

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD

OA/21/371/2020

Date of C.A.V.: 03.02.2021

Date of Pronouncement of Order:15.02.2021

Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member



1. Indraj Meena, S/o. Shree Lalmeena, Group-C
 Aged 33 years, Working as Points Man-A,
 O/o. Station Manger, Kamareddy Railway Station,
 South Central Railway, Hyderabad Division, Hyderabad.
2. Deepak, S/o. Pejsingh, Group-C,
 Aged 32 years, Working as Points Man-A,
 O/o. Station Manger, Nizamabad Railway Station,
 South Central Railway, Hyderabad Division, Hyderabad.
3. Nikhate Umesh Sadashiv, S/o. Sadashiv Gunaji, Group-C
 Aged 32 years, Working as Points Man-A,
 O/o. Station Manger, Umri Railway Station,
 South Central Railway, Hyderabad Division, Hyderabad.
4. E. Ramesh, S/o. Shankar, Group-C
 Aged 31 years, Working as Points Man-A,
 O/o. Station Manger, Mirzapally Railway Station,
 South Central Railway, Hyderabad Division, Hyderabad.
5. Manoj Mahto, S/o. Pamu Mahto, Group-C
 Aged 30 years, Working as Points Man-A,
 O/o. Station Manger, Nizamabad Railway Station,
 South Central Railway, Hyderabad Division, Hyderabad.
6. K. Ravinder, S/o. K. Bhaskar, Group-C
 Aged 36 years, Working as Points Man-A,
 O/o. Station Manger, Kurnool City Railway Station,
 South Central Railway, Hyderabad Division, Hyderabad.

...Applicants

(By Advocate : Sri Anuj Saxena)

Vs.

1. Union of India rep. by,
 The General Manager,
 South Central Railway,
 Rail Nilayam, Secunderabad.
2. The Divisional Railway Manager (P),
 South Central Railway,

Hyderabad Division, Hyderabad.

3. The Senior Divisional Personnel Officer,
South Central Railway,
Hyderabad Division, Hyderabad.
4. Arun Kumar Singh, Aged about 28 years,
Occ: Points Man-A, O/o. Station Manager,
Bolsa Railway Station, South Central Railway,
Hyderabad Division, Hyderabad.
5. S. Balaprasanna Chary, Aged about 28 years,
Occ: Points Man-A, O/o. CTO Hyderabad,
South Central Railway,
Hyderabad Division, Hyderabad.
6. G. Nanda Kishore, Aged about 31 years,
Occ: Points Man-A, O/o. Station Manager,
Malkajgiri Railway Station, South Central Railway,
Hyderabad Division, Hyderabad.
7. C. Janaradhan Reddy, Aged about 54 years,
Occ: Points Man-A, O/o. Station Manager,
Malkajgiri Railway Station, South Central Railway,
Hyderabad Division, Hyderabad.
8. Ashutosh Kumar Chandradutta,
Aged about 30 years,
Occ: Points Man-A, O/o. Station Manager,
Nizamabad Railway Station, South Central Railway,
Hyderabad Division, Hyderabad.
9. Abdul Waseem, Aged about 34 years,
Occ: Points Man-A, O/o. Station Manager,
Falaknama Railway Station, South Central Railway,
Hyderabad Division, Hyderabad.
10. Ramdhan Meena, Aged about 34 years,
Occ: Commercial Clerk, O/o. Ticket Booking Office,
Umari Railway Station, South Central Railway,
Hyderabad Division, Hyderabad.
11. Yogeshwar Meena, Aged about 40 years,
Occ: Points Man-A, O/o. Station Manager,
Karkeli Railway Station, South Central Railway,
Hyderabad Division, Hyderabad.

....Respondents

(By Advocate : Sri N. Srinatha Rao, SC for Rlys
Sri KRKV. Prasad for R4 to R10)

ORDER**(Hon'ble Mr. Ashish Kalia, Judl. Member)**

The applicants have filed the present O.A. seeking the following



relief:

ð(a) to call for the record pertaining to the Impugned Notification No.SCR/P.HYB/210/TR/15/Goods Gd/60% Dept O/Vol.XI dated 7.6.2019 issued by the 2nd respondent office to the extent of not providing proportionate reservation in different categories and impugned Memorandum No.SCR/P.HYB/ 210(TR)/15/GoodsGd/60% Dept O/Vol.XI dated 3.6.2020 empanelling 37 candidates for promotion to the post of Goods Guard against 38 notified vacancies, without following the Rules of Reservation, depriving the applicants herein of their due promotion under 60% quota to the post of Goods Guard and set aside the impugned Memorandum No.SCR/P.HYB/210(TR)/15/ GoodsGd/60% Dept O/Vol.XI dated 3.6.2020, declaring it arbitrary, illegal, unjust and in violation of Article 14 & 16 of the Constitution of India, and consequently,

