

Central Administrative Tribunal,
Mumbai Bench, Mumbai.

O.A.485/2013

Dated this Wednesday the 16th day of September, 2020.

Coram: Dr. Bhagwan Sahai, Member (Administrative)
R.N. Singh, Member (J).

1. Ranjeet Kumar Chaturvedi,
Passenger Guard, under Station
Manager (Suburban), Central Railway,
CST, Mumbai - 400 001.
2. Manendra Singh,
Suburban Guard, under S.M. Office
(Suburban), Central Railway,
CST, Mumbai - 400 001.
3. Amit Kumar,
Guard (Suburban), under Station
Manager (Suburban), Central Railway,
Mumbai Division, CST, Mumbai - 400 001.
4. Pramod Kumar Rai,
Guard (Suburban), under Station
Manager (Suburban), Central Railway,
Mumbai Division, CST, Mumbai - 400 001.
5. Ganesh Kumar,
Passenger Guard (Suburban), under Station
Manager (Suburban), Central Railway,
Mumbai Division, CST, Mumbai - 400 001.
6. Amit Kumar Sinha,
Passenger Guard (Suburban), under Station

Manager (Suburban), Central Railway,
Mumbai Division, CST, Mumbai - 400 001.

7. Shashi Kumar,
Suburban Passenger Guard, under Station
Manager (Suburban Lobby), Central Railway,
Mumbai Division, CST, Mumbai - 400 001.
8. Nagdeo Singh,
Guard, under Control Office,
Central Railway,
CST, Mumbai - 400 001.
9. Krishna Kumar Choudhary,
Ex-Guard Central Railway and
presently working as Income Tax Inspector,
under Joint Commissioner of Income Tax,
Range-3, Indore, White Church Road,
Indore (M.P.) 452 001.
10. Sunil Datta,
Sub. Guard, under Station
Manager's Office, Central Railway,
CST, Mumbai - 400 001.
11. Anil Kumar,
Sub-Guard, under Station
Manager's Office, Central Railway,
Mumbai Division, CST, Mumbai - 400 001.
12. Abhishek Jain,
Sub-Guard, under Station
Manager's Office, Central Railway,
Mumbai Division, CST, Mumbai - 400 001.
13. Santosh Kumar,
Sub-Guard, under Station
Manager's Office at Panvel Railway,

Station of Central Railway and
Head office at CST, Mumbai - 400 001.

14. Ashish Kumar Jha,
Suburban Guard, under Station
Manager's Office, Central Railway,
CST, Mumbai - 400 001.
15. Srawankumar Prasad,
Suburban Guard, under Station
Manager's Office, Central Railway,
Mumbai Division, CST, Mumbai - 400 001.
16. Surendra Kumar,
Sub-Guard, under Station
Manager's Office, Central Railway,
CST, Mumbai - 400 001.
17. Brajesh Kumar,
Sub-Guard, under Station
Manager's Office, Central Railway,
CST, Mumbai - 400 001. .. Applicants.

(By Advocate Shri R.G. Walia).

Versus

1. Union of India, through
Secretary,
Railway Board, Rail Bhawan,
New Delhi - 110 001.
2. The General Manager,
Headquarters Office,
Central Railway, C.S.T.,
Mumbai - 400 001.
3. The Station Manager,

Central Railway,
Headquarters Office, C.S.T.,
Mumbai - 400 001. .. Respondents.

(By Advocate Shri S.C. Dhawan).

Order reserved on : 13.12.2019

Order delivered on : 16.09.2020

O R D E R

Per : Dr.Bhagwan Sahai, Member (A).

Shri Ranjeet Kumar Chaturvedi and 16 others working or having worked as suburban guards under station manager, central railway, CST, Mumbai filed this OA on 19/07/2013. They have sought quashing and setting aside of order of Railway Board in letter dated 21/01/2013 that the date on which they reported for training may be taken as the initial point for notional fixation but they shall be eligible to draw increment on 1/7/2006 as 1/1/2006 was a Sunday. They further seek declaration that their date of appointment was 29/12/2005 and direction to the respondents to treat them as having been appointed on that date for fixation of pay, in addition to payment of cost of this OA.

