IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 13th December, 2013

CORAM :

HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER
HON'BLE MR. A.J. ROHEE, JUDICIAL MEMBER

1. ORIGINAL APPLICATION NO. 234/2010

Durga Lal Sen son of Shri Ratan lal, aged about 46 years, resident of 208 A Quarter Type III, Railway Workshop Colony, Kota Junction and presently working as Office Superintendent Grade II, Section under Chief Works Manager, West Central Railway, Kota Division, Kota.

... Applicant

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

Versus

1. Union of India through General Manager, West Central Zone, West Central Railway, Jabalpur.
2. Chief Personnel Officer (Administration),West Central Zone, West Central Railway, Jabalpur (M.P.).
3. Chief Works Manager (Wagon Repair Workshop), West Central Railway, Kota Division, Kota.

... Respondents

(By Advocate: Mr. Anupam Agarwal)

2. ORIGINAL APPLICATION NO. 237/2010

R.S. Khandelwal son of Shri R.L. Khandelwal, aged about 46 years, resident of C/o H.K. Saxena, Opposite Petrol Pump, Station Road, Kota Junction and presently working as Office Superintendent, Grade II, Box Shop (Wagon Repair Shop) under Chief Works Manager, West Central Railway, Kota Division, Kota.

... Applicant

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

Versus

1. Union of India through General Manager, West Central Zone, West Central Railway, Jabalpur.
2. Chief Personnel Officer (Administration),West Central Zone, West Central Railway, Jabalpur (M.P.).
3. Chief Works Manager (Wagon Repair Workshop), West Central Railway, Kota Division, Kota.

... Respondents

(By Advocate: Mr. Anupam Agarwal)

3. ORIGINAL APPLICATION NO. 238/2010

Ghan Shyam Sharma son of Shri Balu Ram Sharma aged about 59 years, resident of 727 A, Old Railway Colony, Hospital Road, Kota Junction and presently working as Office Superintendent, Grade II, Establishment –IV, under Chief Works Manager, West Central Railway, Kota Division, Kota.

... Applicant

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

Versus

1. Union of India through General Manager, West Central Zone, West Central Railway, Jabalpur.
2. Chief Personnel Officer (Administration),West Central Zone, West Central Railway, Jabalpur (M.P.).
3. Chief Works Manager (Wagon Repair Workshop), West Central Railway, Kota Division, Kota.

... Respondents

(By Advocate: Mr. Anupam Agarwal)

ORDER

PER HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Since the controversy involved in all these three OAs is the same, therefore, these are being disposed of by a common order. The facts of OA No. 234/2010 (Durga Lal Sen vs. Union of India & others) have been taken as a lead case. The applicant in this OA has prayed for the following reliefs:-

"(i) That the entire record relating to the case be called for and after perusing the same the respondents be directed not to revert the applicant from the post of Office Superintendent Grade II scale Rs.5500-9000 by deleting name from panel dated 15.06.2004 by quashing order dated 27.04.2010 and letter dated 23.04.2010 (Annexure A/1 and A/2) with all consequential benefits.

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(ii) That the respondents be further directed to hold good the panel dated 15.06.2004 (Annexure A/6) and further promotion order dated 28.06.2004 (Annexure A/7) and further order dated 19.07.2007 at Annexure A/8 and not to disturb the applicant from the present position of post and pay and allowances by quashing show cause notice dated 13.10.2008 (Annexure A/22) with the further orders passed by the respondents with all consequential benefits.

(iii) Any other order, direction or relief may be passed in favour of the applicants which may be deemed fit, just and proper under the facts and circumstances of the case."

(iv) That the costs of this application may be awarded."

2. Brief facts of the case, as stated by the learned counsel for the applicant, are that the applicant is the substantive employee of the respondent department. At present he is holding the post of Office Superintendent Grade II in the scale of Rs.5500-9000/- under the respondent no. 3.

