IN THE SUPREME COURT OF INDIA

**CIVIL ORIGINAL JURISDICTION**

**UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA**

**(PUBLIC INTEREST LITIGATION PETITION)**

## **WRIT PETITION (CIVIL) No. of 2010**

**IN THE MATTER OF :-**

# 1. Y.S. Chaudhary

#  S/o Sh. Ram Rup Chaudhary

#  R/o C-104, Rail Vihar, Sector-3

#  Vasundhra, Ghaziabad (U.P.)

#  Working as Dy.Chief Engineer (Construction)

#  Tilak Bridge, New Delhi

# 2. S.R.Madke

#  S/o Sh. Mahadeo Madke

 R/o K-01, Kavi Nagar, Ghaziabad (U.P.)

 Working as Dy.Chief Engineer/General

 Kashmere Gate. Delhi

3. Anal Kumar Bhowmik

 S/o. Sh.A.K.Bhowmik

 R/o. Qtr.No.1-H, Rly.Officers Colony

 New Alipur

 Calcutta - 38

 Working as Secy. to Pr.Chief Engineer, E.Rly., Kolkata

4. B.K.Poddar

 S/O Radharaman Poddar

 R/O 51/A, Adarsha Colony, Maligaon Guwahati

 Working as Executive Engineer /BD ,NF Rly Way

 Guwahati.

5. S.K.Roy

 S./0 Late N.B.Roy

 R/o RB-IV 367/1, Officer’s Colony, Civil Line

 Jabalpur, M.P.

 Working as Executive Engineer,

 WCR, Jabalpur, M.P.

6. K.K.Jain

 S/o Sh.V.K.Jain

 R/o E/69, Near Anwar Ganj Rly. Station

 Kanpur, U.P.

 Working as Dy.Chief Engineer/Planning & Design

 North-East Railway, Gorakhpur, U.P.

7. D.K.Ghulani

 S/o Sh. Din Dayal

 R/o FB-109, Mansarovar Garden

 New Delhi, Working as Executive Engineer/

 Planning & Design, Headquarters Office

 Baroda House, New Delhi

8. Rana Bandyopadhyay

 S/o. Sh. S.K. Banerjee

 R/o. Qtr.No.-89, Ist Floor, Kanchrapara

 (West Bengal)-743145

 Working as Divisional Town Engineer/E.Rly., Kanchrapara

9. Pallabh Phouzder

 S/o. Sh. J.C. Phouzder

 R/o. Flat 2-J Officers Colony, New Alipur

 Kolkata – 38

 Working as Dy.Chief Engineer/Con./PRD

 E.Rly., Kolkata

10. Aswini Kumar Mondal

 S/o. Sh. D.C. Mandal

 R/o Qtr-1168/D, Yule Road

 Assansol, West Bengal

 Working as DEN/Bridge, Assansol

11. Devasish Baksi

 S/o Sh. S.K.Baksi

 R/o B-39, Amravati P.O.Sodepur

 Kolkata ……… Petitioners

# **Versus**

# Ministry of Railways

# Through its Secretary

# Railway Board, Rail Bhavan

# New Delhi. ….Respondent

TO

THE HON’BLE CHIEF JUSTICE OF INDIA AND HIS COMPANION JUDGES OF THE SUPREME COURT OF INDIA

The humble Petition of the Petitioners above named:

