

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD**

(THIS THE 26 DAY OF 2 2010)

Hon'ble Mr. A.K. Gaur, Member (J)
Hon'ble Mr. D.C. Lakha, Member (A)

Original Application No.486 of 1998

(U/S 19, Administrative Tribunal Act, 1985)

1. Ganga Sagar, aged about 52 years, Guard Goods, Varanasi Cantt., District Varanasi.
2. Shri K.L Shukla, aged about 51 years, Guard Goods, Gorakhpur.
3. Shri Ashok Kumar Lal, aged about 46 years, Guard Goods, Varanasi Cantt., Varanasi.
4. Anil Kumar, aged about 33 years, Guard Goods, Gorakhpur.
5. Shri Sunil Kumar Srivastava, aged about 41 years, Guard Goods, Varanasi Cantt., Varanasi.

..... Applicants

Versus

1. Union of India through Secretary Railway Board, Ministry of Railway, New Delhi.
2. General Manager, North Eastern Railway, Gorakhpur.
3. Divisional Railway Manager, North Eastern Railway, Varanasi.
4. Bhagwan Prasad, Guard Goods, Varanasi Cantt., Varanasi.
5. Bimlesh Ram, Guard Goods Varanasi Cantt., Varanasi.
6. Baseo Dhar Ram, Guard Goods, Varanasi Cantt., Varanasi.
7. Dasharath Sah, Guard Goods, Varanasi Cantt., Varanasi.
8. Ashok Kumar Jaiswal, Guard Goods, Varanasi Cantt., Varanasi.

..... Respondents

✓

Present for Applicant : Shri A.K. Dave

Present for Respondents : Shri P. Mathur
Shri Anand Kumar

ORDER

(Delivered by Hon'ble Mr. A.K. Gaur, J.M.)

Learned counsel for the respondents raised preliminary objection that this O.A. is inordinately time barred for which no reasonable or plausible explanation has been offered by the applicants. Applicants have earlier filed O.A. NO. 1071 of 1997, which was allowed by the applicants by order dated 27.3.1998 with clear stipulation that fresh O.A. be filed within a period of 2 weeks. O.A. has been filed within that period. Delay condoned. M.A. NO. 8308/08 is allowed.

2. Through this O.A., applicants have prayed following main reliefs:

- "(i) to direct the respondents to consider the representation of the applicants against impugned order dated 3.9.1997 and 5.9.1996 in accordance with the law laid down by the Hon'ble Supreme Court in *R.K. Sabarawal, Veerpal Singh and J.C. Mullick* and further to comply with the Railway Board's order dated 21.8.1997 strictly.
- (ii) To quash the impugned order dated 5.9.1996, 5.4.1995 and 3.9.1997 being violative of reservation policy laid down by the Government of India.
- (iii) To direct the respondents to consider promotion of the applicants as Guard Passenger grade Rs.1350-2200 with respective date from 3.9.97 when 5 S.C. candidate were promoted in irregular manner with consequential benefits of fixation of pay.
- (iv) To direct the respondents to assign seniority of the applicants w.e.f. 10.2.1995 in accordance with railway board Circular dated 21.8.1997.
- (v) To direct the respondent No.1 to penalize the authorities who have acted in contravention of Railway's Board Orders dated 21.8.1997 and Supreme Court judgment referred to above".

✓

3. The brief facts of the case are that the applicants No.1 to 3 were promoted to the grade of Rs.1250-2200 on the post of Senior Goods Guard on adhoc basis since 5.6.1995 and applicant No.4 was promoted on ad hoc basis in the grade of Rs.1350-2200 on 5.1.1996 and applicant NO. 5 was promoted on the grade of Rs.1350-2200 on 12.7.1997. In the applicants grade, the initial grade is of Goods Guard Rs.1200-2040, and then promotional post of Rs.1350-2200, as Guard Passenger by the process of selection, further next promotion is in the grade of Rs.1400-2600 as Mail Guard by seniority cum suitability. On 18.6.1996, respondents published the notification for selecting a panel of 27 post of Guard (Passenger) Grade Rs.1350-2200 including 16 from General category, 5 from S.C. and 6 from S.T. candidates with a clear stipulation that 6 posts of S.T. and S.C. candidates will not be filled up by general community candidate and will be filled up by General category candidate only after the approval of the Competent Authority. As per Government policy maximum promotion quota for Scheduled Caste and Scheduled Tribe candidates has been provided to the extent of 15% for S.C. and 7.5% for Scheduled Tribe. Under the existing distribution of post on various Division there are 134 posts in the grade of Goods Guard Rs.1200-2040 with 30 post reserved for S.C. & S.T., 123 post in the grade of Rs.1350-2200 Guard Passenger/Goods with reservation of 18 S.C. & 9 S.T. and 37 posts in the grade of Rs.1400-2600 Guard Mail/Passenger only, 8 post reserved for S.C. & S.T. category. Aggrieved against the promotion of the juniors to the applicants, they filed representation dated 26.8.1997, but till date, respondents have

