

Central Administrative Tribunal
Jabalpur Bench

OA No.881/04

Bilaspur, this the 28th day of July, 2005.

C O R A M

Hon'ble Mr.M.P.Singh, Vice Chairman

Hon'ble Mr.Madan Mohan, Judicial Member

1. B.B.Sharma
S/o Late Shri O.P.Sharma
S.E. (Diesel), W.C.Railway
H.Q.Jabalpur.
R/o 142/A, Adarsh Nagar, Gwarighat Road
Jabalpur.
2. R.K.Saxena
S/o Shri Giri Raj Saxena
S.E. (Diesel), West Central Railway Itarsi.
R/o R.B.III/506 A Diesel Colony, Itarsi.
3. S.K.Choudhary
S/o Shri S.C.Choudhary
S.E. (Diesel), W.C.Railway Itarsi.
R/o "Shanti-Kunj" Near Diesel Shed, Itarsi.
4. G.K.P.Rao
S/o Shri G.S.Rao
S.E.(Diesel), W.C.Railway Satna.
R/o M.C./94-A Railway Colony
Satna (M.P.).

Applicants.

(By advocate Shri L.S.Rajput)

Versus

1. Union of India through
General Manager
West Central Railway
Indira Market, Near Railway Station
Jabalpur.
2. Divisional Railway Manager
West Central Railway



DRM Office, Jabalpur.

3. Divisional Railway Manager
West Central Railway
DRM Office, Habibganj
Bhopal.
4. Shri Ranjit Prasad, S.E.(Diesel)
West Central Railway Itarsi through
Divisional Railway Manager (P)
West Central Railway, Habibganj
Bhopal.
5. Shri Uma Kant M. Prasad
S.E.(Diesel), W.C.Railway Itarsi through
DRM(P), W.C.Railway
Habibganj, Bhopal.
6. Shri Uma Kant Gound
S.E.(Diesel) W.C.Railway
NKJ (M.P.) through DRM(P), W.C.Railway
Jabalpur.
7. Shri R.K. Singhole
S.E.(Diesel) W.C.Railway
New Katni Jn. Through
DRM (P), W.C.Railway
Jabalpur.

Respondents.

(By advocate Shri M.N.Banerjee)

ORDER

By Madan Mohan, Judicial Member

By filing this OA, the applicants have claimed the following reliefs:

- (i) Quash the impugned orders dated 19.8.2004 (Annexure A1); 6/8.9.2004 (Annexure A2) and 10.9.2004 (Annexure A3) respectively, holding the same to be arbitrary, illegal and against the rules and in violation of Articles 14 & 16 of the Constitution of India.
- (ii) Direct the official respondents to consider the applicants for promotion as S.S.E.(Diesel) in the Grade Rs.7450-11500 in place of private respondents with all consequential benefits.



2. The brief facts of the case are that the applicants are working as Section Engineer (Diesel) in the grade Rs.6500-10500 (RSRP) in Jabalpur and Bhopal Divisions of the West Central Railway. The private respondents who belong to SC/ST community are also posted in the Jabalpur and Bhopal Divisions in the same seniority as that of the applicants. For the purpose of further promotion as Senior Section Engineer Grade Rs.7450-11500, Central Railway had published a pooled seniority list of Diesel shed supervisors on 16.9.2003. The Railway Board vide their letter dated 9.10.2003 decided to restructure certain Group 'C' and 'D' posts in the Railways. As per this scheme, the percentage of Senior Section Engineers (Diesel) Gr.Rs.7450-11500 was revised from 17% of the total strength to 21% by increasing the percentage by 4%. By this up gradation, the number in this grade increased from 22 to 29 posts. As per reservation policy/roster in the Railways, 15% posts are reserved for SC and 7½% for ST community. Thus, out of 22 posts of S.S.E. (Diesel) Gr.Rs.7450-11500, the quota for SC comes to 4 posts and for ST it comes to 2 posts. Remaining posts are classified as unreserved/general posts. Thus, against 3 SC posts, 5 SC candidates were working on reserved SC points, meaning thereby that three employees in SC/ST quota were already in excess of prescribed quota. On restructuring of cadre, the total cadre strength of S.S.E.(Diesel) was enhanced from 22 to 29 posts adding 7 additional posts in the Grade, which were to be filled on West Central Railway zonal basis maintaining the reservation quota. As per impugned order dated 19.8.2004 (Annexure A1), respondent No.1 issued promotion list of 7 additional employees (S.No.1 to 7) from S.E.(Diesel) Grade Rs.6500-10500 to the posts of S.S.E.(D) Grade Rs.7450-11500 in which the SC/ST employees have been promoted against the policy of reservation ignoring the claim of the applicants who are all senior to the private respondents (J.P.Jharia S.No.2 is senior to applicant No.4 and he has been promoted against general seniority post). When the applicants came to know about the



illegal promotions of private respondents under the garb of reservation, the applicants and others from General category employees sent a joint representation to respondent No.1 on 23.8.2004 Annexure A5) but to no avail. Hence this OA is filed.

