A

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A Nos. 601/04, 711/04, 727/04, 786/04, 907/04, 908/04, 912/04, 80/05, 98/05, 327/05, 344/05, 348/05, 374/05 and 567/05.

MONDAY this 21st day of November, 2005

CORAM

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

OA 601/04:

1 Shaji Zacharia,Enquiry Cum ReservationClerk Gr.I
Southern Railway,Ernakulam Junction, Kochi.

2 Antony C.Joseph,Enquiry Cum Reservation Clerk Gr.I
Southern Railway,Ernakulam Town, Kochi.

3 K.S.Manojkumar,
Enquiry Cum Reservation Clerk Gr.II
Southern Railway,Thrissur.

4 T.Sivakuamr
Enquiry Cum Reservation Clerk Gr.I
Southern Railway,Thrissur.

5 D.Samuel,
Enquiry Cum Reservation Clerk Gr.II
Southern Railway;Quilon Junction,
Kollam. ....Applicants

(By Advocate Mr.K.A.Abraham)

V.

1 Union of India, represented by the
Secretary, Railway Board, Rail Bhavan,
NewDelhi.

2 The General Manager,
Southern Railway, Chennai.3.

3 The Chief Personnel Officer,
Southern Railway, Chennai.3. .....Respondents

(By Advocate Mrs.Sumati Dandapani)

OA 711/04:

P.A.Surendranath,
Chief Commercial ClerkGr.II
Ernakulam South Railway Station,
Ernakulam. .....Applicant

(By Advocate Mr. K.A.Abraham)

V.

1 Union of India, represented by the
Secretary, Railway Board, Rail Bhavan,
New Delhi.

2 The General Manager,
Southern Railway, Chennai.3.

3 The Senior Divisional Railway Manager,
Southern Railway, Trivandrum
Trivandrum. ..Respondents

(By Advocate Mr. P.Haridas)

O.A 727/04:

T.P.Sankaran,
Chief Parcel Clerk,
Southern Railway, Mangalore. ...Applicant

(By Advocate Mr. K.A.Abraham)

V.

1 Union of India, represented by the
Secretary, Railway Board,
Rail Bhavan, New Delhi.

2 The General Manager,
Southern Railway,
Chennai.3.

3. The Senior Divisional Railway Manager,
Southern Railway,
Palakkad Division,

Palakkad. ..... Respondents

(By Advocate Smt.Sumati Dandapani)

OA 786/04:

1 R.Rajaram,
Technician Grade III (Mechanical)
Diesel Loco Shed,
Erode,Southern Railway,
Palghat Division,
Palghat.

2 D.Devaraj,
Technician Grade II (Mechanical)
Diesel Loco Shed,Erode,
Southern Railway, Palghat Division,
Palghat. .....Applicants

(By Advocte Mr.Siby J Monipally)

V.

1 Union of India, represented by
Chief Personnel Officer,
Southern Railway,
Park Town,Chennai

2 The Senior Divisional Personnel Officer,
Southern Railway,
Palghat Division,
Palghat.

3 The Senior Divisional Mechanical Engineer,
Southern Railway,
Palghat Division,
Palghat. Respondents

(By Advocate Mr.K.M.Anthru)

OA 907/04:

1 Thampan P S/o Purushothaman V
working as Junior Engineer/P.Way/Gr.I
Office of the SE/P.Way,Alapuzha.

2 T.K.Sasikuamr, S/o K.Kunhirama Kurup
working as Junior Engineer,
P.Way,,Grade I Office of the SSE/PW/Trichur.

3 C.P.Prasad,S/o P.K.Chandrasekharan Pillai,
working as Junior Engineer/P.Way Gr.I
Assistant Engineers Office,
Southern Railway, Kollam.

4 K.M.Sutheendran S/o K.K.Madhavan
working as Junior Engineer P Way Grade I,
Office of the SE/PW Southern Railway,
Shoranur.

5 Velukutty Pathur,S./o Raman Pathur,
working as Junior Engineer P.Way Grade I
Office of the Section Engineer P.Way
Quilandi

6 Mathew Panicker, S/o M.Gee Varghese Panicker
working as Junior Engineer, P.Way
Gr.I, Office of the Section Engineer,
P.Way, Kollam.

7 Vinodan Madakkara, S/o O.Koren,
working as Junior Engineer Gr.I
P.Way, Southern Railway
Kannur. ...Applicants

(By Advocate Mr.K.A.Abraham)

V.

