(15)

NOTES OF THE REGISTRY	ORDERS OF THE TRIBUNAL

OA No.103/2005 with MA No.28/2006.

23.08.2007.

Mr. C. B. Sharma counsel for the applicant.
Mr. V. s. Gurjar counsel for the respondents.

On the request of Learned Counsel for the applicant, let the matter be listed for hearing on 28.11.2007.

(R. R. BHANDARI)
ADMINISTRATIVE MEMBER

(KULDIP SINGH,
VICE CHAIRMAN

P.C./

OA No.103/2005 with MA No.28/2006.

28.11.2007.

Mr. C. B. Sharma counsel for the applicant.
Mr. V. S. Gurjar counsel for the respondents.

Heard the Learned Counsel for the parties. For the reasons dictated separately, the OA as well as MA stands disposed of.

(J. P. SHUKLA)
ADMINISTRATIVE MEMBER

(M. L. CHAUHAN)
JUDICIAL MEMBER

P.C./

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

Jaipur, this the 28th day of November, 2007

CORAM:

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER
HON'BLE MR.J.P.SHUKLA, ADMINISTRATIVE MEMBER

OA No. 30/2005

1. Sanwar Mal s/o Shri Ram Lal, Booking Clerk, Jaipur Railway Station r/o near SBBJ, Kalwar Road, Jhotwara, Jaipur
2. Anil Jain s/o Shri Harish Chand, presently posted as Head Luggage Clerk, Jaipur Railway Station, 1925 Rayaji Bhawan, Nahargarh Road, Jaipur.
3. Satpal Sharma s/o Shri Somdut Sharma, Head Clerk, Jaipur Railway Station r/o B-568, Murlipura, Jaipur.
4. Mukesh Kumar Gupta s/o Shri Jagan Lal, Head Luggage Clerk, Jaipur Railway Station r/o Plot No.6, Path No.6, Vijay Bari, Dehar Ka Balaji, Jaipur.
5. Vipin Singh Chauhan s/o Shri P.S.Chauhan, Head Luggage Clerk, Jaipur Railway Station, r/o H.No. 25, Green Avenue, Khatipura, Jaipur.

.. Applicant

(By Advocate: Shri P.V.Calla)

Versus

1. Union of India through General Manager, N.W.R. Headquarter Office, Opposite Railway Hospital, Jaipur.
2. The Divisional Railway Manager, Jaipur Division, North Western Railway, Jaipur.
3. Shri Banwari Lal Meena s/o Shri Birbal.
4. Shri Ramavtar Khinchi.
5. Shri Ram Ratan s/o Shri Kana Ram.
6. Shri Om Prakash s/o Shri Mool Chand Bairwa.
7. *Vijay Kumar s/o Shri Ganesh Ram,*

Respondent Nos. 3 to 7 are working under Divisional Commercial Manager, Jaipur

.. Respondents

(By Advocate: Shri Anupam Agarwal)

OA No.82/2005

Ganeshi Lal
s/o Shri Hanumanji,
r/o 559, Narsinghpura,
ram Nagar, Fy-Sagar Road,
Ajmer,
presently working as
Welder (Technician Gr.I),
Under Dy. Chief Mechanical Engineer (Carriage),
North Western Railway, Ajmer.

.. Applicant

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

OA No.141/2005

1. Pramod Kumar Sharma, s/o Shri Ramesh Dutt Sharma, Electrical Fitter Gr.II, Tanaji Nagar, Gali No.10, Bhajanganj, Ajmer
2. Anil Kumar Dikshit s/o Shri Noratmal Dikshit, Electrical Fitter Gr.II r/o H.No. 590/22, Shringar Chanwari, Ajmer.
3. Tusar Kantikar s/o Shri P.K.Kantikar, Electrical Fitter Gr.II r/o 75 Microwave Tower Road, Opposite Narishala Gali No.3, Kapil Nagar, Post HMT, Subhash Nagar, Ajmer.

