

**CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH**

**OA/579/1993**

**Date of Decision :/2-12-2000**

W. T. Rahate : Petitioner [s]

Mr. M. S. Trivedi : Advocate for the petitioner [s]

Versus

Union of India and Ors. : Respondent [s]

Mr. N. S. Shevde : Advocate for the Respondent [s]

**CORAM :**

**THE HON'BLE MR. A. S. SANGHAVI** : **MEMBER (J)**

**THE HON'BLE MR. G. C. SRIVASTAVA** : **MEMBER (A)**

**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 ? ~

1. Shri. W.T. Rahate,
2. Shri. Anand Rao
3. Shri. S.D. Pandya,
4. Shri. P. J. Raval,

All are working as H.G.C.,  
Western Railway,

= Applicants =

**Advocate : Mr. M. S. Trivedi**

Versus

1. Union of India (through)  
The General Manager,  
W. Rly., Church gate,  
Mumbai.
2. The Divisional Railway Manager,  
W. Rly., Pratapnager,  
Vadodara.

= Respondents =

**Advocate : Mr. N. S. Shevde**

**JUDGMENT**  
**O.A 579 of 1993**

**Date : /2/11/2000**

Per Hon'ble Shri. A.S. Sanghavi : Member (J).

The applicants who are working as Head Goods Clerk have challenged the action of the respondents to cancel the selection test held on 29.8.92 for the promotion to the post of Chief Goods Clerk. They have also prayed for a declaration that the action on the part of the respondents authority to issue promotion orders vide memo dated 23.9.93 pursuant to memorandum dated 27.1.93 and 12.5.93 is illegal and null and void. According to the applicant on dated 5.8.92 the respondents had issued a memorandum as at Annexure A/1 for

holding the selection for the promotional post of Chief Goods Clerk in the scale of Rs.1600-2660/-. The statement showing the list of the employees who were eligible for appearing in the said selection was also issued by the respondents and all the applicants were shown to be eligible in that list. The selection was held on dated 29.8.92 and written test was also completed. No reservations for SC / ST were disclosed in the said memo which meant that the required quota for SC / ST was full in the said cadre. After the written test was held on 29.8.92, viva voce was to be held but the result of the written test was not declared till 12.5.93. However, on 12.5.93 a memorandum was issued by the respondents canceling the selection of Chief Goods Clerk initiated earlier vide letter dated 5.8.92 and it was mentioned in the said memo that the post of Chief Goods Clerk would be filled up as per the modified procedure laid down in Board's letter dated 27.1.93. The applicants have contended that this action on the part of the respondents to cancel the selection held in the month of August 1992 was mala fide and bad in the eyes of law and hence, requires to be quashed. It is also further contended by the applicant that on dated 27.1.93 the respondents had issued a circular restructuring the cadres in the Grade of 'C' and 'D' of various departments of the Railways. The circular clearly mentions that it would be effective from 1.3.93 and the effect of the restructuring of the post would be of increasing the number of post from 23 to 34 in the pay scale of Rs.2000-3200/-. This restructuring would have the effect of increasing the SC and ST quota by five seats each and would thereby deprive the employees of the general community of their legitimate right of promotion while increase the promotional

opportunity of SC and ST employees. In the selection which was initiated on dated 29.8.92, no reservation in SC /ST was available and therefore the promotional avenues for the applicants were reduced on account of the subsequent restructuring of the cadre and hence the action of the respondents in canceling the selection initiated on dated 29.8.92 is prejudicial to the interest of the applicants. The applicants have prayed that the action on the part of the respondents-authority to cancel the selection test held on 29.8.92 for promotion to the post of Chief Goods Clerk in the scale of Rs.1600-2660/- be quashed and set aside and it be declared that the promotion orders issued vide memo dated 23.9.93 are illegal and null and void.

2. The respondents have resisted this O.A and in their reply have contended inter alia that the selection notified vide Annexure A/1 dated 5.8.92 was for the post of Chief Goods Clerk (Rs.1600-2660/-) and pursuant to that notification result of the written test was declared in May 1993. The selection was delayed because supplementary test for the absentees was required to be conducted and thereafter the result of the written test was to be declared. However, in the meantime the Railway Board vide their letter No. PC/III/91/CRC/1 dated 27.1.93 circulated a letter notifying the restructuring of the cadres of Chief Goods Clerk. The said letter also stated that the selection which was not finalised by 1.3.93 should be canceled / abandoned. The selection initiated on dated 5.8.92 for the post of Chief Goods Clerk and the written test conducted on 29.8.92 had to be canceled in view of the circular issued by the Railway Board as the said selection was not finalised by that time. They have

contended that the averments of the applicant that restructuring the post of Chief Goods Supervisor in the scale of Rs.2000-3200/- would be increased from 23 to 34 is not relevant as the applicants were working as Head Goods Clerk in the scale of Rs.1400-2300/-. They have also contended that the applicants have no right to challenge the promotions made to the scale of Rs.2000-3200/- from the eligible candidates working in the scale of Rs.1600-2660/-. The Annexure A/1 and Annexure A/2 relates to the selection for promotion to the post of Chief Goods Clerk in the scale of Rs.1600-2660/- only and therefore promotion to the scale of Rs.1600-2660/- is irrelevant. They have denied that only to favour the SC / ST candidates and to deprive the general community candidates with ulterior motive the said test was canceled. According to them the Railway Board circular dated 27.1.93 applied to all cadres and therefore there was no question of favouring certain candidates or dis-favouring others. They have maintained that the promotions are being regulated as per the Railway Board's letter dated 16.6.92 on the subject and that the averments of the applicants about mala fides and prejudice to the applicants are without merit. They have denied that the promotional orders passed on dated 23.9.93 are null and void and have prayed that the O.A be rejected with costs.

3. We have heard the learned advocates of both the parties. According to Mr. Trivedi, learned advocate for the applicants once the selection process was started by the respondents for the post of Chief Goods Clerk in the scale of Rs.1600-2660/-, the same could not have been canceled by the respondents and the action of the respondents

in canceling the same without sufficient grounds requires to be struck down. He has further submitted that though the written test was held on 29.8.92 its result was not declared till May 1993. He has alleged that this was done deliberately by the respondents so that benefit of the restructuring of the cadres can be given to the SC / ST candidates pointing out that for the selection which was notified in 92, there was no reservation quota for SC / ST candidate as the required quota of SC / ST was full in the promotional cadre at that time and pursuant to the restructuring of the cadre, both SC and ST would be getting five posts each by way of reservation. He has submitted that this has caused prejudice to the general caste employees and therefore the earlier selection canceled without any reason ought not to have been allowed to be canceled. He has also further submitted that it is a settled position of law that vacancies arising under the old rules should be filled as per the old rules and not by applying new rules. Since the selection notified for the post of Chief Goods Clerk was to be made as per the old rules, for the vacancies of that selection new procedure could not be applied.

