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Reserved

Registration O.A.No. 260 of 1988

Quyum Khan & 41 others	...	Applicants
	Vs.	
Union of India and 2 others	...	Respondents

CONNECTED WITH

Registration O.A.No. 276 of 1988

Khet Singh & 14 others	....	Applicants
	Vs.	
Union of India and 2 others	...	Respondents.

2. Registration O.A.No. 319 of 1988

Daya Ram and 25 others	....	Applicants
	Vs.	
Union of India and 2 others	...	Respondents

3. Registration O.A.No. 352 of 1988

Leon Ervin and 17 others	...	Applicants.
	Vs.	
Union of India and 2 others	...	Respondents.

4. Registration O.A.No. 1247 of 1989

Manzar Khan & 7 others	...	Applicants.
	Vs.	
Union of India and 2 others	...	Respondents.

Hon.D.S.Misra, AM  
Hon.G.S.Sharma, JM  
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(By Hon.G.S.Sharma, JM)

In these five petitions u/s.19 of the Administrative Tribunals Act XIII of 1985 (hereinafter referred to as the Act), a common relief has been sought and they were heard together on the request of the parties. We accordingly propose to dispose of all these petitions by this common judgment.



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2. All the applicants in O.A.Nos. 260 and 1247 are working as Pointsmen 'A' while most of the applicants in the remaining 3 petitions are Pointsmen 'A' and few of them are also working as Pointsmen 'B' at various places in the Jhansi Division of the Central Railway. Their case is that according to the channel of promotion, a Pointsmen 'B' is entitled to be promoted as Pointsmen 'A' and thereafter as Shunting Jamadar and Switchman. Upto the time the cause of action for filing these petitions arose to the applicants, the Pointsmen 'A' and 'B' were also in the zone of consideration for appointment as Assistant Guards. There are various categories of Guards and one can be promoted to the highest category Guard 'A' (Spl.).

3. According to the circular letter no. P 328/3/2/T-R dated 28.7.1982 of the Divisional Railway Manager (Personnel) (for short DRM (P)) Jhansi, applications were invited from Levermen and Pointsmen grade 'A' (pay scale Rs.210-270) for appearing in the selection test for Asstt. Guards. The selection was to be held on the basis of the written examination as well as viva-voce test. It appears from the subsequent circular letter no.P-328/3/2/TR dated 21.4.1985 issued by the DRM (P) that the higher grade of Rs.260-400 was granted for Pointsmen 'A' and Levermen and under this circular letter, the applications were invited from the staff working as Pointsmen 'B' in the grade of Rs.210-270 for selection as Asstt. Guards with a proviso that Pointsmen 'A' could also apply for selection provided they were willing to revert as Pointsmen 'B' after their selection as they



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could be considered for appointment only after such reversion. It may also be relevant at this stage to state that at that time the Jhansi Division of the Central Railway was extending to a large area of Madhya Pradesh and in 1987 Bhopal Division of the Central Railway was carved out from the original area comprised in it. The written examination on the basis of the notification dated 27.4.1985, annexure 2, had taken place and a list of 210 persons who had qualified in the written examination was published by the DRM (P) on 18.3.87 and 70 successful candidates were called for viva voce test scheduled on 6.4.1987, 7.4.1987 and 8.4.1987. The viva-voce scheduled for 6.4.1987 only could take place and the viva-voce to be held on subsequent dates was postponed allegedly due to the formation of the new Bhopal Division. On 11.9.1987 the office of the General Manager, Central Railway Bombay introduced certain changes in the selection to be held for Asstt. Guards and the provision for viva-voce test was altogether deleted and only Pointsmen 'B' working in the grade of Rs.210-270 were made eligible for <sup>selection</sup> ~~applying~~. As formerly Pointsmen 'A' were also allowed to appear in the selection test for Asstt. Guards, an exception was granted for one time to make them eligible for appearing in the next selection. In the light of this letter of the headquarters, the DRM(P) Jhansi vide his first impugned circular letter dated 1.10.1987 cancelled the selection process for the post of Asstt. Guards including the result of the written



