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**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR.**

O.A.No.203 of 2004 and
MA No. 143/2005

28th November 2006

CORAM:

**HON'BLE MR. J K KAUSHIK, JUDICIAL MEMBER AND
HON'BLE MR. R R BHANDARI, ADMINISTRATIVE MEMBER**

Jag Ram Meena S/o Sh. Pramod Ram Ji Meena, Aged about 40 years,
R/o Qtr. No.T-102, Loco Road, Jodhpur (Rajasthan). Presently working
on the post of Deputy Chief Controller in the office of Divisional
Railway Manager, North Western Railway, Jodhpur Division, Jodhpur
(Rajasthan).

... Applicant

By: Mr. S.K. Malik, Advocate.

Versus

1. Union of India through the General Manager, North Western
Railway, Jaipur (Rajasthan).
2. Divisional Railway Manager, North Western Railway, Jodhpur
Division, Jodhpur (Rajasthan).
3. Divisional Personnel Officer, North Western Railway, Jodhpur
Division, (Rajasthan).
4. Smt. Karuna Bala, Deputy Chief Controller, Divisional Railway
Manager's Office / Control Office, North Western Railway,
Jodhpur Division, Jodhpur (Rajasthan).

... Respondents

By: Mr. Salil Trivedi, Advocate, for Respondents No.1 to 3.

Mr. H.S. Sidhu, Advocate, for Respondent No.4.

ORDER

(HON'BLE MR. J K KAUSHIK, JM)

Shri Jagram Meena has preferred this Original Application under
Section 19 of the Administrative Tribunals Act, 1985, praying for the
following reliefs : -

"(a) By an appropriate order, writ or direction, impugned order dated
09 Aug., 2004 (Annexure A/1) passed by Respondent No.3 wherein the





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name of the applicant has not been included in the panel for promotion to the post of Chief Controller under the Restructuring Scheme whereas the Cadre of Chief Controller has been increased from 9 to 12 and the name of the Respondent No.4 who is junior to applicant, has been included, may be declared illegal and be quashed and set - aside as it was never issued.

(b) By an appropriate order, writ or direction, respondents may be directed to consider the case of the applicant for promotion to the post of Chief Controller against the Restructuring Scheme w.e.f. 01 Nov., 2003 as per general seniority and place him in the penal at appropriate place and further promote the applicant w.e.f. 01 Nov., 2003 along with the respondent No.4 with all consequential benefits including arrears of pay and allowances etc.

© Any other relief, which is found just and proper, may be passed in favour of the applicant in the interest of justice by the Hon'ble Tribunal."



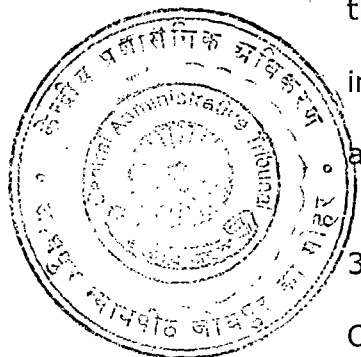
2. We have heard the learned counsel for the contesting parties and have carefully perused the pleadings as well as records of this case. The abridged material facts, necessitating filing of this Original Application, are that the applicant was initially appointed as Traffic Apprentice and after successful completion of requisite training; he was posted as Sectional Controller in the scale of Rs.1600-2660 on 1.11.1993, at Tundla, in Allahabad Division of Northern Railway. He was transferred on mutual exchange basis to Jodhpur w.e.f. 19.6.1994. He enjoyed his next promotion to the post of Deputy Chief Controller w.e.f. 17.11.1995 in the pay scale of Rs. 2000-3200. Restructuring Scheme of certain group C and D cadres including that of Controllers was issued vide Circular dated 28.10.2003. It was made effective from 1.11.2003 resulting in the cadre of Chief Controller being increased from 9 to 12. After superannuation of one Shri K.S. Srivastava, w.e.f. 30th June, 2004, persons on roll of the Chief Controller in the cadre were 8 against the cadre of 12. Three posts

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were available under restructuring Scheme from 1.11.2003 and one post became available on superannuation of one Shri K.S. Srivastava, Chief Controller w.e.f. 30.6.2004. A combined seniority list at Hqrs Level for selection to the post of ADM was issued wherein name of the applicant was shown at Sr. No. 140 and that of the respondent No. 4 at Sr. No.141. The applicant submitted a representation to the competent authority that the applicant is senior to the respondent No. 4 and that only two posts of Chief Controller are being filled up whereas one post of Chief Controller has been kept aside for reserved category candidate. He requested that he may be promoted under restructuring scheme. The respondents have issued a panel of only two persons vide impugned order dated 9.8.2004 wherein the name of the applicant has not been included and his next junior's name is included. The Original Application has been filed on numerous grounds, as mentioned in para 5 and its sub paras.



