

**CENTRAL ADMINISTRATIVE TRIBUNAL**

**JAIPUR BENCH.**

O.A.NO.62 OF 2005

Decided on : June <sup>16</sup> 2005.

**CORAM : HON'BLE MR.KULDIP SINGH, VICE CHAIRMAN &  
HON'BLE MR.A.K.BHANDARI, MEMBER (ADM.).**

1. Ashok Kumar Sharma S/o Shri Balchand Sharma, aged about 47 years, at present working as Junior Engineer Gr. I Scale Rs.5500-9000, O/o Senior D.S.T.E., N.W.R. Jaipur Division, R/o C-60, Govindpuri, Ram Nagar, Sodala, Jaipur.
2. Sachidanand Vishv akarma S/o Shri Laxmi Narayan Vishvakarma, aged about 46 years, working as Junior Engineer-I, Scale 5500-9000, O/O D.S.T.E., N.W.R., Jaipur Division, at present posted at R.R.I. Tower, Railway Station, Phulera, R/o 153 Shyam Nagar, Ward No.20, Phulera.

By : Mr.P.V.Calla, Advocate.

Versus

1. The Union of India through General Manager, North Western Railway, Headquarter Office, Opposite Railway Hospital, Jaipur.
2. The Senior Divisional Signal &\* Telecommunication Engineer, North Western Railway, Headquarter Office, Jaipur.
3. The Divisional Railway Manager, Jaipur Division, North Western Railway, jaipur.

By : Mr.V.S.Gurjar, Advocate.

4. Panna Lal P,Junior Engineer-I (Signal), R.R.I. Tower, Railway Station, Jaipur.
5. Rajendra Kumar Verma, Junior Engineer Gr. I (Signal), Railway Station, Sikar.

By : Mr.Nand Kishore, Advocate.

Respondents



## ORDER

### **KULDIP SINGH,VC**

The applicant has challenged the order dated 13.10.2004 (Annexure A-1) issued under the signatures of Shri G.L. Meena from the office of Respondent No.2 with office order dated 24.12.2004, Annexure A-2. The applicants have also challenged para no.14 of the Railway Board letter dated 9.10.2003, which is part of restructuring Scheme of certain group C and D cadres and it provides that the existing instructions with regard to the reservation of SC./STs wherever applicable will continue to apply.

The applicants allege that despite directions of the Hon'ble Supreme Court of India in the matter of Union of India Vs. V.K.Sirothia decided on 19.11.<sup>19</sup>98 in Civil Appeal N<sup>o</sup>.3622 of 1995 and further clarified in C.P.No.304 of 1999 in C.A.o.1481/1996 dated 31.1.2001 wherein it has been held that in case of up gradation / restructuring of the cadre, the reservation for SCs and STs will not be applicable. However, the Railway Administration while according higher scale in view of the restructuring of the cadre from scale of Rs.5500-9000 to scale of Rs.6500-10500 in the cadre of Section Engineer (Signal) made applicable reservation for SCs and STs and consequently the respondents No.4 and 5 who were not otherwise eligible to be considered for the next higher scale in the cadre of Section Engineer (Signal) have been considered and empanelled at the cost of General Category candidates i.e. Applicants who are otherwise senior and eligible for such upgradation. The applicants are otherwise senior and eligible as compared to the private respondents who are not eligible and the applicants are still working in the lower scale of Rs.5500-9000 on the post of Junior Engineer-I (Signal) under the Senior DSTE, North Western Railway, Jaipur.

It is further submitted that in the Engineering department there is separate wing known as Signal Department where 8 categories of posts ranging from Senior



Section Engineer (highest) in the pay scale of Rs.7450-11500 to scale of Rs.3050-4590 (lowest) known as MSM/ESM Gr. III are available. These posts constitute of complete cadre and total cadre strength of the posts prior to 1.11.2003 was 277 and after 1.11.2003 i.e. After restructuring/up gradation of the posts the cadre remain same i.e. 277, as is apparent from the office order dated 15.9.2004 (Annexure A-4).