4. Nirmal Kumar Banerjee s/o Shri Krishnakant Banerjee, Electrical Fitter Gr.II r/o Railway Q.No.1882 'D', Alwar Gate Chauraha, Ajmer
5. Hardev s/o Shri Mangi lal, Electrical Fitter Gr.II, r/o Anadpuri, Krishyan Ganj, Ajmer.
6. Narendra Kumar Sharma s/o Shri Yagyadutt Sharma, Electrical Fitter Gr.II r/o Opposite Bright Children Academy, Meo Link Road, Ajmer.

.. Applicants

(By Advocate: Shri P.V.Calla)

Versus

1. The Union of India through General Manager, N.W.R. Headquarter Office, Opposite Railway Hospital, Jaipur.
2. The Chief Works Manager, North Western Railway, Central Loco Workshop, Ajmer.
3. The Dy. Chief Electrical Engineer (Works), Railway Power House Nagra, NWR, Ajmer.
4. Pooran Singh, Electrical Fitter Gr.I
5. Prithvi Raj, Electrical Fitter Gr.I
6. Paharchand Ahir, Electrical Fitter Gr.I
7. Vijay Singh, Electrical Fitter Gr.I,
8. Om Prakash Munot, Electrical Fitter Gr.I
9. Beni Prasad, Electrical Fitter Gr.I

Respondent Nos. 4 to 9 are working under the control of Deputy Chief Electrical Engineer (Works), Railway Power House Nagra, NWR, Ajmer

.. Respondents

(By Advocate: Shri Anupam Agarwal, Shri Lokesh Mathur, proxy counsel to Shri R.N.Mathur)

OA No. 254/05

1. Bhag Chand s/o Shri Ramlal, r/o Mata Mandir Ke pas, Thakur ji ka mandir, Dholabhata, Ajmer.
2. Ajmatullah Khan s/o Shri Rahmatullah Khan, r/o H.No.859, Bihari Colony, Sunder Nagar Gali, Khapura-Road, Ajmer.
3. Radhey Shyam Mathur s/o Shri Chiranji Lal, r/o H.No.67, Arjun Lal Sethi Nagar, Parbatsar Beye Pass, Ajmer.

4. Vijay Raj s/o Shri Ramdayalji, r/o Village Saradhana, via Saradhana, Distt. Ajmer.
5. Chhagan Lal s/o Shri Durga Shanker r/o Paal Beechala, Near Andheri Pulia, Behind Roshan Mastana Water Supply, Ajmer.

.. Applicants

(By Advocate: Shri P.V.Calla)

Versus

1. The Union of India though General Manager, N.W.R.Headquarter Office, Jaipur
2. The Chief Works Manager, NWR, Central Loco Workshop, Ajmer.
3. The Dy. Chief Eletrical Engineer (Works), Railway Power House Nagra, NWR, Ajmer
4. Shri Rajendra Kumar Ticket No.95163, Electrical Fitter Gr. I under Dy. Chief Electrical Engineer (WS), Ajmer
5. Shri Prem Chand Ticket No.91647, Electrical Fitter Gr. I under Dy. Chief Electrical Engineer (WS), Ajmer.
6. Shri Mohan Singh Ticket No.92420, Electrical Fitter Gr. I under Dy. Chief Electrical Engineer (WS), Ajmer.
7. Shri Pramar Savle Bhai Ticket No.90037, Electrical Fitter Gr. I under Dy. Chief Electrical Engineer (WS), Ajmer.
8. Shri Bhawani Shanker Ticket No.93725, Electrical Fitter Gr. I under Dy. Chief Electrical Engineer (WS), Ajmer.

.. Respondents

(By Advocate: Shri V.S.Gurjar)

OA No.141/2006

1. Praveen Kumar Karia s/o Shri L.M. Karia, TTI/TNCR, Office of DCTI, Jaipur Division.
2. Khushi Ram s/o Shri Kodu Mal, TTI/TNCR, O/o the DCTI, Jaipur Division, Jaipur
3. Naresh Kumar Purohit s/o Shri Shyam Lal, TTI/TNCR, O/o the DCTI, Jaipur Division, Jaipur
4. Om Prakash Mandiwal s/o Shri Banshi Lal, TTI/TNCR, O/o the DCTI, Jaipur Division, Jaipur.

