
(2011) 04 DEL CK 0172

In the Delhi High Court

Case No : Writ Petition (C) No's. 18032-33 of 2005

Union of India (UOI) and Another

APPELLANT

Vs

Sudershan Kumar and Others

RESPONDENT

Date of Decision : 19-04-2011

Acts Referred:

Administrative Tribunals Act, 1985 — Section 20, 21
Constitution of India, 1950 — Article 14, 16

Citation : (2011) 04 DEL CK 0172

Hon'ble Judges : Sudershan Kumar Misra, J;Anil Kumar, J

Bench : Division Bench

Advocate : Kumar Rajesh Singh, for the Appellant; Meenu Mainee, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The Petitioners, the Union of India through the General Manager, Northern Railway and another have challenged the order dated 31st May, 2005 passed by Central Administrative Tribunal, Principal Bench in O.A No. 2065/2004 titled as "Sudershan Kumar and Ors. v. Union of India and Anr." allowing the original application filed by the Respondents and setting aside the panel and promotion order issued by letter dated 3rd December, 2004 and directing the Petitioners to restructure the panel in the light of the notification dated 8th April, 1988 and the clarification accorded by the Headquarter on 10th April, 2001 and 2nd December, 2004 and to consider the case of promotion of the Respondents along with the persons who have already been promoted from the booking cadre.

2. Brief facts to comprehend the controversy between the parties are that the Respondents belong to the cadre of parcel clerks and have been given promotions as senior parcel clerks, thereafter head parcel clerks and thereafter as parcel supervisors.

3. The Respondents were initially appointed as booking clerks in the year 1967-78 and were absorbed in the cadre of parcel clerks. Under the Petitioners

the cadre of parcel clerks was distinct from booking clerks. Parcel clerks deals with booking and delivery of parcels whereas booking clerks are those who are book and issue tickets for passengers. Cadre of both categories used to be separate and the staff working in both the cadres had to be promoted in their own cadres.

4. At the time of filing the original application in 2004 the Respondents disclosed that they were working as head parcel clerks/parcel supervisors in the grade of Rs. 5000-8000/- and Rs. 5500-9000/- respectively. The Respondents were eligible for promotion to the post of Chief Parcel Supervisor in the grade of Rs. 6500-10500/-. The grievance of the Respondents was that selection for the post of Chief Parcel Supervisor in the grade of Rs. 6500-10500/- was sought to be done by merging the seniority of both the distinct cadres i.e. booking clerks with the parcel clerks. According to the Respondents this was contrary to the decision of the Railway Board given in 1993 where it was decided that those parcel clerks who have been appointed prior to 1993, their cadre will continue to be separate, however, the cadre of those who were appointed after 1993, will be merged with the booking clerks.

5. The Respondents contended that when the selection for the post of Chief Parcel Supervisor was initiated, it transpired that the eligibility criterion considered by the Petitioners was contrary to the rules as large number of booking clerks had been placed senior to the Respondents perhaps because of merging of cadres and as the cadre of parcel clerks was much smaller. The Respondents, therefore, made a representation to the Petitioners contending that though merging of seniority of two cadres, of parcel clerks and booking clerks will not annihilate the careers of the booking clerks who are junior to the Respondents. However it will give a march to the booking clerks over the parcel clerks.

6. Despite a categorical and detailed representation dated 18th December, 2000 against merging of the cadres of parcel clerks and booking clerks who were employed prior to 1993 contrary to policy of the Petitioners, no response was received by those who had made the representation entailing filing of an original application being O.A No. 19/2001 before the Central Administrative Tribunal, Principal Bench for a direction to the Petitioners to consider their representation dated 18th December, 2000 before declaring the result of selection for the post of Chief Booking Supervisor. The said original application was disposed of by order dated 3rd January, 2001 by giving directions to the Petitioners to consider the representation dated 18th December, 2000 and to pass a speaking and reasoned order and to intimate those who had made the representation.

