

(2007) 03 MAD CK 0280

In the Madras High Court

Case No : Writ Petition No's. 30110 and 30111 of 2003

D.W. Samuel and S. Rajamani

APPELLANT

Vs

The Registrar, Central Administrative Tribunal, Madras Bench
and Others

RESPONDENT

Date of Decision : 27-03-2007

Acts Referred:

Constitution of India, 1950 — Article 16(4)

Citation : (2007) 03 MAD CK 0280

Hon'ble Judges : Dharma Rao Elipe, J;A. Kulasekaran, J

Bench : Division Bench

Advocate : Vijay Narayan for R. Parthiban, for the Appellant; P. Jayaraman for P. Veeraraghavan, R. Singaravelan and V.G. Sureshkumar, for the Respondent

Final Decision : Dismissed

Judgement

Dharma Rao Elipe, J.—In the above said two writ petitions, the challenge is to the common order dated 8-3-2002 passed by the Central Administrative Tribunal (in short "the Tribunal") in the original applications filed by the second respondent herein challenging the Selection Panel prepared and published by the Railways for filling up the 13 vacancies in the post of Assistant Personnel Officer.

2. Facts, in brief, are: A notification dated 15-11-1996 was issued by the Railways, inviting applications from the eligible Group C employees for filling up 13 vacancies in the post of Assistant Personnel Officer (Group D) by way of promotion. Of these 13 vacancies, 10 were under unreserved category, 2 were reserved for Scheduled Caste and 1 was reserved for Scheduled Tribe. Out of 222 candidates appeared for the written examinations held on 28-6-1997 and 26-7-1997, only 35 candidates (29-Unreserved and 6-Scheduled Caste) were successful. No candidate from the Scheduled Tribe category was successful, but in terms of the orders of the Railway Board, 20 Scheduled Tribe candidates who secured the minimum of 20% and above in the written examination were called for viva voce for selecting best among them as against the one vacancy reserved

for Scheduled Tribe candidates. Based on the written examination and the viva voce, a panel of 13 selected candidates (10-unreserved category, 2-Scheduled Caste and 1-Scheduled Tribe under relaxed standard) was prepared by the General Manager, Southern Railway, which was approved by the Chief Personnel Officer/Chairman, Selection Committee, Southern Railways and published on 1-12-1997. Alleging irregularities in the selection process, a complaint was made to the CBI and the matter was investigated by the CBI. The unsuccessful candidates have filed O.A. No. 1035 of 1998 challenging the selection panel. The 13 selected candidates were, however, promoted as Assistant Personnel Officers as against the corresponding vacancies. The above original application was disposed of by the Tribunal by order dated 1-3-1999 reserving liberty to the Railway to take appropriate action on the basis of the report submitted by the CBI. The Railway Board, after considering the report submitted by the CBI, canceled the entire panel by order dated 25-6-1999. The promotees though reverted to their respective Group C posts, but were directed to continue as Assistant Personnel Officers on ad hoc basis pending finalisation of the revised panel.

The General Manager then ordered for revaluation of the answer scripts. The revaluation results were notified on 8-11-1999. Three candidates, who were selected and placed in the earlier panel, however, failed in the revaluation process. The said three candidates filed O.A. Nos.1090 and 1130 of 1999 before the Tribunal challenging the panel dated 8-11-1999.

The candidates who were successful in the revaluation were asked to appear for the viva voce on 22-11-1999. The Tribunal, by order dated 22-11-1999, allowed the original applications filed by the three unsuccessful candidates in the revaluation process and directed the Railways to redo the selection afresh.

The Railways challenged the Tribunal's order before this Court in W.P. Nos.1351 and 1352 of 2000. The successful candidates have also filed W.P. No. 1093 of 2000 challenging the order passed by the Tribunal.

This Court by order dated 8-11-1999 set aside the order passed by the Tribunal. Thereafter, the Railways published the Selection Panel on 10-4-2001 wherein 13 candidates were shown as the selected for the posts of Assistant Personnel Officer.

The selection panel dated 10-4-2001 was challenged by the second respondents herein in O.A. Nos.731 and 493 of 2001 on the grounds inter alia that they were eligible for selection under the relaxed standards in the reserved category and that candidates junior to them were wrongly selected and included in the panel.