(b) to direct the respondents to revise the select provisional panel dated 3.6.2020 and prepare the final select panel on the basis of merit list marks declared vide memorandum dated 9.7.2020 adjusting 7 SC reserved vacancy on merit under 25 UR vacancy i.e. Sl.No.9,10,14,19,20,23&25 and consider next 8 SC and 5 ST reserved vacancy from the merit list dated 9.7.2020 by replacing Sl.No.26,28,29,30,32 & 33 i.e. Private Respondents No.4 to 9 from provisional panel dated 3.6.2020 and promote the applicants herein under 60% quota to the post of Goods Guard and pass such other order or orders as the Hon'ble Tribunal may deem fit and proper in the circumstances of the case.ö

2. The applicants have been working as Pointsman-A with the respondents since 2013 to 2015. The Applicant No.1 belongs to ST category and Applicants No.2 to 6 belong to SC category. The respondents invited applications for 38 posts of Goods Guard under 60% departmental promotion quota from various feeder categories in the Division by way of selection method. Examination was conducted and 75 candidates, who secured 60% & above marks in the said examination were made eligible to

be considered for adjudging their suitability by the Selection Board. Ultimately, 37 candidates were empanelled by the respondents on 03.06.2020 and one vacancy was kept for inclusion of name in terms of instructions issued under Serial Circular No.16/1993 and one SC candidate from Commercial Department is adjusted under Unreserved vacancy. The candidates in the said empanelled list at Sl.Nos.9, 10, 14, 19, 20, 23, 25 & 31 are adjusted against SC Roster Points. The candidates at Sl.No.27, 34, 36 & 37 are adjusted against ST Roster Points. The applicants have questioned the said adjustment done by the respondents, by stating that it is contrary to the decision of the Hon'ble Apex Court in **Indira Sawhney** case and the law laid down by the Hon'ble Apex Court in subsequent judgements. The applicants made a representation on 13.7.2020, seeking proportionate distribution of reservation in different categories, by revising the seniority list. The applicants apprehend that the selected candidates will be sent for training/ online training at any moment and thereafter posting orders will be issued without revising the panel dated 3.6.2020. If it is done, the applicants will be deprived of their opportunity to be promoted as Goods Guard. Hence, they have approached this Tribunal for redressal of their grievances.

3. Notices were issued. Sri N. Srinatha Rao, learned Standing Counsel for Railways put appearance on behalf of the official respondents. In the detailed reply filed by the respondents, they stated that the post of Goods Guard in Level-5 in the pay scale of Rs.5200-20200 with Grade Pay of Rs.2800/- is a selection post and is to be filled through selection comprising written examination and perusal of records. A notification was issued vide letter dated 7.6.2019 to fill up 38 vacancies [25-UR, 8-SC & 5-ST].

Written examination was conducted on 2.2.2020 and results were published vide letter dated 13.3.2020 in which 75 employees who secured 60% & above marks were declared as qualified. One employee of Commercial department had given unwillingness. The Selection Board has selected 38 employees as per merit and the panel of 37 employees was released vide Memo dated 3.6.2020, keeping one vacancy unfilled as one employee's result was kept in sealed cover as major penalty proceedings are pending against him. It is submitted by the respondents that in the instructions issued vide RBE 126/2010 (Rly. Board's letter dated 99-E-(SCT)I/25/13) dt.01.09.2010 (circulated as CPO/SC& SC No.122/2010) it was stated that SC/ST candidates appointed on promotion on their merit and seniority will be adjusted against unreserved points of reservation has been kept in abeyance vide RBE 117/2016 (Railway Board's letter dated 30.9.2016) and all further promotions of reserved category persons to unreserved posts will be made by ignoring Railway Board's letter dated 1.9.2010. In accordance with the instructions issued vide Board's letter dated 30.9.2016 and guidelines issued vide CPO/SC& letter dated 23.6.2017, the reserved employees have been charged and it is in order. It is further submitted by the respondents that in Hyderabad Division, in the panel dated 3.6.2020, candidates at Sl.Nos.9, 10, 14, 19, 20, 23, 25 & 31 are charged against SC roster points and candidates at Sl.No.27, 34, 26 & 37 are charged against ST roster. The SC candidate at Sl.No.35, who has come up on merit is charged against UR point to be adjusted against future SC vacancy. The representations of the applicants have been disposed of vide letter dated 13.7.2020. It is contended by the respondents that the applicants secured marks between 66.5% and 69.3% whereas the marks secured by the last



candidate empanelled is 69.5% and hence the applicants were not empanelled. The respondents have stated that the selection list was prepared as per the existing law. It is further stated that the post of Goods Guard is a safety category dealing with the public safety and the train operations highly depend upon the safety categories, it is very much essential to fill the vacancies in this cadre for smooth running of trains.



4. Notices were also issued to Respondents No.4 to 11. Respondents No.4 to 10 filed their reply through learned counsel Sri KRKV Prasad. They have submitted therein that Respondents No.4 to 9 belong to Pointsman cadre and they got more marks than the applicants in the Pointsman stream in the departmental examination conducted by the respondents for the post of Goods Guard. Hence, they were empanelled for the same. Respondent No.10 belongs to Commercial Clerk cadre and he was selected against the vacancy meant for Commercial Clerk stream. It is further submitted that community status has no relevance as the respondents have not formulated any policy of reservation in matters of promotions/ selections.

5. Applicants have filed rejoinder in which, they have reiterated the contentions raised in the Original Application.

6. Heard learned counsel for the parties at length and perused the written arguments filed by all the parties. On perusal of the records, it is found that the following points need to be deliberated by this Tribunal:

i) Whether the concept of compartmentalized horizontal reservation in proportionate distribution of seats amongst social categories as established by the Hon'ble Apex Court has been applied in the present case?

ii) Shall the reserved category candidates, who got selected on their own merit, be considered against Unreserved category posts?

7. The applicants herein appeared for selection to the post of Goods Guard under 60% departmental promotion quota and they have succeeded by securing 60% & above marks. But their names did not find place in the final empanelled list of 38 candidates. Hence, they took forth their grievance and sought a direction for revision of the above said empanelled select list for the post of Goods Guard. Their main contention is that the names of the candidates, who got lesser marks have been put in the said list, by not following the rule of reservation for SC/ST candidates in terms of the law laid down by the Hon'ble Apex Court in **Indira Sawhney's case** (supra) & other cases referred therein. The applicants have relied upon the following judgements:

a) Rajesh Kumar Daria vs Rajasthan Public Service Commission & Ors. Appeal (Civil) 3132 of 2007 dated 18.7.2002

5. All reservations are not of the same nature. There are two types of reservations, which may, for the sake of convenience, be referred to as vertical reservations and horizontal reservations. The reservations in favour of Scheduled Castes, Scheduled Tribes and Other Backward Classes [under Article 16(4) may be called vertical reservations whereas reservations in favour of physically handicapped (under clause (1) of Article 16] can be referred to as horizontal reservations. Horizontal reservations cut across the vertical reservations – what is called interlocking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relatable to clause (1) of Article 16. The persons selected against the quota will be placed in that quota by making necessary adjustment; similarly, if he belongs to open competition (OC) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens remains – and should remain – the same.

b) Anil Kumar Gupta vs. State of U.P. [1995(5) SCC 173]

The proper and correct course is to first fill up the Open Competition Quota (50%) on the basis of merit; then fill up each of the social reservation quotas, i.e. S.C., S.T. and B.C; the third step would be to find out how

many candidates belonging to special reservations have been selected on the above basis. If the quota fixed for horizontal reservations is already satisfied in case it is an overall horizontal reservation ó no further question arises í í í (If, however, it is a case of compartmentalized horizontal reservation, then the process of verification and adjustment/ accommodation as stated above should be applied separately to each of the vertical reservations. In such a case, the reservation of fifteen percent in favour of special categories, overall may be satisfied or may not be satisfied.)



c) Jitender Kumar Singh vs State of UP 2010 (3) SCC 119

The Supreme Court was considering the UP Public Services (Reservation for Scheduled Castes and Scheduled Tribes) Act, 1994 Act (óUP Actö) and government order dated March 25, 1994. The order stated óIf any person belonging to reserved categories is selected on the basis of merits in open competition along with general category candidates, then he will not be adjusted towards reserved category, that is, he shall be deemed to have been adjusted against the unreserved vacancies. It shall be immaterial that he has availed any facility or relaxation (like relaxation in age limit) available to reserved category.ö The Supreme Court thereby stated that a bare perusal of the order implies that there is no express bar in the UP Act for SC/ST/OBC candidates being considered for posts under the general category. It held:

óFrom the above it becomes quite apparent that the relaxation in age limit is merely to enable the reserved category candidate to compete with the general category candidate, all other things being equal. The State has not treated the relaxation in age and fee as relaxation in the standard for selection, based on the merit of the candidate in the selection test i.e. Main Written Test followed by interview. Therefore, such relaxations cannot deprive a reserved category candidate of the right to be considered as a general category candidate on the basis of merit in the competitive examination. Sub-section(2) of Section 8 further provides that Government Orders in force on the commencement of the Act in respect of the concessions and relaxations including relaxation in upper age limit which are not inconsistent with the Act continue to be applicable till they are modified or revoked.ö

The Court made it clear that: óWith age relaxation and the fee concession, the served candidates are merely brought within the zone of consideration, so that they can participate in the open competition on merit.ö

d) **Indira Sawhney vs Union of India (AIR 1993 SC 477)**, popularly known as the Mandal case, the Constitution Bench of the Supreme Court had held:



“[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 the open competition field on the basis of their own merit; they will not be counted against the quota reserved for Scheduled Castes; they will be treated as open competition candidates.”

e) **R.K. Sabharwal vs State of Punjab (1995 AIR 1371)**

The Constitution Bench of the Supreme Court considered the question of appointment and promotion and roster points vis-à-vis reservation and thereby held:

“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 reserved posts. On the other hand the reserve category candidates can compete for the non-reserve 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.”

