

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
O.A. No. 87 of 2006

Dated : 25th September, 2012

C O R A M

Hon'ble Mr. Naresh Gupta, Member [Administrative]

Hon'ble Ms. Bidisha Banerjee, Member [Judicial]

1. Krishna Monhan Singh, son of Chandra Shekhar Singh, resident of Village/P.O. - Chitbaragaon, District – Balia [U.P.] working as a Junior Engineer I [P.Way] Construction, N.E. Railway at Siwan under Dy. C.E. [BG-Con] East, N.E. Railway, Gorakhpur.
2. Vinay Mani Tripathi, son of Late Awadhesh Kumaar Tripathi, resident of Village/P.O. - Pachrukhi, District – Siwan [Bihar] working as a Junior Engineer I [P.Way] Special, N.E. Railway at Siwan under Divisional Railway Manager, N.E. Railway, Varanasi.
3. Satyendra Kumar Pandey, son of Yadu Nath Pandey, resident of Village-Fulwaria Pandey, P.O. - Mirzapur, District – Deoria [U.P.] working as a Junior Engineer I [P.Way] Special Deoria, under AEN/East N.E. Railway, Gorakhpur, Varanasi.

4. R.N. Sharma, Section Engineer [P.Way], N.E. Railway, Siwan.

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Applicants

By Advocate : Shri Sudama Pandey

Vrs.

1. The Union of India through General Manager, N.E. Railway, Gorakhpur.
2. The Divisional Railway Manager, N.E. Railway, Varanasi.
3. The Divisional Railway Manager [Engg], N.E. Railway, Varanasi.
4. The CAO [BG-Con.], N.E. Railway, Gorakhpur.
5. The Chief Engineer, N.E. Railway, Gorakhpur.
6. Abhay Kumar Gautam working under DRM [Engg.], N.E. Railway, Varanasi [U.P.] at present Section Engineer P-Way, [T.T.], N.E. Rly. Gorakhpur Cantt. District – Gorakhpur.
7. Girish Babu working under DRM [Engg.] N.E. Railway, Varanasi [UP] at present Section Engineer [P.Way], N.E. Railway Bhatni, Distt. Deoria [UP].
8. Ramanand Kanaujia working under DRM [Engg.], N.E. Railway Varanasi [U.P.] at present Section Engineer P-Way, [T.T.], N.E. Rly. Gorakhpur Cantt. District – Gorakhpur.
9. Sikandar Mandal working under DRM [Engg.], N.E. Railway, Varanasi [U.P.] at present J.E. [P-Way] under A.D.E.N. Special

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N.E. Rly. Varanasi.

By Advocate : Shri R.Griyaghey, ASC
Shri M.P.Dixit, Pvt. Respondents.

ORDER

Bidisha Banerjee, Member [Judicial] :-

This original application is filed seeking the following reliefs :

- [1] That your Lordships may graciously be pleased to quash and set aside the select list dated 1.10.2004 i.e. result of modified selection of SE [P.Way] scal Rs. 6500-10500 issued by DRM[P] Varanasi [Annexure-A/9] and promotion office order No. 160/04 dated 4.11.2004 [Annexure-A/7].
- [2] That your Lordships may be pleased to direct the respondents to follow the norms and principles of modified selection procedure and order for upgrading as contained in Railway Boards circular dated 6.1.2004 [Annexure-A/1] and upgrade the due incumbents as per strict seniority and modified selection procedure with all consequential benefits w.e.f. 1.11.2003 including resultant and claimed vacancies.
- [3] That your Lordships may please further to direct the respondents to fill in all the 14 upgraded posts in scale 7450-11500 and 22 upgraded posts in scale Rs. 6500-10500 in Varanasi Division including the posts lying vacant prior to 1.11.2003 as contained in Annexure-A/2 and seniority position of P.Way Cadre as on 5.10.2004 which was same as on 1.11.2003 [Annexure-A/3] without delay with retrospective effect, because these cadre in scale Rs. 7450-11500 and 6500-10500 are divisional control posts.
- [4] That your Lordships may graciously be pleased to quash and set aside the entire selection proceeding including result and promotions of the candidates selected and promoted pursuant to notification No.KA/W/254/S.Engg/P.Way/Part-II dated 23.5.2007 issued by DRM [P] Varanasi being in violation of selection rules including order of General Manager, N.E. Railway, Gorakhpur order No.E/254/2/P/XVII/V dated 22.09.2008 as well as order of Railway Boards in the

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matter of selection and promotion.

