

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

10.12.2007

OA No.108/2006

Mr. Shiv Shanker, proxy counsel to
Mr. P.V.Calla, counsel for the applicant
Mr. Alok Garg, counsel for official respondents
Mr. Nand Kishore, counsel for private respondents

Heard the learned counsel for the parties. For
the reasons dictated separately, the OA is disposed
of.

Karanwala
(TARSEM LAL)
Admv. Member

Chauhan
(M.L.CHAUHAN)
Judl.Member

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 10th day of December, 2007

CORAM:

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER
HON'BLE MR.TARSEM LAL, ADMINISTRATIVE MEMBER

OA No. 108/2006

1. Jai Prakash s/o Khem Chand, working as TTE, O/o the CTI, Rly. Station, Jaipur r/o Village and Post Mandola, Near Railway Station Kund, Distt. Rewari, Haryana.
2. Kanhaiya Lal s/o Shri Shyam Lal, working as TTE, O/o of the CTI, Ajmer, r/o Maheshwari Colony, Janta Bazar, Madanjanj, Kishangarh, Ajmer.
3. Rajeev Narula s/o Shri Harbans Lal Narula, working as TTE O/o the CTI, r/o 7-JH, 18, Jawahar Nagar, Jaipur
4. Gokul Prasad Sharma s/o Shri Harsukhlal Sharma, working as TTE, O/o DCTI, Jaipur r/o 57-A, Govardhan Colony, New Sanganer Road, Jaipur
5. Susheel Kumar Agarwal s/o Shri Devi Dayal, working as TTE O/o the CTI (SL), Jaipur r/o 379, Kateva Nagar, Jaipur

.. Applicants

(By Advocate: Shri Shiv Shankar, proxy counsel to Shri P.V.Calla)

Versus

1. Union of India through the Chairman, Railway Board, Rail Bhawan, New Delhi.
2. The General Manager, N.W.R. Headquarter Office, Opposite Railway Hospital, Jaipur.
3. The Divisional Railway Manager, Jaipur Division, Power House Road, Jaipur.
4. The Senior Divisional Personnel Officer, Jaipur Division, Power House Road, Jaipur

5. Shri Kailash Chand Meena s/o Shri Shriram, TTE, O/o CTI, Bandikui, Jaipur Division
6. Shri Hansiram Meena s/o Shri Ram Singh, TTE, O/o CTI, Bandikui, Jaipur Division
7. Shri Madan Kumar Meena s/o Shri Ramdev, TTE Office of CTI, Ajmer under Jaipur Division.
8. Shri Babulal s/o Shri Kherati Lal, TTE, O/o CTI, Bandikui
9. Shri Tej Prakash s/o Shri Anand Swaroop, TTE, Office of DCTI, Jaipur

(respondent Nos. 5 to 9 are reserved category candidates)

.. Respondents

(By Advocate: Shri Alok Garg and Shri Nand Kishore)

OA No.313/2005

1. Dharmveer Yadav s/o Shri Sardar Singh Yadav r/o Q.No.C-4, Road No.1 Ganpati Nagar, Railway Colony, Jaipur, presently posted as Junior Engineer Gr. I (P.Way) under A.E.N. (Track), Jaipur
2. Manoj Kumar Gupta s/o Shri B.B.Gupta r/o E/240 Amba Bari, Jaipur, presently posted as S.E. (P.Way), II, Bandikui.

.. Applicant

(By Advocate: Shri Shailendra Srivastava)

Versus

1. Union of India through Chairman, Rail Board, Rail Bhawan, New Delhi.
2. General Manager, North Western Railway, In front of Railway Hospital, Jaipur.
3. Divisional Railway Manager, North Western Railway, Jaipur Division, Jaipur.
4. Kedar Lal Meena, S.E. (P.Way) c/o S.S.E. (P.Way), Phulera.
5. Suresh Kumar S.E. (P.Way) c/o S.S.E. (P.Way, Kishangarh.
6. Puran Chand P J.E.Gr.I (P.Way), Phulera

.. Respondents

(By Advocate: Shri Hawa Singh, proxy counsel to Shri V.S.Gurjar and Shri Nand Kishore)

lsv

OA No. 96/2006

1. Rajendra Singh Gohil s/o Shri Achal Singh, r/o 16-A, Nirman Nagar-C, Extention, Jaipur
2. Subhash Chand Chaudhary s/o Shri Ram Kumar r/o 65, Parivahan Nagar, Khatipura Road, Jaipur
3. Raishal Singh s/o Shri Ladu Singh, r/o E-46, Govindpura, Sodala, Jaipur
4. Rishiraj s/o Gangasharan ji, r/o F-80, Panchsheel Marg, C-Scheme Marg, Jaipur
5. Jitendra Swaroop Sharma s/o B.S.Sharma, r/o 78, Shivaji Nagar, Civil Lines, Jaipur
6. Manmohan Gaur s/o Shri J.P.Gaur r/o D-9/90, Opposite Swami Narain Mandir, Chitrakoot, Jaipur

All the applicants are working substantively on the post of HTTE/HTC/TNCR under the North Western Railway, Jaipur

.. Applicants

(By Advocate: Shri Shiv Shankar, proxy counsel to Shri P.V.Callà)

Versus

1. The Union of India through the Chairman, Railway Board, Rail Bhawan, New Delhi.
2. General Manager, N.W.R. Headquarter, Office, Jaipur.
3. The Divisional Railway Manager, Jaipur Division, Power House Road, Jaipur
4. The Senior Divisional Personnel Officer, Jaipur Division, Power House Road, Jaipur
5. Shri Sedu Ram Meena s/o Shri Badri Narayan
6. Shri Prem Chand Sonwal s/o Shri Heera Lal
7. Shri Vora Ram s/o Shri Ummed Ram
8. Shri Mohan Lal s/o Shri Devi Dayal Ram
9. Shri Balbir Singh s/o Shri Shivalal,

Respondents No. 5 to 9 are working in the scale Rs. 5000-8000 under D.C.T.I., Jaipur under Ticket Checking Branch, North Western Railway, Jaipur.

.. Respondents

(By Advocate: Shri Hawa Singh proxy counsel to Shri V.S.Gurjar and Shri Nand Kishore)

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. Initially, 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 quote Para 2,3 and 4 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 kept 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.

It may be stated here that on the same lines this Tribunal vide order dated 28.11.2007 passed in OA No.30/2005 and other similar cases decided this controversy, which is squarely applicable in the instant case also.

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.

14. 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.

Tarsem Lal
(TARSEM LAL)

Admvt. Member

M.L.Chauhan
(M.L.CHAUHAN)

Judl. Member

R/