

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Dated : This the 18 day of January 2003

Hon'ble Mr. Justice R.R.K. Trivedi, Vice-Chairman
Hon'ble Maj Gen K.K. Srivastava, Member (A)

Original Application no. 829 of 2001.

1. Gulam Mustafa, S/o Mohd. Yunus
2. Latif Ahmad, S/o Sri Manjoor Ahmad
3. R.N. Patel, S/o Sri Budh Ram
4. Ramesh Chandra, S/o Sri Bechu Singh
5. Akhlesh Kumar Singh, S/o Sri L.B. Singh
6. Krishna Bahadur Patel, S/o late Hunuman Prasad
7. Krishna Kant Singh, S/o late B.B. Singh
8. Rakesh Chandra Gupta, S/o Sri S.L. Gupta
9. Suresh Chandra, S/o Sri Kishori Lal
10. Sumer, S/o late Sarju Prasad
11. Virendra Pratap Singh, S/o late R.S. Singh
12. Vijay Kumar Shukla, S/o Sri A.K. Shukla
13. Vishwanath Prasad, S/o late Lokai Prasad
14. Basant Kumar Singh, S/o Sri U.P. Singh
15. Uma Shanker Tiwari, S/o Sri B.N. Tiwari
16. Mahendra Kumar, S/o late Pyarelal
17. Kamal Afsar, S/o Moinuddin

... Applicants

By Adv : Shri S Agarwal, Sri S.K. Mishra

Versus

1. Union of India through the General Manager, N. Rly., Baroda House, New Delhi.
2. The Divisional Railway Manager, N. Rly., Allahabad.
3. The Divisional Personnel Officer, N. Rly., Allahabad.
4. Sri Jiaul Haq, S/o Sri Fayajul Haq
Sr. Goods Guard NR Allahabad.
5. Ghanshyam Sonkar, S/o Sri V.K. Sonkar,
Sr. Goods Guard NR Allahabad.
6. Nagesh Pandey, S/o Sri V.N. Pandey,
Working as Sr. Goods Guard, NR Allahabad.

7. sri Gotakh Ram (SC), s/o sri J.M. Ram working as Sr. Goods Guard, Juhi Yard, Kanpur.
8. Sri Banshidhar Mishra, s/o Sri Hirambh Misra working as Sr. Goods Guard, NR Allahabad.
9. sri Mohanlal (SC) s/o sri Khacheramal working as Sr. Goods Guard Tundla.
10. Sri Achint Kumar, s/o Sri Nandlal working as Sr. Goods Guard, NR Allahabad.
11. Sri Ram Jeet Verma, s/o Sri Nirmal Chaudhary working as Sr. Goods Guard, NR Allahabad.
12. Sri Lakhpal Singh Chauhan, s/o Sri S.S. Chauhan, working as Sr. Goods Guard Tundla Division, Allahabad Headquarters, Tundla.
13. Sri Vinod Kumar Gautam, s/o Sri S.N. Gautam working as Sr. Goods Guard Tundla Division Allahabad Headquarter, Tundla.
14. Sri Yogesh Kumar Sharma, s/o Sri Ram Gopal Sharma working as Sr. Goods Guard Tundla Division Allahabad H qurs Tundla.
15. Sri Deepak Chattri, s/o Sri C Ghatri, working as Sr. Goods Guard, NR Allahabad.
16. Sri Irfanur Rahman, s/o Sri Hafisul Rahman working as Sr Goods Guard
17. Sri Anil Kumar Srivastava, s/o Sri R.S. Srivastava working as Sr. Goods Guard, NR Allahabad.
18. Ramesh Chandra Mishra, s/o Sri L.R. Mishra, working as Sr. Goods Guard Tundla Division Allahabad Hqrs, Tundla
19. Latif Ahmad, s/o Sri Habib Ahmad, working as Sr. Goods Guard, NR Allahabad.
20. Bharat Singh Shankwar (SC), s/o Sri Chandi Lal, working Sr. Goods Guard, Tundla Div, Allahabad Hqrs, Tundla.
21. Satya Prakash, s/o Bansi Lal, working as Sr. Goods Guard, NR. Allahabad.
22. Sri Santosh Kumar Mishra, s/o Sri U.S. Mishra, working as Sr. Goods Guard, N.R. Allahabad.
23. Sri Dilip Chaudhary, s/o Sri Tawn Chaudhary, working as Sr. Goods Guard, Juhi Yard Kanpur.3/-