4. Mr. Shevde, learned advocate for the respondents on the other hand has contended that the selection test had to be canceled on account of the Railway Board's circular dated 27.1.93 and this has not caused any prejudice to any of the employees. According to Mr. Shevde this circular dated 27.1.93 is not challenged by the applicants in this O.A and since this circular is not challenged the action taken by the respondents on the basis of this circular also cannot be challenged. He has also denied the averments of the applicants that

on account of this circular the number of post for the SC / ST has increased and that the general category employees were prejudiced so far the promotional post were concerned. He has submitted that there is nothing wrong in the cancellation of the selection test for the post of Chief Goods Clerk in the scale of Rs.1600-2660/- as the said test was succeeded by another test as per the procedure laid down in the circular dated 27.1.93.

5. We find great deal of substance in the submissions of Mr. Shevde. The applicants have challenged the cancellation of the selection test held on 29.8.92 for the promotion of Chief Goods Clerk in the scale of Rs.1660-2660/- but have not said anything about the circular dated 27.1.93. The circular is not challenged by the applicants and therefore, the action taken by the respondents on the strength of the circular cannot be allowed to be challenged. The copy of the circular is produced at Annexure A/3 and clause 4.2 of this circular inter alia provides that the selection which have not been finalised by 1.3.93 should be canceled / abandoned. Admittedly, the selection initiated by the respondents for the post of Chief Goods Clerk in the scale of Rs.1600-2660/- vide their notification dated 5.8.92 was not finalised till 1.3.93 and therefore the respondent no.2 had no other alternative to cancel the said selection. He was bound by the circular dated 27.1.93 of the Railway Board and as such he had no option but to cancel the said selection. It is averred by the applicants that though the written test was held on dated 29.8.92 the result of the same was not declared till May 1993 and this was done deliberately to favour the SC / ST candidates. The respondents have

however, replied that the result could not be declared as the supplementary test for the absentees was to be held and after holding the supplementary test the result was declared in May 1993. However, in the meantime, the Railway Board circular had come into effect and therefore the test had to be canceled.

6. Though it was tried to be argued that on account of the cancellation of the test the applicants are prejudiced as the number of reserved posts came be increased on account of the restructuring of the cadre while there was no reservation in the notified selection, we are unable to appreciate the submissions made in this behalf. The circular dated 27.01.93 does not provide for any increase in the reservation quota for SC / ST and clause - 10 of the circular clearly states that 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. It may be that due to restructuring of the cadres more posts would be available in the higher cadres thereby necessitating increase in the reserve quota but then the post for the general category also would be increased simultaneously. It therefore cannot be said that by the said restructuring of the cadres the promotional avenues of the applicants are reduced and that the cancellation of the selection test has adversely affected their rights of promotion. In fact no material has been adduced by the applicants to show what was the percentage of reservation quota earlier and how much increase in the reservation quota is made after the restructuring of the cadres. In any case since the circular dated 27.1.93 is not under challenge, the action

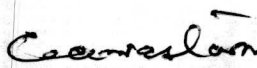
taken by the respondents on the basis of this circular cannot be struck down as invalid or null and void. Mr. Trivedi, learned advocate for the applicant has relied upon the decision in the case of said State of Bihar Vs. Secretariat Assistant Successful Examinees Union 1986 Others reported in (1994) 1 SCC 126, but we fail to understand how this decision apply to the facts of the instant case as the said case related to the filling up the vacancies available up to the last date of the calendar year following the year of the announcement of the vacancies and not against the new vacancies. In that case the number of vacancies were announced and examination were held two years after inviting the applications while the results were announced still three years later. The Supreme Court has held that under the circumstances, the candidates empanelled on the basis of the examination held, were entitled to appointment only against the vacancies available up till the last date of the calendar year following the year of the announcement of the vacancies and not against the vacancies available on the date of the publication of the result or later. This decision has apparently no application to the facts of the instant case as in the instant case there is no empanelment as the selection was canceled. The vacancies arising on the date of the announcement of the selection were to be regulated as per the Board's circular and this circular is not challenged before us.

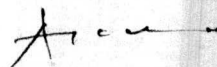
7. Mr. Trivedi, learned advocate for the applicant has submitted that the main challenge of the applicant is not the circular issued by the Railway Board but the challenge of the applicant is the cancellation of the selection whereby the applicants are deprived of

availing of the vacancies existed on the day of the cancellation of the selection. The relief prayed for by the applicant in this O.A however does not say anything about the directions to the respondents to fill up the post as per the old vacancies. Furthermore, it is not shown that on account of the restructuring of the cadres change has been affected in the number of vacancies available for promotion to the cadre of the Chief Goods Clerk and therefore it cannot be said that cancellation of the selection has been prejudicial to the interest of the applicant. It is contended that 29 vacancies were available prior to 1.3.93 but this is not shown that after 1.3.93 any change had occurred in this vacancy adversely affecting the promotional prospectus of the applicant. The relief prayed for also is not in consonance with the submissions made regarding the filling up of the vacancies after 1.3.93 being prejudicial to the interest of the applicants. It is to be noted that by the said circular no change in the rules or the procedure for recruitment or promotions to the post of Chief Goods Clerk is made and therefore it cannot be said that the vacancies available on 1.3.93 ought to be filled up under the old rules or old procedure.

8. Mr. Trivedi has also relied upon decisions in the case of Purendra Kumar Sharma Vs. Union of India and Ors. reported in (1990) 13 ATC 880 as well as Rabindra Kumar Mohanty Vs. Director of Printing & Ors. reported in (1990) 14 ATC 298, but none of these decisions has any application to the facts of the instant case. There is no quarrel about the principle that the vacancies existing prior to the revision of the rules have to be filled up according to the un-

revised rules but, in the instant case there is only restructuring of the cadres and not the revision of the rules. It is also not shown that the restructuring of the cadre has acted against the interest of the applicants. The circular affecting the restructuring of the cadre and laying down the procedure for filling up the vacancies etc is not under challenge before us and therefore, it cannot be said that the cancellation of the test was done by the authorities with a mala fide or ulterior motive. Since the cancellation of the impugned selection to the post of Chief Goods Clerk was in compliance with the directions given in the circular itself, the same cannot be held to be bad in law. Under the circumstances, we do not see any merit in this O.A and are of the opinion that the O.A deserves to be rejected. In the conclusion therefore the O.A is rejected with no order as to costs.

  
(G.C. Srivastava)  
Member (A)

  
(A.S. Sanghavi)  
Member (J)

Mb

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, AHMEDABAD BENCH

OA/TA/RA/CP/ 579/93 of 200

W. T. Rattelle

APPLICANT(S)

VERSUS

421-1

RESPONDENT (S)

I N D E X -----S H E E T

[illegible]

Certified that the file is complete in all aspects.

Signature of S.O. (K)

Signature of Dealing  
Hand.

CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD

Submitted :

C.A.T./Judicial Section.

