

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PREScot ROAD, BOMBAY-1

OA Nos. 727; 484; 485; 487; 571; 596; 622;
680; and 703 of 1993

1. L C Awasthi	..Applicant in OA 727/93
2. G M Sharma & Ors	..Applicants in OA 484/93
3. L P Mishra & Ors	..Applicants in OA 485/93
4. H R Samant	..Applicant in OA 487/93
5. D M Karona	..Applicant in OA 571/93
6. M J Gajjar & Ors	..Applicants in OA 596/93
7. Mrs. R R Samarth & Ors.	..Applicants in OA 622/93
8. Mrs. B. Gajjar & Ors	..Applicant in OA 680/93

v/s

Union of India
through General Manager
Western Railway & Ors. ..Respondents in all above
Oririgal applications

Coram: Hon. Shri Justice M.S.Deshpande, V.C.
Hon. Shri M Y Priolkar, Member (A)

APPEARANCE:

Mr. G S Walia, counsel
for applicants in OA Nos.484; 485; 487; 571 of 93

Mr. M S Ramamurthi, counsel
for applicants in OA Nos. 727 & 596 of 1993

Mr. G.K. Masand, counsel
for applicant in OA No. 680 of 1993

Mr. A.L. Kasture, counsel
and
Mr. N K Srinivasan, counsel
for the respondents

Mr. D.V. Gangal, counsel
for the intervenors.

TRIBUNAL'S ORDER:
(PER: M.S.Deshpande, Vice Chairman)

DATED: 5.10.1993

We had passed an interim order in some cases earlier staying all appointments and promotions pending further orders.

2. We heard the learned counsel appearing for the petitioners and respondents at length and also the learned counsel for the intervenors i.e., All India Scheduled Castes & Schedules Tribes (Railways) Association (for brievity, Association) and directed the intervenors to be joined as a party respondent.

3. The first decision was rendered by the Allehabad High Courtin J.C. MALLIK v. UNION OF INDIA 1978(1) SLR page 842 where the learned judges held that the Railway Board circular dated April 20, 1970 made reservation to the extent of 15 per cent in favour of scheduled Castes in respect of appointment to the posts and not to the vacancies which may occur in the cadre of posts. There the respondents nos. 4 to 8 had been selected by the Selection Committee for promotion to the post of A-Grade Guards on the basis of an erroneous interpretation of Railway Board's circular dated 20.4.1970.

It was held there that

4. If the circular was correctly followed and if the reservation quota was confined to the posts in that event respondents nos. 3 to 8 could not have been considered for selection for appointment to the posts of A Grade Guards and that the selection was not in accordance with law as their selection has been made in excess of the 15 per cent quota fixed for Scheduled Castes candidates. When the matter went up to the Supreme Court in Civil Miscellaneous Petition No. 26627 the Supreme Court passed the following

order on 24.9.1984:

"We clarify our order dated Feb. 24, 1984, by directing that the promotions which may be made hereafter will be strictly in accordance with the judgment of the High Court and such promotions will be subject to the result of the Appeal. If any promotions have been made after Feb. 24, 1984 otherwise than in accordance with the judgment of the High Court such promotions shall be adjusted against the future vacancies. CMP is disposed of accordingly."

5. In a petition filed under Article 32 before the supreme Court - Writ Petition nos. 17386 to 17393 of 1984 GIRDHARI LAL & ORS. V. UNION OF INDIA & ORS - the Supreme Court directed that pending notice the promotions which may be made hereafter will be strictly in accordance with the judgment of the High Court in Civil Writ Petition no. 1809 of 1972 and if any such promotions have been made otherwise than in accordance with the judgment of the High Court, such promotions shall be adjusted against the future vacancies.

6. When a similar matter came up before this Bench in a group of applications, this Bench passed an order on 24.4.1987 to the following effect:

(1) The promotions which may be made hereafter by the respondents will be strictly in accordance with the judgment of the Allahabad High Court in Civil Misce. Writ no. 1809 of 1972, in J.C. Mallik & Others v. Union of India and others reported in 1978, SLJ 401 and such promotions will be subject to final result of the cases. If any promotions have been so far made otherwise than in accordance with the judgment of the Allahabad High Court, such promotions shall be adjusted against the future vacancies.

(2) It is hereby clarified that if any Scheduled Caste/Scheduled Tribe candidate is appointed or promoted in his present cadre on the basis of his overall merit and/or seniority and not on the basis of reservation alone, the respondents

are not prevented from promoting him to the higher cadre if he is found otherwise suitable for promotion even if the reservation quota fixed for Scheduled Caste/Scheduled Tribe candidates has been already achieved in the higher cadre.

- (3) The respondents shall not follow the directions or instructions given by the Railway Board or other authorities in respect of promotions if and to the extent they are inconsistent with this interim order.
- (4) If the respondents have made some promotions on the basis of the orders passed by the High Court of Judicature at Bombay these promotions should not be disturbed. However, these promotions will be subject to the final decisions in the cases.
- (5) However, all the promotions in future should be made by the respondents in accordance with this interim order.
- (6) This interim order should be followed subject to the direction given in each case.

