

Reserved.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,

ALLAHABAD.

....

Original Application No. 1361 of 2002.

this the 6th day of August 2003.

HON'BLE MAJ GEN K.K. SRIVASTAVA, MEMBER(A)
HON'BLE MRS. MEERA CHHIBBER, MEMBER(J)

1. Anil Kumar Jain, s/o Sri C.N. Jain, R/o S-297-A,
Railway Harthala Colony, Moradabad.
2. Raj Kumar, s/o Sri Bharat Singh Vishnoi, R/o Surya
Sadan Krishnapuri Vinepar, Moradabad.

Applicants.

By Advocate : Sri T.S. Pandey.

Versus.

1. Union of India through G.M., N.R., Boradaha House,
New Delhi.
2. D.R.M., N.R., Moradabad Division, Moradabad.
3. Sr. D.P.O., N.R., Moradabad Division, Moradabad.
4. Babu Ram.
5. Ram Prakash
6. H.N. Verma
7. Ram Kumar
8. Vipin Kumar.
9. Vijay Bhadur.
10. Surendra Kumar.
11. Ramesh Chand.
12. Om Prakash.
13. Ragban Singh Meena
14. Babu Lal Meera.
15. Puncham Singh Rawat

All respondent nos. 4 to 15 are Guard Passenger, N.R.
Moradabad Division, through D.R.M., N.R., Moradabad
Division, Moradabad.

Respondents.

By Advocate : S/Sri P. Mathur & M.K. Rajvanshi.

ORDER

BY MRS. MEERA CHHIBBER, MEMBER(J)

This O.A. has been filed by two applicants who have
claimed the following relief(s):



"(i) issue a writ, order or direction in the nature of certiorari quashing the panel dated 23rd August, 2001 and the order dated 23rd October, 2002 (Annexure 1 & 2 respectively) in the alternative the name of respondent nos. 6 to 15 be struck off from the panel list dated 23rd August, 2001 with the further order and direction in the nature of mandamus commanding the respondent no. 1 to 3 to promote the applicants on the post of Guard Passenger with retrospective date with all consequential benefits when the respondent nos. 4 & 5 were promoted on the post of Guard Passenger and also to restructure and place the names of the applicants in the newly published seniority list at the proper senior number showing them senior from 4 & 5.

(ii) -----.

(iii) -----."

2. It is submitted by the applicants that they had challenged the seniority list dated 15.5.99 of Guards (Goods) in O.A. no. 1316 of 1999, but the same was decided on 13.12.01 by holding therein that the seniority list has not yet ^{been} finalised. Therefore, liberty was given to the applicants to file a representation and direction was given to the respondents to decide the same by passing a reasoned and speaking order. pursuant to the said order, applicants have submitted that they filed representation on 16.1.2002 (page 52) which was decided vide order dated 23.10.2002 (page 28). It is this order which has been challenged by the applicants in the present O.A. apart from challenging the panel dated 23.8.2001 whereby as many as 43 persons were selected for being empanelled for the post of Guard Passenger in the scale of Rs. 5000-8000/-.

3. The applicants have submitted that they were initially selected vide order dated 15.10.87 for the post of Guard (Goods) wherein the applicant no. 1 was shown to be at sl. no. 40 in the merit list (page 33). The panel list is also annexed at page 30 which shows that the applicants' name figured at sl. no. 40 & 55 respectively, while S.C. candidates namely S/Sri Ram prakash & Tuhi Ram were at sl. nos. 74 & 76 in the merit list. vide letter dated 9.8.90, applicant no. 1 was sent for training (page 35), while certain other persons who were below him in the merit were ^{also} sent for training in the year 1989 itself and were appointed after completing their training, whereas applicants were appointed as Guard (Goods)

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on 19.1.1991 at Delhi Division after they completed their training.

4. The main grievance of the applicants in this case is that since they were high in the merit list, they could not have been denied their right for being sent to training as per their merit, nor could they have been left-out while sending SC candidates for training in the year 1989.