Original Petition No

579

of

1993

Miscellaneous Petition No

of

Shri

W.T. Rathote 2008

Petitioner(s)

versus

UOI 2008

Respondent (s)

This application has been submitted to the Tribunal by

Shri

M.S. Trivedi

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. This printed copy that the learned advocate has filed some extra enclosures from pages 25 to 31. However ~~same~~ the same is mentioned in page 7 of the OA which may be perused. C.O. Court no II has asked to circulate the matter on 06-10-93.

CAO  
05/10  
S.O.(J)

D.R.(J)

Prabhu  
05-10-93

Before the Hon'ble Central Government

Tribunal Also Bench.  
Also.

Original Application No SM of 93

Sri W. T. Rahale & 3  
Others, H. G. C., W. Rly.  
Banda.


----- Applicants.

<sup>Y/S</sup>  
Union of India Others.  
----- Respondents.

## I N D E X

- |     |  |           |
|-----|--|-----------|
| (1) | Memo of application.                                       | 1 to 9.   |
| (2) | Copy of memorandum dt. 5/8/92. (Anne. A1)                  | 10 to 13  |
| (3) | Copy of memorandum dt. 12/17/93. (Anne. A2)                | 14.       |
| (4) | Copy of circular dt. 27/1/93. (Anne. A3)                   | 15 to 19. |
| (5) | Copy of order passed in O.A. 426/93. (Anne. A4)            | 20 - 22   |
| (6) | Copy of memorandum dt. 23/9/93. (Anne. A5)                 | 22 - 23   |
| (7) | Copy of G.M. W. Rly's instructions dt. 12/3/88. (Anne. A6) | 24.       |

Dt. 4/10/93  
At Ahmedabad.

  
(M. S. Trivedi)

Filed by Mr. en. S. Trivedi  
 Learned Advocate for Petitioners  
 With second set & 2 (two) copies  
 Copies copy served/not served to  
 other side  
 other side

4/10/93 Dy. Registrar C.A.T (I)  
 Ahmedabad Bench

C.A. No. 558/93

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH AHMEDABAD.

Original Application No. of 1993.

Shri W.T. Rathete, & three others. ....Applicants.

V/s.

Union of India & others. ....Respondents.

Application for seeking permission to file  
 joint application as per C.A.T. Procedure Rules.

The applicants above named humbly states that they  
 have filed one applications under section 19 of A.T. Act  
 challenging the memo dtd. 12.5.1993 and memorandum dtd.  
 29.9.1993.

The applicants further states that action on  
 the part of the respondent authority will adversely  
 effect the promotional avenues of the applicants and  
 therefore the applicants have common interest and the  
 cause of the action is also one and the same for all the  
 applicants.

...2....

: 2 :

The applicants therefore requests the Hon'ble Tribunal to allow their joint application and allow them to file single applications in stead of filing separate application.

Dt. 4/10/1993.

Ahmedabad.

x \_\_\_\_\_  
x \_\_\_\_\_  
x Anand Rao A  
x S.D. Pandya  
Applicants.

V E R I F I C A T I O N

We, W.T.Rahate, Shri Anand Rao, Shri S.D. Pandya, Shri P.J. Raval, Adult, Occ. Service, residents of Ahmedabad do hereby verify and states that what is stated hereinabove are true and we have not suppressed any materials facts.

\_\_\_\_\_  
( M.S. Trivedi )  
Advocate for the  
Applicants.

x \_\_\_\_\_  
x \_\_\_\_\_  
x Anand Rao A  
x S.D. Pandya  
Applicants.

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

Original Application No. 571 of 1993.

1. Shri W.T. Rahate,
  2. Shri Anand Rao
  3. Shri S.D. Pandya,
  4. Shri P.J. Raval,
- All are working as H.G.C.,  
Western Railway,

....Applicants.

V/s.

- (1). Union of India (through)  
The General Manager,  
Western Railway,  
Churchgate, Bombay.
- (2). The Divisional Railway Manager,  
Western Railway, Pratapnagar,  
Vadodara.

.....Respondents.

Application Under Section 19 of A.T. Act.

(1). PARTICULARS OF THE APPLICANTS :-

- (a). Name of the applicants :-
  1. Wamanrao
  2. Anandrao
  3. Subashchandra
  4. Pravinchandra
- (b). Name of the father of the applicants :-
  1. Dharmaje
  2. Ashirvad
  3. Dinanath.
  4. Jivram
- (c). Designation and office in employee. :- All are working as H.G.C. under respondent No.2.
- (d). Address for service of all notices. :- M.S. Trivedi,  
Advocate,  
E/4, Shivani Apartment.  
Shahjanand College,  
Azad Society Road,  
Ahmedabad - 380 015.

(2). Particulars of the Respondents :- As stated in the cause title.

(3). Details of impugned order :-

1. This application is against the memorandum dtd. and dtd. 23.9.1993 issued by the respondent authority for promotion of Class - III Staff Comm1. (TFC). department from C.G.C. Scale of Rs. 1600 - 2660 (RP) to C.G.J. Scale of Rs. 2000 - 3200.

2. Memo No. EC/1025/4/9/Pt-II, dtd. 12.5.1993.

(4). Jurisdiction :-

The applicants further declares that the subject matter of this application is within the jurisdiction of this Hon'ble Tribunal.

(5). Limitation :-

The applicants humbly states that the application is within the time limit prescribed under section 21 of A.T. Act.

(6). Facts of the Case :-

The applicants humbly states and submits that they are the permanent employees of the railway <sup>administrative</sup> employees. It is further stated that at present the applicants are working as H.G.C. (Head Goods Clerk) in the pay scale of Rs. 1400 - 2300 under respondent no. 2. The applicants further states that as far as service record and service carrier of the applicants is concern it is spotless and unblemished.

6.2 The applicants further states that initially the applicants were appointed as A.G.C. ( Assistant Goods Clerk) and thereafter

they were promoted as Sr. G.C. and H.G.C. It is further stated that the promotional avenues in the Goods Clerks cadres are as under :-

- (1). Assistant Goods Clerk.     Rs. 975 - 1540
- (2). Senior Goods Clerk.       Rs. 1200 - 2040
- (3). Head Goods Clerk         Rs. 1400 - 2300
- (4). Chief Goods Clerk.       Rs. 1600 - 2660
- (5). Chief Goods Supervisor   Rs. 2000 - 3200.

6.3       The applicants further states that in the year 1992 i.e. on 5.8.1992, memorandum shown as Annexure : A1 to this application was issued by the respondent authority. It is further stated that vide that memo instruction were issued regarding to hold selection for promotion to the post of Chief Goods Clerk in the Scale of Rs. 1600 - 2660(RP) and statement showing the list of employees who eligible for the said selection was also issued by the respondent authority. The name of the present applicants were also figured at serial No. <sup>7</sup>16 - 59 and 61 in the said list.

