/ as if circulars dtd. 9.6.1993 never existed, in view of well known judgment of Supreme Court (Malik's Case) and other benches of the Tribunal.

- (b) . any other and furttther reliefs that the Hon'ble Tribunal may deem fit may be given to the applicant.

9. REMEDY EXHAUSTED :-

The applicant further states that they ~~have~~ applicant had avoiled all the legal remedies available to them as per rules.

10. MATTER NOT PENDING :-

The applicant further declares that the applicant had not proviously filed any application regarding the matter in respect of which this application has been made nor any such applicatin is pending before any judicial forums.

10

11. DETAILS OF I.P.O. :-

801 - 247148
G-KC

12. DETAILS OF ANNEXURE :-

01 - 23/9/93

Separate Index annexed herewith.


Dt. 23/9/1993.
Ahmedabad.

x A.C. Parikh,

Applicant.

VERIFICATION.

I, A.C. Parikh, adult, Occ. Ex.C.G.C., do hereby
verify in state that what is stated hereinabove are true
and I have not suppressed any material facts.


(M. S. Trivedi).
Advocate for the Applicant.

x A.C. Parikh,

Applicant.

A2 A/E

2.

10

(S)

(11)

GOVERNMENT OF INDIA

Machine No.
PC III/83/01/51/2

MINISTRY OF RAILWAYS

(RAILWAY BOARD)

R.B.E. NO.18/93
S.L. No. 2/83

No. PCIII/81/CRC/1

New Delhi, dated 27-1-1983.

Restructuring of certain Group C&D cadres.

The Ministry of Railways have had under review Cadres of certain Groups of C&D staff in consultation with the staff side in the Committee of the Departmental Council of the JCM (Rlys). for some time. The Ministry of Railways with approval of the President has decided that the group C&D categories of staff as indicated in the Annexure (department wise) to this letter be restructured in accordance with the revised percentages indicated therein. While implementing this order the following detailed instruction should be strictly and carefully adhered to:

Date of effect

1. This restructuring of cadres will be with reference to the sanctioned cadre strength on 1.3.93. The staff will be placed in higher grades as a result of implementation of these orders will draw pay in higher grades w.e.f. 1.3.93.

Applicability to various cadres

2. These orders will be applicable on the regular cadres of the Open Line establishment including workshops and Production Units and will include rest giver and leave reserve posts.
 - 2.1 These orders will not be applicable to ex-Cadre and worked charge posts which will continue to be based on worth of charge.
 - 2.2 These instructions will not be applicable to construction units and projects. However, for creation of posts in these units the percentage distribution may be generally kept in view, taking into account the availability of funds.

12

3

Pay Fixation (FR 22-C)

3. Staff selected and posted against the additional higher grade posts as a result of restructuring will have their pay fixed under Rule 1316(FR 22-C) R II w.e.f. 1.3.93 with necessary options for pay fixation as per extant instructions.

Existing classification and filing up of the vacancies.

4. The existing classification of the posts covered by these restructuring orders as selection and non-selection as the case may be remain unchanged. However, for the purpose of implementation of these orders, if an individual railway servant becomes due for promotion to a post classified as a selection post, the existing selection procedure will stand modified in such a case to the extent that the selection will be based only on scrutiny of service records and confidential reports without holding written or vive voce test. Similarly for posts classified as non-selection at the time of this restructuring the same procedure as above will be followed. Naturally under this procedure the categorisation as 'outstanding' will not figure in the panels. This modified selection procedure has been decided upon by the Ministry of Railway as a one time exception by special dispensation, in view of the numbers involved, with the objective of expediting implementation of these orders.

- 4.1 Vacancies existing on 1.3.93 except direct recruitment quota and those arising on that date from this cadre restructuring including chain/resultant vacancies should be filled in the following sequence:

- i) From panels approved on or before 1.3.93 and current on that date ; (ii) and balance in the manner indicated in para 4 above.

- 13
12
7
3
- 4.2 Such selections which have not been finalised by 1.3.93 should be cancelled/abandoned.
- 4.3 All vacancies arising from 2.3.93 will be filled by normal selection procedure.
- 4.4 Extant instructions for D&A/Vigilance clearance will be applicable for effecting promotions under these orders with the critical date being 1.3.93.

Minimum years of services in each grade

5. While implementing the restructuring orders, instructions regarding minimum period of service for promotion with Gr. 'C' issued under Board's letter No. E(NG)I/83/PM-I/12 (RRC) dated 19.2.87 and Board's letter No. E(NG)I/75/PM-I/44 dated 28.5.84 will stand modified to the extent that the minimum eligibility period for the promotion for filling up vacancies covered in para 4.1 would be reduced to one year as one time exception. Thereafter the normal minimum eligibility condition will apply.

Basic Functions, duties and responsibilities.

8. In all categories covered by this letter even though more posts in higher scales of pay have been introduced as a result restructuring the basic functions, duties and responsibilities attached to their posts at present will continue, to which may be added such other duties and responsibilities as considered appropriate.

Excess No. of posts.

7. If prior to issue of this letter the number of posts existing in any grade in any particular cadre exceeds the number admissible on the revised percentages, the excess may be allowed to continue to be phased out progressively with the vacation of the posts by the existing incumbents.

14
13
8

Specific instructions given in the foot-note of Annexure

8. While implementing these orders specific instructions given in the footnote if any, under each category in the enclosed Annexure should be carefully and strictly adhered to.

Annual Review

9. Annual Review should be suspended till further instructions from this office.

Provision of Reservation

10. The existing instructions with regard to reservation of SC/ST will continue to apply while filling additional vacancies in the higher grades arising as a result of restructuring.

Retired employees

11. Employees who retire/resign in between the period from 1.3.93 i.e. the date of effect of this restructuring to the date of actual implementation of these orders will be eligible for the fixation benefits and arrears under these orders w.e.f. 1.3.93.

Direct recruitment percentage

12. Direct Recruitment percentages will not be applicable to the additional vacancies arising out of these restructuring orders as on 1.3.93. The percentage will apply for normal vacancies arising on or after 2.3.93. Also the direct recruitment quota as on 28.2.93 will be maintained.

(15) 14 (9) (6)

Pin pointing of posts

13. Excepting the highest grade post in each category, the promotion should be effected on as is where is basis, as a result of this restructuring. However, the administration may later on pin-point these posts as per administrative requirement, as and when the present incumbent vacates the post on retirement/promotion, transfer, etc.

Provisions of Rest Givers

14. As a measure of rationalisation the Railways should provide rest givers staff in the appropriate grade most convenient to the administration at any particular location and need not necessarily be in the same grade.

Refusal of promotion

15. Such of the staff as had refused promotion before issue of these orders and stand debarred for promotion may be considered for promotion, in relaxation of the extant orders as a one time exception, if they indicate in writing that they are willing to be considered for such promotion against the vacancies existing on 1.3.93 and arising due to restructuring. This relaxation will not be applicable to vacancies arising after 1.3.93.
18. Instructions for improvement of productivity, rationalisation and economy are being issued separately.

Provision of funds in the budget

17. The railway will carefully assess requirement of funds on account of this restructuring for the year 1993-1994 and include the same in the Revised Estimate for 1993-1994. Payment due to staff on account of the restructuring should be made and booked in the Financial Year 1993-1994. The Board desire that the restructuring and posting of the staff after due process of selection should be completed expeditiously.

sd/-
(S.K.Sharma)
Executive Director Pay Commission
Railway Board.

DA : ANNEXURE - A to J

T.C.
Mh
Der
03/9/93

TRANSPORTATION TRAFFIC

| CATEGORY | GRADE (Rs.) | EXISTING % AGE | REVISED % AGE |
|--|-------------|------------------------------------|---------------|
| Station Master/ASMs [Combined Cadre] | 1200-2040 | 10 | 10 |
| | 1400-2300 | 70 | 47 |
| Alternative 1 | 1600-2660 | 10 | 25 |
| | 2000-3200 | 9 | 15 |
| | 2375-3500 | 1 | 3 |
| ASMs | | | |
| Station Masters/ASMs [Seperate Cadre] | 1200-2040 | 13 | 13 |
| | 1400-2300 | 87 | 61 |
| Alternative 2 SMs | 1600-2660 | | 26 |
| | 1400-2300 | 13 | |
| | 1600-2660 | 43.5 | 22 |
| | 2000-3200 | 43.5 | 63 |
| | 2375-3500 | 10% of posts in grade Rs.2000-3200 | 13 |
| Yard Master | 1400-2300 | 40 | 40 |
| | 1600-2660 | 40 | 40 |
| | 2000-3200 | 18 | 17 |
| | 2375-3500 | 2 | 3 |
| Traffic Inspectors/ Movements Inspectors | 1400-2300 | 24 | 16 |
| | 1600-2660 | 23 | 16 |
| | 2000-3200 | 47.7 | 30 |
| | 2375-3500 | 5.3 | 38 |
| Train Clerks | 950-1500 | 30 | 25 |
| | 1200-2040 | 27 | 25 |
| | 1400-2300 | 23 | 30 |
| | 1600-2660 | 20 | 20 |