The Tribunal, by the order impugned in these writ petitions, has allowed the original applications and directed the review of the select list published on 10-4-2001 and inclusion of two more Scheduled Caste candidates, i.e. the original applicants without holding a fresh selection and deleting/reverting the two unreserved category candidates who are occupying the reservation roster

point meant for the Scheduled Caste candidates. Aggrieved by the direction given by the Tribunal to include the names of two more Scheduled Caste candidates, i.e. the original applicants without holding a fresh selection and by deleting/reverting two selected candidates under unreserved category, the petitioners have preferred the present writ petition.

3. Learned senior counsel for the petitioners submitted that the selection to the post of Assistant Personnel Officer is based on the written test (150 marks), viva voce (25 marks) and record of service (25 marks). The minimum qualifying marks for selection are 90 out of 150 in the written test, for record of service 15 out of 25 and for viva voce and record of service put together 30 out of 50. The candidates who have secured 60% and above in the written test would be called for viva voce and those who have scored 60% and above in the written test and 60% and above in aggregate are eligible for selection. A panel of selected candidates is required to be drawn corresponding to the number of vacancies for which the selection was held. While the selection is made based on the qualifying marks, the panel is drawn as per the seniority of the selected candidates.

3. Learned Counsel submitted that in view of the alleged irregularities in the earlier selection process and acting on the report submitted by the CBI, the Railways chose to cancel in entirety the earlier panel published on 1-12-1997 (in which P. Rajeswaran, R2 in W.P. No. 30110 of 2003 and the second petitioner were unsuccessful) and directed revaluation of the answer scripts. The Railways's decision to revalue the answer scripts was upheld by this Court in W.P. No. 1351 of 2000 etc. batch of writ petition. After revaluation, a panel was published on 10-4-2001 showing the names of 13 selected candidates. In the post-revaluation selection process, the second respondents did not secure the requisite qualifying marks in the record of service and viva voce put together and therefore they were not selected. Learned senior counsel submitted that the claims of the second respondents that their non-selection was improper, that they are eligible for selection under the relaxed standards in the reserved category (Scheduled Caste) and that the petitioners and one C. Venugopalan, who are juniors to them, were wrongly selected and included in the panel are unsustainable in law and on facts for the following reasons:

1. The second respondents did not secure the requisite qualifying marks in the record of service and viva voce put together, on the other hand, the petitioners and C. Venugopalan have secured the requisite qualifying marks and therefore they were selected and included in the panel.

2. The revaluation was upheld by this Court in W.P. No. 1351 of 2000 etc. in which second respondents were also parties and they appeared for the viva voce without any protest or grievance.

3. The second respondents having participated in the post-revaluation selection process and having failed in the viva voce cannot now somersault and challenge the selection process.

4. The performance of the second respondents in the viva voce was assessed by the selection committee which included an officer from the reserved community to protect the interests of the candidates belonging to the reserved category.

5. The selection is purely on the basis of the merit, i.e. the marks obtained in the written test and viva voce, including the record of service. The question of seniority becomes relevant only for arranging the selected candidates in the panel and it has nothing to do with the very selection itself.

6. The process for selection was strictly followed in the present case and the assumption of the second respondents that their performance in the viva voce was not properly assessed by the selection committee is contrary to the records.

4. On the claim of the second respondents that reservation roster point meant for the Scheduled Caste candidates was not followed, learned senior counsel submitted as follows:

1. Out of 13 vacancies, 2 vacancies were reserved for Scheduled Caste candidates and 1 vacancy reserved for Scheduled Tribe candidate.

2. The Railway Board's circular dated 30-6-1999 clearly provides that those SC/ST candidates who qualify in the promotional tests with general standards should be empanelled and only a deficiency in the reserved quota should be made for such candidates as being qualified with relaxed norms, that is excluding marks of seniority in the aggregate. The circular further provides that those SC/ST who have qualified without relaxation will be taken against the reserved posts of promotional category but there may be a situation where some of the SCs/STs be getting a place against the non-reserved post in the suitability test. Those SCs/STs will continue to be excluded while determining the present representations of the SCs/STs in a particular cadre and post vacated by them will be filled up as per extant instruction.