A) Summarized relevant facts:-

1) The applicants had applied for the posts of apprentice goods guards as per employment notice

number 1 of 2004, issued by Railway Recruitment Board, Mumbai. Their written test was held on 5/12/2004, its result was declared on 15/6/2005, their documents were verified on or about 25/6/2005 and thereafter letters were issued 05/09/2005 for their provisional selection and recommendation to Central Railway for appointment on the posts of apprentice goods guards (Annex A - 5). The selected candidates were distributed to various divisions of the Central Railway. They signed an agreement and submitted it on or about 9/12/2005, that is before 19/12/2005. They underwent medical examination in December 2005 and were declared as passed on 19/12/2005. By letter dated 22/11/2005, they were called for completing formalities of appointment (Annex A-6). After the medical test, the first batch of higher rankers was sent to Bhusawal training school on 19/12/2005. The present applicants in second batch were called on 29/12/2005 and then directed to report for training at the Bhusawal training school. On 29/12/2005 itself, they were administered oath of office as per the rules. Therefore, for all practical purposes they were appointed on 29/12/2005. The letter of DRM(personnel branch, CST Mumbai) to Principal, Bhusawal regional training centre clearly mentioned that instructions were

given to the bearers of the letter who were appointed to the posts of apprentice goods guards to report for training course from 02.01.2006 to 24.02.2006 (Annex A - 7).

2) Since 29/12/2005 was Thursday, the applicants reported for training on Monday, ie, 2/1/2006. Therefore, it is wrong on the part of the respondents to make their appointment effective from 2/1/2006.

3) The applicants state that unless a candidate is appointed, he/she cannot be directed to report for training. Since their letter of appointment was issued on 29/12/2005 directing them to report for training and no appointment letter was issued on 2/1/2006, their appointment has to be treated from 29/12/2005. The agreement signed by them on 29/12/2005 also clearly mentioned various conditions of service and their service sheet was also prepared on the same day allotting their provident fund numbers. Their pension account number also is of 2005. Therefore, for all practical purposes their appointment took place on 29/12/2005 and not on 2/1/2006. They claim that the illegal order issued by the respondents has resulted in monetary loss to them.

4) After serving as goods guards for sometime,

some of the applicants have subsequently been appointed to other government departments and due to not treating the date of their initial appointment as 29/12/2005, they have also suffered loss during their subsequent pay fixation. Therefore, this OA has been filed.

B) Contentions of the parties

In the OA and during arguments of their counsel on 13.12.2019, the applicants have made these contentions.

1) The order of the respondents for treating their date of appointment from the date when they reported for training at Bhusawal training school, ie, 2/1/2006, is illegal and wrong, has been passed without application of mind, it is arbitrary and violative of provisions of Articles 14,16 and 21 of Constitution of India.

2) Since the applicants took the oath of office on 29/12/2005, were issued railway duty passes on the same date, the letter of 29/12/2005 directing them to report for training clearly stated that they were appointed to the posts of goods guards apprentice and they completed other joining formalities such as signing of agreement, preparation of service sheets and allotment of provident fund numbers, date of their appointment

has to be treated as 29/12/2005 and not as 2/1/2006.

3) As per rule 1302 of Indian Railways Establishment Code (Fundamental rules 17 (1)), a government servant will begin to get pay and allowances attached to his tenure of post with effect from the date from which he assumes the duties of that post. Since the applicants assumed the duty on 29/12/2005, they are entitled for payment of pay and allowances from that date. Therefore the OA should be allowed.

In their reply and during arguments of their counsel on 13/12/2019, the respondents have made these counter contentions.

4) The present OA is misconceived, it does not disclose any cause of action, hence it is not maintainable and deserves to be dismissed. Since applicant number 9 was not an employee of the railways when this OA was filed, the joint application filed by 17 applicants including him is bad in law and liable to be dismissed.

5) The applicants have not pointed out any lacuna or non-application of mind in the order dated 21/01/2013. They are covered by rule 1302 of IREC which in sub-rule 2 provides that a railway servant shall begin to draw pay and allowances for his post

with effect from the date he assumes the duties of that post. Therefore, the contention of the applicants that they are entitled to pay and allowance from the date they took oath of office is inconsistent with the provisions of the IREC. Since the applicants joined duty at Bhusawal training centre on 2/1/2006, they are entitled for pay and allowances only from that date. Simply by taking oath as provided in rule 221 of IREC, a person does not become a regular railway employee until and unless he joins the post and assumes duty and therefore, all benefits to railway employees become applicable from such date.