TRANSPORTATION CONTROLLERS

| CATEGORY | GRADE(Rs.) | EXISTING % AGE | REVISED % AGE |
|------------------------------------|------------|----------------|---------------|
| Traffic Controllers | 1400-2600 | 15 | 15 |
| | 2000-3200 | 58 | 55 |
| | 2375-3500 | 27 | 30 |
| Shunting Master/ Janadar | 1200-1800 | 40 | 30 |
| | 1200-2040 | 40 | 45 |
| | 1400-2300 | 20 | 25 |
| Traffic Signallers | 975-1540 | 35 | 30 |
| | 1200-2040 | 40 | 40 |
| | 1400-2300 | 21.5 | 25 |
| | 1600-2660 | 2.3 | 3 |
| | 2000-3200 | 1.2 | 2 |
| Pointman/ Leverman/ Shuntman | 800-1150 | 35 | 25 |
| | 950-1500 | 65 | 75 |
| *Cabinman | 800-1550 | - | - |
| | 950-1500 | 100 | 75 |
| | 1200-1800 | - | 25 |
| Mail Guards | 1400-2800 | 100 | 100 |
| Passenger Guard | 1350-2200 | 100 | 80 |
| | 1400-2800 | - | 20 |
| Goods Guard | 1200-2040 | 100 | 80 |
| | 1350-2200 | - | 20 |
| Assistant Guard/ Brakesman | 950-1400 | 100 | 80 |
| | 1200-2040 | - | 20 |
| Group 'D' Staff Traffic | 750- 940 | 50 | 35 |
| | 775-1025 | 50 | 65 |

* Footnote
In the existing combine category of
Pointsman/Leverman/Shuntman/Cabinman, the postsd of the
Cabinman are to be taken in the scale Rs. 950- Rs. 1500.

4

12

17

18

ANNEXURE - B

TRANSPORTATION POWER

| CATEGORY | GRADE(Rs.) | EXISTING % AGE | REVISED % AGE |
|---|------------------------|----------------|---------------|
| Mail Drive (superfast, mail & Express Trains only) | 1640-2900 | 100 | 100 |
| Passenger Driver/ Motorman (All Passenger Trains & EMU Service only) | 1600-2660 1640-2900 | 100 - | 80 20 |
| Goods Driver (All Goods Trains) | 1350-2200 1600-2660 | 100 - | 80 20 |
| Bhunter | 1200-2040 1350-2200 | 100 - | 80 20 |
| First Fireman Electrical Assistant/ Diesel Asst. | 950-1500 1200-2040 | 100 - | 80 20 |
| Second Fireman | 825-1200 950-1500 | 100 - | 80 20 |

True copy
ml a
20/9/93 Advocate

ANNEXURE - C(i)

COMMERCIAL

| CATEGORY | GRADE(Rs.) | EXISTING % AGE | REVISED % AGE |
|--------------|------------|----------------|---------------|
| * Commercial | 975-1540 | 30 | 20 |
| Clerks | 1200-2040 | 27 | 35 |
| including | 1400-2300 | 29 | 25 |
| Weigh Bridge | 1600-2660 | 9 | 12 |
| Clerks | 2000-3200 | 5 | 8 |
| Ticket | 950-1500 | 20 | 20 |
| ** checking | 1200-2040 | 37 | 35 |
| Staff | 1400-2300 | 29 | 25 |
| | 1600-2660 | 9 | 12 |
| | 2000-3200 | 5 | 8 |
| ECRC | 1200-2040 | 40 | 40 |
| | 1400-2300 | 45 | 40 |
| | 1600-2660 | 10 | 12 |
| | 2000-3200 | 5 | 8 |

* Footnote :- The revised percentages will also apply to Weigh Bridge Clerks, where this category exists separately from that of Commercial Clerks. On railways where Commercial Clerks and Weigh Bridge Clerks are in a combined cadre with common seniority the revised percentages will apply to the combined cadre.

** Footnote :- The Cadre of Train conductors in scale Rs. 1400-2300 is to be combined with ticket checking Staff in the corresponding scale only, for the limited purpose of determining higher grade posts in scale Rs. 1600-2660 and Rs. 2000-3200, after which the category of Train conductors will continue to exist as a separate category as at present.

17

20

| CATEGORY | GRADE (Rs.) | EXISTING % AGE | REVISED % AGE |
|--|-------------|----------------|---------------|
| Commercial Inspector | 1400-2300 | 35 | 25 |
| Commercial/Claims/Rates/R&D/Marketing Inspectors | 1600-2660 | 20 | 15 |
| | 2000-3200 | 40.5 | 30 |
| | 2375-3500 | 4.5 | 30 |
| Catering Inspectors | 975-1540 | 30 | 20 |
| | 1200-2040 | 20 | 20 |
| | 1400-2300 | 20 | 25 |
| | 1600-2660 | 20 | 20 |
| | 2000-320 | 10 | 15 |
| *** | | | |
| Bill Issuer/Catering Stores Clerk | 825-1200 | 66 2/3 | 55 |
| | 975-1540 | 33 1/3 | 45 |
| Group 'D' Staff (Commercial) | 750-940 | 50 | 35 |
| | 775-1025 | 50 | 65 |
| Commercial Cook | 800-1150 | 45 | 30 |
| | 950-1500 | 25 | 30 |
| | 1200-1800 | 20 | 25 |
| | 1320-2040 | 10 | 15 |
| Head Waiter/Head Bearer | 800-1150 | 60 | 50 |
| | 825-1200 | 40 | 50 |
| Coach Attendant (1st Class) | 775-1025 | 20 | 15 |
| | 800-1150 | 80 | 85 |
| Legal Staff | 1600-2660 | 45 | 30 |
| | 2000-3200 | 55 | 70 |

*** Footnote :- Instructions contained in Board's letter No. PCIII/81/JCM-DC/1 dated 17.7.1984 may be kept in view while restructuring the cadres of the Bill Issuers/Catering Stores Clerk.

21

20

ANNEXURE "D"

MEDICAL

| CATEGORY | GRADE(Rs.) | EXISTING % AGE | REVISED % AGE |
|----------------------------|------------|----------------|---------------|
| Health & Malaria Inspector | 1200-2040 | 35 | 25 |
| | 1400-2300 | 30 | 30 |
| | 1600-2660 | 25 | 30 |
| | 2000-3200 | 10 | 15 |
| Pharmacist | 1350-2200 | 40 | 30 |
| | 1400-2800 | 40 | 30 |
| | 1840-2900 | 20 | 40 |
| Lab Staff | 1320-2040 | 30 | 20 |
| | 1400-2300 | 30 | 30 |
| | 1840-2900 | 40 | 50 |
| Nurses | 1400-2800 | 40 | 30 |
| | 1840-2900 | 30 | 35 |
| | 2000-3200 | 30 | 35 |
| X-Ray | 975-1540 | 30 | 20 |
| | 1350-2200 | 56 | 50 |
| | 1400-2800 | 5 | 15 |
| | 1840-2900 | 8 | 15 |
| * Dresser/ Ot Asstt. | 800-1150 | 50 | 40 |
| | 825-1200 | 47.5 | 55 |
| | 950-1400 | 2.5 | 5 |

* Footnote :- The 5% posts in Rs. 950-1400 grade of Dresser/OT Asstt. will be admissible if 2.5% posts in Rs. 950-1400 grade are presently available in the cadre. This may be confirmed to Board enclosing authority for allotting grade of Rs.950-1400 to Dressers/OT Asstt.

22

ANNEXURE - E

ENGINEERING INCLUDING WORKSHOPS

| CATEGORY | GRADE(Rs.) | EXISTING % AGE | REVISED % AGE |
|-----------------------------------|------------|----------------|---------------|
| Technical Supervisor | 1400-2300 | 33 | 30 |
| | 1600-2660 | 30 | 25 |
| | 2000-3200 | 27 | 28 |
| | 2375-3500 | 10 | 17 |
| Artisan Staff | 950-1500 | 35 | 30 |
| | 1200-1800 | 35 | 30 |
| | 1320-2040 | 27 | 35 |
| | 1400-2300 | 3 | 5 |
| Artisan Khalasi | 750-940 | 30 | 20 |
| | 800-1150 | 70 | 80 |
| * Drawing/Design/Estimating Staff | 1200-2040 | 20 | 20 |
| | 1400-2300 | 30 | 20 |
| | 1600-2660 | 25 | 25 |
| | 2000-3200 | 25 | 35 |

* Footnote :- The existing posts in scale Rs. 2375-3500 in Production Units at ICF, DLW, & CLW will continue as a part of the Percentage provided for posts in scale Rs. 2000-3200.