1 Union of India, represented by the Secretary,
Railway Board, Rail Bhavan, New Delhi.

2 The General Manager,
Southern Railway, Chennai.3.

3 The Chief Personnel Officer,
Southern Railway,
Chennai.3.

4 The Senior Divisional Engineer,
Trivandrum Division,
Southern Railway, Trivandrum.

5 The Senior Divisional Engineer,
Palakkad Division, Southern Railway,
Palakkad.

6 The Senior Divisional Engineer
Southern Railway, Chennai.

7 The Senior Divisional Engineer,
Southern Railway, Madurai.

8 The Senior Divisional Engineer,
Southern Railway, Trichy.

9 P.R.Unnikrishnan, Junior Engineer Gr.I
Pway,Alwaye,Southern Railway,
Ernakulam.

10 A.D.Alexander Daniel,
Junior Engineer Gr.I, P.Way
Angamally. SSE/PW/Office.Alwaye.

11 Ramar R. Junior Engineer
USFD/Nagercoil, Office of the
Assistant Divisional Engineer,
Nagercoil.

12 S.Ramachandran, Junior Engineer Gr.I P.Way
C/oSenior Divisional Engineer,
SouthernRailway, Chennai.

13 V.Kapilan, Junior Engineer,
Gr.I P.Way C/o SDE,SouthernRailway,Chennai.

14 K.Arunachalam, JE Gr.I P.Way
C/o Divisional Personnel Officer,S.Rly.Trichy.

15 D.Muhilan, JE Gr.I P.Way
C/o SDE,S.Rly, Madurai.

16 S.Bhuvaneswaran, JE Gr.I
P.Way C/o SDE,S.Rly, Chennai.

17 S.Ponmani Sankar,JE Gr.I CN/MS
Chief Engineer Constructions,
Southern Railway, Egmore.

18 K.Kirubhakaran, JE Gr.I P.Way
C/o SDE,Southern Railway, Palakkad.

19 B.Ramadoss, JE Gr.I P.Way
C/o SDE,S.Rly, Palakkad.

20 D.Samuel,JE Gr.I P.Way
C/o SDE,Southern Railway,Chennai.

21 D.Govindaraju,JE Gr.I P.Way
C/o SDE,Southern Railway, Palakkad.....Respodnents

(By Advocate Mrs. Sumati Dandapani for R.1to8)
Mr.C.S.Manilal (R 9 to 11)

OA 908/04:

1 Jose Mon KO S/o K.C.Kochummen
working as Travelling Ticket Examienr,
Office of the CTTI,Southern Railway,.
Quilon.

2 K.G.Unnikrishnan S/o K.S.Gopalan, working as
Travelling Ticket Examiner, Office of th CTTI,
Southern Railway,Trivandrum North.

3 Joseph Baker Fenn S/o JB Fenn,
working as Travelling Ticket Examiner
Office of the CTTI,S.Rly,Ernakulam.

4 Sunil Thomas S/o T.Y.Thomas
working as Travelling Ticket Examiner,
Office of the CTTI,Southern Railway,
Quilon.

5 K.P.Umesh S/o K.L.Purushothaman
working as TTE, Office of the CTTI
Southern Railway,Quilon.

6 Mohandas M, S/o T.P.Vijayan
working as TTE Office of the CTTI
Southern Railway, Trivandrum.

7 K.Ajayakumar S/o K.Krishna Pillai
working as Travelling Ticket Examiner,
Office of theCTTI,S.Rly,Trivandrum. .....Applicants

(ByAdvocate Mr.K.A.Abraham)

V.

1 Union of India, represented by the Secretary
Railway Board, Rail Bhavan, New Delhi.

2 The General Manager,
Southern Railway, Chennai.3.

3 The Divisional Railway Manager,
Trivandrum Division,
Trivandrum.

4 The Senior Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum.

5 K.Reghuraman, Office of the CTTI
Southern Railway,Ernakulam.

6 Vijayan, Office of the Chief Travelling
Ticket Inspector,Southern Railway,
Trivandrum.

7 K.Subramanian, Office of the CTTI
Southern Railway, Quilon.

8 K.Anandan, Office of the Chief Travelling
Ticket Inspector,Southern Railway,
Quilon.

9 P.K.Karthiayani, Office of the CTTI
Southern Railway,Thirussur.

10 K.Shibu, Office of the Chief Travelling Ticket
Inspector,S.Rly,Trivandrum.

11 P.H.Johnson, Office of the CTTI
Southern Railway, Ernakulam.

12 Sajumon Daniel, Office of the Chief Travelling
Ticket Inspector,
Southern Railway,Ernakulam Junction.

13 K.Nagarajan, Office of the Chief Travelling Ticket
Inspector, Southern Railway, Ernakulam Junction.

14 Sanish P.Sanker,TTE
C/o Office of theChief Travelling Ticket Inspector,
Southern Railway,
ErnakulamTown.

15 K.S.James, TTE,C/o CTTI,Kottayam. ....Respondents

(By Advocatess Mrs. Sumati Dandapani (R.1to4)
Mr.TC Govindaswamy (for R.5,10,11,12 and 14)

OA 912/04:

1 R.Devarajan S/o N.Raghavan Pillai
working as Travelling Ticket Inspector Gr.III
Office of the Chief Travelling Ticket Inspector
Southern Railway,Ernakulam.

2 R.S.Mani S/o P.Ramaswami,
working as TTI Gr.III Office of the CTTI
S.Rly,Trivandrum.

3 M.K. Rajasekahra Kurup, S/o Karunakara Kurup
working as TTI Gr.III
Office of the Chief Travelling Ticket
Inspector, S.Rly.Ernakulam.

4 G.RamachandranNair S/o Gangadhara Kurup
TTI Gr.III Office of the CTTI,
Southern Railway,Kollam.

5 G.Antony S/o A.George Louise
working a Platform Inspector Gr.III
Office of the Chief Travelling Ticket Inspector,
Southern Railway,Ernakulam. .....Applicants

(By Advocate Mr.K.A.Abraham)

V.

1 Union of India, represented by the Secretary
Railway Board, New Delhi.

2 The General Manager,
Southern Railway,Chennai.3.

3 The Divisional Railway Manager,
Trivandrum Division,
Trivandrum.

4 K.Murugaiah,Travelling Ticket Inspector
Gr.II Southern Railway, Nagarcoil
Junction, Nagercoil.

5 K.V.Raghavan, TTI Gr.II
S.Rly,Trivandrum Central,Trivandrum.

6 P.G.Georgekutty, TTI Gr.II
Southern Railway, Ernakulam Town,
Ernakulam.
....Respondents

(By Advocates Mr. Sunil Jose (R.1to3)
Mr.TCG Swamy (R.5&6)

OA 80/2005:

R.Parasuraman S/o D.Ramalingam,
Junior Engineer Gr.I . P.Way
Office of the DYCE/CN, Southern Railway,
Cannanore.
....Applicant

(By Advocate Mr.K.A.Abraham)

V.

