

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 10th day of November, 2005

ORIGINAL APPLICATION No.77/2005

CORAM:

HON'BLE MR. A.K.AGARWAL, VICE CHAIRMAN (ADM)
HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)

Ladu Ram s/o Shri Mandrup, aged about 40 years, r/o Gujar Mohalla, Ajmer and presently working Welder Grade-III, Shop No.25, under Deputy Chief Mechanical Engineer (Carriage), North Western Railway, Ajmer Division, Ajmer.

.. Applicant

(By Advocate: Mr. C.B.Sharma)

Versus

1. Union of India through
General Manager,
North Western Zone,
North Western Railway,
Jaipur.
2. Chief Works Manager (Loco),
North Western Railway,
Ajmer Division,
Ajmer.
3. Deputy Chief Mechanical Engineer (Carriage)
North Western Railway,
Ajmer Division,
Ajmer.

.. Respondents

(By Advocate: Mr. V.S.Gurjar)

ORDERPer Hon'ble Mr. M.L.Chauhan

The applicant has filed this Original Application thereby praying for the following reliefs:

- (i) That the entire record relating to the case be called for and after perusing the same the respondents may be directed not to apply reservation in upgraded posts and to act as per eligibility list dated 15.10.2004 (Annexure A/2) in connection with promotion to the post of skilled artisan Grade-II in the scale of Rs. 4000-6000 from the scale of Rs. 3050-4500. by quashing eligibility list dated 24.2.2005 (Annexure A/1).
- (ii) That the respondents be further directed to promote the applicant to the post of skilled artisan Grade-II in the scale of Rs. 4000-6000 with all consequential benefits.
- (iii) Any other order, direction or relief may be passed in favour of the applicant which may be deemed fit, just and proper under the facts and circumstances of the case."

2. Briefly stated facts of the case are that the applicant belongs to the cadre of Carriage Department of the Railways and at the relevant time he was working as Skilled Artisan Grade-III/Technician Grade-III in the pay scale of Rs. 3050-4590. It is the case of the applicant that vide letter dated 9.10.2003 the Railway Board issued order for restructuring of the cadre by way of upgradation of posts and thereafter the respondents calculated the vacancies. The applicant has placed a copy of such statement on record as Ann.A4. It is further stated that respondent No.3 has issued a seniority list Ann.A2 vide letter dated 15.10.2004 whereby 8 posts of Welder Grade-II in the pay scale of Rs. 4000-6000 were proposed to be filled in and the name of the applicant was also included at Sl.No.8 in List-A. The applicant has

further alleged that even the Department of Personnel and Training vide letter dated 25.10.2004 (Ann.A6) has advised that where the total number of posts remained unaltered though in different scales of pay, as a result of regrouping, 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. The grievance of the applicant is that instead of clear cut instructions issued by the Govt. of India to the Railway Board vide Ann.A6, the respondent No.3 further issued eligibility list dated 24.2.2005 by applying reservation thereby deleting name of the applicant from List-A and placing the applicant in List-B at Sl.No.3. It is this order which is under challenge in this OA. The applicant has also made representation dated 26.2.2005 against the eligibility list dated 24.2.2005 (Ann.A1) but no action has been taken in the matter. It is in these circumstances that the applicant has filed this OA thereby praying for the aforesaid reliefs.

3. Notice of this application was given to the respondents. The respondents have filed reply. In the reply the respondents have admitted that in the present case restructuring of 3 categories in Carriage Department was effected in pursuance of the Railway Board letter dated 9.10.2003 and instructions issued vide communication dated 15.10.2003 as well as under

the instructions issued under the order dated 22.10.2003, which resulted into the change in the percentage of the cadre, as under:-

Name of the post	Pay Scale	Existing strength/number of posts	Revised strength/number of posts	Difference
Senior Technician	5000-8000	05	09	+04
Technician Grade-I	4500-7000	38	43	+05
Technician Grade-II	4000-6000	33	27	-06
Technician Grade-III	3050-4590	23	20	-03

It is further stated that effect of restructuring has increased the number of posts of two grades i.e. Senior Technician in the pay scale of Rs. 5000-8000 and Technician Grade in the pay scale of Rs. 4500-7000 had the effect of increase in number of posts and in the other two grades, the result of restructuring was decrease in the number of posts as indicated above. The fact that seniority list dated 15.10.2004 did not include name of any candidate from reserved category and name of the applicant was included at Sl. No.8 in List-A has been admitted. It is however, stated that the said seniority list was cancelled vide office order dated 6.12.2004 in view of the objections raised by the recognized associations and amended seniority list dated 24.2.2005 was issued which consist of 8 candidates each. Name of the applicant was included in List-B at Sl.No.3 and according to the reservation policy 2 posts were reserved for candidates of

Scheduled Caste and 2 posts were reserved for candidates of Scheduled Tribe which resulted into some of the applicants named in List-B. It is further stated that reservation has been applied in view of increase/decrease in number of posts as a result of restructuring/upgradation. Hence, the action of the answering respondents is perfectly legal.

