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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

**ORIGINAL APPLICATION NO. 160/2005
JODHPUR : THIS THE 15TH DAY OF SEPTEMBER, 2008.**

CORAM :

Hon'ble Mr. K.V. Sachidanandan, Vice Chairman (J)
Hon'ble Mr. Tarsem Lal, Administrative Member

.....

Ghanshyam Singh Bhati S/o Shri Ganesh Singh aged 44 years,
Head Parcel Clerk, Parcel Office, North Western Railway,
Jodhpur, R/o T-53 M, Railway Traffic Colony, Jodhpur.

.....Applicant.

(By Mr. Vijay Mehta, Advocate)

VERSUS

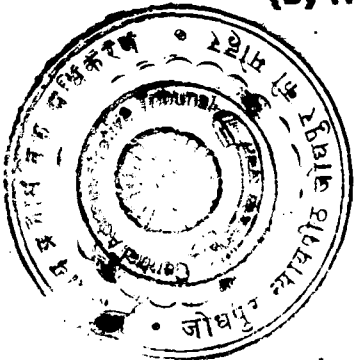
1- Union of India through the General Manager, North
Western Railway, Jaipur.

2- Divisional Railway Manager, North Western Railway,
Jodhpur.

3- Senior Divisional Personnel Officer, North Western
Railway, Jodhpur.

.....Respondents.

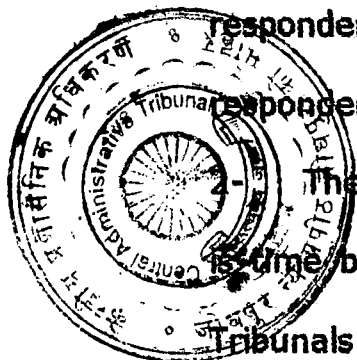
(By Mr. Vinay Chhipa, Adv.holding brief of Mr. Manoj Bhandari, Advocate)



**ORDER (ORAL)
{PER K.V.SACHIDANANDAN, VC [J]}**

The respondents have issued letter for re-structuring of cadre of Chief Booking Supervisors, Booking Supervisors on 12th May, 2004. It is averred in the O.A. that 37 posts of Booking Supervisors were made available for up-gradation and respondent - department has filled-in only 37 posts by giving promotion(s) from the category of Head Booking Clerk in accordance with the seniority and without conducting any examination vide the impugned order Annex. A/1 dated 31st December, 2004 and published a Seniority list dated 7th

February, 2005 for the post of Head Booking Clerk wherein, the name of the applicant appears at Sl. No. 32 after the name of Shri Chaub Singh, whose name appears as the last name, for promotion as Booking Supervisor. It is further pleaded in the O.A. that the respondents have called-upon the applicant along with others to appear in the examination for promotion to the post of Booking Supervisor, as per order dated 26th May, 2005. The case of the applicant is that had the respondents fill-in all the posts by promotion in accordance with up-gradation, he would have been promoted and, it is illegal to call-upon the applicant to appear in examination. No reasons as to why promotions due to re-structuring to all the posts of Booking Supervisor were not made, have been given by the respondent-department. Aggrieved by such inaction on the part of respondents, the applicant has filed this O.A.



The respondents have filed a detailed reply contending that O.A. is time barred as to in violation of Section 21 of the Administration Tribunals Act, 1985 because the applicant is challenging the order which was passed in December 2004 (Annex.A/1), hence, the O.A. is liable to be rejected. The respondents in paras 5 and 6 of their counter, stated as under :

"5. It is submitted that the total number of posts increased and decreased as a result of implementation of scheme of re-structuring is as under :-

S. Category No.	Grade	Cadre		Difference
		Prior Re-structuring	After Re-structuring	
1. C.B.S.	6500-10500	17	25	+8
2. B.S.	5500-9000	25	37	+12
3. H.B.C.	5000-8000	51	52	+ 1
4. S.B.C.	4000-6000	73	59	-14
5. B.C.	3200-4900	42	35	-7
Total		208	208	NIL