3. The Railway Board issued orders for restructuring of certain Group 'C' and 'D' cadre vide order dated 09.10.2003 (Annexure A/3). The respondents calculated 35 vacancies of Office Superintendent Grade II as on 20.03.2004 (Annexure A/4). Vide office order dated 15.06.2004 (Annexure A/6), the applicant's name (Durga Lal Sen) appeared at sr. no. 32. The name of the applicant (R.S. Khandelwal) in OA No. 237/2010 appeared at sr. No. 29 of this list and the name of applicant (Ghan Shyam Sharma) in OA No.238/2010 appeared at sr. no. 35. The names of the applicants also appeared in the office order dated 28.06.2004 (Annexure A/7) which is as follows:-

1. Shri Durga lal Sen at sr. no. 8
2. Shri R.S. Khandelwal at sr. no. 5
3. Shri Ghan Shyam Sharma at sr. no. 11

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These applicants were also given proforma promotion in the pay scale of Rs.5500-000 w.e.f. 01.01.2003 vide order dated 19.07.2007 (Annexure A/8).

4. The respondents vide order dated 01.02.2007 (Annexure A/9) further calculated 4 vacancies to be filled by promotion and 4 vacancies by way of limited department examination to the cadre of Office Superintendent Grade II in the pay scale of Rs. 5500-9000/-

5. The respondents made selection of 3 candidates in this selection. The applicants did not participate because they were already allowed the scale of Rs.5500-9000/-.

6. The applicants are continuously holding the post of Office Superintendent Grade II in the scale of Rs.5500-9000/- as per the order dated 28.06.2004 (Annexure A/7). However one Shri Bhanwar Lal, who was holding the post of Junior Clerk prior to 2003 and presently holding the post of Head Clerk in the scale of Rs.5000-8000/- represented before respondent no. 1 on 31.01.2008 stating therein that the panel dated 15.06.2004 is not as per the Railway Board's order and reservation has not been allowed while placing the official on panel (Annexure A/12).

7. The respondent no. 3 submitted a detailed record vide letter dated 25.04.2008 (Annexure A/14) before respondent no. 2 stating that there was no deficiency of reserved category staff. That there were 3 more reserved category employees who had

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represented earlier and who had been replied by the respondents department by which they are satisfied. Even Shri Bhanwar Lal has been given reply whenever he represented earlier.

8. However vide letter dated 17.07.2008 (Annexure A/15), it has been ordered that the position of 2004 be reviewed and reservation be allowed to reserved category staff by modifying the order passed in 2004 in which the applicants were allowed scale of Rs.5500-9000/-

9. Being aggrieved by this decision of the respondents, the applicants represented before the respondent no. 1 on 23.07.2008 against the proposed action (Annexure A/16).

10. That the applicants alongwith co-workers filed OA No. 279/2008 (Durga Lal Sen & Others vs. Union of India & Others). This OA was decided by the Tribunal vide order dated 30.07.2008 (Annexure A/18). Vide this order, the Tribunal quashed the order dated 17.07.2008 (Annexure A/1 of that OA) and observed that it was open for the respondents to pass fresh order after issuing the show cause notice to the applicants. No order was passed on merit.

11. The respondents issued the show cause dated 13.10.2008 to the applicants stating therein that the position of 2004 is to be reviewed for allowing reservation to reserved category staff and it was further proposed to revert the applicants from the post of Office Superintendent Grade II.

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12. The learned counsel for the applicant submitted that the cadre strength of Office Superintendent in the scale of Rs.5500-9000/- remains as follows:-

> **Prior to 01.11.2003** 18 from which 17 posts lying vacant against which respondents allowed ad hoc promotion by applying prescribed percentage for reserved category staff.
>
> **On 01.11.2003** 5 more posts became available as per percentage under the restructuring scheme and total strength became 23 with the regular vacancy of 22.
>
> That the respondents further added 5 vacancies against upgraded posts and 8 resultant vacancies due to promotion of officials in higher grade. In view of this position 35 vacancies calculated as on 01.11.2003 which is evident from Annexure A/4. The panel dated 15.06.2004 at Annexure A/6 issued taking into consideration of percentage of reserve category staff.

