

12  
CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2633/2003

New Delhi this the 13th day of February, 2004.

HON'BLE MR. V.K. MAJOTRA, MEMBER (ADMNV)

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Jagmohan Singh

-Applicant

(By Advocate Shri T.S. Pandey)

-Versus-

Union of India & Anr.

...Respondents

(By Advocates Shri H.K. Gangwani with Ms Aparna Rohtagi)

1. To be referred to the Reporters or not? YES/NO *Yes*

2. To be circulated to other Benches of the Tribunal? *Yes*

*S. Raju*  
(Shanker Raju)  
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

O.A. No.2633/2003

This the 13th day of February, 2004

HON'BLE SHRI V.K. MAJOTRA, VICE-CHAIRMAN (A)

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

Jagmohan Singh S/O Tirath Singh,  
R/O C-51, Tatehnagar, Jail Road,  
New Delhi.

... Applicant

( By Shri T.S.Pandey, Advocate )

-versus-

1. Union of India through  
Chairman and Ex-Officio  
Principal Secretary, Govt. of India,  
Railway Road, Rail Bhawan,  
New Delhi.

2. General Manager,  
Northern Railway,  
Baroda House,  
New Delhi.

... Respondents

( By Shri H.K.Gangwani with Ms. Aparna Rohatgi, Adv. )

ORDER (ORAL)

Hon'ble Shri Shanker Raju, Member (J)

Applicant in this OA has prayed for the following  
reliefs :

"(A) issue any writ, order or direction in the nature of certiorari quashing the impugned orders dated 5th December 1995 and 26th April 2002 and 25.3.2003 (Annexure 1, 2 and 3) respectively with the further order or direction in the nature of mandamus commanding the respondents to consider the promotion the applicant on the post of Chief Office superintendent scale 7450-11500/- within a stipulated period whatever is fixed by this Hon'ble Tribunal that in pursuance of the office memorandums dated 20th November 1989 together with the provisions contained under section 33 of the 'Equal Opportunities, Protection of Rights and Full Participation Act, 1995'.

- (B) Award cost to the applicant from the respondents. .
- (C) Issue any other and further writ order or direction which this Hon'ble Tribunal deem fit and proper in the circumstances of the case but may have not been pleaded by the applicants for found just and appropriate to this Hon'ble Tribunal."

2. By an order dated 2.12.2003 on MA-2528/2003 seeking interim relief to hold the selection, orders have been issued subjecting the selection to the outcome of the OA.

3. Admittedly, applicant who is an orthopaedically handicapped person having 55% disability, was appointed as an LDC on 16.6.1972 and has risen to the rank of Office Superintendent Grade-I (OS-I). Applicant is also a member of Northern Railway Physically Handicapped Employees' Welfare Association, a registered society.

4. Following the recommendations of the Fifth Central Pay Commission, two posts of Chief Office Superintendent (COS) have been created vide letter of 10.5.1998 and are to be filled up as one-time relaxation following the process of modified selection vide Railway Board's letter dated February, 1999. Inter alia, existing instructions with regard to the reservation of SC/ST has been observed to be continued in the new grades. The posts are yet to be filled up.

5. Government of India, Department of Personnel & Training (DOP&T) vide OM dated 28.2.1986 provided reservation in jobs for physically handicapped persons in

Group 'C' and 'D' posts and for this, identification of posts has to take place. Railway Board has taken a policy decision on 10.7.1987 providing reservation for physically handicapped persons in Group 'C' and 'D' posts and has listed 253 jobs in Group 'C' and 17 in Group 'D' for physically candidates. This is with a view to ensure 3% reservation in different categories for physically handicapped. The post in question of COS is a Group 'C' post.

6. Government of India, Ministry of Personnel issued a memorandum on 20.11.1989 providing reservation for physically handicapped in the posts filled by reservation. This has to be implemented by all Ministries and Departments.

7. On coming into force of "Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995" (herein referred to as the Disabilities Act), on 7.2.1996, a mandatory requirement of providing 3% reservation in appointments has been made which included handicap in vision, hearing and locomotor disabilities. However, this is with a rider that having regard to the type of work in any establishment, a notification exempting the establishment from reserving the posts for disabled is to be issued by the appropriate government.

8. Memorandum dated 16.1.1998 provides 100-point roster for reserved posts for physically handicapped, and point No.1 is reserved for physically handicapped.