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test held on 18.3.1987 intimating that fresh applications will be invited separately. The DRM (P) thereafter issued another notification dated 15.10.1987, annexure 7, inviting applications from Pointsmen 'B' working ~~the~~ in the grade of Rs.210-270 for appearing in the selection test for Asstt. Guards. The selection was to take place only on the basis of the written examination and no provision for participation of Pointsmen 'A' was made by the DRM (P) in this notification.

4. Out of the 210 successful candidates, as mentioned in the circular letter dated 18.3.1987, annexure 3, of DRM (P) Jhansi, 45 persons were working in the area, which now forms part of the new Bhopal Division of Central Railway and by issuing circular letter dated 3.9.1987, copy annexure 4, the DRM(P) Bhopal ordered that these employees may be utilised as Asstt. Guards, as and when required. It, however, appears that either due to the formation of the new Division or due to the fact that the second limb of the selection, namely, viva-voce test had not been concluded, some of the 45 successful candidates in the written selection, working as Pointsmen 'A' in the new Bhopal Division, could not give their option for their voluntary reversion as Pointsmen 'B' in the prescribed form and on account of this difficulty, when they were not being considered for promotion as Asstt. Guards, they rushed to the Jabalpur Bench of the Central Administrative Tribunal in two batches of 4 and 29 by filing O.A.No.466 of 1987 and 93 of 1988 and insisted for interim relief. The Jabalpur Bench vide its orders dated 19.2.1988, copies annexures 9 and 10, directed the Railway administration to provisionally admit the petition-



ers to training course for Asstt. Guards commencing from 23.2.1988.

5. The applicants in the present petitions, thereafter, approached this Bench of the Tribunal by filing the aforesaid petitions on 7.3.1988 and subsequent dates with the prayer that the impugned order dated 1.10.1987 by which the continuing selection process was cancelled and the notification dated 15.10.1987 prescribing different conditions for selection to the post of Asstt. Guards be quashed and the respondents be directed to appoint Asstt. Guards from the list of 210 candidates aforesaid with the allegations that the provision for having viva-voce test for the selection to the post of Asstt. Guards was against the rules and there was no provision for having written test and viva-voce test both for the selection. It is also alleged that on passing the written test, the applicants have acquired a right for being appointed as Asstt. Guards and the selection process could not be cancelled unilaterally by the respondents and the applicants are entitled to appointment as Asstt. Guards. The validity of the notification dated 15.10.1987 depriving the Pointsmen 'A' of their valuable right of appearing in the selection for Asstt. Guards has been challenged on the ground that this is arbitrary as in their regular line, the Pointsmen 'A' can be promoted only upto the post of Shunting Jamadar grade 330-480 while there is much more scope for promotion in the line of Guards. The applicants had very much insisted for granting the similar interim relief to them but we did not accede to their request.



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6. The respondent no.2 in all these petitions is the Railway Board and respondent no.3 is DRM Jhansi. Union of India was not a party to these petitions initially and the General Manager Central Railway was impleaded as respondent no.1 but on the objections of the respondents, the Union of India was added as a party in place of the General Manager. The petitions have been contested on behalf of the respondents and in the replies filed on their behalf by the Addl.DRM Jhansi, it has been stated that the applicants did not exhaust the departmental remedies before approaching the Tribunal and their petitions are barred by S.20 of the Act. They are also barred by limitation prescribed by S.21 of the Act. Due to the opening of Bhopal Division, the selection started under the notification dated 27.4.1985 could not be finalised and the candidates declared successful in the written examination and working <sup>in</sup> the new Bhopal Division were ordered to be posted as Asstt. Guards purely on adhoc basis. The selection for the post of Asstt. Guards was formerly done by having both written and viva-voce test under notification dated 27.2.1985 and the new selection procedure prescribed under the notification dated 11.9.87 is perfectly in accordance with law and within the competence of the authority issuing the notification. As the selection process started under notification dated 27.4.1985 could not be concluded the DRM (P) was competent to cancel the same and no rights had accrued on its basis to the applicants. The applicants have a regular avenue of promotion to the post of Shunting Jamadar and they have no right of promotion to the post of Asstt. Guards. The facts of the present case are not similar to the facts of the <sup>cases</sup> before the Jabalpur



Bench and the applicants are not entitled to any relief.