.. Applicants

(By Advocate: Shri P.V.Calla)

Versus

1. The Union of India through General Manager, North Western Railway, Jaipur
2. Divisional Rail Manager, Jaipur Division, Power House Road, Jaipur
3. Shri Ganga Sahai Meena s/o Shri Badri Prasad, TTI, Office of CTI, Rewari
4. Shri Rambabu Bairwa s/o Shri Ram Narain Bairwa, TTI, Office of CTI, Bandikui.
5. Shri Makkhan Lal Jaif s/o Shri bhata Ram, TNCR, Office of DCTI, Jaipur Rly. Station.

.. Respondents

(By Advocate: Shri V.S.Gurjar and Shri Ramesh Chand)

OA No.181/2006

1. Mahesh Chand Sharma s/o Shri Badri Prasad,
2. Jagdeep Kumar William s/o Shri J.William
3. Ram Karan s/o Shri Man Singh
4. Anwar Hussain s/o Shri Izhar
5. Rambabu s/o Shri Phool chand
6. Vijay Kumar s/o Shri Satish Chand
7. Gajanand Sharma s/o Shri Ram Prasad
8. Bachan Pal Singh s/o Shri Shiv Dan
9. Bhikha Ram s/o Shri Gulab Chand
10. Amar Chand Sharma s/o Shri Bansi Lal

All the applicants are working on the post of Ticket Collector/LR-TC, scale Rs. 3050, Office of Divisonal Chief Ticket Inspector.

.. Applicants

Versus

1. The Union of India through the General Manager, North Western Railway, Opposite Railway Hospital, Jaipur
2. The Divisional Rail Manager, Jaipur Division, Jaipur
3. Birduram Meena s/o Devi Lal, working as Senior TC, Office of Station Superintendent, Phulera, Jaipur Division.
4. Surendra Kumar s/o Prabhu Dayal, working as, working as Senior TC, Office of Station Superintendent, Rewari, Jaipur Division.

5. Ram Dayal Meena s/o Lichhman Lal, working as Senior TC, Office of Station Superintendent, Rewari, Jaipur Division.
6. Ranjeet Singh, working as Senior TC, Office of Station Superintendent, Phulera, Jaipur Division.
7. Om Prakash s/o Thawar Singh, working as Senior TC, Office of Station Superintendent, Rewari, Jaipur Division.
8. Kailash s/o Ram Gopal, working as Senior TC, Office of Station Superintendent, Bandikui, Jaipur Division.
9. Om Prakash s/o Chhote Lal, working as Senior TC, Office of Station Superintendent Bandikui, Jaipur Division.

.. Respondents

(By Advocate: Shri Anupam Agarwal)

OA No.419/2004

Govind Prasad s/o Shri Bhori Lal, r/o 40/30, Gopalganj Road, Nagara Bhatta, AJmer working as Section Engineer in the scale Rs. 6500-10500 under Dy. Chief Mechanical Engineer (Carriage), North Western Railway, Ajmer Division, Ajmer.

.. Applicants

(By Advocate:Shri C.B.Sharma)

Versus

1. The Union of India through the General Manager, North Western Zone, Jaipur
2. The Chief Works Manager (Loco), North Western railway, Ajmer Division, Ajmer.
3. Dy. Chief Mechanical Engineer (Carriage), North Western Railway, Ajmer Division, Ajmer.
4. Shri Satish Chandra Chargeman-A under Deputy Chief Mechanical Engineer (Carriage), North Western Railway, Ajmer Division, Ajmer.
5. Shri Bar Singh Bhai, Chargeman-A under Dy.Chief Mechanical Engineer (Carriage), North Western Railway, Ajmer Division, Ajmer.