13. The learned counsel for the applicant argued that there is no deficiency of reserve category staff at present and also at the relevant time when the promotion were allowed to the applicants in the year 2004. He further submitted that 13 posts as shown downgraded were never downgraded because there is no provision for down-gradation of posts. In fact these vacancies are resultant of higher grades and respondents already provide reservation against 17 vacancies while allowing ad hoc promotion to 3 officials and further to 5 officials w.e.f. 01.01.2003. However, the respondents wants to allow the benefit to 8 candidates against the cadre of 23 and by this action more than 68% reservation is

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to be allowed, which is not at all justified. The applicant submitted representation on 01.11.2008.

14. The respondent no.2 further directed to take action for amending the panel on the basis of re-assessment of the vacancies as unreserved 28, scheduled caste category 5 and Scheduled Tribe category 2 instead of 30, 3 and 2 as calculated in the year 2004.

15. The Railway Board also issued order dated 11.02.2008 (Annexure A/32) to the effect that reservation be given not on the basis of vacancies but on the basis of cadre strength and since in the present case cadre strength is 23, therefore, reservation can be applied on the basis of cadre strength only whereas the applicants have applied reservation on the vacancies position which the against the rules and, therefore, the OA be allowed.

16. On the contrary, the learned counsel for the respondents submitted that the reservation is applicable in restructuring as per Para 228 of IREM Vol. I. The action of the answering respondents is just and legal. The reserved candidate if comes on own merit is not counted against the reserved vacancy. The applicant has failed to demonstrate as to how the SC/ST employees were given reservation at the relevant time.

17. The learned counsel for the respondents submitted that there were 35 vacancies for the post of Office Superintendent Grade II as per the Railway Board's letter dated 09.10.2003. Out

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of these 35 vacancies, higher grade linked vacancies of COS and OS I were also included. The sanctioned cadre of OS II is 23 only. The panel dated 15.06.2004 was made as per the seniority of the cadre of Head Clerk without looking to the post based roster. It being not as per the rules, any correction thereafter cannot be assailed on that basis. The applicants were wrongly promoted and, therefore, any correction can be made by the respondents. He further submitted that the application of reservation while making ad hoc promotion is of no relevance.

18. The learned counsel for the respondents further denied that due reservation to the category of SC/ST was allowed while issuing promotion order under restructuring. The respondents have placed post based roster with their reply at Annexure R/1. He submitted that the panel prepared earlier in which the applicants were also promoted was not as per this roster and, therefore, the panel was amended by reverting the ineligible candidates while including the eligible candidates.

19. The applicants filed the representation before the respondents and the respondents in terms of the directions issued by the Tribunal decided the representation vide order dated 27.04.2010 (Annexure A/1). The panel dated 15.06.2004 was issued in order of seniority without considering the roster point. As per rules those reserved candidates who were promoted because of their seniority position cannot be considered against the reserved point in the roster. To man reserved point, reserved category candidates are to be picked up from the bottom and

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placed there. Since the panel was not prepared by taking these aspects, therefore, it was required to amend the panel to comply with the rule position. The applicants have tried to mix up the issue by considering the senior reserved category candidates whose names were found in the final panel because of their seniority position. He further submitted that those SC/ST employees who were promoted because of their seniority are treated to be the general category candidates. The applicants cannot base their claim by counting those SC/ST candidates against the quota reserved for them. Therefore, there is no illegality in the action of the answering respondents. Mere long continuance on the promotional post against the rules is also of no benefit to the applicants. Any mistake can be corrected at any stage by applying fundamental principles of law. Therefore, the OA is devoid of merit and it deserves to be dismissed with costs.

20. The applicant has also filed rejoinder. In the rejoinder also, the applicant has reiterated that the respondents provided reservation at the time of ad hoc promotion and these officials were further allowed regular promotion in higher grade on the basis of ad hoc service. In the rejoinder, the applicant has more or less reiterated the points raised in the OA.