W

not decided the representation of the applicants. Thereafter applicants filed O.A. which was registered as O.A. NO. 1071 of 1997 – Ganga Sagar and Ors. Vs. Union of India and Ors. but the same was withdrawn by the applicants with the permission to file fresh Original Application.

4. The gist of the case are that by notification dated 18.6.1996, respondents clearly laid down that only 5 posts were to be filled up by S.C. category candidates, with the approval of Competent Authority.

5. On the notice of the O.A., Official respondents have filed counter affidavit and submitted that initial grade of Guards (Goods) was Rs.1200-2040 (now Rs.4500-7000) and the promotional grade is Senior Guards (Goods) is Rs.1350-2200 (now revised to Rs.5000-8000), for promotion of Guards (Passenger) selection is held by virtue of seniority. It is further relevant to point out that Senior most candidates amongst the Guard (Goods) Rs.1200-2040 and Rs.1350-2200 were called out by adopting 3X formula by the selection committee. Official Respondents further submitted that the post of Guard (Passenger) Rs. 1350-2200 is a selection post and as such without passing the selection, the petitioners are not entitled for promotion.

6. After issuing notice to the private respondents, private respondents appeared before the Court and filed their counter affidavit and submitted that vide letter dated 4/5.4.1995 all the candidates were promoted on the basis of their general seniority

✓

irrespective of their caste. In the aforesaid letter, it has been specifically mentioned that the Guards of Scheduled Caste/Scheduled Tribes have been promoted against reserved post, hence there is no loss to the applicants. It is further submitted that in Varanasi Division, there are total 37 posts of Guard Mail/Express in which 16 posts have been shown for S.C./S.T as mentioned in the original application, but perusal of the seniority list dated 1.4.1999 of Guards Mail/Express grade 5500-9000 total sanctioned posts is $37 + 17 = 54$ in which the Guards of S.C./S.T are only 11 and not 16 as alleged by the applicant. Among the aforesaid 11 candidates of S.C/S.T. and Guard Mail/Express only one Guard Shri Muttu Ram has been promoted as Guard Mail/Express against reserve point, but the remaining 10 S.C/S.T. candidates of Guard Mail/Express have been promoted against their general seniority. Thus the posts of Guard Mail/Express filled up by remaining 10 S.C/S.T candidates can not be said to be filled up by reservation, because they have not been promoted against reserved point. Thus there is a short fall of S.C./S.T. because in 54 posts of Guard Mail/Express grade Rs.5500-9000 in Varanasi Division the posts of S.C./S.T as per reservation i.e. 15% and 7.5% should be 12, hence 11 posts of Guard Mail/Express are still to be filled up by the candidate of S.C./S.T. The respondents No. 1 to 6 have also admitted that 10 posts of Guard Mail/Express have been filled up by S.C./S.T. against reservation. Hence, they are denying the further promotion of S.C./S.T candidates against reserve point, which is against the reservation policy mentioned in the Constitution of India. For convenient perusal,

✓

the following total strength of Guard Category in the Division is reproduced hereunder:-

Guards category	Sanctioned strength	Prescribed percentage 15% + 7.5%		Post filled up as per reserve/roster point		Short falls of post vacancies still existing	
		SC	ST	SC	ST	SC	ST
1. Guard M/E 1400-2600 (RPS) 5500-9000 (RSRP)	58	09	09	01	--	08	04
2. Guard Passenger 1350-2200 (RPS) 5000-9000 (RSRP)	126	19	09	08	01	11	08
3. Guard Goods 1200-2040 (RPS) 4500-7000 (RSRP)	94	14	06	06	---	08	06