1 Union of India, represented by the Secretary
Railway Board,Rail Bhavan,
New Delhi.

2 The General Manager,
Southern Railway,Chennai.

3 The Chief Personnel Officer,
Southern Railway,Chennai.3.

4 The Senior Divisional Engineer
Trivandrum Division,
Southern Railway, Trivandrum.

5 The Senior Divisional Engineer,
Palakkad Division,
Southern Railway,
Palakkad.

6 The Senior Divisional Engineer,
Southern Railway, Chennai.

7 The Senior Divisional Engineer,Southern
Railway,Madurai.

8 The Senior Divisional Engineer,
Southern Railway, Trichy.

9 P.R.Unnikrishnan, JE Gr.I P.Way

Southern Railway,Alwaye.

10 A.D.Alexander Daniel, JE,Gr.I
P.Way, Angamaly, SSE/PW Office,Alawaye.

11 Ramar R. JE USFD/Nagercoil,
Office of ADE, Nagercoil.

12 S.Ramachandran, JE Gr.I P.Way
C/o SDE,S.Rly,Chennai.

13 V.Kapilan, JE Gr.I P.Way
C/o SDE,S.Rly, Madurai.

14 K.Arunachalam, JE Gr.I P.Way
C/o DPO,S.Rly, Trichy.

15 D.Muhilan, JE,Gr.I P.Way
C/o SDE,S.Rly, Madurai.

16 S.Bhuvaneswaran, JE, Gr.I. P.Way
C/o SDE,Southern Railway,
Chennai.

17 S.Ponmani Sankar, JE Gr.I
CN/MS Chief Engineer Constructions,
S.Rly,Egmore.Chennai.

18 K.Krubhakaran, JE Gr.I. P.Way C/o
SDE, Southern Railway,
Palakkad.

19 B.Ramadoss, JE Gr.I P.Way
C/o SDE,Southern Railway,
Palakkad.

20 D.Samuel, JE Gr.I, P.Way
C/o SDE, Southern Railway.
Chennai.

21 D.Govindaraju, JE Gr.I, P.Way
C/o SDE,S.Rly, Palakkad. .....Respondents

(By Advocates Mr.Sunil Jose, (R.1to8)
Mr.C.S.Manilal (R 9 to11)

OA 98/05:

1 K.Madhusoodanan,S/o R.Karunakaran Nair
Junior Engineer,Gr.II P.Way
ADE Office,Southern Railways, Kollam.

2 A.J.George S/o J.Geroge, JE Gr.II P.Way
SSE Office,SouthernRailway
Trivandrum.

3 K.John Crepritic S/o J.Kesari
JE Gr.II P.Way
S.Railway,Section Engineers Office,
Varkala. .....Applicants.

(By Advocate Mr.K.A.Abraham)

V.

1 Union of India, represented by the Secretary
Railway Board,Rail Bhavan
New Delhi.

2 The General Manager,
Southern Railway, Chennai.3.

3 The Chief Personnel Officer,
Southern Railway,Chennai.3.

4 The Senior Divisional Engineer
Trivandrum Division,
Southern Railway,
Trivandrum.

5 The Senior Divisional Engineer,
Palakkad Division, Southern Railway,

Palakkad.

6 The Senior Divisional Engineer,
Southern Railway,Chennai.

7 The Senior Divisional Engineer,
Southern Railway, Madurai.

8 The Senior Divisional Engineer,
Southern Railway,Trichy.

9 Sivaprakasam, JE Gr.I C/o SDE.
Southern Railway, Trichy.

10 Kannan J Jr.Engineer Gr.I
C/o SDE,S.Rly Madurai.

11 Bhaskaran.P. JE Gr.I C/o SDE,S.Rly.Trichy.

12 Annamalai A. JE Gr.I C/o SDE,S.Rly Madurai.

13 S.Venkitesan JE Gr.I C/o SDE S.Rly.Chennai.

14 T.Dhanasekahran, JE,Gr.I C/o SDE S.Rly.Chennai.

15 K.R.Rameshkumar, JE Gr.I C/o SDE
Southern Railway,Chennai.

16 K.Gopalakrishnan, JE Gr.I C/o SDE,.S.Rly.Palakkad.

17 G.Hariprasad, JEGr.I C/o Sr.DE,S.Rly.Chennai.

18 C.Prabhakar, JE Gr.I C/o SDE,
S.Rly.Trichy. .... Respodents

(By Advocate Mr. K.M.Anthru (for R.1to8)

OA 327/05:

Thankamany,
Head Telephone Operator,
Southern Railway,
Trivandrum. ....Applicants

(By Advocate Mr. K.A.Abraham)

V.

1 Union of India represented by the
Secretary, Railway Board,
Rail Bhavan,New Delhi.

2 The General Manager,
Southern Railway,
Chennai.3.

3 The Chief Personnel Officer,
Southern Railway,Chennai.3.

4 The Senior Divisional Personnel Officer,
Trivandrum Division,
Southern Railway,
Thiruvananthapuram.

5 K.A.Sarojini, Head Telephone Operator,
promoted as Chief Telephone Operator
Southern Railway,Thiruvananthapuram.

6 V.Selvaraj, Head Telephone Operator,
promoted as Chief Telephone Operator,
Southern Railway,Thanchavoor.

7 K.J.Antony, Head Telephone Operator,
Thiruvananthapuram, promoted as
Chief Telephone Operator,
Thiruvananthapuram. .....Respondents

(By Advocate Mr.Sunil Jose, R.1to4)

OA 344/05:

1 A.M.Mohammed Rafeeq S/o late A.Mohammed Salih
working as CTTI Gr.II Sleeper
Erode.

2 K.Doraisamy S/o late N.V.Krishnamurthy
working as CTTI Gr.II Sleeper
Erode.

3 A.Arumugam,S/o R.Angappa Mudaliar
Working as CTTI Gr.II
residing at 12/19, Kavibharathi St,Sastri
Nagar,Erode.2. .....Applicants

(By Advocate Mr.K.A.Abraham)

V.