7. A similar order was passed by the Hyderabad Bench and was extracted by the Full Bench of this Tribunal in *V. LAKSHMINARAYANAN v. UNION OF INDIA & ORS.* CASES reported in 1993(24) ATC Full Bench 420 and it was on the same lines on the order passed by this Bench. The order reads:

"We have considered these rival contentions, Having regard to the orders of the Supreme Court in directing Allahabad High Court's Judgment shall be implemented and the orders passed by the Bombay High Court and the Madras Bench of the Central Administrative Tribunal to which a reference has been made in foregoing paras, we direct that the interim direction given by the Madras Bench of the Central Administrative Tribunal should also be made applicable to the instant case."

7. We accordingly direct that the vacancies available, from time to time in the Office Superintendent's branch will be filled up in accordance with 40 Point Roster system subject to the condition that the post held by the members of the Scheduled Castes and Scheduled Tribes do not exceed 15% and 7½% respectively at any given point of time and if a person belonging to the Scheduled Caste or Scheduled Tribe is promoted on his own merits and not in a reserved vacancy, then for the purpose of this interim order such appointment will be excluded while computing the required percentage. Any promotion that could be made in pursuance of this order will, however, be subject to the result of main application."

(Emphasis supplied).

The Bench thereafter made a reference to the Full Bench and the matter came to be considered in quite some detail by the Full Bench. However having done so the Full Bench observed pending decision of the Supreme Court in MALLIK's case Tribunals are bound to pass interim orders on applications challenging reservation on the basis of 40 point roaster and promotion of SC&ST candidates consistent with the interim order already passed by the Supreme Court in MALLIK's case dated 24.9.1984 as extracted above. They approved the interim order passed by the Division Bench ~~in such cases~~ ~~in reference to order~~ on 16.5.88 as one having been passed in terms of the interim order passed by the Supreme Court in MALLIK's case. and directed that in similar cases the Tribunal shall pass similar orders taking into account the directions of the Supreme Court. If the Tribunal had already passed any order not in conformity with the order of the Supreme Court inadvertently, such order ~~may~~ was to be recalled and fresh orders passed in terms of the order of Supreme Court so that conflicting directions and interim orders by various Tribunals can be avoided.

8. What is of consequence is that in para 49 the Full Bench observed that though they had discussed the contentions urged before them by the parties based on the arguments advanced by them they accepted the request of learned Additional Solicitor General Shri V.R. Reddy, who appeared on behalf of the Railway, and refrained from expressing their final conclusions on the issues arising ~~have to~~ in the case which shall await the decision of the Supreme Court in MALLIK's case.

9. Reference was made extensively to the observation of the Full Bench before us for the purpose of enabling us to take an appropriate view of the matter. But since the Full Bench itself has not given any conclusions which are final we are constrained to observe that none of the observations made by the Full Bench could be accepted as ratio of the decision of the Full Bench so that it would have a binding effect on smaller Benches, as practically nothing was finally decided and the controversy on the points of law had not been set at rest. We might, however, mention here that none of the parties have taken exception to the interim orders which were passed in accordance with the directions given by the Supreme Court. When the matter came up before a Division Bench at Bombay Bench to which one of us (Shri M Y Priolkar, Member(A)) was a party, it pointed out that the interim direction given by this Bench was in conformity with the direction given by the Supreme Court as well as the Hyderabad Bench of the Tribunal and there was no conflict and that the interim order passed by this Bench of the Tribunal would be on the same terms as passed by the Hyderabad Bench. So far as the parties to the present petition are concerned the position remains that they still have to obey the directions given ~~as~~ pursuant to the final order by the Full Bench so far as the matter of reservation is concerned.

10. The question raised on behalf of the intervenors Association was about seniority. The contention was for that a candidate who got his promotion on the basis of reservation to the higher post his seniority in the promotional cadre must count from the date on which he came

into the cadre and that his seniority would not be on the basis of seniority in the lower cadre from which he rose to the higher cadre albeit he came to be promoted on the basis of the reservation policy. This proposition was not accepted by a Division Bench in of this Tribunal VIR PAL SINGH CHAUHAN v. U.O.I. & ORS. 1987(4) ATC 685 and it was held that where a junior belonging to a reserved category jumps over the senior, due to reservation for SC&ST, such juniors will have to wait for their turn for further promotion. The same view was taken by Division Bench of this Tribunal at Patna in KAMESHWAR SHARMA v. U.O.I. & ORS. 1990(12) ATC 26 and it was held that if an employee has got accelerated promotion from Grade 'C' to Gr. 'B' by virtue of reservation, he cannot be granted the benefit of seniority in Gr. 'B' for next promotion to Gr. 'A' and for promotion to Gr. 'A' his seniority in Gr. 'B' will have to be determined with reference to seniority in Gr. C irrespective of longer length of service rendered in Gr. 'B' due to accelerated promotion.

