

19

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NOS. 921-922 of 2004 and 32-34 of 2005
CUTTACK, THIS THE 16th DAY OF January, 2009

Nirupama Mohapatra & others Applicants

Vs

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

(C.R. Mohapatra)
MEMBER (A)

(K.Thankappan)
MEMBER (J)

20

CENTRAL ADMINISTRATIVE TRIBUNAL CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NOS. 921 & 922 of 2004 and 32-34 of 2005
CUTTACK, THIS THE 16th DAY OF January, 2009

CORAM :

HON'BLE Mr. JUSTICE K. THANKAPPAN, MEMBER(J)
HON'BLE Mr. C.R. MOHAPATRA, MEMBER(A)

1. Sri Nirupama Mohapatra, aged about 53 years, D/o. Late Trinath Mohapatra, At/PO-Puri, Dist.-Puri, now working as Office Superintendent, Grade-II, in the Office of Sr. Divisional Personnel Officer, At-Khurda Road Division, Dist.-Khurda.

.....Applicant (In O.A.No. 921/04)

2. Sri Narayan Chandra Patasani, aged about 51 years, S/o. Krupasindhu Patasani, At/PO-Chhatipur, Dist.-Khurda now working as Office Superintendent, Grade-II, in the Personnel Department, At-Khurda Road Division, Dist.-Khurda.

.....Applicant (In O.A.No. 922/04)

3. Sri Brajabihari Nayak, aged about 51 years, S/o. Late Gunanidhi Nayak, at Qtrs. No. G/49-A, Accounts Colony, Jatni, Dist. Khurda, now working as Head Clerk, Office of Sr. Divisional Personnel Officer, East Coast Railway, Khurda Road Division, Jatni, Dist.-Khurda.

.....Applicant (In O.A.No. 32/05)

4. Sri Jagannath Mohapatra, aged about 47 years, S/o. Late Sridhar Mohapatra, At/PO-Kudiari, Jatni, Dist. Khurda, now working as Head Clerk, Office of Sr. Divisional Personnel Officer, East Coast Railway, Khurda Road Division, Jatni, Dist.-Khurda.

.....Applicant (In O.A.No. 33/05)

5. Sri Suresh Chandra Hota, aged about 54 years, S/o. Late Purna Chandra Hota, At/PO-Kudiari, Jatni, Dist. Khurda, now working as Head Clerk, Office of Sr. Divisional Personnel Officer, East Coast Railway, Khurda Road Division, Jatni, Dist.-Khurda.

.....Applicant (In O.A.No. 34/05)

Advocate(s) for the Applicants- M/s.J.M.Patnaik, P.K.Nayak, A.P.Misra,
P.K.Rout,D.P.Mohanty,
R.K.Patnaik, S.Mishra

VERSUS

1. Union of India represented through the General Manager, East Coast Railway, At/PO- Chandrasekharpur, Bhubaneswar, Dist-Khurda.
2. The Divisional Railway Manager, East Coast Railway, Khurda Road Division, At/PO-Jatni, Dist.-Khurda.
3. The Senior Divisional Personnel Officer, E.Co.Rly., Khurda Road Division, At/PO-Jatni, Dist. Khurda.
4. Smt. Kabita Das, Office Superintendent, in the office of the Senior Divisional Personnel Officer, Khurda Road Divison, At/PO-Jatni, Dist.-Khurda.
5. Sri Souvik Saha working as Officer Superintendent in the Officer of the Divisional Personnel Officer, E.Co.Railway, Khurda Road Division, At/PO-Jatni,Dist. Khurda.

..... **Respondents (In O.A.Nos. 921&922/04)**

1. Union of India represented through the General Manager, East Coast Railway, At-Rail Vihar, PO- Chandrasekharpur, Bhubaneswar, Dist-Khurda.
2. The Chairman, Railway Board, Government of India, Rail Bhawan, New Delhi..
3. The Chief Personnel Officer, East Coast Railway, Rail Vihar, At/PO- Chandrasekharpur, Bhubaneswar, Dist. Khurda.
4. Divisional Railway Manager, East Coast Railway, Khurda Road Division, At/PO-Jatni, Dist.-Khurda.
5. The Divisional Railway Manager(Personnel), East Coast Railway, Khurda Road Division, At/PO-Jatni, Dist.-Khurda.
6. Sri Ananta Charan Nayak, now working as Head Clerk in the Office of Area Manager, E.Co.Railway, At/PO-Talcher, Dist.-Angul under control of Senior Divisonal Personnel Officer, East Coast Railway, Khurda.
7. Sri Ashok Kumar Behera, working as Head Clerk in the Office of Sr. Divisional Personnel Officer, E.Co.Railway, Khurda Road Division, At/PO-Jatni, Dist.-Khurda.
8. Sri Prasant Kumar Sethy, working as Head Clerk in the Office of Sr. Divisional Personnel Officer, E.Co.Railway, Khurda Road Division, At/PO-Jatni, Dist.-Khurda

