

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
O.A. No. 470 of 2005

Date of Order: 8th April 2011

C O R A M

HON'BLE MR. JUSTICE ANWAR AHMAD, MEMBER[J]
HON'BLE MR. AKHIL KUMAR JAIN, MEMBER[A]

Banarasi Poddar, son of Late Jugal Kishore Poddar, Resident of
Village – Ekashi Tola, Post Office – Bariarpur, District- Munger.

..... Applicant.

By Advocate: - Shri Gautam Bose

-Versus-

1. The Union of India through the Chairman, Railway Board.
2. The General Manager, Eastern Railway, 17, Netaji Subhash Road, P.S.- Hare street, Kolkata.
3. The Divisional Railway Manager, Eastern Railway, Malda.
4. The Senior Divisional Personnel Officer, Eastern Railway, Malda.
5. The Senior Divisional Mechanical engineer, Eastern Railway, Malda.
6. The Senior Section Engineer (C&W), Jamalpur.

..... Respondents.

By Advocates: - Shri N.K. Sinha.


O R D E R

Akhil Kumar Jain , Member [Administrative] :- This OA has been filed by the applicant for setting aside the impugned orders dated 08.10.2004 as contained in Annexure A/1 and 25.11.2004 as contained in Annexure A/2. The applicant has further sought for a direction upon the respondents to re-consider the matter of promotion to the post of O.S. Grade II and consider the case of the applicant also for the same.

2. The case of the applicant is that in the year 2003, he was working as

Head Clerk in Mechanical Department in Malda Division. In the provisional seniority list of Mechanical Department in Malda Division prepared on 15.05.2003 by Senior Divisional Personnel Officer, the name of applicant appeared at Sl. 17 under the heading of Head Clerk (Annexure A/3). On 09.10.2003, the Railway Board issued order R.B.E. No. 177/2003 about restructuring of certain Group 'C' and 'D' cadres including Ministerial cadre to which the applicant belongs (Annexure A/4). In pursuance of the said scheme, the concerned officers in Malda Division worked out number of posts to be upgraded in Ministerial Cadre (Annexure A/5). Accordingly, 16 posts of OS II Grade were to be filled up from Head Clerk category by adopting a modified selection procedure on one time basis which means that selection was to be done on seniority cum suitability basis from amongst the eligible persons who came under the zone of consideration. However, vide office order no. EO/108/04 dated 08.10.2004, only 12 persons were promoted under U.R (unreserved) category (Annexure A/1). The applicant made a representation to DRM, ER, Malda Division on 14.10.2004 which was forwarded by Sr. DME, Malda (Annexure A/6 and A/6/1). Another representation was submitted on 05.11.2004 (Annexure A/7). However, his representation was rejected vide letter dated 25.11.2004 issued by Sr. Divisional Personnel Officer, ER, Malda (Annexure A/2).

3. It has been submitted by the applicant, though the number of posts of O.S. Grade II was worked out as 16 by three Divisional heads, the respondents have taken the plea that only 15 posts were available in OS-II Grade and that as per roster, the available vacancies were earmarked as UR-12, SC-2 and ST-1. According to seniority in the immediate lower grade, 12 candidates were considered as UR and 2 posts earmarked for SC were carried forward as backlog because there was no SC candidate available. 1 ST post was filled up by an ST candidate. The applicant's contention is that Shri Acharya, whose name is at Sl. No. 1 in the seniority list of 01.04.2003 superannuated on 26.08.2003. Shri B.P.



Singh whose name appears at Sl. No. 9 . 9 stood removed from service before the Restructuring Scheme 2003 came into effect. Shri A.K. Tamang at Sl. No.. 12 stood transferred to N.F. Railway much before the restructuring scheme. Thus the name of the applicant was actually at 14th position in the seniority list of the Head Clerks as on 01.04.2003. Again one post of Chief O.S. was vacant and if the said post was to be filled up from OS cadre, the total vacancies of OS II would come to 17. Hence, the applicant came within the zone of consideration for promotion to the OS-II on the basis of his seniority. On 18.05.2005, the applicant made another representation to DRM, Malda giving full details (Annexure A/8).