(23)

22

(8)

ANNEXURE - 'F' (i)

ACCOUNTS & CASH & PAY DEPARTMENT

| CATEGORY | GRADE | EXISTING STRUCTURE | REVISED STRUCTURE |
|----------------------------------|-------|---|---|
| Accounts Staff (General A/cs) | | Ratio - 1:7 (Between Supervisors and Clerks) | Ratio - 1:6 (Between Supervisor SO(A/cs) + Sr.SO(A/cs and (Accounts Clerk, Jr. Accts. Asst. & ACCTTS. Asstt.) |
| Traffic A/cs | | Ratio - 1:10 | Ratio - 1:9 (Between Supervisor SO(A/cs) + Sr.SO(A/cs and (Accounts Clerk, Jr. Accts. Asst. & ACCTTS. Asstt.) |

| | GRADE | Existing %AGE | REVISED %AGE |
|---------------------------|-----------|---------------|--------------|
| Finger Print Examiner | 1350-2200 | 50 | 35 |
| | 1400-2300 | 40 | 50 |
| | 2000-3200 | 10 | 15 |
| Cashier (non-Supervisory) | 1200-2040 | 20 | 20 |
| | 1400-2300 | 80 | 80 |
| | 1640-2900 | - | 20 |
| Shroff | 850-1500 | 40 | 45 |
| | 1200-2040 | 40 | 40 |
| | 1400-2300 | 20 | 25 |

ANNEXURE - F(11)

STATEMENT REGARDING RECRUITING OF GROUP 'C' STAFF OF
ACCOUNTS & CASH & PAY DEPARTMENT

Annexure to Board's letter No. PC-1111/91/CRC/1 Dated 27.1.1992

RESTRUCTURING OF CADRE OF CASHIER (SUPERVISORS)

| Railways | Existing Strength | | | Restructured Strength | | |
|----------|-------------------|-----------|-------|-----------------------|-----------|-------|
| | (SCALE) | | | revised by CRC. | | |
| | 2000-3200 | 1600-2660 | TOTAL | 2000-3200 | 1600-2660 | TOTAL |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| Eastern | 15 | 15 | 30 | 20 | 10 | 30 |
| S.E.Rly. | 11 | 16 | 27 | 17 | 10 | 27 |
| N.F.Rly. | 7 | 7 | 14 | 10 | 4 | 14 |
| N.E.Rly. | 10 | 16 | 26 | 13 | 13 | 26 |
| S.Rly. | 10 | 21 | 31 | 13 | 18 | 31 |
| S.C.Rly. | 9 | 10 | 19 | 13 | 6 | 19 |
| Western | 10 | 10 | 20 | 15 | 5 | 20 |
| Central | 11 | 8 | 19 | 15 | 4 | 19 |
| Northern | 13 | 19 | 32 | 19 | 13 | 32 |
| | 96 | 122 | 218 | 135 | 83 | 218 |

✓ 23

24

(9)

ANNEXURE - 'G'

SIGNAL TELECOM

| CATEGORY | GRADE (Rs.) | EXISTING % AGE | REVISED % AGE |
|--------------------|-------------|----------------|---------------|
| ESM (S&T) | 950-1500 | 20 | 15 |
| | 1200-1800 | 30 | 25 |
| | 1320-2040 | 45 | 50 |
| | 1400-2300 | 5 | 10 |
| Telephone Operator | 850-1500 | 35 | 25 |
| | 1200-2040 | 42.5 | 35 |
| | 1400-2300 | 13 | 25 |
| | 1800-2860 | 7 | 11 |
| | 2000-3200 | 2.5 | 4 |

ANNEXURE - 'H'

CIVIL ENGINEERING DEPARTMENT / MECHANICAL

| CATEGORY | GRADE (Rs.) | EXISTING % AGE | REVISED % AGE |
|-------------|-------------|----------------|---------------|
| Gangman/ | 720-1440 | 30 | 25 |
| Trolleyman/ | 800-1160 | 30 | 55 |
| Gateman/ | 800-1000 | | |

COMMON STAFF

| CATEGORY | GRADE(Rs.) | EXISTING % AGE | REVISED % AGE |
|---|--|------------------------------|---------------------------|
| Ministerial Staff (Estt. and other than Estt. Excluding Accounts Staff) | 950-1500 1200-2040 1400-2300 1600-2660 2000-3200 | 20 35 30 10 5 | 20 35 25 12 8 |
| * Typists | 950-1500 1200-2040 1400-2300 1600-2660 2000-3200 | 35 42.5 13 7 2.5 | 20 35 25 12 8 |
| Misc. Group 'D' Staff including Safaiwala of C&W Department | 750- 940 775-1025 | 50 50 | 35 65 |
| Safaiwalas excluding C & W Department | 750- 940 775-1025 800-1150 | 50 50 - | 35 45 20 |

* Footnote :- Board's letter No. E(NG)II/92/CD/1 dated 17.7.1992, may be kept in view while restructuring the cadre of the Typists.

27

26

(c)

ANNEXURE - 'J'

STORES & PERSONNEL & STATISTICAL / PUBLICITY

| CATEGORY | GRADE(Rs.) | EXISTING % AGE | REVISED % AGE |
|-----------------------|------------|----------------|---------------|
| Ward Keeping Staff | 1400-2300 | 55 | 40 |
| | 1600-2660 | 30 | 35 |
| | 2000-3200 | 15 | 25 |
| Personnel/Inspector | 1400-2300 | 30 | 25 |
| Welfare | 1600-2660 | 40 | 40 |
| Inspector/HOER | 2000-3200 | 30 | 35 |
| Inspector/Statistical | | | |
| Inspectors/Publicity | | | |
| Inspector. | | | |

a final order in the matter on that very day, although there was apparently no urgency. No further evidence in this respect was necessary to prove the misconduct of the petitioner.

10. For all that has been said above, I do not feel inclined to exercise the extraordinary jurisdiction of this Court under Art. 226 of the Constitution in the present case and the writ petition consequently fails and is dismissed. The parties are, however, left to bear their own costs.

Petition dismissed.

ALLAHABAD HIGH COURT

(D. B.)

Before :—K. N. Singh and S. D. Agarwala, JJ.

Civil Misc. Writ No. 1809 of 1972

Decided on 9-12-1977

J. C. Malik and others

Vs.

(Petitioners)

Union of India and others

(Respondents)

Constitution of India, Article 16(1) and 16(4)—Railway Board Circular letter dated 20th April 1970—Reservation of posts for Scheduled Castes—Percentage of 15% is in respect of appointment to the posts and not to the vacancies which may occur in the cadre of posts—Power of reservation cannot be exercised in a manner to make the reservation so excessive that it may practically deny a reasonable opportunity of employment to members of other communities.

In the instant case, the total number of posts of A Grade Guards is 37 including 32 permanent posts and 5 temporary posts. If 15% of the vacancies occurring in a particular year is filled by promotion of Scheduled Castes, the result would be that after some time the percentage of Scheduled Castes Candidate in the A Grade Guards would reach upto 60% which would obviously be to the detriment of other persons who may be senior or meritorious but they cannot be promoted on account of the reservation made in favour of Scheduled Castes. It is pertinent to note that the circular letter dated 20th April, 1970 further lays down that if Scheduled Castes candidates are not available for selection from B Grade Guards, then the Selection Committee is required to consider the case of Scheduled Castes candidates belonging to the C Grade Guards and if they are selected they would be entitled to promotion to A Grade Guards. Thus Scheduled Castes employees belonging to the lowest category of C Grade Guards will always have edge over B Grade Guards who are admittedly senior to C Grade Guards. The petitioners have drawn up a chart Annexure 5 to the petition giving the details of the vacancies which would be available upto 1984 on account of the retirement of A Grade Guards on attaining their age of superannuation. The figures as mentioned in the chart have not been disputed by the respondents. The chart indicates that if 15% quota is against the available vacancies, the result would be that by December, 1984, Scheduled Castes will be having 50% of posts in the Cadre of A Grade Guards. This would be in violation of clause (i) to Article 16 of the Constitution. Article 16(1) ensures equality of opportunity to all citizens in matters relating to appointments to any office under the State. Clause (4) of Article 16 is an exception to clause (1) which confers power on the State to make reservation in the

14
A2
P/37
(28)
(28)

i
i
i
i
e
I
e
n
tl
C
ci
Se
qu
wt
3.
Bo
for
Gu

matter of appointment in favour of Scheduled Castes, Scheduled Tribes and other backward classes. The power conferred under clause (4) cannot be exercised in a manner to make the reservation so excessive that it may practically deny a reasonable opportunity of employment to members of other communities.

(Para 4)

In view of the above discussion, we are of the opinion that the Railway Board's circular letter dated 20th April, 1970 made reservation to the extent of 15% in favour of Scheduled Castes in respect of appointment to the posts and not to the vacancies which may occur in the cadre of posts.

(Para 5)

Case referred.

1. T. Devadasan Vs. Union of India and another, A.I.R. 1964 S. C. 179.

JUDGMENT

K. N. Singh, J.—By means of this petition under Article 226 of the Constitution, the petitioners, who are in the service of the Northern Railway as Grade B Guards and Grade C Guards, have challenged the selection of respondents Nos. 4 to 8 for appointment to the posts in Grade A Guards. The petitioners have claimed relief for quashing the Railway Circulars dated 27th August, 1963 and 20th April, 1970 but during the course of the argument, the petitioners have confined their relief to the quashing of the selection of the aforesaid respondents.

2. In the Railway service, there are three classes of Guards, namely Guards A Grade in the pay scale of Rs. 235-7-240-8-240, Guards B Grade in the pay scale of Rs. 150-5-175-5-205-EB-7-240 and Guards C Grade in the pay scale of Rs. 120-4-170-EB-5-200-EB-5-225. The three categories of Guards belong to the Category of Class III posts in Railway Service. Under the existing service rules and the circulars issued by the Railway Board, initial requirement is made in the Grade C Guards. B Grade Guards are appointed by promotion from Guards C Grade on the basis of Seniority while appointments to the post of Grade A Guards are made by selection from the aforesaid two lower Grades. A departmental selection Committee is constituted for holding selection. On the basis of the list prepared by the Selection Committee, promotion is made to the post of A Grade Guards as and when vacancy arises. In 1972, selections were made for promotion to A Grade Guards. The petitioners Nos. 1 to 3 are B Grade Guards while petitioners Nos. 4 to 6 are C Grade Guards in the Northern Railway posted within Moradabad Division. They were not selected while junior to them were considered and selected. Respondents Nos. 4 to 8 were selected against the reserved vacancies as they belonged to the Scheduled Castes even though they were C Grade Guards. Reservation for Scheduled Castes Candidates were made in accordance with the Railway Board's circular dated 20th April, 1970. According to the respondents, the Selection Committee selected the respondents Nos. 4 to 8 against the 15% quota reserved for the Scheduled Castes Candidates in the vacancies which were available at the time of selection in the A Grade Guards.

