

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/21/622/2020

HYDERABAD, this the 2nd day of March, 2021



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

1. Mohd. Ankooshavali, S/o. Mohd. Ahamed Ali,
Aged 56 years, Occ: Sr. Passenger Guard (Group 'C'),
O/o. The Station Manager, Kazipet R.S.,
South Central Railway, Secunderabad Division,
Kazipet, Warangal Urban District, Telangana State.
2. B. Hanumanth, S/o. B. Narasimhulu,
Aged 40 years, Occ: Senior Passenger Guard,
O/o. The Station Manager, Secunderabad R.S.,
South Central Railway, Secunderabad Division, Secunderabad.
3. N. Pavan Kumar, S/o. N. Rami Reddy,
Aged 50 years, Occ: Senior Passenger Guard,
O/o. The Station Manager, Kazipet R.S.,
South Central Railway, Secunderabad Division,
Kazipet, Warangal Urban District, Telangana State.
4. D. Srinivas Rao, S/o. D. Komohariaha,
Aged 50 years, Occ: Sr. Passenger Guard,
O/o. The Station Manager, Kazipet R.S.,
South Central Railway, Secunderabad Division,
Kazipet, Warangal Urban District, Telangana State.
5. G. Siddaiah, S/o. G. Yadagiri,
Aged 59 years, Occ: Senior Passenger Guard,
O/o. The Station Manager, Secunderabad R.S.,
South Central Railway, Secunderabad Division, Secunderabad.
6. T.D. Dhanraj, S/o. T. Darmaiah,
Aged 50 years, Occ: Sr. Passenger Guard,
O/o. The Station Manager, Secunderabad R.S.,
South Central Railway, Secunderabad Division,
Secunderabad.
7. Md. Ghouse, S/o. Md. Raj Mohmad,
Aged 56 years, Occ: Senior Passenger Guard,
O/o. The Station Manager, Secunderabad R.S.,
South Central Railway, Secunderabad Division,
Secunderabad.

8. Ravindernath Pande, S/o. Durander Pandey,
Aged 56 years, Occ: Senior Passenger Guard,
O/o. The Station Manager, Secunderabad R.S.,
South Central Railway, Secunderabad Division, Secunderabad.

9. B. Sai Ram, S/o. B. Anjaiah, aged 49 years,
Occ: Senior Passenger Guard,
O/o. The Station Manager, Secunderabad R.S.,
South Central Railway, Secunderabad Division,
Secunderabad.



10. N. Kondalu, S/o. N. Nagabushnam, aged 51 years,
Occ: Senior Passenger Guard,
O/o. The Station Manager, Kazipet R.S.,
South Central Railway, Secunderabad Division,
Kazipet, Warangal Urban District, Telangana State.

11. B. Srinivas, S/o. B. Venkateswarlu, aged 59 years,
Occ: Senior Passenger Guard,
O/o. The Station Manager, Secunderabad R.S.,
South Central Railway, Secunderabad Division,
Secunderabad.

12. N. Venkateswarlu, S/o. Ellaiah, aged 58 years,
Occ: Senior Passenger Guard,
O/o. The Station Manager, Kazipet R.S.,
South Central Railway, Secunderabad Division,
Kazipet, Warangal Urban District, Telangana State.

...Applicants

(By Advocate: Mr. KRKV. Prasad)

Vs.

1. Union of India rep. by the Secretary, Railway Board,
Ministry of Railways, Rail Bhavan, New Delhi.
2. The General Manager, South Central Railway,
Rail Nilayam, Secunderabad.
3. The Principal Chief Personnel Officer,
South Central Railway, Rail Nilayam, Secunderabad.
4. The Senior Divisional Personnel Officer,
South Central Railway, Secunderabad Division,
Sanchalan Bhavan, Secunderabad.

....Respondents

(By Advocate : Mr. N. Srinatha Rao, SC for Rlys.)

ORAL ORDER
(Per Hon'ble Mr. B.V. Sudhakar, Admn. Member)

Through Video Conferencing:



2. The OA is filed questioning the Memorandum dt. 13.12.2019 to the extent of Sl. No. 1 to 12 and to direct the respondents to promote the applicants forthwith as Mail/ Express Guards w.e.f. 13.12.2019 with all consequential benefits.