5. They have next contended that all this, while applicants were not aware of their placement vis-a-vis the respondent nos. 6 to 15 who were otherwise below them in the merit list. They came to know for the first time in the year 1999 about their placement vis-a-vis private respondent nos. 6 to 15. Therefore, being aggrieved, they had challenged the said seniority list in the Tribunal. During the pendency of the first O.A., respondents had issued a notification dated 30.5.2000 for promotion to the post of Guard(passenger) from Guard (Goods) (pages 55 to 62). In eligible candidates' list, applicants' name figured at sl. nos. 105 & 106.

6. The next contention raised by the applicants' counsel^{L.H.} is that that in the posts of Guard (Passenger), the total strength was 118, while 30 candidates belonging to SC & ST category were already in field as on 30.5.2000, whereas according to 22.5% reservation, the reserved posts could have been only 28. He has, thus, submitted that since the prescribed reservation quota was already full on 30.5.2000, therefore, the respondents could not have called SC & ST candidates to appear in the selection for promotion to the next higher grade, whereas perusal of the panel dated 23.8.2001 (page 26) would show that as many as seven candidates belonging to SC category were empanelled for the post of Guard (passenger) namely at sl. nos. 16,27,28,29,30,37,39 and three candidates belonging to ST category were also empanelled shown at sl. nos. 41,42 & 43. These are candidates who have been impleaded by the applicants as private respondents and applicants' counsel submitted that these persons could not

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have been empanelled as quota of SC & ST candidates were already exceeding reserved posts for such category. He has, thus, prayed that this panel needs to be quashed on this ^{ground} alone.

7. He has next argued that the interview was held for the post of Guard(passenger) on 7.7.2001 and 13.7.2001, but the applicants were not even considered as the respondents purposely sent them on duty on 13.7.2001, thus, depriving them of their right to be considered for the next post. Counsel for the applicants submitted that he had made specific averment to this effect in para 8 of the O.A., but the same has not been denied by the respondents, therefore, the said averment is deemed to have been accepted in law. He has, thus, submitted that since he was eligible candidate, he could not have been denied the right to be considered. It is in this ^{background} that the applicants' counsel submitted that the panel dated 23.8.2001 needs to be quashed and set-aside.

8. The last contention raised by the applicants' counsel is that the private respondents could not have been given double benefit inasmuch as they were already given the benefit of reservation as per notification dated 10.3.1984 at the time when the vacancies were advertised for 111 posts of Guard (Goods) because at that time 26 posts were reserved for SC, 7 for ST and 10 for Ex-army personnel. Notification is annexed with the Rejoinder to the Counter filed by official respondents. It is submitted by the applicants' counsel that they could not have been given further benefit by sending them to training also ahead of the applicants simply because they were SC candidates. He has submitted that by extending this un-necessary and un-called for benefit to the SC candidates by sending them for training by superseding the applicants, the respondents have acted in illegal and arbitrary manner, as a result of which they have been pushed down in the seniority list of Guard(Goods). Had they been sent for training in the year 1989, they would have been appointed ahead of the SC candidates and would have got better chance for being

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posted to Moradabad Division, but since the private respondents have been given posting prior to him in Moradabad Division, applicants had to seek transfer to Moradabad Division on their own request and in this process their seniority was depressed. Therefore, they have prayed that the said seniority list be quashed and set-aside and they be given better placement than the private respondents.

9. Counsel for the private respondents submitted that this O.A. is highly time barred as the applicants are trying to challenge an issue where cause of action, if any, had arisen in the year 1989 and 1994, but at that relevant time no objection was raised by the applicants, therefore, they cannot agitate this issue now after such a long time. To further elaborate, this point, he submitted that in the year 1989 when the private respondents were sent on training, no objection was raised by the applicants. They were sent for training in the year 1991 and after they successfully completed their training, they were allotted Delhi Division, which was accepted by them and even at that time they did not raise any objection, therefore, they acquiesced to the situation and cannot be allowed to turn-around ^{now} and say that they ought to have been posted in Moradabad Division. He further submitted that on 7.12.92 both the applicants sought their transfer to Moradabad Division on request and categorically stated therein that they are prepared to accept the bottom seniority at Moradabad. In support of his contention, he has annexed the applications of both the applicants at page nos. 15 & 20 of the Counter. He also invited our attention to page 32 of the Counter filed by the official respondents wherein order dated 10.3.93 has been annexed which reads as follows:

The following Gurard (Goods) have been transferred to the mention divisions as per their own request and costs. Both the applicants have been shown at sl. nos. 1 & 2 in the said order.