11. These decisions were followed also by this Bench in Tr.A.No. 16/89 D G BALIWANT v. U.O.I. & ORS. to which one of ^{us} (Shri M Y Priolkar, Member (A)) was a party. A similar question arose in Tr.A. No. 147/87 P M KHADE & ANOTHER v. WESTERN RAILWAY, decided on 6.7.93 and we followed the decision in BALIWANT's case as no new point was presented before us. We, therefore, took the view that the case was fully covered by the decision in BALIWANT's case.

12. This was the catena of cases in which what was described as leap frogging was not permitted.

13. Shri Gangal, learned counsel for the intervenors, however, pointed out to us that in OA No. 326/89 - ALL INDIA NON SC&ST EMPLOYEES ASSOCIATION (RAILWAY) BIKANER & ORS v. U.O.I. & ORS. a Division Bench at Jodhpur and a division bench sitting at Jabalpur - OA No. 358/90 RAMLAL B. VERMS & ORS v. U.O.I. & ORS. - took a contrary view relying on KARAM CHAND v. HARYANA STATE ELECTRICITY BOARD & ORS v. U.O.I. 1989 SC 261 and the observations of the Full Bench at Hyderabad and held that the seniority of officials belonging to SC&ST in any cadre will be reckoned from the date of promotion to a grade and not from a date of entry into the grade from which he was promoted.

From whatever source an employee has been promoted, he occupies the place with the seniority normally available along with others irrespective of whether he got the benefit of reservation or otherwise, and he cannot be later classified on the basis of his original appointment or promotion and ^{denied} ~~and~~ further promotion if he is qualified otherwise on the ground that he acquired the promotion on the basis of reservation ~~and~~ only. There is nothing as accelerated promotion in service jurisprudence.

14. That Division Bench also observed that since the matter had been referred once to the Larger Bench and the Full Bench had expressed its view which ^{was} ~~is~~ in accordance with KARAM CHAND's case there ^{was} ~~be~~ no point in referring the case again to the Larger Bench, as the decision of the Supreme Court is binding on the Tribunal under Article 141 of the Constitution.

15. Had the dispute rested there ~~merely~~ there would not have been any difficulty in following the decision in RAMAL'S case. But a Division Bench at Bombay in M.P. No. 447/89 in certain Transferred and Original Applications beginning with Tr.A. No.154/86 decided on 15.9.89(to which one of us. Shri M Y Priolkar Member(A) was a party)took note of the decision in KARAM CHAND's case and after going through the judgment felt that it was not an authority on the point as to whether a person who has been promoted on the basis of reservation would be entitled to a promotion in the higher cadre irrespective of the fact as to whether the quota reserved for SC/ST is already achieved or not in the higher cadre, and then referred to KAMESHWAR SHARMA & ORS. v. U.O.I. in Tr.A.No. 385/86 decided on 9.8.89 by Patna Bench of ^{the} Tribunal ~~as~~ an authority on the point mentioned above.

16. It is, therefore, clear that there are two sets of decisions taking divergent and irreconcilable views and it is not possible for us being a coordinate Division Bench to decide upon the correctness of one ^{the} or ^{the} other view and it will be for ^a the larger Bench to pronounce upon the correct legal position. We are told that J C MALLIK's matter is likely to be decided ^{early} by the Supreme Court when it starts hearing the appeal from the decision of the Allahabad High Court.

17. Shri Ramamurthi, learned counsel for some of the applicants stated before us that a SLP was filed before the Supreme Court against the decision of VER PAL SINGH's case and no stay had been granted, though ^{the} SLP was admitted.

18. Shri Gangal for the Association pointed that SLP was filed against the decision in OA 423/89 and it was directed xxxx that the matter be listed after summer vacation. When the decision in J.C. MALLIK's case referred to by the petitioners/ is considered by the Larger Bench and that no interim direction sought by the appellants before the Supreme Court was necessary. The result is that both sets of decisions hold the field to-day and the learned counsel appearing for the respondents Railways contend that there is no uniform view of this Tribunal which can be xxxx followed except the decision of the Full Bench of the Tribunal.

19. In our view so far as the interim orders are concerned we shall have to be guided by the Full Bench's view that the directions of Hyderabad Division Bench was in conformity with the interim direction of the Supreme Court. We have already extracted the order of Hyderabad Division Bench and a proper reading of that order would be that the vacancies available shall be filled up in accordance with the 40 point roster system subject to the condition that the posts held by the members of SC&ST do not exceed 15 and 7-1/2 per cent respectively at any given point of time, with the rider that if a person belonging to SC&ST is promoted on his own merits and not a reserved vacancy then for the purpose of this interim order such appointments would be excluded while computing the required percentage. The requirement is that the candidate who competes for the general seat in excess of the quota for the reserved categories must not have got post on the basis of reservation. If he has got the post by virtue of reservation his promotion would fall within the

restricted quota and he would not be entitled to compete for the general vacancies. This, however, will not apply to the category or categories where the person belonging to the SC/ST is promoted on his own merit and not in reserved vacancy and any such excess posts would not count for the reserved category. We make it clear that we are not deciding any point of principle and we are not saying anything about the correctness of one or other view, but we are bound by the Full Bench's directions that Division Benches orders be in accordance with the interim orders of the Supreme Court.