4. The respondents in their written statement have submitted that the number of posts due to revised percentage on restructuring in the cadre of OS-II of Mechanical Department was 16. The men on roll were 9 and hence there were 7 vacancies. Again resultant vacancies due to filling up of posts in higher grade were 8. Thus total number of available vacancies in OS II Grade was 15 and not 16. The break up of the said vacancies was UR-12, SC-02 and ST-01 as per post based roster. Accordingly, 12 seniormost candidates were considered against UR vacancies. The SC and ST candidates who came into zone of consideration as per their own seniority were considered as UR as per CPO/KKK's Sl. Circular 73(7)/2003. As there was no SC candidate available in the lower grade (excluding those who were counted against UR), the 2 SC posts was carried forward as backlog. 1 ST post was filled up by ST candidate. It has further been stated that in the grade of Chief OS, 3 vacancies were available after restructuring which were filled up from amongst the eligible candidates from OS I grade. Consequently, the available no. of vacancies in OS I grade was 8 which were filled up from eligible candidate from OS II grade.

5. It has further been submitted by the respondents that the claim of the applicant that one chain vacancy of Chief OS grade was available for OS II grade is not correct. The applicant could not be promoted to OS II grade under



restructuring as his seniority position did not allow him to be considered for the said promotion as per restructuring scheme w.e.f. 01.11.2003. The representation filed by the applicant on 18.05.2005 was replied vide letter dated 08.06.2005. Further, the applicant was given readiness letter alongwith 08 others to appear in selection of OS II against the vacancies available as on date vide letter No. L/No. ED/Clerk./Mech/SC&ST/Pt I dt 21.06.2005.

6. In his rejoinder to the WS filed by the respondents and supplementary petition, the applicant has stated that in the seniority list of OS- II as contained in Annexure A/3 of the OA, there were 10 persons name in type. The name of one Shri Mishra has been written in hand. His name was not there in the original seniority list. Shri Mishra on medical decategorisation from ASM was absorbed as OS II. Though he was posted under DRM's management Section, his lien was maintained in the cadre of Mechanical Department. This office order was issued on 12.11.2003 and he joined on 17.11.2003. Both these dates are after the effective date of restructuring, i.e. 01.11.2003. Again Shri S. Minj (ST) at Sl. No. 3 on OS II grade stood removed from service before restructuring and Shri S.K. Dubey at Sl. No. 6 on OS II grade was transferred before restructuring to Malda Division in Eastern Railway. Therefore, as per the seniority list the men on roll came to 8 and not 9 on the effective date, i.e. 01.11.2003. The Railway administration as per order dated 30.07.2004 promoted 8 persons to OS grade I from OS grade II. In other words, all OS grade II incumbents were promoted to OS grade I and hence as on the effective date of 01.11.2003, the vacancies in OS grade II, to be filled under restructuring came to 16. The applicant's name, as per seniority list of Head Clerks was at sl. 14 as explained earlier in the OA and hence automatically he was to be promoted to O.S. grade II.

7. It has been added by the applicant that one Shri C.R. Kishku is a ST candidate who got promotion in ST quota. Hence, applicant should have been adjusted under UR vacancies as per respondent's own admission that there were 12



UR posts. The applicant has also stated that Deputy Secretary, Government of India, Department of Personnel and Training on 25.10.2004 issued a memorandum referring to Ministry of Railway's U.O. Note No. 2004-E(SCT)1/25/1 dated 7th May 2004 stating that the Hon'ble Supreme Court in the matter of Union of India Vs. V.K. Sirothia he held that reservation of SC and ST will not be applicable when making promotions to posts upgraded on account of restructuring of cadre (Annexure A/11 of the rejoinder). As such, reserving posts to be filled by SC,ST in promotion of 3 candidates at Sl. No.2,5 and 11 against reservation quota is bad in law. In support of his contention, the following orders/judgments have been cited by the applicant:-

1. Order passed by Hon'ble Supreme Court in Contempt Petition (Civil) 304/99 in Civil Appeal No. 1481/1996 in the case of All India non SC/ST Employees Association (Railway) Vs. V.K. Agrawal and another.
2. Order passed by CAT, Jaipur Bench on 14.02.2006 in OA No. 313 of 2004 in the matter of Raj Kumar Gurnami and Others Vs. UOI.