7. Pursuant to the order of the Tribunal, Petitioner No. 1 issued an order to Divisional Railway Manager, Northern Railway, Firozpur, Punjab stipulating that instructions dated 8th April, 1988 have not been implemented at Ferozpur Division leading to the problem as propounded by the Respondents. It was stated that neither cadres have to be separate or joint at all levels and the cadres of

parcel clerks and booking clerks cannot be separate up to the level of Grade Rs. 1600-2660/- and then merging at the level of CBS/CPS grade Rs. 2000-3200/- which would result in bias in favour of one of the categories. Consequent to the order dated 10th April, 2001 the Petitioner No. 2 cancelled the selection which was held in the year 2000 for the post in the grade of Rs. 6500-10500/- by combining the seniority of parcel clerks with booking clerks.

8. By that time as number of booking clerks had already been promoted/selected over the Respondents, they submitted a representation to revert those booking supervisors who had been promoted as Chief Parcel Supervisor. Instead of reverting these booking supervisors who had been promoted as Chief Parcel Supervisors contrary to Petitioners instructions dated 8th April, 1988, the Railway Board in the meantime issued a restructuring order by notification dated 9th October, 2003 restructuring various cadres in group "C" and a number of posts were upgraded. As the implementation of notification dated 9th October, 2003 was to be carried out by merging the seniority of parcel supervisors and booking supervisors to upgrade the post of Chief Parcel Supervisor/Chief Booking Supervisors in the grade of Rs. 6500-10500/-, a representation was made. The Respondents also relied on the order of Petitioner No. 1 dated 10th April, 2001 whereby the headquarter office had given clear directions that the cadres have to be either separate or combined at all levels and the cadres could not be separate at some levels and combined at other levels. The Respondents also represented that restructuring by combining seniority of parcel supervisors and booking supervisors will be detrimental to the careers of parcel clerks especially as a number of booking supervisors had already been promoted contrary to the seniority of parcel clerks on account of merging of two cadres.

9. On the representation of the Respondents the matter was referred to the headquarter office by DRM Northern Railway, Firozpur by letter dated 21st May, 2004. The Respondents had contended that due to lack of specific directions by the headquarter, Petitioner No. 2 was constrained to refer the matter again to the headquarter. It was pointed out that it is a fact that parcel clerks are senior in the initial grades but due to small cadre they remain backward till reaching grade 1600 - 2660/5500 - 9000 and as a result they become very junior to the booking clerks appointed later on. Reliance was placed on the order of the board whereby booking clerks appointed after 1st November, 1993 had been designated as commercial clerk and the seniority had been clubbed at all levels. The Petitioner No. 2, however, admitted that there are no specific instructions regarding those persons who had been appointed prior to 1st November, 1993.

10. The headquarter despite the earlier directions did not respond to the letter dated 21st May, 2004 whereby the representation of the Respondents was forwarded to Petitioner No. 1. The Respondents, therefore, filed an original application being O.A No. 2065/2004 titled as "Sudershan Kumar and Ors. v. Union of India through General Manager, Northern Railway and Anr." contending inter-alia that despite the instructions dated 8th April, 1988 and the letter dated

10th April, 2001 of the Petitioner No. 1, the cadres of parcel clerks and booking clerks have been merged by the Petitioner No. 2 for promotion to the post of Chief Parcel Supervisor and Chief Booking Supervisor. It was also asserted that Petitioner No. 2 is in a hurry to implement the restructuring orders on the basis of combined seniority contrary to instructions dated 8th April, 1988 and clarification dated 10th April, 2001.

11. The petition was contested by the Petitioners contending inter-alia that the Railway Board vide their policy instructions dated 6th August, 1993 circulated under printed serial No. 10841 formulated a scheme to merge all the cadres of goods, booking and parcel clerks into common cadre of "Commercial Clerks". It was contended that this scheme came into force on 1st November, 1993 and no appointments were to be made to the lowest grades in any of the three cadres by direct recruitment and promotion had to be made only to the unified cadre. The scheme contemplated that all employees on regular basis to any of the three existing cadres up to 31st October, 1993, however, will continue therein and would progress in their respective cadre. The scheme also contemplated giving option to the employees in the three existing cadres to come over to the new unified cadre which option had to be exercised within two months from the date of issue of corresponding instructions and the option was deemed to be effective from 1st November, 1993.