1 Union of India, represented by the Secretary
Railway Board, Rail Bhavan
New Delhi.

2 The General Manager,
Southern Railway,
Chennai.3.

3 The Divisional Railway Manager,
Palakkad Division, Palakkad.

4 The Sr.Divisional Personnel Officer,
Southern Railway, Palakkad Divn.
Palakkad.

5 P.Rama Moorthy,CTTI Gr.I Sleeeper
S.Rly,Coimbatore.

6 J.Sreenivasa Raghavan,CTTI Gr.I

Sleeper,S.Rly.Salem.

7 K.K.Padmini,CTI,Gr.I Southern Railway,
Shoranur. .....Respondents

(By Advocate Mr.Sunil Jose R.1to4)

Mr.C.S.Manilal (R.7)

OA 348/05:

1 G.Karthikeyan, S/o late M.Gopalan,
working as Junior Engineer,
Signal, Gr.I,Special Revenue Maintenance
Southern Railway, Trivandrum.

2 D.Hari, S/o T.K.Damodaran,
working as Junior Engineer,
Signal Gr.I Office of the Senior Engineer,
Signal,Quilon.

3 K.S.Rabindranath,S/o C.V.Krishnan Nair
working as Junior Engineers Signal Gr.I,Office of the
Section Engineer,Signal,Southern Railway,
Trichur.

4 Ajayakumar Pillai, S/o P.G.K.Pillai
working as Junior Engineer,
Signal Gr.I,Office of the Senior Section
Engineer,Southern Railway,
Trivandrum. ....Applicants

(By Advocate Mr.K.A.Abraham)

V.

1 Union of India, represented by the Secretary,
Railway Board, Rail Bhavan,
New Delhi.

2 The General Manager,
Southern Railway,

Chennai.

3 The Chief Personnel Officer,
Southern Railway, Chennai.

4 The Chief Signal and Telecommunication Engineer,
Southern Railway, Chennai.

5 The Divisional Railway Manager,
Southern Railway, Thiruvananthapuram.

6 Shri S.Nagarajan, Section Engineer
Signal Divisional Office,
Southern Railway, Palakkad.

7 Shri D.Ravi, Section Engineer – Signal
Southern Railway, Nagercoil Jn.
Nagercoil, Kanyakuamri District.

8 Shri MK.Rajarathinam, Section Engineer -
Signal Office of CSTE/P/MAS MM
Complex,Chennai,Southern Railway,
Chennai.

9 Shri K.Gunasekahran, Section Engineer – Signal
C/o Sr.DSTE/PGT Divisional Office,
Palakkad.

10 C.Periyasamy, Section Engineer -Signal
C/o Sr.DSTE,Southern Railway
Divisional Office, Madurai.

11 Shri V.Munusamy, Section Engineer-Signal
Southern Railway, Madurai.

12 Shri C.H.Rajan, Section Engineer,
Signal,Construction Southern Railway,
Madras,Egmore.

13 Shri T,.Damodaran, Section Engineer-Signal
Southern Railway, Palakkad.

14 Shri K.Jayaraman,Section Engineer-Signal
General,Southern Railway,
Divisional Office,Thiruchirapally.

15 Shri K.Mohan, Section Engineer -Signal,
Southern Railway,Divisional Office,
Chennai.3.

16 Shri D.Chidambaram,Section Engineer-Signal,
C/o Sr.DSTE,Southern Railway
Divisional Office,Chennai.

17 Shri V.Sangili,Section Engineer-Signal,
Southern Railway, Divisional Office,
Madurai. .....Respondents

(By Advocates Mr.Sunil Jose (R.1to5)
Mr.CS Manilal (R7&9)

OA 374/05:

R.Ramesh, aged 44 years
S/o P.Raghavan Nair, Senior Goods Guard,
Office of the Station Master,
Southern Railway, Quilon. ...Applicant

(By Advocate Mr.K.A.Abraham)

V.

1 Union of India, represented by the Secretary, Railway Board, Rail Bhavan, New Delhi.

2 The General Manager, Southern Railway,Chennai.3.

3 The Chief Personnel Officer, Southern Railway, Chennai.3.

4 The Senior Divisional Personnel Officer, Southern Railway, Trivandrum Division, Trivandrum.14.

5 V.K.Binoj, Passenger Guard, Southern Railway,Quilon Railway Station, Kollam. .....Respondents

(By Advocate Mr.Sunil Jose, R.1to4)

OA 567/05:

T.Ratheesan,
S/o T.Kelappan,
Safety Councellor, Palghat
residing at Rly.Qrts. No. 415-D
Palghat North Rly Colony,
Palghat. .....Applicant

(By Advocate Shameena Salahudheen)

V.

