

43

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

**ORIGINAL APPLICATION NO. 309/2006
JODHPUR THIS DAY 16th November, 2009**

CORAM:

HON'BLE Dr. K.B. SURESH, JUDICIAL MEMBER

HON'BLE MR. V.K. KAPOOR, ADMINISTRATIVE MEMBER.

Bhagirath Ojha S/o Shri Mool Chandji,
aged about 53 years,
R/o inside Goga Gate, Bikaner (Raj.)

(Presently working as Head Typist under Commercial Branch Divisional
Railway Manager Office, North Western Railway, Bikaner)

.... Applicant

For Applicant : Mr. Sanjeev Joshi, Advocate.

VERSUS

1. Union of India through
General Manager,
North Western Railway,
Jaipur (Raj.).
2. Divisional Railway Manager,
North Western Railway,
Bikaner.
3. Divisional Personnel Officer,
North Western Railway,
Bikaner.

.... Respondents.

For Respondents 1 to 3 : Mr. Vinay Jain, Advocate.

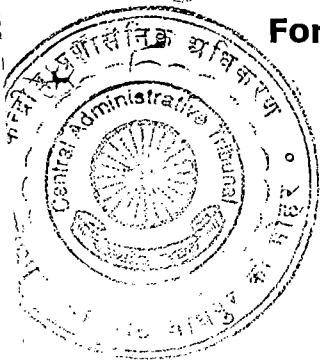
ORDER

[PER Mr. V.K. KAPOOR, MEMBER (A)]

Learned Counsel for applicant has filed this O.A. seeking
following reliefs:-

- "(i) That this Hon'ble Tribunal may kindly direct the respondent
to give the benefit of to the applicant of the restructuring
policy and promote him in grade Rs.5500-9000 w.e.f.
01.11.2003 with all consequential benefits.

[Signature]

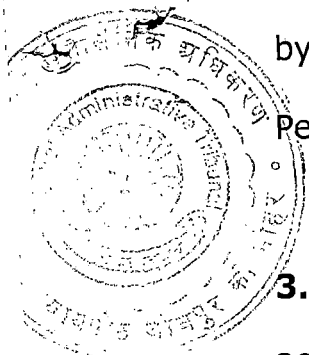


- (ii) That the respondent may also be directed to pay interest at 12% per annum on the arrear of pay in grade 5500-9000.
- (iii) That any other direction, or orders may be passed in favour of the applicant, which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
- (iv) That the cost of this application be awarded to applicant."

2. The brief facts of the case are that Shri Bhagirath Ojha is working as Typist under respondents No.2 & 3 in the pay scale of Rs.5000-8000. The applicant moved an application on 15.06.2005 to DRM, NWR, Bikaner for promoting him to grade of Rs.5500-9000 which were kept vacant for scheduled caste candidate since 1996. It is averred that the respondents promoted only two general category persons namely Shri Janwal Lal Acharyaya & Jaswant Singh. It is further averred that even though one post was vacant as against scheduled caste candidate in pay scale of Rs.5500-9000 created by way of policy of restructuring w.e.f. 01.11.2003 against which he has sought promotion alongwith consequential benefits from 01.11.2003. The applicant has moved a letter from Division Secretary of NWR Employees' Union, Bikaner dt. 15.06.2005 alongwith references made by Divisional Personnel Officer, NWR, Bikaner dt. 27.01.2005, DRM, Personnel Bikaner on 16.12.2005 and subsequently on 30.08.2006.

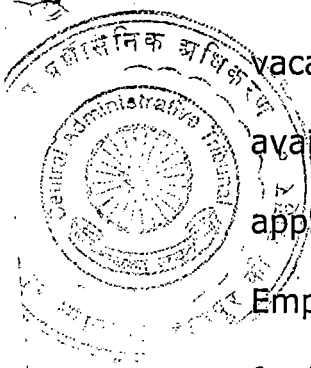
3. The learned counsel for respondents No.1 to 3 filed reply on 29.11.2007 stating therein that the applicant is the third in seniority in grade Rs.5000-8000 as has been typist and there were no vacancy in the general category grade of Rs.5500-9000. Out of 03 posts, one post has been kept reserved for schedule caste candidate but the SC

