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**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH : CUTTACK**

Original Application No. 608 of 2005

Tuesday, this the 25<sup>th</sup> day of September, 2007

**CORAM :**

**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER  
HON'BLE MR. TARSEM LAL, ADMINISTRATIVE MEMBER**

1. Kashinath Mohapatra,  
S/o. Late Radhu Mohapatra,  
Village: Rathipur, P.O. Kantia,  
P.S.: Jatni, District Khurda,  
Presently working as Dy. Station  
Superintendent, E.Co. Railway,  
Birapurusottampur, Distt. Puri.
2. Manoranjan Patnaik,  
S/o. Late Chaitanya Patnaik,  
69, Housing Board Colony,  
Luis Road, Bhubaneswar,  
Presently working as Dy. Station  
Superintendent, E.Co. Railway,  
Bhubaneswar, Distt. Khurda.
3. P.V.S.P. Swamy,  
S/o. Late P.S. Prakash Rao,  
Presently working as Dy. Station  
Superintendent, Bhubaneswar,  
E.Co. Railway, Bhubaneswar,  
District Khurda.
4. Harekrishna Sahu,  
At / P.O. Haladiabahal,  
Via. Meramundali, Distt. Dhenkanal,  
Presently working as Dy. Station  
Superintendent, Gurudijhatia,  
At/P.O.: Gurudijhatia, P.S.: Gurudijhatia,  
District Dhankanal.
5. A.S. Chakrapani,  
S/o. Late A.R. Sarayaulu,  
Gajapati Nagar, Jatni, Distt. Khurda,  
Presently working as Dy. Station  
Superintendent, Khurda Road, Khurda. ... Applicants.

 (By Advocates M/s. Dhalsamant & P.K. Behera)

## v e r s u s

1. Union of India represented through  
General Manager, East Coast Railways,  
Rail Vihar, Bhubaneswar, Dist. Khurda.
  2. Chief Personnel Officer,  
Office of the General Manager,  
East Co. Railways, Rail Vihar,  
Bhubaneswar, District Khurda.
  3. Divisional Railway manager,  
East Coast Railways,  
Khurda Road Vision, At/ P.O. Jatni,  
District Khurda.
  4. Senior Divisional Personnel Officer,  
Office of the D.R.M., East Coast Railways,  
Khurda Road, District Khurda.
  5. R.K. Mallick,  
D.T.I., Talcher Railway Station,  
At/P.O./P.S.: Talcher, District Angul.
  6. Balaram Das,  
Station Superintendent, Byree,  
At/P.O. :- Byree, Distt. Jajpur.
  7. N. Durjo,  
Station Superintendent,  
Baruva Railway Station,  
At/P.O.:- Baruva, Dist. Srikakulam (A.P),
  8. L.D. Behera,  
Station Superintendent,  
Balugaon Railway Station,  
At/P.O.:- Balugaon, District Khurda.
  9. Bimbadhar Behera,  
Station Superintendent,  
Gangadharpur Railway Station,  
At/- Gangadharpur, P.O. Nachuni,  
District Khurda
- ... Respondents.

(By Advocate Mr. R.C. Rath)

**O R D E R**  
**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

The issue involved in this case is no longer res-integra as the Full Bench in the case of P.S. Rajputh and two others vs Union of India 2006(1) ATJ 36 whereby it has been held that in respect of filling up of the posts arising out of re-structuring there is no reservation.

2. Brief facts of the case: The applicants were promoted to the post of Deputy Station Superintendent in the scale of Rs 5,500 - 9,000 w.e.f. 05-01-2000. And, the date of promotion to the said post in respect of Respondent No. 5 to 8 was posterior to the date of promotion of the applicants. In the seniority list published as on 01-10-2004 names of the applicants were shown above those of respondents No. 5 to 9. The next higher post is Station Superintendent and for consideration for promotion to this post, the respondents had called the eligible Dy. Station Superintendents to appear for an examination vide Annexure A-2 notification dated 28-11-2003. Result of the said examination was published vide notification dated 15-09-2004 (Annexure A-3). The names of the applicants were not, however, figuring therein. Applicant had filed the Annexure A-4 representation. Of course, the names of respondents 5 to 9 have also not figured in as they did not complete 2 years of their service in the lower grade of Dy. Station Superintendent. Those whose names figured in were promoted and posted on 'as is where is basis'. As there was not much joy in the response of the respondents to the

representation made by the applicants, further representations were made and vide representation dated 12-01-2005 (Annexure A-7), the applicants cited the decision of the Apex Court in C.A. No. 1481/96 which categorically held that the posts which are upgraded are not additional posts for which reservations for SC and ST will be applicable. However, the respondents simply rejected the representations stating that none of the rules have been violated by them, vide **Annexure A-8 (impugned) order dated 15-02-2005**. Hence this O.A.