1 The Secretary,
Ministry of Railways,
Railway Board, New Delhi.

2 The General Manager,
Southern Railway,
Madras.

3 The Divisional Railway Manager,
Palghat Division,
Southern Railway,
Palghat.

4 The Senior Divisional Personnel Officer,
Palghat Division, Southern Railway,
Palghat. .....Respondents

(By Advocate Mrs.Sumati Dandapani)

These applications having been jointly heard on 3.10.05 & 6.10.05, the Tribunal on 21.11.2005 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

In all these Original Applications, the Applicants have challenged Clause 14 of the Annexure.A1 order of the Railway Board No.PC.III/2003-CRC/6 dated 9.10.03 by which instructions have been issued to the General Managers of All Indian Railways and Production Units regarding restructuring of certain Group C and D cadres for strengthening and rationalizing the staff pattern of the Railways. As a result of the restructuring, the existing percentage of different grades in certain categories of Group C and D staff have been changed which resulted in the upward revision of the percentage in higher grades and downward revision in the lower grades in each of such categories of staff. However, the total

number of staff strength in each category remained the same. The Applicants are aggrieved only by the instruction No.14 regarding reservation of posts to the SC/ST categories of staff in the additional higher grade posts occurred as a result of the restructuring. The said instruction No.14 reads as follows:

> "The existing instructions with regard to reservation for SC/ST wherever applicable will continue to apply."

2. The Applicants had drawn support for their contention from the order of the Apex Court dated 31.1.01 in Contempt petition (C) No 304 of 1999 in CA No.1481 of 1996 – All India Non SC/ST Employees Association (Railway) Vs.V.K.Aggarwal and others. Being a very short order, the same is reproduced below in toto.

> "It appears that all the decisions so far that if as a result of reclassification or readjustment, there are no additional posts which are created and it is a case of upgradation, then the principle of reservation will not be applicable. It is on this basis that this Court on 19.11.1998 had held that reservation for C and ST is not applicable in the upgradation of existing posts and Civil Appeal No.1481 of 1996 an the connected matters were decided against the Union of India. The effect of this is that where the total number of posts remained unaltered, though in different scales of pay, as a result of regrouping and the effect of which may be that some of the employees who were in the scale of pay of Rs. 550-700 will go into the higher scales, it would be a case of upgradation of posts and not a case of additional vacancy or post being created to which the reservation principle would apply. It is only if in addition tot he total number of existing posts some additional posts are created that in respect of those additional posts the reservation will apply, but with rgard to those additional posts the dispute does not arise in the present case. The present case is restricted to all existing employees who were redistributed into different scales of pay as a

result of the said upgradation.

The Union of India shall rework the seniority in the light of the clarification made today and report back within 6 weeks from today."

3. The Applicants have also relied upon the orders of the Hyderabad Bench of this Tribunal dated 27.12.04 in OA 1318/04 – M.Sureshkumar and others Vs. Union of India represented by the General manager, S.C. Railway, Rail Nilayam, Secunderabad and others. The relevant extracts from that order is reproduced below:

> 3. It is pointed out by the applicants that as per the decision of the Hon'ble Supreme Court in Contempt Petition (Civil) No.304/99 in the case of All India Non-SC/ST Employees Association (Railways) Vs.V.K.Aggarwal, reported in AIR 2002 SC 2875, it has been held that the reservation for SC/ST will not be applicable tot he restructuring of Groups C and D posts in Railways (Annexure.V). The said decision of the Supreme Court has been conveyed by the Ministry of Personnel, Public Grievances & Pensions (DOPT) which is the nodal Ministry for implementation of any Establishment/Personnel service conditions of Central Government employees vide their Office Memorandum dated 25.10.2004 to the Ministry of Railways duly advising to implement the directions of the Hon'ble Supreme Court and not to apply reservation while filling the posts upgraded on account of restructuring by the existing employees (Annexure.VI). The respondents, therefore, cannot go behind the dicta laid down by the Hon'ble Supreme Court which in turn was circulated by the DOPT and cannot act contrary to the same.
>
> The Applicants further submitted that this Tribunal in a similar situation had already issued directives by an order dated 2.12.2004 in OA No.1252/2004 directing the respondents to look into the grievances of the applicants therein in accordance with law and following the instructions of DOPT (Annexure.VII). However, while the respondents are very much duty bound to issue instructions in accordance with law, by issuing the impugned order once again, they have exhibited a very casual approach verging on being

contemptuous of the orders of this Tribunal and have taken recourse to issue of the impugned order. It is also submitted by the applicants that even though they have submitted a representation dated 15.12.2004 to the respondents with a request to comply with the judgment of the Supreme Court and also the instructions of the DOPT mentioned supra, the respondents in flagrant violation of the law have chosen to ignore the representation and issued the impugned order arbitrarily(Annexure.VIII) promoting SC/ST employees who rank juniors to the applicants herein. The respondents are only perpetrating an illegality and procrastinating the issuance of rightful promotions tot he applicants causing them mental agony and financial loss. They have, filed the present OA for the reliefs as mentioned above.

xx xx xx

5. The Applicants in Annexure.VI to the OA have enclosed a copy of the Office Memorandum dated 25th October, 2004 of the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, wherein they have directed the Ministry of Railways to implement the directions of the Supreme Court and not to apply reservation while filling the posts upgraded on account of restructuring by the existing employees, and the Ministry of Railways have also issued instructions to the effect that the rules of reservation for SC/ST employees would not apply in case of filling up the vacancies of the posts upgraded on account of restructuring. In view of the above directions of the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training vide their OM dated 25th October, 2004 which is the nodal Ministry in the matter of implementation of the establishment/personnel service conditions of Central Government employees to implement the directions of the Hon'ble Supreme Court, this Tribunal is inclined to issue necessary directions to the respondents not to follow the rules of reservation with respect of the restructured vacancies as per law laid down by the Hon'ble Supreme Court. Therefore, the decision of the respondents in their order No.Comml/113/2004 vide E/P.467/1/2/TC/Restg/03 dated 17.12.2004 is set aside as being illegal and not in conformity with the law laid down by the Supreme Court in Contempt Petition *(Civil) No.304/99 (supra) which

held that the rule of reservation for SC/ST would not be applicable to the restructuring of Groups C and D posts in Railways, a copy of which is annexed as Annexure.1 to the OA.