**MOST RESPECTFULLY SHOWETH:**

1. The Writ Petition under Article 32 of the Constitution of India is filed praying against the discrimination being perpetuated by the ministry of Railway ,where in the promotee officers of CIVIL Engineering department are being deniedequality interm of granting 238 additional vacancies to them for induction to Group “A” , where as 3 other department , who are equally situated and were given additional vacancies under the same scheme and notification have already been given the additional vacancies and for issue of writ of mandamus directing the Respondent/Ministry of Railways to implement the additional 238 vacancies which were granted to the promotee officers of Civil Engineering Department and four other Engineering Department of Indian Railways by the Railway Board and duly approved by the Union Public Service Commission (UPSC) under the same scheme and notification in order to remove the stagnation of ad-hoc officers which exists in the Group A of Civil Engineering Department.
2. That, after no response from the administration, many applications and prolonged discussions through their federation with the administration the Petitioners filed an Original Application bearing No. 28 of 2008 before the Central Administrative Tribunal Principal Bench, New Delhi seeking direction to the Respondent/Ministry of Railways to implement the additional vacancies of 238 granted to the Civil Engineering Department and approved by UPSC in pursuance of the order/judgment dated 23.09.2002 passed by the Hon’ble Supreme Court in Civil Appeal No. 97 of 1997 wherein, the Hon’ble Supreme Court has uphold the power of the government to relax the quota provided in Rule 4 of the Recruitment Rules dealing with the induction of officers in to Group A through promotion and direct appointment in case of exigencies.
3. That the Railway administration has constantly refused to implement the ratio of Hon’ble supreme Court’s judgment dated 23/09/02 which inter alia said that one department can not be discriminated against the other, where in the 3 departments have already been given the benefit of additional vacancies, whereas the departments –Civil Engineering department – the present petitioners and the Electrical departments, are being denied the same, thus violating article 14 & 16 of the constitution for treating 2 sets of department differently i.e. Traffic, S&T & Personnel departments are given the benefit and the civil Engg & Electrical Department are being the benefits, though additional vacancies were given to all the 5 departments under one scheme and one letter, duly approved by UPSC.
4. That the scheme additional vacancies is not being implemented for Civil Engineering Department, under the plea that the Jabalpur CAT – had ruled that “**Govt. was not empowered to enhance the stipulated/laid down quota (40%) for promotee officers under rule 4 of recruitment rules for Group ‘A’,** the appeal of promotee officers Federation for which was dismissed in limini by Hon’ble Supreme Court of India. This despite the fact that Hon’ble Supreme Court of India, later on in their detailed and full pledged judgment delivered on 23/09/2002, in the case of U.O.I. & Ors Vs. A.K.Singh & Ors (92/1999) in an appeal for another department for the same scheme and similarly situated. It is important to point out that the case of Civil Engineering Department (Jabalpur bench of CAT) judgment also came into discussion. This judgment held that the Hon’ble CAT have erred in their judgment, and that the government is empowered to enhance the quota in explained circumstances. The operative paras of the judgments are as under :
5. That, the Ld. Central Administrative Tribunal, Principal Bench, New Delhi after detailed presentations and discussions for about two years in its order dated 21.01.2010 passed in O.A. No. 28 of 2008 has expressed its inability to adjudicate the matter on the ground that the Ld. Administrative Tribunal, Jabalpur Bench, Jabalpur vide its order dated 05.08.1994 passed in O.A. No.8653 of 1994 has held that government has no power to relax the quota provided in Rule 4 of the Recruitment Rules dealing with the induction of officers in to Group A through promotion and direct appointment. The appeal bearing Civil Appeal No.17364 of 1994 against the said order dated 05.08.1994 passed by Ld. Tribunal, Jabalpur, was preferred before the Hon’ble Supreme Court by the Federation of the Promotee Officers. The Hon’ble Supreme Court vide its order dated 20.01.1995 passed in Civil Appeal No.17364 of 1994, dismissed the appeal in limine. The Ld. Central Administrative Tribunal vide its order dated 21.01.2010 directed the Petitioners herein, to approach the Hon’ble Supreme Court for appropriate relief or remedy, despite very positive and exhaustive judgment on the subject, on 23/09/02, by quoting the operative para of the said judgment in their order dated 28/01/2010 (copy enclosed as Annexure )
6. That, the Petitioners herein are the officers in Group A of the Indian Railway Services of Engineers working in Civil Engineering Department as who represent the cause of the Promotee Officers of the Civil Engineering Department & who are the victims of the wrong decision of the Respondent/Ministry of Railways.
7. That, the Petitioners have approached this Hon’ble Court against the violation of their Fundamental Rights provided under Article 16 of the Constitution of India which guarantees the equality before law among the equals and equality of opportunities for all citizens in matters relating to the employment or appointment to any office under the State.
8. That in 1988 – 1989 a study was conducted by the Railway Board regarding cadre position on Railways which indicate large scale stagnation existing in the cadre of Group – B Officers.
9. That on 05.03.1991 the Railway Board in consultation with the U.P.S.C. decided to allot additional number of vacancies for induction to Group ‘A’ from the cadre of Group ‘B’ Officers for five Departments only (out of 8 departments) as under:

 i) Civil Engineers - 238

 ii) Signal & Tele-Commn

 Department - 76

 iii) Electrical Engineers - 52

 iv) Personnel Deptt. - 49

 v) Traffic Deptt. - 48

 463

 These additional vacancies were duly approved by the U.P.S.C.