The applicants plead that in the hierarchy of avenues from the scale of Rs.5500-9000, the next higher grade is Rs.6500-10500 known as Sectional Engineer (Signal) which is a selection post. The Department had issued a Notification to prepare panel to provide regular promotion on the post of Section Engineer in the scale of Rs.6500-10500, on September 30, 2003 and it had proposed to conduct a selection. A list of eligible candidates for selection to the post in question was issued wherein all 12 candidates were found eligible (Annexure A-5). In the eligibility list, the applicants are at Sr.No.8 and 9 whereas the respondents 4 and 5 find mention at Sr.No.12. However, the said selection was canceled and to that effect a notification was issued on 12.10.2004 on the ground that the promotion to the higher grade in the scale of Rs.6500-10500 will be provided under the restructuring of the up gradation of the cadre Scheme by adopting a modified selection procedure. This was so stated and mentioned vide annexation A-6. It is further stated that the applicants are senior to the private respondents no.4 and 5 as is apparent from Annexure A-6.

It is further stated that in view of the restructuring/up gradation scheme, next scale is to be granted to the senior most employee subject to suitability test and since there is nothing on record against the applicants as such there cannot be any reason to ignore them from providing higher scale in comparison to the private respondents who are junior to the applicants and are also not eligible. The higher scale is provided to those who have completed two years continuous service on the lower grade. Both the applicants were promoted in the scale of Rs.5500-9000 in November, 1999 and in February, 2000 respectively, as such, they became eligible



for higher scale i.e. Rs.6500-10500 on or after December, 2001 and 17.2.2002 respectively, as they had not completed two years service much earlier to the private respondents. Instead of completing the process of selection, the department had prepared a panel for the post of Section Engineer in the scale of Rs.6500-10500 vide orders dated 13.10.2004 wherein the names of the private respondents is shown at Sr.No.8 and 9 and it has been specifically mentioned in the endorsement against the name of the private respondents that they have been given the benefit of the reservation. Thus, it is pleaded that the respondents have invoked the principle of reservation in the up gradation/restructuring scheme itself. It is further stated that after issuance of panel, Annexure A-1, the respondents vide office order dated 24.12.2004 had also issued posting orders regarding officers empanelled by office order dated 13.10.2004. Though 9 candidates were empaneled including private respondents but while issuing posting orders, only 7 candidates shown in Annexure A-1 from Sr.No.1 to 7 were given posting against the working post, whereas against the name of Respondents 4 and 5 it was made clear that they have not completed two years of continuous service on the present grade i.e. Grade o Rs.5500-9000. Thus, it is apparent that the respondents No.4 & 5 were not eligible and they were also empaneled. It is further stated that in case reservation is not applied while providing higher scale under the restructuring / up gradation the applicants were bound to be given scale of Rs.6500-10500 and they were also bound to be empanelled as there is nothing against them and they are senior to the private respondents. It is further stated that vide Annexure A-7, dated 25.10.2004, the DOPT had 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 up gradation of post and not a case of additional vacancy or post being created to which the reservation principle would apply. The Ministry of Railway was further advised to implement the directions of the Supreme Court and not to apply reservation while

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filling the posts upgraded on account of restructuring of cadre of the existing employees. Thus, it is clear that the reservation cannot be applied while filling up the posts upgraded under the restructuring scheme. Thus, the applicants have filed the present O.A. With a prayer to quash the orders dated 13.10.2004 (Annexure A-1) and 24.12.2004 (Annexure A-2) and for a direction to the respondents not to promote the private respondents and instead promote the applicants. It is further prayed that para 13 of the Railway Board letter dated 9.10.2003 be also quashed and be declared as illegal.

The respondents are contesting the Original Application. They have pleaded that a perusal of the impugned order dated 13.10.2004 (annexure A-1) will show that the respondents have taken a perfectly legal action which is in consonance with the service law jurisprudence and there is no cause of action in favour of the applicants. It is further stated that vide order dated 24.12.2004 (Annexure A-2), in reference to the earlier notification dated 30.9.2003 (Annexure R-5/2), wherein 7 posts of Section Engineer (Signal) in the pay scale of Rs.6500-10,500 were advertised providing for 5 vacant posts for general category and 2 vacant posts for scheduled caste category. Reservation for SC/ST is admissible in view of the Railway board's communication dated 9.10./2003. It is further stated that as per the post based roster is provided in view of the verdict of the Hon'ble Supreme Court in the case of R.K.Sabhartwal. Thus, whenever there is increase and / or decrease in the cadre, reservation is to be provided in order to maintain the percentage of the reservation as per the constitutional guarantee and reservation policy. The restructuring has been effected only in two grades i.e. Senior Section Engineer (Signal) and Section Engineer Signal in the pay scale of Rs.7450-11500 and Rs.6500-10,500 respectively which has the effect of increase in the number of posts and in the other two grades, the result of restructuring was decrease in the cadre (Annexure R-2). The supervisory category is different from the artisan category. In the Signal