2. The admitted facts are as follows :

There was a cadre restructuring of certain 'C' and 'D' cadres to be ordered by virtue of Railway Boards' order dated 6.1.2004 in the following manner :

"ANNEXURE-'B'

CATEGORY	GRADE[Rs]	EXISTING %AGE	REVISED %AGE
Standing Drivers	5000-8000	20	30
	4000-6000	80	70
Diesel Assistants / Electrical Assistants	4000-6000	20	30
	3050-4590	80	70

3. The date of effect was 1.11.2003. The procedure to be followed as envisaged as hereunder :

"3. Staff selected and posted against the additional higher grade posts as a result of restructuring will have their pay fixed under Rule 1313 [FR 22][I][a][I]-RII w.e.f. 01.11.2003 with the usual option for pay fixation as per extant rules.

4. The existing classification of the posts covered by these orders as 'selection' and 'non-selection' remains unchanged. for promotion to a post classified as a 'selection' post, the existing selection procedure will stand modified in such a case to the extent that the selection will be based only on seniority or service records and confidential reports without holding any written and/or viva voce test. Naturally under this procedure the categorization as 'outstanding' will not figure in the panels. This modified selection procedure has been decided upon by the Ministry of Railways as a one time exception by special dispensation. In view of the numbers involved, with the objective of expediting the classified as 'non-selection' at the time of this restructuring the promotion will be based only on scrutiny of service records and confidential reports. In the case of Artisan staff, the benefit of restructuring under these orders will be extended on passing the requisite Trade Test. However, in case of placement of Supervisors [erstwhile Mistries] to grade Rs. 5000-8000 the instructions contained in para 13.2 should be followed.

4.1 Normal vacancies existing on 01.11.2003 except direct recruitment quota who those arising on that date from this cadre restructuring

including chain/resultant vacancies should be filled in the following sequence-

[i] From panels approved on or before 1.11.2003 and current on that date;

[ii] and the balance in the number indicated in para 4 above.

4.2 Such selections which have not been finalised by 01.11.2003 should be cancelled/abandoned.

4.3 All vacancies arising from 02.11.2003 will be filled by normal selection procedure.

4.4 All vacancies arising out of the restructuring should be filled up by senior employees who should be given benefit of the promotion w.e.f. 1.11.2003 whereas for the normal vacancies existing on 1.11.2003 junior employees should be posted by modified selection procedure but they will get promotion and higher pay from the date of taking over the posts as per normal rules. Thus the special benefit of the promotion w.e.f. 01.11.2003 is available only for vacancies arising out of restructuring and for other vacancies the normal rules of prospective promotion from the date of filling up of vacancy will apply.

4.5 In cases where percentages have been reduced in the lower grade and no new post becomes available as a result of restructuring, the existing vacancies on 01.11.2003 should be filled up by normal selection procedure."

4. At the relevant time, the applicants were placed in the posts and pay scales noted hereunder :

Applicant No.1 JE 1 in 5500-9000 from 1.6.1998

Applicant No.2 JE 1 in 5500-9000 from 11.8.1987

Applicant No.3 JE 1 in 5500-9000 from 11.8.1987

Applicant No.4 SE [P.Way] in 6500-10500.

5. The applicants claim that by virtue of their seniority in respective posts and pay scales, they should get restructuring benefits on 01.11.2003 for applicants no.1 to 3 in the scale of Rs. 6500-10,500 and applicant no. 4 in the scale of Rs. 7400-11,500.

6. The applicants further claim that the revised percentage of posts would be the following :

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Varanasi Railway Division of Technical Supervisors [P.Way] strength for upgrading was -

<u>A</u>	<u>Varanasi Division</u>	<u>Sanctioned Strength as on 1.11.2003</u>	<u>Revised Sanctioned strength as on 1.11.2003.</u>
	Sr. S.E.[P.Way] 7450-11500	9	12 + 2 = 14
	SE [P.Way] 6500-10500	15	19 + 3 = 22

B. BSB Div. Revised sanctioned strength and Actual on roll as per strength as on 1.11.2003.

		<u>Actual</u>	<u>Diff.</u>
Sr. S.E. [P.Way] 7450-11500	14	7	[-] 7
S.E.[P.Way] 6500-10500	22	12	[-] 10
	36	19	[-] 17

Accordingly, 7 senior most S.E. [P.Way] 6500-10500 are still to be upgraded against fixed percentage of posts in the scale of Rs. 7450-11500 and 10 seniors in scale of Rs. 5500-9000 deserve to be upgraded against vacant posts in the scale of Rs. 6500-10500.