6.4       The applicants further states that the selection was held on 29.8.1992 and written test was also completed. It is pertinent to note that it was specifically mentioned in the aboveresferred memo dtd. 5.8.1992 that there is no vacancy reserved for S.C./S.T. and this reservation is based on 15% for S.C. and 7½% for S.T. on the cadre of C.B.C., C.L.E., scale of Rs.1600 - 2660 (RP). The applicants further states that meaning thereby ~~mf~~ at that time the required quota of S.C./S.T. were fulfilled in the said cadre.

6.5       The applicants further states that it is significant to note that the written test was held on 29.8.1992, but the

result of the said test was not declared by the respondent authority upto May, 1993. The applicants further states that various instructions are issued by the respondent authority and provision is also made in terms of para 210 (d) of Chapter - II, of the I.R.E.M. for selection to non-garretted posts and regarding declaration of result of test. It is further stated that but reasons which are best known to the department the result of the test which was held on 29.8.1992 was not declared upto May, 1993.

6.6 The applicants further states that thereafter memorandum dtd, 12.5.1993 was issued by the respondent authority, shown as Annexure : A2 to this application. It is further stated that vide that memo selection of C.G.C. initiated earlier vide letter dtd. 5.8.1992 was cancelled. Moreover it was further <sup>m</sup>entioned in the said memo that the post of C.G.C. Scale of Rs. 1600 - 2660 (RP) will be filled in as per the modified procedure as laid down in Board's letter dtd. 27.1.1993. Thus action on the part of the respondent authority cancelling the previous selection held in the month of August 1992 was not only illegal, arbitrary or unjust, but it was malafide and bad in the eyes of law and the same is required to be quash and set aside.

6.7 The applicants further states that the respondent authority had issued <sup>one</sup> ~~are~~ circular dtd. 27.1.1993 regarding restructuring of cadres in the grade of C & D of the various department of Railway. It was specifically mentioned in the said circular that the said circular will be effective from 1.3.1993. It is further stated that due to the said

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restructuring the posts of G.C.S. in the pay scale of Rs. 2000 - 3200 will increase from 23 to 34. But the actual position of S.C./S.T. and general community is as under :-

At present :-

<u>Total No. of Posts.</u>	23
S.C. required according to S.C.quota.	03
S.T. required according to S.T.quota.	02
S.C. Actually working	07
S.T. Actually working	03

After restructuring :-

Total No. of posts.	34
S.C.required according to S.C.quota.	05
S.T. required according to S.T.quota.	05

Thus, as it appears from the above facts that after restructuring the S.C./S.T. employees were in excess quota of 15% and 7½% respectively. The applicants further states that as it was also mentioned in the letter dtd. 5.8.1992 )Annexure : A1) when selection for the posts of C.G.C. was held there was no only reserved post for S.C./S.T. Thus the S.C./S.T. employees who were working in the grade of Rs. 1600 - 2660 were not eligible/entitled to get the benefit of restructuring because the quota for them was excess in the higher posts.

6.8 The applicants further states that therefore, and with a view to deprive the legal and legitimate right of the employees of the General Community and to favour S.C./S.T. Employees and with a ulterior motive the result of the

written test was not declared but cancelled by the respondent authority vide memo dtd. 12.5.1993. It is significant to note that the employees of general communities working as H.G.C. in the scale of Rs. 1400 - 2300 had filed one application before this Hon'ble Tribunal under section 19 of A.T. Act, regarding not giving promotion to S.C./S.T. employees above excess quota of 15% and 7½% fixed for them respectively. The applicants further states that the said application registered as O.A. No. 426 of 1993 and ad-interim injunction was granted by the Hon'ble Tribunal which is still continue. Copy of the said order is annexed hereto and marked as Annexure : A4 to this application.

6.9 The applicants further states that respondent authority had issued one memorandum dtd. 23.9.1993 and vide that order the respondent authority had issued promotion order from C.G.C., scale of Rs. 1600 - 2660 (RP) to C.G.S., scale of Rs. 2000 - 3200 (RP). It is pertinent to note that there are 17 S.C./S.T. employees out of 19 employees who are promoted vide that order. Copy of the said order is annexed hereto and marked as Annexure : A5 to this application. The applicants further repeats and reiterates ~~xx what~~ what is stated hereinabove and state that as mentioned hereinabove in para 6.7 that even after restructuring the S.C. / S.T. employees were in excess quota in C.G.S., scale of Rs. 2000 - 3200 and now promoting more 17 S.C./S.T. employees in the said grade will become the quota over flown. Thus action on the post of the ~~xx~~ respondent authority promoting persons belonging to S.C./S.T. community over and above 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 is page 844, where in it

P-25-31

has been laid down that S.C./S.T. employees cannot be promoted in excess of their prescribed quota. Moreover 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 Allahabad ~~High~~ High Court Judgment.

6.10 The applicant further states that the action on the part of the respondent authority is illegal and arbitrary. Not only that it is against the instructions issued by G.H. W. Railway's instruction dtd. 12.2.1985. (1985). It is further stated that as mentioned hereinabove the action on the part of the respondent authority ~~the~~ cancelling the previous test held on 29.8.1992 is also malafide which deprived the applicants from their legal and legitimate right for promotions. Thus action on the part of the respondent authority vide memo dtd. 23.9.1993 promoting S.C./S.T. employee as C.G.S. in the scale of Rs. 2000-3200 illegal, null and void and requires to be quash and set.

Not only that the said action of the respondent authority will cause great hardships and irreparable injury to the employees of general community.

Now no any **other** and further efficacious remedy left for the applicants except to approach to Hon'ble Tribunal by filing this application for their grievances.

7. Reliefs prayed for :-

Looking to the facts and circumstances of the case

and in view of the facts mentioned hereinabove the applicants therefore pray as under :-

- (A) that the Hon'ble Tribunal be pleased to Admit this application;
- (B) That the Hon'ble Tribunal further be pleased to quash and set aside action on the part of the respondent authority to cancell the selection test held on 29.8.1992 for promotion to the post of C.G.C. in the scale of Rs.1600-2660(RP),vide memo dtd. 12.5.1993.
- (C) that the Hon'ble Tribunal further be pleased to declare that the action on the part of the respondent authority to issue promotion orders vide memo dtd. 23.9.1993 pursuance of memorandum dtd.27.1.93 and 12.5.1993 are illeged and null and void.
- (D) Any other and further reliefs that the Hon'ble Tribunal may deem fit and proper may be given to the applicant.

8. Interim reliefs :- Pending hearing and final disposal of this case the respondents/its subordinates may be directed not to implement the <sup>memorandum/</sup>office order dtd. 23.9.93 issued by the respondent authority.

9. Pen Remedy Exhausted :- The applicants further states that the applicants have exhausted all the remedies available to them as per rules.

10. Matter not pending :- The applicants further declares that the subject matter of this application is not pending before any judicial forums.

11. Details of I.P.O. :- 801-923296  
67- 4/10/93

12. Details of Annexures :- Prod Post-Office

Separate index annexed herewith.

Dt. 4/10/1993.  
Ahmedabad.

x Raval  
x Raval  
x Anand Rao A.  
x S.D. Pandya  
Applicants.