3. Applying the above said circular, the selection of Shanthiraj Bhoge and Chandrika Jayasankar cannot be deemed to be the one under general category and their selection was only as against the two vacancies reserved for Scheduled Caste candidates. These two selected candidates were above the second respondents in the seniority list.

4. This Court has already W.P. No. 1311 of 1999 relating to the selection to the post of Assistant Law Officers in the Railways that the reserved community candidates who come within the zone of consideration and who are selected on the basis of the requisite qualifying marks would be accommodated against the reserved vacancy and such selection and promotion cannot be treated one made against the the general or unreserved category.

5. The second respondent did not raise the issue of breach of rule of reservation when he had already challenged the initial selection in the year 1998 when he filed O.A. No. 1035 of 1998. After having taken part in the post-revaluation selection process and when they were not selected on the only ground that they

have failed to secure the qualifying marks in the viva voce and the record of service, they cannot now plead that rule of reservation has not been followed.

5. Learned senior counsel submitted that the Tribunal completely failed to apply the above said circular which was issued by the Railways pursuant to the various pronouncements of the Supreme Court and erred in holding that the selection of Shanthiraj Bhoge and Chandrika Jayasankar should be treated as against the unreserved vacancies as they have scored more marks even from among the unreserved category candidates and therefore two more candidates from SC category, viz. the original applicants/second respondents without holding a fresh selection and deleting/reverting two candidates from unreserved category who were wrongly selected as against the two vacancies meant for the Scheduled Caste candidates.

6. Learned senior counsel further submitted that the Tribunal erred in issuing the direction to constitute a DPC to review the select panel based on the marks already awarded by the earlier DPC and if the order of the Tribunal is to be implemented there will be in effect two DPCs exercising control over the present selection, one DPC awarded marks in viva voce and record of service and another DPC is to draw the list of two candidates only.

7. Learned standing counsel appearing for the Railways submitted that the selection has been done strictly in accordance with the then prevailing rules more particularly Paragraphs 201 and 204 of the Indian Railway Establishment Manual. The selection is purely based on the marks secured by the candidates in the written test and viva voce, which included the record of service, but the selection panel is not drawn on merit alone but as per seniority amongst the candidates who had secured the requisite qualifying marks. The candidates who have secured the requisite marks are placed in the panel in the order of seniority and if there is an SC candidate available on such placement, he will be placed against the post reserved for SCs and only in the absence of an SC candidate in the panel it will become necessary to consider the other SC candidates for filling up the post. In the present case, as against the two vacancies reserved for SC candidates, two SC candidates viz. Shanthi Raja Bhoge and Chandrika Jayasankar were selected against the SC vacancies and the SC vacancies were thus filled up. Since the selection in the present case was held in the month of April, 2001 on the basis of the Railway Board's circular dated 30-6-1999, the Department of Personnel & Training's instructions dated 11-7-2002 providing that a reserved category candidate who secures more marks and comes out successfully purely on merit should be treated only against the unreserved vacancies and should not be counted as against the reserved vacancies is not applicable in the present case inasmuch as the said circular came into effect only from 7-8-2002. Therefore, the claim of the second respondents that the selection of M/s. Shanthi Raja Bhoge and Chandrika Jayasankar should be counted as against the unreserved vacancies and not as against the two vacancies reserved of Scheduled Caste candidates and as such the Railways should have selected

two more SC candidates for filling up the two vacancies reserved for Scheduled Caste candidates.

