

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCHL

OA No. 117/06

TUESDAY THIS THE 20th DAY OF FEBRUARY 2007

C O R A M

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

R. Nagarajan S/o P. Rangasamy
Travelling Ticket Examiner
O/o the Chief Travelling Ticket Inspector
Erode
residing at 13, Gandhi Nagar,
Ramanath Puram PO
Coimbatore-641045. .. **Applicant**

By Advocate Mr. K. A. Abraham

Vs.

- 1 Union of India represented by the Secretary
Railway Board, Rail Bhavan,
New Delhi.
- 2 The General Manager
Southern Railways, Chennai-3
- 3 The Divisional Railway Manager,
Palakkad division, Palakkad
- 4 The Senior Divisional Personnel Officer
Southern Railway, Palakkad.
- 5 K. Senthilkumar, TTI(Sleeper)
Southern Railway, Erode.
- 6 A. Rajendran, TTI (Sleeper)
Southern Railway, Palakkad. .. **Respondents**

Advocate Mr. K.M. Anthru for R1-4

ORDER**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN**

The facts in brief are:- The applicant is working as a Travelling Ticket Examiner in the Southern Railway, Palakkad Division. The Railway Board issued orders for restructuring of Group C&D category staff in Annexure A1 and fixed the sanctioned strength and percentage distribution by Annexure A-2 orders. A panel of persons eligible for upgradation was drawn up in Annexure A-3 and by A-4 order 126 persons were upgraded/promoted to the next grade in the scale of rs 5000-8000 w.e.f .1.11.2003. The party respondents 5 & 6 who belong to the reserved category were promoted superseding the applicant who belongs to the general category. The posts were filled up by applying reservation and it is the case of the applicant that if reservation is not applied, he is entitled to be placed above the party respondents in the higher grade as his position in the provisional seniority list at A-5 is Sl. no. 133 whereas the party respondents are at Sl. Nos 137 & 141 respectively. The respondents have not considered the A-6 representation submitted by him.

2 The respondents have filed a reply statement. It is submitted that Railway Board vide letter No PC-III/2003/CRC/6 dated 09.10.2003 with the approval of the President had issued the orders of restructuring in the categories of Group C&D posts with the revised percentages and mode of implementation. It was also indicated vide para 14 of the said order that the existing instructions

with regard to reservation for SC/ST wherever applicable will continue to apply. In the light of the Apex Court's judgement in R.K Sabharwal's case, on the lines of the DOP&T O.M, the Railway Board had also introduced the new post based roster system in Railways vide letter no 95-4 (CTO 1/49/5(1) dated 21.8.1997. The following points have to be adhered to in the revised new post based reservation system;

- 1 The number of points in the roster shall be equal to the number of posts in the cadre.
- 2 Cadre for the purpose of the roster, shall mean a particular grade and shall comprise the number of posts to be filled by a particular mode of recruitment in terms of the applicable recruitment rules.
- 3 In case there is any increase or decrease in the cadre strength in future, the roster shall be expanded/contracted correspondingly.

Hence the stand of the respondents is that wherever there is partial upgradation taking place rosters will have to be applied for the reasons spelt out above. Due to restructuring the posts in certain cadres have increased, thereby the reservation points will also increase.

3 On the legal position they have submitted that the subject matter is pending consideration by the apex court in a series of petitions. The order of this tribunal in OA NO.601/04 has been taken in appeal before the Hon High court of Kerala. The High Court of Rajasthan was pleased to stay the order of the CAT in WP No 9467/2003. In a batch of matters in regard to applicability of reservation in restructuring/upgradation of posts the order of the High

Court of Chandigarh dated 3.3.05 is being taken in appeal before the Apex court.

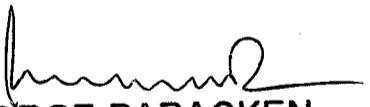
4 We heard the counsel on both sides. A copy of the order of this bench in OA no 601/04 and batch was produced and it was argued on the applicant's side that the applicants herein are identically placed and hence eligible for the same relief. And though the appeal was pending the Hon High court had not granted any stay. The apex court has already settled the issue and the fact that some orders of other CAT benches/high courts are being taken before the Supreme court cannot make any difference to the applicants herein.

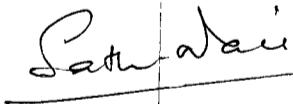
5 It is seen that following the principles laid down by the Ho'ble Supreme Court in All India Non SC/ST Employees Association Vs Agarwal and others reported in (2001(10) SCC165) and the Full Bench decision of the Principal Bench of the CAT sitting at Allahabd in OA 933/04 - P.S Rajput and Ors and other connected cases, this Tribunal had quashed clause 14 of A1 order dated 9/10/2003 and restrained the respondents from extending reservation in upgradation on restructuring. This order has been appealed against and is stated to be pending. At this stage we do not see any reason to take a different view as the applicants herein are also similarly placed employees. The argument advanced by the respondents that implementation of the judgement would be against the directions of the supreme court in Sabharwal case does not seem to hold good as the import of the said judgement was elaborately considered by the Apex Court in the case referred to above and also by the full

bench which observations have been reproduced in our earlier order. Besides, in the averments of the respondents, there is some inconsistency in that on one hand they say that they are implementing the post based reservation and on the other hand they state that they have assessed 142 vacancies and applied the reservation percentages to the vacancies.

6 Therefore we allow this OA on the same lines following the directions given in the order in OA 601/04 and connected cases dated 21st November 2005., agreeing with the Full Bench judgement dated 10.8.2005 in P.S Rajput and ors vs Mohammed Niyazuddin and ors. Clause 14 of Annexure A1 is quashed and the Respondents are directed to review Annexures A3&A4 to the extent of promotions granted to Respondents 5 &6 and to pass appropriate orders without applying the principles of reservation in the promotions made against restructured posts. No costs.

Dated 20.2.2007


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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