3. Respondents have contested the OA. They have stated that the Ministry of railways has undertaken cadre review of certain Group C and D staff in consultation with the Staff side with a view to strengthening and rationalizing the staffing pattern of Railways. As a result of review undertaken on the basis of functional, operational and administrative requirements, it has been decided with the approval of the President for Group C and D staff categories in terms of R.B.E. No. 177/03 (Annexure R-1) there shall be restructuring in accordance with the revised percentages. The Chief Personnel Officer/BBS had issued Annexure R-2 order strictly keeping the Govt. of India reservation policy relating to SC and ST in mind. Para 14 of the RBE No. 177/03 lays down that the existing instructions with regard to reservation of SC and ST wherever applicable will continue to be applied. Again, vide Annexure R-3, the Apex Court has, in one case held that the authorities while implementing the circular regarding cadre restructuring will have regard to the law laid down by the Supreme Court

in Sabarwal's case. Again, vide Annexure R-4, the Jodhpur Bench of the Tribunal had held that where partial restructuring takes place, the the question of promotion arises which would mean that there would be reservations in respect of the posts which were not forming part of partial upgradation. Thus, both the Annexure R-3 judgment of the Apex Court and the order of the Jodhpur Bench led to the issue of Annexure R-5 circular by the Railway Board . Thus, according to the respondents, the settled position of law is that the existing reservation policy to the effect that re-distribution of particular category of post involving in increase of higher grade post amounts to partial upgradation of the posts and in such a case a promotion is involved which attract the policy of reservation. Again, support has been taken from the decision of the Mumbai Bench of the Tribunal in the case of S.P. Raj vs UOI which took the view that if the reservation is being worked out on the basis of cadre in a seniority group and not on the vacancies occurring therein, then the method of filling the vacancies as envisaged in Sabarwal's case takes care of the question of reservation in re-structuring of posts.(Para 11 of the counter refers).

4. Arguments were heard and documents perused. Counsel for the applicant has made available a copy of the Full Bench Judgment in the case of P.S. Rajputh & two others vs Union of India referred to in para 1 above. This judgment has taken into account the very Annexure R-1 with particular reference to clause 14 which provided for reservation and which has been heavily relied upon by the respondents,

notification for re-structuring, the decision of the Apex Court in the case of Sabarwal, the Mumbai Bench, the Chandigarh Bench and other decisions of the Apex Court. The full Bench had compared and contrasted various points as per the previous cadre restructuring and the current one and after an elaborate discussion on the entire matter, the Full Bench ultimately held as under:-

"The question which craves for answer... reads -

' ... whether upgradation of a cadre as a result of restructuring and adjustment of existing staff in the upgraded cadre can be termed to be promotion attracting the principle of reservation in favour of SC/ST?

ANSWER: The upgradation of the cadre as a result of the restructuring and adjustment of existing staff will not be termed as promotion attracting the principles of reservation in favour of Scheduled Caste/Scheduled Tribe,"


5. A glimpse at the Full Bench judgment would also go to show that the entire points of issue in this case have been fully dealt with, as if this very case has been dealt with by the Full Bench. In view of the Full Bench Decision, the **OA is allowed**. Annexure A-8 order dated 15-02-2005 is hereby quashed and set aside. It is declared that there being no reservation in respect of upgraded post (due to re-structuring), if omission of the names of the applicants from the list of promotion to the post of Station Superintendent is purely on the ground of applying reservation as per clause 14 of the Annexure R-1 order, the applicants' case shall be duly reviewed and if otherwise found suitable, they should be granted the post of Station

Superintendent from the date others had been so provided i.e. 2004. In that event, the applicants shall be entitled to pay and allowances at the higher pay scale also and as such is entitled to arrears of pay and allowance as well. This shall also be paid to the applicant. This drill shall be performed within a period of two months from the date of communication of this order.

6. No costs.

(Dated, the 25<sup>th</sup> September, 2007)

  
(TARSEM LAL)  
ADMINISTRATIVE MEMBER

  
(DR. K B S RAJAN)  
JUDICIAL MEMBER