..... **Respondents (In O.A.Nos.32-34/05)**

Advocates for the Respondents – Mr. O.N.Ghosh (In O.A.Nos. 921&922/04)

Mr. Ashok Mohanty (Sr. Counsel) &

Mr. T.Rath. (In O.A.Nos. 32-34 of 2005)

ORDER

MR. JUSTICE K.THANKAPPAN, MEMBER(J):-

Since the questions involved in these O.As. are one and the same so also the grounds urged, the matter having been heard together are disposed of by a common order.

2. Applicants in O.A.Nos. 921 & 922 of 2004 are now working as Office Superintendent Gr.II whereas applicants in O.A.Nos. 32, 33 and 34 of 2005 are working as Head clerks in the East Coast Railways, Khurda Road Division. Applicants in O.A. 921 and 922 of 2004 have challenged promotion given to Respondent Nos. 4 and 5 to the Grade of O.S.-I and the applicants in O.A.Nos. 32 to 34 of 2005 have challenged promotion given to Respondent Nos. 6,7 and 8 to the grade of O.S.-II. It is the common case of the applicants that as per the seniority in the grade of Head Clerks and the Office Superintendents Gr.II published in the years 1972 and 2001, respectively, i.e. on dated 29.07.1972, 01.05.1994 and 1.1.2001, the applicants are seniors to the Private Respondents. Further, it is the case of the applicants that as per Railway Board Circular No. RBE 177/2003 dated 09.10.2003, restructuring of certain Group-C and D cadres has been published. It is stated that as per clarification dated 01.11.2003 issued by the Railway Board

while implementing the restructuring of the Group-C and D posts, policy of reservation cannot be applied to various categories including that of Office Superintendent, Gr.-I or II. According to the applicants, in implementation of cadre restructuring, normal promotion rule should be applied in the matter of giving promotion to all categories without applying the policy of reservation to the candidates belonging to reserved categories, like Scheduled Castes and Scheduled Tribes. It is also common case of the applicants that as per the judgment of Punjab & Haryana High Court, application of reservation, while implementing the cadre restructuring, cannot be applied, although the above judgment of the Punjab & Haryana High Court is questioned before the Hon'ble Apex Court in Civil Appeal Nos. 6934-6946 of 2005. It is the further case of the applicants that seniority is a civil right and it cannot be curtailed by the Department by issuing any circular on the pretext of implementation of cadre restructuring policy in the Railways. Even if, any cadre restructuring has to be implemented, the seniority of the applicants cannot be ignored on the pretext of post-based roster as per the Railway Estt. Circular Sl. No. 135/97 dated 22.09.1997.

3. While admitting O.A.No. 921/04 this Tribunal issued an interim order to the effect that "pending final decision, the orders of promotion shall be subject to result of the O.A". On receiving

notice in O.A.Nos. 921 and 922 of 2004 and other O.As., reply statements/Counters have been filed by the Respondent-Railways taking the stand that the O.As. are misconceived and this Tribunal should not interfere with the promotion orders passed in favour of the Private Respondents. It is further stated that following the Railway Board's letter dated 09.10.2003, regarding restructuring of Group-C and D cadres, several clarifications were issued by the Railway Board to the General Managers and Chief Personnel Officers for implementation of the cadre restructuring policy. In accordance with the above letter of the Railway Board dated 09.10.2003, Annexure-R/1, circular dated 23.01.2004 has been issued in implementation of the restructuring policy adopted by the Govt. of India. Further, it is stated in the counter that in the advent of cadre restructuring scheme, ministerial cadre in Personnel and Administrative department of Khurda Road Division of East Coast Railways has been formulated and the mode of filling up of all the cadres in pursuance of cadre restructuring has been clarified by the Railway Board. Further it is stated in the counter as under:

“normal vacancies existing on 01.11.2003 except D.R.Q. 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 01.11.2003 and current on that date;

ii) And the balance in the manner indicated in the above para.
iii) All vacancies arising from 02.11.2003, will be filled by normal selection procedure.

The copy of Railway Board's Estt. Sl. No. 05/04 is annexed as Annexure-R/1 to this counter.

The following is the assessment of vacancies in the cadre of O.Ss. of Personnel Branch in KUR Divn.