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24. Sri Uma Shanker Srivastava, s/o Sri S.M. Srivastava, working as Sr. Goods Guard, NR Allahabad.
25. Sri Lakan Lal Meena (ST), s/o Sri Mangal Ram, working as Sr. Goods Guard, Tundla Div. Allahabad Hqrs, Tundla.
26. Sri Laxmi Narain Meena (ST), s/o Sri B.R. Meena, working as Sr. Goods Guard, Tundla Div. Allahabad Hqrs, Tundla
27. Sri Harikesh Meena (SC) s/o Sri Bodya Ram Meena, working as Goods Guard, Tundla Div, Allahabad Hqrs, Tundla.
28. Sri Ram Dayal Meena, (ST), s/o Sri B.L. Meena, working as Goods Guard, Tundla Div. Allahabad Hqrs, Tundla.

... Respondents

By Adv : Sri A.K. Gaur, Sri B.B. Paul, Sri H.S. Srivastava
Sri Anand Kumar

Alongwith

Original Application no. 859 of 2001.

1. Uday Vir Singh, s/o Sri Kaptan Singh
2. M.C. Gupta, s/o R.L. Gupta,
3. R.M. Sharma, II, s/o Sri C.P. Sharma
4. Ram Singh II, s/o Sri Ram Prasad,
5. Bhatwati Prasad, s/o Sri Yed Ram
6. Mohan Singh, s/o Sri Ramji Lal
7. Yoginder Singh, s/o Onkar Singh
8. Ram Lal Meena (ST), s/o Sri R.R. Meena
9. Mohan Kujur, (ST), s/o Sri Charwa Kujur
10. J.J. Bage (ST), s/o Sri Sabyan Bage
11. Lakan Lal Meena II, s/o Sri J.R. Meena

All working as Sr. Goods Guard and Passenger Guards; at Tundla Railway Station, Allahabad Division N. Rly

... Applicants

By Adv : Sri H.P. Chakorvorty, Sri A.K. Dave,
Sri M.L. Sharma

Versus

1. Union of India through General Manager, N. Rly., Baroda House, New Delhi.

....4/-

2. Divisional Railway Manager, N. Rly., Allahabad (UP)
3. The Selection Board, through its Chairman
Sri R.S. Chauhan, Divisional Operating Manager,
D.R.Ms' Office, N. Rly., Allahabad.

