

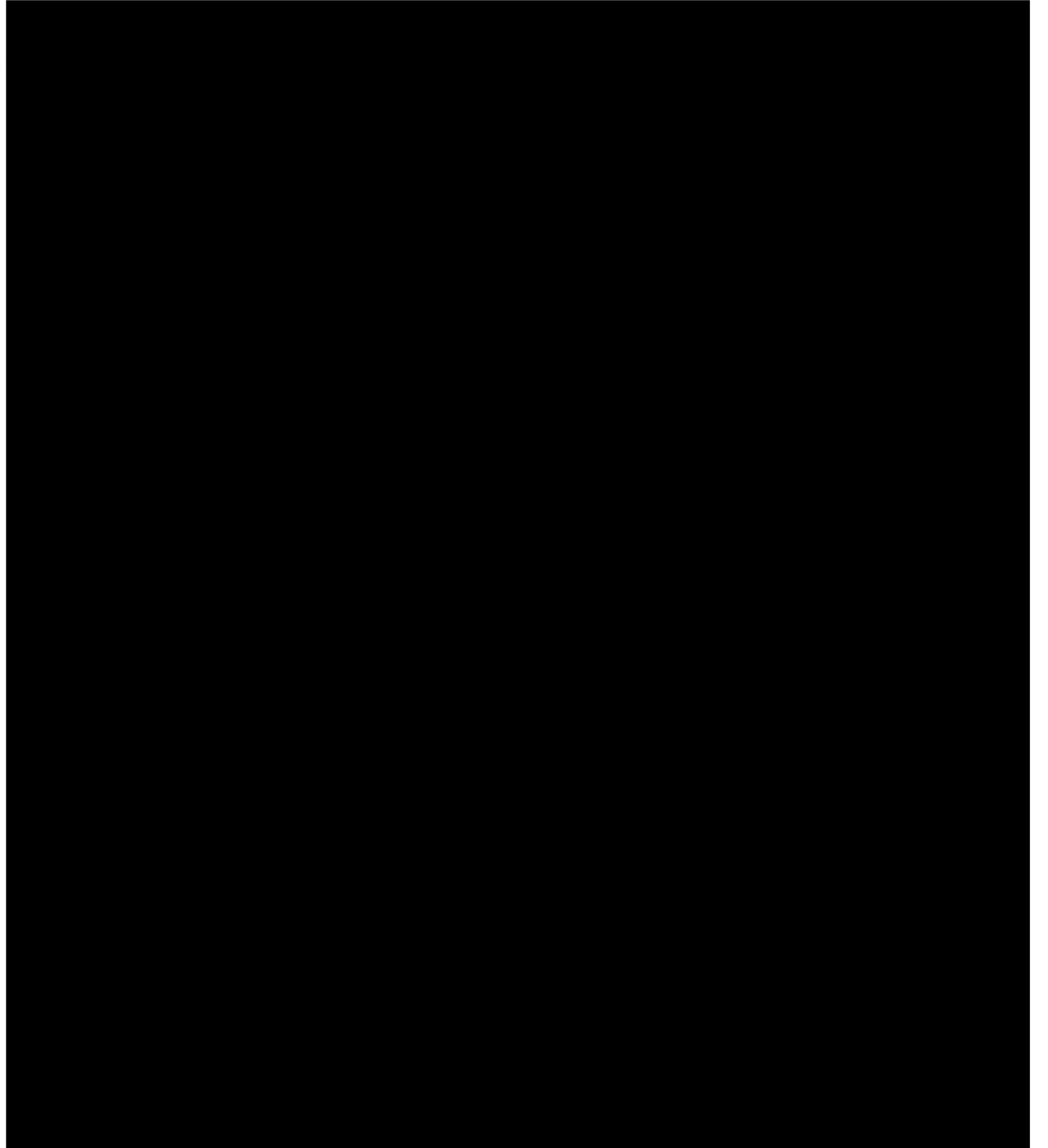
Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00916/2023

Jabalpur, this Friday, the 10th day of May, 2024

HON'BLE SHRI JUSTICE AKHIL KUMAR SRIVASTAVA, JUDICIAL MEMBER
HON'BLE SHRI KUMAR RAJESH CHANDRA, ADMINISTRATIVE MEMBER







(By Advocate –Shri M.N.Banerjee alongwith Shri Adeetya Banerjee)

V e r s u s

1. Union of India through its General Manager,
Western Railway Head Quarters Church Gate Mumbai (Maharashtra)
Pin code 400020