V E R I F I C A T I O N

We, W.T. Rahate, Shri Anand Rao, Shri S.D. Pandya, Shri P.J. Raval, adult, Occupation : Service, residents of Ahmedabad do hereby verify and states that what is stated hereinabove are true and we have not suppressed any materials facts.

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

x Raval  
x Raval  
x Anand Rao A.  
x S.D. Pandya

WESTERN RAILWAY

No. EC/1025/4/9 Pt. II

DIVISIONAL OFFICE,  
BARODA, Dt: 5-8-92

To,

SSS- KKF SBI ASV BRCY ND ANND DHG BH  
AKV SBT PRIN KHD KOD GDA SVL  
VG KBIN ADI (CTNL) BRC (CTNL) GTX  
KOSAD (KRIBHCO) BJW KRCA Mawas (Sd)  
DM Office BRC KRSA VLYN BJD  
SVL (WIP) GNC

C/- AM/DCM-ADI, Hd. Courier BRC,  
CMIs-I, II, III-ADI, VG ND ANND BRC BH MYG PRIN IB

Sub: Selection Board for promotion to the post  
of Chief Goods Clerk, Scale Rs. 1600-2660 (P).  
Tfc. Deptt. BRC Division.

.....

1. The selection board to draw up a pan. of 29 employees (UR) suitable to the post of CGC, scale Rs. 1600-2660 (P) is proposed to be held on 29.8.92 in this office at 10.30 hrs. (Written Test). There is no ~~reservation~~ vacancy reserved for SC/ST. This reservation is based on 15% for SC & 7½% for ST on the cadre of CBC/CLC, scale Rs. 1600-2660 (P) in accordance with the orders received under GM(E)CG's letter No. EP.220/0 dt. 26.9.89 as per decision of CAT-ADI in OA.241/87 dt. 28.4.89.
2. Employees who are eligible to be called for the above selection are shown in the enclosed list-A. They may be informed accordingly and arrange to relieve them in time to appear in the above selection in time on 29.8.92 without fail. None should be detained on administrative ground as second chance will not be given. Please get this noted by all the individual concerned and send their acknowledgement of having noted the same, to this office at once i.e. on or before 17.8.92 to APO(I)BRC per bearer. If any employee is unwilling to appear in the selection, should submit his unwillingness at once i.e. on or before 17.8.92 to APO(I)BRC per bearer.
3. The staff mentioned in List-B should also be advised to be in readiness for the above selection at short notice if their senior mentioned in List-B shows unwillingness for the above selection.
4. If any employee is not working at the station shown, the same should be advised to this office and SS/SM concerned where he is working at present.

The selection will be based on written test & Viva-Voce test and those who qualify in written test, they will be called for Viva-voce test.

4. It may please be ensured that if any staff is on leave or sick, the information may be sent in written to his home address by Regd. AD. through personal messenger and his acknowledgement be obtained. It should be noted that the employees who are required to appear in the above selection, and are undergoing treatment with the private Doctor should present themselves before the Railway Medical Officer to certify the genuineness of their sickness. Senior Subordinates Incharge must submit his acknowledgement for receipt of this letter before 17.8.92.

P/11

5. The CMS/DMO/ADMO will please ensure that the employees mentioned in the enclosed list do not report sick deliberately keeping in view the interest of Railway Administration. They will please also ensure that if any employee ~~mentioned~~ mentioned in the list as already sick under them, they are advised to this Selection and kept proper record.

In terms of CPO CCG's Confidential D.C. letter EP/1025/0 Vol. IV dated 18-2-92 for seeking permission for appearing in Supplementary Test lies on the employees and administration is not required to ascertain the reasons of the employee concerned.

*Handwritten signature*  
5/8/92

for DRM (E) BRC.

Addressed to :

- Sr. DCM Sr. DEN (N) DPO II BRC.
- CMS PRIN SBI MS/BRC.
- Sr. DMO PRIN ADI VG ANND BRCY BH GDABRCY KKF.
- DB JMB SBI Stn. Dispensary ASC PRIN ADMO DHG.
- VTA MALB Janitor BRC. DCM I BRC.
- Comm. Control BRC.
- Divl. Secy. WRMS/WREU BRC.
- C/- OS /General for supply Stationery.

....

*True copy*  
*oyl a*  
*Advercal*  
3/10/93

P.S-3 12

Statement showing the List 'A' of the eligible employees working as HGC Scale Rs. 1400-2300 (Rp) for the post of 'CGC ~~Scale~~ Scale Rs. 1600-2660 (Rp).

S.No.	Name	Design.	Station.
1.	Shri B.K. Purchit R3193	HGC	ANND.
2.	" D.S. Shukla. R3193	"	KKF - H9
3.	" X Omprakash Gupta R3193	"	SBI
4.	" B.C. Upadhyaya R5193	"	KKF - B...
5.	" 3 Prafulchandra C. R1193 X	"	ASV
6.	" X H.N. Desai X	"	KBRV
7.	" P.J. Rawal	"	KKF - R...
8.	" M.G. Gagh R3192 X	"	BRCY
9.	" R.M. Bhatt R2192 X	"	BRCY
10.	" X R.A. Desai X R2193 X	"	BH
11.	" 5 Z.R. Vohra R4193	"	VLYN
12.	" 6 Rajeshwar D. Gupta R2194	"	ADI (ATNL)
13.	" 7 N.H. Bhalgandia R10194	"	ADI (BRC)
14.	" 8 A.M. Galaria R6194	"	BH
15.	" 9 S.A. Bhatt R9193	"	ASV
16.	" 10 W.T. Rahate	"	ASV
17.	" G.L. Shah R10192 X	"	SBT (EPH)
18.	" H.D. Sharma R2192 X	"	Kribhco
19.	" J.K. Khanna R2194	"	KKF - 1/13
20.	" M.R. Jani	"	SBI
21.	" B.R.D. Kutinoba	"	BRC
22.	" 14 F.H. Toker	"	KKF
23.	" 15 V.B. Deshpande	"	CC (ACMI) A. G. K. 07/3/92
24.	" 16 Ratilal M. Bhatt	"	BJW
25.	" 17 N.D. Dhanwani	"	ASV
26.	" X Umeshchandra B. R1193 X	"	ND
27.	" 18 A.S. Shaikh R8193	"	ANND
28.	" 19 G.G. Shaikh 5194	"	SBI
29.	" 20 M.H. Gosai	"	BJW (GR).
30.	" 21 Shivram Varma	"	ASV
31.	" 22 V.A. Saxena	"	KKF
32.	" 23 K.H. Pandya	"	BH
33.	" 24 I.A. Patel	"	BJW (CSFC)
34.	" 25 N.D. Sharma	"	BRCY
35.	" 26 K.T. Verma	"	SBI
36.	" 27 A.G. Suthar	"	MHD
37.	" 28 R.M. Verma	"	ASV
38.	" P.J. Desai	"	AKV
39.	" 40 S.A. Panjabi	"	KKF
40.	" 41 G.N. Shukla	"	KKF - 1/13
41.	" 42 K.T. Kerawala	"	KKF
42.	" 43 V.V.P. Nair	"	BJW (GSFC)
43.	" 44 J.K. Sheth	"	DRM ( ) BRC
44.	" 45 C.R. Shah	"	SBI
45.	" 46 S.S. Dongre	"	ANND
46.	" 47 M.R. Job	"	BI (SAIL)
47.	" 48 M.I. Shaikh	"	ASV
48.	" 49 S.M. Pathan	"	Godhra ACMI
49.	" 50 D.N. Mehta	"	BRCY
50.	" 51 V.G. Manchani	"	ASV
51.	" 52 A.I. Darwan	"	ADI
52.	" 53 N.N. Devnani	"	KHD
53.	" V.P. Dave	"	