From perusal of aforesaid calculation it is clear that there were short fall of S.C/S.T serving Guard vide impugned letter dated 3.9.1997, the S.C./S.T candidates were promoted in the next higher grade on the basis of their normal seniority in Guards Mail/Express except one S.C. candidates named Shri Mithu Lal who was promoted against reserved point. From perusal of seniority list dated 1.4.1999 of Guards Mail/Express, Guard Passenger and Guard Goods, it is clear that S.C/S.T Guards have been promoted as Guards Mail/Express against the aforesaid General seniority for the post of Guards Passenger and not on the basis of reserve roster point, inspite of promotion

✓

of S.C./S.T Guards vide order dated 3.9.1997 11 posts of Scheduled caste and 8 posts of Scheduled Tribes are still vacant in Guard Passenger, which have not been filled up. Hence fixing of seniority of the applicants over and above the private respondents, is contrary to law and the same is misleading and misconceived which is liable to be rejected. There is no violation of any Rules as well as law laid down by the Hon'ble Supreme Court.

7. Applicant has filed Rejoinder Affidavit and submitted that the respondents have not furnished any Rule in support of their contention to the effect that after posting as Goods Guard in the grade of Rs. 1200-2040 now revised to Rs.4500-7000, the next promotion grade to the post of Senior Guard Goods in the grade of Rs.1350-2200 now revised Rs.5000-8000 and that for promotion of Guard Passenger, selection is made by virtue of seniority. No provisions of Rule have been quoted in this regard which were followed in making promotion in the Guard cadre. The applicants' grievance is that being Senior Goods Guard, the applicants junior who belonged to S.C./S.T category have been given promotion as Passenger Guard while the applicants have been retained to the lower rank of Senior Goods Guard, while the scale of pay of Senior Goods Guard and Passenger Guard are identical i.e. 1350-2200, as such reservation benefits within the same scale of pay was not permissible under any Rule.

8. We have heard Shri A.K. Dave, learned counsel for the applicant, Shri Sudama Ram holding brief of Shri Anand Kumar,

✓

counsel for the private respondents and Shri P. Mathur, learned counsel for the official respondents and perused the record as well as written arguments filed by the parties counsel.

9. Shri A.K. Dave, learned counsel for the applicant argued that the panel dated 5.9.1996 was formed with correct assessment of vacancies and the reservation policy had been complied with before giving approval of the panel. Learned counsel for the applicant further urged that respondents have not considered the representation of the applicants and they have not complied the Rules contained in Railway Board Circular dated 21.8.1997. Learned counsel for the applicant further argued that respondents have committed the contempt of the Hon'ble Supreme Court judgment in the case of R.K. Sabarawal, Veerpal Singh Chauhan and J.C. Mullick and also by ignoring the railway Boards order dated 21.8.1997 issued by the Railway Board in compliance of Hon'ble Supreme Court judgment.

10. Learned counsel for the applicant has placed reliance on the decision of Hon'ble Supreme Court in the case of **R.K. Sabharwal Vs. State of Punjab - AIR 1995 S.C. 1371, Union of India and Ors. Virpal Singh Chauhan - AIR 1996 SC 448.**

The relevant portion of the aforesaid decisions are reproduced hereunder;-

"6. The expressions "posts" and "vacancies" often used in the executive instructions providing for reservations, are rather problematical. The word "post" means an appointment, job, office or employment. A position to which a person is appointed. "Vacancy" means an unoccupied post or office. The plain meaning of the two expressions make it clear that there must be a 'post' in existence to enable the 'vacancy' to occur. The cadre strength is always measured by the number of posts comprising the cadre.

✓

Right to be considered for appointment can only be claimed in respect of a post in a cadre. As a consequence the percentage of reservation has to be worked out in relation to the number of posts which form the cadre-strength. The concept of 'vacancy' has no relevance in operating the percentage of reservation".

