

Central Administrative Tribunal, Jabalpur Bench

OA No.149/2005

Jabalpur this the 13th day of June, 2006

Hon'ble Mr. Justice M.A.Khan, Vice Chairman (J)

Hon'ble Dr.G.C.Srivastava, Vice Chairman (A)

Jainendra Kumar Chourasia,
Aged about 43 years,
S/o Shri Puran Lal Chourasia,
J.E.-I (TRS) West Central Railway Itarsi,
Resident of RB III/533, Azad Nagar, New Yard
ITARSI, Distt. Hoshangabad (M.P.)

.... Applicant

(By Advocate: Shri L.S.Rajput)

VERSUS

Union of India, though

1. General Manager,
West Central Railway,
Indira Market, Near Railway
Station, Jabalpur (M.P.) 482001.
2. Divisional Railway Manager,
West Central Railway,
Habibganj-Bhopal (M.P.)
3. Shri Chandra Kant Mandlik (ST),
J.E.-I (TRS) Loco-Shed Itarsi.
4. Shri R.K.Nagraj (SC) J.E.-I (TRS)
Loco-Shed Itarsi.
5. Shri Narendra Kumar Bisare (SC)
J.E.-I (TRS) Loco-Shed Itarsi.
6. Shri K.S.Chouhan (ST) J.E.-I (TRS)
Loco-Shed Itarsi.

... Respondents.

Address of Respondents No.3 to 6
Through DRM (P) West Central
Railway Bhopal (M.P.)

(By Advocate: Shri M.N.Banerjee)

ORDER

By Hon'ble Mr. Justice M.A.Khan, Vice Chairman(J)

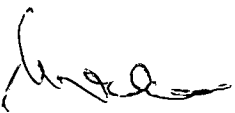
The applicant is claiming the following relief:-

- (i) Quash the impugned orders A-1 to A-4 holding the same to be illegal and void with a declaration that Para 14 of A-1 dated 9.10.2003 is not applicable in the restructuring scheme.

- (ii) Direct the official respondents to consider the applicant for placing him on appropriate place under the restructuring scheme, without any reference to reservation policy from due date with all consequential benefits within a reasonable time as deemed just by the Tribunal.
- (iii) Quash any other order passed against the interest of the applicant, during the pendency of the petition.

2. Shorn of unnecessary details, the facts relevant for deciding the contentions raised in the present OA are that the applicant has been working as J.E-I (TRS) in West Central Railway Loco Shed at Itarsi in grade of Rs.5500-9000 (RSRP). He is at S.No.5 in the seniority list and respondents 3,4 & 5 are at S.Nos. 23, 24 & 25 respectively. In the seniority list published on 5.2.2004 the applicant is at S.No.5 while the aforementioned private respondents are at S.Nos. 24, 25 & 29 respectively. As a result of restructuring of Group 'C' & 'D' cadres w.e.f. 1.11.2003, 6 posts of JE-I were upgraded to higher grade of Rs.6500-10500 (RSRP) as Section Engineer (TRS) by reducing the equal posts of JE-I and these upgraded posts were to be filled by modified selection. The grievance of the applicant is that the official respondents have filled up the 6 upgraded posts by applying the policy of reservation to SC/ST candidates. According to the applicant, this is contrary to the law laid down by the Hon'ble Supreme Court and other courts including this Tribunal. It is submitted that the applicant made a representation to the respondents but it has not evoked any response from the respondents.

3. The official respondents have contested the OA and controverted the contention of the applicant that reservation was not applicable to the 6 upgraded posts in question. It was stated that whenever the number of posts of any grade is reduced, reservation in promotion to the extent of 15% for SC & 7.5% for ST in proportion to the total number of posts would be reduced. If total number of posts increased in a particular grade, reservation is increased in proportion to a total number of posts in concerning grade. The guidelines issued by DOP&T vide OM dated 2.7.97 for post-based roster system in compliance of the Railway Board instructions were meant for implementation. These instructions were in compliance of the Apex Court judgment in the case of R.K.Sabbarwal Vs. UOI & Ors. 1995 Vol.29 ATC 481. It was submitted that the applicant was trying to mislead the Tribunal. In case of restructuring, a number of posts are increased in higher grades and in proportion a number of posts are reduced in lower grades. Detailed position is given in a statement in Para 5 of the reply. As a result of