S.No.	Name	Design.	Station.
54.	Shri G.M. Bhambhani	HGC	KKF
55.	" M.H. Solanki	"	KOD
56.	" R.M. Mehta	"	SBI
57.	" K.K. Sheth	"	ASV
58.	" R.H. Patel	"	BRCY
59.	" Anandrao A.	"	ASV
60.	" H.C. Shah	"	KKF
61.	" S.D. Pandya	"	BJW (GR)
62.	" S.C. Rawal	"	ND
63.	" S.A. Rohil (SC)	"	GNC
64.	" S.A. Barot	"	ASV
65.	" T.J. Mehta	"	KKF
66.	" M.H. Thakur	"	ASV
67.	" H.P. Nimbark	"	BJW (CR)
68.	" V.D. Mackwana (SC)	"	BJW
69.	" R.S. Mackwana	"	BRCY
70.	" P.D. Vidhani	"	ACMI
71.	" S.A. Gani	"	BRCY
72.	" B.D. Waghela	"	Head
73.	" B.R. Tankar (SC)	"	Courier
74.	" S.K. Thakor	"	KKF
75.	" N.J. Patel	"	KKF
76.	" Anandsing A.	"	BJW
77.	" C.D. Vankar (SC)	"	BJW (BR)
78.	" D.R. Solanki	"	DHG
79.	" N.M. Sokanki (SC)	"	KKF
80.	" D.K. Vankar (SC)	"	SBI
81.	" M.D. Sokanki (SC)	"	SBI
82.	" Gokal S.	"	KHD
83.	" Gulamnow Shaikh	"	ASV
84.	" N.M. Patel	"	DRM (C) PRTN.
85.	" B.K. Kalonia	"	KBCS
86.	" B.M. Sikh	"	BRC
87.	" K.D. Chamar (SC)	"	ASV

List 'B'.

Statement showing eligible employees working on HGC Scale Rs. 1400-2300 (Rp) for the post of CGC Scale Rs. 2600-2660 (Rp) to remain in readiness within notice.

1.	Shri M.S. Adhavya	HGC	ASV
2.	" A.R. Dwivedi	"	DRM (C) BRC
3.	" M.C. Chavda	"	SVL (WTPS)
4.	" A.L. Patel	"	DRM Office
5.	" B.L. Deruyani	"	(BRC) PRTN.
6.	" R.M. Valand	"	SBI
7.	" V.M. Pandya	"	ASV.
8.	" P.K. Mehta	"	KKF
			GDA.

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Nb. EC/1025/4/9/Pt.II

SSs KKF SBI ~~AD~~ ASV BRCY ND ANND DHG BH AKV SBT PRTN KHD  
KOD GDA SVZ VG KBRV ADI (CTNL) BRC (CTNL) GTX KOSID (KRIBHCO)  
BJW (KRCA) KAWAS (SDG.) DRM OFFICE BRC KRSA VLYN BJD SVL (WIPS)  
GNC HD. COURIER BRC.

C2CMIs I II & III ADI VG ND ANND BRC BH MYG P/IN DB  
ARM DCM ADI DCM(R)ADI / P/ZTS UD

Sub:- Selection Board for Promotion to the Post of CGC  
Scale Rs. 1600-2660(RP) - Traffic Department -  
BRC Division.

Re f:- This office letter of even No.dtd.05.08.1992.

Railway Board vide their letter No. FC III/91/CRC/1 dated 27.01.1993 circulated vide GM(E)CCG's letter No. EP/830/0 (RESTRUCTURING) dtd. 8/10.02.1993 have notified the restructuring of Cadre of Commercial Clerks.

In view of the above, the Post of CGC Scale Rs.1600-2660(RP) will be filled in as per the modified procedure as laid down in Board's letter No.quoted above. In view of this, Selection of CGC initiated vide this office letter quoted above is stands cancelled. The employees concerned may please be advised of the same.

For DRM (F) BRC

COPY FORWARDED TO:

CCM (F) CCG

CCM(G) CCG for inf.

SR.DCM SR.DEN(N) DCM B RC CMS FRTN MS SBI

DFO (II) BRC

SR. DMOS PRTN ADI VG ANND BRCP BH GDA BRCY KKF DB

JMB SBI (STN.DISP.) ADMO (RSC) PRT N

ADMOs JMB BH DB ANND GDA VG DHG VTA MALB

JANITOR DRM OFFICE BRC

DCMI BRC DCTI BRC

COMML. CONTROLLER BRC FOR N.A.

OS GENERAL

C/- DIVL. SECRETARY WREU & WRMS BRC

C/- GUARD FILE

Tongue  
Nyl  
—  
3/1952

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

GOVERNMENT OF INDIA  
-----  
MINISTRY OF RAILWAYS  
-----  
(RAILWAY BOARD)  
-----

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

No. PCIII/81/CRC/1

New Delhi, dated 27-1-1993.

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)

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.

(16)

Existing classification and filling 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 viva 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      17      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 18.2.87 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.**  
-----

6. 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 incumbment.

(14) (18)  
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 (19)

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.
16. 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.

DA : ANNEXURE - A to J

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

*Triser*  
*aylt*  
*4/10/95 Dd*

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	65
	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

NOTICE BEFORE ADMISSION

JUDL-I  
CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH

BY R.P.A.D.

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. N.S. Trivedi

Union of India & Others Versus

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. 1673 stated above and whereas the above matter is put up for hearing on 20/8/93. The Hon'ble Tribunal has passed the order as mentioned below."

Whereas the said application 1673 has been again fixed for admission/interim orders on 20/8/93 at 10.30 A.M., a Copy of the application alongwith the relevant annexures is attached bearing Regn.No. as O.A. 426/93.

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.

DEPUTY REGISTRAR  
CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH

DATE :

48  
Order passed on 30/8/93.

21

Notice returned 1/9/93. 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 1/9/93. Direct service as regards respondent no.2 permitted.

True  
my  
7/10/93

Anne AS  
9/22

Western Railway

Regional Office,  
Vadodra-4.  
Dated. 23.9.93.