3. Learned counsel for the petitioners urged that the Railway Board's Circular dated 20th April, 1970 did not permit reservation for Scheduled Castes in excess of 15% of the posts of the A Grade Guards. He urged that the respondents have wrongly interpreted and

implemented the said circular and if the interpretation of the respondents is accepted to be correct, the said circular would practice discrimination against the petitioners in matters relating to employment. Railway Board is competent to issue circular making reservation for promotion to the Scheduled Castes Candidates and also to fix quota for the purpose. The Railway Board, by its circular letter dated 27th August, 1963 fixed 12 1/2% as reserved quota for Scheduled Castes in class III and class IV posts of the Railways. This quota was revised by the Railway Board by its circular letter dated 29th April, 1970. 12 1/2% of reservation was raised to 15% for classes III and IV employees. The relevant portion of the said circular as applicable to classes III and IV posts is as under:—

"It has also been decided that in vacancies in posts filled by promotion in which reservations have been provided vide Railway Board's letter No. B (SCT) 63 CM 15/10 dated 27-8-1963, the percentages of reservation for Scheduled Castes and Scheduled Tribes in such posts shall also be raised from 12 1/2% to 15% in favour of Scheduled Castes and from 5% to 7 1/2% in favour of Scheduled Tribes."

The above paragraph clearly lays down that there would be reservation for Scheduled Castes to the extent of 15% for appointment to the posts filled by promotion. The reservation of 15% has been made for appointment to the posts and not to the vacancies which may occur in the posts. This view finds support from the opening part of the said circular letter which clearly states that the question of revising the percentages of reservation for Scheduled Castes and Scheduled Tribes in posts and services under the Government of India in the light of the population of these communities as shown in the 1961 census has been under consideration of the Government for some time. The Circular further states that it has now been decided in modification of decisions contained in paras 2 and 4 (1) of the Ministry of Home Affairs' Resolution of 13th September, 1950 that the following reservations will hereafter be made for Scheduled Castes and Scheduled Tribes in posts and services which are filled by direct recruitment. The circular thereafter prescribed different quota for direct requirement and for promotion to different class of service. It is thus clear that reservation for Scheduled Castes has been made in posts and services and not in vacancies occurring from time to time.

4. If the contention of the respondents that percentage of reservation relates to the vacancy and not to the posts is accepted serious consequences would ensue which would certainly result in discrimination against those employees not belonging to Scheduled Castes. In the instant case, the total number of posts of A Grade Guards is 37 including 32 permanent posts and 5 temporary posts. If 15% of the vacancies occurring in a particular year is filled by promotion of Scheduled Castes, the result would be that after some time the percentage of Scheduled Castes Candidates in the A Grade Guards would reach upto 60% which would obviously be to the detriment of other persons who may be senior or meritorious but they cannot be promoted on account of the reservation made in favour of Scheduled Castes. It is pertinent to note that the circular letter dated 29th April, 1970 further lays down that if Scheduled Castes candidates are not available for selection from B Grade Guards, then the

ca
11
3.
R
th
to
A.
C
an
ch
th
de
ou
sel
Ca
6.
ap.
Ne
ter
ar
tan

Selection Committee is required to consider the case of Scheduled Caste candidates belonging to the C Grade Guards and if they are selected they would be entitled to promotion to A Grade Guards. Thus Scheduled Caste employees belonging to the lowest category of C Grade Guards will always have edge over B Grade Guards who are admittedly senior to C Grade Guards. The petitioners have drawn up a chart Annexure 3 to the petition giving the details of the vacancies which would be available upto 1984 on account of the retirement of A Grade Guards on attaining their age of superannuation. The figures as mentioned in the chart have not been disputed by the respondents. The chart indicates that if 15% quota is against the available vacancies, the result would be that by December, 1984, Scheduled Castes will be having 56% of posts in the Cadre of A Grade Guards. This would be in violation of clause (1) to Article 16 of the Constitution. Article 16 (1) ensures equality of opportunity to all citizens in matters relating to appointments to any office under the State. Clause (4) of Article 16 is an exception to clause (1) which confers power on the State to make reservation in the matter of appointment in favour of Scheduled Castes, Scheduled Tribes and other backward classes. The power conferred under clause (4) cannot be exercised in a manner to make the reservation so excessive that it may practically deny a reasonable opportunity of employment to members of other communities. See *T. Devadasan vs. Union of India and another* (AIR 1964 S. C. 179).

5. In view of the above discussion, we are of the opinion that the Railway Board's circular letter dated 20th April, 1970 made reservation to the extent of 15% in favour of Scheduled Castes in respect of appointment to the posts and not to the vacancies which may occur in the cadre of posts. Admittedly, respondents Nos. 4 to 8 have been selected by the Selection Committee and appointed to the posts of A Grade Guards on the basis of an erroneous interpretation of the Railway Board's circular letter. If the circular was correctly followed and if the reservation quota was confined to the posts in that event respondents Nos. 3 to 8 could not have been considered or selected for appointment to the posts of A Grade Guards. In our opinion, their selection was not in accordance with law as their selection has been made in excess of the 15% quota fixed for Scheduled Caste candidates.

6. In the result, we allow the petition and quash the selection and appointment of respondents Nos. 4 to 8 as A Grade Guards. Respondents Nos. 1 to 3 are directed to make the selection in accordance with the terms contained in the Railway Board circular dated 20th April, 1970 and in the light of the observation made in this judgment. In the circumstances of the case, parties shall bear their own costs.

Petition allowed.

KERALA HIGH COURT
(FULL BENCH)

Before:—V. P. Gopalan Nambiyar, CJ, George Vadakkal and
T. Chandrasekhara Menon, JJ.

O. P. No. 1872 of 1974

Decided on 31-8-1977

N. Mohammed Kutty

Vs.

High Court of Kerala and others

(Petitioner)

(Respondents)

23/9/97

ITEM NO.41

Court No.1

Section 111

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Civil Miscellaneous Petition No.3490/84 (In C.A.No.3017/78) of 198

Union of India & Ors.

PETITIONERS/APPELLANTS

VERSUS

J.C.Mazlik & Ors.
(For directions).

RESPONDENTS

Date: 24.2.84

This matter was called on for hearing today.

CORAM:

Hon'ble THE CHIEF JUSTICE

Hon'ble Mr. Justice A.P.SEN

Hon'ble Mr. Justice A. VARADARAJAN

For the Petitioners/Appellants: Mr. G.D. Gupta, Adv.
Miss A. Subhashini, Adv.

For the Respondents: Mrs. Urmila Kapoor, Adv.
Mr. R.B. Rohtagi, Adv. & M.R. Nagaraja, Adv.
Mr. Nareesh Kumar, Adv. Mr. B. Krishna, Adv.
Mr. R.S. Mogde, Adv. & Miss C.S. Lalita, Adv.

UPON hearing counsel the Court made the following

ORDER

Any promotions made during the pendency of the appeal will be subject to the result of the appeal. Counsel for the appellants, Union of India has no objection to it. CMP is disposed of accordingly.

Sd/-

(R.N. VERMA)
Court Master.

Item No.15

C O P Y

Court No.1

Section III.

SUPREME COURT OF INDIA

RECORD OF PROCEEDINGS

Civil Miscellaneous Petition No.26627 (In CA No.2017/78).

Union of India

PETITIONERS/APPELLANTS.

VERSUS

J.C.Malik & ors.

RESPONDENTS

(For clarification of Court's order dated 24.2.1984).

Date: 24.9.1984:

This matter was called on for hearing today.

CORAM:

Hon'ble the Chief Justice

Hon'ble Mr. Justice E.S.Venkataramiah

Hon'ble Mr. Justice A.Varadarajan

For the Petitioners/Appellants: V.C.Mahajan, Sr. Adv., Girish Chandra, R.N.P oddar, Advs.

For the Respondents: Mrs.Urmila Kapoor, Adv.

(Two other names not legible).

K.B.Rohtagi, Adv.

K.R.Nagaraja, N.Kaushik, R.S.Hedge, Advs.

Upon hearing counsel the Court made the following

O R D E R

We clarify our order dated Feb.24, 1984, by directing that the promotions which may be made hereafter will be strictly in accordance with the judgment of the High Court and such promotions will be subject to the result of the Appeal. If any promotions have been made after Feb.24, 1984 otherwise than in accordance with the judgment of the High Court, such promotions shall be adjusted against the future vacancies. CMP is disposed of accordingly.

Sd/- R.N.Verma

COURT MASTER.

IN THE SUPREME COURT OF INDIA

ORIGINAL JURISDICTION

CIVIL MISC. PETITIONS NOS. 41996 to 42003 OF 1984.
(Applications for ex-parte stay).