21. Heard the learned counsel for the parties and perused the documents on record. The fact of promotion of the applicants vide order dated 15.06.2004 (Annexure A/6) has not been disputed by the respondents. It is also not disputed between the parties that the cadre of Office Superintendent Grade II is of 23 posts. It is

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also not disputed that the total vacancies that were to be filled up were 35 as per the calculation at Annexure A/4. Therefore, the brief controversy is that whether the roster for reservation would be applicable on the basis of 23 cadre post or on the basis of 35 vacancies which were to be filled up. The respondents have filed post based roster at Annexure R/1 and this post based roster has not been disputed by the learned counsel for the applicant.

22. The learned counsel for the applicant argued that S/Shri Kishan Chand, Ashok Kumar and T.K. Das who belong to reserved category were allowed promotion against Point Nos. 4, 12 and 17 for SC category as per roster maintained by the respondents and to support his averments, he referred to Annexure A/11. On the contrary, the learned counsel for the respondents submitted that they were wrongly shown as promoted against the reserved quota. In fact they were to be promoted as per general seniority in general category. When it came to the knowledge of the respondents, this lapse was corrected by the respondents by making partial modification by issuing the order dated 27.04.2010. We have given due consideration to the averments made by the respective parties and we are of the opinion that the respondents were at liberty to correct the mistake when it came to their notice. Therefore, we find no irregularity or illegality in the action of the respondents in issuing the modification order dated 27.04.2010.

23. It is not disputed that the total posts in the cadre of Office Superintendent Grade II are 23. If this cadre strength is taken for

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the purpose of reservation then there would be 3 posts for SC and 2 posts of ST. While making selection of 35 vacancies even 3 SC and 2 ST vacancies were not filled up by the respondents, certainly this was a lapse on the part of the respondents and in our opinion they can always correct this lapse.

24. In the present case, the respondents have made selection to the post of Office Superintendent Grade II for 35 vacancies, the calculation of the vacancies have been given at Annexure A/4.

25. Since the total posts in the cadre of Office Superintendent Grade II are 23, therefore, we are of the view that at any given point of time, there cannot be more than 23 Office Superintendent Grade II working. Out of the 35 vacancies, 5 vacancies are against the linked vacancies as against the upgraded posts and 8 vacancies are against the anticipated vacancies in the higher grade. We are of the view that when all the 23 posts of Office Superintendent Grade II are filled up then the reservation would be applicable on the basis of the post based roster (Annexure R/1) and when out of these 23 employees, some are promoted due to anticipated vacancy or for any other reason then the resultant vacancies are also to be filled up in accordance with the provision of reservation. Since the 12 additional vacancies were also filled up vide order dated 15.06.2004 (Annexure A/6) included the linked vacancies of 5 of upgraded posts and 8 vacancies against the anticipated vacancies, therefore, we are of the opinion that the roster point would be applicable even to these vacancies so that at any given point of time, the reservation is available to

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SC/ST employees according to the rules. However, it is strange that the calculation sheet at Annexure A/4 shows reservation vacancy- 3 posts of SC and 2 posts for ST employees, even then why these posts were not filed up when the panel was prepared and issued on 15.06.2004.

26. The learned counsel for the respondents has stated that the panel issued on 15.06.2004 of 35 employees was purely on seniority and no reservation roster was applied at that point of time and, therefore, to correct that mistake a fresh panel has been issued to provide reservation to the SC/ST employees as per the rules.

27. Having considered the rival submissions of the parties, we are of the view that the action of the respondents in revising the panel dated 15.06.2004 to provide reservation to the SC/ST candidates according to the provisions of rules is correct and it does not suffer from any illegality. It is also the policy of the Government to provide reservation to the SC/ST in promotion. If 35 persons have been selected by the respondents, they have to apply the roster on the basis of 35 vacancies so that there is representation of the SC/ST employees at any point of time as per roster. The respondents should ensure that the SC/ST candidates are placed according to the post based roster (Annexure R/1). We find no merit in the present OA.

28. Consequently, the OA is dismissed with no order as to costs.

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29. The Registry is directed to place the copy of this order in the files of OA No. 237/2010 (R.S. Khandelwal vs. Union of India & Others) and OA No. 238/2010 (Ghan Shyam Sharma vs. Union of India & Others).

(A.J. Rohee)
Member (J)

(Anil Kumar)
Member (A)

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