

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH, JAIPUR

JAIPUR, the 28<sup>th</sup> day of February, 2005

ORIGINAL APPLICATION No. 172/2003

CORAM:

HON'BLE MR. V.K.MAJOTRA, VICE CHAIRMAN (A)  
HON'BLE MR.M.L.CHAUHAN, MEMBER (J)

1. Mohammed Nayeem  
s/o Shri Abdul Rafiq  
r/o 47/40  
Flower Gali,  
Darga Bazar,  
Ajmer.
2. Suresh Chand Gupta  
s/o Shri Ishwar Lal Gupta,  
9/6/2-C ,  
Vidyadhar Nagar,  
Jaipur.
3. Radhey Shyam Sharma  
s/o Shri Matadeen  
r/o 26-A, Shanti Nagar,  
Hasanpura,  
Jaipur.
4. Raj Kumar Yadav  
s/o Shri Birbal Singh  
r/o 29, Radhakrishanpura,  
Sikar.
5. Ravindra Sharma  
s/o Shri Sri Narayan  
r/o Jhumar Lal Ki Bagichi,  
Opposite All India Radio,  
MI Road,  
Jaipur.

48

6. Gopesh Sharma  
s/o Shri Mahesh Chand Sharma  
r/o A-13, Anita Colony,  
Gandhi Nagar,  
Jaipur

7. Vinod Tiwari  
s/o Shri Ram Awatar Sharma  
r/o 26-A Shanti Nagar,  
Hasanpura,  
Jaipur.

8. Ravi Chand Tiwari (Retd.)  
s/o Shri B.B.Tiwari,  
r/o Plot No.1,  
Barodia Basti,  
Power House Road,  
Jaipur.

9. Salim Mohammed  
s/o Shri Mohammad Khan  
r/o ENT, 113-F,  
Loco Colony,  
Jaipur.

10. Rajendra Mittal  
s/o Shri Kali Charan  
r/o E/108,  
Tara Nagar,  
Jaipur.

11. Tarun Gaur  
s/o Shri Ramchandra Gaur  
r/o 48 Bhagwat Watika,  
Jaipur.

12. Pramod Saxena  
s/o Shri Lajpat Rai Saxena  
r/o C-209,  
Malviya Nagar,  
Jaipur.

13. Ashok Kumar  
s/o Shri Jagat Narayan  
r/o 5-Jha-34,  
Jawahar Nagar,  
Jaipur.

14. Yogendra Sharma  
s/o Shri Amarnath Sharma  
r/o 185 Janak Puri-II,  
Imli Wala Phatak,  
Jaipur.

62

15. Sailesh Bhatnagar  
 s/o Shri N.S.Bhatnagar,  
 r/o 144 Shanti Nagar,  
 Ajmer Road,  
 Jaipur.

All the applicant are working in the  
 Grade Rs. 5000-8000 on the post of Head TTE/  
 Head TC/TNCR.

...Applicants

(By Advocate: Shri P.V.Calla)

Versus

1. Union of India through  
 the General Manager,  
 North-West Railway,  
 Headquarters Office,  
 Jaipur
2. The Divisional Railway Manager,  
 Jaipur Division,  
 Jaipu
3. Shri Makhan Lal Jeph,  
 s/o Shri Mata Ram,  
 Trains Conductor (TNCR),  
 C/o DCTI,  
 Jaipur Division,  
 Jaipur.
4. Shri Shyam Singh  
 Travelling Ticket Inspector,  
 O/o the Chief Ticket Inspector,  
 Bandikui.
5. Shri Mahadev Ram Meena  
 S/o Shri Bhura Ram,  
 Head TTE O/o the Chief  
 Ticket Inspector,  
 Sikar