Counsel for private respondents, thus, submitted that it is abundantly clear from this order that the applicants

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were transferred to Moradabad Division on their own request. Now as far as how the seniority of such persons is to be fixed is to be decided as per para 312 of IREM Vol.I which for ready reference reads as under :

"312 Transfer on request: The seniority of railway servants transferred at their own request from one railway to another should be allotted below that of the existing confirmed, temporary and officiating railway servants in the relevant grade in the promotion group in the new establishment irrespective of the date of confirmation or length of officiating or temporary service of the transferred railway servant.

Note:(1) This applies also to case of transfer on request from one cadre/Division to another cadre/Division on the same Railway (Rly.Bd.No.E(N~~o~~)1-85 SR 6/14 of 21.1.1986."

10. He has, thus, submitted that in keeping ^{with} that rule 312 of IREM Vol.I both the applicants were placed at bottom of the seniority list in Moradabad issued on 6.1.94. The said seniority list is annexed with the Counter at page 23 and in the said seniority list, applicants' name were shown at sl. nos. 204 & 205 at page 34, while the respondent nos. 6 to 15 were shown much above the applicants. Therefore, the applicants knew about their position in Moradabad fully well in the year 1994 itself and if they were aggrieved, they ought to have raised objection at that relevant point, but they never challenged their placement in Moradabad Division ^{even at that time} and now they cannot challenge the seniority given to them by saying as if ~~that~~ seniority list of 1999 has given them some fresh cause of action.

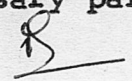
11. Not only this, he further submitted that vide order dated 24.10.96 private respondents were given further upgradation as per their seniority in Moradabad Division from the scale of Rs. 1200-2040/- to Rs.1350-2200/-, but the applicants did not even raise any objection at that time. The order is annexed at page 38 and the name of the private respondents figured at sl. nos. 13,14,16,17,25 & 28 etc..

12. Coming to the seniority list of 15.5.99, counsel for the private respondents submitted that this was only a provisional list and ^{though} objections were called by the department from those who were aggrieved of the said list, but even at

that time applicants did not file any objection (page 40). accordingly, order was issued on 10.3.2000 whereby this seniority list was treated as final, but the applicants did not place all these facts before this Tribunal when they approached in the earlier O.A., nor did the official respondents bring the same on record. These persons were not impleaded by the applicants in the first O.A., therefore, they also could not have brought to the notice of this Tribunal. It was only after the ^{aforsaid} O.A. was decided that the official respondents filed Review application stating therein that the seniority had already been finalised vide order dated 10.3.2000. However, Review application was dismissed, against which union of India had already filed Writ petition before the Hon'ble High Court at Allahabad, which is still pending. Counsel for private respondents, therefore, submitted that the applicants knew their position right from the day one and it is settled by the Hon'ble Supreme Court that any challenge to the seniority made after delay and latches should not be entertained. He relied on the following judgments:

- (i) V. Bhasker Rao & others Vs. State of A.P. & others (1993) 3 SCC 307.
- (ii) B.S. Bajwa & Another Vs. State of Punjab & Ors. (1998(1) SLR 461.
- (iii) Joyachan M. Sebastian Vs. Director General & Ors. (1996) 10 SCC 291.

13. Counsel for private respondents next submitted that since there was no illegality in the seniority list issued by the department and finalised on 10.3.2000, accordingly, they rightly issued the notification dated 30.5.2000. As far as the second panel is concerned for the post of Guard (Passenger), there are as many as 45 persons who were empanelled, but all of them have not been impleaded by the applicants, whereas the relief sought by the applicants is to quash the entire panel. In absence of impleading those persons whose rights are going to be affected in case the relief was to be granted to the applicants, O.A. is not maintainable for non-joinder of necessary parties.