20. The position so far as the interim orders which are required to be passed today is concerned is that the employees of SC/ST will not be entitled to claim seniority on the basis of his date of entry in the promotional cadre if he has got into the cadre on account of his belonging to SC/ST. It is only the other category which we have mentioned who would be entitled to compete for the general seats.

21. That takes us to the letter dt. 16-6-1993 Exhibit 'A' to O.A.No.596/93 M.J.GUJJAR & ORS. v. WESTERN RAILWAY which has been ~~not~~ challenged as being contrary to the interim directions issued by the Full Bench. The Boards letter purports to show that it was being issued on the basis of the directions of the Full Bench and the orders of the Supreme Court in J.C.MALLIK'S case. The submission of Shri Ramamurthy learned counsel for applicant in OA No.596/93 was that though the Railway Board purported to act within the directions aforesaid, the instructions are contrary to the directions of the Supreme Court and the Full Bench. Exception was taken to Clause 3.1 which prescribed the manner of holding selection and confirming the panel because

it prescribed a relaxed standard in respect of SC/ST candidates even while competing for the post of general category. The language used is ambiguous though the learned counsel for respondent railways contended that the instructions in clause 3.1 were confined only to the manner in which the reserved posts are to be filled and there ~~was~~ was no question of leap frogging. Our attention was drawn to clause 'd' of page 2 of the written statement in OA 680/93.

Clause 'd' reads:

"(d) It is submitted that for making good deficiencies of 15 and 7-1/2 per cent, the principle of 40 point roster will be applied and after making good this deficiencies, the normal rules of seniority will be applied wherein any employee in the higher grade are senior to all employees in the lower grade and the employees whose names are borne on the earlier panel are senior to all these employees, whose names are borne selected in the subsequent panel, irrespective of the facts that they have accelerated promotion or otherwise."

What the respondent railways understand by the existing procedure is what is stated in clause (d) page 2 of the written statement, the effect of which will be to ~~make~~ ^{make} ~~your~~ eligible candidates who have come by way of reservation also, to compete for the general posts which are to be filled on merit. Even the standard for filling the general category is ~~not~~ ^{to} be observed in their case but a relaxed standard would be applied when they compete for the post of general category. This will be contrary to the interim directions which were given by the Benches of the Tribunal in accordance with the order passed by the Full Bench and would not be permissible as long as an interim direction stands.

have to Examples 2 & 3 show that when they apply a 3X formula, the scales will be weighted in favour of the reserved category to the detriment of the general category and the reserved categories ~~would~~ make inroads on the posts which would otherwise be available for the non-reserved category. There cannot be any objection to a candidate from the SC/ST who has come by way of merit competing with the open categories on the basis of his own merit. There can be no limit to the vacancies being filled on the basis of merit even by the persons belonging to the SC/ST but the result of the instructions issued by the letter dated 16.6.92 would be to prefer the less meritorious to the meritorious beyond the reserved quota of 15 & 7-1/2 per cent respectively for the SC&ST and this would be contrary to the directions issued by the Tribunal in consonance with the observation of the Full Bench. The letter dated 16.6.1992 cannot be permitted to be enforced due to ~~as per~~ the preference is sought to be given and its operation shall have to be stayed until the final decision of these matters.

22. In OA No. 680/93 Bharti Gajjar v. Western Railway and in OA No. 727/93 Awasthi v. Western Railway the petitioners seek a direction to promote employees against additional vacancies/posts arising out of reservation for restructuring order of cadres without ~~any~~ SC/ST employees. The restructuring is based on the instructions dated 27.1.93, Exhibit 'A' to OA no. 727/93 and it does not result in creation of additional vacancies but upgradation of existing posts. Annexure A-iii gives the posi-

tion regarding the existing percentage and the revised percentage resulting in upgradation after the restructuring. In view of the decision of this Tribunal (Allahabad Bench) In OA No. 414/87 N.K. SARNI v. DIRECTOR GENERAL, RDSO decided on 31.5.88 the applicants would be entitled to ask for relief if reservation is sought to be introduced in the matter of upgradation of the existing posts. The learned members observed in para 15 that law is very clear that in matters of promotion reservation would apply but the point is whether the upgradation is promotion at all and this was answered in the negative by holding that upgradation was not promotion and that therefore the roster could not apply for filling the upgraded posts.

In the result we direct:

23. (i) that the vacancies available from time to time should be filled up in accordance with the 40 point roster scheme subject to the condition that the members of the SC/ST do not exceed 15 and 7-1/2 percent respectively at any given point of time and if a person belonging to the SC/ST is promoted on his own merit and not in a reserved vacancy then for the purpose of this interim order such appointment will be excluded while computing the required percentage. Any promotion that would be made in pursuance of this order will however be subject to the result of ^{their} ~~those~~ applications and in the light of the clarification which we have given in the body of this judgment.

