

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

Original Application No. 198/2005

Date of order: 25.09.2008

**HON'BLE MR. K.V. SACHIDANANDAN, VICE CHAIRMAN.
HON'BLE MR. TARSEM LAL, ADMINISTRATIVE MEMBER.**

Arun Kumar Pandey son of Shri Shobhnath Pandey, aged about 56 years, resident of Quarter No. 2273, Diesel Railway Colony, Bhagat Ki Kothi, Jodhpur. Post - The applicant presently holding the post of CMS-II in the Railway Workshop, Northern Western Railway, Jodhpur.

...Applicant.

Mr. Kuldeep Mathur, counsel for applicant.

VERSUS

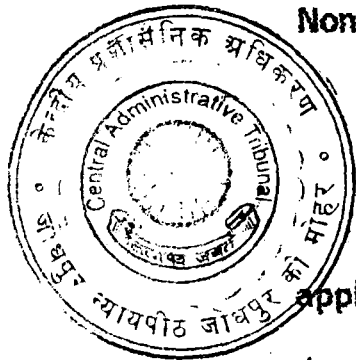
1. The Union of India, through the General Manager, North-West Railway, Jaipur (Raj.).
2. The Deputy Chief Chemist and Metallurgist (Establishment), Northern Western Railway, Carriage & Wagon Workshop, Ajmer.
3. The Chief Works Manager, Northern Western Railway, Workshop, Jodhpur.
4. Sh. Santosh Kumar, CMS-I, Diesel Shed, Metallurgical Laboratory, Northern Western Railway, Bhagat Ki Kothi, Jodhpur.
5. Sh. Hansraj, CMS-I, Northern Western Railway, Diesel Shed Phulera, Bhagat Ki Kothi, Jodhpur.

...Respondents.

Mr. Vinay Chhipa, proxy counsel for
Mr. Manoj Bhandari, counsel for respondents No. 1 to 3.
None present for respondent no. 4 & 5.

ORDER (Oral)

PER MR. K.V. SACHIDANANDAN, VICE CHAIRMAN



The brief facts of the Original Application are that the applicant entered into the services of the respondent department on 27.12.1978 as Lab Assistant and was promoted to the post of Junior Chemical and Metallurgical Assistant in the year 1979. Thereafter, in the month of October, 1980, he was promoted to the post of Chemical & Metallurgical Assistant. Presently, the applicant is holding the post of Chemical &

Metallurgical Superintendent-II (Group 'C') at Railway Workshop, Jodhpur w.e.f. 14.10.1987.

The Deputy Chief Chemist and Metallurgist (Establishment), NWR, Carriage & Wagon Workshop, Ajmer issued a seniority list dated 19.08.2004 (Annex. A/3) of CMS-II working under him. In the said seniority list, the name of the applicant appears at sl. no. 1. In the same seniority list the name of Santosh Kumar/respondent no. 4 and name of Hansraj/respondent no. 5 appears at sl. Nos. 8 and 9, respectively. From the said seniority list, it appears that the applicant belongs to General Category, whereas both the private respondents belong to Scheduled Caste category.

Thereafter, on 10.12.2004, the General Manager (P), Northern Western Railway issued a joint seniority list of CMS-II. In the said seniority list dated 10.12.2004 (Annex. A/4), the name of the applicant appears at sl. no. 22, whereas name of Sh. Santosh Kumar and Hansraj appears at sl. Nos. 37 and 38, respectively.

The respondent-department introduced restructuring scheme for certain group 'C' and group 'D' cadres vide their letter dated 04.11.2003 made effective from 01.11.2003.

The applicant is senior to Sh. Santosh and Sh. Hansraj and comes within the zone of consideration for promotion to the next grade as per seniority under restructuring scheme but the respondent-department has inserted para 14 of RBE No. 177/03 dated 09.10.2003 (Annex. A/2) and instructed to apply the reservation policy of SC/ST in restructuring of post also.

As per seniority list issued by the department, the applicant is entitled for promotion on the post of CMS-I, but the



respondent-department by applying reservation to fill upgraded posts have debarred the applicant from promotion to the post of CMS-I w.e.f. 01.11.2003 and the reservation class candidates, who are otherwise not within the zone of consideration as per seniority position have been considered and promoted to the post of CMS-I.

The respondent-department have issued an order dated 13.01.2005 (Annex. A/1) whereby Shri Santosh Kumar and Shri Hansraj have been promoted to the post of CMS-I in the pay scale of Rs. 7450-11500 by applying reservation in restructuring scheme.

On 15.02.2005, the respondent-department also issued an order promoting the applicant to the post of CMS in the pay scale of Rs. 7450-11500. It is submitted that though the applicant has been promoted to the post of CMS-I, but he is eligible and entitled for promotion to the post of CMS-I in the pay scale of Rs. 7450-11500 w.e.f. 01.11.2003 the date on which Shri Santosh Kumar and Hansraj have been promoted by applying reservation policy of SC/ST in restructuring of posts.

Being aggrieved by the above action of the respondent-department, the applicant has filed this Original Application and prayed for the following reliefs:



- (i) That impugned para No. 14 of Railway Boards Letter dated 09.10.2003 may be declared illegal and may be quashed and set aside.
- (ii) The order dated 13.01.2005 passed by respondent no. 3, promoting respondent no. 3 on the post of CMS-I w.e.f. 01.11.2003 by applying reservation policy of SC/ST in restructuring of post also may be declared illegal.
- (iii) The respondents may be directed to fill up the posts of CMS-I w.e.f. 1.11.2003 under re-structuring strictly as per seniority with all consequential benefits. It may further be held that the applicant is entitled for promotion to the post of CMS-I under restructuring scheme w.e.f. 1.11.2003 with all consequential benefits.
- (iv) Any other reliefs, which this Hon'ble Tribunal deems fit

and proper, may be granted in favour of the applicant.
(v) Costs of this application be ordered to be awarded in favour of the applicant."

The official respondents filed a detailed reply to the Original Application. It is submitted by the respondent-department that in terms of Railway Board's letter No. 177/03, the cadre of CMS was restructured w.e.f. 01st November, 2003. The position of cadre of C&M in the North-West Railway is shown in the Annexure-'Schedule-R' to the O.A. showing the cadre strength as on 31.10.2003 prior to restructuring of posts and the posts after restructuring of posts as on 01.11.2003. As per the said schedule, it is clear that on the post of CMS-I in the pay scale of Rs. 7450-11500, one post of Scheduled Caste is vacant. Therefore, Shri Santosh Kumar was granted promotion w.e.f. 01.11.2003 on the post vacant prior to restructuring and not on the basis of restructuring post. It is admitted that Shri Hansraj has been given promotion on account of restructuring of posts which is in accordance with law as per the policy laid down by the Railway Administration whereby para-14 of the Restructuring Scheme is to apply to the existing instructions in cadre restructuring. The policy of reservation shall apply in the restructuring scheme depending upon the reservation policy existing as on the date of the current scheme.

We have heard Mr. Kuldeep Mathur, learned counsel for the applicant and Mr. Vinay Chhipa, learned proxy counsel for Mr. Manoj Bhandari, learned counsel for the official respondents and gone through the pleadings, documents and material placed on record.

When the matter came up for hearing, learned counsel for the official respondents produced a judgment of the Hon'ble



Supreme Court in Civil Appeal Nos. 6934-6946 of 2005 decided on the similar issue. He submitted that the Hon'ble Supreme Court has already settled the issue with regard granting the seniority / promotion under the cadre restructuring scheme observing the reservation quota. The relevant para Nos. 1, 55, 56 and 57 of the said judgment are reproduced as follows:

"1. Whether the policy of reservation of posts for Scheduled Castes/Scheduled Tribes can be applied at the stage of giving effect to cadre restructuring exercise undertaken pursuant to letter No. PC-III/2003/CRC/6 dated 9.10.2003 issued by the Railway Board is the question which arises for determination in the above noted appeals filed against the orders of Punjab & Haryana High Court which upheld the decision of Chandigarh Bench of the Central Administrative Tribunal (hereinafter referred to as 'the Tribunal') to quash para 14 of the said letter and the direction given for making appointments de hors the policy of reservation. The special leave petition filed by the Union of India against the order of Allahabad High Court is being disposed of along with appeals because the issue arising therein is similar.

55. In this appeal, Union of India and two others have challenged order dated 5.4.2006 passed by Allahabad Bench of the Tribunal and order dated 6.7.2006 passed by High Court of Allahabad in Writ Petition No. 34662 of 2006. The facts culled out from the record of the appeal show that as a result of cadre restructuring exercise undertaken pursuant to the policy contained in letter dated 9.10.2003, two posts of Personal Inspector Grade I (Rs. 6500-10500/-) became available in Varanasi Division of Northern Railway. One of these posts was earmarked for general category and the other for the reserved category. The respondent who was holding the post of post of Senior Personal Inspector represented for appointment against the unfilled post earmarked for reserved category by contending that she fulfils the condition of eligibility. Her claim was rejected by the competent authority on the premise that the reserved post cannot be offered to general category candidate. She then filed O.A. No. 509 of 2005. The Allahabad Bench of the Tribunal relied on the order passed by this Court in V.K. Sirothia's case and the one passed by the Full Bench of the Tribunal in O.A. No. 933 of 2004 (P.S. Rajput and two others v. Union of India and Others) and held that the applicant (respondent herein) is entitled to be considered for the second post. The High Court also relied on the order passed in V.K. Sirothia's case and dismissed the writ petition filed by the Union of India and others.

56. We have heard learned counsel for the parties. In view of the findings recorded by us in civil appeals that policy of reservation is applicable to the cadre restructuring exercise undertaken pursuant to the policy contained in letter dated 9.10.2003, the orders impugned in civil appeal arising out of Special Leave Petition (Civil) No. 5045 of 2007 are liable to



be set aside.

57. In the result, the appeals are allowed and the impugned orders are quashed. As a consequence, the original applications filed by the respondents in all the cases shall stand dismissed. However, parties are left to bear their own costs."

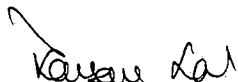
The Hon'ble Supreme Court has held that even in cadre restructuring, the policy of reservation should be adhered to.


Learned counsel for the applicant at this stage submitted that a Review Application has been filed against the said judgment before the Hon'ble Supreme Court which is still pending.

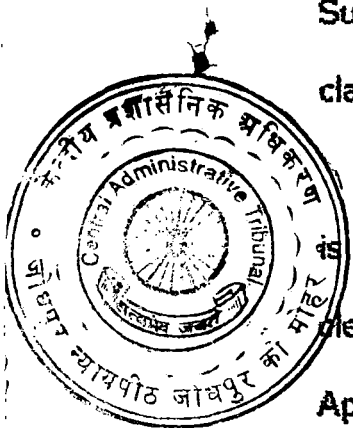
Considering the ratio laid down by the Hon'ble Supreme Court in the said Civil Appeal Nos. 6934-6946 of 2005, we are of the considered view that the said decision is binding on all Courts under Article 141 of the Constitution and becomes a ratio decidendi, therefore, the applicant is not entitled for any relief as claimed and this O.A. is not merited.

Under the facts and circumstances of the case and taking into account the ratio of the said judgment of the Hon'ble Supreme Court, we are of the considered view that the benefit claimed by the applicant cannot be granted.

In view of the above observations, the Original Application is dismissed with no order as to costs. However, it is made clear that the applicant can approach the authority if the Review Application, which is said to be pending before the Hon'ble Supreme Court, is allowed.


(Tarsem Lal)
Administrative Member


(K.V. Sachidanandan)
Vice Chairman (J)



Part II and III destroyed
in my presence on 15/1/08
under the supervision of
section officer (J) as per
order dated 19/8/2014
[Signature]
Section officer (Record)

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29/9/08