

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH**

Original Application No.21/2007
This the 26th day of January 2009

HON'BLE MR. M. KANTHAIAH, MEMBER (J).
HON'BLE DR. A.K. MISHRA, MEMBER (A).

1. Madhu Bhaskar Sharma, aged about 48 years, son of Sri H.B. Sharma, Resident of D-1385/6, Indira Nagar, Lucknow.
2. R.K. Misra, aged about 54 years, son of J.P. Misra, Resident of 554/Kh/128 Visheswar Nagar, Lucknow.
3. N.N. Tewari, aged about 51 years, son of B.N. Tewari, resident of L-25, Jail Road, Lucknow.
4. A.K. Srivastava, aged about 38 years, son of B.L. Srivastava, C/o M.B. Sharma, D-1385/6, Indira Nagar, Lucknow.

...Applicant.

By Advocate: Shri D.P. Awasthi.

Versus.

1. Union of India through the Secretary, Ministry of Railway, Rail Bhawan, New Delhi.
2. The General Manager, Northern Railway, Baroda House, New Delhi.
3. The Divisional Railway Manager, Northern Railway, Hazratganj, Lucknow.
4. Peary Lal S/o Kalika Ram, SE/C & W, Under CDO, N. Rly, Varanasi.

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5. Munsi Ram S/o Dewan SE/C&W, Under CDO N. Rly, Varanasi.
6. Nanku Prasad S/o Sarju Prasad, SE/C&W under C.D.O. N. Railway, Charbagh (S. Line), Lucknow.
7. Isidore Minz S/o Mathus Minz SE/C&W, under CDO, N. Rly, Varanasi.

... Respondents.

**By Advocate: Shri B.B. Tripathi for Shri M.K. Singh.**

**ORDER**

**BY MR. M. KANTHAIAH, MEMBER JUDICIAL.**

The applicant no. 1 to 4 have filed OA with a prayer to quash the order dt. 30.12.2004 (Ann.-A-2) and 01.11.2006 (Ann.-A-5) issued by the Respondent no.3 and also seeking promotion of the applicants being senior to the Respondent N.4 to 7 from the date of issue of the order dt. 31.12.2004 (Ann.-A-4) and also restrain the application of reservation to SC/STs in promotions under the Scheme of restructuring on the following grounds:-

(i). Apply the policy of reservation for SC/STs while granting promotions against 11 upgraded posts under the impugned order dt.30.12.2004 is illegal and superseded the

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applicants, who are senior in the feeder category.

(ii). The promotions have been given to the private respondents by applying the principal of reservation which deprived the right of the applicants, who are being senior to the private respondents.

(iii). The co-ordinate bench of Central Administrative Tribunal, Chandigarh in an identical matter and 12 others dt. 24.11.2004 has decided the policy of reservation of SC/Sts is not available to the restructuring scheme.

2. The respondents have filed Counter Affidavit, denying the claim of the applicants stating that reservation applies whenever post increased and in the instant case there is increase of posts and therefore, the orders passed under the impugned order are in accordance with rules and there are no justified grounds for interference of the Tribunal.

3. The applicant has filed Rejoinder Affidavit, denying the stand taken by the respondents and reiterated the pleas taken in the OA.

4. Heard both sides.

5. The point for consideration is whether the applicants are entitled for the relief as prayed for.

6. The admitted facts of the case are that the applicant and respondent No. 4 to 7 are working as J.E.-1/C&W (Junior Engineer-1/Carriage & Wagon) in Grade Rs.5500-9000 under the control of the respondents. Annexure-1 and 1-A are the combined seniority position of JE-1/C&W as on 30.12.2004 circulated by Respondent No.3. According to the seniority list, the applicants No.1 to 4 are placed at Sl. No. 16,13,15,17 whereas, the Respondent No. 4 to 7 are shown at Sl. No. 40,41,44,46. It is also not in dispute that the applicants No.1 to 4 belong to general category whereas, Respondent No.4 to 6 belongs to SC category whereas, Respondent No.7 belongs to ST category. The Respondent No.3 also promoted 11 J.E. I/C &W grade 5500-9000 to the next higher grade of Rs. 6500-10500 (RSRP) as SE/C&W under the Scheme of "restructuring of Cadre" and Ann.-A-2 is the copy of such letter reveals the same. While giving promotions for these eleven posts of SC/C&W, the authorities have follow and applied the policy of

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reservation of SC/STs and under which, the respondent No. 4 to 7 have been promoted ignoring the applicants, who are seniors.

7. It is the case of the applicants that they are senior to the Respondent No. 4 to 7 but by ignoring their seniority the Respondent No.3 promoted their juniors, who are Respondent No.4 to 7 by applying the policy of reservation of SC/STs to them, which is not valid and legal, while giving promotion under the scheme of restructuring and on that ground they have challenged the impugned order Ann.-A-2 dt. 30.12.2004. It is also the case of the applicants that the promotion against eleven posts of SC/C&W Grade Rs. 6500-10500 (RSRP) covered under Ann.-A-2 dt. 30.12.2004 is only by way of up gradation from the post of JE-1 C&W and no additional and new posts were created and as such promotions have to be made only on the basis of seniority and thus, the applicants claimed their promotion questioning the promotion given to the Respondent No.4 to 7, who are juniors to them.

