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**CENTRAL ADMINISTRATIVE TRIBUNAL**

**JODHPUR BENCH.**

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O.A.No.315/2003

January 17, 2005.

**CORAM: HON'BLE MR.KULDIP SINGH, VICE CHAIRMAN &  
HON'BLE MR.M.K.MISRA, MEMBER (ADM.)**

Hukam Chand S/o Shri Kishanlal, aged 40 years, B/C Mochi (SC), at present working as Technician Gr. II (Welder) Railway Workshop, Bikaner R/o House No.1/93, M. P. Nagar, Bikaner.

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Applicant

By: Mr. M.R.Singhvi, Advocate.

Versus

1. The Union of India through the General Manager, North Western Railway Headquarters Office, Jaipur.
2. The Dy. Chief Mechanical Engineer (Workshop), North Western Railway Workshop, Bikaner.

By: Mr. Manoj Bhandari, Advocate.

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Respondents

**ORDER (oral)**

**KULDIP SINGH, VC**

The applicant who is working as Technician Grade II (Welder) in the scale of Rs.4000-6000, under the respondents has filed this O.A. pleading that he belongs to Scheduled Caste category. The next promotion is to the post of Technician Grade I (Welder). One vacancy became available on 31.12.2003, on retirement of Shri Sohan Lal, a Scheduled Tribe candidate. Under PS No.11450/1997, issued by the respondent-Railways, if no



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SC/ST candidate is available for being promoted, then in the third recruitment year, the post can be exchanged, namely, if a post is earmarked for S.C. candidate is available but no S.C. candidate is there, then the same can be filled in by S.T. candidate and vice versa. It is submitted by him that since no candidate belonging to S.T. community is available, the vacancy in question should be exchanged with S.T. Since the applicant is the senior most person in the seniority list of S.C. Category, he has a definite chance of getting promotion. He admits that the quota meant for Scheduled Caste candidates is full. The applicant submitted representations to the respondents on 5.6.2000, 6.11.2000, 10.1.2001, 25.5.2001, 26.12.2001, 23.5.2002, 2.12.2002, 54.1.2003 and 20.1.2003 (Annexures A-4 to A-12). His claim was rejected by letter-dated 21.1.2003 (Annexure A-1). He submitted further representations but to no avail.

The applicant claiming that non-grant of ST point to him by way of exchange amounts to violation of Articles 14 and 16 of the Constitution of India, has prayed for quashing the order, annexure A-1 with direction to the respondents to fill in the vacancy of Sohanlal, a S.T. Candidate, by appointing a person belonging to S.C. community, as no S.T. candidate is available and he be given promotion from the date when the third recruitment year with all the consequential benefits.



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Respondents have contested the Original Application by filing a detailed reply. They submit that there is no provision of exchange of posts earmarked for Scheduled Caste and Schedule Tribe and vice-versa. By placing reliance on a decision of this Tribunal in the case of Rajendra Kumar Gaur Vs. Union of India & Others, decided on 11.5.2001 (Annexure R-2), they plead that as per the L-type roster issued by the DOPT, there cannot be any replacement of posts and if the exchange of reservation between ST and SC is permitted, the number of employees of one reserved category of employees, appointed by reservation will go beyond the reservation prescribed for that category. The view of this Tribunal has been upheld by a Division Bench of High Court of Rajasthan in CWP No.4279/2003 titled Union of India & Others Vs. Vijay Singh, decided on 27.8.2003 (Annexure R-3), based on decision in CWP No.3722/2001 in the case of one Rajender Kumar Gaur. Even as per OM dated 6.11.2003 (Annexure R-1) and OM dated 6.1.2004 as circulated by letter dated 22.1.2004 (Annexure R-4), there is no permission for exchange of reservation between SC and ST.



We have heard learned counsel for the parties and perused the material on the file.