(6) That in 1992 Departmental Promotion Committee (DPC) conducted induction of cadre of Group ‘B’ services in Group ‘A’ (for 1990-1991), for all those five departments. The 158 (out of 238 allotted as above) additional vacancies in Civil Engineering Department were filed for two years only i.e. 1990 and 1991 in addition to regular vacancies for the year 1989, 1990 & 1991. The balance 80 vacancies for the year 1992 in Civil Engineering Department were to be filled in next year.

(7) That, on 19.02.1993 letter No. E(GP) 92/1/49 dt. 19.02.1993 was issued by Railway Board approving the name of the Group ‘B’ Officers (225) of Civil Engineering Department to be promoted to Group ‘A’ (IRSE) w.e.f. 24.12.1992.

(8) That, in 1993 an O.A. No. 283 / 93 with M.P. No. 664/93 was filed. Smt. P. Viswanathan – a direct recruited officer of Traffic Department (IRTS) before the Hon’ble CAT of Madras Bench at Chennai challenging the Notification dated 22.07.1992 of Ministry of Railways notifying the induction of 99 Gp. ‘B’ Officers of Traffic Department in Gp. ‘A’ containing 48 additional vacancies and the balance normal quota vacancies as per the above mentioned scheme, saying that the Government is not empowered to induct more number of Gp. ‘B’ Officers in Gp. ‘A’ than the stipulated quota (40%) laid down for them in Recruitment Rules.

(9) That, in 1993 an O.A. bearing No. 574 of 1993 titled as Anil Kumar Sanghi & Ors. Vs. Union of India & Ors. was filed before the Central Administrative Tribunal, Principal Bench, New Delhi for Signal & Telecommunication (S&T) Department challenging the Notification dt. 15.09.1992 issued by the Govt. of India, Ministry of Railways (Railway Board) appointing 127 Group ‘B’ Officers of the S&T (Signal & Telecommunication Engineers) to the Jr. Scale of the Indian Railway Service of S&T Engineers (IRSSE) w.e.f. 23.07.1992, as being violative of Rule 4 of the Recruitment Rules to IRSSE .

(10) That, another O.A. bearing No. 865 of 1993 titled as Ranjan Yadav & Anr. Vs. Union of India & Ors. was filed before the Central Administrative Tribunal, Jabalpur Bench, Jabalpur, challenging the Notification dated 19.02.1993 issued by Govt. of India, Ministry of Railways (Railway Board) appointing 225 Group ‘B’ Officers of Civil Engineering Department to the Jr. scale of the Indian Railway Service of Engineers (IRSE) w.e.f. 24.12.1992 on the identical plea i.e. this being violative of Rule 4 of the Recruitment to the IRSE, according to which Gp. ‘B’’s quota of 40% cannot be exceeded as the Government is not empowered to exceed the stipulated quota.

(11) That, on 14.02.1994 the Hon’ble CAT, Madras Bench dismissed the application filed by the direct recruits against the Government Notification for Traffic Department, and held that Government is empowered to enhance the quota, in the exigencies of government working specially this has been done in consultation with the U.P.S.C.

(12) That, on 05.08.1994 the Hon’ble CAT, Jabalpur Bench, Jabalpur, allowed the O.A. bearing No. 865 of 1993 and held that Government is not empowered to induct Group ‘B’ Officers in Group ‘A’ more than the quota laid down in Rule 4.

(13) That, in 1994 a Civil Appeal bearing No. 17364 / 94 titled as Union of India & Ors. Vs. Ranjan Yadav & Ors. was filed in the Hon’ble Supreme Court challenging the Order dated 05.08.1994 of Hon’ble CAT, Jabalpur Bench, in O.A. No. 865 / 1993.

(14) That, on 20.01.1995 the Hon’ble Supreme Court vides its Order dated 20.01.1995 dismissed the Civil Appeal bearing No. 17364 of 1994.