2. Chief Personnel Officer, Western Railway Head Quarters Church Gate Mumbai (Maharashtra) Pin code 400020

3. The Divisional Railway Manager, Western Railway Do Batti Ratlam District Ratlam M.P. Pincode 457001



(By Advocate –Shri S.P.Singh, Shri A.K.Soni, Shri S.K.Dagor
Shri Devendra Singh)

(Date of reserving the order:-28.02.2024)

ORDER

By Kumar Rajesh Chandra, AM:-

This Original application is directed against Eligibility list issued by Divisional Railway Manager, western Railway, Ratlam on 22.09.2023 for filling up 113 post of loco pilot (passenger) in pay Scale of 9300-34800 Grade pay 4200 (Level –VI).

2. The applicant has sought for the following relief in this Original Application:-

“8. **Relief sought:-**

8.1 Respondents may kindly be commanded to produce all relevant record for kind perusal of Hon'ble Tribunal.

8.2 Impugned eligibility list dated 22.09.2023 Annexure A-1 and suitability list dated 25.09.2023 Annexure A-2 may kindly be quashed and set aside.

8.3 Any other relief which Hon'ble Tribunal may consider reasonable looking to the facts and circumstances of the case.

8.4 Cost of the petition may kindly be allowed.”



3. The brief facts of the case is that all the applicants are working as Loco Pilot (Goods) in Ratlam Division of Western Railway. The General Manager, Western Railway, Mumbai by its letter dated 24.03.2021 had sent proposal to Railway Board, New Delhi for filling the post on ad-hoc basis subject to outcome of pending SLPs. The General Manager had specified six reasons for the proposal. Applicants are not aware of development of the action taken by Railway Board. The respondents ought to have included the name of applicant No.1 as also other persons who were party in earlier O.A .No. 708/2015. A perusal of vacancy of post notified would show that as a matter of fact 35 candidates who belong to SC/ST community have been included in the list stated to be against General community apart from 17 more SC/ST



community candidates who were much junior in seniority position have been included in the list on the garb of quota system. This makes the figure of SC/ST candidates included in the list to be 52 out of total 113 candidates. The applicants have submitted representation on 23.09.2023. The respondents without considering the representation had issued suitability list Annexure A/2 on 25.09.2023. Earlier applicant No.1 and most of the other applicants have filed Original Application before CAT Jabalpur bearing OA No.708/ 2015 based on judgement of **M. Nagraj & others** vs. **UOI & others**, which was allowed by CAT Jabalpur on 02.08.2017 relying on judgement of Hon'ble Supreme court of India in the case of M. Nagraj (**Supra**).

4. Per contra, learned counsel for the official respondents have contested the claim of the applicant by filing a counter reply wherein it is stated that as per instructions given in the Railway Board letter dated 22.06.2022 and HQ letter dated 23.06.2022, wherein, it is advised that the reservation roster should be strictly maintained and the instructions of RBE 114/1997 to be followed. According to the said circulars, the employees of reserved category



who on the basis of merit come in the eligibility list/ suitability list, should not be shown against the reserved points. On this basis the Eligibility list (Annexure A-1) and suitability list (Annexure A-2) for promotion to the post of loco pilot (passenger) in pay scale 9300-34800/- G.P. Rs. 4200/- (level/6) was issued, which is as per rules. Further, it has been submitted that the Jarnail Singh batch of cases are still pending in Hon'ble supreme Court and any promotion order issued shall be subject to further order that may be passed by the Hon'ble Supreme Court in the said batch of cases, therefore, the action of the respondents is in accordance with the policy/ instructions, the copy of Railway Board letter dated 22.06.2022 and copy of HQ letter dated 23.06.2022 is filed as Annexure R/1 and R/2 collectively. The respondents further submitted that as per bench marking for filling up 113 post of loco pilot passenger GP 4200/- Level-6 (Gen-96,SC-08-ST-09) eligibility list was issued on 22.09.2023, in which employees of reserved category who come between serial No. 01 to 96, on the basis of seniority have been taken against General points thereafter employees shown between serial No 97 to 113 have been taken

against points reserved for scheduled caste and schedule tribe respectively which is as per rules. The respondents further submitted that looking to the number of vacancies in the post of loco pilot passenger a proposal for ad-hoc promotion to the running staff category was sent to the Railway Board but the same was not approved.