7. The applicant further claim that out of available vacancies on restructuring the percentage distribution should be in the manner as hereunder :

<i>Categories</i>	<i>Grade [Rs.]</i>	<i>Existing %</i>	<i>Revised %</i>
Technical Supervisors [for cadres where posts of Supervisors [erstwhile Ministries] are available	7450-11500	17	18
	6500-10500	28	29
	5500-9000	25	24
	5500-8000	30	29

8. Per contra, the respondents have stated that as per restructuring as on 1.11.2003, the revised percentage posts in engineering department is as follows :

<i>Grade</i>	<i>Scale</i>	<i>Sanctioned post to 1.11.2003</i>	<i>Revised post as per structure</i>	<i>Revised post</i>
SSE/P.Way	7450-11500	9	12+2=14	5
SE/P.Way	6500-10500	15	19+3=22	7

Annexure-A/1 to written statement depicts the following figures :

Sl. No.	Class & Pay scale	Total Saned. Post as on 31.10.93	Total san. Work - charged post as on 31.10.03	Total	Total post on the basis of res. as on 1.11.03	Total no. of empl as on 31.10.03	Total vacancies		Resultant higher post vacancies on res. As on 1.11.03	Actual no. of vacancies of higher post as on 31.10.03	Total vacancies for promotion		Remarks.
							[6-3]	[5-7]			[8+10]	[9+11]	
1	2	3	4	5	6	7	8	9	10	11	12	13	14
1	SSE/PWay 7450-11500	3	-	9	14	8	5	1	-	-	5	1	
2	SE/P.Way 6500-10500	15	3	18	22	13	7	5	1	-	8	5	
3	JE I/P.Way 5500-9000	16	4	20	18	24	2	4	8	5	10	1	
4	JE II/P.Way	25	2	27	22	24	-3	3	10	1	7	4	

9. It is further stated that the post of SSE/P.Way [7450-11500] in Engineering department of Eastern Railway is under the control of headquarter. The promotion to the said post is made on the basis of Zonal Railway. The Eastern Railway i.e. the Zonal Railway consists, three divisions named as Varanasi, Lucknow and Izzat Nagar. Promotion to the said post is made from SE/P.Way [6500-10500] on the basis of seniority. The applicants have given wrong number of real employees. The number of existing vacancies for promotion on the basis of restructuring is brought on records vide Annexure-A/1, to the written statement. Perusal of memo no.Ka/210/5/NERMU/IX/Lose dated 29.5.2006 clearly indicates that as per restructuring, 42 posts were upgraded against the post meaning thereby the promotion of only 12 posts were to be made, out of which, two posts were to be filled up from Scheduled Tribe and 10 posts were also to be filled up from headquarter level, but there was no candidate of S.T. and hence the same is lying vacant. It is wrong and false to say as stated by the applicants that 7 posts are lying

vacant in Varanasi Division.

10. It is further submitted that vide letter dated 4.11.2004 order No. Ka/59/5/Restructure/Rail Path Ni Bhag 11/89 [Annexure-3], 11 employees were promoted to the post including one employee of Varanasi Division, whose name is O.P. Sonekar as per Zonal seniority.

11. The respondents have further submitted that so far those employees working in different Organization of Rly. Department are concerned who have lien in Varanasi Division and have been given promotion in restructuring, ~~there~~ ^{we} consequential vacancies ~~has~~ to be filled up from General Selection process as per General Manager [P] order dated 29.09.2005 [Annexure-G]. Hence, it is submitted that the applicants have no claim.

12. The contention of the respondents have been controverted in the rejoinder as follows :

[i] 8 posts in the scale of Rs. 7450-11500 are yet to be filled in by modified selection as per seniority -

- 5 - Revised under restructuring
 - 2 - Vacant posts as on 31.10.2003
 - 1 - Ex cadre safety counselor utilized.
- By hands of open line BSB Division.

Total 8 posts.

In the scale of Rs. 6500-10500 to be filled in by modified selection as on 1.11.2003 as detailed below :

- 13 posts as a result of restructuring as admitted by the respondents in Annexure-A/II Ganana Patra.
- 8 Resultant chain vacancies as a result of upgrading in scale Rs. 7450-11500 from scale Rs. 6500-10500.
- 2 Posts ex cadre of USFD sanctioned in scale of Rs. 6500-10500 but upgrading shown against vacancies.
Vide O.D. No. 169/04 Annexure-A/3 of written statement S/shsri M.P.Srivastava and Harish Chandra Mishra at Sl. No. 1 to 10.
- 4 Resultant vacancies of S/Shri Mohd. Arashad Khan at S. No. 2, O.P. Mishra at Sl. No.3 and R.B. Pandey at Sl. No. 8 Abhai Kumar working in other organisations on deputation prior to 1.11.2003 and not repatriated as

yet. [Total 27 posts].