6. The OA is disposed of at the stage of admission itself, setting aside the impugned office order dated 17.12.2004 issued by the 5th respondent and directing the respondents to implement the orders of the Hon'ble Supreme Court (supra) in letter and spirit within a period of one month from the date of communication of this order and issue a revised order in the matter by not applying the rule of reservation to the restructured Group D and D posts on the Railways. The cases of applicants be considered as per their seniority and merits while giving promotions without applying the rule of reservation"

4. During the course of arguments the learned counsel for the Applicant Shri K.A.Abraham has further relied upon the order of the Principal Bench dated 23.7.99 in OA 2133/93 – All India Non-SC/ST Railway Employees Association,New Delhi V. Union of India through the Chairman, Railway Board. In the said OA, the Applicants therein have challenged Para 10 of the Railway Board instructions contained in their order dated 27.1.93 which is also exactly similar to the instruction No.14 of the impugned order in the present OA. The aforesaid instruction at Para 10 reads as under:

"Provision of reservation: The existing instructions with regard to reservation of SC/ST will continue to apply while filling additional vacancies in the higher grades arising as a result of restructuring."

5. The Tribunal after considering the contentions of both the parties allowed the OA and Para 10 of the letter dated 27.1.03 was quashed and the respondents were directed to make promotions to

the upgraded post without following the instructions on reservation. The Applicants have also relied upon the order of the Chandigarh Bench dated 24.7.01 in OA 426/PB/94 - Pankaj Saxena, CMI, Northern Railway, Bhatinda Vs. Union of India through General Manager, Northern Railway, Baroda House, New Delhi and others. In this OA also the Railway Board's letter dated 27.1.03 (supra) was under adjudication,. The Tribunal followed the orders of the Calcutta Bench in the case of Birender Kumar Das Vs. Union of India and others – 1994(2) ATJ 506 and the orders of the Jabalpur Bench in the case of Ashok Kumar Shrivastava and another Vs. Union of India and others, 1987(4) SCC 385 and held that rule of reservation is not applicable when there is upgradation for grant of next higher scales to meet with the grievances of the staff who may be stagnated at a particular pay scale. The Writ Petition filed against the aforesaid orders of the Tribunal dated 24.7.01 before the Hon'ble High Court of Punjab and Haryana in CWP No.10217/CAT/02 – Union of India and others Vs. Pankaj Saxena and another was dismissed. The Special Leave Petition © No.(S.11588/2003) filed before the Hon'ble Supreme Court against the aforesaid orders of the High Court of Punjab and Haryana was also got dismissed by its order dated 13.5.05. The orders of the Jabalpur Bench in the case of Ashok Kumar Shrivastava (supra) was also carried to the Hon'ble Supreme Court vide Special Leave Petition No.11001/87 and the Hon'ble Apex Court has dismissed the SLP agreeing with the reasons given by the

Tribunal in the conclusion it has reached. Again in OA 124 PB of 2004, the Chandigarh Bench of this Tribunal vide order dated 24.11.04 in **Unreserved Employees Association (Regd), Rail Coach Factory, Kapurthala, through its President Kahwaljit Singh and another Vs. Union of India and others** considered the question whether the policy of reservation shall apply in the scheme of restructuring. Considering the earlier judgments in Ashok Kumar Shrivastava Vs. Union of India and others (supra) and the orders in the Contempt Petition in the case of V.K.Aggarwal and others (supra) by the Hon'ble Apex Court, Para 14 of the memo dated 9.10.03 was quashed and set aside with a declaration that the policy of reservation in favour of members of SC/ST is not applicable to the restructuring scheme.

6. As late as on 10.8.05, the same issue was considered in great detail by a Full Bench of this Tribunal sitting at Allahabad Bench in OA 933/04 – P.S.Rajput and two others Vs. Union of India and others and OA 778/04 – Mohd. Niyazuddin and ten others Vs. Union of India and others. The specific question under consideration before the Full Bench was:

> ".....whether upgradation of a cadre as a result of restructuring and adjustment of existing staff in the upgraded cadre can be termed to be promotion, attracting the principle of reservation in favour of SC/ST?"

After detailed discussion of various judgments in related cases, the Full Bench came to the conclusion that :

> "The upgradation of the cadre as a result of the restructuring and adjustment of existing staff will not be

termed as promotion attracting the principles of reservation in favour of Scheduled Caste/Schedule Tribe."

While arriving at the aforesaid conclusion, the Full Bench has taken into consideration the various relevant judgments of the Hon'ble Supreme Court and different orders passed by the various Benches of this Tribunal and its following observations are relevant in the present case also:

"In our considered opinion, the reasoning given is correct and cannot be ignored. It becomes unnecessary to go into all other precedents but revet back to the basic Scheme. Perusal of it clearly shows that the benefit of restructuring is restricted to the persons who are working in a particular cadre on the cut-off date. The cadres are begin restructured on functional, operational and administrative consideration. Certain posts are being placed in higher scale of pay as a result of restructuring. This includes duties and responsibilities of great importance. The Scheme provides that if prior to issue of the instructions, he number of posts existing in any particular cadre exceeds the number of poss admissible on the revised percentage, the excess may be allowed to continue to be phased out progressively with the vacation of the posts by the existing incumbents. The duties, responsibilities and functions performed by the employee have to be combined in a phased manner, in the initi8al sage on merger, efforts have to be made to post the employees in the categories in which they have been working. This clearly shows that though we have earlier drawn the distinquishing features between the 1993 and 2003 Scheme, in fact it remains the same.