8. Aggrieved by the said promotions, the applicants have also made representation to the

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respondent authorities on 22.02.2005 (Ann.-A-3) and also issued reminder dt. 03.10.2006 (Ann.-A-4) but the authorities rejected the same vide order dt. 01.11.2006 Ann.-A-5, which is under challenge in this OA along with Ann-A-2.

9. It is the case of the respondents that reservation policy applies where posts are increased and in provision of circular dt. 09.11.2003, it was found necessary to give effect to Para-14 and therefore shortfall of SC/ST as may occur in the new roster formed after the cadre expands due to increase of vacancy. Further, Railway Board Circular dt. 07.08.2002, which lays down the reservation policy with regard to treatment of SC/ST candidates who may have been promoted on their own merit are not to be treated towards reserved point and they are to be treated against unreserved points in the roster. It is also their case that there is increase of posts therefore application of para-14 of the circular dt. 09.10.2003 <sup>was</sup> necessitated and thus, stated that there is no illegality in the action of the respondents.

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10. Admittedly, the applicants have challenged only the impugned promotion given to the Respondent No. 4 to 7 under the restructuring scheme, which is subject to the result of O.A.No.1173/2004. The respondents have taken plea that they have given promotion to the Respondent NO.4 to 7, who are juniors to the applicants in the gradation list by applying the reservation policy of SC/STs by giving effect to Para-14 of the circular dt. 09.10.2003 but the same is not the subject matter in this OA. It is also the case of the respondents that the same is the subject matter in O.A.No.1173/2004 on the file of Central Administrative Tribunal, Principal Bench, New Delhi and as such, they have given promotion to the Respondent No.4 to 7 subject to the result of such OA. Both sides have not filed copy of judgment in O.A.No.1173/2004 and also not stated any thing in respect of its disposal. But, learned counsel for the applicant relied on the other matter of Central Administrative Tribunal, Chandigarh Bench, which shows that the Tribunal has quashed the impugned para-14 of the Memorandum dt. 09.10.2003 with a declaration

that the policy of reservation of SC/STs is not applicable to the restructuring scheme.

11. The respondents have not filed any document to show that the increase of the post of JE-1 to substantiate the application of para-14 of the circular dt. 09.10.2003 and also other circulars. It is the case of the applicants that the promotion of SC/C&W from JE-1/C&W was only under the restructuring scheme but not by way of increase of posts or grant of additional posts. Further, the impugned order Ann-A-2 Dt. 30.12.2004 also clearly shows that the promotion of JE/C&W to SC/C&W in grade Rs.5500-9000 to SC/C&W Grade Rs. 6500-10500 (RSRP) was under cadre restructuring and it also supports the stand taken by the applicants that the promotion to SC/C&W is by way of up gradation from JE/C&W under restructuring scheme but not by way of grant of any additional post. Without substantiating their stand, it is not open to the respondents to say that they have given promotion to Respondent No.4 to 7, who are admittedly juniors to the applicants in the cadre of JE/C&W, have been promoted to the

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cadre of SC/C&W because of sanction of additional posts and increase of existing posts. Thus, the applicants are justified in questioning the validity of promotion granted to the Respondent No.4 to 7 on the post of SC/C&W, who are juniors to the applicants in the gradation list naturally causes prejudice to them.

12. The recitals of Ann.-A-2 shows that the promotion of the Respondent No.4 to 7 on the post of SC/C&W was only provisional and subject to out come of O.A.No.1173/2004 pending before the Central Administrative Tribunal, Principal Bench, New Delhi. When the impugned promotions are only provisional that too subject to the out come of OA pending on the file of Central Administrative Tribunal, Principal Bench, New Delhi, causing of any loss or prejudice to the applicants does not arise. Admittedly, the subject matter in O.A.No.1173/2004 was in respect of the circular dt. 09.10.2003 for applying the policy of reservation in favour of SC/ST to the restructuring scheme and in such circumstances the promotions given to the Respondent No.4 to 7 under Ann.-A-2

dt.30.12.2004 is only provisional and not final and further subject to the result of such dispute before the Central Administrative Tribunal, Principal Bench, New Delhi and in such circumstances, the applicants are at liberty to agitate on their grievances after finality or disposal of OA No.1173/2004.

13. Admittedly, both sides have not stated anything in respect of disposal of such OA and also not filed any copy of judgment. But the applicants have filed copy of judgment in O.A.No.124/2004 and 12 other matters on the file of Central Administrative Tribunal, Chandigarh in respect of para-14 of Memorandum dt.09.10.2003 in respect of applicability of policy of reservation in favour of SC/St to the restructuring scheme stating that the tribunal quashed para-14 of Memorandum dt. 09.10.2003 and relied on the said judgment in support of their cases. Admittedly, noting has been stated in this judgment in respect of the finality of O.A.No.1173/2004 on the file of Central Administrative Tribunal, Principal Bench, New Delhi and the same is not helpful at this stage since, the promotion order Ann.A-1 itself shows

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that the said provisional promotion of the Respondent No.4 to 7 are subject to the result of O.A.No.1173/2004.

14. Under the above circumstances the claim of the applicants is not at all sustainable at this stage and thus, OA is disposed of with a liberty to the applicants to seek their remedy after finality of OA No.1173/2004. No costs.

*28-01-09*  
(DR. A.K. MISHRA)

MEMBER (A)

*28-01-09*  
(M. KANTHAIAH)

MEMBER (J)

Amit