Out of 27 posts, only 9 posts have been filled by seniority from general candidates by modified selection plus 2 by junior most SC/ST on the pretext of reservation against settled principles of law. This upgradation was ordered vide Annexure-A/3 of written statement.

Thus, out of 27 posts only 9 posts filled in under cadre restructuring as on 1.11.2003. Therefore, as yet on date 27 minus 9 = 18 posts in scale of Rs. 6500-10500 are yet to be filled in scale of Rs. 6500-10500 [S.E. P.Way] from scale of Rs. 5500-9000.

It is submitted that 2 juniors S/Shri Abhay Kumar Gautam at Sl. No. 7, Girish Babu at Sl. No. 11 of Annexure-A/3, A/9 of written statement have been up-graded on the plea of reservation superseding seniors.

[ii] There is no provision of reservation for SC/ST in cadre restructuring as held by Hon'ble Supreme Court as contained in Annexure-A/6 of the OA at page 37 but respondents have provided reservation and upgraded most juniors superseding seniors.

In substantiation thereof the counsel has referred to the following rulings *BB.*

- [1] 1999 SCC [L&S] 988, the UOI vs. V.K. Sirothia.
- [2] 2002 SCC [L&S] 688 All India Hon SC/ST Employees Association Railway vs. V.K. Agrawal.
- [3] 2006 [1] ATJ 36 Full Bench Alld. P. S. Rajput vs. UOI & Ors.
- [4] 2005 [1] AIJ-I Un-reserved Employees Association vs. UOI & Ors.
- [5] OA 589/2005 CAT/Alld decided on 5.4.2006, Dr. Rubbey Mazumdar vs. UOI & Ors.

[iii] The post of SSE [P.Way] [7450-11500] was not a Head Quarter ~~Control~~ ^{Controlled} post but it was a Divisional ~~Central~~ Post as on 1.11.2003 on the crucial date of cadre restructuring. A decision was arrived at General Managers in P.N.M. Meeting on 2.1.2003 with N.E. Railway Mazdoor Union item number 71/13 and accordingly these posts were decentralized as Divisional Controlled posts and circulated by G.M. [P], N.E. Railway, Gorakhpur as itself evident from Annexure-A/5 of the OA. *BB.*

MA 378 of 2011 is filed to amend relief in following manner :


BB.

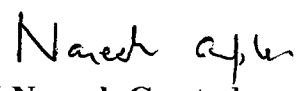
“That your Lordships may graciously be pleased to quash an set aside the entire selection proceeding, including result and promotions of the candidates selected and promoted pursuant to Notification No. KA/W/254/S.Engg/P.Way Part-II dated 23.05.2007 issued by the DRM[P] Varanasi being in violation of Selection rules including order of General Manager N.E. Railway, Gorakhpur order No.E/254/2/P [X VII]/IV dated 22.09.2008 as well as orders of Railway Board in the mater of selection and promotions.”

13. Heard the learned counsel of both the sides and perused the documents.

14. The dispute is on factual matrix whether the post as shown in restructuring order ought to be more enabling more number of seniors to be upgraded under restructured post or whether the number of posts depicted in the restructuring order is proper. If the number of posts available for restructuring are more than the number of posts filled up on restructuring the applicants stand a chance to be considered against modified selection procedure. But if such posts are out of resultant vacancies obviously they cannot have any grievance if such vacancies are not filled up by modified selection procedure.

15. In absence of proper materials/further information to adjudicate the claim of the applicant, the respondents are directed to pass a speaking order delving into the contentions of the applicants as reflected in paras 6, 7 and 12 hereinabove and to pass a reasoned and speaking order on the eligibility of the applicants to be considered against vacancies available due to restructuring within three months from the date of communication of this order. If it is found that the applicants were wrongly left out, they shall be given appropriate relief of seniority with effect from the date their juniors are granted such promotion against restructured vacancies or from the date the vacancies have been filled up without monetary benefits. No costs.


[Bidisha Banerjee]
Member [Judicial]
mps.


[Naresh Gupta]
Member [Administrative]