6. Shri Chhote Lal  
r/o Malakali Dhani,  
Near Ringus Railway  
Station, District Sikar
7. Shri B.L.Meena  
s/o Shri Bhonri Lal,  
Trains Conductor TNCR),  
O/o the DCTI, Jaipur
8. Shri V.L.Meena, Head TTE  
O/o the Chief Ticket Inspector,  
Sawai Madhopur.
9. Shri R.C.Meena  
s/o Shri Khyali Ram Meena,  
Head TTE, O/o Chief  
Ticket Inspector (Sleeper),  
Jaipur.
10. Shri J.P.Meena  
s/o Shri Arjun Sahay,  
Head TTE,  
O/o Chief  
Ticket Inspector,  
Sikar.
11. Shri Net Ram Meena  
s/o Shri Ram Ratan Meena,  
Head TTE  
O/o CTI (Sleeper),  
Jaipur.
12. Shri Pratap Singh  
S/o Shri Bodan Ram,  
Travelling Ticket  
Inspector, O/o CTI,  
Alwar.
13. Shri Balbir Singh  
s/o Shri Hanuman Singh,  
Head TTE C/o CTI,  
Bandikui

62

14. Shri Shri Chand Parwalia  
S/o Shri Ram Lal,  
Head TTE, Office of CTI, Bandikui.
15. Shri Mohan Lal Mehra  
s/o Shri Ram Sahai Mehra,  
Head TTE O/o CTI (Sleeper)  
Jaipur.
16. Shri Ganga Sahay  
S/o Shri Nand Ram,  
Head TTE O/o CTI (Sleeper),  
Jaipur.
17. Shri Suresh Kumar P.  
Shri Piyare Lal,  
Head TTE c/o O/o CTI, Rewari
18. Shri Om Prakash  
s/o Shri Shishupal,  
O/o CTI (Sleeper),  
Jaipur.

.. Respondents

(By Advocate: Mr. Anupam Agarwal and  
Mr. Manish Bhandari)

ORDER

**Per Hon'ble Mr. M.L.Chauhan.**

The applicants who belong to the cadre of ticket checking staff are aggrieved of the order dated 9.5.2002 (Ann.A1) whereby the <sup>provisional</sup> combined seniority list of ticket checking staff was issued, which was subsequently made final vide notification dated 18.12.2002 (Ann.A2) so far as it relates to the grade of Rs. 5000-8000 (Rs. 1400-2300 unrevised). In relief clause, the applicants have made the following prayers:-

"It is therefore prayed that the Hon'ble Tribunal may kindly call for and examine the entire records relating to this case and by an appropriate writ, order of direction:

(i) Command the official respondents to recheck the position of reserve category candidates (in respect of the private respondents) and after doing this exercise senior employees belonging to general category may be granted higher scale i.e. 1400-2300 that is revised to Rs. 5000-8000 w.e.f. 1.3.1993 with all consequential benefits.

(ii) further by appropriate writ, order or direction the official respondents may be restrained not to accord higher scale by apply reservation under restructuring upgradation scheme in future.

(iii) Any other relief to which the applicant is found entitled, in the facts and circumstances of the facts and circumstances of the present case, may also be granted in favour of the applicants.

(iv) The Original Application may kindly be allowed with costs."

2. Briefly stated, the applicants belong to cadre of ticket checking staff in which various posts are available in different grades. The details of posts are as under:-

- 1) TTE/Sr.TC - 1200-2040 (4000-6000)
- 2) Head TTE/Head TC/TNCR scale Rs. 1400-2300 (5000-8000)
- 3) TTI/TNCR scale Rs. 1600-2660 (500-9000) and
- 4) CTI Scale Rs. 2000-3200 (6500-10500)

The applicants were initially appointed in the grade of Rs. 1200-2040 (4000-6000). The dispute in the present case is regarding the posts of Head