(15) That, in March ‘1995 a letter bearing No. E(GP) /93/1/85 dated was issued by the Govt. of India, Ministry of Railway (Railway Board) notifying the names of the Officers, implementing the Judgment / Order dated 05.08.1994 of Hon’ble CAT, Jabalpur, in O.A. No. 865 / 1993, thereby reversing the grant of Group ‘A’ to 225 officers of Civil Engg. Deptt. and thereby adjusting the additional (more than the regular quota) number of officers against the subsequent years’ vacancies.

(16) That, on 04.08.1995 the Hon’ble CAT, Principal Bench, New Delhi dismissed the O.A. No. 574 of 1993 in the case of S &T Deptt. and held that, Government is not empowered to induct persons more than the quota laid down 40%.

(17) That, in 1997 a Civil Appeal bearing No. 92 of 1997 titled as Indian Railway Class II Officers Federation & Union of India Versus Anil Kumar Sanghi & Ors., was filed challenging the Order dt. 04.08.1995 of Central Administrative Tribunal (CAT), Principal Bench, New Delhi in O.A. No. 574 of 1993.

(18) That, on 23.09.2002 the Hon’ble Supreme Court set aside the Order dt. 04.08.1995 of the Ld. CAT, in O.A. No. 574 of 1993 and held that no illegality has been committed by the Union of India in appointing 127 Group ‘B’ officers of S&T Department of Railways to the Jr. Scale Group ‘A’ by the Order dt. 15.09.1992. The Ld. CAT has committed an error of law in interpreting the relevant Rule. The provision in Rule 4 of Recruitment to IRSSE (Group ‘A’) for variation of percentage from time to time in case of a necessity, is for all purposes equivalent to the power of relaxation. The Hon’ble Supreme Court has further held that the S&T Department cannot be treated differently than Traffic Department and Personnel Department who have already been granted the benefit of additional vacancies.

(19) That, in 2003 applications were made by various offices of Civil Engineering Departments and also of Electrical Department; after the Judgment of the Hon’ble Supreme Court of India on 23.09.2002 holding that the Government is empowered to enhance the quota of Gp. ‘B’ Officers for induction to Gp. ‘A’ in the exigencies of government services and also that the government cannot treat department different than other department and the essence of the Judgments be implemented in the case of officers of Civil Engineering department .

(20) That, on 28.04.2003 a letter bearing No. E(GP) 2002/1/27 dt. 28.04.2003 issued by the Railway Board while replying to the Indian Railway Promote Officers’ Federation (IRPOF), mentioned that promotions in respect of IRSE will be regulated in terms of Orders of Hon’ble CAT, Jabalpur Bench, Jabalpur and the promotions in respect of IRSEE will be regulated in terms of Orders of Hon’ble CAT, Mumbai Bench, Mumbai.

(21) That, on 30.08.2004 a letter bearing No. ROF/Meeting/04/41 was issued by IRPOF to the Chairman, Railway Board requesting the Board for conducting DPC in respect of 79 vacancies in Civil Engineering Department from Group ‘B’ to Group ‘A’ for the year 1992 to 1995 and the shortfall of 90 vacancies from 1989 to 2000 be also filled in view of the Hon’ble Supreme Court Judgment dated 23.09.2002, since the Hon’ble Supreme Court of India had already quashed the Judgments in the case of S&T Deptt. holding that the Government is not empowered to give more vacancies than 40% quota.

(22) That, on 30.08.2004 the issue of implementing the Judgment of Hon’ble Supreme Court of India, in the case of S&T Department, Civil Engineering Department and Electrical Department too, which similarly diluted is taken up by the Indian Railway Promotee Officers Federation, in the formal meeting with the Railway Board on 27.04.2004 (Item No. 5 para 14) and again on 10.01.2005 (Item No. 5 Para 43). Railway Board agrees to reconsider this issue.

(23) That, on 10.01.2005 during the meeting of the IRPOF with the Railway Board, the Respondent made the assurance to reconsider the issue of implementation of Judgment dt. 23.09.2002 of the Hon’ble Supreme Court in case of Civil Engg. Department also, as per Rule 4 of I.R.S.E. against the 238 vacancies sanctioned by the U.P.S.C. but no response came further.