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

4.1 We are of the view that the matter is no longer res-integra and the same is fully covered by the decision rendered by this Bench of the Tribunal in OA No.313/2004, Raj Kumar Gurnani and ors. vs. Union of India and other connected matters decided on 14.2.2005 whereby this Tribunal relying upon the judgment of the Hon'ble Apex Court in the case of Union of India Vs. V.K.Sirothia, 1999 SCC (L&S) 938 and another judgment of the Apex Court in the case of All India Non-SC/ST Employees Association vs. V.K.Agarwal and ors., 2002 SCC (L&S) 688 and also decision of the Chandigarh Bench of the Central Administrative Tribunal in the case of Unreserved Employees Association (Registered), Rail Coach Factory, Kapurthala through its President and Ors. etc. etc. vs. Union of India, 2005 (1) ATJ 1 has specifically held that where the total number of posts on account of restructuring remained unaltered though in different scales of pay and effect of which

may be that some of the employees who were in the lower scale of pay will go into higher scale, 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. At this stage, it would be useful to quote para 5.4 of the judgment which is in the following terms:-

“5.4 At this stage, we may also notice that the Ministry of Railways vide EO Note No. 2004-E (SCT) 1/25/1 dated 7th May, 2004 has referred the matter to the Ministry of Personnel, Public Grievances and Pensions for clarification as to whether reservation would be applicable in the case of restructuring of Group ‘C’ and ‘D’ cadre in Railways. The Ministry of Personnel, Public Grievances and Pensions has given its clarification vide letter dated 25th October, 2004 which is reproduced in extenso and thus reads:-

“Subject: Restructuring of Group ‘C’ and Group ‘D’ cadres in the Railways- Application of reservation to Scheduled Castes/Scheduled Tribes.

The under signed is directed to refer to the Ministry of Railways U.O. Note No. 2004-E (SCT) 1/25/1 dated 7th May, 2004 on the subject noted above and to say that the Supreme Court in the matter of Union of India vs. 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 vs. V.K.Agarwal and others) further clarified that where the total number of posts remained unaltered, though in different scales of pay, as a result of regrouping, 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.”

Thus from reading of this letter, it is clear that the Ministry of Personnel, Public Grievances and Pension in no uncertain terms advised the Ministry of Railways to implement the directions given by the Hon'ble Supreme Court and not to apply reservation while filling the posts upgraded on account of restructuring by existing employees, as can be seen from para 2 of the aforesaid letter. While rendering such advice, the Ministry of Personnel etc. has also taken into consideration the decision rendered by the Hon'ble Supreme Court in the matter of Union of India vs. V.K.Sirothia as well as the order passed in the Contempt Petition No. 304 of 2003. All India Non SC/ST Employees Association vs. V.K.Agarwal and ors. The order passed by the Hon'ble Apex Court in the case of V.K.Agarwal (Supra) find mention in the judgment rendered by the Chandigarh Bench of C.A.T. in the case of Unreserved Employees Association (supra) which has been reproduced in the earlier part of the order. From reading of this portion, it is clear that the Apex Court in its order dated 31.1.2001 has categorically held that....."the effect of this is that where the total number of posts remained unaltered though in different scale of pay, as a result of re-grouping and the effect of which may be that some of the employees who were in the scales of pay of Rs. 550-700 will go into the higher scales, it would be a case of upgradation of posts and not a case of additional vacancy of post being created to which the reservation principle would apply....". Admittedly, in the present cases total number of posts in particular cadre before and after restructuring remained unaltered though some of the posts in the cadre as a result of re-grouping were upgraded in higher scale, the effect of which may be that some of the employees who were in the lower scale will go into higher scale, which would be a case of upgradation of post and not a case of additional vacancy being created to which reservation principle would apply in terms of the clarification given by the Apex court vide order dated 31.1.2001, in the case of V.K.Agarwal (supra) and reported in 2002 SCC (L&S) 688."

4.2 The law as laid down by this Tribunal in the case of Raj Kumar Gurnani (supra), as reproduced above, is squarely applicable in the instant case. As per own showing of the respondents, total number of posts in different categories in the Carriage Department remained the same viz. 99 though as many as 4 and 5 (in all 9 posts) in the pay scales of Rs. 5000-8000 and 4500-7000) have been increased and equal number of posts in the pay scale of Rs. 4000-6000 and Rs. 3050-4590 have been decreased. Thus, there is no addition

of posts in overall cadre strength of Technician/Artisan Staff prior to upgradation and after upgradation.

4.3 At this stage, it would be useful to quote the decision of the Full Bench of the ~~the~~ Tribunal ~~the~~ Allahabad Bench rendered in OA No. 933/2004 and other connected matters, P.S.Rajput and ors. vs. Union of India and ors. where the same letter of the Railway Board dated 9.10.2003 was under consideration and the reference made before the Full Bench was 'whether upgradation of a cadre as a result of restructuring and adjustment of existing staff in the upgraded cadre can be termed to be promotion attracting the principle of reservation in favour of SC/ST ?' While answering the reference and after perusing the different schemes of the Railway Department regarding restructuring including the present scheme and also noticing the various decisions of the Apex Court and other decisions relied on behalf of the railway authorities, the Full Bench answered the reference in the following terms:-

"The upgradation of the cadre as a result of restructuring and adjustment of existing staff will not be termed as promotion attracting the principles of reservation in favour of Scheduled Caste/Scheduled Tribe."

While answering the reference, the Full Bench in Para 40 has also observed that if there was just marginal increase in the posts that would be by restructuring, this will not make it creation of

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