11. Learned counsel for the private respondents raised preliminary objection that applicants have not impleaded necessary parties, hence O.A. is not maintainable in the eye of law. In following cases, Hon'ble Supreme Court has held that affected parties must be impleaded:-

- (a) ***State of Bihar Vs. Rameshwar Pd. Singh- 2000 SCC (L&S) 845.***
- (b) ***Rashmi Mishra Vs. Madhya Pradesh Public Service Commission and Ors. - 2007 SCC (L&S) 345.***
- (c). ***K.H Siraj Vs. High Court of Kerala & Ors. - 2007 (1) SLJ (SC) 164.***
- (d) ***A. Janardan Vs. Union of India and Ors. - 1983 (3) SCC 601.***
- (e) ***Indu Shekhar Singh Vs. State of U.P and Ors.- 2006 vol. (8) SCC 129 (G).***
- (f) ***All India S.C. & S.T Employees Assn. and Anr. Vs. A. Arthur Jeen and Ors. 2001 (JT) Vol. 5, 42***

In all above decisions, Hon'ble Supreme Court has clearly held that all selected persons are impleaded as necessary party since the applicants have failed to implead all selected persons of the panel as one of the respondents, no relief could be granted to the applicants.

12. Shri Sudama Ram holding brief of Shri Anand Kumar, learned counsel for the private respondents argued that applicants have sought plural remedies in the aforesaid O.A. as such it is not maintainable under Rule 10 of the C.A.T

✓

(Procedure) Rules, 1987 read with Section 19 (1) of the A.T. Act 1985. Learned counsel for the applicant would contend that there is no illegality in the panels of Passenger Guard or Mail/Express Guard and vacancies for SC/ST quota were worked out as per existing Rules. In the panel of Mail/Express Guard, SC candidates were promoted on their general seniority and normal merit position except one vacancy of Shri Muthu Ram and not against roster point as explained in detail vide para 4 of the Counter filed by the private respondents. It is a settled law in case of R.K. Sabharwal (supra) that SC/ST candidates selected on their own merit position would not be counted towards reserved vacancies. The claim of the applicants is based on fiction that the SC/ST candidates were wrongly promoted against reserved points causing vacancies in Passenger Guards to get promotion to the five SC candidates and thus general candidates (viz. applicants) could not be promoted. Applicant did not challenge the panel of Mail/Express Guard at the relevant time on 5.4.1995 and now they have challenged without making necessary parties to the affected persons of the said panel of Mail/Express Guard.

13. Shri Sudama Ram holding brief of Shri Anand Kumar, learned counsel for the private respondents further contend that applicants have no legal right to challenge the notification of selection dated 18.6.1996 (Annexure A-1 to the O.A.) when they could not be placed on the panel of 5.9.1996 (Annexure A-2). Applicants had knowledge of vacancies notified in which they appeared without any demur and protest.

2

14. Shri Sudama Ram holding brief of Shri Anand Kumar, learned counsel for the private respondents has also placed reliance on the decision reported in **2007 SCC (L&S) 792, Union of India and Ors. Vs. S. Vinodh Kumar and Ors., AIR 1986 Supreme 1413- Uma Shanker Shukla Vs. Akhileshwar Shukla- 1998 (3) SCC 694- Union of India and Ors. Vs. N. Chandrashekharan and 2006 (5) Supreme page 100 Sanjay Kumar Vs. N. Verma.** In the aforesaid decisions, Hon'ble Supreme Court has clearly ruled out that where the concerned Rule are not challenged and candidates participated in the selection process and became unsuccessful, such candidates are estopped from challenging the procedure thereafter.

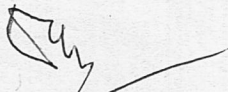
15. In view of the aforesaid observations, the preliminary objection raised by the respondents are sustained in law as the applicants have failed to implead all the persons who are going to be affected by quashing the impugned orders dated 5.9.1996, 5.4.1995 and 3.9.1997. Since no necessary parties will be impleaded as opposite parties, no order can be passed behind their back.


16. Having given our thoughtful considerations to the pleas advanced by the parties counsel, we are of the considered view that although the applicants have failed to make out any case warranting interference on the ground of preliminary objection raised by the respondents but in order to secure the ends of justice, it would be appropriate and proper to direct the respondents to consider the representation of the applicants preferred against the order dated 3.9.1997 and 4/5.4.1995 in

✓

accordance with the provision of law after taking into account the decision rendered by Hon'ble Supreme Court in the case of ***R.K. Sabharwal and Virpal Singh Chauhan (supra)*** within a period of 3 months from the date of receipt of a certified copy of the order.

17. With the aforesaid directions, the O.A. is disposed of. No costs.


Member (A)


Member (J)

Manish/-