IN

WRIT PETITIONS NOS. 17386 to 17393 OF 1984.
(Under Article 32 of the Constitution of India)

Girdhari Lal & Ors. .. Petitioners
-versus-
Union of India & Ors. -- Respondents

TAKE NOTICE that on the applications for ex-parte stay above-mentioned (copy enclosed), the Supreme Court has on the 21st December, 1984 passed the following order:-

"Pending notice, the promotions which may be made hereafter will be strictly in accordance with the judgement of the High Court in Civil Writ Petition No. 1809 of 1972 and if any such promotions have been made otherwise than in accordance with the judgement of the High Court, such promotions shall be adjusted against the future vacancies."

TAKE FURTHER NOTICE that the said applications will now be listed for hearing before this Court after notice on the 4th day of February, 1985.

Dated this the 7th day of January, 1985.

Sd/-
DEPUTY REGISTRAR

- To
1. Union of India through Chairman,
Railway Board, Rail Bhavan,
New Delhi.
 2. The Chairman,
Railway Board,
Rail Bhavan, New Delhi.
 3. The Secretary,
Ministry of Railways,
Rail Bhavan,
New Delhi.

T.C

[Handwritten signature]

23/1/85 *[Handwritten signature]*

No. EP 220/0.

DRM(E) PCT, PARCAO-CCG, CE(SIC)-CCG
OAM PL, CBO-CCG, JIS(JRH)-CCG
Dy.CEE(W) PL, SPB-MX, Dy.GOS-MX
Dy.CEE(POH)-MX/Chief Cashier-CCG
SPO(T), (M), (Engg) CCG
Dy.CPO(W), APO(HQ)/DAR/(C)/(E&S).

Headquarters Office
Churchgate, Bombay-400 020.

35
34
33
32
31
30
29
28
27
26
25
24
23
22
21
20
19
18
17
16
15
14
13
12
11
10
9
8
7
6
5
4
3
2
1
0
3rd Feb., 1988.

Sub: Promotions, reversion of SC/ST Employees
on the basis of reservation.

Copies of extract of the Interim Orders dated 24/4/87 and
dt. 17/11/87 issued by the Central Administrative Tribunal,
New Bombay Bench are sent herewith for information and necessary
action. [How many copies of the Interim Orders are to be sent to the
and Supreme Court for their consideration of the cases.]

Encl: as typed below.

An extract of interim order issued by CAT on 24/4/87

"21. We, therefore, pass the following interim order in all the
the above cases pending before us. We will however place before us
how the interim order should be implemented in each case."

INTERIM ORDERS

- (1) The promotions which may be made hereafter by the respondents will be strictly in accordance with the judgement of the Allahabad High Court in Civil Misc. Writ No. 1809 of 1972, in J.C. Mallik & Others v. Union of India and others reported in 1978, SLJ 401 and such promotions will be subject to final result of the cases. If any promotions have been so far made otherwise than in accordance with the judgement of the Allahabad High Court, such promotions shall be adjusted against the future vacancies.
- (2) It is hereby clarified that if any Scheduled Caste/Scheduled Tribe candidate is appointed or promoted in his present cadre on the basis of his ~~overall~~ overall merit and/or seniority and not on the basis of reservation alone, the respondents are not prevented from promoting him to the higher cadre if he is found otherwise suitable for promotion even if the reservation quota fixed for Scheduled Caste/Scheduled Tribe candidates has been already achieved in the higher cadre.
- (3) The respondents shall not follow the directions or instructions given by the Railway Board or other authorities in respect of promotions if and to the extent they are inconsistent with this interim order.
- (4) If the respondents have made some promotions on the basis of the orders passed by the High Court of Judicature at Bombay these promotions should not be disturbed. However, these promotions will be subject to the final decisions in the cases.

(5) However all the promotions in future should be made by the respondents in accordance with this interim order.

(6) This interim order should be followed subject to the direction given in each case.

Hereafter we would indicate what should be done in each case before us."

An extract of interim order issued by C.J. New Bombay Bench, New Bombay on 17-11-1987.

ex-parte

"It appears that the interim order of this Tribunal passed on 24-4-1987 to govern all the promotions and is not restricted to the applicants in the case in which that order has been passed. Hence, an ~~ex-parte~~ interim order is passed restraining the Respondents from making promotion of Scheduled Caste and Scheduled Tribe candidates in excess of 15% and 7% posts respectively."

p.das.

M.P. 925/92 in
Transfer Application No. 275/86

Shri G.L. Badani

M.P. 904/92 in
Transfer Application No. 230/86

Shri D.R. Kulkarni

M.P. 905/92 in
Transfer Application No. 231/86

Shri V.B. Ghayal

M.P. 906/92 in
Transfer Application No. 232/86

Shri N.G. Thine

M.P. 907/92 in
Transfer Application No. 233/86

Shri J.K. Singh

M.P. 908/92 in
Transfer Application No. 234/86

Shri Y.G. Joshi.

M.P. 909/92 in
Transfer Application No. 235/86

Shri V.K. Kamth

M.P. 910/92 in
Transfer Application No. 236/86

Shri R.N. Banerjee

M.P. 902/92 in
Transfer Application No. 226/86

Shri G.N. Apte & Anr.

M.P. 924/92 in
Transfer Application No. 160/86

Shri Samuel Paul Raj

M.P. 926/92 in
Transfer Application No. 420/86

Shri R.h. Welling & Ors.

M.P. 911/92 in
Transfer Application No. 460/86

Shri R.M. Bhausar

M.P. 927/92 in
Transfer Application No. 488/86

Shri Jageshchandra Arya

Shri G.D. Samant

Shri D.V. Gangal

Shri G.S. Walia

Shri G.K. Masand

Advocates for the
applicants.

M.P. 933/92 in
Original Application No. 64/86

Shri K.B. Patel

M.P. 928/92 in
Original Application No. 218/86

Shri S.A. Rathod

M.P. 930/92 in
Original Application No. 244/86

Shri C.J. Marolia

M.P. 914/92 in
Original Application No. 29/87

Shri K.P. Pradhan

M.P. 915/92 in
Original Application No. 137/87

Shri N.D. Narayankar

M.P. 903/92 in
Transfer Application No. 229/86

Shri V.S. Galimbe & Ors.

M.P. 929/92 in
Original Application 223/86

Shri A.N. Galigalkar

M.P. 913/92 in
Original Application No. 378/86

All India Scheduled Castes and
Scheduled Tribes Association
Matunga Branch.

M.P. 912/92 in
Original Application No. 209/86

Mrs. J.S. Dabholkar and 20 others. V/s
Union of India and others.

CORAM: Hon'ble Shri M.Y. Priolkar, Member (A)
Hon'ble Shri V.D. Deshmukh, Member (J)

Tribunal's Order

Dated: 1.3.93

Per Shri M.Y. Priolkar, Member (A)

Shri V.G. Rege
Shri P.M.A. Nair
counsel for the
respondents.



All the above M.Ps have been filed on behalf of
the original respondents in the respective O.As, praying
that our interim order dated 24.4.87 may be re-called and
be complied to bring it in conformity with the order of the
Full Bench at Hyderabad of Central Administrative Tribunal

dated 27.2.92, in O.A. 759/87 and other connected matters. 38

In para 50 of the Full Bench order, the interim order passed by Division Bench of the Hyderabad Bench of Tribunal has been approved as having been passed in terms of the interim order passed by the Supreme Court in Mallick's case, and it has been directed that in similar cases, all the Benches of the Tribunal shall pass similar orders taking into account the directions of the Supreme Court. It is

also stated that in case any Bench of the Tribunal has already passed any order not in conformity with the order of the Supreme Court inadvertently, such order may be recalled and fresh order passed in terms of the order of the Supreme Court, so that conflicting directions and interim orders by various Tribunals can be avoided.

No conflict between our interim order and the order of the Supreme Court in question has been brought to our notice. However in order to put the matter beyond any shadow of doubt, as prayed for by the learned counsel for the original respondents, we modify our interim order dated 24.4.87 to the effect that para 21 of our interim order shall be replaced by para 7 of the interim order dated 16.5.88 of the Hyderabad Bench reproduced at page 3 in para 2 of the M.P. Although this interim order of the Hyderabad Bench only refers to the vacancies in the Office Superintendent's branch, we make it clear that the principles laid down therein will apply to all the categories of posts which are the subject matter of the above original applications filed in this Tribunal.

A copy of this order may be placed in each of the above O.As.

Certified True Copy
Date .. 27/3/92

Section Officer
Central Admn. Tribunal,
Bombay Bench

T. C.
23/4

EX' E'

Central Administrative Tribunal
Madras Bench

...

Thursday, the Twentyseventh day of August,
One thousand nine hundred and ninety two

PRESENT.

Hon'ble Justice Dr. David Annoassamy, Vice-Chairman.

and

Hon'ble Justice R. Venkatesan, Administrative Member

T.A. 562 of 1986

Thomas Manoharan

... Applicant

..VS..

1. Union of India
rep. by Secretary
to Government
Ministry of Railways
Rail Bhavan
New Delhi. ... Respondents.

2. The General Manager
(Personnel)
Southern Railway
Park Town
Madras-3.

3. Vijayamohan Rao
Asstt. Commercial
Officer(Claims)
General Manager's Office
Southern Railway
Park Town
Madras-33.

M/s. P. Pandi

S.T.S. Murthi

... Counsel for the applicant

Mr. M K. Venkateshwara Rao.. Counsel for the Respondents.