8. Per contra, learned Counsel appearing for the second respondents/original applicants submitted that the selection of M/s. Shanthiraj Bhoge and Chandrika Jayasankar, who belonged to Scheduled Caste community, was on the basis of their own merit and therefore their selection should be deemed as against the unreserved vacancies and not as against the two vacancies reserved Scheduled Caste. Learned Counsel submitted that if a reserved category candidate is selected on the basis of his own merit and performance, his selection should be as against the merit quota, but not against the reserved vacancies. In the present case since M/s. Shanthiraj Bhoge and Chandrika Jayasankar have been selected based on their own merit and performance, their selection should be counted only as against the unreserved vacancies and as such for filling up the two vacancies reserved for Scheduled Caste candidates, the Railways should have gone down further below the list of candidates for selecting suitable Schedule Caste candidates by applying the relaxed standards as was done for filling up one vacancy reserved for Scheduled Tribe candidate. Learned Counsel submitted that the Tribunal was therefore right in holding that the selection of Shanthiraj Bhoge and Chandrika Jayasankar should be counted against the merit quota against the vacancies meant for unreserved category and that the official respondents are duty bound to select and empanel two more Scheduled Caste candidates (original applicants) by applying the relaxed standard, if necessary, without holding a fresh selection and by deleting/reverting two unreserved category candidates who are occupying the reservation roster point meant for Scheduled Caste candidates.

9. Heard the learned Counsel for the parties. We have also carefully gone through the impugned order passed by the Tribunal and the records placed before us.

10. The main contention of the original applicants, who belong to the Scheduled Caste, before the Tribunal and even before us was that the since the two selected Scheduled Caste candidates have qualified themselves for selection purely on the basis of their own merit, ability and performance in the written examination and viva voce, their selection should be counted as against the unreserved vacancies (open category) only and not as against the two vacancies reserved for the Scheduled Caste candidates and, consequently, the two reserved vacancies should have been filled by selecting the best candidates from out of the other Scheduled Caste candidates, even by applying the "relaxed standards" as was done in the case of the Scheduled Tribe. This was accepted by the Tribunal and by the impugned order, the Tribunal directed the inclusion of the names of the original applicants without holding fresh selection and by reverting two candidates selected under unreserved category. The inclusion of the original applicants in the panel in compliance of the Tribunal's direction would upset the selection of the writ petitioners, who were selected as against the unreserved

vacancies and placed in the panel at Sr.Nos.11 and 12 respectively.

11. The points that arise for consideration, in the light of the rival contentions raised by the parties, are:

1. Whether the selection of the two candidates belonging to reserved category as against the "reserved vacancies" is legal?
2. Whether the original applicants are entitled for selection as against the "reserved vacancies"?

12. We have carefully gone through the entire materials placed before us, including the confidential records relating to the original selection proceedings and the viva voce mark sheet. We have also perused the rules and regulations governing the promotion and more particularly the rules relating to promotion of Scheduled Castes/Scheduled Tribes against the reserved vacancies. Under "general standard", candidates who secure 60% and above are called for the interview (viva voce). The rules also provide for applying "relaxed standard" for the reserved candidates to select the "best among the failed" for filling up the reserved vacancies. A candidate is eligible to be empanelled in the selection list if he secures a minimum of 30 marks out of 50 in record of service and viva voce taken together and a minimum of 15 marks out of 30 under record of service. The qualifying marks of 15 out of 30 in record of service is applicable to all candidates including the reserved candidates. The Annual Confidential Reports (ACR) for the last five years from 1995-96 to 1999-2000 were considered by the Selection Committee for allotting marks under the record of service.

13. It is also seen that out of 39 candidates called for the viva voce, five were Scheduled Caste candidates. The selection panel published on 10-4-2001 contained the names of 12 candidates, of which ten were under unreserved categories and two candidates were shown as "SC" category. For better appreciation, we extract the relevant entries from the list of the names of the employees who qualified in the revaluation and called for viva voce:

Sr.	Name	Community	Professional	Viva	Record of Marks	Total	No.	Ability	Voce
-----	------	-----------	--------------	------	-----------------	-------	-----	---------	------

