

**THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR
ORDER SHEET**

APPLICATION NO.: _____

Applicant (S)

Respondent (S)

Advocate for Applicant (S)

Advocate for Respondent (S)

TES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

29.06.2009

OA No. 12/2005 with MA 01/2007 & 158/2007

Mr. P.V. Calla, Counsel for applicant.

Mr. Anupam Agarwal, Counsel for respondents.

Heard learned counsel for the parties.

For the reasons dictated separately, the OA as well as MAs are disposed of.


(B.L. KHATRI)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

AHQ

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 29th day of June, 2009

ORIGINAL APPLICATION NO. 12/2005

With

MISC. APPLICATIONS NOS. 01/2007 & 158/2007

CORAM:

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. B.L. KHATRI, ADMINISTRATIVE MEMBER

1. Smt. Gladys Massey wife of Shri Jarold Massesy, aged about 54 years, Matern Gr. II, Office of the Chief Medical Superintendent, Railway Hospital, North Western Railway, Ajmer,
2. Smt. Veena High wife of Mr. Jonathan R. High, aged about 51 years, Matern Gr. II, Office of The Chief Medical Superintendent, Railway Hospital, North Western Railway, Ajmer.

.....APPLICANT

(By Advocate: Mr. P.V. Calla)

VERSUS

1. Union of India through General Manager, North Western Railway, Jaipur.
 2. The Divisional Railway Manager (Estt.), North Western Railway, Ajmer Division, Ajmer.
 3. Smt. Kamal A. Mane
 4. Smt. Usha B. Parmar
 5. Smt. Shakuntala B Parmar
 6. Smt. Kripawati Massey
- Private respondents nos. 3 to 6 are Matern Gr. II, Office of the Chief Medical Superintendent, Railway Hospital, North Western Railway, Ajmer.

.....RESPONDENTS

(By Advocate: Mr. Anupam Agarwal)

ORDER (ORAL)

The grievance of the applicants in this case is regarding notification dated 10.11.2004 (Annexure A/1) whereby 5 posts of Assistant Nursing Officer were intended to be filled in by promotion. As can be seen from notification dated 10.11.2004 (Annexure A/1),

out of 5 posts, 3 posts were for General Category and one each for SC & ST. Feeling aggrieved by the aforesaid notification, the applicants have filed this OA thereby stating that the respondents have wrongly notified the two posts for reserved categories contrary to the judgment rendered by the Constitution Bench in the case of R.K. Sabbarwal vs. State of Punjab, AIR 1995 SC 1371. The applicant has also made reference to the DOPTs instructions dated 02.07.1997 which stipulates as to how the roster has to be implemented in the light of the judgment rendered by the Constitution Bench in the case of R.K. Sabbarwal and based on the judgment of the Apex Court, the Railway Board has also issued instructions dated 21.08.1997.

2. Notice of this application was given to the respondents. The respondents have filed reply. Along with the reply, the respondents have also annexed copy of Railway Board order dated 06.09.2002 i.e. RBE 154/2002 which stipulates the criteria for reservation roster for promotion from Group 'C' to Group 'B' and within Group 'B' category. Perusal of this Annexure shows that the instructions as adopted by the Railway Board vide letter dated 21.08.1997, which stipulates procedure regarding filling of the reserved vacancies on the basis of post based roster, has not been followed while making promotion to the aforesaid category, rather the respondents have followed the instructions which were prevalent prior to the issuance of instructions dated 21.08.1997 by the Railway Board and contrary to the law laid down by the Apex Court in the case of R.K. Sabbarwal.


3. We have heard the learned counsel for the parties. We are of the view that without going into merit of the case and the contentions as raised by the applicants, the present case can be disposed of solely on the ground that the respondents have not followed the correct procedure while working out the reservation on the aforesaid posts as advertised vide notification dated 10.11.2004 (Annexure A/1), The Constitution Bench decision in the case of R.K. Sabbarwal was rendered in the year 1995 whereby the Apex Court

has held that reservation shall be made applicable on the basis of post based roster and not on the basis of vacancy based roster. In the light of the decision rendered by the Constitutional Bench, which has been followed by the respondents while issuing the Railway Board letter dated 21.08.1997, it was not permissible for them not to apply reservation based on post based roster in respect of posts as advertised vide notification Annexure A/1. Thus according to us, the respondents have committed legal infirmity in adopting vacancy based roster instead of post based roster while determining vacancies in terms of notification dated 10.11.2004 (Annexure A/1). Thus, we are of the view that the applicants have made out a case for grant of limited relief. Accordingly, the impugned order dated 10.11.2004 (Annexure A/1) is set aside to the extent which provides for filling up 2 vacancies from SC & ST category. The case is remitted back to the respondents to re-determine the vacancies in the light of the law down by the Apex Court which stipulates that reservation has to be worked out in relation to post and not on vacancy based roster. Ordered accordingly. It is made clear that while determining the vacancies and working out the reservation on post based roster basis, the respondents shall take into consideration all the 5 posts as advertised vide notification dated 10.11.2004 (Annexure A/1). The respondents will take steps for filling remaining posts of Assistant Nursing Officer only after applying correct law.

4. With these observations, the OA is disposed of with no order as to costs.

5. In view of the order passed in the OA, no order is required to be passed in Misc. Applications nos. 01/2007 & 158/2007, which are also disposed of accordingly.


(B.L. KHATRI)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

AHQ