Department, all the posts in every category have not been upgraded. The restructuring has been effected keeping in view category wise panel of promotion. Where there is decrease / increase in the cadre, reservation policy has to be applied in order to maintain the proper percentage of reservation admissible as per the rules to the reserved category. Notification dated 13.9.2003 was issued to fill up the posts of S.E (Sig) in the pay scale of Rs.6500-10500 wherein total number of posts were 7 out of which 2 were meant for SC category and 5 posts were for general category. However, the same was cancelled vide notification dated 12.10.2004 in view of the letter dated 6.10.2004, pending selection which were not finalized were to be canceled and all the vacancies as on 1.11.2003 and the increased posts on account of restructuring/up gradation were to be filled up by the modified selection procedure. Earlier the eligibility criteria issued for the selection provided the condition to call three candidates for one vacancy and accordingly 6 candidates of SC category were to be called for two vacant posts but only one candidate of S.C. Category was available. Similarly for the general Category, 15 eligible candidates were to be called but including the applicants only 9 candidates were available. Keeping in view the provisions of para 215 of the Railway Establishment Code, panel is prepared and issued after the eligible candidate have been declared successful in the written examination and the number of candidates on the panel are to correspond to the number of vacancies. Since the selection process could not be finalised, the modified selection procedure was adopted in view of the letter of Railway Board dated 6.1.2004 and accordingly order dated 13.10.2004 was issued as a result of section made by modified selection procedure, which is perfectly legal and valid. Both the candidates of the SC category have been kept on the panel against reserved vacancies and these vacancies of SC category were in existence prior to 1.11.2003 which has nothing to do with the up gradation. This fact is evident from the notification dated 30.9.2003 wherein two vacancies were provided for

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reserved category at the time as well and now the panel issued on the basis of modified selection procedure also provides for two reserved vacancies for SC category candidates, who will be accorded promotion in accordance with the modified provisions of selection and not as per para 215 of IREC and after they have completed the residency period of two years in the relevant grade, whereas there is no embargo for offering an opportunity to these candidates to participate in the selection procedure without having completed the residency period of two years in the relevant grade/pay scale. Similar is the reply of the private respondents. They also submit that panel of 9 posts was formed vide Annexure A-1, which clearly show that 4 posts have been filled up by way of restructuring and remaining 5 posts meant for vacancies which existed as on 31.10.2003. It is in conformity with the Railway Board directions issued in view of the instructions, Annexure R-4-5/1. Respondents 4 and 5 have not been considered against the vacancies under upgradation as a result of restructuring and selection was processed for 5 posts of J.E (Sign) and the same was done in accordance with the modified procedure, as per the relevant instructions. Even earlier Notification dated 30.9.2003 clearly stated that two posts were meant for reserved category candidates, so it is prayed that the O.A. Be dismissed.

We have heard the learned counsel for the parties and perused the material on the file.

As regards the legal position regarding invoking of principle of reservation is concerned, there is no dispute between the parties that in up gradation / restructuring Scheme, the reservation policy cannot be invoked. Besides, that learned counsel for the applicant had also referred to a judgment given by the Hon'ble High Court of Punjab & Haryana at Chandigarh in W.P.No.3182-CAT-2005 (Union of India & others Vs. Pushpa Rani & Others), which affirmed decision of the C.A.T. Chandigarh Bench, holding that the reservation policy would not be applicable in the case of restructuring/up gradation of the posts is involved. The Hon'ble Punjab

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& Haryana High Court after referring to Contempt Petition No.304 of 1999 in C.A.No.1481/96 adjudicated by Apex Court, negated the contention of the Union of India for application of reservation in up gradation/restructuring holding that in case of upgradation/restructuring, the reservation policy cannot be invoked. Similar view has been taken by the Delhi High Court also in the case of Union of India Vs. All India Non SC./ST Railway Employees Association, New Delhi & Another, CWP No.6090 of 202 decided on 18.11.2003. But still the question involved in this case is whether number of posts which have become available in the higher grade are due to up gradation/restructuring or otherwise i.e. In normal course due to further promotion / retirement etc. The impugned order, Annexure A-1 shows that while following the modified selection procedure, 9 persons were placed on panel which included the private respondents who are at Sr.No.8 and 9 in the panel and while issuing annexure A-2, posting orders were issued in which it was clarified that persons whose name appear at Sr.No.1 to 4, they have been promoted w.e.f. 1.11.2003 and given the benefit of restructuring/upgradation. As regards the remaining 5 to 9 persons are concerned, it was categorically stated that they will get the promotion from the date they assume office. The endorsement No.2 shows that only 4 persons have been given the benefit of upgradation. So, the question which arises for decision is as to how many posts had become available under the restructuring Scheme in the pay scale of Rs.6500-10500. From the chart annexed with the Scheme of restructuring, it is clear that as on 1.11.2003, there were 10 posts of JE (Sig) in the pay scale of Rs.6500-10500 and after restructuring, number of posts in this category had been increased to 12. Similarly we find that the higher post of Senior Section 'Engineer (Sig) in the pay scale of Rs.7450-11500, the existing cadre as on 1.11.2003 was of 7 post and after restructuring there were 9 posts. Thus, from the existing cadre if two persons are given benefit of up gradation to the posts of Senior Section Engineer (Sig) would become 9 and by way of chain action, two more posts