1.	R. Muthusamy	N	92.5	16	21.0	129.5	2.	R. Sudhakaran	N	94.0	15	23.7	132.7
3.	T.P. Baskar	N	92.5	17	22.5	132.0	4.	C. Devarajan	N	106.0	18	23.5	147.5
5.	Shanthi Raj Bhoj	SC	94.5	16	19.7	130.2	6.	G. Subramanian	N	90.5	17	16.3	123.8
7.	R. Mohan	N	104.0	15	19.5	138.5	8.	T.R. Ragavendran	N	92.5	18	24.5	135.0
9.	Chandrika Jayasankar	SC	94.0	17	16.9	127.9	10.	V. Mohanan	N	91.5	5	22.5	119.0
11.	P. Rajeswaran	SC	92.5	8	20.2	120.7	12.	C. Venugopalan	N	94.5	14	19.7	128.2
13.	A. Rajamani	N	94.0	15	21.8	130.8	14.	S.W. Samuel	N	93.0	16	19.7	128.7
15.	N. Panneerselvam	Unwilling to attend viva voce					16.	M. Alagiri	SC	91.0	7	20.1	118.1
17.	K. Manickaraj	SC	93.5	8	19.1	120.6	18.	A. Nagaiah	Unwilling to attend viva voce				
19.	E. Sangareswai	N	91.5	11	20.2	122.7	20.	R. Parandhaman	N	105.0	10	16.8	131.8
21.	T. Jhonson	N	102.0	10	23.6	135.6	22.						

S.S. Jagannathan N Unwilling to attend viva voce 23. A. Srinivasan N Unwilling to attend viva voce 24. S. Mohan N 104.0 12 21.3 137.3

14. From the above, it is evident that the out of 24 candidates (19 general category and five Scheduled Caste candidates), 12 (10 general category and 2 Scheduled Caste) were selected and placed in the panel. The highest total marks secured was 147.5 by one C. Devarajan (Unreserved), who is placed at Sr. No. 5 in the selection panel and the lowest marks secured was 123.8 by G. Subramanian (Unreserved), who is shown at Sr. No. 9 in the panel. Of the five Scheduled Caste candidates, the two selected candidates, viz. Shanthi Raj Bhoj and Chandrika Jayasankar, whose selection as against the reserved vacancies was questioned by the original applicants, have secured 130.2 and 127.9 respectively and they were shown at Sr.Nos.8 and 12 respectively in the panel. The original applicants have secured the total marks of 120.7 and 120.6 respectively. It is therefore clear that the selected candidates under the unreserved category were within the mark range of 147.4 and 123.8. The selected Scheduled Candidates have secured more marks, both in the written examination and viva voce, than the marks secured by the lowest total marks secured by the unreserved candidate. While preparing the selection list, Railways treated the selection of Shanthi Raj Bhoj and Chandrika Jayasankar as against the two vacancies reserved for Scheduled Caste candidate despite the fact that the said two candidates have secured more marks on their own merit and performance.

15. The law is well-settled on this issue. A candidate of reserved category, viz. Scheduled Caste or Scheduled Tribe securing more marks in the written examination and viva voce on the basis of his own merit, ability and performance and coming out successfully either on par with or above the unreserved candidates cannot be considered to be selected as against the "reserved vacancies". The selection of such meritorious candidate should be counted only as against the "unreserved vacancies" or "general category". In R.K. Sabharwal and others Vs. State of Punjab and others, , the Supreme Court held as follows:

When a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserve points, it has to be taken that the posts shown at the reserve points are to be filled from amongst the members of reserve categories and the candidates belonging to the general category are not entitled to be considered for the reserve posts. On the other hand, reserve category candidates can compete for the non-reserved posts and in the event of their appointment to the said posts their number cannot be added and taken into consideration for working out the percentage of reservation.

In Union of India v. Virpal Singh Chauhan AIR 1995 SCW 4309, following its earlier decision in R.K. Sabharwal case, cited supra, the Supreme Court, in paragraph 28, observed as follows:

Once the number of posts reversed for being filled by reserved category

candidates in a cadre, category or grade (unit for application of rule of reservation) are filled by the operation of roster, the object of rule of reservation should be deemed to have been achieved and thereafter the roster cannot be followed except to the extent indicated in Para 5 of R.K. Sabharwal. While determining the said number, the candidates belonging to the reserved category but selected/promoted on their own merit (and not by virtue of rule of reservation) shall not be counted as reserved category candidates.

In R.K. Sabharwal and others Vs. State of Punjab and others, , the Supreme Court held as follows:

In this connection it is well to remember that the reservations under Article 16(4) do not operate like a communal reservation. It may well happen that some members belonging to, say, Scheduled Castes get selected in open competition field on the basis of their own merit; they will not be counted against the quota reserved for Scheduled Caste; they will be treated as open competition candidates.