24. (ii) that while filling the upgraded posts on account of restructuring which do not involve expansion of the cadre, the reservation shall not be resorted to.

(iii) That the respondent railways are restrained from acting upon and giving effect to the instructions contained in Railway Board letter dated 16.6.1992 under General Manager's letter dated 1/20-7-92 and the further instructions of the General Manager (E) under letters dated 1.9.92 and 28.4.93 until further orders as they are not in conformity with the interim direction given by the Tribunal in pursuance of the Full Bench decision and the directions of the Supreme Court in J.C. MALLIK's case.

(iv) All these matters are admitted and ^{is} leave/granted to file joint applications.

Respondents to file written statement if ^{already} they have not been filed/within 8 weeks from to-day.

Rejoinder, if any, within 3 weeks thereafter.

Matters be placed before Registrar for completion of pleadings on 4.1.1994 and thereafter in sine die list.

The all India Scheduled Casts & Scheduled Tribes (Railway) Association is allowed to intervene and the applicants are directed to join as a party respondent in all these petitions.

Copies of the application be furnished to Shri D V Gangal, counsel for the Association.

Sd/-

(M.Y. Priolkar)
Member (A)

Sd/-

(M S Deshpande)
Vice Chairman

R. P. M. 33794

In

O.A. m. 680/93.

Shri R. C. Awasthi Esq.

Applicant

4/3

U. S. G. E. m.

Respondent.

Shil C Ananthi

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULSHAN' BUILDING,
6, PHSSCOM Road, MUMBAI - 400 001

REVIEW PETITION NO.

OF 1993

JN:

O.A. Nos. 727, 484, 485, 487, 571, 596, 622,
620 and 703 OF 1993,

Union of India and Ors.

• Review Petitioners
(Original Respondents)

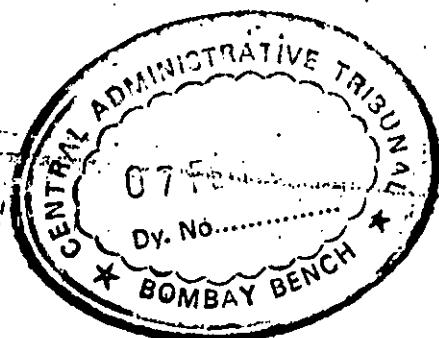
G.D.P. J. No. 1 V/s

1. L.C. Awasthi ••• Applicant in O.A 727/93
2. U.M. Sharma & Ors. Applicants in O.A 484/93
3. L.P. Mishra & Ors. Applicants in O.A 485/93
4. H.R. Samant & Ors. Applicant in O.A 487/93
5. H.M. Karona ••• Applicant in O.A 571/93
6. K.J. Gajjar & Ors. Applicant in O.A 595/93
7. Mrs. R.E. Samarth & Ors. Applicants in O.A 626/93
8. Mrs. R.Gajjar & Ors. Applicants in O.A 680/93
9. Hardes Singh & Ors. Applicants in O.A 703/93

• Respondents
(Original Applicants)

PETITION FOR REVIEW OF ORDER DATED: 5.10.1993

The above-named Review Petitioners beg to
prefer this Review Petition under ~~no~~ Order 47 of
Code of Civil Procedure 1908 for review of order
dated 5.10.1993, in the above cases from which
order no appeal has been preferred and grounds of
review are as follows:



1. The above said OAs came up for hearing on 4th and 5th October, 1993 and Hon'ble Tribunal had passed interim orders on 5.10.1993. Certified copy of the same was received by the Review Petitioners on 25.10.1993. A copy of the said order dated 5.10.1993 is annexed hereto and marked as Exhibit '1'. The operative part of the aforesaid interim orders is reproduced as under:

"23. (i) that the vacancies available from time to time should be filled up in accordance with the 40 point roster scheme subject to the condition that the members of the SC/ST do not exceed 15 and 7½% respectively at any given point of time and if a person belonging to the SC/ST is promoted on his own merit and not in a reserved vacancy then for the purpose of this interim order such appointment will be excluded while computing the required percentage. Any promotion that would be made in pursuance of this order will however be subject to the result of the applications and in the light of the clarification which we have given in the body of this judgment;

"24. (ii) that while filling up the upgraded posts on account of restructuring which do not involve expansion of the cadre, the reservation shall not be resorted to.

(iii) that the respondent railways are restrained from acting upon and giving effect to the instructions contained in Railway Board letter dated 16.6.1992 under General Manager's

"letter dated 1-20.7.1992 and the further instructions of the General Manager (E) under letters dated 1.9.92 and 28.4.93 until further orders as they are not in conformity with the Interim direction given by the Tribunal in pursuance of the Full Bench decision and the directions of the Supreme Court in J.C. Mallik's case.

leave is granted to file joint applications.

Respondents to file written statement if they have not been filed already within 8 weeks from today.

Rejoinder, if any, within 3 weeks thereafter.

Matters to be placed before Registrar for completion of pleadings on 4.1.1994 and thereafter in sine die list.