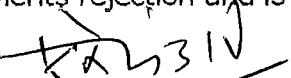
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became available by way of restructuring scheme in the pay scale of Rs.6500-10500. So, in all four posts had become available in the pay scale of Rs.6500-10500 as a result of restructuring / up gradation and all other vacancies were available in normal course, as the same existed prior to coming in force of up gradation scheme, which should have been filled up by normal procedure. However, when the Scheme of upgradation/restructuring came though the posts in pre-revised cadre had been advertised but the advertisement was withdrawn and it was decided to fill up the earlier advertised posts along with the posts becoming available as a result of restructuring of the cadre under modified selection process. So, the procedure as modified had to be applied for filling up these vacancies which existed upto 30.10.2003, according to the Railway Board letter, Annexure R.4-5/1, available at page 50 of the paper book. The para 4 of the said letter indicates that the selection will be based only on scrutiny of service records and confidential reports without holding any written and/ or viva voce test. Para 4.4 shows that all vacancies arising out of the restructuring should be filled up by senior employees who should be given benefit of the promotion w.e.f. 1.11.2003 whereas for the normal vacancies existing on or before 1.11.2003 junior employees should be posted by applying modified selection process but they will get promotion and higher pay from the date of taking over the posts as per normal rules. Thus, the specific benefit of the promotion w.e.f. 1.11.2003 is available only for vacancies arising out of restructuring and for other vacancies, the normal rules of prospective promotion from the date of filling up of vacancy will apply. According to the notification, Annexure R.4-5/1, dated 6.1.2004, the posts which have become available on restructuring/up gradation, have been divided into two categories, (1) the vacancies arising out of restructuring and (2) vacancies becoming available under the normal vacancy position as existing on 31.10.2003. The impugned order, Annexure A-1 indicate that 9 persons had been promoted as Junior Engineer (Sig) in the pay scale of Rs.6500-10500 and vide

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Annexure A-2, when the posting orders were issued, it had been clarified vide endorsement No.2 that name of persons appearing at Sr.No.1 to 4 were promoted because of upgradation and persons whose names appear at Sr.No.5 to 7, will get promotion \on assuming the office and as far as the respondents No.4 and 5 are concerned, it is mentioned that since they have not completed 2 years residency period in the lower grade, they are not being promoted for the time being. However, their names stand on the panel. Thus, we find that only the senior most persons could be placed in the pay scale of Rs.6500-10500 by virtue of their placement in the restructuring / upgradation scheme and all other persons had to undergo selection process. But since in this case by giving one time relaxation vide letter dated 6.1.2004, the selection procedure has been modified and the vacancies which were existing as on 1.11.2003, the Railway board authorized the concerned general manager to fill up these vacancies by following the modified selection procedure. However, the vacancies had been filled up as per procedure authorized by Railway Board. The applicants have not challenged the letter dated 6.1.2004 vide which the modified procedure has been invoked and since these vacancies have also not become available either as a result of action of restructuring orders and up gradation of number of posts in the scale of Rs.6500-10500 or because of chain reaction of increase in number of posts in the scale of Rs.7450-11500, so, these vacancies are normal vacancies and for normal vacancies the principle of reservation has to be invoked by the department.

In view of what has been discussed and held above we find that no case is made out by the applicants for our interference in the impugned order. The O.A. Merits rejection and is dismissed, leaving the parties to bear their own costs.

  
**(A.K.BHANDARI )**  
**MEMBER (ADM.)**

HC\*June 9, 2005.

  
**(KULDIP SINGH)**  
**VICE CHAIRMAN** 26/2005