In Ritesh R. Sah Vs. Dr. Y.L. Yamul and others, , the Supreme Court once again reiterated the above said position in the following words:

There cannot be any dispute with the proposition that if a candidate is entitled to be admitted on the basis of his own merit then such admission should not be counted against the quota reserved for Scheduled Caste or Scheduled Tribe or any other reserved category since that will be against the constitutional mandate enshrined in Article 16(4).

16. Our attention was also invited to the questions raised made on the floor of the House whether persons belonging to SCs/STs and OBCs who are selected on merit are not required to be shown against the quota of vacancies/posts reserved for their communities and if so, the total number of persons belonging to SCs STs and OBCs selected/recruited/promoted on merit in the Ministry of Railways to different categories of services and not counted against the reserved quota of vacancies/posts for their communities, during the last five years in the Ministry. The reply made by the Minister for Railways is as follows:

(a) Yes. Sir. It has been stated in para 11 of the Explanatory Notes to DOP&Ts OM No. 36012/2/96-Estt. (Res.) dated 02-07-1997 that while operating the roster, persons belonging to communities for whom reservation has been made, but who are appointed on merit and not owing to reservation, should not be shown against reserved points. They will occupy the unreserved points.

(b) The information is being collected and will be laid on the Table of the Sabha.

17. We shall now advert to some of the communications/circulars issued by the Railway Board's on this issue. In the communication Ref. RBE No. 147/99 dated 24-6-1999, it has been clarified that it is not necessary that for being considered for general posts, an SC/ST candidate must progress all along as a general candidate. If SC/ST candidates are fulfilling the eligibility conditions and coming

within the zone of consideration, they have to be considered for promotion against the general posts too. In the Railway Board's communication R.B.E. No. 128/2002 dated 7-8-2002 it has been clarified that the SC/ST candidates appointed by promotion on their own merit and not owing to reservation or relaxation of qualifications will not be adjusted against the reserved points of the reservation roster. They will be adjusted against unreserved points. Also find from the records that a We shall also advert to the relevant Railway Board's communications on the above issue. In the communication bearing Ref. RBE No. 128/2002 dated 7-8-2002 it is clarified in clear terms that the SC/ST candidates appointed by promotion on their own merit and now owing to reservation or relaxation of qualifications will not be adjusted against the reserved points of the reservation roster. They will be adjusted against unreserved points. The said communication further clarified that if an unreserved vacancy arises in a cadre and there is any SC/ST candidate within the normal zone of consideration in the feeder category, such SC/ST candidate cannot be denied promotion on the plea that post is not reserved. Such a candidate will be considered for promotion alongwith other candidates treating him as if he belongs to general category. In case he is selected, he will be appointed to the post and will be adjusted against the unreserved point. It is also seen from the records that on the query raised by various Ministries/Departments/Offices whether the ratio laid down by the Supreme Court in R.K. Sabharwal case, cited supra, was applicable in case of promotion as well, it has been clarified by the Department of Personnel and Training as follows:

The said judgment was given effect vide Department of Personnel and Training OM No. 36012/2/96-Estt.(Res.) dated 2-7-1997 and para 2 of the said O.M. Specifically mentioned about this part of the decision of the Court. Thus the fact that that own merit SC/ST candidates are to be adjusted against unreserved posts was communicated on 2-7-1997 itself. However, several Ministries/Departments/Offices raised queries whether it was applicable in case of promotion as well or not.

This Department, in order to set at rest the confusions that prevailed in regard to treatment of SC/ST candidates promoted on their own merit, issued clarificatory OM No. 36028/17/2001-Estt(Res) dated 11-7-2002. Thus, OM dated 11-7-2002 did not lay down any new policy or principle. Rather, it merely clarified the provision which was already in force vide OM dated 2-7-1997. Therefore, the provision about treating own merit SC/ST candidates already existed and had been communicated vide OM dated 2-7-1997.

The position has again been clarified vide RBE No. 103/2003 dated 20-6-2003 in the following words:

Some of the Zonal Railways have raised doubts regarding Para (i) of the above quoted letter and sought a categorical clarification as to how the SC/ST candidates appointed by promotion on their own merit and not owing to reservation or relaxation of qualifications is to be adjusted in the post based

roster.