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

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. No.	Name	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	"	"	L.HVD
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-	KENA	"	"	BRCY
11.	C.P. Marodia (SC)	-do-	-do-	SBI	"	"	VG
12.	N.S. Dinker (SC)	-do-	-do-	ASV	"	"	KOD
13.	D.Z. Rathod (SC)	-do-	-do-	ANND	"	"	ANND
14.	S.R. Makwana (SC)	-do-	-do-	KKF	"	"	PTB
15.	B.M. Vasava (ST)	-do-	-do-	PREN	"	"	BRCY
16.	S.D. Dodiar (ST)	-do-	-do-	BRCY	"	"	BJW/GSFC
17.	K.H. Choudhary (SC)	-do-	-do-	KOD	"	"	MALD
18.	I.D. Parmar (SC)	-do-	-do-	BJW	"	"	BH GNFC
19.	R.H. Verma (SC)	-do-	-do-	SBI	Adhoc CGS		IRM Office RTN

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/-

23  
p/

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.A. 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.

*Team*  
for DM(E)/ERC.

To,  
SSs/SMs- GDM, DMG, KMF, ASV, GNC, AKV, KSE, KRCA,  
AMND KOD BJW PRIN VG PER MALB SVL WFPS KINA SBI  
ERCY HVD DH.  
DCM/ADI, CAM/ADI  
CMIs- I II III ADI VG ERC ND AMND BH MYG DB PRIN GDA  
DCMI/ERC, Comml. Controller/ERC OS/Comml.  
CC-EP 4, 5 CC-P-Bill (TFC.)  
SR. DAO/ERC.  
C/ P. File, G. File No. EC/1025/4/9/1 Pt. II EC/839/4/6/1  
C/- DCM/ERC Sr. DCM/ERC, ACM/ERC.  
C/- Divl. Secy. WREU/WREMS-ERC.

*True copy*

*ml*

*Adm. Secy*

*3/10/93*

Anne. A6  
P/23  
24  
ANNX - A-9

Copy of GM (E)-CCG's letter No. E (SCT) 220/15(1) Court case dated 12/02/1988, addressed to DRM(E)/AII and copy of CGM-ATT

\* \* \* \*

Sub : Reservation for SC/ST - Court case.

Ref : Your letter No. CAT/JU/41/96 Dt. 28/01/1988.

\* \* \* \*

The case was put up for Lo's views and his observations are reproduced below for information and guidance.

"The issue of promotion of SC/ST vis-a-vis general candidates is pending before Supreme Court (Larger Bench) for final hearing in several writ petition tiled by both the groups. As per interim orders issued by various benches of Tribunal/High Courts, the general directions are that SC/ST candidates are to be given promotion upto 15% & 7 1/2% respectively and the promotions are to be made against posts. The issue now posed before us is whether SC/ST employees are to be promoted further after completion of the prescribed percentage, taking into account their general seniority. In this regard, it is mentioned that these SC/ST employees who have come or been promoted due to reservation quota, having jumped the queue, cannot not be permitted to compete with general candidates for further promotions. They are a special class by themselves and they have only to go to the reserve quota for further promotion. If the reserve quota is already full in the next grade the SC/ST candidates, just below that grade, in reserve quota will have to wait till vacancy occurs in higher grade in reserve quota this will not apply to such SC/ST candidates who want their own in competition with general candidates have attained their present position and not due to reservation, they are entitled to compete further with general candidates and they will not be affected for promotion in general quota even if the reserved quota is full in the higher grade.

Further, it should be made clear in the promotion order itself that the promotion are purely provisional subject to final decision by Supreme Court on this issue."

This is issued with the approval of CPO(ADM.).

\* \* \* \*

No. CAT/JU/41/86

D.R.M. of Uillee, Ajmer.  
Dt. 17/02/1988.

Copy forwarded for information and guidance to :-

1. CWM, Dy.CME (C&W), Dy.CDS (G), Dy.CAO (W&S), Dy.CEE (P/M)-Ajmer.
2. Dy. CAO (IA), DAO, Security Commissioner (RPF).  
Compilation Officer, Ajmer.
3. APC (I), (II), (III), (IV).
4. OS (EE), (EM), (ED), (DT), SotCle./EP.  
CC Cont./E/Sch., AC, EMD.

SD/-  
FOR D.K.M. (E) - AII.

Toad grr  
Mh  
3/10/93 Ad

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

(Petitioners)

Vs.

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% 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

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, 1968 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. 233-7-240 8-240, Grade B Grade in the pay scale of Rs. 150-5-175-5-205-EB-7-240 and Grade 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 Grade 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% 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 20th 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 recruitment 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 17 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 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 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 36% 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 extensive 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 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.*

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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

High Court of Kerala and others

*Vs.*

(Petitioner)

(Respondents)

ITEM NO.41

Court No.1

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS

Civil Miscellaneous Petition No.3490/84 (In C.A.No.3077/78) of 198

Union of India & Ors.

VERSUS

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

PETITIONERS/APPELLANTS

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. & H.R. Nagaraja, Adv.  
Mr. Naresh Kumar, Adv. Mr. D. 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.

SA/-

(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 (Ld 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, Adv.

For the Respondents: Mrs.Urmila Kapoor, Adv.

(Two other names not legible).

K.B.Rohtagi, Adv.

K.R.Nagaraja, N.Kaushik, R.S.Reddy, Adv.

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.

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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.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD

O. A. NO.579 OF 1993

W.T.Rahate & Ors..... Applicants

V/s

Union of India & Ors.... Respondents

WRITTEN STATEMENT ON  
BEHALF OF RESPONDENTS.

*Recd. up to  
07/12/94  
27/12/94*

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.
2. Regarding paras 6.1 to 6.4, the respondents rely on the original papers as and when necessary. The respondents rely on the service record of the applicant for the purpose of date of appointment, promotions

for its contents.

3. Regarding para 6.5, it is stated that the result of the written test was declared in May, 1993. In the mean time, supplementary test for the absentees was required to be conducted and thereafter the result of the written test was required to be declared.

4. Regarding para 6.6, the respondents rely on letter dated 12.5.93 issued by Baroda Division for its contents. It is stated that the Railway Board vide their letter NO.PC/III/91/CRC/1, dated 27.1.93 circulated under GM(E), CCG's letter No.EP/830/0 (Restructuring), dated 8/10-2.93 have ~~not~~ notified the restructuring of cadre of commercial clerks. It is stated that in view of the afore said order of restructuring the post of Chief Goods Clerk scale Rs.1600-2660(RP) is to be filled in as per modified procedure as laid down in Railway Board's letter dated 27.1.93 and the selection held on 29.8.92 was cancelled and all the employees concerned were informed vide DRM(C), BRC's letter No.EC/1025/4/9 Part II, dated 12.5.1993. It is denied that the action on the part of the respondedant authority cancelling the previous selection held in the month of August, 1992 is ~~illegal~~ <sup>al</sup> illegible, arbitrary and unjust, bad in the eye of law and the same

is required to be quashed and set aside as alleged. The

issued letter dated 12.5.93 cancelling the selection of Chief Goods Clerk initiated vide letter dated 5.8.92/stating inter alia that the post of CCC scale Rs.1600-2660(RP) will be filled in as per the modified procedure as laid down in Railway Board's letter dated 27.1.93. The said letter dated 12.5.93 is legal and proper.