12. The Petitioners, however, categorically admitted that in Ferozpur division all booking and parcel staff who joined prior to 1st November, 1993 would continue to be promoted in all grades separately but to the grade of Rs. 6500-10500/- the seniority of booking supervisors and parcel supervisors in grade of Rs. 5500-9000/- would be merged and common selection would be held. The Petitioners contended that in respect of Ferozpur division it was decided in consultation with both recognized labour federations that Railway Board's instructions dated 6th August, 1993 circulated under printed serial No. 10841 would be followed and a joint agreement in this regard was relied on. It was also contended that the Railway Board in consultation and agreement with both the recognized labour federations and with the approval of the President decided for restructuring of Group "C" and "D" cadre which included the cadre of commercial clerk.

13. The Petitioners contested the original application of the Respondent on the ground that the sanctity of policy instructions in selection and in agreement with the recognized labour unions have been upheld in a number of judgments passed by Tribunals and the High Court. The Petitioners also contested the original application filed by the Respondents on the ground that Principal Bench of the Tribunal has no territorial jurisdiction to entertain the application. It was also pleaded that the application of the Respondents was premature and not maintainable u/s 21 of the Administrative Tribunals Act, 1985 and the application was barred by limitation as the Respondents were aggrieved by order dated 30th July, 2001 and they have not filed the original application after exhausting all the

departmental remedies.

14. The Tribunal considered the pleas and contentions of the parties and allowed the original application and set aside the panel of booking clerks and parcel clerk for promotion and promotion order dated 3rd December, 2004 and the Petitioners were directed to restructure the panel, directly in light of notification dated 8th April, 1988 and the clarification accorded by Petitioner No. 1, headquarter on 10th April, 2001 and 2nd December, 2004. The Petitioners were also directed to consider the case of the promotion of the Respondents as also the case of the other persons who had already been promoted from the cadre of booking clerks, however, the Tribunal also directed the Petitioners that before passing any adverse order against any of the employees already promoted, he or she must be put to notice.

15. The Tribunal repelled the objection regarding Respondents not impleading all those who would be in joint panel of booking clerks and parcel clerks at the level of Rs. 6500-10500/- for those employed prior to 1.11.1993, as it was found to be against the Railway Board's letter dated 8th April, 1988. It was held that at the time original application was filed, there was no proposal to form the panel for implementing the restructuring by the Railways. Panel was made during the pendency and promotion order dated 3.12.2004 was passed. Reliance was also placed by the Tribunal on A. Janardhana Vs. Union of India (UOI) and Others, holding that where the proceedings are analogous to those in which the constitutionality of a statutory rule regulating the seniority of Government servants is assailed, then in such proceedings the necessary parties to be impleaded are those against whom the relief is sought, and in whose absence no effective decision can be rendered by the Court. It was held that in such cases, relief is sought only against the Union of India and the concerned Ministry and not against any individual nor is any seniority claimed by any individual against another particular individual and, therefore, the petition is not to fail for not implementing some of the recruits and not representing against such an illegality. In para 21 of the impugned order the Tribunal had held as under:

As regards preliminary objection of non-making of a representation, applicants have approached this Tribunal against merging the cadres at the level of Rs. 6500-10500 for consideration of restructuring the benefit, which is against the Railway Board's letter dated 8.4.1988. At the time when this application was filed, no proposal was there to form the panel for implementing the restructuring order by the Railways. It is during the pendency that the restructuring was effected to but as in the order dated 3.12.2004, the orders which not only included formation of panel but promotion as provisional and is liable to be cancelled as per the directions of the Courts, this empanelment and promotion has been made subject to the outcome of the OA. As such, we do not find this infirmity as effect of dismissal of OA. Moreover, the Apex Court in A. Janardhana Vs. Union of India (UOI) and Others, observed as under:

In this case, Appellant does not claim seniority over particular individual in the