Learned counsel for the respondents placed heavy reliance on the Instructions issued by letter dated 6.11.2003 (Annexure R-1), by Government of India, Ministry of Personnel, P.G. & Pensions, Department of personnel & Training, to resist the claim

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of the applicant. Para 2 of the Circular being relevant is reproduced as under: -

"That basic principle of post based reservation is that the number of posts filled by reservation by one category in a cadre should be equal to the quota prescribed for that category, if exchange of reservation between SC's and ST's is permitted, number of employees of one reserved category of employees appointed by reservation will go beyond reservation prescribed for that category. It would be against the spirit of post-based reservation. Therefore, after introduction of post based reservation, it is not permissible to fill-up a post reserved for ST by a SC candidate or vice-versa by exchange of reservation between SC's and ST's."

On the lines of the above clarification, even the Railways have also issued instructions as circulated by letter dated 22.1.2004 (Annexure R-4), indicating that all the instructions on the subject are suitably modified to the extent as clarified in the said OM. In reply to this, learned counsel for the applicant placing reliance on a decision in the case of M.A. Murthy Vs. State of Karnataka & Others, 2004 CDR 145 (SC), submitted that the instructions issued by the DOPT or Railways in 2003/2004 cannot be applied retrospectively or in other words, these cannot take away the effect of the PS No.11450/1997, which provides for exchange of points between SC and ST. The judgement cited by the applicant is not applicable to the facts of this case for two reasons. Firstly, the Apex Court in the said decision has held that a law declared by the Apex Court cannot have only prospective operation unless it is indicated to be so in the order itself otherwise it will be treated as retrospective. It was also held that the review judgement erases the previous judgement and would operate as law from the very inception. Undisputedly, it is admitted case of



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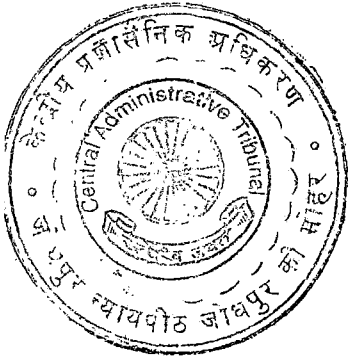
the applicant himself that the vacancy arose on 31.12.2003 and the same is to be carried forward for three recruitment years and only in the third recruitment year, it can be exchanged with S.C. Even though the instructions issued by the DOPT as well as Railways are very clear that no exchange of SC with ST or vice versa is permissible in view of the post based roster, yet even if one accepts the claim of applicant for the sake of argument, even then the time has not yet come for exchange of the point of ST with SC in this case as the point of S.T. is to be carried forward for three recruitment year whereas the applicant is claiming exchange on the first instance itself. In view of this, the applicant cannot succeed by pleading that instructions issued in 2003/2004 are not applicable to his case. Thus, the question of retrospective operation of the instructions does not arise at all.

Considering the claim of the applicant from another angle, even if one were to accept the claim of the applicant that he should be granted S.T. point by exchange with S.C., admittedly, the quota of S.C. is already full i.e. 15%, as provided in the Constitution itself, then the quota would exceed which is not permitted either in the Statutes or law. In any case in view of the position under the law at present, it is the L based Roster which is being followed and under such roster, there is no scope for vacancy based reservation. It is only post based reservation. We also find support in our view from the decision of this Tribunal in the case of Rajendra Kumar Gaur (supra), in which it



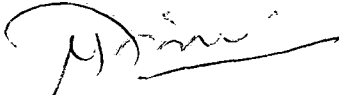
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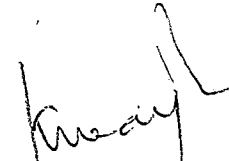
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was clearly held that as per the L-type roster issued by the DOPT, there cannot be any replacement of posts and if the exchange of reservation between ST and SC is permitted, the number of employees of one reserved category of employees, appointed by reservation will go beyond the reservation prescribed for that category. The High Court of Rajasthan has also upheld this view.

In the result the Original Application turns out to be devoid of any merits and is rejected. In the peculiar facts of this case there shall be no order as to costs.

  
(M.K.MISRA)  
Member (A)

  
(KULDIP SINGH)  
Vice Chairman

HC\*

January 13, 2005.

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Copy of order sent  
to Counsel for pet  
by special post Regd AD  
Viale n 69  
of 1-2-2005

Part II and III destroyed  
in my presence on 08/01/2014  
under the supervision of  
section officer (1) as per  
order dated 18/12/2013

Section officer (Records)