The All India Deprived Caste & Scheduled Tribes (Railway) Association is allowed to intervene and the applicants are directed to join as a part respondent in all these petitions.

Copies of the application be furnished to Shri D.V. Gangal, Counsel for the Association."

2. Sub-para (i) of the aforesaid order restrains the Respondents from providing reservation while filling up the upgraded posts on account of restructuring which do not involve expansion of the cadre. The above directives of Hon'ble Tribunal are based on the decision given by the Allahabad Bench of the CAT in O.A. No. 414 of 1987.

ners prefer this Review Petition
to directives on the following

G R O U N D S

ions/cadre restructuring have been ordered to rationalise and revise the norms with the upgradation of technology so that the staff may use the new technology in railway working. The upgradation is an ~~an~~ object to achieve new technological requirements besides higher grade posts are provided to handle the new assets created due to gauge conversions, electrification, dieselisation, computerisation, mechanisation of track maintenance, improve communications etc. for which manpower of higher skill is required.

3.2 The cadre restructuring is an effective method for improving productivity. The thrust areas of Railways Eighth Plan include electrification, modernisation and technology upgradation which require upgradation of the skills. Higher grade posts have been created to attract skilled and educated work force to meet the demands of higher technology. The existing staff have also to be given incentives to adapt to the new technology and methods of working, therefore Railway Board instructed the upgraded posts may be filled up by selection/seniority-cum-suitability so that selected incumbents may fulfil above set objectives. These upgradings are not ordered merely to give the financial benefits by raising the salary of certain posts. Posts caused due to upgradation involves the selection/appointment therefore normal reservation rules are applicable.

3.3 That in the restructuring orders issued vide

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letter No. PC III/91/CRC/5 dtd. 27-1-93, the total number of posts in the higher grades of a cadre will increase with corresponding reduction in the lower grades and thus additional vacancies will occur in favour of SC/ST against reservation as per the percentage in the higher grades with corresponding reduction in the lower grades. Though there may not be any change in the total cadre strength that is all grades of a particular cadre put together. A copy of the said letter dated 27-1-1993 is annexed hereto and marked as Exhibit '2'

3.4 That the CAT Jodhpur in TA No. 269/1986 - Dr. Ajit Kumar Vs. Union of India's case upheld the reservation in the upgraded posts as it involves the process of selection/testing suitability of the person who is getting such promotion.

3.5 That the Kerala High Court in the case of N.G. Prathu and others Vs. Chief Justice and others (1973 (2) SLR - 251) also held that where raising of the salary scale without effecting in the category viz. reservation rules will not apply whereas in the present upgradation, it

is raising of the salary scale in the category

of one category only and not in other category

only and hence it is not a case of

raising of the salary scale in the category of higher responsibilities.

3.6 That, in terms of clause (i), of interim directives of such orders of this Hon'ble Tribunal, the reservation in accordance with the 40 points roster is required to be provided subject to the

condition that the Members of the SC/ST do not exceed 15 & 7% respectively at any given point of time, which in other words mean once the number of posts in a particular grade increases while the percentage is applied the reserved vacancies also will automatically increase to that extent directives in sub para (ii) is contrary to sub para (i).

3.7 That this Hon'ble Tribunal has not appreciated the correct intention of the restructuring scheme whereby only a few posts from a particular grade has been upgraded to the next higher grade with corresponding reduction in the lower grades.

3.8 That this Hon'ble Tribunal has failed to appreciate the fact that this is not an en-mass upgradation in which one grade is replaced by the other without any change in the number of posts in any particular grade.

3.9 That the Hon'ble Tribunal over-looked the fact that in the instance upgradation against reservation the SC/ST employees will get additional posts only to the extent of the prescribed percentage arising out of the increase in the number of posts in a particular grade.

3.10 The word promotion has been defined in the Indian Railway Establishment Manual-I (Revised Edition 1989) in para 211 as under:-

"Promotion includes the promotion from lower grade to higher grade, from one class to another class and from one grade to another grade. Thus CAT has incorrectly assumed that the upgradation does not amount appointment i.e. promotion.

There are some posts of same grade but they are considered higher such as co-ordinating Senior Administrative Grade Officers known as Head of Department of grade 5900-6700 and Senior Administrative Grade Officers of 5900-6700 are working in the one and same grade even then if it is considered promotion".

3.11 That the Hon'ble Tribunal over-looked the fact that in the instant case the incumbents of the upgraded posts including the SC/ST employees and also non SC/ST employees according to the 40 point roster formula.