Merely words being changed here and there, does not take it away from the main Scheme to which we have referred to above as 2as in the year 1993. The substance, as already stated above, remains the same. It was urged on behalf of the respondents that new posts have been created as a result of the restructuring. But even as was demonstrated before us by the respondents, there was just marginal increase in the posts that would be by restructuring. This will not make

it creation of additional posts to be filled up in accordance with the recruitment rules. It would certainly remain restructuring and, therefore, the said argument must fail.

We deem it necessary to mention that on 7.8.2002, a Bench of this Tribunal had concluded that there was no reservation in the upgraded posts as a result of restructuring. The Union of India filed a Civil Writ Petition No.6090/02 in the Delhi High Court. In the Delhi High Court, the only controversy raised was that they have no grievance with th order of 23.7.1999 but it should be made applicable prospectively. In other words, the Scheme of 1993 which was quashed was not even challenged seriously. This presents, as noticed above, almost the same Scheme in which in a different language has been drawn and consequently, i cannot be taken that the policy of reservation would come into play.

7. We have heard Mrs.Sumathi Dandapani, Mr.Sunil Jose, Mr.P.Haridas and Mr. K.M.Anthru on behalf of Respondents Railways. Their contention was that the Railway Board had earlier issued a circular dated 6.11.84 which was similar to the impugned circular dated 9.10.03. Para 6 of the said circular dated 16.11.84 provided for reservation rules to be applied in restructuring. The circular dated 16.11.84 was challenged before the Hon'ble Supreme Court in the case of Girdhari Lal Kohli (W.P(C) No. 17386-93/84) and vide order dated 26.7.95 it was disposed of in the following manner:

"We have heard Ms.S.Janani the learned counsel for the petitioners. Having regard to the decision of the Constitution Bench of this Court in R.K.Sabharwal and Ors Vs. State of Punjab and others, 1995(2) SCC 745 it is directed that while implementing the circular dated November, 16, 1984 (Annexure.A) the authorities will have regard to the law laid down by this Court in Sabharwal's case."

8. According to the Respondents by virtue of the aforesaid order, the Hon'ble Supreme Court has laid down the principles that while making promotions against the additional posts arising due to restructuring, the Railways should follow the law laid down in R.K.Sabharwal' case (ie., the law of post-based reservation)." Respondents have, therefore, contended that the reservation in restructuring is not illegal per se so long as reservation is restricted to the prescribed percentage of the SC/ST which is to be calculated on the total number of posts in the cadre. So far as the policy itself is concerned, according to the Respondents, it has undergone a change during the period from1.1.84 to 21.8.97. From 16.6.92, the Railways adopted the principle of post based reservation to the extent of 15% for S.Cs and 7 ½% for S.Ts in order to implement the interim order dated 24.9.84 passed by the Hon'ble Supreme Court in the case of JC Malik Vs. UOI. Thereafter, pursuant to the Apex Court's ruling in the case of R.K.Sabharwal case (1995(2) SCC 745), this principle was given the formal shape of post based reservation rosters vide circular dated 21.8.97. Thereafter, the reservation is to be introduced in restructuring provided the same conforms to the law laid down by the Hon'ble Supreme Court in the case of R.K.Sabharwal stands confirmed and also holds good in the context of the present reservation policy. The Respondents have also submitted that the judgment of the Hon'ble Supreme Court in the case of Girdhari Lal Kohli was passed placing reliance upon its

judgment in the case of R.K. Sabharwal Vs. State of Punjab which is passed by the Constitutional Bench, and therefore, it would deserve more weightage than the judgments in the various other cases. In case, according to the respondents, reservation to SC/ST candidates are not provided in the additional posts occurred on account of restructuring in the higher grades, the post based roster system will get non-operational. In the list of beneficiaries of the restructuring, if proportionate number of SC/ST are not there, the principles laid down in R.K.Sabharwal's case will get defeated.

9. The respondents have also relied upon the order of the Lucknow Bench of this Tribunal dated 26.7.04 in OA 46/04 – Harish Chandra Vs. G.M. Northern Railway, Baroda House, New Delhi and others. The relief sought for in the said OA was also to quash the Para 14 of the restructuring order dated 9.12.93. The contention of the Respondents in that OA was as under:

> "It is also stated that in terms of cadre restructuring and upgradation are not synonymous carrying different meaning in their respective context and the provisions with regard to reservations for the SC/ST is applicable wherever there is plurality of posts. It is also their case that cadre restructuring and upgradation since meant different, therefore due process prescribed for the selection has been followed regarding both the incumbents against the post which become available as a result of restructuring which is not permissible in the case of upgradation."

Accepting the contention of the Respondents, the Lucknow Bench vide their order dated 26.7.04 (ibid) dismissed the OA and upheld the provision contained in Para 14 of the restructuring order dated

9.10.04.

10. We have also heard Shri T.C.Govindaswamy appearing for party respondents in OA 908/04 and OA 912/04 as also Mr.C.S.Manilal, appearing for party respondents in O.As 907/04, 80/05, 344/05 and 348/05. Their argument was also in consonance with the arguments of the official respondents.