Sl. no.	Category	Scale of pay (Rs.)	Sanctd. as on 31.10.03	Sanctd. as on 01.11.03	Act upon	Vacancy	Total no. of posts to be filled
1.	Ch.O.S.	7450-11500/-	04	07	04	03	03
2.	O.S.-I	6500-10500/-	11	14	11	03+01 (lien holder)	07
3.	O.S.-II	5500-9000/-	21	28	21	07	14

It is, therefore, evident that 07 nos. of posts in the cadre of O.S.-I were supposed to be filled-up in the following break-up:-

i) Sanctioned Cadre : 11
ii) Revised Cadre : 14
iii) Addl. Post available due to restructuring : 03
iv) Resultant/Chain Vacancies : 03
v) Existing vacancies : 01
(Lien Holder)

Total No. of posts to be filled (iii+iv+v) : 07"

The further case set up in the counter by the Respondents is as under:

"the latest instruction as regards minimum years of service/residency period in each grade & provision of reservation has been clarified & circulated vide Estt. Sl. No. 230/87 & 135/97 (vide Annexure-A/15 to the

O.A.) respectively. The copy of the said Estt. Sl. No. 230/87 is annexed herewith as Annexure-R/2. It has been clarified that for selection/suitability/Trade Test, the eligible employees may be considered before completion of stipulated 2 years of service including ad-hoc, if any, but they are to be promoted only on completion of 2 yrs. Period.

It is humbly submitted that vide Estt. Sl. No. 135/97, it has been clarified that for the cadre below 14 posts, the "L" shape roster has to be followed for implementation and further promotion. As indicated in Para-11 of the explanatory norms i.e. principles for making and operating post based roster, in case of small cadres (upto 14 posts), all the posts shall be earmarked on the same pattern as in the Annex.-III. Initial promotion against these posts shall be by the category for which the post is earmarked. Replacement of incumbents of posts shall be by rotation as shown horizontally against the cadre strength applicable. While operating the relevant roster, care will have to be taken to ensure that on no occasion, the percentage of reserved category candidates exceed 50%. If such a situation occurs at any time, the relevant reserved point occurring as a result of rotation will be skipped and carried forward to next U.R. point.

As such, it is a very well settled and clear concept that :-

i) For selection/suitability/Trade Test, the eligible employees can be considered before completion of stipulated 2 yrs. of service including ad-hoc, if any, but they are to be promoted only on completion of 2 yrs. period.

ii) The categories with cadre strength upto 14 posts can adjust reserved community candidates more than the prescribed i.e. 15% SC & 7-1/2% ST. But, in no case the percentage of reserved category should exceed 50% of the total cadre strength. The norms of filling up of posts in categories with cadre strength upto 14 posts is guided by Annex-III of Estt. Sl. No. 135/97

i.e. the posts will be filled as per the community-wise distribution in rotation basis as per the communities earmarked in the roster.

In view of the foregoing paras, it has been mentioned that 07 nos. of posts (in the break-up of 05 UR & 02 SC) in the cadre of OS-I were suppose to be filled-up in the advent of implementation of cadre restructuring scheme. Accordingly, the incumbents on the feeder category of OS-II have been promoted against the existing roster in vogue as per roster points i.e. as per the communities earmarked in the roster".

4. Further it is stated in the counter by the Respondents that while effecting restructuring there should be some adjustment to the feeder cadre of O.S.-II for promoting against the reserved categories. Hence it is stated that the promotion now ordered to all the Private Respondents are on the basis of the application of reservation policy in the matter of promotion while implementing the restructuring of the ministerial cadres and it is in accordance with the instructions issued by the Railway Board. Ld. Counsel for the Respondents also brought to the notice of this Tribunal that the judgment of the Punjab & Haryana High Court relied on by the applicants regarding application of reservation while implementing cadre restructuring and effecting promotion is in doubt and stated that the ratio of this decision has hardly any application to this case as the matter has been settled by the Judgment of the Apex Court in Union of India vs Pushpa Rani & others, reported in (2008) 2 SCC

(L&S) 851, approving the reservation policy in implementation of restructuring.

5. The applicant has filed rejoinder in O.A. 34/05 taking the stand that since Railway Board has not specifically advised for following reservation in restructuring, the promotion effected in respect of Respondents 6 to 8 are wrong. It is further stated that the official Respondents have actually attempted to misguide this Tribunal in the face of the judgments of the Hon'ble Apex Court pronounced in the case of R.K.Sabarwala vs State of Punjab and Giridharilal Kohali & 7 others vs Union of India, in the matter of filling up of vacancy in normal course as per the post based roster.