background of any particular fact controverted by that person against whom the claim is made. The contention is that criteria adopted by the Union Government in drawing-up the impugned seniority list are invalid and illegal and the relief is claimed against the Union Government restraining it from upsetting or quashing the already drawn up valid list and for quashing the impugned seniority list. Thus the relief is claimed against the Union Government and not against any particular individual. In this background, we consider it unnecessary to have all direct recruits to be impleaded as Respondents. We may in this connection refer to *General Manager, South Central Railway, Secunderabad and Anr. etc. v. The General Manager, South Central Railway, Secunderabad and Another Vs. A.V.R. Siddhantti and Others*, . Repelling a contention on behalf of the Appellant that the writ Petitioners did not implead about 120 employees who were likely to be affected by the decision in this case, this Court observed that the Respondents (original Petitioners) are impeaching the validity of those_ policy decisions on the ground of their being violative of Articles 14 and 16 of the Constitution. The proceedings are analogous to those in which the constitutionality of a statutory rule regulating the seniority of government servants is assailed. In such proceedings, the necessary parties to be impleaded are these against whom the relief is sought, and in whose absence no effective decision can be rendered by the Court. Approaching the matter from this angle, it may be noticed that relief is sought only against the Union of India and the concerned Ministry and not against any individual nor any seniority is claimed by anyone individual against another particular individual and therefore, even if technically the direct recruits were not before the Court, the petition is not likely to fail on that ground. The contention of the Respondents for this additional reason must also be negated.

16. Regarding not filing of the representation it was held that filing of representation would be a useless formality as the Respondents had approached the Tribunal on an action to fill up the upgraded post of Chief Booking Supervisors/Chief Parcel Supervisors on the basis of combined seniority and not taking a decision on the clarifications given by the Headquarter and had even filed a detailed reply where the reasons were already assigned to have adopted such a procedure. In any case it was held that in exceptional circumstances nothing precludes the Tribunal to entertain the application without exhausting the available remedy of filing representation in consonance with Section 20 of the Administrative Tribunal Act, 1985 and, therefore, this plea of the Petitioners was repelled.

17. The plea of the Petitioners regarding limitation was also rejected on the ground that the action of the Petitioner is null and void keeping in view the earlier decisions and on account of various panels formed and promotions accorded on the basis of combined seniority which gave a continuing cause of action.

18. With regard to the plea of the Petitioner that the policy decision of the Petitioners" could not be interfered with by way of judicial review, the Tribunal

has held that if the policy decision is taken in blatant infraction of statutory provisions or guidelines laid down and the action is arbitrary, mala fide and the same cannot stand the scrutiny of principle of equality enshrined under Article 14 & 16 of the Constitution, the Tribunal shall be entitled to interfere with such policy decision. Reliance was placed by the Tribunal on BALCO Employees Union (Regd.) Vs. Union of India and Others, . . Regarding the merger of the cadre of parcel clerks and the booking clerks at the level of Rs. 6500-10500/- it was held that it is contrary to Petitioners own policy decision dated 8th April, 1988 and clarification given by the headquarter on 10th April, 2001 and 2nd December, 2004. The Tribunal also observed that the Petitioners could not adopt different yardstick for combining the cadres, as in some of the divisions the cadres of booking clerks and parcel clerks were kept separate pursuant to notification dated 8th April, 1988 and the clarifications issued by the Headquarter on 10th April, 2001 and 2nd December, 2004, while on the other hand in complete contravention of these notifications the cadres were merged at the level of Rs. 6500-10500/- and a combined seniority list was issued in the Ferozpur division. It was held that either the combination of cadre should have been at all levels or the cadre should have been treated separately at all levels and that as this had not been done, the panel created by merging the cadre would be in violation of the policy of the Petitioners and also contrary to the clarifications made by the headquarter and thus, for the Ferozpur division no exception could be carved on any ground. The Tribunal had also adversely commented on the undue haste shown by the Ferozpur division, as even though clarification was sought by letter dated 21st May, 2004 from the Headquarter but the Petitioner No. 2 did not wait for the clarification and the panel was finalized on 17th November, 2004, which was contrary to the clarification sent by the Headquarter to Ferozpur division on 2nd December, 2004. Despite this order was passed by the Petitioners on 3rd December, 2004 promoting panelist of combined panel of booking clerks and parcel clerks who had been employed prior to 1st November, 1993.

19. The learned Counsel for the Petitioners has primarily contended that in respect of Ferozpur division merging of cadre at the level of Rs. 6500-10500/- was decided by the employees themselves who were employed prior to 1st November, 1993 in consultation with both the recognized Labour federations, agreeing that the Railway Board instructions dated 6th August, 1993 circulated under printed serial No. 10841 would be followed and a joint agreement in this regard was relied on. It is also contended that the Railway Board in consultation and agreement with both the recognized labour federations and with the approval of the President had decided for restructuring of Group "C" and "D" cadres which included the cadre of commercial clerks and, therefore, the panel was formed on 17th November, 2004 and consequently the order was passed on 3rd December, 2004 which cannot be challenged by the Respondents and the Tribunal has committed an error in not considering this aspect. The Petitioners counsel did not raise any other pleas and contentions while impugning the order of the Tribunal dated 31st May, 2005.