... Respondents

By Adv : Sri A.K. Gaur Sri Anand Kumar

O R D E R

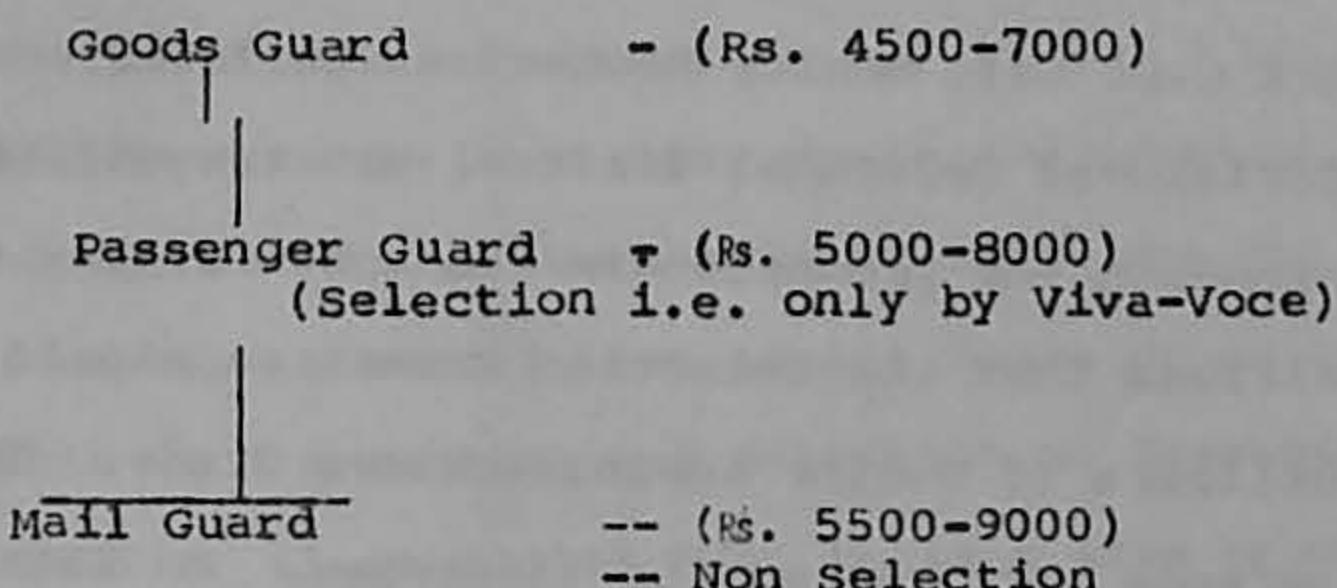
Hon'ble Maj Gen K.K. Srivastava, Member (A).

Both the above O.A.s have been filed under section 19 of the A.T. Act, 1985, challenging the panel of Passenger Guard (Grade Rs. 5000-8000) as declared by the Divisional Personnel Officer (in short DPO), Northern Railway, Allahabad, raising similar issue and, therefore, have been heard and are being decided by a common judgment. The leading O.A. being OA no. 829 of 2001.

2. In OA no. 829 of 2001 the applicants have prayed for quashing the panel dated 5.7.2001 and have further sought a direction to the respondents to appoint the applicants on the post of Passenger Guard from the post of Senior Goods Guard, on which the applicants are presently working by applying the principle of recruitment by transfer from one post to another, considering only their suitability, as it does not involve any promotion at all. The applicants in the alternative have also sought a direction to the respondents no. 1, 2 and 3 to appoint the applicants and other Senior Goods Guards working in the Pay scale of Rs. 5000-8000 to the post of Passenger Guard on the basis of their seniority subject to rejection of unfit.

3. In short the case of the applicants is that all the applicants were initially appointed as 'Goods Guard' in the Pay scale of Rs. 1200-2040 (Since revised to Rs. 4500-7000) between the period of 1976 to 1984. Prior to Fifth Pay

Commission recommendations came into force with effect from 1.1.1996, the channel of promotion of 'Goods Guard' is to the post of 'Passenger Guard' (Rs. 1350-2000) by selection method and then to the next post of 'Mail Guard' (Rs 1400-2600) by Non-selection method. However, with the endorsement of Fifth Pay Commission recommendations w.e.f. 1.1.1996, the post of Senior Goods Guard, was created in the Pay Scale equivalent to the post of Passenger Guard and 20% of the post of Goods Guard were placed in the higher scale of Senior Goods Guard/ Passenger Guard i.e. Rs. 5000-8000. Similarly, in the next higher scale of Rs. 5500-9000 the post of Senior Passenger Guard was created which was in the equivalent Pay scale of 'Mail Guard' and the same was also to the extent of 20% of the total number of posts of 'Passenger Guard'. The applicants claimed to have been promoted on the post of 'Senior Goods Guard' in the scale of Rs. 5000-8000 on various dates in the year 1996. After implementation of the aforesaid new Pay Scale channel of promotion (revised 'A', 'B' and 'C') communicated by the General Manager, Baroda House, New Delhi, vide its letter dated 6.3.1999, wherein following hierarchy was provided :



Aforesaid revised channel of promotion no-where provides that Senior Goods Guard working in the scale of Rs. 5000-8000 would be required to undergo selection method alongwith 'Goods Guard' working in the scale of Rs. 4500-7000 for the purpose of being posted to the post of 'Passenger Guard'. The applicants claimed that since the date of their promotion as 'Senior Guard' they are

continuously being required to run 'Passenger Train' for the last several years and in respect of some of the applicants i.e. applicants no. 5, 6, 8, 14 & 15 detailed duty chart of various period has also been annexed as Annexure 8, 9, 10, 11, 12 & 13 to the Compilation II of the OA, showing that they are continuously running Passenger and Mail train for the last several years. It has also been claimed that posting from the Senior Goods Guard to Passenger Guard does not involve any advantage in the matter of Pay fixation as well as there is no change in respect to nature of duties or responsibilities etc. In the past the respondents have always posted Senior Goods Guard on the post of Passenger Guard strictly in order of seniority and at no point of time there has been any deviation on this count. It is stated that vide notification dated 27.4.2001 thirty vacancies of Passenger Guards in the Pay Scale of Rs. 5000-8000 were notified, required to be filled in by promotion from the Goods Guard on the basis of selection. The requisition does not require selection process for Senior Goods Guard for posting them as Passenger Guard. A Selection Committee was constituted consisting of three members namely Sri R.S. Chauhan, Divisional Operating Manager, Sri C.D. Lal, Senior Mechanical Engineer and Sri Sudama Ram, Divisional Personnel Officer, who are officers of Senior Scale although for promotion in the scale of pay of Rs. 5000-8000, it is claimed that the Selection Committee should have consisted of the officers of Junior Administrative Grade. The total number of 80 persons were called for interview. On 28th and 29th May 2001 interview was held by the aforesaid selection Committee and 49 candidates were interviewed. Thereafter on 6.6.2001 one of the members of the Selection Committee namely Sri Sudama Ram, D.P.O. was transferred and in his place Sri Ganga Ram, D.P.O., interviewed rest of thirty candidates alongwith other two members of the Selection Committee on 13.6.2001. In all 79

candidates appeared for interview. Sri C.D. Lal one of the members of the Selection Committee was going to retire on 30.6.2001 and hence respondents no. 2 and 3 acted with undue haste and published the panel on 5.7.2001, wherein 20 candidates have been declared to be selected for appointment to the post of Passenger Guard in the Pay Scale of Rs. 5000-8000, wherein 23 are already working as Senior Goods Guard and two are working as Goods Guard. The persons included in the Panel superseded a large number of senior persons and aggrieved against the aforesaid panel OA has been filed. The facts disclosed in O.A. no. 859 of 2001 are also similar.

4. It is also stated that Selection has been held arbitrarily and in discriminatory manner inasmuch as the candidates who have out standing record and were awarded several reward etc, have not been selected while the candidates who were even undergoing punishment, as a result of disciplinary proceedings have been found to be meritorious enough for being included in the panel.

5. The Official respondents no. 1, 2 & 3 have filed their counter affidavit wherein the Pay scale and creation of various posts of Goods Guard and above substantially are not being disputed, but it is stated that Senior Goods Guard (Rs 5000-8000) are eligible for promotion and selection as Passenger Guard (Rs. 5000-8000). It is stated that it is status promotion which although does not involve any change in the Pay scale, but atleast changes the designation of the staff marking them eligible for promotion to the next grade/posts. The post of Passenger Guard is a selection post and eligible Staff can be promoted only on the basis of selection. It is however, stated that due consideration is also given to seniority in selection as per 'A', 'B' & 'C'. The respondents admitted that selection