6. On anxious consideration of the contentions raised by the applicants and the stand taken in the counters, the question to be decided in these O.As. is whether the Respondents are justified in giving promotion to Respondent Nos. 4 and 5 in O.A. 921-922 of 2004 and Respondent Nos. 6 – 8 in O.A.Nos. 32 to 34 of 2005 or not? The applicants have challenged the promotion given to private Respondents mainly on four grounds. Firstly, the principle of reservation is not applicable to the case of upgradation of posts in implementation of the restructuring scheme as set out in Ministry of Railways letter dated 09.10.2003, published as per Circular RBE No. 177/03. Secondly, by giving promotions to the private Respondents,

the Railways have violated the provisions of post-based roster in respect of 14 posts on the cadre strength allotted in Khurda Division. Thirdly, promotion given to the private Respondents is against the Recruitment Rules applied in the Department as they are not having the requisite stay or two years residency period of service in the feeder category and; finally, as per the seniority list of O.S.-II and the Head Clerks, all the private Respondents promoted are juniors to the applicants in the respective grade and hence, their seniority has been ignored.

7. While considering these questions, we have to once again peruse the Restructuring Scheme issued by the Railway Board in pursuance of the letter of the Ministry of Railways, Govt. of India proposing to restructure certain categories of Group 'D' and 'C' posts and upgradation thereof. As per the statement made in the counter regarding the restructure of Group-C and D staff of Transportation and Traffic Department as per Board's Letter No. PC-III/2003/CRC/6 dated 09.10.2003, it is seen that the following categories of posts with revised percentage has to be restructured and upgradation shall be ordered. It is stated in page 3 to 5 of the counter filed in O.A. 921/04 as under:

"The instructions of Rly. Board have been circulated vide Rly. Board's Order No. 177/03 (Annexure-A/5 to O.A.) and 05/04 etc.

AB

In the advent of implementation of cadre restructuring scheme, the following table shows cadre position of Ministerial cadre in Personal & Administration Department of Khurda Road Division of East Coast Railway which has been annexed to the O.A. as Annexure-A/10.

MINISTERIAL CADRE

Sl. no.	Categories & Scale (Rs.)	No. of posts exists	No. of posts	No. of posts surrender	Revised %age balance	Revised No. of posts
1.	Ch.O.S. 7450-11500/-	04	00	04	04%	07
2.	O.S.-Gr. I 6500-10500/-	11	00	11	08%	14
3.	O.S. Gr.II 5500-9000/-	21	01	20	16%	28
4.	Hd. Clerk 5000-8000/-	51	01	50	29%	51
5.	Sr. Clerk 4500-7000/-	57	00	57	23%	41
6.	Jr. Clerk 3050-4590/-	35	00	35	20%	36
G/Total :		179	02	177	100%	177

The mode of filling-up of vacancies arising out of restructuring scheme has been further clarified vide RBE No. 05/04 which is as under :

“If an individual Rly. 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 any Written & V/Voce Test. For the posts classified as “Non-Selection” at the time of this restructuring, the promotion will be based only on scrutiny of Service Records & Confidential Reports.

Normal vacancies existing on 01.11.2003 except D.R.Q. and those arising on that date from this cadre

10

restricting including chain/resultant vacancies, should be filled in the following sequence:-

- i) From panels approved on or before 01.11.2003 and current on that date;
- ii) And the balance in the manner indicated in the above para.
- iii) All vacancies arising from 02.11.2003, will be filled by normal selection procedure.

The copy of Railway Board's Estt. Srl. No. 05/04 is annexed as Annexure-R/1 to this counter.

The following is the assessment of vacancies in the cadre of O.Ss. of Personnel Branch in KUR Divn.

Sl. no.	Category	Scale of pay (Rs.)	Sanctd. as on 31.10.03	Sanctd. as on 01.11.03	Act upon	Vacancy	Total no. of posts to be filled
1.	Ch.O.S.	7450-11500/-	04	07	04	03	03
2.	O.S.-I	6500-10500/-	11	14	11	03+01 (lien holder)	07
3.	O.S.-II	5500-9000/-	21	28	21	07	14

It is, therefore, evident that 07 nos. of posts in the cadre of O.S.-I were supposed to be filled-up in the following break-up:-

- i) Sanctioned Cadre : 11
- ii) Revised Cadre : 14
- iii) Addl. Post available due to restructuring : 03
- iv) Resultant/Chain Vacancies : 03
- v) Existing vacancies : 01

(Lien Holder)

Total No. of posts to be filled (iii+iv+v) : 07. "

Perusal of the above statement would show that the restructuring of Group-C and D posts and other posts are on the basis of the scheme set out in that behalf. Though the applicants have not challenged the legality or validity of the scheme, yet, it is not for this Tribunal to suggest the manner of restructuring of cadre for the purpose of improving efficiency in administration and the matter is left to the discretion of the Railway Board or the executive, as the case may be.