6) Since completion of training is mandatory requirement for directly recruited employees, if they don't complete the training successfully, they are not entitled to be posted on regular posts and to draw benefits. Since the dispute about pay fixation of applicants was raised in PNM meeting, the matter was referred to Railway Board for final decision. Accordingly the decision of the Railway Board was communicated in the letter dated 21/1/2013 that the freshly appointed goods guards are required to undergo training prior to appointment on substantive posts, the date on which they reported for training should be taken as the initial point for notional pay fixation.

7) The first batch of 25 candidates was sent for training from 19/12/2005 and the present applicants who were lower in rank were sent for training beginning from 2/1/2006.

8) Railway travel passes are not issued only to railway employees. All candidates selected by railway recruitment board to be sent for training are also issued passes. SC/ST candidates are issued passes even to attend written tests and viva/voce. Therefore, just because they were issued passes on 29/12/2005, they did not become entitled for pay and allowances from the date of the passes.

9) For reporting for training at the Bhusawal training school on 2/1/2006 was their own responsibility. Since they were allotted to Mumbai division, they took oath of office at Mumbai. It is admitted that service records of the applicants were completed on 29/12/2005, including allotment of PRAN numbers pertaining to year 2005 given for permanent retirement account. However, allotment of PRAN numbers in the year 2005 does not confer any legal right on them to claim pay fixation without assuming duty/training. Therefore, they have failed to make out any case in this OA. The impugned order is not wrong as alleged by them. Their appointment was not treated after 1/1/2006 to

deprive them of benefit of VI CPC recommendations.

10) On 29/12/2005, only 2 applicants had signed the service register and one had signed on 30/12/2005. The concerned officer had signed the service register on 30/12/2005 for 14 candidates and on 2/1/2006 for three. The service register of 13 applicants had also been inspected by the applicants counsel on 15/11/2016. The applicant number 9, ie. Shri Krishna Kumar Chaudhary is presently not working with the railways.

In view of this factual position, the OA should be dismissed.

C. Analysis and conclusions:

We have carefully analyzed contents of the OA and its enclosures. Have considered rival contentions of the parties. Based thereon, we conclude as follows.

i. Undisputedly, on their selection by the RRB for the posts of apprentice goods guards, and intimation issued by the respondents, the applicants reported to Station manager, Mumbai Central division on 29.12.2005.

ii. As per instructions of the respondents themselves, on that day the applicants completed all joining formalities such as taking of oath of office, signing of service agreements, signing of

entries in their service register, etc. On that day they were allotted PF numbers and PRAN by the respondents themselves.. They were issued letters of appointments by the respondents directing them to report at the Bhusawal training centre for the course commencing from 02.01.2006 (sample of this letter is at Annex-7, page 75 of the OA). This very clearly establishes that they assumed the duty as apprentice goods guards on 29.12.2005.

iii. The letter from DRM, Mumbai to the Principal of the Bhusawal training centre also clearly mentioned that they were the candidates for appointment to the posts of apprentice goods guards and they were appointed on temporary basis awaiting receipt of verified copies of their character certificates.

iv. Accordingly the applicants reported for the training course on 02.01.2006. Since the course commenced on that day, the applicants were required to report there on that day only. However, in doing that they were not late in joining their duty. Had the respondents asked them to report on 30.12.2005 or on 31.12.2005, they would have done on those dates also. Therefore, their reporting for the training course on 02.01.2006 on direction of the respondents themselves cannot be treated as joining

date on the posts for the applicants. Their joining on duty and assuming of charge of the posts had taken place on 29.12.2005 itself, with taking of oath of office, signing of service registers, allotment of PF numbers and PRAN.

v. In view of the above conclusions, we find merit in the OA, hence it deserves to be allowed. The contentions of the respondents have not convinced us of any merit in them.

D. Decision:

OA 485 of 2013 is allowed. The respondents are directed to treat 29.12.2005 as the date of appointment of the applicants for fixation of pay. However, no costs.

(R.N. Singh)

Member (J)

(Dr. Bhgwan Sahai)

Member (A).

H.

JD
01/10/2013