..2..

27

41

O R D E R

(Pronounced by the Hon'ble Justice Dr. David Annoassamy, Vice-Chairman).

The applicant belongs to the category of Assistant Transportation Officer in the Southern Railway. The next promotional opportunity for the post is Senior Transportation Officer of Divisional Operational Superintendent. The present strength of Traffic Transportation and Commercial (TTC) cadre is 30 as against which there are 7 SC and 4 ST candidates already holding that post which works out about 33%. There is no scope for further promotion of any candidates on the basis of reservation. However, the authorities are going ahead in giving promotion to the third respondent, who belongs to the reserved category.

The main grievance of the applicant is that persons belonging to Scheduled Caste and Scheduled Tribe Community have been given promotions by the respondents over and above the 15% and 7.5% fixed for them as per the Reservation Policy under the Constitution thereby denying the legitimate promotional opportunity of the applicants, and violating the fundamental right of the employees guaranteed under Articles 14 and 16 of the Constitution.

111
62

Accordingly the applicant has come before the Tribunal for the following relief:

" To direct the respondents not to give further promotion to the SC and ST candidates to the post of Senior Scale in Traffic Transportation and Commercial (TT&C) Department over and above 15% and 7.5% respectively fixed for them."

This case was argued alongwith T.A. 123/87 and the same contentions were raised by the parties.

We have considered those arguments elaborately in the judgement of today in T.A. 123/87 and come to the conclusion that apppointment and promotion of SC/ST over and above the quota prescribed for them is not permissible.

In the result the application is allowed as follows:

The respondents are directed, while operating the roster, not to exceed

- 4 -

at any point of time the quota of posts reserved for each category. The roster has to be suspended when the quota is reached; for being revived as and when the percentage of SC or ST falls below the prescribed level.

Ordered as above. There will be no order as to costs.

/True Copy /

JOINT REGISTRAR.

Tic

Mr

Del

23/9/92

29
42
43

No.E/SCT/220/0 Vol.III

To,

All Concerned.

Divl.Secy. REU/WRMS, SC/ST Association-BRC.

BAUDA, Dt: 9/06/93.

Sub: Court Judgement/Orders - Promotion of SC/ST against reserve vacancies.

Ref: GM(E)CCG's letter No.E(SCT)220/0 Vol.IV dt. 20.5.93
dt. 28.4.93 and This office letter of even No. dated 7.8.93.

--X--

A copy of GM(E)CCG's letter No.E/SCT/220/0 Vol.IV dated 20.5.93 is reproduced below for information and guidance and necessary action.

DA: Typed below.

for DM(S)-BRC

--X--

Copy of GM(E)CCG's letter No.E(SCT)220/0 Vol.IV dated 20.5.93 addressed to DM/BRC and others.

--X--

Sub: Court Judgement/Orders - Promotion of SC/ST against reserved vacancies.

Ref: This office letter No.E(SCT)220/0 Vol.IV dated 28.4.1993.

--X--

In continuation of above referred letter, it is clarified that cadre restructuring will be implemented in terms of the procedure laid down in Railway Board's letter No.89.E (SCT) I/49/5 (Pt.) dated 16.6.92. (P.S.No.97/92).

Any selection in progress and initiated ~~xx~~ before 1.3.1993 will be completed as per earlier instruction. However, any selection initiated after 1.3.1993 will be finalised as per Railway Board circular referred to above.

Sd/-
(V.P. Sambrani)
for General Manager

Dada
Kindly forward Rly Bds
letter referred at
encin at (X) at
planned 'A'
on this case

Spl
for
15/6

TC
MA
MA

Handwritten notes: "Du", "55", "45", and a signature.

| DATE | OFFICE REPORT | ORDERS |
|--------|---------------|--|
| 3.8.93 | | <p>Heard learned advocate Mr.M.S.Trivedi for the applicants and Mr. Anil Kothari, learned advocate for the respondents.</p> <p>2. The applicants have filed this application under section 19 of the Administrative Tribunals Act, 1985, challenging the circulars Ann. A-3 dated 9th June, 1993 and 7th June, 1993 and has prayed for interim relief as per para 8 of the application. The respondents have filed reply on interim relief. The learned advocate for the applicants has drawn our attention to reply para 4.1 and para 4.3 in which the respondents have contended that the cadre of CTI and TNCR/TTI shown in para 6(5) of the application are correct. The learned advocate for the applicants therefore, submitted that the respondents are in a mood to pass the promotional order even when there is an ^{excess} upgrading quota. The learned advocate for the respondents submitted that no order of upgradation has been issued and the application is premature. He submitted that the instructions which have been given in the said circulars under challenge are in terms of conformity with the Full Bench judgment of CMT Hyderabad.</p> <p>3. Having heard the learned advocates we pass the following order on interim relief.</p> <p style="text-align: center;"><u>ORDER</u></p> <p>In case the respondents pass any order of promotion to SC/ST employees to the higher post of category No. 1 & 2 over and above 15%:7.5% respectively fix for them and if any such order</p> |

46

| DATE | OFFICE REPORT | ORDERS. |
|------|---------------|---|
| | | <p>contravenⁿ the interim order of the Hon'ble Supreme Court in Mallick's case, the same may not be implemented for 15 days within which time the applicants can move this Tribunal for stay of any such promotional order. Further directions will be given in case the respondents pass any promotional order. The respondents to file reply on merits within four weeks. Direct service permitted ^{N. on} respondent No.2.</p> <div data-bbox="423 968 705 1082"><p>Sd/- (M.R.Kolhatkar) Member (A)</p></div> <div data-bbox="1160 968 1379 1082"><p>Sd/- (R.C.Bhatt) Member (J)</p></div> <div data-bbox="627 1070 1097 1350"><p>Time exp. At Sec. of Section Officer C.A.</p></div> <p>vtc.</p> <div data-bbox="658 1579 987 2063"><p>TC [Signature] [Signature]</p></div> |

NOTICE BEFORE ADMISSION

JUDL-I
CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

BY R.P.A.D.

47.
B.D. PATEL HOUSE
NR. SARDAR PATEL COLONY
POST : NAVJIVAN
AHMEDABAD-380 014.

Filed on the 20th day of August 1993.
REGN. NO O.A. / 426 / 1993
Mr. V.A. Saxena

APPLICANT (S)
ADV. MR. M. S. Trivedi

Union of India & others

RESPONDENT (S)
ADV. MR.

TO

1. Union of India, through,
The General Manager, W.Rly.,
Churchgate,
Bombay.
2. The Divisional Rly.,
Manager Divisional Office,
Pratapnagar,
Baroda.

Whereas Shri. V.A. Saxena applicant has made an application under Section 19 of the Administrative Tribunals Act, 1985 to this Tribunal, hearing O.A.No. 167/93 stated above 10/8/93 whereas the above matter is put up for hearing on 10/8/93. The Hon'ble Tribunal has passed the order as mentioned below.*

Whereas the said application 167/93 has been again fixed for admission/interim orders on 10/8/93 at 10.30 A.M., a Copy of the application alongwith the relevant annexures is attached bearing Regn.No. as O.A. 425/93.

You are requested to produce the record(s) noted below on the aforesaid date of hearing for the perusal of the Hon'ble Bench of the Tribunal.

- (I) -
(II) -
(III) -

Should you wish to argue anything against the admission of the application or issue of interim order, you are at liberty to do so on the date fixed, or any other date to which the case may be adjourned, either in person or through an advocate.

Also take notice that in default of your appearance on the date fixed, the case will be heard/proceeded ex parte.

2 by
10/8/93
DEPUTY REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

DATE :

48
Order passed on 30/6/93.

Notice returnable on 3/9/93. Ad interim relief against promoting SC/ST candidates to the grade of M.1600-2600 from the grade of M.1400-1600 in excess of 15 % and 7 1/2 % of SC/ST candidates, respectively, of the total strength of the cadre till then, unless the promotion of any such candidate is on competitive merit with general category candidates against general category seat and he is entitled to promotion on the basis of seniority. This ad interim relief will continue till 3/9/93. Direct service as regards respondent no.2 permitted.

7c
Per
23/5

Western Railway

Divisional Office,
Vadodra-4.
Dated. 23.9.93.

No. EC/830/4/6 Goods.
MEMORANDUM 7/.

Sub:- Promotion, reversion and transfer of Comml. Class III
Staff TFC Deptt. - BRC Divn. CGS scale B.2000-3200(RP).
Ref:- This office Memo. No. even dated 23.9.93.