(24) That, on various dates 15.03.2006, 16.03.2006, 17.03.06, 18.03.06, 10.08.2006, 17.02.2007, 26.07.2007, 27.07.2007 and 14.08.2007, the Petitioners submitted application to the Secretary, Railway Board for the implementation of the ratio of the Judgment dated 23.09.2002 passed by the Hon’ble Supreme Court in case of S&T Department for Civil Engg. Deptt. and for the promotion of 238 Group ‘B’ Officers to Group ‘A’ against these vacancies as sanctioned by the U.P.S.C. as per their assurance given in the meeting dt. 27.04.2004 and 10.01.2005 between IRPOF and the Railway Board.

(25) That, on 28.05.2007 the Petitioners filed Writ Petition No. 4110 of 2007 before the Hon’ble High Court of Delhi at New Delhi seeking relief regarding the relaxation as per Rule 4 of the Recruitment Rules for the purpose of the promotion from Gr. B to Gr. A. The Hon’ble High Court was pleased to issue notice vide its Order dated 28.05.2007**.**

(26) That, the aforesaid Writ Petition was dismissed as withdrawn by the Hon’ble High Court vide its order dated 05.10.2007 due to lack of jurisdiction and Hon’ble High Court directed to file appropriate petition / application before the appropriate forum.

(27) That, in 2007 the Petitioners filed an Original Application bearing No. 28 of 2008 before the Central Administrative Tribunal Principal Bench, New Delhi seeking direction to the Respondent/Ministry of Railways to allot the additional vacancies of 238 granted to the Civil Engineering Department and approved by UPSC.

(28) That, on 21.01.2010 the Ld. Tribunal vides its order dated 21.02.2010 passed in Original Application No.28 of 2008 dismissed the application as withdrawn with the liberty to the Petitioners to approach the Hon’ble Supreme Court with appropriate remedy provided in law.

**GROUNDS:**

That, the present Writ Petition is preferred on the following Grounds:

1. Because, the additional vacancies were sanctioned for removing the stagnation in five departments under the one and the same scheme of Govt. of India. The same has now been implemented in Personal Department, Traffic and Commercial departments.
2. Because, the Ld. Tribunal has observed that the Administrative Tribunal, Jabalpur, Bench, Jabalpur vide its order dated 05.08.1994 passed in O.A. No. 8653 of 1993 has held that the government under Rule 4 of the Recruitment Rules has no power to relax the quota of indunction in Group ‘A’ services. The Civil Appeal No. 17364 of 1994 was filed by the federation of the Petitioners before the Hon’ble Supreme Court against the order dated 05.08.1994 passed by the Ld. Tribunal and the abovementioned Civil Appeal was disposed in limine by the Hon’ble Supreme Court vide its order dated 20.01.1995 without expressing any opinion on the merits of the case . The Ld. Tribunal on the basis of the order dated 20.01.1995 passed by the Hon’ble Supreme Court constrained itself from passing any orders in the O.A. No. 28 of 2008 preferred by the Petitioners and gave liberty to the Petitioners to approach the Hon’ble Supreme Court for appropriate relief on the basis on the judgment dated 23.09.2002 passed by the Hon’ble Supreme Court in Civil Appeal No. 97 of 1997.
3. Because, the Petitioners fundamental right under Article 16 of the Constitution of India has been violated by the Respondents and they have been discriminated with the officers of other Engineering Departments of Railways namely Signal & Telecommunication, Electrical and Personnel Departments who along with Civil Engineer Department were also allotted the additional vacancies under the same scheme and objective i.e., to remove the stagnation and in these departments the additional vacancies in favour of the promotee officers has already been implemented.
4. Because, the Hon’ble Supreme Court in *“****Jai Singhani Vs. Union of India*** *reported in AIR 1967 SC 1427 has held that the principle of equality of opportunity is guaranteed to all Citizens in respect of matters relating to employment, which includes the appointment. It does not prohibit the State to make reasonable classification. In respect of promotion, the principle of equality is attracted when the promotions are made from amongst the same class of employees and there has been discrimination. Accordingly ‘Article 16 (2) prohibits discrimination and thus assures the effective enforcement of the Fundamental Right of equality of opportunity guaranteed by Article 16 (1). The words, ‘in respect of any employment’ used in Article 16 (2) must, therefore, include all matters relating to employment as specified in Article 16 (1). Therefore, we are satisfied that promotion to Selection posts is included both under Article 16 (1) and (2).”*
5. Because, the concept of equality as provided under Article 16 of the Constitution of India applies to the appointment and promotion and where there is discrimination among the equals with out any intelligible differentia then it is violative of Article 16 of the Constitution. This Hon’ble Court in “***State of Mysore Vs. P.Narsingha Rao*** *reported in AIR 1968 SC 349 has held that Article 16 is only an incident of application of concept of equality enshrined in Article 14 thereof. It gives effect to the doctrine of equality in the matter of appointment and promotion.”*
6. Because, the Hon’ble Supreme Court in ***“R.P. Sigh Vs. State of Bihar*** *reported in AIR 1978 SC 327” has further held that “It is well settled proposition and principle of law that the doctrine of equality aimed to achieve the object of providing justice and eliminating the discrimination amongst the equals in respect of matters relating to employment. It has been discussed that the principle of equality is attracted when the equals i.e. persons of the same group or classification are treated as unequal, but every such case is to be adjudged in accordance with the facts and circumstances.”*
7. Because, the Hon’ble Supreme Court vide its order dated 23.09.2002 has held that the Government has the power under Rule 4 of the Recruitment Rules to relax the quota where the exigencies requires doing so. In the present case also the additional vacancies were allotted to five departments including the Civil Engineering Department to which the Petitioner herein belong, to remove the acute stagnation in the Group A services.
8. Because, the Ld.Tribunal vide its order dated 21.01.2010 passed in O.A. No. 28 of 2008 has observed that the Petitioners has placed reliance on the order dated 23.09.2002 passed by the Hon’ble Supreme Court in Civil Appeal No. 92 of 1997 wherein the Hon’ble Supreme Court has held that *“The provision for variation of percentage from time to time in case of necessity is for all practical purposes equivalent to the power of relaxation. There is no particular reason why the Class II promotee office of S&T department should be treated differently from the same category in Traffic department. The application of such different standards could very well be avoided by giving a wider meaning to the expression varied from time to time. Whether it be variation or relaxation, it is meant to provide a leeway for adjustment in exigencies of service which is very much necessary in administrative interest and to cope up with unforeseen contingencies.”*
9. Because, before the order/judgment dated 23.09.2002 passed by the Hon’ble Supreme Court there were contrary decisions of the different Administrative Tribunals regarding the power of the Government to relax the quota as provided in Rule 4 of the Recruitment Rules. The Hon’ble Supreme Court vide its order/judgment dated 23.09.2002 has settled the law that the Government in case of exigencies can relax the quota and therefore, upheld the decision of the Government to allot additional vacancies to the five departments for the indunction of the Group B officers in o Group A.
10. Because, the respondent/Ministry has erred in law in withdrawing the additional vacancies allotted to the Civil Engineering Department by the Railway Board and approved by the Union Public Service Commission on the ground that the Ld. Administrative Tribunal, Jabalpur vide its order dated 05.08.1994 has held that the Government has no power to relax the quota as prescribed in Rule 4 of the Recruitment Rules. The Respondent has failed to appreciate that the Hon’ble Supreme Court vide its order/judgment dated 23.09.2002 has upheld the power of the government to relax the quota in the case of the exigencies and in this manner the order dated 05.08.1994 passed by the Ld.Tribunal is overruled and would have no application.