9. Vide a decision taken by the Ministry of Railways on 5.12.1995, keeping in view the special nature of job and safe carriage of goods and passengers, reservation for physically handicapped in posts filled by promotion has not been agreed to.

10. Applicant individually and through the Association, filed representations which remained unresponded, resulting in filing of OA No.3108/2002 wherein directions have been issued to dispose of the representation in the light of OM dated 20.11.1989. The representations made by the applicant individually and through association were turned down on 26.4.2002 and 25.3.2003 holding that on reconsideration by the Full Board in January, 2002 the earlier decision has been reiterated.

11. O.M. dated 18.2.1997 issued by the Ministry of Personnel provides reservation as per roster to the Physically handicapped in Group 'A' and 'B' posts and also O.M. dated 4.7.1997 providing roster points No.1, 34 and 67 in the cycle of 100 vacancies for 100-point roster to be reserved for physically handicapped.

12. Non-implementation of promotion in the newly created cadre of COS gives rise to the present OA.

13. Learned counsel for the applicant Shri T.S.Pandey along with Shri H.P.Chakravorty, referring to the Disabilities Act ibid contended that Section 33 mandates appointment by way of reservation in Government

jobs to those who are physically handicapped. However, to exempt an establishment from appointing disabled persons, a notification by the appropriate government keeping in view the job of work, is pre-requisite.

14. Referring to Section 47 of the Disabilities Act, it is stated that no promotion to disabled shall be denied on the ground of disability. However, keeping in view the type of work an establishment can be exempted only after a notification by the appropriate government.

15. Having regard to the above, it is stated that the aim and object of the Disabilities Act is to fix responsibility of the Central Government to provide facilities to the people with disabilities and to have equal opportunities for participation.

16. Having regard to the above, it is stated that in absence of a notification issued by the Ministry of Railways, they cannot be exempted from the purview of the Disabilities Act. Accordingly, they cannot discriminate a handicap.

17. Referring to Government of India's O.M. dated 28.2.1986 it is stated that as a policy decision, after the advisory committee findings, reservation in promotion for Group 'C' and 'D' posts has been provided to the handicapped persons. The aforesaid notification has been adopted by the Railways vide their RBE dated 10.7.1987. Once a policy decision has been taken by the Railway authorities to provide 3% reservation in the categories

mentioned, which inter alia included OS and other analogous categories, they cannot resile from their earlier stand.

18. While referring to the decision taken by the respondents on 5.12.1995, it is stated that the only ground on which the reservation has been denied to physically handicapped persons is the special nature of the job and safe carriage of goods and passengers. In this backdrop, it is stated that once, as admitted by the respondents, there is no impediment for the applicant to have attained promotion in the due course of seniority, not providing reservation on the ground of safety of passengers and carriage of goods, the same cannot be a bar for providing reservation as Article 14 forbids unreasonable classification and once there is no object sought to be achieved, the twin test laid down by the settled principle of law having not been satisfied, the decision of the respondents by not adopting the guidelines of nodal ministry is arbitrary and being a welfare State, keeping in view the Directive Principles, action of the respondents cannot stand scrutiny of law.

19. In so far as re-examination by the Full Board is concerned, the respondents rejected the prayer of the applicant for reservation to the physically handicapped and have not followed the DOP&T OM dated 20.11.1989 as only one ground of the special nature of the job which is not an impediment for promotion in their turn, is a illogical, irrational justification.

20. Referring to the decision of the respondents, non-adoption on the ground of Section 47(2) is not a good ground.

21. In nutshell, what has been stressed is that once the government has taken a decision to introduce reservation for physically handicapped in reservation to Group 'C' and 'D' posts, the post of COS being a Group 'C' post, cannot be exempted from the purview on the basis of safe carriage of goods and passengers as the job of COS is an office job and the disability in so far as the physically handicapped is concerned, is in no manner going to put hindrance in discharge of duties.

22. Respondents in their reply through Shri H.K.Gangwani vehemently opposed the contention. The justification given by them not to adopt the instructions of DOP&T dated 20.11.1989 is reproduced as under :

"2. That the various considerations which have weighed with the Respondent (Railway Board) not to adopt the instructions of the Department of Personnel & Training are as under :-

- (i) Every post at the lowest grade of entry has an avenue of promotion. Some of the promotions, e.g. Khallasi to Khallasi Helper, Junior Clerk to Senior Clerk, Junior Chargeman to Senior Chargeman etc are more or less based on proportionate distribution between the two grades, the higher grade being the compensation for more experience gained in basically the same nature of duties. However, in more senior grades the nature of duties become markedly different, involving far greater mobility and far wider range of knowledge and responsibilities. This fact has been recognized by placing a selection between the lowest grades and the next higher grade. The selection procedures are necessarily stringent so



JP

- 2 -

as to ensure that only the really capable in all respects are put out to shoulder the much higher responsibilities devolving in the higher grade.

- (ii) Difficulty in implementing reservation for physically handicapped in higher grades filled by promotion involving supervisory duties requiring fair amount of mobility and visual acuity.
- (iii) In some cases promotions may involve transfer from the existing place of duty of the physically handicapped posing problem attendant on dislocation of the physically handicapped.
- (iv) It has not been possible to fill the 3% quota prescribed for recruitment of physically handicapped persons in identified posts from the open market. In fact there is a considerable backlog, the main reason being availability of limited number of posts/categories identified for appointment of physically handicapped as against computation of vacancies for this purpose on the number of direct recruitment in both identified as well as non-identified categories. In this background with adequate number of physically handicapped persons not being there in the feeder grade we will be faced with a situation of perennial backlog and carry forward.
- (v) Reservation in posts filled by promotion for physically handicapped employee has also not been found necessary in view of the non-discriminatory provisions in place in the Railways in the matter of their promotion along with others subject to their passing selection/suitability/trade test, as enjoined in Section 47(2) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.
- (vi) Reservation as prescribed for physically handicapped is already being followed at the initial stage of recruitment from the open market in posts identified for being manned by appropriate category of handicapped as enjoined in Section 33 of the Act supra.
- (vii) The Railways being an operational transport organisation basically responsible for the safe carriage of

goods and passengers, reservation in promotion for promotion for physically handicapped has not been found to be necessary."

23. Moreover, it is stated by Shri Gangwani that in the normal course despite having handicap, the applicant is eligible to be considered in the selection for promotion to Group 'C' post of COS subject to his qualification in the selection. As such, there is no discrimination meted out to the applicant. Moreover, it is stated that Section 33 of the Disabilities Act ibid operates only on direct appointments to the posts in Central Government and is not applicable in a case of promotion. However, referring to Section 47 it is stated that having taken a policy decision keeping in view the nature of duties and responsibilities to be incorporated with the post with Railways, the Railways are exempted from the purview of 3% reservation would not be applicable. Moreover, it is stated that the policy decision cannot be subject matter of a judicial review and the decisions have to be left to be taken by the executive authorities in their wisdom.

24. In the rejoinder, the pleas taken in the OA have been reiterated.

25. In so far as the seniority issue raised by the applicant is concerned, having not assailed the same and having not claimed any relief, otherwise also for multiplicity of reliefs, the application is barred under Rule 10 of the CAT (Procedure) Rules. Moreover, we find that in OA No.3117/2003 wherein applicant was one of the

parties, by an order dated 29.12.2003 the OA was dismissed. However, on merits, on seniority, we do not dwell further.

26. In so far as the policy decisions taken by the government, the Apex Court in **State of Rajasthan & Ors. v. Lata Arun**, 2002 SCC (L&S) 859 held as follows :

"10. The points involved in the case are twofold : one relating to prescription of minimum educational qualification for admission to the course and the other relating to recognition of the Madhyama Certificate issued by the Hindi Sahitya Sammelan, Allahabad as equivalent to or higher than +2 or 1st year of IDC for the purpose of admission. Both these points relate to matters in the realm of policy decision to be taken by the State Government or the authority vested with power under any statute. It is not for courts to determine whether a particular educational qualification possessed by a candidate should or should not be recognized as equivalent to the prescribed qualification in the case. That is not to say that such matters are not justiciable. In an appropriate case the court can examine whether the policy decision or the administrative order dealing with the matter is based on a fair, rational and reasonable ground; whether the decision has been taken on consideration of relevant aspects of the matter; whether exercise of the power is obtained with mala fide intention; whether the decision serves the purpose of giving proper training to the candidates admitted or it is based on irrelevant and irrational consideration or intended to benefit an individual or a group of candidates."

27. If one has regard to the above, a policy decision of the government though cannot be interfered with or a decision is substituted by that of a Tribunal, however, in a judicial review nothing precludes the Tribunal from examining the policy decision as to its validity and whether it is based on rational and

reasonable grounds in the light of concept of equality and equal opportunities incorporated under Articles 14 and 16 of the Constitution.

28. While there is no denial from the fact that in the light of policy of reservation promulgated by the government providing reservation for physically handicapped persons in Group 'C' and 'D' posts vide DOP&T notification dated 28.2.1986, the respondents had also taken a policy decision on 10.7.1987 providing reservation in Group 'C' and 'D' posts on a joint consideration by the committee appointed by the Board. The office staff has been incorporated where the reservation for physically handicapped is to be applied. The physical requirement, the basis for reservation, is when the work performed is while sitting. Moreover, we find that DOP&T reiterated the reservation for physically handicapped vide OM dated 20.11.1989. Those are the identified posts and held by the appropriate category of physically handicapped persons. We also find that DOP&T OM dated 4.7.1997 providing point at No.1 in the cycle of 100 vacancies in 100-point roster earmarked for physically handicapped. All ministries and departments have been asked to ensure the reservation policy being implemented.

29. Section 33 of the Disabilities Act provides reservation to the tune of 3% in government service. This is with a view to provide equal opportunity to this section of the society. This is to bring at par with those the physically handicapped whose handicap is not an

impediment for purpose of duties assigned to the post. Section 33 in its proviso exempts only those establishments where keeping in view the work and performance and discharge of duties, that too on a notification made by the appropriate government. We do not find any notification issued by the Railways exempting from the purview the application of provisions of the Disabilities Act. No such orders have been passed by the appropriate government, i.e., the Central Government, in the instant case.

30. Section 47 of the Disabilities Act prohibits discrimination in the government employment and merely because of a disability, one cannot be denied promotion. However, this is subject to the type of work carried in an establishment and the condition precedent is a notification for exemption by the appropriate government.

31. The Apex Court while dealing with a case in **Kunal Singh v. Union of India & Anr.**, 2003 (1) SC3LJ 300 while interpreting Sections 33 and 47 of the Disabilities Act in so far as removal of a handicap on retirement on medical ground, observed as under :

"8. The need for a comprehensive legislation for safeguarding the rights of persons with disabilities and enabling them to enjoy equal opportunities and to help them to fully participate in national life was felt for a long time. To realize objective that people with disabilities should have equal opportunities and keeping their hopes and aspirations in view a meeting called the 'Meet to Launch the Asian and Pacific Decades of Disabled Persons' was held in Beijing in the first week of December 1995 by the Asian and Pacific countries to ensure 'full participation and equality of people with disabilities in the Asian and Pacific

Regions'. This meeting was held by the Economic and Social Commission for Asia and Pacific. A Proclamation was adopted in the said meeting. India was a signatory to the said proclamation and they agreed to give effect to the same. Pursuant thereto this Act was enacted, which came into force on 1st January, 1996. The Act provides some sort of succour to the disabled persons.

9. Chapter VI of the Act deals with employment relating to persons with disabilities, who are yet to secure employment. Section 47, which falls in Chapter VIII, deals with an employee who is already in service and acquires a disability during his service. It must be borne in mind that Section 2 of the Act has given distinct and different definitions of "disability" and "person with disability". It is well settled that in the same enactment if two distinct definitions are given defining a word/expression, they must be understood accordingly in terms of the definition. It must be remembered that person does not acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected under Section 47 of the Act specifically. Such employee, acquiring disability if not protected, would not only suffer himself, but possibly all those who depend on him would also suffer. The very frame and contents of Section 47 clearly indicate its mandatory nature. The very opening part of Section reads "no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service". This Section further provides that if an employee after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits; if it is not possible to adjust the employee against any post he will be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Added to this no promotion shall be denied to a person merely on the ground of his disability as is evident from sub-section (2) of Section 47. Section 47 contains a clear directive that the employer shall not dispense with or reduce in rank an employee who acquires a disability during the service. In construing a provision of social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to be one which obstructs the object and paralyses the purpose of the Act. Language of Section 47 is plain and certain

casting statutory obligation on the employer to protect an employee acquiring disability during service".

32. If one has regard to the above, we are of the considered view that a handicapped covered within the definition of the Disabilities Act cannot be deprived of opportunity of promotion by way of reservation only on the basis of disability.

33. The Government of India vide OM issued in 1986, 1989 and 1997 and lastly vide OM dated 24.7.1998 brought to the notice of all the departments and ministries to meticulously follow the instructions for reservation in promotion for physically handicapped which has not been followed in the present case. This was with a view to ensure the reservation policy of the government is strictly implemented. We do not find the Ministry of Railways being exempted from the purview of various instructions issued by the government for reservation for physically handicapped. Admittedly, the Railway Board has agreed to the reservation by taking a policy decision.

34. The subsequent decision impugned taken on 5.12.1995 does not pass the twin test of reasonable classification enshrined under Article 14 of the Constitution. The only ground taken by the respondents not to have given effect to the policy decision of the government to provide reservation in Group 'C' and 'D' posts, is "special nature of job, performance and

responsibility for the safe carriage of goods and passengers".

35. A glaring example of arbitrariness and unreasonable classification has forthcome. It is an admitted stance of the respondents that though they are not in a position to provide reservation to the handicapped employees within the 3% quota, yet these handicapped employees are eligible to be considered in normal course of promotion and the physical disabilities would not be an impediment. Once in normal circumstances, the requirement of performance, safety of passengers and carriage cannot be a bar for promotion of a handicapped in normal course, then the aforesaid impediment for providing reservation in promotion to the handicapped as mandated on a policy decision by the Government is an unreasonable classification which has no reasonable nexus, what to talk of the object sought to be achieved. By not providing reservation to the handicapped persons in Group 'C' and 'D' posts, the State has the onerous onus to establish the twin test, has miserably failed to do so.

46. The respondents' plea that in office work that is to be performed by OS-I and COS greater mobility and responsibility is required on a supervisory post and their resort to Section 47(2) of the Disabilities Act and the fact that once reservation is followed at the initial stage of recruitment, are not justifiable grounds, rather it smacks of arbitrariness and hostility which is nothing



but a discrimination, as in the other departments the reservation in promotion is being followed.

47. There should be some justification for reasonable, rational and logical justification for not adhering to the policy decision of the government for reservation in promotion in Group 'C' and 'D' posts to the physically handicapped persons.

48. In the Constitutional Bench decision by the Apex Court in **D.S.Nakara & Ors. v. Union of India**, 1983 SCC (L&S) 145 = (1983) 1 SCC 305, the following observations have been made :

"13. The other facet of Article 14 which must be remembered is that it eschews arbitrariness in any form. Article 14 has, therefore, not to be held identical with the doctrine of classification. As was noticed in Maneka Gandhi case {91978} 1 SCC 248} in the earliest stages of evolution of the constitutional law, Article 14 came to be identified with the doctrine of classification because the view taken was that Article 14 forbids discrimination and there will be no discrimination where the classification making the differentia fulfils the aforementioned two conditions. However, in **E.P.Royappa v. State of T.N.** {(1974 4 SCC 3}, it was held that the basic principle which informs both Article 14 and 16 is equality and inhibition against discrimination. This Court further observed as under : (SCC p.38, para 85)

From a positive point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belonging to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Articles

14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment.

14. Justice Iyer has in his inimitable style dissected Article 14 in Maneka Gandhi case as under at SCR p.728 : (SCC p.342, para 94)

That article has a pervasive processual potency and versatile quality, egalitarian in its soul and allergic to discriminatory diktats. Equality is the antithesis of arbitrariness and ex cathedra ipse dixit is the ally of demagogic authoritarianism. Only knight-errants of 'executive excesses' - if we may use current cliché - can fall in love with the Dame of despotism, legislative or administrative. If this Court gives in here it gives up the ghost. And so it is that I insist on the dynamics of limitations on fundamental freedoms as implying the rude law : Be you ever so high, the law is above you.

Affirming and explaining this view, the Constitution Bench in *Ajay Hasia v. Khalid Mujib Sehravardi* {(1981) 1 SCC 722} held that it must, therefore, now be taken to be well settled that what Article 14 strikes at is arbitrariness because any action that is arbitrary must necessarily involve negation of equality. The Court made it explicit that where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is, therefore, violative of Article 14. After a review of large number of decisions bearing on the subject, in *Air India v. Nargesh Meerza* {(1981) 4 SCC 335} the Court formulated propositions emerging from an analysis and examination of earlier decisions. One such proposition held well established is that Article 14 is certainly attracted where equals are treated differently without any reasonable basis.