5. Regarding para 6.7, the respondents rely on true and proper interpretation of the Railway Board's letter dated 27.1.93 on the subject of restructuring of certain Group C & D cadres (Annexure A/3 with the application). It is not disputed that the said order of restructuring are effective from 1.3.93. It is stated that as per para 4.2 of the Railway Board's letter dated 27.1.93 the selections, which have not been finalised by 1.3.93 should be cancelled/abandoned. Hence selection initiated on 5.8.92 and the written test conducted on 29.8.92 in pursuance thereof has been cancelled by a letter dated 12.5.93. It is stated that GM(E), CCC, vide his letter No.E(SCT)220/0 Vol V, dated 20.5.93 has clarified that the cadre restructuring will be implemented in terms of procedure laid down in Railway Board's letter NO.89(E) (SCT)/I/49/5(PL), dated 16.6.1992 (PS NO.97/92). It is submitted that any selection in progress and initiated before 1.3.93 will be completed as per earlier instructions and any selection initiated after 1.3.93 will be finalised as per Railway Board's letter dated 16.6.92. The averments of the applicant that after

restructuring the posts of Chief Goods Supervisor in the

scale of Rs.2000-3200(RP) would be increased from 23 to 34

are not relevant as the applicants are working as Head

Goods Clerks in the scale of Rs.1400-2300(RP). The

applicants' averments that after restructuring the SC/

ST Employees were in excess quota of 15% & 7½% respectively

in the cadre of Chief Goods Supervisor scale Rs.2000-3200(RP)

are not admitted. It is denied that in view of the state-

ment in the letter dated 5.8.92(Annexure A/5) when the

selection for the post of CGC was initiated that there was

no reserved posts for SC/ST and hence the SC/ST employees

working ~~in~~ in the scale of Rs.1600-2660(RP) are not eligible/

entitled to get ~~promot~~ the benefit of restructuring because

quota reserved for them was in excess in the higher posts

are not true and are not admitted. The applicants have no

right to challenge promotions made to the scale of Rs.2000-

3200(RP) from the eligible candidates working in the

scale of Rs.1600-2660(RP). It is stated that Annexure A/1

and Annexure A/2 refer to the selection for promotion to

the post of Chief Goods Clerk scale Rs.1600-2660(RP) only.

It is submitted that the respondents have to implement the

Railway Board's letter dated 16.6.92. It may be stated

that the applicants have challenged only letter dated

12.5.93 cancelling the selection held on 29.8.92 for the

post of CGC and have not challenged the order dated 23.9.93

(Annexure A/5 with the application).

6. Contents of para 6.8 are not true and are denied. It is denied that with a view to deprive the legal and legitimate rights of the employees belonging to general community and to favour SC/ST employees and with ulterior motive the result of the written test was not declared but was cancelled by the respondents vide Memo dated 12.5.93. It is stated that the said averments are without any merit. As stated herein above, the selection initiated by letter dated 5.8.92 was required to be cancelled on issue of Railway Board's letter dated 27.1.93. There is no ulterior motive or malafide intention to deprive the employees belonging to general community of their legal rights or to favour the employees belonging to SC/ST community. It is stated that O.A.NO.426/93 filed by Shri V.A. Saxsena and others has been disposed of on 25.11.93 by the order of the Hon'ble Tribunal. It is submitted that in view of the interim order passed by the Hon'ble Supreme Court in the case of Union of India V/s J.C. Malik, the respondents are maintaining reservation at the rate of 15% <sup>and</sup> 7½% for SC & ST respectively on the total number of posts/cadres. However, it is submitted that there is no injunction against promotion of employees belonging to reserved community on his merit or seniority. It is submitted that the Full Bench of the Tribunal, Hyderabad Bench has also passed order in a group of matters in February, 1992 approving the

interim order passed by the Bench of the said Tribunal in the case referred to the Full Bench having been passed in terms of the interim orders passed by the Supreme Court in Malik's case and directed that in similar case the Tribunals shall pass similar order taking into account the direction of the Supreme Court. The said Full Bench further ordered that if 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 orders be passed in terms of the order of the Supreme Court so that conflicting directions and interim orders by various Tribunals can be avoided.

The reason for cancelling the selection initiated on 5.8.92 by letter dated 12.5.93 is already stated in the preceding paras.

Regarding para 6.9, it is stated that the order dated 23.9.93 (Annexure A/5) has been issued by the Divisional Office, Baroda, promoting the eligible candidates to the scale of Rs.2000-3200 (RP) on their empanelment, from the scale of Rs.1600-2660 (RP). The applicants are working in the scale of Rs.1400-2300 (RP). The applicants have no right to challenge the said order dated 23.9.93 and in fact have also not challenged the said order in this application. The said promotion order has been issued after notification of panel of selected candidates to the post of CCS scale Rs.2000-3200 (RP). As regards the interim order passed by the Hon'ble Supreme Court in J.C. Malik's case

and Girdharilal Kohli<sup>15</sup> Case the respondents rely on the said orders which are produced by the applicant at Annexure A/7 with the application for their contents.

8. Contents of para 6.10 are not true and are not admitted. It is denied that the action on the part of the respondent authority is illegal and arbitrary. It is denied that the action of the respondent authority is against the instructions issued by the General Manager, Western Railway, by his letter dated 12.2.85 as alleged. It is denied that the action on the part of the respondent authority cancelling the test held on 29.8.92 is malafide and deprives the applicants from their legitimate right of promotion. It is denied that the promotions ordered by the respondent authority by letter dated 23.9.93 promoting SC/ST employees as CGS scale Rs.2000-3200 (RP) is illegal, null & void and is required to be quashed and set aside as alleged. It is denied that the said action of the respondent authority will cause great hardship irreparable injury to the employee of general community. It is submitted that the respondents are following the interim order of the Supreme Court. The Railway Board has issued a letter dated 16.6.92 on the subject and the said instructions are being followed and promotions are being made as per entry in the Grade from which the employees are being promoted. The averments of the applicants in para under reply are without any merit. The promotions made by order dated 23.9.93 cannot be said to

be null & void.

9. The applicants are not entitled to any of the reliefs claimed in para 7 of the application.

10. The applicants are not entitled to any interim order as prayed for in para 8 of the application & *Interim relief deserves to be vacated*

11. Contents of paras 9 to 12 need no reply.

\* 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 Senior Shri R.N.Meena, working as/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

21.2.94

Senior Divisional Personnel Officer,  
Western Railway, Baroda.

*[Signature]*

*Advocate for Resp*

12. 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 and therefore respondent administration be permitted to file additional affidavit if warranted as per guidance of respondent no. one.