20. The pleas and contentions on behalf of the Petitioners are contested by the learned Counsel, Ms. Meenu Mainee and she has relied on the pleas raised before the Tribunal and had reiterated the same.

21. This Court has considered the pleas and contentions raised by the parties and the record which is produced along with the writ petition which includes the notice dated 8th April, 1998 and the clarifications accorded by the headquarter on 10th April, 2001 and 2nd December, 2004.

22. From the perusal of the documents produced it is apparent that the question of merging different cadres of Commercial Staff into single cadre had been under consideration before the Railway Board for considerable time, as merging of cadre would have provided flexibility and convenience in posting and transfers etc.. Consequently on 8th April, 1988 it was agreed to merge all S.G. Railway into one unified cadre. With a view to have uniformity the Railway Board had decided to execute the merger of 3 cadres into one combined cadre of "commercial clerks" in respect of new entrants, where they were not already combined. The scheme had to come into force with effect from 1st November, 1993 and under the scheme it was laid down that no appointments shall be made to the lowest grades in any of the three cadres whether by direct recruitment, promotion or otherwise, except only to the unified cadre. The existing employees were given an option in order to continue in the existing cadres or to opt for a unified cadre. Under the policy the option to existing employees was as under:

OPTION FOR EXISTING EMPLOYEES:

5. All the employees appointed on regular basis to any of the three existing cadres up to 31st October, 1993 will continue therein, and progress in their respective cadres as is the position at present. However, employees working in the lowest grade in any of the three existing cadres will be given an option to come over to the new unified cadre. This option should be exercised within two months from the date of issue of corresponding instructions by your railway. Option exercised within this period of two months will be deemed to be effective from 1.11.1993. Option once exercised shall be treated as final and no change will be permitted at a later date, and they will seek their promotion in the unified cadre in accordance with Para 7 and 7.1 below."

23. From the correspondence produced on the record it is apparent that the cadres of booking clerks and the parcel clerks were either to be merged at all levels or were to be kept separate at all levels which is also apparent from an order passed on the representation by General Manager on 10th April, 2001 which is as under:

Ref: Your letter No. 757-E/172/PIA dated 12.2.2001 and letter dated 16.2.2001.

Under this Office letter No. 752-E/592/IV/CP dated 8.4.1988 a combined channel of promotion for Booking/Parcel/Luggage Clerks designated as Coaching Clerks was issued. After issue of the above instructions DRM/FZR/UMB and DLI were

instructed vide this office letter No. 752-E/552/PQ/EIC dated 29.11.1991 to confirm whether instructions dated 8.4.1988 in regard to the Coaching Staff have been implemented on their divisions. Your office vide letter No. 757-E/172/PIA dated 3.1.1992 had confirmed that the channel of promotion of Coaching Clerks have since been implemented as per this Office letter dated 8.4.1988. Similar confirmation were also given by DRM/URB and DLI.

In case the above instructions are implemented properly there should be no problem in holding the selection for CBS/CPS grade 6500-10500.

However, from your letters under reference it appears that perhaps the instructions dated 8.4.1988 have not actually been implemented on FZR division due to which the present problem has arisen. It may be noted that either the cadres have to be separate or joint at all levels. It cannot be separate up to the level of 1600-2660 and then combined at the level of CBS/CPS grade 2000-3200 as it would result in bias in favour of one of the categories.

You may take suitable action accordingly.

This has the approval of CPO.

Sd/-

For General Manager (P)

24. While passing the order addressed to the Ferozpur division where the Respondents are employed, it was specifically asserted that the instruction dated 8th April, 1998 has not actually been implemented, which has resulted into problem agitated by the Respondents which is on account of the merger of two cadres at the level of Rs. 6500-10500/-. The booking clerks who were more in number thus got a pass over the parcel clerks. By order dated 10th April, 2001 it was categorically emphasized that either the cadres have to be separate or joint at all levels and, therefore, the Ferozpur division could not keep the cadres separate up to the level of Rs. 1600-2660 and then combine the cadres of booking clerks and parcel clerks at the level of CBS/CPS Grade of Rs. 2000-3200/6500-10500 as it would result in bias in favor of one of the cadres. The representation of the Respondent against the merger of cadre in holding the selection for CBS/CPS grade of Rs. 6500-10500/- was sent for clarification to the headquarters which was the competent authority to decide. The said letter is as under:

Subject: Channel of promotion of Booking/Parcel Clerks in all grades.