TTE/Head TC/TNCR carrying pay scale of Rs. 5000-8000. It is stated that as per provisions contained in IREM, a panel was prepared for the posts carrying pay scale of Rs. 5000-8000 after a positive act of selection and no one can be promoted in the grade of Rs. 5000-8000 without qualifying the selection. It is further stated that the Railway Board from time to time introduced upgradation/cadre restructuring programme. As per the said scheme whosoever is senior most in the feeder cadre is provided new scale without passing any selection. As per this modified selection procedure, the priority is given to the seniority subject to suitability and suitability has to be judged after looking into the records. It is further stated that the reservation is not applicable while granting promotion/higher scale on account of upgradation. It is further stated that the railway administration by mis-interpreting  rules and the scheme applied reservation in the case of upgradation on account of restructuring of cadre and the action of the railway administration was assailed before various Benches of the Central Administrative Tribunal and the matter went up to the Hon'ble Supreme Court. It is further stated that after examining the matter on all levels, it has been decided that restructuring of cadre is not a promotion nor it is a creation of new posts and 

providing higher grade to the reserved category candidates superseding general category candidates is bad in law. For that, purpose the applicants have placed reliance on the judgment passed by the Supreme Court in the case of All India Non-SC/ST Employees Association vs. V.K.Agarwal. It is further stated that the Railway Board vide letter dated 27.1.1993 circulated the scheme of upgradation/restructuring and pursuant to the aforesaid scheme vide order dated 25.4.1994 large number of employees working in the scale of Rs. 1200-2040 were given higher grade of Rs. 1400-2300 (Rs. 5000-8000). Copy of the said order has been annexed as Ann.A4. It is further stated that 9 candidates were given benefit of restructuring/upgradation by applying the reservation as against their names. It is further stated in the note below this order that all 9 candidates were found unsuitable on the basis of service record and the said order was made effective on 1.3.1993. It is further stated that the order dated 25.4.1994 was later on modified vide order dated 6.6.94 (Ann.A5) and the candidates belonging reserved category were also empanelled. It is further stated that for the purpose of grant of promotion in the grade of Rs. 1400-2300 (Rs. 5000-8000) eligibility list was prepared in the year 1992, copy of the said eligibility list has

been placed on record as Ann.A6. It is further stated that in the said eligibility list the name of the applicants found above respondent Nos. 3, 4 and 5. It is further stated that in view of the legal position settled by the Apex Court that no reservation will be applicable while affording higher grade in restructuring, bunch of applications were also filed before this Tribunal. While deciding the bunch of cases, this Tribunal vide order dated 29.3.2001 in the case of M.D.Sharma vs. UOI directed the railway administration to take up fresh exercise of revising the seniority list on the basis of catch-up principle at the level senior general candidates catch-up with junior roster promotees and after such exercise they shall issue a fresh eligibility list for promotion to the next level in accordance with law. It is further stated that in compliance of the judgment rendered by this Tribunal the railway administration vide letter dated 7/8.8.2001 issued a seniority list of ticket checking branch. Names of the applicants in the seniority list in the grade of Rs. 5000-8000 were shown above private respondents. Copy of the said seniority list has been placed as Ann.A7. The grievance of the applicants is that thereafter the railway administration issued a provisional seniority list vide notification 9.5.2002 (Ann.A1)

in respect of ticket checking branch including seniority list of employees working in the grade of Rs. 5000-8000 and while issuing the above provisional seniority list, names of the applicants were shown below private respondents. That seniority list was made final vide notification dated 18.12.2002 (Ann.A2). It is on this basis, the applicants have filed this OA thereby challenging the impugned seniority list Ann.A1 and A2 and also praying that they be given upgradation in the scale of Rs. 5000-8000 w.e.f. 1.3.93 with all consequential benefits and the official respondents may be restrained not to accord higher seniority by applying reservation in upgradation and restructuring scheme in future.