was proposed vide letter dated 27.4.2001. However, there does not exist any rule or instruction to promote Senior Goods Guard to Passenger Guard by way of seniority without selection and since no complaint was raised in respect to Viva-Voce being held by the Railway officials and therefore selection by way of interview was held and result was declared. The candidates who are unsuccessful in the selection have challenged the aforesaid selection when they ^{have} no right to do so. It has been stated that the Selection Committee of Senior Scale Officers was constituted as per the rules although the Selection Board can also be nominated consisting of officers as was done in the past. The change of one of the member in the Selection Committee in the midst of selection cannot be said to vitiate selection and the selection has been held rightly and in accordance with the rules. The selection from Senior Goods Guard to the post of 'Passenger Guard' has been prescribed by the competent authority. Since, there is no illegality in the above selection, hence the OA is liable to be rejected.

6. Some of the private respondents i.e. respondents no. 4, 5, 8, 10, 11, 15, 16, 17, 21 & 24 have also filed their counter affidavit wherein it is stated that the OA is premature as the applicants have not filed any appeal against the order dated 25.7.2001 and hence OA is liable to be dismissed as premature. It is claimed that selection has been held in accordance with the Rules and hence there is no error in the selection; due to exigency of service, the Senior Goods Guards are locally utilised to work ^{as perly on} Passenger Guard as and when adhoc/stop gap arrangement due to the vacancy available on the post of Passenger Guard. But that would not be treated to be the rule or established policy and would not confer any benefit upon the persons concerned. It is further stated that selection has been held to

the post of Passenger Guard correctly in view of Railway Board letter dated 14.7.1993.

7. The applicants have filed their rejoinder affidavit reiterating their stand in the O.A.

8. Heard Sri S. Agarwal, learned counsel for the applicants in O.A. no. 829 of 2001 and Shri M.L. Sharma learned counsel for the applicant in OA no. 859 of 2001, Sri A.K. Gaur appearing for the official respondents and Shri B.B. Paul appearing for the private respondents, Carefully considered their submissions and perused records. *Sri H.S. Soodra 2001*
Sri Arvind Kumar also argued on behalf of respondents.

9. From the submission of rival parties following issues emerge :-

a. Whether the post of Passenger Guard is a selection post so declared by the competent authority

b. Whether the appointment of Senior Goods Guard (Rs. 5000-8000) to the post of Goods Guard can be said to be promotion and method of selection involving Senior Goods Guard as well as Goods Guard was rightly adopted by the official respondents.

c. Whether Selection committee was rightly constituted or it should have consisted of the officers working in Junior Administrative Grade.

d. Whether Rule 218 (c) of IREM Vol 'I' was amended on 15.3.1999 and can be said to have been published in order to be effective in the present selection or not?

e. Whether on the basis of continuous working as Passenger Guard and Mail Train Guard the applicants are entitled to the benefits of the provisions contained under Railway Board Circular dated 19.3.1976 as interpreted by Apex Court in the case of

R.C. Srivastava Vs. Union of India and others (SLP no. 9866
of 1993 decided on 3.11.1995)

- f. Whether change of member of the Selection Committee in the midst of selection vitiates the entire selection
- g. Whether non- holding training course for Schedule caste candidates vitiates the selection
- h. Whether selection otherwise has been held in accordance with the Rules?
- i. Whether selection has been arbitrary and discriminatory and the persons with tainted record have been selected showing the selection has not been held strictly on the basis of merit?

10. Shri M.L. Sharma, learned counsel for the applicants in O.A. no. 859 of 2001 has vehemently urged that the post of Guard has not been declared to be a selection post by the competent authority i.e. Railway Board. He has placed reliance upon Rule 211 read with 212 of IREM Vol 1 showing that it is the Railway Board alone who is competent to declare the post as Selection post. He has also referred to the averments made in para 4.10 of the OA wherein necessary assertions have been made which have not been denied by the official respondents in their counter affidavit. He has also placed before us the channel of promotion issued by the General Manager, wherein the post of Passenger Guard has been shown as selection post, relying upon the Railway Board Circular dated 5th June 1998. A copy of the Railway Board Circular has been placed on record, which does not make any such declaration and thus on the said basis Sri Sharma has contended that the post of Passenger Guard is not a selection post and hence entire selection made by the official respondents is vitiated in law. However, the respondents, both official and the private in reply to the aforesaid, have

been filed as Ann CA1 to the counter affidavit filed by the private respondents in OA no. 829 of 2001 whereby for appointment to the post of Passenger Guard and Passenger Drivers it has been stated that the existing process of selection shall continue. This shows that the Passenger Guard is a selection post and the contention of the applicants in OA 859 of 2001, cannot be accepted.