No general category candidate can be appointed against a slot in the roster which is reserved for the Backward Class. The fact that considerable number of members of a Backward Class have been appointed/ promoted against general seats in the State Services may be a relevant factor for the State Government to review the question of continuing reservation for the said class but so long as the instructions/ rules providing certain percentage of reservations for the Backward Classes are operative the same have to be followed. Despite any number of appointees/ promotees belonging to the Backward Classes against the general category posts the given percentage has to be provided in addition.”

f) **Union of India vs Virpal Singh Chauhan (1996 AIR 448)**

The Supreme Court held that while determining the number of posts reserved for SC and ST, the candidates belonging to reserved category but selected/ promoted on the rule of merit (and not by virtue of rule of reservation) shall not be counted as reserved category candidates.

The applicants have also relied upon **Ritesh R. Sah vs Dr. Y.L. Yamul (1996 AIR 1378)**, **Dr. NTR University of Health Sciences vs Dubbasi Praveen Kumar, Writ Appeal No.733, 735 of 2014**, **U.P. Power Corporation Ltd. vs Nitin Kumar**, etc. in support of his case.



8. The respondents have clarified in the counter reply that the applicants obtained marks between 66.5% and 69.3% in the written examination whereas the marks secured by the last candidate selected and empanelled for the post of Goods Guard were 69.5%. Thus, it is very much clear that the claim of the applicants that they are more meritorious than Respondents No.4 to 11, who found place in the above said select list, has no basis, whatsoever. Hence, the points raised in the present Original Applicant need not be dealt with further and the O.A. can be closed here itself. However, to put at rest the issues raised before this Tribunal, the points taken in the Original Application have to be dealt with in detail.

9. The first question raised by the applicants is whether the reserved category candidates, who got selected on their own merit, be considered against the UR category or not. The answer is in affirmative in view of the various judgements of the Hon'ble Supreme Court. The respondents in their reply have cited the decision dated 7.5.2018 of the Hon'ble Apex Court in SLP No.30621/2011 and also the decision of the Hon'ble High Court of Punjab & Haryana at Chandigarh in CWP No.15782/2015. The legal position that emerges in regard to promotion on merit is that the respondents are permitted to promote reserved candidates to reserved vacancies and unreserved candidates to unreserved vacancies. Further, the Hon'ble High Court of Punjab & Haryana held that *“all the SC/ST candidates coming up in the purview of general seniority shall be*

considered against available Roster Points. Whenever, in any case if the roster point is consumed and the number of SC/ ST employees still appear as per the zone of consideration in the general seniority, they will be promoted and adjusted against future SC/ ST vacancies.” The point raised by the applicants is answered accordingly. The Tribunal holds that the respondents have correctly adjusted the reserved candidates, who have come on their own merit, against the unreserved vacancies, by mentioning the clause *“the SC candidate will be adjusted against the future vacancy of SC/ST”*. It is also mentioned that this exercise is being done subject to the final decision of the above said SLP.

10. The next point raised by the applicants with regard to the concept of compartmentalized horizontal reservation in proportionate distribution, we find that it is not relevant in the present case as the respondents have followed the post based roster in consonance with the judgement of the Hon’ble Apex Court in the matter of **R.K. Sabharwal vs UOI 1995(2) SCC 745** (supra) wherein it was held that *“the entire cadre strength should have been taken into account to determine whether reservation to the required unit had been reached.”* Thus, it is very clear from the judgement that the entire cadre/ post based roster have to be followed. There is no scope for compartmentalized horizontal reservation in the departmental promotion quota. In the present case, the quota is 60% for promotion from various feeder categories in the said Division. When the post based roster is being followed, there is hardly any scope for horizontal reservation. In fact, compartmentalized horizontal roster would be followed for selection under categories like Physically Handicapped, Ex-Serviceman, Sports quota, etc.



Thus, this point does not find favour. Hence, the Original Application is liable to be rejected.

11. In view of the above discussion and the legal and factual position, we find that there is no merit in the present Original Application. Hence, the O.A. is dismissed with no order as to costs.



(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER
/pv/

(ASHISH KALIA)
JUDICIAL MEMBER