8. As regards calling the applicant for appearing in the test for selection to the post of OS Grade II, the applicant has stated he informed the respondents that he was appearing under protest and without prejudice to his right and interest as claimed in the present OA. The result of the test was not published till filing of rejoinder and even if applicant was found suitable, he should be promoted as per Annexure A/1.

9. The respondents in their reply to the rejoinder and the supplementary petition have reiterated their averments on the number of vacancies of OS grade II and that 12 UR posts were filled up as per seniority and 1 ST quota was filled by an ST candidate as per laid down instructions. 2 SC posts were carried forward. As regards judgment of the Hon'ble Supreme Court cited by the applicant, the respondents have stated that copies thereof have not been attached and the office is not aware about the said judgment nor any guidelines to that effect have been



received from C.P.O, ER, Kolkata. It has further been submitted that vide letter dated 17.06.2006 of Eastern Railway, it was informed that the Hon'ble Supreme Court has granted stay on contempt proceedings arising out of the order of Hon'ble CAT, Chandigarh Bench and subsequently Hon'ble High Court on applicability of reservation in restructuring in the matter of Pushpa Rani & Ors. Vs. Union of India (Annexure R/4). Apart from the points made earlier, the respondents have also stated that the monetary benefit of promotion under restructuring has been given w.e.f. 01.11.2003 only to those promotees who were promoted against vacancies exclusively arising out of restructuring of cadre. Those who have been promoted against available vacancies as on 31.10.2003 or prior to that have been given prospective effect in terms of item 4.4. of CPO/KKKs Sl. 6(1)/2004 as is clear from Annexure A/1. Again, Shri Mishra, Ex -ASM was medically decategorised and was absorbed in alternative post of y OS II Mechanical against existing vacancy before restructuring of cadre. Hence, the date of issuing of office order for posting of Shri B.C. Mishra could not be considered only criteria for awarding benefit under restructuring. In view of this, respondents have reiterated that the applicant could not be promoted under restructuring because of his low position in seniority list.

10. Heard the learned counsel for both the sides.

11. The learned counsel for the applicant reiterating the detailed reasons for considering the relief prayed for as given in the OA, rejoinder and supplementary petition, submitted that the OA merits allowing on the ground that reservation is not applicable in case of restructuring in which total number of posts in a cadre does not increase. This has been held by the Hon'ble Supreme Court in cases cited in rejoinder and further clarified by the DOP&T in their clarification issued to the Railways. It was further submitted that the stay granted in contempt proceedings in the case cited by the respondents does not mean that



the order of the Hon'ble High Court or the Hon'ble CAT, Chandigarh Bench has been reversed.

12. The learned counsel for the respondents reiterated submission made in the W.S and supplementary written statement filed on behalf of the respondents.