3. Heard learned counsel for both parties.

4. In reply it is stated that before restructuring there were total 22 posts of Senior Section Engineer (Diesel) Gr.Rs.7450-11500 in WCR. In terms of Railway Board's letter dated 9.10.2003 the existing strength of 17% of Senior Section Engineer (Mech.) Diesel was revised to 21%. As a result of this revision, the total posts of Senior Section Engineer (Mech.) Diesel increased from 22 to 29. Further, 2 posts of Zonal Headquarters in Mech. Diesel Wing were included in this total strength of 29, increasing it to 31. As per reservation roster in 31 posts, point Nos. 4,12,16, 24 & 30 are for SC and 8 & 20 are for ST candidates. Out of total 9 already promoted SC/ST employees, 7 were promoted on their own merit and, therefore, they were excluded from reservation percentage in terms of Board's letters dated 7.8.2002 and 20.6.2003. The applicants sent a joint representation dated 23.8.2004, the reply to the same was in process, but meanwhile they have approached the Tribunal with this OA, which is premature.

5. Learned counsel for the applicants has drawn our attention towards an order of CAT, Jaipur Bench in Imamuddin Khan Vs.UOI & Ors. passed in OA No.253/04 dated 23.12.2004 - 2005 (1) ATJ 77 - and has also drawn our attention towards an order of CAT, Chandigarh Bench in the case of Unreserved Employees Association (Registered) Rail Coach Factory, Kapurthala through its President and Ors. Vs. UOI & Ors. decided on 24.11.2004 - 2005 (1) ATJ. The relevant portions are reproduced hereunder:

(A) Restructuring of Cadre-Upgradation-Reservation-There cannot be any reservation in the restructuring Scheme.



(C) Judicial Pronouncement-Administrative Order-A
Judicial pronouncement cannot be overturned by issuing an administrative order.

Para 25: Before parting, we may, with advantage, make reference to a recent clarification/directions given by Govt. of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, as contained in their letter dated 25th October, 2004 which is in reply to a note received from Ministry of Railways dated 7th May, 2004 on the controversy involved in the present case. We are reproducing the said letter below:

“Subject: Restructuring of Group ‘C’ and ‘D’ cadres in the Railways-Application of reservation to SC/ST. The undersigned is directed to refer to the Ministry of Railways U.O. Note No.2004-E(SCT)1/25/1 dated 7th May, 2001 on the subject noted above and to say that the Supreme Court in the matter of Union of India Versus V.K.Sirothia has held that reservation for SCs and STs will not be applicable when making promotions to the posts upgraded on account of restructuring of cadres. The Hon’ble Court in the Contempt Petition No.304 of 1999 (All India Non SC/ST Employees Association Versus V.K.Agarwal and others) further clarified that where the total number of posts remained unaltered, though indifferent scales of pay, as a result of re-grouping, it would be a case of upgradation of posts and not a case of additional vacancy or post being created to which the reservation principle would apply. If the case is restricted to all existing employees who were redistributed into different scales of pay as a result of upgradation, there cannot be any reservation.

The matter has been examined keeping in view the observations of the Supreme Court. The Ministry of Railways are advised to implement the directions of the Supreme Court and not to apply reservation while filling the posts upgraded on account of restructuring, by the existing employees.

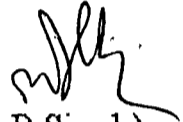
After going through this OM and reading the same with our conclusions arrived at on the basis of various judgments, particularly of the High Courts of Punjab, Delhi and Kerala and Supreme Court judgments, in our opinion, Ministry of Railways would be bound by the clarification given by DoPT and would issue their own circular on similar lines.



6. Heard the learned counsel for the respondents also. The issue involved in this case is squarely covered by both the orders cited on behalf of the applicants. Consequently, for the foregoing reasons, the OA is allowed. The impugned orders Annexure A1 dated 19.8.2004; Annexure A2 dated 6/8.9.2004 and Annexure A3 dated 10.9.2004 are quashed and set aside. Respondents are directed to consider the applicants in the appropriate pay scales under the restructuring scheme as per their eligibility and suitability, from due dates, with all consequential benefits, within a period of three months. No costs.



(Madan Mohan)
Judicial Member



(M.P. Singh)
Vice Chairman

aa.

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

प तिलिपि अचे धित :-

- (1) सविन, उच्च न्यायालय कार एस्टेब्लिशमेंट, जबलपुर
- (2) आदेशक श्री/श्रीमती/कु.....के काउंसल
- (3) प्रत्यर्थी श्री/श्रीमती/कु.....के काउंसल
- (4) वंशपाल, के.प्र.अ., जबलपुर न्यायपीठ

सूचना एवं आवश्यक कार्यवाही हेतु

उप निम्न

L.S. Report put on 22/09/04
M. M. Bhandari
22/09/04

22/9/04