3.12 In pursuance of para 16 of Railway Board's letter dated 27-1-93, further instructions have been issued under Member Staff, Railway Board and ex-officio Secretary to Govt. of India confidential D.O. letter No. PC-III/91/CRG/5 dated 1.2.93 vide which zonal Railways have been instructed that vacant posts of Group D as on 28.2.93 should be surrendered and the posts of Group D in lowest grade which fall vacant after 1.3.93 may be kept frozen and not filled-up upto 5% of book of sanction as on 1.3.93. No relaxation in qualification is to be granted for direct recruit category. The present upgradation is not meant to confer financial benefits in shape of better career and proper progression rather these benefits are consequel as existing staff have also been given opportunity to man higher grade posts and promotion as and whereas basis directed to just avoid hardship in mid session transfers etc. In N.K.Saini & others Vs. Union of India - OA No. 414/87 CAT/Allahabad drawn the

Conclusion that upgradation are for betterment and progression of career and remove the stagnation. Present upgradation is an exercise to achieve 5% reduction in man-power also. Judging the Suitability by process of selection/seniority suitability Test/Trade test is one of the essential aspects of present upgradation as well as earlier upgradation rather fitting the senior people in new pay scale. N.K.Saini and others Vs. Union of India's case CAT placed the reliance incorrectly as facts in regard to upgradation are not identical and similar in nature.

3.13 That the Hon'ble Tribunal has failed to appreciate the fact that the reservation rules are equally applicable in the upgraded posts. The Government's Competency in introducing/withdrawing reservations from certain sphere of services has already been upheld by this Hon'ble Court in C.A. Rajendran Vs. Union of India 1968(1) SCR-721.

3.14 That the Hon'ble High Court of Andhra Pradesh in W.P. No. 5856/1982 Dr. K. Ramakrishnaiah and Others Vs. G.M./S.C. Ry & Others has upheld the reservation for SCs/STs in upgraded posts.

4.1 The Hon'ble Court has incorrectly appreciated that the instructions contained in Railway Board's letter No.89-E(SCT)I/49/5 Pt. dt. 16.6.1992 are contrary to the directions of the Full Bench and Orders of Supreme Court in J.C. Malik's case. On the submission of applicant's Advocate who had taken exception to Clause 3.1 of the above said letter which reads as under:-

"The panel of candidates may be formed as per existing procedure. In non-Safety categories

in case adequate number of SC/ST candidates are not available as per general merit in the panel to fill the reserved posts, additional SC/ST candidates to the extent of deficiency may be placed on the panel applying the specified relaxed standard and if still the reserved quota is unfilled further SC/ST candidates may be considered for adhoc promotion under the best amongst the failed pm policy."

These instructions are not at all contrary to the decision of the J.C. Malik's case as well as Full Bench judgement of C.A.T/Hyderabad. In the above said clause 3.11 relaxed standard has been prescribed for the reserved posts to the extent of 15 & 7½ and not for general posts.

4.2 The Hon'ble Tribunal has incorrectly appreciated that the written statement submitted in O.A. 680/93 particularly clause 'd' which reads as under:-

"It is submitted that for making good deficiencies of 15 and 7½ percent, the principle of 40-point roster will be applied and after making good these deficiencies, the normal rules of seniority will be applied wherein any employee in the higher grade are senior to all employees in the lower grade and the employees whose names are borne on the earlier panel are senior to all these employees, whose names are borne selected in the subsequent panel, irrespective of the facts that they have accelerated promotion or otherwise."

is a part and parcel of Railway Board's instructions dated 10-6-02.

4.3 That the relevant provisions of law have been reproduced herein below for ready reference.

(a) Indian Railway Establishment Manual of Railway Board, Second Edition, 1962:

"Para 320. Seniority on promotion to non-selection posts:-

(a) Promotion to non-selection posts shall be on the basis of seniority-cum-suitability, suitability being judged by the authority competent to fill the post, by oral and/or written test or a departmental examination or a trade test as considered necessary and the record of service. The only exception to this would be in cases where for administrative convenience, which should be recorded in writing, the competent authority considers it necessary to appoint a Railway Servant other than the senior most suitable Railway Servant other than the senior most suitable Railway Servant to officiate in a short term vacancy not exceeding two months as a rule four months in any case. This will however, not give the Railway Servant any advantage not otherwise due to him. A Railway Servant, once promoted against a vacancy, which is non-fortuitous, should be considered as senior in that grade to all others, who are subsequently promoted. The suitability of a Railway Servant for promotion should be judged on the date of the vacancy in the higher grade or as close to it as possible.

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(b) An employee, who qualified in an earlier test and only promoted in a non-fortuitous vacancy but reverts to the lower grade before a subsequent test is held will rank senior to all others who qualify in the subsequent test. In respect of those, who have either officiated in fortuitous vacancies or did not officiate at all will not be given any protection for seniority on subsequent promotion.

(c) In respect of non-selection posts in the channel of promotion for staff in various categories combined, seniority list of employees passing the suitability test should be based on the length of service in comparable grades without, however, disturbing the inter-se seniority to staff belonging to the same category.

Para 314. Seniority in selection posts:

The seniority of two or more officiating Railway-Servants selected at different selection for a particular selection post should be fixed with reference to the date of selection, & that is to say, Railway-Servant borne on an earlier panel shall be senior to those selected later even though the latter may be continuously officiating in the selection posts as a local arrangement from a date prior to the date of promotion of the former or the latter may be substantively senior to the former."