11. Because, the Hon’ble Supreme Court vide its order/judgment dated 23.09.2002 while upholding the power of the government to relax the quota in case of the exigencies and approving the order of the government of allotting the additional vacancies has held that the departments who have been allotted the additional vacancies shall not be discriminated and the additional vacancies allotted to these departments shall be implemented.
12. Because, the Constitution of India guarantees equality before law to the citizens of this country. The provisions of the Constitution of India enforces equality among the equals and any law, rules, regulation or decision or order which discriminates between the equals is violative of the Constitution of India and is null and void.
13. Because, the Civil Engineering Department (to which the Petitioners belong) along with the four other department of the Railways were allotted the additional vacancies under the same scheme and the common objective i.e. to remove the stagnation in the promotion of the Group B officers to Group A of the department. The Respondent has already allotted and implemented the additional vacancies to the three departments namely Personnel, Training and Signal and Telecommunication and has left the Civil Engineering Department on the untenable and illegal ground the Ld.Tribunal, Jabalpur vide its order dated 05.08.1994 has held that the government has no power to relax the quota and thus allotment of additional vacancies was contrary to the recruitment rules. The Railway has failed to appreciate that the order dated 05.08.1994 passed by the Ld.Tribunal has been overruled by the Hon’ble Supreme Court vide its order/judgment dated 23.09.2002 whereby this Hon’ble Court has uphold the power of the government to relax the quota in case of the exigencies.
14. Because, in the sheer violation of the order dt. 23.09.2002 passed by the Hon’ble Supreme Court wherein the Supreme Court held that all the similar departments in which the additional vacancies were approved by the UPSC shall be treated equally, but the scheme requiring reduction of stagnation in 5 departments is implemented for 3 departments only and the scheme benefits are denied to two departments (Elect. & Civil Engg.).
15. Because, the Article 16 of the Constitution of India provides for equal opportunity of employment and appointment in services to the citizens of this country. The decision of the Respondent to withdrew the additional vacancies which were granted by the Railway Board and approved by the Union Public Service Commission from the Civil Engineering Department only and not from the other departments amounts to denying the equal opportunity of employment to the Petitioners and thus is violative of Article 16 of the Constitution of India.
16. Because, the different treatment of the officers of the Civil Engineering Department in allotment and implementation of additional vacancies with the similarly situated and similarly placed officers of Signal and Telecommunication Department and other department is inequality among the same group. The Hon’ble Supreme Court in “***The General Manager, Southern Central Railway, Secundrabad Vs. A.V.R. Sidhanti,*** *reported in AIR 1974 SC 1955 while dissented the meaning and scope of Fundamental Right of equality has held that different treatment through mini classification creating inequalities amongst the same groups and class of people under an employment is discriminatory.”*
17. Because, the Respondent vide letter dated 27.07.2007 restored back the additional vacancies to the Signal and Telecommunications Department in consonance of the judgment of the Hon’ble Supreme Court wherein the Hon’ble Court has held that the Govt. has the power to enchance/relax the quota of induction from Group b to Group A as per Rule 4 but failed to implement that part of the judgment of Hon’ble Court wherein it was held that all the similar situated departments cannot be treated differently and therefore, the power of the enhancement/relaxation of quota for induction from Group B to Group A has been implemented in case of three departments leaving behind the Civil Engineering and Electrical Departments. This order of the respondent is discriminatory in nature and is vioaltive of Article 14 and 16 of the Constitution of India.
18. Because, once the principle has been decided by the Supreme Court regarding Govt. having power to relax the applicants belonging to the Civil and Electrical Department should not be denied the benefits of relaxation/enhanced quota based on the pretext that Govt. is not empowered to enhance quota, which is not legally acceptable. Hence, affecting Civil & Electrical Departments adversely, despite clear cut judgment of the Supreme Court, is not legally reasonable and is violative of Article 16 of the Constitution of India.*.*
19. Because, the policy decision of the Government of India for enhancing/relaxing the quota laid down for nomination in Junior Scale Gp. ‘A’ (60:40) for Gp.’B’ was meant to give benefit to the stagnating promotee officers, who had been suffering stagnation since 1985 despite clear cut assurance to look into the matter, on the request may by their Federation and expressly to address the problem, the Government had sanctioned additional 238 posts for Civil Engineering Deptt.
20. Because, the number of Gr. ‘B’ officers working with 8 years services or more in Gr. ‘B’ was 454 as on 1/9/1989 in Civil Engg. Deptt. and 130 in Elect. Branch (1110 in all Deptts.) indicating the acute stagnation in the deptts. this necessitating the additional posts for induction in these departments.
21. Because, non implementation of the ratio of the judgment has created an analogous situation where under the cadre position of same recruitment rules, Govt. is empowered for enhancement of quota for 3 departments (Traffic, S&T and Personnel Departments) and not empowered for Civil Engg. And Electrical departments which is totally biased and unconstitutional and illegal.
22. **Because, even today the extent of stagnation is very large in these deptts. which is as under (as on 01/11/2007).**