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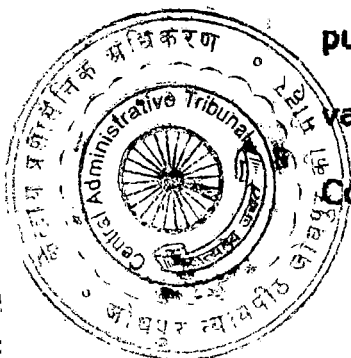
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As per the restructuring of the post in the Grade 5500-9000, only 12 posts have increased, therefore, the question as to whether the reservation is applicable or not on the restructuring of post, is to be seen in so far as these 12 posts are concerned. The posts increased as a result of implementation of scheme of restructuring are to be filled in by modified procedure of selection, according to which scope of selection is limited to scrutiny of service records and confidential reports. The incumbent eligible to be considered for selection / promotion are from next lower grade.

6. It is wrong to contend that one post has been kept vacant without assigning reasons. It is stated that 14 posts have been filled in the cadre of Chief Booking Supervisor Grade 6500-10500 and one post is kept vacant as the matter of application of Rule of reservation is still under examination. Similarly 26 posts in the cadre of Booking Supervisor Grade 5500-9000 have been filled in by keeping 02 posts vacant, one for the employee facing major penalty charge-sheet and other for clarification of application of rule of reservation.

At the time of consideration of promotion, total staff on roll in the cadre of Booking Supervisor Grade 5500-9000 were 23. Out of these 23, 14 have been promoted in higher grade. There remain 9 posts. 26 have already been promoted so against the cadre of 37, there are only 02 vacancies. The reasons for keeping these vacancies has already been enumerated above."

3- It is contended in the reply that the panel of Booking Supervisor Grade Rs. 5500-9000 is having 27 posts out of which 2 posts have been kept vacant for the reason that one employee is facing major penalty charge-sheet and other has been kept vacant for clarification to be attained with regard to the application of rule of reservation. It is further submitted that this Tribunal in the past has passed order restraining the Railways for giving effect to Para 14 of the restructuring order dated 9th October, 2003, therefore, these orders have been passed in various OAs which are pending before this Tribunal. It is contended that no relief can be granted to the applicant till the decision is given in the pending cases pertaining to the reservation policy being applicable during the restructuring of posts in pursuance of the order dated 9th October, 2003 pertaining to the vacancies occurring after 1st of November, 2003. The decision of the Constitution Bench of the Hon'ble Supreme Court while deciding the



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case of *R.K. Sabharwal* on 10th February, 1995, in the instant case, the Hon'ble Supreme Court made a reference to the case of *J.C. Malik* and declared that there was no infirmity in the view taken by the High Court. Further, in the case of *J.C. Malik* itself, the Supreme Court finally confirmed the principles of post based reservation in its judgement dated 26th July, 1995. The respondents have, therefore, contended that there is no merit in the OA and the same deserves to be dismissed.

4- Heard Mr. Vijay Mehta, learned counsel for applicant as well as Mr. Vinay Chhipa, advocate, holding brief of Mr. Manoj Bhandari, representing the respondents Railways.

5- We have given due consideration to the arguments and the material placed on record. The learned counsel for applicant argued that in restructuring of cadre also there should have been reservation and had it been done the applicant would have been selected. The learned counsel for respondents on the other hand submitted that the matter has been settled by the Hon'ble Supreme Court in the case of *Union of India Vs. Pushpa Rani and Others and a batch* in Civil Appeal Nos. 6934-6946 of 2005 and it has laid down the dictum that even in restructuring of cadre reservation should be followed. The operative portion of the said judgement dated 29th July, 2008 is quoted as below



"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

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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 Senior Personal Inspector represented for appointment against the unfilled post earmarked for reserved category by contending that she fulfils the conditions 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."

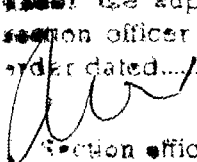



6- Considering the entire legal position explained above and the issue involved in this case and also keeping in view the dictum laid down by Hon'ble the Supreme Court, we consider that there is no merit in this application, which is hereby dismissed with no order as to costs.

(Signature)
(Tarsem Lal)
Member (A)

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

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Item II and III destroyed
in my presence on 23/11/14
under the supervision of
section officer () as per
order dated 19/8/2014

Section officer (Record)

20/11/14


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