15. Thus the fundamental principle is that Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question.

16. As a corollary to this well established proposition, the next question

is, on whom the burden lies to affirmatively establish the rational principle on which the classification is founded correlated to the object sought to be achieved? The thrust of Article 14 is that the citizen is entitled to equality before law and equal protection of laws. In the very nature of things the society being composed of unequals a welfare State will have to strive by both executive and legislative action to help the less fortunate in the society to ameliorate their condition so that the social and economic inequality in the society may be bridged. This would necessitate a legislation applicable to a group of citizens otherwise unequal and amelioration of whose lot is the object of State affirmative action. In the absence of doctrine of classification such legislation is likely to flounder on the bed rock of equality enshrined in Article 14. The Court realistically appraising the social stratification and economic inequality and keeping in view the guidelines on which the State action must move as constitutionally laid down in Part IV of the Constitution, evolved the doctrine of classification. The doctrine was evolved to sustain a legislation or State action designed to help weaker sections of the society or some such segments of the society in need of succour. Legislative and executive action may accordingly be sustained if it satisfies the twin tests of reasonable classification and the rational principle correlated to the object sought to be achieved. The State, therefore, would have to affirmatively satisfy the Court that the twin tests have been satisfied. It can only be satisfied if the State establishes not only the rational principle on which classification is founded but correlate it to the objects sought to be achieved. This approach is noticed in *Ramana Dayaram Shetty v. International Airport Authority of India* {(1979) 3 SCC 489, 506} when at SCR page 1034 (SCC p.506), the Court observed that a discriminatory action of the Government is liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory."

49. If one has regard to the above, Article 14 prohibits arbitrariness and forbids class legislation. The reasonable classification is an exception but has to qualify the twin test, i.e., the classification is based

on intelligible differentia and has a reasonable nexus with the objective sought to be achieved.

50. In the conspectus of above, the same work and requirement for the post is not an impediment for normal promotion. In a reservation, the same cannot put any hindrance in following the government directives in the light of Vienna Convention and with a paramount object of rehabilitating and giving equal opportunity to the disabled. There is no intelligible differentia as set out by the respondents.

51. The object sought to be achieved is no where to be seen. If the object is to keep off a handicapped person from getting reservation in promotion keeping in view the nature of duties and responsibilities, then it should be equally applicable in normal course of promotion. If a person is fit to discharge duties and onerous responsibilities keeping in view the safety of carriage and passengers, then denying him promotion on reservation is not fair. This is an extreme case of irrational attitude of the respondents having taken a policy decision in 1987. Once the decision was taken and the duties and responsibilities attached to the identified posts were same, the posts identified in 1987 through notification dated 10.7.1987 inter alia included the office staff up to the level of OS-I who apart from performing office work has also to look after the supervisory work. The newly created grade of COS, though includes duties of higher importance, cannot be different from what has been performed by the OS-I and it is in

addition to it. We do not find the justification arrived at and the reasons by the Full Board to the denial of reservation in Group 'C' and 'D' posts and moreover particularly in the post of COS. Once the reservation for SC/ST is continued to be applied, the reservation for physically handicapped which was to be followed as per the policy decision of the government, the decision of the Board <sup>v</sup>is itself is not a policy decision, goes in conflict with their earlier decisions. Having failed to pass the twin tests laid down under Article 14, the action is unsustainable in law. We are also of the view that once the office stream has been identified which included the post of OS-I, there is no need for identifying the post. However, we find that the duties attached to the post will not impede the applicant from performing the same.

52. In the result, for the forgoing reasons, the OA is allowed. Impugned orders are quashed and set aside. Respondents are directed to comply with their earlier policy decision of 1987 and also the Government of India instructions issued in 1997 as well as on 24.7.1998 to consider providing reservation to the physically handicapped in the post of Chief Office Superintendent. Thereupon, the respondents shall, as per the roster for the physically handicapped, consider the claim of the applicant for promotion to this post. The aforesaid exercise shall be undertaken and completed by the respondents within a period of three months from the date of receipt of a copy of this order. No costs.

*S. Raju*

( Shanker Raju )  
Member (J)

*V. K. Majotra*

( V. K. Majotra )  
Vice-Chairman (A)