|  |  |  |
| --- | --- | --- |
| **Deptts** | **No. of Gr.’ B’ Officers with 8 years regular service or more** | **No. of Gr. ‘B’ officers working in SS (Adhoc) Gr. ‘A’ post.** |
| **Civil Engg.**  | **636** | **451** |
| **Elect.** | **185** | **128** |
| **Accounts** | **350** | **261** |
| **S & T** | **268** | **249** |
| **Other Deptt.** | **839** | **719** |
| **Total** | **2278** | **1808** |

**xiv) Because, as per the figures maintained by the Railway Admn., the number of junior scale posts-in all deptts. As on 01.11.2007 is 1647 at present out or which only 382 officers are actually working in Junior scale (379 direct recruits and 3 promotees) leaving clear vacancies in junior scale itself to the tune of 1265. If the quota of 50% which is presently laid down, the share of Gr. ‘B’ in Gr. ‘A’ should have been 824, whereas only 3 Gr. ‘B; officers are actually working in Gr. ‘A’. For Civil Engg. and Elect. Deptts. these figures as on 01.11.2007are as under: -**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Deptts** | **No. of sanctioned****posts in Jr. Scale** | **No. of Officers actually working** | **No. of vacancies**  | **Share of Gr. ‘B’ in Jr.Scale (50%)** | **No. of Gr. ‘B’ Officers promoted to Gp. ‘A’ actually working** |
| **Civil Engg.** | **295** | **114** | **181** | **148** | **Nil** |
| **Elect. Deptt.** | **220** | **53** | **167** | **110** | **Nil** |
| **All deptts.**  | **1647** | **382** | **1265** | **824** | **3** |

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xv) **Because, as per the total posts the situation is very bad as under: -**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Deptts** | **Total sanctioned post in Gr. ‘A’** | **Total Officers actually working** | **Vacancies**  | **Share of Gr. ‘B’ in Gp. ‘A’ (50%)** | **Gr.‘B’ officers promoted to Gp. ‘A’ actually working.** |
| **Civil Engg.** | **2024** | **1422** | **602** | **1012** | **189** |
| **Elect. Deptt.** | **1022** | **844** | **178** | **511** | **93** |
| **All deptts.**  | **8902** | **6134** | **2768** | **4451** | **1033** |

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1. Because, between 30.08.2004 and 07.06.2005, the issue of implementing the Judgment of Hon’ble Supreme Court of India, in the case of S&T Department, for Civil Engineering Department and Electrical Department too, which are similarly situated was taken up by the Indian Railway Promotee Officers Federation, in the formal meeting with the Railway Board on 27.04.2004 (Item No. 5 para 14) and again on 10.01.2005 (Item No. 5 Para 43). Railway Board agreed to reconsider this issue.
2. Because, the Hon’ble Supreme Court vide its order/judgment dated 23.09.2002 had uphold the power of the government to relax the quota as provided in Rule 4 of the Recruitment Rules and allot the additional vacancies in the case of exigencies therefore, the decision/order of the Respondents withdrawing the additional vacancies allotted to the Civil Engineering Department on the ground that the government has no power to relax the quota and allot additional vacancies is contrary to the judgment of this Hon’ble Court and hence is not sustainable in the eyes of law.

### PRAYER

In light of the above-mentioned premises, the petitioners most humbly and respectfully pray that the Honourable Supreme Court may be pleased to:-

* 1. issue appropriate writ, order or direction in the nature of mandamus or any other appropriate writ or direction directing that the Respondent to implement the 228 additional vacancies which were allotted to the Civil Engineering Department by the Railway Board and approved by the Union Public Service Commission in view of the order/judgment dated 23.09.2002 passed by the Hon’ble Supreme Court in Civil Appeal No. 92 of 1997 ;
	2. issue appropriate writ, order or direction in the nature of mandamus or any other appropriate writ or direction directing the Respondent to induct applicants and others belonging to Civil Engineering Department in the light of the Judgment dt. 23.09.2002 passed by the Hon’ble Supreme Court of India in Civil Appeal No. 92 of 1997;
	3. issue appropriate writ, order or direction in the nature of mandamus or any other appropriate writ or direction directing the Respondent to extend all such benefit, rights, facilities and relief which are due to the Officers of Civil Engg. Deptt. with all consequential benefits;
	4. pass such other order(s) as this Hon'ble Court may deem fit and proper.

AND FOR THIS ACT OF KINDNESS THE PETITIONERS AS IN DUTY BOUND SHALL EVERY PRAY

##### DRAWN & FILED BY

DRAWN ON:

(**C.D. SINGH**)

ADVOCATE FOR THE PETITIONERS

FILED ON: