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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR.**

Original Application No. 206/2005 and
Misc. Application No. 165/2005

Date of order: 13.12.2006

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

Somdutt Pripathi S/o Shri Deendayal Tripathi, at present working as Junior Engineer-I (P-Way Grade II) under the Divisional Railway Manager, North West Railway Bikaner at present posted on deputation as Instructor, Civil Engineer Training Academy, North Central Railway.

...Applicant.

Mr. Kishan Bansal, counsel for the applicant in OA and respondent in MA.

VERSUS

1. The Union of India, through the General Manager, North Western Railway, Headquarter Office, Opposite Railway Hospital, Jaipur.
2. The Director, Pay Commission II, Railway Board, Rail Bhawan, New Delhi.
3. Divisional Railway Manager, North Western Railway, Bikaner.
4. Divisional Personnel Officer, North Western Railway, Bikaner.
5. Jai Ram Meena S/o Bodan Ram Meena at present posted as SE, P-Way, Railway Station Elenabad, Sitt. Sirsa (Haryana).
6. Principal Civil Engineer Training Academy, Northern Central Railway, Old Station Building Kanpur (U.P.)

...Respondents.

Mr. Manoj Bhandari, counsel for respondents No. 1 to 4 in OA and applicants in MA.

None is present for the respondents No. 5 & 6 in OA.

2/-



- 2 -

ORDER**(By Mr. J K Kaushik, Judicial Member)**

Shri Somdutt Tripathi has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 and has sought the following reliefs: -

"(i) By an appropriate order of direction the impugned order dated 23.12.2004 (Annex. A/1), provisional order dated 4.6.2004 (Annex. A/2) and order dated 21.7.2004 (Annex. A/3) passed by the respondent No. 4 may kindly be declared illegal and be quashed and set aside.

(ii) By an appropriate order or direction the respondents may kindly be directed to give the same relief to the applicant as given to the persons junior to the applicant vide order dated 23.12.2004 (Annex. A/1), order dated 4.6.2004 (Annex. A/2) and order dated 21.7.2004 (Annex. A/3).

(iii) By an appropriate order or direction the respondents may be directed to place the name of the applicant at appropriate place in the order dated 23.12.2004, 4.6.2004 and 21.7.2004 as per his seniority.

(iv) By an appropriate order or direction Clause 14 of Circular dated 9.10.2003 be declared illegal and be quashed.

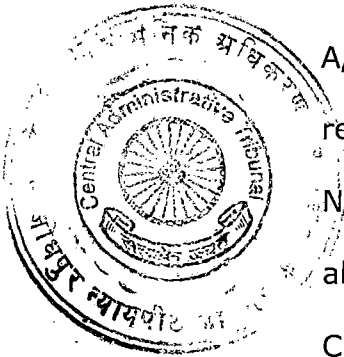
(v) Costs of this application may also be awarded and also other relief which this Hon'ble Tribunal may feel in favour of the applicant may kindly be passed."

2. We have heard learned counsel for both the parties at a considerable length and have carefully perused the pleadings as well as records of this case. The brief facts of this case are that the applicant was initially appointed to the post of PWI Grade III vide order-dated 07.09.1988. He was enjoyed his promotion to the post of JE-I (erstwhile PWI grade II) vide order dated 23.05.1997 in the pay scale of Rs. 5500-9000. The seniority list of JE-I post was last issued on 17.01.2003 wherein the names of 36 persons have been included. The name of the applicant figures at serial No. 15 and the name of the respondent No. 5 figures at serial No. 17. A scheme known as 'restructuring of certain group 'C' and 'D' cadre' came to be introduced vide circular dated 09.10.2003. Subsequently, certain modifications

22/

-3-

were also made in the scheme. The applicant fell within the consideration zone for grant of benefits to the post of Section Engineer (P-Way) in the scale of Rs. 6500-10500 (RP) under the restructuring scheme w.e.f. 01.11.2003. The benefits under the restructuring scheme were required to be extended by applying the modified selection procedure based on the service records of the person concerned. However, his case was not considered for grant of said benefits and applicant's next junior Shri Jai Ram Meena, respondent No. 5 was extended the benefits and placed on panel for the post of SE (P-Way) in the pay scale of Rs. 6500-10500. The action of the respondents has been assailed on numerous grounds intermixed with the pleadings as well as specified in para 5 and its sub-paras. Para 14 of the circular issued by the Railway Board on 09.10.2003 at Annexure A/4 has also been challenged and it has been averred that the respondents have given the benefits of reservation to the respondent No. 5, despite the fact that para 14 of the aforesaid circular has already been struck down by the co-ordinate Bench of this Tribunal at Chandigarh as well full bench of Tribunal at Allahabad.

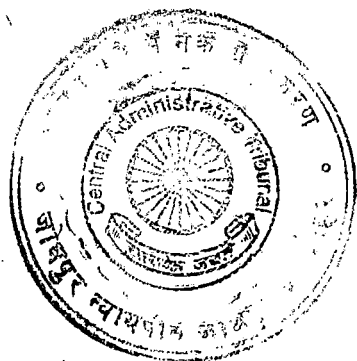


3. The respondents have filed a detailed and exhaustive reply to the Original Application wherein it has been averred that matter pertaining to challenge to para 14 of the memorandum passed by the Railways on 09.10.2003 is pending consideration before the Hon'ble Apex Court of the country and the same is sub-judice. Certain legal aspect has been elaborately discussed. However, we are abstaining from entering into detailed discussions afresh in view of the order we propose to pass in this case. However, it may be noted that we have verified the cadre strength for cadre of the P-Way and there was no change in overall sanctioned/authorized strength of the cadre; in other

22

words, earlier cadre strength was 71 and after restructuring also it remained 71 and there was only increase of percentage of the posts in higher posts of the cadres with a corresponding decrease in the lower posts of the cadre.

4. Both the learned counsel for the parties have reiterated the facts and grounds raised in their respective pleadings as noticed above. We have considered the rival contentions put forth on behalf of both the parties. The main controversy is as to whether the reservation roster is to be applied in case of restructuring when there is no increase in the authorized strength of a cadre and also the fate of para 14 of the Restructuring scheme. We take judicial notice of one of the recent decision passed by this Bench of the Tribunal in the case of **Jag Ram Meena vs. Union of India and Ors. (OA No. 203/2004)** decided on 28.11.2006, where both of us were party to the order and find that identical controversy was adjudicated upon and set at rest in that case. It has been held that reservation roster has no application while granting the benefits under restructuring scheme; there being no increase in cadre strength. The same does not remain res integra; rather squarely covers the controversy involved in the instant case on all fours. A copy of the said order is being placed on records and the discussions made therein may be read as part of this order. We have, therefore, no hesitation in applying the ratio of the said decision to this case and decide it on similar lines.




5. The upshot of the aforesaid discussion leads us to the conclusion that there is force in this Original Application and the same is accordingly allowed. The impugned orders dated 23.12.2004 (Annex. A/1), provisional order dated 4.6.2004 (Annex. A/2) and order dated

22/

-5-

21.7.2004 (Annex. A/3), so far they relate to the respondent No. 5, stands quashed. The official respondents are directed to consider the case of the applicant against vacancy on which the said respondent No. 5 was promoted and if found fit, he shall be entitled to all the consequential benefits w.e.f. 1.11.2003. This order shall be complied with within a period of three months from today. However, the reliefs granted herewith shall be subject to the outcome of SLP pending before the Apex court. The Misc. Application No. 165/2005 does not survive and the same stands disposed of. There shall however be no order as to costs.



R R Bhandari
(R R BHANDARI)
ADMINISTRATIVE MEMBER

J K Kaushik
(J K KAUSHIK)
JUDICIAL MEMBER

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