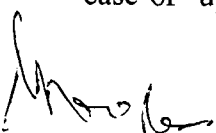
reduction of posts of JE-II in the grade of Rs.5000-8000 earlier reservation for SC is reduced from 4 posts to 3 posts and there is no reduction in ST posts, which remains the same as 2. Similarly in the case of JE Grade of Rs.5500-9000 earlier reservations for SC is reduced from 4 to 3 posts and for ST there is no change from 2 posts. The proportionate number of post reduced in lower grade has been increased in higher grade i.e. Rs.7450-11500/- from existing two number of posts to revised 3 number of posts to SC with no change for ST. The enhancement of post in SSE Rs.7450-11500 created resultant vacancies in Rs.6500-10500 grade against which promotion is granted. It is also stated that the total number of posts available earlier were 92, UR-72, SC-13 & ST-7, and after restructuring, the total number of posts remained 91, UR-72, SC-12 & ST-7, which within the prescribed limit of reservation i.e. 15% for SC & 7.5% for ST. Therefore, there is no violation of the reservation policy. According to the respondents, the scheme of restructuring was on functional, operational and administrative consideration. The post being placed in the higher scale of pay as a result of restructuring should included the duties and responsibilities of greater importance. These higher-grade posts are already classified as selection posts in normal channel of promotion since last 50 years without restructuring the scheme. The facts of the case are not same as in the order of Hon'ble Apex Court relied on by the applicant. Rather a decision of Lucknow Bench of this Tribunal in OA No. 356/04 decided on 4.10.2004 had affirmed the policy of reservation in cadre restructuring scheme of Railways and held that it was promotion to higher grade. The Bangalore Bench of this Tribunal in OA No.241, 870 and 1002 of 1999 also upheld the policy of reservation in upgradation and held it to be a promotion through selection.

4. We have heard the learned counsel for the parties.

5. The short question that arises for consideration is whether the upgradation of 6 posts in the grade of Rs.5500-9000 to the next higher grade of Rs.6500-10500 which is attached to the post of Section Engineer are to be filled by observing caste based reservation policy. Learned counsel for the applicant has relied upon the order of the Apex Court dated 31.1.2001 in the case of All India Non-SC/ST Employees Association (Railway) Vs. V.K.Agarwal & Ors, copy of which has been filed as A-7 to the OA. Aforesaid judgment will fortify the case of the applicant. The DOP&T vide OM

dated 25th October, 2004 had issued instructions for implementing this order, copy of which is marked as Annexure A-8. Learned counsel has also referred to a decision of the Full Bench of the Allahabad Bench of this Tribunal in the case of **P.S.Rajput & Others Vs. Union of India & others reported in 2006 (1) ATJ 36**. The question referred to the Full Bench was whether the upgradation of the cadre as a result of restructuring and adjustment of existing staff in the upgrade cadre can be termed to be promotion attracting the principle of reservation in favour of SC/ST. The Full Bench after analyzing the whole gamut of law laid down in various decisions of the Tribunal and the Supreme Court and also examining the restructuring scheme involved which was akin to the restructuring scheme in this case, answered the reference that the upgradation of the cadre as a result of restructuring and adjustment of the existing staff will not be termed as promotion attracting the principle of reservation in favour of SC/ST. He has also relied upon a decision of the Chandigarh Bench of the Tribunal in the case of **Unreserved Employees Association (Registered) Rail Coach Factory Kapurthala Vs. UOI & Others reported as 2005 (1) ATJ 1** in which also in a case of upgradation of certain posts as a result of restructuring of cadre it was held that reservation for SC/ST will not apply as placement in the higher pay scale in the restructuring scheme was not a promotion.

6. Conversely, the respondents placed reliance on the judgment of the Supreme Court in **R.K. Sabhawal Vs. State of Punjab (Supra)** wherein it was held that when a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserve points, it has to be taken that the posts shown at the reserve points are to be filled from amongst the members of reserve categories and the candidates belonging to the general category are not entitled to be considered for the non-reserved posts and in the event of their appointment to the said posts their number cannot be altered and taken into consideration for working out the percentage of reservation. It was further observed that the percentage of reservation has to be worked out in relation to number of posts, which form the cadre strength. Respondents also referred to an order of Lucknow Bench of the Tribunal dated 4.10.2004 in OA 356/2004 **K.Chandrashekhar Vs UOI and others (Supra)** wherein it was held that reservation would be applicable for SC/ST in case of upgradation as a consequence of restructuring. Further reliance is placed by the



respondents on the order of the Full Bench of the Bangalore Bench of the Tribunal in the case of M.L. Rajaram Naik and others Vs. Additional Director, CGHS Banagalore & Others, reported in the Compilation for the year 1997-2001 – Full Bench Judgment, page 194. The question referred to the Full Bench for consideration was as to whether the filling up of the upgraded posts in the higher scale of seniority cum fitness basis from the earlier scale amounted to promotion calling for application of reservation in favour of SC/ST. The Full Bench of this Tribunal answered the question in the affirmative holding that placing in 10% BCR Grade IV amounted to promotion and reservation for SC/ST in those posts was applicable. The judgment of the Rajasthan High Court in Rajiv Chaudhary Vs. State of Rajasthan 2003 (4) SCT 943 has been relied upon where in it was held that upgradation of posts after abolition of the existing vacancy will amount to filling up new posts and reservation would be applicable.