Ugner



candidate is not available. The respondents have mentioned of cadre restructuring w.e.f. 01.11.2003 in which one post of OS-II (typist) grade Rs.5500-9000 were upgraded (Ann.-R/1) and 03 employees of grade Rs.5000-8000 were to be promoted in grade Rs.5500-9000. As the applicant was junior to both general category candidates Janwar Lal Acharyaya and Jaswant Singh, he could not be promoted because one post was reserved for SC candidate. The respondents have further stated that the clarification was sought from Railway Board etc. above filling up this reserved SC post by the general candidate. The applicant is not able to make out his legal right over the promotion post in question and is not entitled for any relief from this Court.

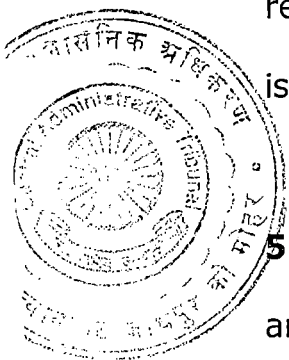
4.(a) Learned Counsel for the applicant in his arguments stated that 03 posts of typist in Grade 5000-8000 in North Western Railway, Bikaner existed. Out of these, 02 posts were meant for general category and one post was reserved for the schedule caste in the grade of Rs.5500-9000. It was contended on behalf of the applicant that the 02 general posts were filled. Applicant's name was omitted and he was not promoted on the scale in question, even though the vacancy existed as eligible scheduled caste candidates were not available in the present strength. The learned counsel for the applicant presented copies of letters dated 15.06.2005 NWR Employees' Union Bikaner, dated 16.12.2005 and 30.08.2006. It was further argued on behalf of the applicant that as scheduled caste candidate was not available, the applicant has to be promoted, relying on the Supreme Court Judgment dated 29.07.2008 (**Union of India**



Upkar

vs. Pushpha Rani & Ors.) SCC 2008 (8) SRJ 236. The applicant has also made a reference to one circular from the Ministry of Railways dated 06.01.2004 in support of his contention.

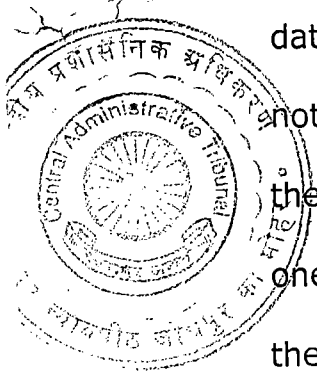
(b) Learned counsel for the respondents has mentioned that only 03 posts of typist were available at higher post i.e. Rs.5500-9000 out of these 03 posts, 02 posts were made for general category and one was reserved for scheduled caste candidate. On two general posts Shri Janwar Lal Acharyaya and Jaswant Singh were promoted but the applicant being junior to them, could not get promotion on the post in question. The respondents clarified that letter by Divisional Railway Manger, NWR Employees' Union, Bikaner on 15.06.2005 was reference letters in support of the applicant. The respondents relied mostly on reference letters dated 16.12.2005 and 30.08.2006 as regards denial of promotion to applicant due to reservation of one superior post in SC cadre. The counsel for respondents has referred to circular dated 06.01.2004 that throws some light on the reservation of posts 03 subsequent recruitment years. The counsel for respondents further argued that if reserved post is not filled up in 03 subsequent recruitment years, the said post would lapse. Accordingly, legal right is not created for this promotional post in favour of the applicant.



5. I have gone through the arguments of both the learned counsels and facts of the case minutely. This is an accepted fact that the applicant and two other persons namely Shri Janwar Lal Acharyaya & Jaswant Singh, all 03 of general category candidates were working on

