

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 19th DAY OF JULY, 2010)

**Hon'ble Mr. G. Shanthappa, Member (J)
Hon'ble Mrs. Manjulika Gautam, Member (A)**

**Original Application No.367 of 2004
(U/S 19, Administrative Tribunal Act, 1985)**

1. R.B. Yadav aged about 47 years S/o Shri Kali Charan R/o Prem Ganj Jhansi.
2. M.D. Joshi aged about 44 years S/o Shri D.H. Joshi R/o 71 Toria Narsingh Rao, Jhansi.
3. I.G. Srivastava, aged about 54 years S/o Shri Har Nam Sewak R/o Rani laxmi Nagar, Rly. Colony, Jhansi.
4. G.D. Yadav aged about 55 years S/o Shri Govind Das R/o Ali Gol Khirki, Jhansi.

..... *Applicants*

Present for Applicants : Shri R.K. Nigam

Versus

1. Union of India through General Manager, North Central Rly. Allahabad.
2. Divisional Rly. Manager, North Central Rly. Jhansi Division, Jhansi.

..... *Respondents*

Present for Respondents : Shri D.S. Shukla

ORDER

(Delivered by Hon'ble Mr. G. Shanthappa, J.M.)

We have heard Shri R.K. Nigam, learned counsel for the applicants and Shri D.S. Shukla, learned counsel for the respondents.

2. The above application is filed under Section 19 of Administrative Tribunals Act, 1985, seeking the relief of quashing the order dated 24.02.2004 issued by the 2nd respondent in violation of Railway Board's

[Signature]

instruction dated 06.01.2004 and further direction to the respondents to extend the benefit of Railway Board's letter dated 06.10.2004 and promote the applicants as Passenger Guards in pay scale of Rs.5000-8000/- by modifying selection.

3. Learned counsel for the respondents submitted that during the pendency of this Original Application some developments have been taken place in which the respondents have stated in Paras 6 and 7 of the statement:-

6. That so far as present facts of the case is concerned is that the applicants were Senior Goods Guard in the grade of Rs.5,000-8,000/- and have claimed promotion on the post of Passengers Guard in the Grade of Rs.5000-8000/- (the grades of Senior Goods Guard and Passenger Guards are same) in the present original application by way of modified selection under restructuring scheme. In this regard, it is submitted that as per provisions contained in para 4.5 of the Railway board letter dated 06.01.2004, where the percentage have been reduced in the lower grade and no new post becomes available, as a result of restructuring, the existing vacancies on 01.11.2003 should be filled up by normal selection proceedings. It is further submitted that the percentage in the grade of passenger Guard have been reduced from 80% to 73% vide Railway Board letter dated 09.10.2003. For kind perusal of this Hon'ble Tribunal a photo copy of Railway board's letter dated 09.10.2003 is annexed herewith as Annexure-2.

7. That since the percentage in the grade of Passenger Guard have been reduced as explained above, as such no new post was available in the grade of Passenger Guard on account of restructuring hence the existing vacancies of passenger Guard were filled up by normal selection process in view of the provision contained in the Railway Board's instruction dated 06.01.2004. Allegations contrary to this are against the provision of law and not sustainable."

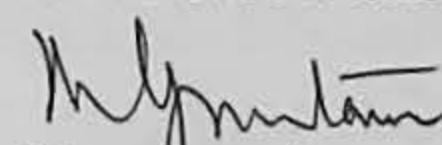
4. It is further submitted that the applicants have not impleaded the juniors to the applicants as party/respondents in the present O.A., hence O.A. is not maintainable. Hence, the applicants want to impleade the so called juniors as party/respondents.

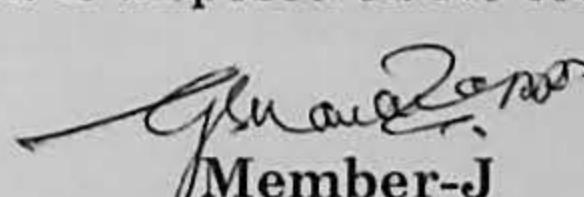


5. Learned counsel for the applicants submitted that so called juniors as on the date of filing O.A. at the relevant point of time they were not promoted, the question of impleading those juniors is not necessary. Learned counsel for the applicants admitted that the applicants got promotion as Passenger Guards w.e.f. 22.02.2008 though the relief of the applicants ~~was~~ ^{was} granted but their interest has not ~~was~~ ^{been} protected under the Railway Board's letter dated 06.10.2004. We have considered the submission of the learned counsel, if the applicants are aggrieved by the said order dated 22.02.2008, it is open for the applicants to challenge that order and obtain the benefit in a separate O.A..

6. In the Present Original Application, since the applicants have not amended the O.A. and they have not made their so called juniors as a party, ~~hence~~ relief sought in the present O.A. as has become infructuous. The applicants are at liberty to challenge the said order dated 22.02.2008 if they are aggrieved. Learned counsel for the applicants submits that the present O.A. may be closed and the applicants may be given liberty to challenge the said order in a separate O.A. We have recorded statement made from either side, accordingly, O.A. is disposed of. The applicants are at liberty to approach this Tribunal for their appropriate relief in a separate O.A..

7. With the above observations O.A. is disposed of. No costs.


Member-A


Member-J

Sushil