7. Before discussing the law applicable to the question raised, it seems necessary to recapitulate a few facts. The restructuring scheme was framed by the Railway Board vide letter dated 9.10.2003 (Annexure A1), implementation of which has resulted in upgradation of 6 posts in the grade of Section Engineer. This scheme shows that the Ministry of Railways reviewed the cadre of certain Group 'C' & 'D' staff in consultation with the staff side with a view to strengthening and rationalizing the staff pattern on Railways. As a result of the review undertaken on the basis of functional, operational and administrative requirement, Group 'C' and 'D' categories of staff as indicated in the annexures to that letter would be restructured in accordance with the revised percentages indicated therein. Detailed instruction to be borne in mind while implementing the orders was also appended. These instructions, which were enjoined to be carefully adhered to, could be summarized as follows.

8. The date of effect, i.e., the cut-off date of the restructured cadres will be with reference to the sanctioned cadre strength as on the date following the date on which the cadres in the headquarter offices of new Zonal Railway/new Divisions are closed. These orders will be applicable on the regular cadres except the staff of RDSO, ex-cadre and work charged posts and construction units and projects. Existing classification of the posts covered by these orders as 'selection' and 'non-selection', as the case may be, remains unchanged. While implementing period of service for promotion issued from

More

time to time should be followed. The cadres would be restructured on functional, operational and administrative considerations; the posts being placed in higher scales of pay as a result of restructuring should include the duties and responsibilities of ^{greater} importance. If prior to issue of these instructions the number of posts existing in any grade in any particular cadre exceeded the number admissible on the revised percentages, the excess may be allowed to continue to be phased out progressively with the vacation of the posts by the existing incumbents. Restructuring in certain categories of Ministerial Staff, Personnel Inspectors and Depot Material Superintendents would be subject to the introduction of direct recruitment in these categories and the element of direct recruitment of graduates with not less than 50% marks would be introduced at the level of Office Superintendent Gr.II in the pay scale of Rs.5500-9000 in the ministerial categories to the extent of 20% of the posts and remaining 80% of posts in grade Rs.5500-9000 would continue to be filled by promotion of staff from the lower grade Rs.5000-8000 as per the procedure in force. Similar percentage of reservation in the categories of Personnel Inspectors and Depot Material Superintendents would be filled by direct recruitment and promotion of staff from the lower grade was prescribed. The existing instructions with regard to reservation of SC/ST wherever applicable will continue to apply. Direct recruitment percentages will not be applicable to the additional posts arising out of these restructuring orders as on the cut off date. The direct recruitment percentage will apply for normal vacancies arising on or after the date following the cut off date. Also the direct recruitment quota as on the date preceding the cut off date will be maintained. The administration would also be required to take steps to pin point the additional posts arising out of the restructuring as per administrative requirements Schedule (Annexure E) to Annexure A1 of these instructions indicates the existing percentage and revised percentage of Technical Supervisor, who were in 4 grades, i.e., Rs.7450-11,500, Rs.6500-10,500, Rs.5500-9000 and Rs.5000-8000. As per para 14 of these instructions, the existing instructions with regard to reservation of SC/ST wherever applicable will continue to apply. In other words, normal reservation applicable would regulate appointment by promotion to the restructured posts/cadre.