Agreed

the grade of Rs.5000-8000. This is an accepted fact that the three promotional posts in the grade of Rs.5500-9000 were available but out of these 03 posts, the promotion 02 Head typist was meant for general category and one post was reserved for the SC candidate. Accordingly, two typists were promoted on the senior typist grade of Rs.5500-9000 but applicant could not get promotion as he was junior to them and the third post was singularly reserved for the SC candidate. Here the contention of the applicant is that he deserved promotion to on the senior typist grade of Rs.5500-9000 because SC candidate was not available, the post gets de-reserved thereby paving the way for his promotion. In its support, the applicant is made a mention of NWR Employees' Union Bikaner Divisional Secretary letter dated 15.06.2005 (Ann.A-2) this letter dt.15.06.2005 tells about the policy that if the vacancy is not filled by reservation in the third year of carried forward of reservation, then the reservation will be treated as having lapsed & the reserve post would be filled as an unreserved vacancy. Hence the references made by Divisional Personnel Officer, NWR, Bikaner dated 27.01.2005 (Annexure-3) and direction from DRM, NWR, Bikaner dated 16.12.2005 (Annexure-4) and 30.08.2006 (Annexure-5) are note-worthy. This has been clarified by the Senior Railway Officials in the present case that 02 posts were available for general category and one post was reserved for SC candidate. As per these clarifications, the vacant post of Scheduled Caste was vacant from 1996 and no candidate from SC was available, thus this reserved SC post could not be filled up. The letter from the Divisional Officer, NWR, Bikaner dated 04.11.2005 also speaks of the fact that the preliminary grade



Agar

Rs.3050-4590 (RP) is done away with, therefore, the reserved SC post cannot be filled up from other general category. Under these circumstances, the theory of de-reservation does not find favour with the applicant and confers no right to him whatsoever.

6. The applicant has mostly relied upon the Supreme Court Judgment dated 29.07.2008 Union of India vs. Pushpa Rani & Ors. SCC 2008(8) SRJ 236 that reads as under:-

"Service law-Promotion-Applicability of reservation-Held-Once it is recognized that additional post becoming available as a result of restructuring of different cadres are required to be filled by promotion from amongst the employees who satisfy the conditions of eligible there can be no rational justification to exclude applicability of the policy of reservation while effecting promotion."

The learned counsel for respondents argued that this case is not directly applicable in the present matter as the situation and scenario are somewhere different. One circular from Ministry of Railways dated 06.01.2004 was presented by the applicant's counsel at the time of arguments but this circular does not come as a solid support to him.

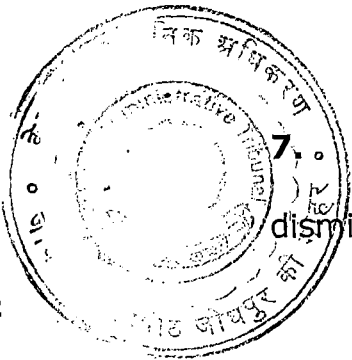
On the contrary, this has been clarified in para No.4 of the circular that if reservation post is not filled up for specified number of years, the reservation would not lapse. The reference made by DRM vide letter dated 30.08.2006 specifically clarifies the fact that as no SC candidates were available from the zone of promotion covering 03 candidates, the promotion of applicant was not possible on the head typist post. This clearly finds support from the fact that the reserve of vacancy carried forward for further 03 subsequent recruitment years, it was not proper to fill up head typist post kept reserved for SC



Cypr

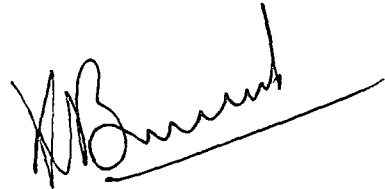
7/10

candidate. Thus, the ruling of Supreme Court mentioned above and circular from the Ministry of Railways dated 06.01.2004 does not strengthen the contentions of applicant. Therefore, contention of applicant is not to be accepted and this would not be proper to give him benefit of restructuring policy. Therefore, this was proper under prevailing circumstances not to promote the applicant in the grade of Rs.5500-9000 w.e.f. 01.11.2003 and no consequential benefits shall be paid to him. Thus the respondents have done no wrong if they have not opened up the promotional avenues for the applicant on the post of head typist in the grade of Rs.5500-9000 thereof.



7. The Original Application is liable to be dismissed and is dismissed. No order as to costs.


[V.K. KAPOOR]
ADMINISTRATIVE MEMBER


[Dr. K.B. SURESH]
JUDICIAL MEMBER

RSS

Mr. V. Jahn. *[Signature]*
2/12/69

Part II and III destroyed
in my presence on 8/15/65
under the supervision of
section officer (J) as per
order dated 07/07/2015

[Signature]
Section officer (Records)