Ref: i) This office letter of even No. dated 16.2.2001.

ii) Your office letter No. 752-E/549/II/REP/EIC dated 10.04.2001.

As per channel of promotion in the category of Booking/Parcel Clerks appointed prior to 1.11.1993, both the categories are not merged till grade 1600-2660/5500-9000, but in the selection of CBS/CPS their seniority is merged

and the selections are finalized on the basis of this merged seniority.

In this connection it is pointed out and is a fact that parcel clerks though very senior in the initial grades but due to small cadre they remain backward till reaching grade 1600-2660/5500-9000 and as a result they become very junior to the booking clerks appointed later on in the initial grades, their cadre being large.

As per Rly. Boards orders, the Booking clerks appointed after 1.11.1993 have been designated as Commercial Clerks and their seniority is clubbed at all level, thereby leaving no chance of discomfort to any category.

The issue is raised by the biased Booking/Parcel clerks appointed prior to 1.11.1993 that their seniority should remain separate at all levels. Since Rly. Board has issued clarification for the persons of this category appointed after 1.11.1993 but there is no instruction/clarification what sort of action is to be taken for the persons of this category appointed prior to 1.11.1993. In the past, the matter was referred to Hd. Qrs.office vide this office letter of even No. dated 16.2.2001. In reply of which it was only intimated that it cannot be separate up to the level of 1600-2660/5500-9000 and then combined at the level of CBS/CPS Gd. 2000-3200/6500-10500 as it would result in bias in favour of one of the categories and this office was advised to take action accordingly. The clarification received was not clear what action is to be taken for this category of staff.

You are therefore requested to please call for the papers already dealt with in this case and after getting the decision of competent authority, now, this office may be advised about the action to be taken for the staff of this category to avoid any resentment.

A comparative statement of parcel/booking cadre with their date of appointment is attached herewith for ready reference.

Sd/-

For Divisional Railway Manager,

N. Railway, Ferozepur.

25. This is not disputed that even before the clarification could be received by the Ferozpur division, a panel was formed on 17th November, 2004 and some of the booking clerks were placed in the grade of Rs. 6500-10500/- and promoted by order dated 3rd December, 2004. But the order of promotion was provisional and was subject to any change or cancellations as per the directions by the Tribunal.

26. The learned Counsel for the Petitioners is unable to explain as to how the panel dated 17th November, 2004 was finalized by merging the cadre at the level of CBS/CPS grade of Rs. 2000-3200/Rs.6500-10500 without getting a reply to the clarification dated 21st May, 2004 sought from the headquarter. The learned Counsel is also unable to justify as to how the cadre of booking clerks and parcel

clerks could be kept separate up to the level of Rs. 1600-2600/Rs.5500-9000 only and then combined at the level of CBS/CPS grade of Rs. 2000-3200/Rs.6500-10500 specially as in Lucknow, Ambala and Moradabad division, as well as at the headquarters at Delhi, the employees appointed prior to 1st November, 1993 have been treated differently by maintaining seniority lists separately. No rational reason has been given for adopting different yardsticks for merger for those appointees who were appointed prior to 1st November, 1993 in different divisions, except that a joint agreement was arrived at with the recognized labour federations. The copies of the alleged agreement with the recognized labour federations have not been produced nor have the particulars thereof been detailed. In any case on the basis of the alleged agreements the policy in respect of the employees who were appointed prior 1st November, 1993 could not be implemented differently in different divisions in as much as merging the cadres at the level of CBS/CPS grade Rs. 2000-3200/Rs.6500-10500/- and keeping it separate up to the level of Rs. 1600-2660/Rs.5500-9000 was not contemplated under the policy. In the clarifications given by the Petitioners they have taken a categorical stand that either the cadres have to be separated or joint at all levels and it cannot be that the cadres be kept separate up to the level of Rs. 1600-2660/- and then combined at the level of CBS/CPS grade of Rs. 2000-3200/6500-10500.