11. We have gone through the entire pleadings in the cases and also heard the extensive arguments put forward by the counsels from both sides. The crux of the arguments of the Applicants was that since there was no change in the total number of posts in the category even though the percentage of grades differs, there cannot be any reservation in the increased number of posts in the higher grade. On the contrary, the respondents' case is that reservation to the extent that is permissible in terms of the judgment of the Apex Court in R.K.Sabharwal and others (supra) should be allowed. In our considered opinion, it is not necessary to adjudicate these contentions again for the simple reason that the Full Bench of this Tribunal, has already considered the question in great detail as to whether upgradation in a cadre as a result of restructuring and adjustment of existing staff in the upgraded cadre can be termed to be promotion attracting the principle of reservation in favour of SC/ST in the case of Full Bench reference in **OA 933/04 – P.S.Rajput and two others V. Union of India and others and OA 778/04 – Mohd.Niyazuddin and ten others Vs. Union of India and others.**

The categorical and unequivocal finding of the Full Bench was that "the upgradation of the cadre as a result of the restructuring and adjustment of existing staff will not be termed as promotion attracting the principles of reservation in favour of SC/ST candidates". While considering the aforesaid question and answering in the above manner, the Full Bench had the occasion to consider the case of R.K.Sabharwal and others (supra) also. We may profitably quote the relevant part of the judgment, which is as under:

> "On behalf of the respondents, it was stated that the said conclusions cannot be so arrived at and reliance has been placed on the famous decision of the Supreme Court in the case of R.K.Sabharwal & Others V. State of Punjab and others, (1995)2 SCC 745. The Supreme Court held:
>
> > "5. We see, considerable force in the second contention raised by the learned counsel for the petitioners. The reservations provided under the impugned Government instructions are to be operated in accordance with the roster to be maintained in each Department. The roster is implemented in the form of running account from year to year. The purpose of 'running account' is to make sure that the Scheduled castes/Scheduled Tribes and Backward Classes get their percentage of reserved posts. The concept of "running account' in the impugned instructions has to be so interpreted that it does not result in excessive reservation. "16% of the posts..." are reserved for members of the Scheduled Casters and Backward Classes. In a lot of 100 posts those falling at Serial Numbers 1,7,15,22,30,37,44,51,58,65,72,80,87 and 91 have been reserved and earmarked in the roster for the Scheduled Castes. Roster points 26 and 76 are preserves for the members of Backward Classes. It is thus obvious that when recruitment to a cadre starts then 14 posts earmarked in the roster are to be filled from amongst the members of the Scheduled Castes. To illustrate, first post in a cadre must go tot-he Scheduled caste and

therefore the said class is entitled to 7th, 15th, 22nd and onwards upto 91st post. When the total number of posts in a cadre are filled by the operation of the roster then the result envisaged by the impugned instructions is achieved. In other words, in a cadre of 100 posts when the posts earmarked in the roster for the Scheduled Castes and the Backward Classes are filled the percentage of reservation provided for the reserved categories is achieved. We see no justification to operate the roster thereafter. The 'running account' is to operate only till the quota provided under the impugned instructions is reached and not thereafter. Once the prescribed percentage of posts is filled the numerical test of adequacy is satisfied and thereafter the roster does not survive. The percentage of reservation is the desired representation of the Backward Classes in the Stat Services and is consistent with the demographic estimate based on the proportion worked out in relation to their population. The numerical quota of posts is not a shifting boundary but represents a figure with due application of mind. Therefore, the only way to assure equality of opportunity tot-he Backward Classes and the general category is to permit the roster to operate till the time the respective appointees/promotees occupy the posts meant for them in the roster. The operation of the roster and the 'running account' must come to an end thereafter. The vacancies arising in the cadre, after the initial posts are filled, will post no difficulty. As and when there is a vacancy whether permanent or temporary in a particular post the same has to be filled from amongst the category to which the post belonged in the roster. For example the Scheduled caste persons holding the posts at roster points 1,7,15 retire then these slots are to be filled from amongst the person belonging to the Scheduled Castes. Similarly, if the persons holding the post at points 8 to 14 or 23 to 29 retire then these slots are to be filled from among the general category. By following this procedure there shall neither be shortfall nor excess in the percentage reservation."

"In Para 6 the Supreme Court has elaborated on the

expression 'posts' and 'vacancies' and has brought out clearly the difference between the two. This para reads as under:-

> "6. The expressions 'posts' and 'vacancies' often used in the executive instructions providing for reservations, are rather problematical. The word 'post' means an appointment, job, office or employment. A position to which a person is appointed. 'Vacancy' means an unoccupied post or office. The plain meaning of the two expressions make it clear that there must be a post in existence to enable the 'vacancy' to occur. The cadre-strength is always measured by the number of posts comprising the cadre. Right to be considered for appointment can only be claimed in respect of a post in a cadre. As a consequence the percentage of reservation has to be worked out in relation tot-he number of posts which form the cadre-strength. The concept of 'vacancy' has no relevance in operating the percentage of reservation".

The Supreme Court has further brought out in para 7 as to how the rosters would be operated and has observed as under:

> "7. When all the roster points in a cadre are filled the required percentage of reservation is achieved. Once the total cadre has full representation of the Scheduled Castes/Tribes and Backward Classes in accordance with the reservation policy then the vacancies arising thereafter in the cadre are to be filled from amongst the category of persons to whom the respective vacancies belongs."

These findings of the Supreme Court are necessarily based on the fact because the Apex Court was concerned whether reservation policy is based on vacancy or posts. The answer given was that it is not vacancy-based and, therefore, the decision in the case of R.K.Sabharwal (supra) will not be held to be dealing with the present controversy."

12. We, therefore, in respectful agreement with the common order of the Full Bench dated 10.8.2005 in the case of P.S Rajput and two

others and Mohd. Niyazuddin and ten others dated 10.8.05 (surpa) quash and set aside Clause 14 of the Annexure A1 order dated 9.10.03 issued by the Ministry of Railway (Railway Board). Accordingly, the OAs are allowed and official respondents are restrained from extending reservation in the case of upgradation on restructuring of cadre strength of ECRCS in Southern Railway. As regards the cases in which such reservation has already been granted, the Respondents shall pass appropriate orders withdrawing the reservation to the private respondents. There is no order as to costs.

Dated this the 21st day of November, 2005

GEORGE PARACKEN
JUDICIAL MEMBER

SATHI NAIR
VICE CHAIRMAN

S.