3. Brief facts of the case are that the applicants, who belong to the UR category, are working as Sr. Passenger Guards for the respondents organisation. They were promoted as Mail/Express Guards on 13.12.2019 and listed from Sl. No.1 to 12 in the select list. Some UR candidates have challenged the Memo dated 13.12.2019 to the extent of the SC/ST employees enlisted from Sl. Nos. 13 to 34 by filing OA No.70 of 2020 before this Tribunal. Interim order was passed on 14.1.2020, to not to effect any promotion to the post of Mail/Express Guard till the directions of the Tribunal in OA Nos. 1162/2013 & batch dated 11.1.2019 were complied with. Earlier too, when the respondents issued promotion orders vide memo dated 4.2.2019, applicants promotion got delayed since junior SC/ST employees were considered for promotion. Respondents have taken the stand that unless the OA 70/2020 was disposed of and the SLPs filed are disposed, they would not be able to grant the promotions sought. Aggrieved, the OA is filed.

4. The contentions of the applicants are that they are senior and hence, have to be promoted irrespective of the issue of reservation of promotion as per the select list dated 13.12.2019. The challenge was only to the extent of

SC/ST employees who figured from Sl. 13 to 34 and not in respect of the promotion of the applicants. The Tribunal order dated 11.1.2019 has not been implemented in curing the defects embedded in the memo dated 4.2.2019 wherein the juniors of the applicants have been promoted. The juniors promoted vide memo dated 4.2.2019, have no issues in regard to the promotions granted to them. Even adhoc promotion has not been granted. Some of the applicants are retiring in June, October and November 2021 and if promotions are not granted, there would be loss of status apart from huge financial loss. In fact, respondents are utilizing the services of the applicants in Express Trains. Respondents should have at least sought clarification in regard to the Interim order passed and rectified the position in administrative interest.



5. Respondents in the reply statement state that the select list of 34 employees for promotion to the post of Mail/Express Guard was released on 13.12.2019, where in applicants figure from Sl. 1 to 12 and the SC/ST employees from Sl. 13 to 34. Some UR employees filed OA 70/2020 challenging the promotion of the SC/ST employees in the select list under reference and the Tribunal has passed an interim order dated 14.1.2020 directing not to effect any promotions to the cadre of Mail/Express Guard, until Tribunal directions issued on 11.1.2019 are complied with. If required, adhoc promotions can be given in case of contingencies. Hence, the promotion of the applicants could not be effected. The applicants could have got impleaded themselves in OA 70/2020 and got the order modified. As per Railway Board order dated 19.6.2018, which was issued based on the Hon'ble Supreme Court directions dated 17.5.2018, promotions can be

effected from reserved to reserved, unreserved to unreserved and based on merit. Senior most reserved category employees are adjusted against roster points and others as per general seniority. No junior was promoted. SLP filed on 1.10.19 against the order of the Tribunal dated 11.1.19 is pending adjudication. Adhoc promotions have also not been given because they have to be resorted to in required contingencies. As per RBE 91/2018 promotion of SC/ST employees can be effected based on seniority / select list. Accordingly, further promotions on provisional basis, were granted based on the Railway Board order dated 28.12.2018 and para 309 of IREM. Respondents have made it explicit that they have no objections if the Tribunal orders promotions as per the select list dated 13.12.2019 in pursuance of the interim order dated 14.1.2020 and vacate the stay.



Applicants filed a rejoinder wherein they state that there is no litigation pending in regard to their promotion. The controversy revolves around OA 70 of 2020 and which has no bearing in respect of the promotion of the applicants. Even after submitting representations, the respondents have not acted, but in case of Junior SC/ST employees, respondents usually file vacate stay petitions promptly. Respondents are continuing to grant promotions to the juniors against the prevailing law in respect of reservations in promotions. Applicants in OA 70 of 2020 did not seek relief against these applicants and hence the question of impleading themselves in OA 70 of 2020 does not arise. As per Railway Board instructions dated 28.12.2018; Nagraj and Jarnail Singh judgments are to be followed. Provisional promotions are to be effected without following reservation in promotions. Juniors promoted are reaping the benefits,

whereas applicants, though senior, are not promoted even after being selected and prayed for relief repeatedly. The interim order does not bind the right of the applicants.