3. Notice of this application was given to the official respondents as well as private respondents. The private respondents, despite repeated opportunities, have not filed reply. However, the official respondents have filed reply. The fact that promotion of private respondents from the grade of Rs. 1200-2040 (Rs. 400-6000) to the scale of Rs.1400-2300 (Rs. 5000-8000) was given pursuant to the restructuring scheme is not denied. However, it has been stated that in the restructuring scheme dated 27.1.1993 in para 10, a provision was made that the existing instructions

60/

with regard to reservation to SC/ST be continued while filling additional vacancies in the higher grade due to restructuring and it was on that account the reservation was given to the private respondents. Regarding change of seniority which was issued pursuant to the judgment rendered by this Tribunal in the case of M.D.Sharma and other connected matters (supra) decided on 29.3.2001, it has been stated that now the Railway Board vide letter dated 21.11.2002 has issued fresh instructions providing therein that instead of base grade seniority it should be entry into the grade which will determine the seniority and looking to this circular, the position, as was existing, was modified.

4. We have heard the learned counsel for the parties and gone through the material placed on record.

4.1 The learned counsel for the applicants raised two fold grievance in this case. Their first grievance is regarding promotion in the grade of Rs. 5000-8000 w.e.f. 1.3.93 pursuant to restructuring scheme issued by the respondents in the light of the judgment rendered by the Apex Court in the case of Union of India vs. V.K.Sirothia, 1993 SCC (L&S) 938 and also clarificatory order dated 31.10.2001 passed by the

Apex court in the case of All India Non-ST/SC Employees Assosiciation vs. V.K.Agarwal reported in 2002 SCC (L&S) 688 whereby it has been held that principle of reservation is not applicable in the upgradation of existing posts, the affect of which was 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 lower scale will go into the higher scale, it would be a case of upgradation of the posts and not a case of additional vacancies or posts being created to which the reservation principle would apply. The second grievance of the applicants is regarding provisional seniority list issued vide Ann.A1 which was made final vide Ann.A2 in the grade of Rs. 5000-8000 whereby the position of the applicants as per seniority list dated 7/8.8.2001 (Ann.A7) was changed to the detriment of the applicants whereby the private respondents have been shown senior to the applicants. So far as first grievance of the applicants that the applicants should be granted higher scale i.e. Rs. 1400-2300 (Rs. 5000-8000) w.e.f. 1.3.93 pursuant to restructuring scheme is concerned, we are not inclined to grant the said relief, inasmuch as, the applicants have not challenged the promotion order of the private respondents whereby they were granted promotion in

60

the year 1994 w.e.f. 1.3.93 and as such the validity of the said order cannot be gone into. Further, the present application has been filed in the year 2003 and is barred by time. The applicants have not moved any application for condonation of delay thereby explaining the circumstances under which the OA could not be filed, in case they were not granted upgradation in the pay scale of Rs. 5000-8000 w.e.f. 1.3.93 when such promotions were made in the year 1994 thereby extending benefit of reservation to the upgraded posts on account of restructuring of the cadre. As such no relief can be granted to the applicants.

4.2 So far as the second grievance of the applicants is concerned, we are of the view that there is substantial force in the submissions made by the learned counsel for the applicants. At this stage it may be stated that the Railway Board in order to remove stagnation had been resorting to restructuring of cadre w.e.f. 1.1.79, 1.10.80 and 1.1.93 and subsequently w.e.f. 1.1.2003 by taking into consideration total strength of all the categories in one cadre and then distributing the vacancies. In the instant case, we are concerned with the restructuring in the cadre of ticket checking staff w.e.f. 1.1.93. At this stage it may be noticed that prior to 1.1.1993 reservation was also made applicable in respect of restructuring of

cadre w.e.f. 1.1.1979 and 1.10.80 by the railway authorities. The restructuring policy was challenged before the Jodhpur Bench of this Tribunal in OA No.326/89 and reservation in restructuring of cadre was set-aside. The matter was carried to the Apex court by the railway administration and the Apex Court in Civil Appeal No. 1481/96 dismissed the case of the railway authorities vide order dated 19.11.1989 thereby holding that reservation for SC/ST is not applicable in the case of upgradation of existing posts. The decision in the aforesaid civil appeal was passed on the basis of the judgment rendered by the Apex Court in the case of Union of India vs. V.K.Sirothia, 1999 SCC (L&S) 938 whereby the Apex Court in Para 2 has observed as under:

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"The findings of the Tribunal that the so-called promotion as a result of redistribution of posts is not promotion attracting reservation on the facts or the case, appear to be based on good reasoning. On facts, it is seen that it is case of upgradation on account of restructuring of the cadres, therefore, the question of reservation will not arise. We do not find any ground to interfere with the order of the Tribunal."

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The decision rendered by the Apex Court in the case of V.K.Sirothia (supra) was further reiterated and clarified by the Apex Court in the case of All India Non-SC/ST Employees Association (supra) whereby the Apex Court in no uncertain terms has stated that where as a result of re-classification

16

and re-adjustment there are no additional posts which are created and it is a case of upgradation then principle of reservation will not apply. The effect of such upgradation is that where the total number of posts remain 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 lower scale of pay will go into the higher scale, it would be a case of upgradation of posts and not a case of additional vacancy or posts being created to which reservation would apply.

4.3 Thereafter various Benches of this Tribunal including this Bench has rendered judgments following the aforesaid judgment of the Apex Court that in the case of restructuring of the cadre the reservation would not be applicable. In the instant case, it is admitted case between the parties that the applicants who were initially inducted in the cadre of ticket checking staff in the pay scale of Rs. 1200-2040 (Rs. 4000-6000) were eligible to be promoted in the scale of Rs. 1400-2300 (Rs. 5000-8000) against the post of Head TTE/Head TC/TNCR. It is also not dispute that the aforesaid post is selection post and as per provisions contained in IREM the selection to the said post is a positive act and a person can be promoted only after

qualifying the selection. Admittedly, the respondents have not resorted to this provision while granting promotion to the private respondents in the grade of Rs. 5000-8000. Had the respondents resorted to this method of selection as envisaged in the IREM then the official respondents would have been justified applying reservation to the higher post but as already stated above, the Railway Board in order to remove stagnation introduced upgradation/cadre restructuring scheme thereby providing the modified method of selection and on account of upgradation/restructuring of the cadre higher grade was to be given on the basis of seniority subject to suitability. It is also not in dispute that the respondents resorted to the policy of reservation while implementing the restructuring scheme and thereby making promotion in the year 1994 on account of this modified selection scheme dehors the provisions contained in the IREM and promoted certain persons, in the grade of Rs. 5000-8000 including the private respondents thereby ignoring the claim of the applicants, general candidates, who were admittedly senior to the private respondents. According to us, such a course was not permissible to the respondents in view of the law laid down by the Apex Court in the cases of V.K.Sirothia and All India Non-SC/ST Employees Union, But since the applicants have not challenged

promotion order of the private respondents in the grade of Rs. 5000-8000 at the relevant time and also the validity of promotion order is not under challenge, as such no relief can be granted on this account, as already stated. However, the grievance of the applicants that at least they are entitled to be shown senior to the reserved category candidates in the grade of Rs. 5000-8000 cannot be lost sight of and there is substance in the submissions made by the learned counsel for the applicants. At this stage, it may be stated that some of the affected persons have also filed OA in this Tribunal which was disposed of by common order dated 29.3.2001 (OA No.387/89, M.D.Sharma vs. UOI and other connected matters) and the issue involved in those OAs was determination of principle of reservation for SC/ST candidates promoted earlier on roster principle vis-à-vis general candidates promoted later. This Tribunal while quashing the impugned seniority list directed the respondents to take up fresh exercise of revising the seniority list on the basis of catch-up principle at the level senior general candidates catch-up with the junior roster promotees and after such exercise they shall issue fresh eligibility for promotion to the next level in accordance with law. Pursuant to the directions issued by this Tribunal, the respondents issued a seniority list Ann.A7 whereby