---xx---

Consequent upon the notification of the above panel for promotion to the post of CGS scale B.2000-3200(RP) the following orders are issued to have immediate effect.

| Sr. Name No. S/Shri | Present Position | | | Revised Position | | | |
|-------------------------|------------------|---------|-----------|------------------|-----------|-----------|-----------------------|
| | Desig. | Scale. | Stn. | Desig. | scale | Station. | |
| 1. | 2. | 3. | 4. | 5. | 6. | 7. | 8. |
| 1. L.G. Sarvia | | CGS | 2000-3200 | DHG | CGS | 2000-3200 | KSE ONGC |
| 2. H.M. Pathak | Adhoc | CGS/CGS | 2000-3200 | DRM Office. | CGS | -do- | DRM Office |
| 3. D.M. Parmar (SC) | | CGC | 1600-2660 | KKF | " | " | GNC |
| 4. N.Z. Patel (ST) | | -do- | -do- | KBCS | " | " | KBCS |
| 5. N.P. Patel (ST) | | -do- | -do- | AKV | " | " | AKV |
| 6. S.K. Parmar (SC) | | -do- | -do- | ASV | " | " | CAM ADI |
| 7. A.S. Makwana (SC) | | -do- | -do- | ASV | " | " | LHVD |
| 8. P.L. Maran (ST) | | -do- | -do- | BJW (GR) | " | " | BJW GR |
| 9. D.S. Rawal (ST) | | -do- | -do- | SVL (WTPS) | " | " | SVL WTPS |
| 10. M.A. Vankar (SC) | | -do- | -do- | KRNA | " | " | BRCY |
| 11. C.P. Marodia (SC) | | -do- | -do- | SBI | " | " | VG |
| 12. N.S. Dinkar (SC) | | -do- | -do- | ASV | " | " | KOD |
| 13. D.Z. Rathod (SC) | | -do- | -do- | ANND | " | " | ANND |
| 14. S.R. Makwana (SC) | | -do- | -do- | KKF | " | " | PTN |
| 15. B.M. Vasava (ST) | | -do- | -do- | PRTN | " | " | BRCY |
| 16. S.D. Dodiar (ST) | | -do- | -do- | BRCY | " | " | BJW/GSFC |
| 17. K.H. Choudhary (SC) | | -do- | -do- | KOD | " | " | MALB |
| 18. I.D. Parmar (SC) | | -do- | -do- | BJW | " | " | BH GNFC |
| 19. R.H. Verma (SC) | | -do- | -do- | SBI | Adhoc CGS | | IRM Office PRTN |

Joining time, TA/DA, Duty-Kit pass and transfer packing allowance is admissible to Sr.No. 1, 3, 7, 10, 11, 12, 14, 17, 18 & 19.

Sr. No. 1 is transferred as he surplus at DHG.

Sr. No. 19 is promoted and posted on adhoc basis and does not confer any claim for regular retention on promotion and does not confer any claim for regular retention on promotion nor does not it mean that his name has been automatically placed on panel of CGS scale B.2000-3200(RP).

Sr.No. 2 to 12 are promoted w.e.f. 1.3.93 in upgraded post of cadre restructuring.

Contd...2/-

The staff should be relieved within fifteen days, failing which the same should be treated as refusal to carry out their transfer and they will be debarred for promotion as per rules. Staff in occupation of Railway Quarter should vacate the same. Before taking the staff on promotion, senior subordinates should verify that they are not undergoing any penalties against or any major D/R or B/C case is pending against them and if case is pending then he should be relieved on promotion and this office should be advised at once.

The employees who desired to give their options for pay fixation from the date of increment can exercise their option within one month from the date of promotion as per extant rules.

The date of changes should be advised to this office at once.

The above promotion orders are issued on provisional basis as per GM(E)/CCG's No. EP/220/0 Vol. II dated 31.12.79.

for DM(E)/BRC.

To,
SSS/SMs- GFM, DMG, KMF, ASV, GNC, AKV, KSE, KRCA,
AMND KOD BJW PRIN VG PRR MALB SVL WTPS KRNA SBI
BRCY EVD DH.
DCM/ADI, CAM/ADI
CMIs- I II III ADI VG BRC ND AMND BH NYG DB PRIN GDA
DCMI/BRC, Comml. Controller/BRC OS/Comml.
CC-EP 4, 5 CC-P-Bill (TFC.)
SR. DAO/BRC.
C/ P. File, G. File No. EC/1025/4/9/1 Pt. II EC/839/4/6/1
C/- DCM/BRC Sr. DCM/BRC, ACM/BRC.
C/- Divl. Secy. WREU/WRMS-BRC.

24/9/93

✓
Copy/Regender/written submission
filed by Mr. N. S. Shinde
Learned advocate for petitioner/
Respondent with support
Copy served/set served on other side

50
By. Registrar C.A.T. (J)
A'bad Bench
15/3/93

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD

O. A. NO.554 OF 1993

A.C.Parikh..... ... Applicant

V/s

Union of India & Anr..... ... Respondents

WRITTEN STATEMENT ON
BEHALF OF RESPONDENTS

Per P
ash
A

The respondents humbly beg to file written
statement to the application as under:-

1. Contents of paras 1 to 5 are procedural and need no reply. However, it is stated that letter dated 9.6.93 (Annexure A/3 with the application) has been issued by the Divisional Office, Baroda, circulating G.M. (E), CCG's letter No.E(SCT)220/0 Vol IV, dated 20.5.93 stating inter alia and clarifying that cadre restructuring will be implemented in terms of the procedure laid down in Railway Board's letter No.89 E(SCT) I/49/5 (Pt), dated 16.6.92 (PS NO.97/92) and that any selection in progress and initiated before 1.3.93 will be completed as per earlier instruction and that any selection initiated after 1.3.93 will be finalised as per the Railway Board's circular

referred to above. The said letter is only in the nature of clarification.

2. Regarding para 6.1, the respondents rely on the service record of the applicant for the purpose of his date of appointment, dates of promotions, scale drawn, place of posting, etc.

3. Regarding para 6.2, it is stated that the applicant has retired from the railway service with effect from 31.7.93 on attaining the age of superannuation. It is stated that the Railway Board has issued letter dated 27.1.93 (Annexure A /1 with the application) on the subject of restructuring of certain Group C & D cadres. The respondents rely on the said Circular. It is not disputed that the said orders of restructuring are effective with effect from 1.3.93.

4. Regarding para 6.3, it is stated that the applicant has given the avenue of promotion of Assistant Goods Clerk and not of Goods Guard. The applicant has been promoted to the post of Chief Goods Clerk as per rules according to his turn. It is not disputed that an employee belonging to general category has to secure 60% marks in the written test and viva voce for qualifying himself in the selection, whereas relaxation is available to the employees belonging to reserved community candidates. It is not disputed that the reservation at the rate of 15% & 7½% for SC & ST respectively is provided by the railway administration.

5. Regarding para 6.4, it is stated that the reservation at the rate of 15% & 7½% provided by the Railway does not affect the fundamental right of the employees belonging to General Community and the said reservation is constitutional. The right of equality and equal opportunity in the matters of public employment is not affected by reservation. It is submitted that the reservation is to be maintained in the cadre as per the interim order of the Supreme Court. Every promotion of a reserved community candidate cannot be considered against reservation unless it is made against reservation/reserved point. It is submitted that there is no restraint against promotions of SC/ST employees on the basis of their own merit or seniority and ~~xx~~ such promotions are not to be considered against reservation.

6. Regarding para 6.5, it is submitted that the applicants have not placed any material to show the number of posts of SC/ST employees required as per their quota. It is not disputed that prior to restructuring total number of posts of CGS were 23 and after restructuring total number of posts available for SC/ST comes to 34, which shows addition of 11 posts on account of upgradation. It is not admitted that prior to restructuring the SC/ST employees in the promotion grade are already in excess. It is denied that the authority has interpreted the instructions dated

dated 9.6.1992 incorrectly and have proposed to promote SC/ST employees in excess as alleged. It is stated that the orders of restructuring are issued by the Railway Board vide order dated 27.1.93, which are made effective from 1.3.93. THE RESPONDENTS ARE OBEYING the interim orders passed by the Hon'ble Supreme Court and the Central Administrative Tribunal. The order dated 9.6.93 at Annexure A/3 only lay down the procedure to be followed by the administration while implementing the orders of restructuring and the procedure to be followed in the matters of selections initiated prior to 1.3.93 and after 1.3.93. The respondents are following the instructions issued by the Railway Board vide letter dated 16.6.92 while making promotions after the issue of restructuring orders.

7. Regarding para 6.6, the respondents rely on the judgement of Allahabad High Court in J.C.Malik's case and interim order passed by the Supreme Court in appeal against the decision of Allahabad High Court. The applicant has produced the judgement of the Allahabad High Court in J.C.Malik's case and the interim orders passed by the Hon'ble Supreme Court in the appeal matter against the said judgement as well as interim order passed by the Hon'ble Supreme Court in Girdharilal's case and the interim order passed by the Bombay Bench and Madras Bench, etc. at Annexure A/2 with the application. It is submitted that the respondents are maintaining reservation

: 5 :

at the rate of 15% 7½% for SC & ST respectively on the total number of posts in the cadre. It is submitted that the Railway Board have issued revised instructions vide their letter No. 89E(SCT) I/49/5 (Pt), dated 16.6.92 circulated by the Headquarter Office under letter No. E/SCT/220/0 Vol IV, dated 1.7.92 but the said instructions were kept in abeyance by the Headquarter Office vide their letter No. E/SCT/220/0 Vol IV, dated 1.9.92 so that ~~xxx~~ the concerned Benches of the Central Administrative Tribunals could be approached for modification of the interim order passed earlier so as to be in conformity with the interim order passed in J.C. Malik's case by the Hon'ble Supreme Court. It is stated that the HQ Office vide their letter No. E/SCT/220/0, dated 28.4.93 has issued instructions to implement the Railway Board's order dated 16.6.92 from 28.4.93 as in the meantime orders of restructuring of cadre are issued by the Railway Board. Thereafter, the Headquarter Office has further clarified vide letter NO. E(SCT) 220/0 Vol IV, dated 20.5.93 that the Railway Board's instructions of 16.6.92 might be implemented while implementing the orders of cadre restructuring. In para 2 of the said letter it has been clarified that the selection initiated after 1.3.93 will be finalised as per the Railway Board's revised Circular dated 16.6.92 in the category where

no restructuring is involved and selection initiated prior to 1.3.93 is to be completed as per earlier instructions as per letter dated 21.5.93.. It is stated that all instructions issued earlier are superseded by Railway Board's letter dated 16.6.92.