.. Respondents

(By Advcate: Shri V.S.Gurjar)

OA No. 102/2005

Promod Kumar s/o Shri Shanti Prasad Sharma, r/o Gali No.2, Sangam Vihar Colony, Gaddi Road, Ajmer and presently working as Progressman, Artisan Gr.I, Shop No.28 under Dy. Chief Mechanical Engineer (Carriage), North Western Railway, Ajmer Division, Ajmer.

.. Applicant

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India through General Manager, 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: Shri V.S.Gurjar)

OA No.103/2005

.. Applicant

Mahesh Kumar Sharma s/o Shri Baij Nath Sharma, r/o Q.No. 2029-D, Near Railway School, Johnsganj, Ajmer, presently working a Skilled Artisan Gr.II Shop No. 28 under Dy. Chief Mechanical Engineer (Carriage), North Western Railway, Ajmer Division, Ajmer.

.. Applicant

(By Advocate: Shri C.B.Sharma)

Versus

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

.. Respondents

(By Advocate: Shri V.S.Gurjar)

O R D E R (ORAL)

By this common order, we propose to dispose of these OAs, as the sole question which requires our consideration in these cases is whether upgradation of the cadre as a result of restructuring and adjustment of existing staff will be termed as promotion attracting the principle of reservation in favour of SC and ST category.

2. We have heard the learned counsel for the parties. The learned counsel for the applicants submit that these OAs have to be allowed in view of the decision rendered by this Tribunal in OA No.313/04, Raj Kumar Gurnani and ors. vs. Union of India and ors., and other connected matters which were disposed of vide judgment dated 14th February, 2005 and also similar OAs which have been disposed of on the basis of the judgment rendered in the case of Raj Kumar Gurnani. It is further argued that the decision rendered by this Tribunal in the case of Raj Kumar Gurnani (supra) is passed on the basis of the decision rendered by the Apex Court in the case of Union of India vs. V.K.Sirothia, 1999 SCC (L&S) 938 and All India Non-SC/ST Employees Association (Railway) vs. V.K.Agarwal and Ors., 2002 SCC (L&S) 688 which decisions still hold good. It is further argued that the respondents filed Writ Petition against the

decision of this Tribunal in the case of Raj Kumar Gurnani (supra) and also in respect of another OA decided in favour of Suresh Chand Sharma and others and the said Writ Petitions were registered as DB Civil Writ Petition No. 9467 of 2005 and DB Civil Writ Petition No. 9470 of 2005. Intially, stay order was granted by the Hon'ble High Court. However, the same was vacated/modified subsequently. The learned counsel for the applicants relied upon the following portion of the order dated 29.8.2006 passed in DB Civil Writ Petition No. 9467 of 2005, The Railway Board and Ors. vs. Suresh Chand Sharma and Ors., which thus reads:-

> "After hearing the counsel for the parties we are satisfied that there cannot be a blanket stay of the operation of the decision of the Tribunal. From a bare reading of the order of the Supreme Court dated 17.1.2006 it is apparent that the concerned decision of the Tribunal may be implemented subject to outcome of the appeals. If the Supreme Court permitted implementation of the decision of the Tribunal subject to outcome of the appeals, it is plain that this Court cannot stay implementation. If operation of the judgment is stayed, there would be conflict between two orders. While as per order of the Supreme Court, the judgment of the Tribunal may be implemented, as per order of this Court, the judgment cannot be implemented.
>
> We, therefore, clarify that implementation of the judgment will be subject to result of this writ petition.
>
> Contempt proceedings arising from the impugned judgment of the Tribunal shall however, remain stayed."

The learned counsel for the applicants argued that since there is no stay regarding decision rendered by this Tribunal which is based upon the decision of the Supreme Court, as such, these OAs are

required to be allowed and direction is required to be given to the respondents that reservation cannot be applied in respect of posts upgraded on account of restructuring scheme.