7. The rejoinder was filed only in O.A.No. 260 of 1988 under the signatures of one Quayum applicant but the last page of the rejoinder, which contains the verification clause does not bear anybody's signatures and as such, it is <sup>a</sup> waste paper and no value can be attached to a rejoinder which has not been verified or even signed by <sup>any body.</sup> ~~the counsel~~. It has been stated in this rejoinder that the petition is within limitation and is not barred by S.20 of the Act. The procedure for having viva-voce test for the selection to the post of Asstt. Guards was illegal and the applicants having been declared successful in the written examination are entitled to be appointed as Asstt. Guards without subjecting them to any other selection. It was also stated that the applicants are entitled to parity with the staff now working in the Bhopal Division.

8. From the detailed facts stated above, it is evident that upto 1982, as appears from annexure 1 to the petition, only the Pointsmen Gr.'A' besides Levermen with which we are not concerned in these cases, were eligible for appearing in the selection for the post of Asstt. Guards and the written examination and the viva-voce tests both were prescribed for that selection. Even for the selection held under notification dated 27.4.1985, copy annexure 2, the written test and viva-voce test both were prescribed but the selection was limited to the Pointsmen and Levermen working in the grade of Rs.210-270. The Pointsmen 'A' working in the higher grade of Rs.260-400 were, however, permitted to participate in the selection on the condition that they had to revert voluntarily to the post of Pointsmen



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'B' after their selection. This was little anomalous but as the candidates saw a bright future on their selection as Asstt. Guards, they were prepared to undergo voluntary reversion. The applicants having participated in the selection on the basis of this notification, which prescribed both written and viva-voce tests, are now estopped from challenging the selection procedure. Though it has been alleged by them that to have written examination and viva-voce test both for some selection is against rules, the applicants did not quote any rules in any of these petitions prohibiting such procedure for any post. No such rule was even brought to our notice at the time of hearing and as such, we are unable to uphold this contention of the applicants and hold that there was nothing irregular or much less illegal in prescribing the viva-voce test for the selection of Asstt. Guards under annexure 1 and 2. Thus, without appearing in the viva-voce test the selection did not reach the final stage before the selection process was cancelled under order dated 1.10.1987, annexure 5. The applicants were never finally selected as Asstt. Guards merely on the basis of their passing the written examination. We are further of the view that even on their empanelment after passing the final selection, the panel could be cancelled. A Bench of this Tribunal in Miss Kattaria Vs. Union of India (1987 (2) S.L.J.-683) has held that inclusion of the name in the select list does not confer a right of appointment and no regular inquiry is required under the law to exclude the name.



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9. We are, therefore, of the view that the impugned order dated 1.10.1987 cancelling the selection process conducted for the post of Asstt. Guards under notification dated 27.4.1985 was well within the competence of the DRM(P) Jhansi and its validity cannot be challenged by the applicants.