6. Heard both the counsel and perused the pleadings on record.



7. I. It is not in dispute that the applicants figure at Sl. No. 1 to 12 in the select list dated 13.12.2019 issued for promoting the applicants to the posts of Mail/Express Guard. OA No.70/2020 was filed challenging the promotion of the SC/ST employees figuring from Sl.No. 13 to 34 in the select list cited. Tribunal passed an interim order on 14.1.2020 in OA No.70/2020 as under:

“5. ... In the meanwhile, the respondents shall not effect any promotion to the post of Mail & Express Guard until the steps indicated in the judgment dated 11.01.2019 are complied with. However, to meet any exigency or shortage of staff in that post, it shall be open to the respondents to make ad hoc promotions, strictly in accordance with the seniority, by not taking into account the reservation in promotions, to the post of Senior Passenger Guard.”

Therefore, it is understandable that the respondents could not act in view of the interim order and promote the applicants. However, when they have received the representations, the respondents could have moved the Tribunal for modification of the interim order. It is surprising that the respondents contend that the applicants need to have got impleaded themselves in OA No.70/2020 and got the order modified. The interim order has given the leeway to grant adhoc promotions depending on the contingencies and the respondents did not exercise discretion in this direction. When the applicants are being posted to work in Goods/ Mail/ Express Trains, which was not refuted by the respondents, it would imply

that there is a contingency to use their service in public interest. More so, when there no bar legally to utilize their services on adhoc basis.

II. In respect of the orders issued by the Railway Board in regard to promotions, there are arguments on either side, which need a closer look and we do not intend to go into the same, in the present OA since they have no bearing in respect of the promotions of the applicants. As pointed out by the respondents, they could not grant regular promotion in view of the interim order. Respondents have also stated that they have no objection to promote the employees as per the select list dated 13.12.2019 to the grade of Mail/Express Guards. There is no challenge to the promotions of the applicants.



Thus, keeping in view the fact that the applicants are senior most, enlisted from Sl. No. 1 to 12 in the select list issued on 13.12.2019 for promotion to the grade of Mail/Express Guard, respondents are directed to promote them to the grade of Mail/ Express Guard from the date they are found fit for promotion, by granting notional seniority and other consequential benefits as per eligibility. However, we make it clear that, no back wages shall be paid from the date of notional promotion till the date they join the promotional posts. As there is delay in granting promotion to the applicants though selected, we direct the respondents to promote the applicants within a month from the date of receipt of this order, since some of the applicants are retiring shortly. The interim order dated 14.1.2020 passed by this Tribunal in OA No.70/2020 stands modified only to the extent of these applicants in the select list dated 13.12.2019. In regard to the SC/ST employees serialised from Sl. No.13 to 34 in the select list under

reference, respondents have stated that the order of the Tribunal dated 11.1.2019 is under challenge before the Hon'ble Supreme Court. We may have to thus await the final word from the Hon'ble Apex Court in the matter to take a view in regard to their promotions.



III. Before parting, we must add that the respondents have to take care of the needs and difficulties of all the employees, when the situation warrants. Respondents should not take sides in legal issues by giving an impression that they are pursuing the interest of one group. Let not the respondents give scope for such an impression. Interest of everyone has to be rigorously pursued. Our remarks are based on the observations of the Hon'ble Supreme Court in ***S.I. Rooplal & Anr vs Lt. Governor Through Chief Secretary, Delhi & Ors*** dt. 14th December, 1999 in Appeal (Civil) No. 5363-64 of 1997, as under:

Before concluding, we are constrained to observe that the role played by the respondents in this litigation is far from satisfactory. In our opinion, after laying down appropriate rules governing the service conditions of its employees, a State should only play the role of an impartial employer in the inter-se dispute between its employees. If any such dispute arises, the State should apply the rules laid down by it fairly. Still if the matter is dragged to a judicial forum, the State should confine its role to that of an amicus curiae by assisting the judicial forum to a correct decision. Once a decision is rendered by a judicial forum, thereafter the State should not further involve itself in litigation. The matter thereafter should be left to the parties concerned to agitate further, if they so desire. When a State, after the judicial forum delivers a judgment, files review petition, appeal etc. it gives an impression that it is espousing the cause of a particular group of employees against another group of its own employees, unless of course there are compelling reasons to resort to such further proceedings. In the instant case, we feel the respondent has taken more than necessary interest which is uncalled for. This act of the State has only resulted in waste of time and money of all concerned.

With the above directions, the OA is disposed of with no order as to costs. MA 104/2021 filed for deletion of R-1 for array of respondents stands closed.



(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

/evr/