In this context, it is clarified that in selection posts, SC/ST candidates who are selected by applying the general standard and whose names in the select list/panel appear within the number of unreserved vacancies are to be treated as selected on their own merit. For example, suppose there are a total of 10 vacancies for which a panel/select list is to be prepared. Out of them, six vacancies are unreserved and four are reserved for SC/STs. First six candidates in the select list/panel who have been selected by applying the general standard will be adjusted against unreserved vacancies irrespective of the fact whether they or some of them belong to SC or ST category. SC/ST candidates selected for remaining four reserved vacancies whether selected on general standard or by giving relaxations/concessions as per existing instructions on the subject, shall be adjusted against reserved vacancies.

It is also pertinent to note that in the Railway Board's letter dated 10-10-2003 it is stated that since the DOP&T vide their OM No. 36028/19/2003-Estt (Res) dated 29-9-2003 have clarified that their clarification given in OM No. 36028/17/2001 Estt (Res) dated 11-7-2002 did not lay down any new policy or principle rather it merely clarified the position which was already in force vide their OM dated 2-7-1997 regarding post based roster and further clarified that the provision about treating the SC/ST candidates promoted on their own merit as unreserved already existed, the Railway administration may not be in a position to defend the writ petition filed against the order of the Tribunal and hence the Board has decided to withdraw the writ petition and to implement the order of the Tribunal. The writ petitions filed by the Railways challenging the order of the Tribunal was, therefore, withdrawn as not pressed.

18. Therefore, we are of the considered view that the selection of M/s. Shanthiraj Bhoje and Chandrika Jayasankar should be treated as against the general vacancies (unreserved vacancies) and not against the reserved vacancies inasmuch as by virtue of securing high marks in the written examination and the viva voce, they qualified for promotion on their own merit, ability and performance and not owing to reservation or relaxation of qualifications. The Railways were wrong in showing their selection as against the two reserved vacancies. The Tribunal was correct in holding that these two candidates are to be shown against the merit quota.

19. When once it is held that the selection of M/s. Shanthiraj Bhoj and Chandrika Jayasankar is to be counted as against the unreserved vacancies, the two reserved vacancies should be filled by selecting two best Scheduled Caste out of the remaining three candidates available in the list. It is seen from the list of the candidates for selection, out of the remaining three Scheduled Caste candidates, the original applicants, viz. M/s. Rajeswaran and Manickaraj have secured the total marks of 120.7 and 120.6 respectively and the other candidate has secured the total marks of 118.1. It was contended by the Railways before the Tribunal that the original applicants could not be selected as they failed to secure the

minimum qualifying marks of 30 out of 50 in record of service and viva voce and a minimum of 15 under the record of service. The original applicants have secured 20.2 and 19.1 respectively in the record of service and 8 and 8 respectively in the viva voce and therefore failed to secure the minimum qualifying marks of 30 out of 50 in the viva voce. This contention was rejected by the Tribunal, relying on the order dated 11-4-2001 passed by the Supreme Court in Civil Appeal No. 9877 of 1995 (K. Prabhakara Rao v. Union of India) In the said decision the question that fell for consideration before the Supreme Court was whether the fixation of the minimum percentage of marks in the viva voce test as per paragraph 205 of the Indian Railway Establishment Manual can be held to be in accordance with law or not. The Supreme Court while answering the question in negative directed the respondent to consider the case of the appellant as if there is no qualifying marks in the viva voce test as indicated in paragraph 205 of the Indian Railway Establishment Manual. That apart, the selection rules itself provide for the application of "relaxed standards" for selecting the best among the failed reserved candidates for filling up the reserved vacancies. The Tribunal was right in holding that the Railways are duty bound to select and empanel two more Scheduled Caste candidates on the basis of the total marks secured by them and by applying the "relaxed standards", if required. In such circumstances, we are of the view that the original applicants are entitled for selection as against the two vacancies reserved for the Scheduled Caste candidates.

20. We find no merit in the writ petitions. The writ petitions are therefore dismissed. No costs. Interim orders, if any, shall stand vacated. Connected miscellaneous petitions are closed.