9. Arguments have been advanced by the learned counsel for the parties on the question whether the principle of reservation for SC/ST will be applicable for

Amal

appointment to the upgraded posts which came into being as a result of the implementation of the above mentioned restructuring scheme. According to the counsel for the respondents, in brief, the addition of 6 upgraded posts in the grade of Section Engineer being the higher selection post has to be filled up from the lower grade of JE Grade-1 by applying the normal rule of promotion and it being promotion for all intent and purposes would also attract the reservation provided for SC/ST. To contra, the counsel for the applicant has submitted that the upgradation of the 6 posts with simultaneous reduction of equal number of posts in the grade of AE-1 and those upgraded posts being filled up only by officers manning the post of JE Grade-1 do not have an element of promotion. So reservation is not attracted. Under the existing reservation post based roster in accordance with the judgment of the Hon'ble Supreme Court in R.K.Sabharwal case would be applicable since 1995. Therefore, reservation for SC/ST was applicable while the vacancy-based roster was applicable and after the post based roster became operative in the matter of direct recruitment and promotion. The scheme under scrutiny had a clause for making reservation after restructuring and placement in the higher scale with benefit of FR 22. It is well established by catena of judgments of the Hon'ble Supreme Court and High Courts that reservation for SC/ST would be applicable in the case of promotion from a lower post to higher post. But the restructuring scheme has provided upgradation of certain posts in the higher grade reducing the equal number of posts in the lower grade. There was no addition in the total strength of the cadre of TRS and it was only upgradation provided to few posts included in that quota. Therefore, filling up of the 6 upgraded posts in the grade of Section Engineer consequent on the restructuring scheme in question from among the persons who were in position in the lower grade on the cut off date would not tantamount to promotion. It may also be remembered that the restructuring was carried out on functional, operation and administrative consideration.

10. If we examine all these facts in the light of the judgments of the Supreme Court in the case of All India non-SC/ST Employees Association (Railway) (Supra) and later Full Bench decision of Allahabad Bench of this Tribunal in the case of P.S.Raiput & Others (Supra), we have no escape from holding that the appointment to these 6 upgraded posts which came into being consequent on the restructuring in the grade of

Agree

Section Engineer cannot be treated to be a promotion which would attract reservation in favour of SC/ST. The Hon'ble Supreme Court in the case of All India non-SC/ST Employees Association (Railway) (Supra) has held as under:-

“ It appears from all the decisions so far that if as a result of re-classification of readjustment 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.1484/1999 and the connected matters were decided against the Union of India. The effect of this is that where the total number of posts remains unaltered though in different scales of pay, as a result of regrouping and the effect of which may be that some of the employees who were in the scale of pay of Rs.550-750 will go into this higher scales, it would be case of upgradation of posts and not a case of additional vacancy of post being created to which the reservation principle would apply. It is only if an addition to the total number of existing posts some additional posts are created that in respect of these additional 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 re-distributed into different scales of pay as a result of the said upgradation.


The Union of India shall re-work the seniority in the light of the clarification made today and report back within 6 weeks from today”.

11. The Hon'ble Supreme Court in the case of R.K.Sabharwal and Others has held that promotion attracting reservation should be post based and that has to be applied when promotion, if any, is made. The Lucknow Bench of the Tribunal in the case of K.Chandrashekhar (Supra) has not taken into consideration the judgment of the Supreme Court in the case of All India non-SC/ST Employees Association (Supra) and the Full Bench decision of this Tribunal in the case of P.S.Rajput & Others (Supra). The judgment of the Full Bench in M.L.Rajaram Naik and others (Supra) has been duly taken into consideration by the Full Bench in the case of R.P.S.Rajput and others.

12. Accordingly the orders of promotion dated 27.7.2004, 13.12.2004 (A-2 & A-3) and the order dated 13.1.2005 (A-4) are set aside to the extent the promotions have been made and the select panel has been prepared applying the principle of reservation for SC/ST for appointment to the 6 upgraded posts which came into being on implementation of restructure scheme dated 09.10.2003 (A-1) and was filled up by the modified procedure provided in the said scheme. The respondents are directed to make fresh selection and appointment to the aforesaid 6 upgraded posts in the grade

of Rs.6500-10,500 without applying the principle of reservation for SC/ST in the light of the observations made herein above. Parties to bear their costs.


(Dr.G.C.Srivastava)
Vice Chairman (A)


(M.A.Khan)
Vice Chairman (J)

Rakesh

पृष्ठंकन सं ओ/न्या.....जबलपुर, दि.....

प्रतिलिपि अर्पित :-

- (1) सचिव, उच्च न्यायालय काउंसिलर, जबलपुर
- (2) आवेदक श्री/श्रीमती/श्रीम. के काउंसिल
- (3) प्रत्यक्षी श्री/श्रीमती/श्रीम. के काउंसिल
- (4) बालपाल, कोर्टा, ज.प्र. के काउंसिल

सूचना एवं आवश्यक कार्यवाही हेतु

उप रेजिस्ट्रार

Shri L.S. Rajput HCB
Shri nar Banejee HCB

Issued
2
20/6/06