8. Having regard to the above, we have to decide the issues as contended before us.

9. With regard to the first issue regarding applicability of reservation policy to the employees belonging to reserved categories in the case of restructuring or on upgradation of posts, the Apex Court has now concluded the matter as per the judgment reported in (2008) 2 SCC (L&S) 851 in Union of India vs Pushpa Rani and others and other connected Civil Appeals. In the above judgment, it is categorically held that the restructuring of the posts as per the letter dated 09.10.2003 is not a simple upgradation of posts but additional posts created by virtue of restructuring which had all features of promotion and, therefore, reservation policy is applicable. The Apex Court further held in paragraph 59 of the above judgment as follows:

60

"Therefore, the Tribunal and the High Court were not justified in treating it as a case of upgradation of posts simpliciter. Consequently, the decision of the Tribunal to quash Para 14 of Letter dated 09.10.2003 and direction given for making appointments dehors the policy of reservation are legally unsustainable."

Hence, the first point argued by the Ld. Counsel for the applicants is answered accordingly.

10. With regard to the second point, though it is alleged that by giving promotion to the private Respondents, the Department has violated the roster point while giving promotion in respect of 14 posts and the promotions so given to the private Respondents are in excess of the quota prescribed for reserved communities, the applicants have not furnished any material to show that the total cadre strength of the posts in question or even the number of reserved posts filled up by the Department in the particular cadre is in excess of the quota meant for reserved communities and if so, we are not in a position to opine anything on this aspect. However, the counter filed on behalf of the Respondent-Railways, it is stated as under:

" ii) The categories with cadre strength upto 14 posts can adjust reserved community candidates more than the prescribed i.e. 15% SC & 7-1/2% ST. But, in no case the percentage of reserved category should exceed 50% of the total cadre strength. The norms of filling up of posts in categories with cadre strength upto 14 posts is guided by Annex-III of Estt. Sl. No. 135/97 i.e. the posts will be filled as per the community-wise

distribution in rotation basis as per the communities earmarked in the roster.

In view of the foregoing paras, it has been mentioned that 07 nos. of posts (in the break-up of 05 UR & 02 SC) in the cadre of OS-I were suppose to be filled-up in the advent of implementation of cadre restructuring scheme. Accordingly, the incumbents on the feeder category of OS-II have been promoted against the existing roster in vogue as per roster points i.e. as per the communities earmarked in the roster".

From the above, it can be conclusively answered with the materials now placed by the Respondents that the promotion ordered in favour of the private Respondents are within the limits of the reserved quota. Hence, this question is answered accordingly.

11. The next question to be considered is whether all the private Respondents are not having requisite qualification for promotion as per the Recruitment Rules. In this context, it is stipulated in paragraph-6 of Annexure-R/1 that "While implementing the restructuring orders, instructions regarding minimum period of service for promotion issued from time to time should be followed. However, while considering any relaxation in the residency period prescribed for promotion to various categories, the General Manager would personally ensure that the safety aspect of the Railways is not compromised". Further, it is stated in Annexure-R/2, the Railway Board's orders circulated under

P/R/14/314/3 (Policy) dated 20.08.1987, that "it is further clarified for selection/suitability test/trade test eligible employees may be considered before completion of the stipulated 2 years service including adhoc, if any, but they are to be promoted only on completion of two years period". This means, even if relaxation is given to the private Respondents, as contended by the Ld. Counsel appearing for the applicants, they will be given the benefit of promotion only on completion of residency period of service.

12. In the above, we are of the view that the promotion of the private Respondents are also within the frame work of the restructuring policy contemplated as per letter dated 09.10.2003. Hence, the third question is also answered accordingly.

13. The final question to be considered is whether the seniority of the applicants vis-à-vis the private Respondents have to be taken into account. In other words whether the seniority of the applicants over their promoted juniors has been ignored. This question can only be considered at the time of considering the inter se seniority of the applicants vis-à-vis the promoted private Respondents as and when they are promoted to the next higher grade.

14. In the above circumstances, having regard to the points raised by either side and applying the principle enunciated by the

Apex Court in Union of India vs Pushpa Rani's case, (supra) we are of the view that the O.As. are without any merit and accordingly the same are dismissed without any order as to costs.

Chhatu
(C.R.MOHAPATRA)
MEMBER (ADMN.)

K. Thankappan
(K. THANKAPPAN)
MEMBER (JUDL.)

RK