the applicants were shown senior to private respondents. Now the respondents have issued another provisional seniority list dated 9.5.2002 (Ann.A1) and based on this a final seniority list dated 18.2.2002 (Ann.A2) was issued whereby applicants who were senior in the seniority list dated 7/8.8.2001 (Ann.A7) were shown junior to the private respondents. This exercise was undertaken by the respondents on the plea that in view of the 85<sup>th</sup> Constitutional Amendment and the instructions issued by the Railway Board vide letter dated 21.11.200<sup>1</sup>, the position which was existing prior to 1995 was to be maintained. According to us, the action of the respondents is wholly illegal and arbitrary. It may be stated that the circular dated 21.11.200<sup>1</sup> on the basis of which the impugned seniority list Ann.A1 and final seniority list Ann.A2 was prepared is not attracted in the instant case. This circular is applicable where the person has been promoted in higher post on account of reservation from the earlier date than the general candidate who could not be promoted for want of vacancy and thus the reserved candidate has been given accelerated promotion and it was on that account that the catch-up principle was evolved by the Apex Court and it was held that the seniority should be determined on the basis of base grade/catch-up principle. As already stated above,

this is not the case of that nature. This is a case where the private respondents were promoted to the higher grade on the basis of restructuring of the cadre where the reservation policy was not applicable at all. It is true that in OA No.387/99 decided by this Bench vide judgment dated 29.3.2001, the benefit was given to the general category candidates on the basis of catch-up principle and accordingly seniority was also determined by the railway authorities vide Ann.A7 but the fact remains that the higher scale of Rs. 5000-8000 was given to the private respondents under the restructuring scheme on the plea that reservation is applicable in restructuring cadre contrary to the law laid down by the Apex Court. Thus, it is not a case of promotion where the instructions issued by the Government from time to time regarding reservation is applicable. Rather it is a case where the reservation was made applicable on account of restructuring of the cadre and the private respondents were given promotion earlier to the applicants contrary to the law laid down by the Apex Court. which was not permissible. Since the applicants have not challenged the validity of the order whereby private respondents were given promotion in the year 1994 at the relevant time and also that the persons belonging to SC/ST who have been given promotion prior to 1995 were *protected* *or*

by the decision rendered by the Apex Court, as such they could not have been reverted even though they were illegally promoted and nothing prevented the affected persons to challenge the said order within one year as prescribed under Section 21 of the Administrative Tribunals Act. However, we are of the firm view that the applicant have made out a case for restoration of their seniority in the grade of Rs. 5000-8000 qua the private respondents who were illegally promoted applying the principle of reservation under the restructuring scheme.

4.4 Accordingly, the impugned seniority lists Ann.A1 and A2 are hereby quashed and set-aside so far as it relates to the seniority in the grade of Rs. 5000-8000 and respondents are directed to make further promotion under upgradation in the higher post on the basis of seniority of the applicants in the grade of Rs. 5000-8000 as shown vide Ann.A7.

4.5 At this stage, we may notice the submissions made by the learned counsel for the respondents that the applicants have not specifically prayed in the prayer clause regarding quashing of Ann.A1 and A2, as such ,no relief can be granted to him. The submissions made by the learned counsel for the applicants is bereft of merit and deserves outright rejection. As can be seen from para 1 (a) of the application under heading 'Details of the order against which the application is made' the

applicants have specifically stated that they are aggrieved of the impugned seniority list issued vide Ann.A1 and A2. Thus, the OA was filed against these orders only, as such it is permissible for the Tribunal to mould the relief and grant appropriate relief even if it is not prayed in the prayer clause.

5. Accordingly, the OA is partly allowed in the aforesaid terms with no order as to costs.

  
(M.L.CHAUHAN)

Member (J)

  
(V.K.MAJOTRA)

Vice Chairman

28.2.05