10. The respondents in their reply have filed letter dated 11.9.1987, annexure RA 1, issued by the headquarters office of the Central Railway to all the DRMs changing the procedure for filling the vacancies of Asstt. Guards and this letter prescribes that for the selection only the written examination was to be held. The deletion of the provision for viva-voce for the selection of Asstt. Guards had to apply from the date of this letter and not with retrospective effect. There is nothing in this letter to show that this should also apply to pending selections. We are further of the view that the notification dated 27.4.1985, annexure 2, under which the applicants had appeared in the written test, shows that a panel of Asstt. Guards was to be prepared after written and viva-voce test. This selection process could be completed only after viva-voce test and the number of persons to be included in the panel had to be limited according to the requirement of the department and it is not appreciable that all the 210 candidates, who had passed the written test, could become eligible for appointment as Asstt. Guards merely on the change of the procedure or on doing away with the requirement of viva-voce test for preparing such panel. Even if, we assume for the sake of arguments that the selection process initiated under



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notification dated 27.4.1985 could be completed in the light of the letter dated 11.9.1987 of the headquarters, the panel had to be prepared by including the names of only such candidates out of 210 persons having passed the written test who had secured the maximum marks and their service records were otherwise fit for such selection. The request of the applicants that after the headquarters letter dated 11.9.1987 all the persons who had passed written test are entitled to get empanelled ~~and~~ for appointment as Asstt. Guards is neither reasonable nor practicable. The approach of DRM Bhopal by issuing letter dated 3.9.1987, copy annexure 4, after the creation of the Bhopal Division directing that the employees having been declared successful in the written test by the DRM (P) Jhansi may be utilised as Asstt. Guards as and when required, does not appear to be correct. This could be done <sup>only</sup> for <sup>^</sup> adhoc appointments to keep the Railways running till the preparation of a panel of suitable persons on the basis of the result of the written test declared by the DRM (P) Jhansi or on the basis of the new selection to be held under the latest orders of General Manager, Central Railway. The stand of the respondents in these cases is that this was merely an adhoc arrangement made by the DRM Bhopal. In any case, the matter of Bhopal Division is still sub-judice before the Jabalpur Bench of the Central Administrative Tribunal and we will not like to make any comment in this connection but so far as the applicants are concerned, we are of the view that the impugned order dated 1.10.1987, annexure 5, is not an invalid order and merely on the



basis of the result of the written test, the respondents cannot be directed to appoint the applicants as Asstt. Guards.

11. Regarding the other impugned order dated 15.10.1987, copy annexure 7, inviting fresh applications for filling the vacancies of Asstt. Guards we are of the view that the DRM (P) Jhansi did not keep in view the instructions (v) of the headquarters letter which states that the existing Pointsmen 'A' etc., should be given an opportunity to opt for consideration as Asstt. Guards as one time exception and thereafter, the employees in these categories will not be eligible for promotion as Asstt. Guards. In the notification dated 15.10.1987, the DRM did not invite the options of Pointsmen 'A' for being considered for selection as Asstt. Guards and this order is bad to this extent. As formerly the Pointsmen 'A' were eligible for empanelment as Asstt. Guards the General Manager Central Railway gave one opportunity to Pointsmen 'A' for the selection to be held under the letter dated 11.9.1987 changing the procedure and the DRM should have made the proper compliance of this order while issuing the notification dated 15.10.1987. We are not aware whether the selection going to be held under this notification has been completed or not. In case, the selection has been completed, instead of holding a fresh written test for the applicants and all those Pointsmen 'A' etc., for whom the selection was made open as one time exception, the selection process started under notification dated 27.4.1985 should be completed



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by preparing a panel as observed above and in case no selection has been held so far, the applicants and others covered under instruction (v) should be either allowed to appear in the written test or their panel may be prepared on the basis of the written test under notification dated 27.4.1985 as may be convenient to the administration. The applicants have not challenged the order dated 11.9.1987 of the headquarters of the Central Railway in any manner and as such, while modifying or cancelling the impugned order dated 15.10.1987, it cannot be held that the Pointsmen 'A' should be made eligible for the selection as Asstt. Guards for all time to come. There is no other point for consideration in these petitions.

12. The petitions are disposed of accordingly without any order as to costs.

*[Signature]*  
MEMBER(J)

*[Signature]*  
MEMBER(A)

Dated: 22nd Aug. 1988  
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