11. The second question however, is of utmost importance inasmuch as in A.B.C. issued by the official respondents it is clear that the Senior Guard have not been placed at par with the Goods Guards in order to constitute feeder cadre for promotion to the post of Passenger Guard. The Railway Board's circular dated 27.1.1993 read with 14.7.1993, as referred to by the respondents, only provides that senior Goods Guard shall be considered by lateral induction as Passenger Guard in the same Grade. Accordingly it is clear that induction of Senior Goods Guard as Passenger Guard, both in the same Pay scale, is not vertical movement. It is lateral induction, meaning thereby posting from one post to another in the same Pay scale and obviously it does not have any element of promotion. The word 'promotion' has been defined by the Apex Court in the case of 'Tarsem Singh Vs. State of Punjab' reported in Judgment Today 1994 (4) SC page 303 and in Para 9 Hon'ble Supreme Court has observed as under :-

"The promotion as understood under the Service Law Jurisprudence means advancement in rank, grade or both. Promotion is always a step towards the advancement to a higher post, grade or honour."

Therefore, in our view the appointment of Senior Goods Guard to the post of Passenger Guard is not a promotion i.e. vertical movement but is a lateral induction and hence rules pertaining to promotion from one grade to another as contained in Chapter II,

Selection B of IREM vol I could not have been applied earlier by clubbing the Goods guard alongwith Senior Goods Guard. In case of Goods Guard, it is a vertical movement constituting the promotion which is not the case in respect of Senior Goods Guard. On account of the aforesaid reasons the entire selection is vitiated in law and is liable to be set aside.

12. The issue no. 3 and 4 can be considered and decided together. The applicants vehemently contended that as per rules duly published, Passenger Guard is a post in the Pay Scale of Rs. 5000-8000. Hence selection was liable to be made by the Selection Committee, constituting members in the Junior Administrative Grade. Learned counsel for the applicants have relied upon the Railway Board Circular no. E (NG)-1-87-PMI-6 dated 29.8.1988 read with E(MG)-I/95/PMI/14 dated 3.3.1998 which made the following amendments in Rule 218(c) of IREM Vol I :-

"218(c). For selection posts in scale of pay Rs. 1600-2660 / 5000-8000 (RSRP) and above the Selection Boards will consist of officers of Junior Administrative Grade For all other selection posts the selection Board will consist of officers not lower in rank than senior scale in either case except in the case of selection for Personnel Deptt. the Selection Board may include a Personnel Officer in the next lower rank who shall nevertheless be an equal member of the Selection Board."

They have also placed before us copy of the General Manager, Northern Railway Circular PS no. 11862/99 dated 31.10.1999 wherein also it provides constitution of the Selection Committee for non-gazetted post as follows:-

"For selection of non-gazetted posts in the Grade 5000-8000 (RSRP) and above the Selection Board will consist of officers of Junior Administrative Grade."

On the contrary learned counsel for the respondents have relied

upon the Circular issued by the Joint Director Estt. Railway Board dated 20.10.1999 wherein in para 3.4.4. it is stated that the selection to the post in the Scale of Rs. 5500-9000 Selection Board should consists of the officers in Junior Administrative Grade. Reliance has been placed upon Board's letter no. E(MG)/95/PMI/1 dated 15.3.1999. A copy of the Railway Board Circular no. E (MG)-1/95/PM-1 dated 15.3.1999 annexing Advance correction slip no. 73 has been placed which states as under:-

"In para 2. 18(c) as modified vide Advance Correction slip-39 for the Existing Pay scale of Rs. 166-2660, Rs. 5000-8000 (RSRP) substituted the scale of pay to Rs. 5500-9000 (RSRP)."