8. Regarding para 6.7, the respondents rely on the Railway Board Circular dated 27.1.93 for its true and proper interpretation. It is not disputed that the orders of restructuring are effective from 1.3.93. It is submitted that the respondent No.2 has to follow certain procedure before implementing the orders of restructuring. It is denied that the said orders of restructuring are not implemented by the railway administration for one reason or other so far. It is not disputed that the employees belonging to general category had filed Original Applications involving the issue regarding reservation at the rate of 15% & 7½% in favour of SC & ST respectively and different interim orders are passed by different Benches of the Tribunal. It is submitted that the orders dated 16.6.92 issued by the Railway Board were kept in abeyance by the administration and finally letter dated 20.5.93 has been issued by the Headquarter Office issuing clarification regarding implementation of the orders of restructuring in terms of procedure laid down in Railway Board's letter dated 16.6.92 and the procedure to be

followed in the selections ~~posts~~ initiated prior to and after 1.3.93. The said instructions are circulated by the Divisional Office, Baroda by a letter dated 9.6.93. It is denied that in view of clarification contained in letter dated 20.5.93 to implement the restructuring order in terms of procedure laid down in Railway Board's letter dated 16.6.92 the respondents are proposing to promote SC/ST employees in excess of 15% & 7½% respectively in the said categories. It is submitted that the respondents are implementing the interim order issued by the Hon'ble Supreme Court for maintaining reservation on the total number of posts in a cadre in favour of SC & ST at the rate of 15% & 7½% respectively. There is no prohibition against the promotion of reserved community candidates on the basis of their own merit or seniority and such promotions when made cannot be considered to be against reservation. The respondents are also following the instructions issued by the Railway Board and the Headquarter Office based on the Full Bench orders of the Hyderabad Bench. The applicant has no cause to challenge the order dated 9.6.93 in the present case. It is denied that the said impugned order is illegal & malafide. It is denied that impugned action of the respondents is arbitrary, unconstitutional and against and in violation of the directions given by the Hon'ble Supreme Court in

J.C.Malik's case. It is denied that the impugned action of the respondents amounts to contempt of Court. The averments are without any merit. It is submitted that the respondents have no intention whatsoever to commit contempt of Court.

9. Regarding para 6.8, it is submitted that as per the letter dated 20.5.93 the cadre restructuring orders are to be implemented in terms of procedure laid down in Railway Board's letter dated 16.6.92. It is denied that the respondents propose to promote SC/ST employees occupying present position by way of reservation and thereby ignoring the claim of senior employees belonging to General Community and hence the impugned action is contrary to the constitutional guarantee of the applicant as enshrined under Articles 14 & 16 of the Constitution of India. It is submitted that there is no violation of any fundamental rights of the applicant guaranteed by the Articles 14 & 16 of the Constitution of India in implementing the Railway Board's letter dated 16.6.92. It is submitted that the Railway Board has issued instructions for considering SC/ST candidates as per their seniority in the lower grade keeping in view the order of the Full Bench of the Central Administrative Tribunal, Hyderabad Bench. It is submitted that the respondent No.2 has already issued the promotion orders dated 23.9.93 in implementation of the orders of cadre restructuring. A copy of the said promotion order

54

: 9 :

dated 23.9.93 promoting the employees from the post of Chief Goods Clerk to the post of Chief Goods Supervisor scale Rs.2000-3200 (RP) is produced herewith as Annexure Ann.R/1 R/1.

10. Contents of para 6.9 are not fully true and are not admitted. It is denied that the employees of reserved communities presently working in the feeder cadre ~~never~~ having been promoted against reservation cannot be treated as eligible for further promotion on the ground that the quota in promotional posts is not only full but over-flown as alleged. It is denied that treating it otherwise would amount to excessive reservation/promotion and is contrary to interim orders of the Supreme Court. It is denied that the impugned action is, therefore, required to be quashed. It is submitted that there is no illegality in considering the reserved community candidate for further promotion on the basis of their seniority position in the lower grade even if they are promoted against reservation. It is denied that the applicant has prima facie case or that the balance of convenience is in favour of the applicant. The applicant would not suffer any irreparable loss. The applicant has already retired on 31.7.93.

11. Regarding para 6.10, it is submitted that the applicant has not produced interim orders passed in O.A.NO.289/93, 131/93 & 369/93. The said orders are

passed on the facts of the case. The applicant has produced interim order in O.A.NO.369/93 & O.A.426/93 as Annexure A/4. No interim relief is granted in ~~this case~~ the present case.

12. The applicant is not entitled to any of the reliefs claimed in paras 7 & 8 of the application.

13. Regarding paras 9 to 12, it is stated that no representation is made ~~to~~ by the applicant before filing this application.

X. In view of what is stated above, the application may be dismissed with costs.

VERIFICATION.

I, B.N.Meena, age about 36 years, son of Shri R.N.Meena, working as Senior Divisional Personnel Officer, Western Railway, Baroda, and residing at Baroda, do hereby state that what is stated above is true to my knowledge and information received from the record of the case and I believe the same to be true. I have not suppressed any material facts.

Baroda

Dated: 21.2.1994

File 18.3.84

Senior Divisional Personnel Officer,
Western Railway, Baroda.

X.14. It is humbly submitted that Policy making authority is the Railway Board and the subject matter under dispute is having far reaching implications. The respondents have referred the reply for vetting of Railway Board, therefore respondent administration be permitted to file additional affidavit if warranted as per guidance of respondent no. one.

o.FC/830/4/6 Goods.
MEMORANDUM

Regional Office,
Vadodra-4.
Dated 23.9.93.

Sub: - Promotion, reversion and transfer of Comm. Class III
Staff TFC Deptt. - BRC Divn. CGS scale B.2000-3200(RP).
Ref: - This office Memo. No. even dated 23.9.93.
--xx--

Consequent upon the notification of the above panel for promotion to the post of CGS scale B.2000-3200(RP) the following orders are issued to have immediate effect.

| Sr. Name No. S/Shri | Present Position | | | Revised Position | | |
|-------------------------|------------------|---------------|-------------|------------------|-----------|-----------|
| | Design. | Scale. | Stn. | Design. | Scale | Station. |
| 1. | 2. | 3. | 4. | 5. | 6. | 7. |
| 1. L.G. Sarvia | CGS | 2000-3200 | DHG | CGS | 2000-3200 | KSE |
| 2. H.M. Pathak | Adhoc CGS | CGS 2000-3200 | DRM | CGS | -do- | ONGC |
| 3. D.M. Parmar (SC) | CGC | 1600-2660 | KKF | Office. | | DRM |
| 4. N.Z. Patel (ST) | -do- | -do- | KBCS | " | " | Office |
| 5. N.P. Patel (ST) | -do- | -do- | AKV | " | " | GNC |
| 6. S.K. Parmar (SC) | -do- | -do- | ASV | " | " | KBCS |
| 7. A.S. Makwana (SC) | -do- | -do- | ASV | " | " | AKV |
| 8. P.L. Maren (ST) | -do- | -do- | ASV | " | " | CAM API |
| 9. D.S. Rawal (ST) | -do- | -do- | DCW (GR) | " | " | L. HVD |
| 10. M.A. Vankar (SC) | -do- | -do- | SVL (WTFES) | " | " | DJW GR |
| 11. C.P. Marodia (SC) | -do- | -do- | KTNA | " | " | SVL WTFES |
| 12. N.S. Dinker (SC) | -do- | -do- | SEC | " | " | BRCY |
| 13. D.Z. Rathod (SC) | -do- | -do- | ASV | " | " | VG |
| 14. S.R. Makwana (SC) | -do- | -do- | ANND | " | " | KOD |
| 15. B.M. Vasava (ST) | -do- | -do- | KKF | " | " | ANND |
| 16. S.D. Dodiar (ST) | -do- | -do- | IREN | " | " | PTR |
| 17. K.H. Choudhary (SC) | -do- | -do- | BRCY | " | " | BRCY |
| 18. I.D. Parmar (SC) | -do- | -do- | KOD | " | " | DJW/GSFC |
| 19. R.H. Verma (SC) | -do- | -do- | DJW | " | " | MLD |
| | | | SBI | Adhoc CGS | | BR GNFC |
| | | | | | | IRM |
| | | | | | | Office |
| | | | | | | RTM |

Joining time TA/DA, Duty Kit pass and transfer packing allowance is admissible to Sr.No.1,3,7,10,11,12,14,17,18 & 19.

Sr. No.1 is transferred as he surplus at DHG.

Sr. No.19 is promoted and posted on adhoc basis and does not confer any claim for regular retention on promotion and does not confer any claim for regular retention on promotion nor does not it mean that his name has been automatically placed on panel of CGS scale B.2000-3200(RP).

Sr.No.2 to 12 are promoted w.e.f. 1.3.93 in upgraded post of cadre restructuring.

Contd...2/-