3. Per contra, respondents have filed a very exhaustive reply to the Original Application. A preliminary objection has been taken regarding maintainability of the Original Application, as the applicant is claiming to be senior to the respondent No.4, at this belated stage. It has been averred that respondent No.4 is senior to the applicant in every respect and as regards the provisional seniority list issued for selection to the post of Assistant Operating Manager (AOM) (Gazetted) Gr. Rs.7500-12000 against 70% quota is concerned, the respondent No.4 has already filed a representation against the same which is under consideration with the competent authority. It has also been averred that the case of the respondent No.4 was correctly considered for empanelment as Chief Controller since she is senior to the applicant. It is also submitted that 3rd post against restructuring Scheme also

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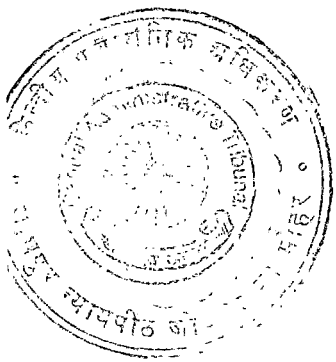
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became vacant w.e.f. 1.11.2003 but that is against SC point, if the reservation is applied in terms of para 14 of Annexure A-3, but para 14 has been stayed by this Bench of the Tribunal. As such this post has been kept vacant and will be filled up only on final decision of the case, which are pending before this Bench of the Tribunal in the case of Smt. Devi Sharma & others. The grounds raised in the O.A. have generally been denied. A separate reply has been filed on behalf of the respondent No.4 wherein the facts and grounds as mentioned in the O.A. have been controverted.

4. We have considered the rival submissions put forth on behalf of the contesting parties. As far as factual aspect is concerned, the matter regarding relief of seniority by applicant, over respondent No.4 was not seriously contested. The last seniority list for the post of Deputy Chief Controller was issued on 18th August, 2000, wherein the 4th respondent has been shown as senior at Sr. No.13, to the applicant, whose names appears at Sr. No.14. In so far as the seniority list issued for promotion to the post of Assistant Operating Manager (AOM) against 70% is concerned, it is prepared at Headquarters level and would be relevant when any promotions are made by the Headquarters Office. The seniority list at Zonal Hqrs is prepared as per the initial grade seniority in the cadre ignoring the changes in seniority due own request or mutual exchange transfers amongst various divisions and this proposition of law has been settled by this Bench of the Tribunal in case of **V.K. Saxena v. Union of India** reported in [1990] 13 ATC 796,. Thus there is nothing wrong with the seniority list meant for AOM since the applicant was initially senior to private respondents in the initial grade. However, the seniority list dated 18th August, 2000 (Annexure A-2) in respect of



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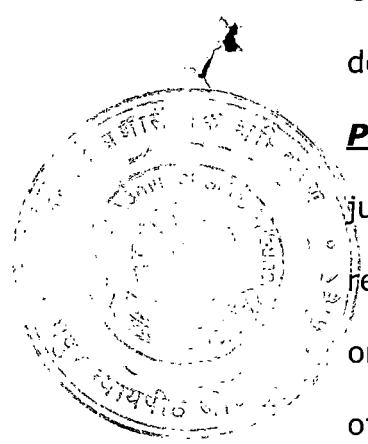
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Deputy Chief Controller which is not under challenge, would regulate the seniority at Divisional level as indicated above. Hence, the applicant is not at all senior to the respondent No.4 and, therefore, the prayer made in para 8 (a) of the O.A. cannot be granted to applicant and as such this claim is rejected.