13. We have perused the pleadings and considered the submissions made on behalf of the parties.

14. As the most important issue in this case is whether reservation is applicable in case of restructuring or not, we do not proceed to discuss the other points raised at this stage. In this connection, we take note of the instructions of the DOPT letter dated 25.10.2004 as contained in Annexure A/11 which was issued in reference to Ministry of Railways U.O. Note No. 2004-E(SCT)1/25/1 dated 07.05.2004 regarding issue of applicability of reservation for SC and ST in restructuring of Group 'C' and 'D' categories in the Railways. In the said instructions, the department has cited the judgments of Hon'ble Supreme Court in the matter of Union of India vs. V.K. Sirothia and in the Contempt Petition No. 304 of 1999 in the matter of All India Non SC/ST Employees Association Vs. V.K. Agarwal and Others. In the case of Union of India vs. V.K. Sirothia in Civil Appeal No. 3622 of 1995 along with CA No. 9149/45 decided on 19.11.1998, the Hon'ble Supreme Court held that the finding of the Tribunal that "the so called promotion as a result of redistribution of posts is not promotion attracting "reservations" on the facts of the case appears to be based on good reasoning. On facts, it is seen that it is a case of upgradation on account of restructuring of cadre and, therefore the question of reservation does not arise." This was also followed by a similar judgment of the CAT, Principal Bench in All India Non SC/ST Employees Organisation Vs. UOI in OA No. 2123/1993 dated 23.07.1999

15. In the matter of All India Non SC/ST Employees Association (Railways) Vs. V.K. Agarwal & Ors in CP (Civil) No. 304/1999 in Civil Appeal No. 1481/1996 decided on 31.01.2001, the Hon'ble Court observed as follows:-




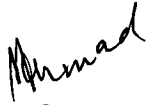
“ It appears from all the decisions so far that if as a result of re-classification or re-adjustment there is no additional posts which are created and it is a case of upgradation, then the principle of reservation will not be applicable. It is on this basis that this court on 19th November, 1998 had held that reservation for SC & ST is not applicable in the upgradation of existing posts and civil appeal no. 1481/1996 and 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 re-grouping 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 in 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 to the total number of existing posts the reservation will apply, but with regard to these 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.” [Extracted from The Guiding Principles in the Decisions on Service Law Compiled by Bahri Brothers page-309 under the heading (IV- 16 Upgradation of Posts)].

16. The respondents in their reply have stated that copies of the said judgments have not been annexed and the respondents are not aware about the judgments nor there are any circular guidelines to this effect issued by the CPO, Eastern Railway, Kolkata. In our opinion, this plea of the respondents is not tenable . The issue has been decided clearly in the judgments of the Hon'ble Supreme Court as cited above and the respondents cannot take the plea of governance of law laid down by the Hon'ble Supreme Court. There is no averment on the part of the respondents that this decision has been reversed by any subsequent order of the Hon'ble Supreme Court. The respondents in their second supplementary written statement filed in reply to rejoinder to the written statement have stated that as per letter dated 17.06.2006 of Eastern Railway as contained in Annexure R/4, the Hon'ble Supreme Court granted the stay order on contempt proceedings arising out of Hon'ble High Court's order on applicability of reservation in restructuring of cadres. It appears from Annexure R/4 that the instructions regarding applicability of reservation in restructuring/upgradation of

posts in Group 'C' and 'D' as contained in para 14 of the Board's letter dated 09.10.2003 had been challenged before CAT, Chandigarh Bench by Pushpa Rani and Others and Shri N.D. Kakkar and Others. Subsequently on an appeal before Hon'ble High Court, it was held that reservation should not be applicable. The contempt proceeding arising out of this have been stayed by the Hon'ble Supreme Court. This citation of the respondents does not help them in the matter because it does not establish that non applicability of reservation for SC/ST in upgradation/restructuring has been declared bad in law. Therefore, we are inclined to agree with the applicant that in view of the Hon'ble Supreme Court's decision as cited above, the reservation for SC and ST is not applicable in case of upgradation on restructuring. In the instant case, it is clear that there was no increase in the number of posts as a result of restructuring in Ministerial cadre. Only the percentages in different grades were altered resulting in reduction in number of posts in lower grades and increase in number of posts in higher grades. As such, in the light of observations made above, reservation for SC/ST is not applicable in the instant case.

17. In view of the foregoing discussions, the OA is allowed to the extent that the respondents are directed to consider the case of promotion of the applicant on restructuring of the cadre on the same lines as in case of order dated 08.10.2004 as contained in Annexure A/1 within a period of three months from the date of receipt/production of a copy of this order.


[Akhil Kumar Jain]
Member[A]


[Anwar Ahmad]
Member[J]

srk.