It is thus contended by the respondents that constitution of the Selection Committee requiring the Junior Administrative Grade officers is applicable only in those cases where the Pay scale of the concerned post is Rs. 5500-9000 and above and not Rs. 5000-8000 as was the position in the instant case.

13. Learned counsel for the applicant however, have challenged publication of the aforesaid amendment dated 15.3.1999 and contended that the said amendment was never published and made known to the parties who were to follow the said provision and, therefore, it cannot be said that the said provision could have been applied in the instant case. Reliance has been placed by Shri Sudhir Agarwal, learned counsel for the applicants on the following cases :

- a. AIR 1987 SC 1059, V.K. Srinivasan Vs. State of Karnataka (Para 19)
- b. AIR 1951 SC 467 Haria Vs. State of Rajasthan (Para 8)
- c. 1994 Vol (3) SCC 198 Pankaj Jain Vs. Union of India & others (Para 13 to 18)

It is no doubt true that the Railway Board has powers to frame

the rules in view of the powers conferred upon it under Rule 123 of IRE Code Vol I read with the provisions of Article 311 of the constitution of India. However, for implementation of the said rule it is necessary that the same should have been published in any recognised method. The normal method of publication of rule is their publication in the official gazette. However, where in a particular department there is any other recognised mode of publication, the ^{procedure for publication of} subordinate Legislation can also be followed. In the present case the authority of the rank of General Manager while issuing its Circular of 1999 has mentioned the Pay Scale of Rs. 5000-8000, requiring constitution of a Selection Board consisting of the officers of Junior Administrative Grade, meaning thereby that even the General Manager Railway Board was not aware of the aforesaid amendment as appended to be made by the Board vide Advance correction slip no. 73 dated 15.3.1999. The official respondents at the time of conclusion of hearing were again given opportunity to place the publication of the aforesaid rule in the Gazette but nothing has been placed before us. The learned counsel for the applicants have contended in para 4.19 that when ever selection was made in the past for the post of Passenger Guard Selection Board always consisted of the officers of Junior Administrative Grade. The aforesaid averment has not been disputed in para 18 of the counter affidavit. It also shows that selection to the post of Passenger Guard has been made by a Selection Committee consisting of Junior Administrative Grade officers. It is only in the present case the selection committee has been constituted of Senior Scale Officers. In the circumstances the contention of the applicants has force that Selection Committee was not constituted in accordance with the rules duly published and known to the parties concerned.

14. Learned counsel for the applicants also invited our attention to Para 3.4.5. of the Circular dated 20.10.1999 issued by the General Manager, Railway Board relied upon by the respondents which provides as under :

"3.4.5. In divisions where the senior scale officers are in independent charge of the Deptt. the constitution of the Selection board for Selections to posts in scale Rs 5000-9000 will be as under;

(Note below para 218 (c) of IREM)

(i) Other than personnel department;
JAG Officers from any other department in the division can be nominated, Senior Scale Officer in independent charge of the department who should not be subordinate to any other member of the Board will be the fourth member of the Board."

The respondents could not show anything to controvert the above contention of the learned counsel for the applicant showing that the provisions made in para 3.4.4., as referred to above, is not applicable in the present case. Hence we are of the view that the constitution of the Selection Committee in the present case was not in accordance with the rules. Hence entire selection is vitiated in law.