3. On the other hand, the learned counsel for the respondents have drawn our attention to the order of the Principal Bench of this Tribunal dated 29.11.2005 passed in OA No.1173/2004, All India Equality Forum vs. UOI and argued that the matter can be disposed of in terms of that order. At this stage, it will be useful to quota para 2 and 3 of the said judgment, which thus reads:-

> 2. We have heard learned counsel for both side and both side agreed that the issue raised in the present OA stands concluded by the Full Bench judgment of the Tribunal rendered on 10.08.2005 in OA No. 933/2004 (P.S.Rajput and two ors. vs. UOI and Ors.) as well as in OA No. 778/2004 (Mohd. Niyazuddin and 10 Ors. vs. UOI and Ors) wherein it has been held that "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." The only contention, which has further been pressed, is that the present OA is not maintainable vis-à-vis the Applicant No.1 as Applicant No.1 is an All India Equality Forum, which cannot be allowed to espouse the service grievance of any Government employees.
>
> 3. It has further been admitted by the parties that on an identical issue, the Hon'ble Supreme Court has granted Special Leave to appeal in SLP (Civil)…/2005 arising out of judgment and order dated 03.03.2005 in CWP No. 3182/2005 decided by Hon'ble High Court

of Punjab and Haryana at Chandigarh. It is also stated that certain other connected SLPs are also pending before the Hon'ble Supreme Court viz. SLPs © 12550 of 2005, 13209/2005, 13125-13137/2005. The leave in the aforesaid SLP filed by CC No.6536 of 2005 was granted by the Hon'ble Supreme Court vide order dated 14.11.2005. It is further agreed by both side that the issue raised in the present application would be squarely covered by any judgment rendered by the Apex court in the aforesaid SLPs."

4. Since the law laid down on the said subject would be binding on all parties including those who had not approached the Court, being a law under Article 141 of the Constitution of India, we are of the view that the present OA can be disposed of without making any comment on the maintainability of the present OA vis-à-vis Applicant No.1. We find justification in the contention that the judgment to be rendered by the Hon'ble apex Court in the aforesaid SLPs would be binding upon the parties herein also. We order accordingly. All pending MAs accordingly stand disposed of."

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

5. We are of the view that it will not be useful to keep the matter pending and the matter can be disposed of in the light of the decision given by the Principal Bench in the case of All India Equality Forum (supra), and in the light of the order passed by the Rajasthan High Court while modifying the Stay.

6. Accordingly, it is held that the decision to be rendered by the Apex Court in the case as mentioned

in Para 3 of the judgment of the Principal Bench, as quoted in the earlier part of the judgment, would be binding upon the parties. Since there is no stay regarding implementation of the decision rendered by this Tribunal and even the Apex Court has permitted implementation of the decision of this Tribunal subject to the outcome of the appeals pending before it, as can be gathered from the order passed by the Hon'ble High Court, we are of the view that it will be in the interest of justice, if direction is given to the respondents not to apply reservation in respect of posts upgraded on account restructuring scheme w.e.f. 1.11.2003 till the issue regarding application of reservation in respect of posts upgraded on account of restructuring is not decided by the Hon'ble Supreme Court. However, it is made clear that in case the respondents want to fill up the posts upgraded on account of restructuring without applying reservation policy and to implement the decisions rendered by this Tribunal, this order will not come in the way of the railway authorities to make such promotion, but it will be subject to the decision to be rendered by the Apex Court. It is further clarified that if the railway authorities wish to fill up the posts which had fallen vacant prior to 1.11.2003 and subsequent posts which had fallen vacant on account of retirement of employees etc. which are not covered by restructuring scheme, it will be permissible for them

to make promotion against such posts in accordance with rules thereby apply policy of reservation.

6. With these observations, the aforesaid OAs are disposed of with no order as to costs.

7. In view of the order passed in the aforementioned OAs, no order is required to be passed in Misc. Applications pending in these OAs which shall also stand disposed of accordingly.

8. The Registry is directed to place one copy of this order in each case file.

(J.P.SHUKLA)
Admv. Member

(M.L.CHAUHAN)
Judl. Member

R/