27. This fact has also not been successfully disputed by the learned Counsel for the Petitioners that the number of employees in the cadre of booking clerks and parcel clerks are not the same and are quite different in as much as the number of parcel clerks are much less. If the cadre of booking clerks and parcel clerks are merged, it will undoubtedly result into an undue advantage to the booking clerks as they would easily get a pass over the parcel clerks being more in number.

28. Even pursuant to clarification sought on 21st May, 2004, the GM headquarter by its letter dated 2nd December, 2004 again clarified that for maintaining seniority of the employees appointed prior to 1st November, 1993 instructions have already been issued and reiterated that separate seniority for goods cadre and coaching cadre (booking and parcel) should be kept, which rather has been kept and followed in UMB, LKO and MB divisions and Delhi division. The letter dated 2nd December, 2004 of the G.M Headquarter is as follows:

Sub: OA 2065/04 & MA No. 1763/2004 filed by Sh. Sudershan Kumar s/o Bhagwan Dass, Parcel Supervisor, Ludhiana and 11 others v. UOI and Ors.

Ref: Your office letter No. 698-E/716-CAT/04/ND Ls.

In reference to your office letter No. 757-E/172/PLA dated 21.5.2004. Your attention is drawn towards this office letter No. 752-E/549/II/REP/EIC dated 10.04.2001 wherein it was clearly informed that in the instant matter, channel of promotion had already been issued vide this office letter No. 752-E/552/IV/CP dated 8.4.1988 and as confirmed vide your office letter No. 757-E/172/PIA dated

3.1.1992 this channel of promotion was being implemented in your division. Therefore, there should be no problem, if this channel of promotion is following properly.

It is also intimated that this channel of promotion is being followed in UMB, LKO & MB division i.e. separate seniority for Goods cadre and Coaching cadre (booking & Parcel) as such there is no any problem. As regards DLI division. They are maintaining seniority separately in each stream i.e. Booking, Parcel and Goods as such there is also no such problem as created on FZR division. However, as per extant instructions in initial grade Rs. 3200-4900 there is common seniority of commercial clerks who are appointed on or after 1.11.1993. For maintaining seniority of commercial clerks appointed prior to 1.11.1993, detailed instructions have already been issued as per PS No. 10841.

Now draft written statement prepared by Rly. Advocate has been submitted by you for vetting to headquarter office. It is not understood that when the matter exclusively pertains to the division then why written statement has been sent to this office.

Therefore, it is advised to take action at your end as per extant instructions and policy.

Sd/-

For General Manager (P)

29. In the entirety of facts and circumstances it is inevitable that in view of the Railways Board's letter dated 6th August, 1993 under P.S. No. 10841 which is applicable to the officers who were appointed on regular basis before 1st November, 1993 the combined cadre would be operative with effect from 31st October, 1993 and for these employees, either the cadres were to be combined up to the basic pay of Rs. 6500-10500 or to get the entire cadres separated at all levels. Since the cadres have been kept separate in various divisions, the exception could not be carved out only at the level of CBS/CPS grade of Rs. 2000-3200/6500-10500 in the Ferozpur division. Consequently the Petitioners could not draw the panel on 17th November, 2004 nor could have passed the promotion order dated 3rd December, 2004. In any case the said promotion was provisional.

30. In the circumstances the order of the Tribunal directing the Petitioners to restructure the panel strictly in accordance with the notification dated 8th April, 1998 as well as clarification recorded by the headquarters on 10th April, 2001 and 2nd December, 2004 and to consider the case of Respondents along with other persons who have already been promoted from booking cadre cannot be termed to be illegal or unsustainable or suffering from such perversity which will require any interference by this Court. It has also been held that before passing an adverse order against those persons who have already been empanelled, a notice be given to them, cannot be termed to be arbitrary or illegal in the facts

and circumstances of the present case.

31. No other points have been canvassed by the learned Counsel for the Petitioners before us impugning the order of the Tribunal. There are no grounds to interfere with the order of the Tribunal in the facts and circumstances. Therefore, the writ petition is dismissed. The parties are, however, left to bear their own cost.