15. Regarding the applicability of the Railway Board Circular dated 19.3.1976, as interpreted by Hon'ble Supreme Court in R.C. Srivastava's case (supra), we are of the view that it has been claimed by the applicants in the OA that as Senior Goods Guards they are discharging the duties of Passenger and Mail Guards for several years. The fact as such has been admitted by the respondents but they claim that such adhoc and stop gap arrangement used to be made only in the exigency of service, and it would not confer any right upon the applicants to claim the benefit on the said basis. However, in view of what has been held by Hon'ble Supreme Court in R.C. Srivastava's case (supra)

referring to the Railway Board's Circular dated 19.3.1976 it cannot be held that the applicant are not entitled to be considered for posting and appointment as Passenger Guards in the light of the Railway Board Circular dated 19.3.1976, as interpreted by Hon'ble Supreme Court in the aforesaid case. The said circular clearly provides that the persons working for a long period cannot be declared unsuitable in interview if they are working satisfactorily. The ^{answering} respondents have not placed anywhere that the working of the applicants as Passenger Guard and Mail Guard was unsatisfactory at any point of time and hence we are clearly of the view that the applicants are entitled to be considered in accordance with the Railway Board Circular dated 19.3.1976 as also in the light of Hon'ble Supreme Court direction in the case of R.C. Srivastava's case (supra) where by Hon'ble Supreme Court has clearly held that the Railway authorities are bound to act in accordance with the Circular dated 19.3.1976.

16. The question no. 6 relates to the change of one of the members of the Selection Committee in the midst of selection. This fact has been admitted by the respondents but they submitted that the aforesaid change would not constitute any irregularity vitiating the selection. We are not inclined to accept the submission of the respondents. Where selection is being made only on the basis of interview/Viva-voce, subjective satisfaction of the member concerned constitutes most important factor and a change in the member of the Selection Committee would obviously result in different testing standard. It is not the case where large number of candidates of the two sets of candidates were appearing for selection and the member of the Selection Committee were constituted to interview the candidates who have already been screened through the written test etc., as is the case in respect to PSC.

In the present case only 79 candidates were interviewed and only one Selection Committee was constituted. Hence change of the member of Selection Committee in the midst of selection, in our view, vitiates the selection.

17. As regards issue no. 7 the learned counsel for the applicants in OA no. 859 of 2001 has challenged the selection on the ground that no training course was provided to Schedule Caste candidates which was the mandatory requirement and for the said purpose the learned counsel has relied upon the judgment of Jabalpur Bench of the Tribunal in O.A. no. 236 of 2001 connected with two other cases, Tajendra Singh Vs. Union of India and others decided on 5.8.2002 and OA no. 638 of 2000 connected with two other cases Devi Singh and others Vs. Union of India and others decided on 5.8.2002. The case of Devi Singh (supra) was specifically the case pertaining to selection of Passenger Guards. The view taken in the aforesaid case is actually applicable in the present case also and hence the present selection is vitiates on account of aforesaid irregularity as well.

18. So far as issues No.8 and 9 are concerned, the applicants have pleaded that the persons who were undergoing punishment have also been selected showing that the same has not been made on the criterion of merit alone and is arbitrary and discriminatory. The said averment has not been denied by the respondents, but it is contended that there is nothing wrong in considering and selecting the candidate undergoing punishment. Learned counsel for the applicants however has relied on the law laid down by Hon'ble Supreme Court in the cases of L.Ragaiya Vs. IG Registration reported in A.I.R. 1996 SC 2199, para 4 and State of Tamilnadu Vs. K.S. Merugesan, reported in 1995 (29) ATC 555 (SC), wherein Hon'ble Supreme Court has held that the person undergoing punishment is not even eligible for promotion. It is not disputed

18.

in the present case that the respondent No.6 was undergoing punishment of withholding of increments for three years and has been selected for the post of Passenger Guard. We are unable to accept the plea of the respondents and are of the view that selection has been made arbitrarily and the criterion of merit has not been followed strictly.

19. In view of what has been stated above, both the Original Applications are allowed. The panel dated 5.7.2001 of Passenger Guard (Grade Rs.5000/- 8000/-) is quashed and the respondents are directed to reconsider the matter of appointment on the post of Passenger Guard in accordance with law and in view of observations made above.

20. There shall be no order as to costs.

Ram
14-1-03

SD
AM

SD
NC