5. The private respondents Nos. 4 to 7 have also filed their reply wherein they have stated that the official respondents has issued the eligibility list for promotion to the post of Loco Pilot passenger on 22.09.2023 with a break up of 11 posts wherein SC/ST employees working as Loco Pilot Goods have been considered by virtue of their seniority and fulfilling the other norms and procedure required for promotion to the post of Loco Pilot Passenger and the private respondents Nos. 4 to 7 have been considered against the vacant reserved post in the post based roaster in the eligibility list against serial No. 99, 100, 111 & 112 and applicants being UR employees have no right to claim for promotion against reserved post being senior UR employees.

6. The applicant has also filed Rejoinder to the Reply filed by the respondents refuting the contentions of the respondents made in the Reply by reiterating the averments as already made in the Original Application.



7. We have heard the learned counsel for both the sides and have gone through the pleadings and the documents annexed therewith. We have also gone through the written submission put forth by the applicant.

8. It is evident from the record that as per instructions given in the Railway Board's letter dated 22.06.2022 and 23.06.2022 wherein it is advised that the reservation roster should be maintained strictly and according to the instructions of RBE 114/1997. According to the said circular, the employees of reserved category who on the basis of merit come in the eligibility list, should not be shown against the reserved points. On this basis, the eligibility list and suitability list for promotion to the post of Loco Pilot (Passenger) in the pay scale of Rs. 9300-34800 with grade pay of Rs. 4200/- was issued, which is as per rules.



9. It is pertinent to mention here that looking to the number of vacancies in the post of Loco Pilot (Passenger) a proposal for ad-hoc promotion to the running staff category was sent to the Railway Board but the same was not approved. Furthermore, due to high vacancies in the Loco Pilot (Mail/Passenger) cadre the Railway Board has issued instructions for provisional promotion vide Railway Board's letter dated 03.08.2023.

10. It is settled law and as held by the Apex Court in [R.K.Sabharwal and Others v. State of Punjab](#) [(1995) 2 SCC 745] that reserved category candidates can compete for the non-reserved posts, as well. In R.K. Sabharwal (**Supra**), it was said that the candidates belonging to Scheduled Castes who compete on their own merit along with general category candidates are not to be counted within the percentage of reservation made for such candidates in the service, because they have competed with the general category candidates on their own merit without availing any relaxation for reserved candidates. The same principle which has been enunciated by the Constitution Bench in the aforesaid case shall be applicable whenever a member of Scheduled Castes



or Backward Classes has got accelerated promotion to a higher grade and is to be considered for further promotion to a still higher grade against general category posts. The accelerated promotions are to be made only against the posts reserved or roster prescribed. There is no question of that benefit being available when a member of Scheduled Castes or Backward Classes claims promotion against general category posts in the higher grade. It need hardly be pointed out that such candidates who are members of the Scheduled Castes or Backward Classes and have got promotion on the basis of reservation and application of roster before their seniors in the lower grade belonging to general category, in this process have not superseded them, because there was no inter se comparison of merit between them. As such when such seniors who belong to general category, are promoted later then it cannot be said that they have been superseded by such members of Scheduled Castes or Backward Class who have been promoted earlier. While considering them for further promotion against general category posts if the only fact that they have been promoted earlier being

members of Scheduled Castes or Backward Class is taken into consideration, then it shall violate the equality clause.



11. The question to be considered is whether the promotion is based on the relative merit of the parties or based on seniority in that particular cadre. There is no dispute about the fact that in the cadre of Loco Pilot (Goods), certain posts are reserved for SC/ST category and certain posts are unreserved. There is no dispute about the fact that the reserved category can be filled up only by candidates coming under the said category. But as far as unreserved seats are concerned, anybody including reserved candidates can compete for the said post.

12. It is also evident from the record that the eligibility list for promotion to the post of Loco Pilot passenger on 22.09.2023 with a break up of 11 posts wherein SC/ST employees working as Loco Pilot Goods have been considered by virtue of their seniority and fulfilling the other norms and procedure required for promotion to the post of Loco Pilot Passenger and the private respondents Nos. 4 to 7 have been considered against the vacant reserved post in the post based roster in the eligibility list against

serial No. 99, 100, 111 & 112 and applicants being UR employees have no right to claim for promotion against reserved post being senior UR employees. It would be pertinent to mention here that the list was prepared on benchmark including merit/seniority/service record/ACR and SC/ST candidates if coming on merit will occupy the Un-reserved points.



13. In view of the discussion made above, we find no irregularity in the impugned orders passed by the respondent department and therefore, the Original Application is dismissed being devoid of any merit. No order as to costs.

(Kumar Rajesh Chandra)
Administrative Member
rn

(Akhil Kumar Srivastava)
Judicial Member