Para 315. Seniority when date of appointment to a grade is the same

Subject to what has been stated in paragraphs 302, 303, 304, 305 and 306, when the

date of appointment to the grade are the same, the dates of entry into the grade next below it shall determine seniority. If those dates also coincide, then the dates of entry into each of the lower grades in order down to the lowest grade in the channel of promotion shall determine seniority. If these dates are also identical, then the relative date of birth shall determine seniority. If these dates are also identical, then the relative date of birth shall determine seniority, the older persons being the senior.

4.4 Hon'ble Tribunal has erred in not following the Supreme Court's judgment in the case of Karam Chand Vs. Haryana Electricity Board AIR 1989 SC 261 very clear and specific free from ambiguity and Full Bench CAT Hyderabad has also deliberated in their judgement dt. 27-2-92 about the applicability of the judgement of Karam Chand's case in O.A. No.759/87 with reference to SC/ST seniority and held that the seniority of SC/ST have to be reckoned as per feeder grade. Supreme Court's judgement is binding all the subordinate courts including Central Administrative Tribunals under Article 141 of Constitution without any exception. The matter of the seniority has fully deliberated in the CAT/Hyderabad judgement dt.27-2-92 and larger Bench's judgement are always accepted as binding judgement when contradictory judgments deliberated by different Central Administrative Tribunals and their views are irreconcilable, therefore Full Bench had not given any plausible reasons for differing with Full Bench decision and incorrectly proceeded on presumption that

seniority is an issue in J.C. Malik's case.

In this regard the following judgments may also kindly be considered:-

I) CAT/Jodhpur held in OA No.905/89 in which they held that seniority of SC/ST have determined with reference of railway rules.

II) In OA No.423/89 CAT/Jaipur agreed with the judgements of Jodhpur Bench given in OA No.905/89.

III) In OA No.358/90 of Ram Lal Vs. Union of India, CAT/Jabalpur also upheld SC/ST seniority as per Railway rules.

IV) Supreme Court while considering on 27.1.93, the Special Leave to Appeal (Civil) No.12214/02 against the judgements (dated 28-1-91) of CAT/Jabalpur Bench in OA No.358 and 359/90 Jaipur Bench OA No.423/89 in which petitioners Sri Dashratmal and others requested the ex-party stay but Supreme Court did not agree to stay judgement and ~~not~~ nor given any interim directions. This indicate, that the Supreme Court in hearing SLP for admission did not view these judgments of CAT/Jabalpur and Jaipur on merit to be stayed. A photostat copy of the same is placed at F/(356/90) is a case of Ram Lal Vs. Union of India in which seniority of SC/ST employees upheld by CAT/Jabalpur. In OA No.423/89, CAT/Jaipur also upheld the rule of normal seniority).

V) In the writ petition No.17386/84 in the Supreme Court of Giridhari Lal Kohli and others Vs. U.O.I. plaintiff made request that to restrain the implementation of Railway Board's letter No.85-E(SCP)I/49/2 dated, 26-2-85 to Northern Rly in which question of inter-so-

seniority of SC/ST employees were clarified.

The Supreme Court did not issue the stay orders for implementation of the above referred Board's letter. It also indicates that Supreme Court do not foresee any demerit in the existing practice and normal seniority rules existing in Railways.

These orders were issued in consultation with the then Dy. L.A.

4.5 Unfortunately the Reviewing Petitioners could not bring to the notice of this Hon'ble Tribunal, the aforesaid letter dated 27-1-1993 being Exhibit - 2 hereto, at the hearing of the above matters, inspite of due diligence.

Exhibit - 2

4.6 The Reviewing Petitioners humbly submit that there are certain errors apparent on the face of the record, as pointed out hereinabove, as such the said order dated 5-10-1993 ought to be reviewed.

4.7 The Reviewing Petitioners also submit that there are various sufficient reasons as set out hereinabove, this Hon'ble Court ought to review the aforesaid order.

4.8 Even otherwise, for the reasons set out hereinabove, the said order ought to be reviewed.

5. The certified copy of the aforesaid order dated 5-10-93 was received by the Reviewing Petitioners on 25-10-1993 as such the present Review Petition is filed in time, and even if there be any delay, the same be condoned, to meet the ends of justice.

6. In view of what has been set out hereinabove, the Review Petitioners above-named

pray that this Hon'ble Tribunal may be pleased to;

- (i) Review and quash the interim orders passed on 5-10-1993 in para 23(i) & para 24(ii) & (iii) as mentioned hereinabove and the matter be heard afresh;
- (ii) Delay if there be any infiling this Review Petition be condoned.
- (iii) For such other and further reliefs as this Hon'ble Court may deem fit and proper.
- (iv) Costs may be provided for.

for and on behalf of
Reviewing Petitioners

Dated this 24th day of
November, 1993.

(K. L. Dukhadekar)
(S. S. CUREJA)
Dy. Chief Personnel Officer
(S. S. C.)
Western Rly, Churchgate,
Bombay.

Advocate for Reviewing Petitioners.