5. Now turning to the main issue on which much stress was laid by the learned counsel for the applicant i.e. Regarding application of the reservation roster as per para 14 of the restructuring scheme. The plea of the respondents is that 3rd post is meant for SC category and applicant does not belong to that category. It has also been averred that the same has been kept vacant since there are certain stay orders granted by the Apex court and the matters relating to the same are pending consideration before the Apex court. We take judicial notice of the one of the elaborate decision of the co-ordinate Bench of the Tribunal at Principal Bench in O.A.No.745 of 2005 (**Ram Sewak & Another Vs. UOI etc.**) dated 23.8.2005. The question as to whether normal rule of reservation while filling up the post under restructuring scheme would apply or not as provided in para 14 of the Restructuring Clause, has been examined in detail. It also makes a reference to the decision of the Full Bench of the C.A.T at Allahabad in O.A.No.933/04 **P.S. Rajput & 2 others Vs. UOI & Others**, 2006 (1) ATJ 36. The judgment also gives a complete answer to the defence version of the respondents. While we direct the placement of a copy of the said order on file of this case, and to treat discussions made therein as part of this order. We find it expedient that para 21 to 24 should be reproduced and the same are reproduced as under:

"21. As regards pendency of SLP before the Apex Court against the affirmed decision of the Chandigarh Bench of the Tribunal by the High Court of Punjab and Haryana, it is trite law that unless the decision is

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overturned, reversed or modified the decision of the High Court or the Tribunal remains as precedent and as per the decision of the Apex Court in **S.I. Rooplal & Anr. V. Lt. Governor of Delhi & Others**, JT 1999 (9) SC 597 the doctrine of precedent has to be respected. We are bound to follow the decision of the Full Bench. A Full Bench of this Tribunal in **Ganga Ram v. Union of India** reported in CAT Full Bench Judgments Vol. II 441 (Bahri Brothers) categorically held that a non-speaking interim order in SLP is not a declaration of law and is not binding under Article 141 of the Constitution of India unless the decision of the High Court of Punjab and Haryana, affirming the decision of the Chandigarh Bench of the Tribunal is set aside, reversed or modified by the Apex Court the same remains effective.

22. Following the above, we respectfully agree with the decision of the Full Bench and are also bound by the decision of the High Court of Punjab and Haryana as well as the decision of the Chandigarh Bench of the Tribunal where clause 14 of the restructuring scheme has been set aside. We follow the same.

23. However, on a final decision by the Apex Court the law shall take its own course.

24. Accordingly, for the foregoing reasons, OA is allowed. Paragraph 14 of the impugned circular dated 9.10.2003 is declared as ultra vires and orders passed on 23.3.2005 is set aside. Respondents are hereby directed to take up the process to fill up the remaining upgraded posts of Technician Grade-II on the basis of seniority, without adopting the reservation policy. In the event applicants shall be entitled to all consequential benefits. Respondents are further directed to comply with the aforesaid directions within a period of three months from the date of receipt of a copy of this order. No costs."

6. We also take judicial notice of one of the orders which has been passed by the Apex Court in the case of I.A.No.4 In Civil Appeal NO(s). 2614 OF 2003 Union of India & Ors. Vs. Rajender Kumar Gaur & Anr. dated 14/11/2005 wherein earlier there was an interim order but subsequently their Lordships have passed the following order :

"We have been shown a copy of the order dated 29th September, 2004, made by the Division Bench of the High Court restoring Civil Contempt Petition No.123/03 to the file. Whatever grievances the respondents have with regard to the non-implementation of the order of the High Court, they are free to urge therein."

The above proposition of law applies to the facts and circumstances of this case and we are of the considered opinion that there is no need to get any post reserved for any reserved category and the action of the respondents for keeping a post of Chief Controller as reserved under para 14 of the Restructuring Scheme, is not correct.



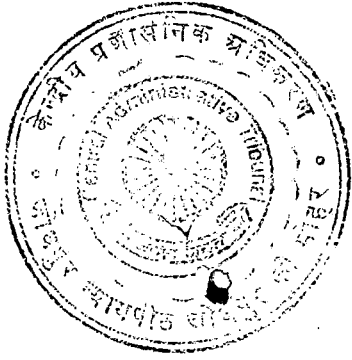
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7. The upshot of the aforesaid discussion leads us to the conclusion that there is force in this Original Application and the same is partly allowed. The official respondents are directed to consider the case of the applicant against 3rd vacancy which became available in pursuance of the restructuring scheme for the post of Chief Controller in the pay scale of Rs.7450-11500, forth with and in any case not later than two months from the date of receipt of copy of this order. Consequences are to follow. However, para 23 of the judgment in the case of Ram Sewak (supra) shall be applicable to this case also. The MA for modification of order dated 17.8.2004 which is otherwise in different context, does not survive and stands disposed of. There shall however be no order as to costs.



(Signature of R R Bhandari)

(R R BHANDARI)
ADMINISTRATIVE MEMBER

(Signature of J K Kaushik)

(J K KAUSHIK)
JUDICIAL MEMBER

HC*

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