Therefore, the relief as sought for quashing the panel cannot be given to the applicants.

14. He has further submitted that it is absolutely wrong to state that private respondents have been given promotion by reservation. Infact all the private respondents were high in the seniority list, therefore, even though they were SC candidates, they have to be considered when their turn come and so long they are able to take promotion on their merit without taking any relaxation or reservation, ~~the~~ said promotion has to be treated as 'General'. In support of his contention, he relied on the O.M. dated 3.10.2002 (page 44). He, thus, submitted that the contention of the applicants' counsel is totally devoid of merit. He further submitted that even otherwise applicant no.2 was very much called for interview, but he was not declared successful, therefore, he cannot challenge the panel of those candidates who have been declared successful. As far as applicant no.1 is concerned, they have submitted that he had given in writing that he would have no objection or grievance, if promotions are given to others, therefore, applicants cannot agigate about the panel dated 30.5.2001 at all. In the alternative, private respondents submitted that even if ultimately it is proved that the applicant no.1 was not considered for promotion, at best a direction can be given to consider his candidature and incase he is found suitable, it would only ~~the~~ affect the last person who has been promoted as Guard (passenger) and by no stretch of imagination it can vitiate the entire panel. He has, further, submitted that as far as promotion to the posts of Guard (Passenger) are concerned, panel was issued on 30.5.2000 and if applicants were aggrieved, they should have challenged the same in the earlier O.A. itself, but they never challenged the said panel and promotions have also been given to the empanelled candidates on 23.8.2001, whereas the present



O.A. has been filed on 12.11.2002, therefore, as far as challenge to the panel is concerned, that is barred by limitation. Therefore, he submitted that the present O.A. is liable to be dismissed. Counsel for private respondents further submitted that the applicants have not even filed Rejoinder to the Counter filed by them, which means that the averments made by private respondents stand admitted in law by the applicants.

15. Counsel for official respondents followed the arguments advanced by the counsel for private respondents. He, however, submitted that the applicants have not come to the Court with clean hands as they never informed the Court about finalisation of the seniority list on 10.3.2000. More-over, they have not explained that the seniority of both the divisions namely Delhi & Moradabad are separate and they have got themselves transferred to Moradabad on their own request, therefore, naturally, they were required to be placed at the bottom of the seniority in Moradabad Division and once they had sought transfer on their own request, their seniority would count from that date and the earlier part becomes totally irrelevant especially when they have specifically given in writing that they would accept the bottom seniority in Moradabad. He has, thus, submitted that this O.A. is liable to be dismissed as there is no merit in the same.

16. As far as sending SC candidates for training in the year 1989 is concerned, he explained that since there was short fall of SC candidates, therefore, in order to fulfil the short fall, they could always send the SC candidates to the training even ahead of General candidates. As far as private respondents' promotion is concerned, they have submitted that they were promoted against General vacancies as per their own merit and not by giving ~~relaxation~~ them any reservation or relaxation.



17. We have heard counsel for the parties and perused the pleadings as well.

18. At the outset, it would be necessary to mention that so far as applicants' claim with regard to respondent nos. 4 & 5 was concerned, counsel for the applicants gave it up at the time of arguments and he confined his arguments against the respondent nos. 6 to 15 only as far as seniority was concerned and further promotion to the post of Guard (passenger).

19. The record show that the applicants were given their appointment in the year 1991 at Delhi Division, which was accepted by them and they made no objection at that time, meaning thereby that they had accepted the position. Thereafter on 7.12.92 both the applicants sought transfer to Moradabad Division on their own request by giving ~~them~~ in writing that they would ^{accept} be placed in the bottom of seniority in Moradabad. Accordingly, vide order dated 10.3.93 when they were transferred (page 32 of C.A. of official respondents) to Moradabad Division, it was specifically mentioned that they are being transferred on their own request and costs and they had already given their willingness for being placed at the bottom of the seniority in Moradabad. Thus, applicants were fully aware even at that time that they would be placed at the bottom of the seniority at Moradabad Division. Thereafter on 6.1.94 seniority list was issued at Moradabad Division, wherein applicants were shown at sl. nos. 204 & 205 (page 34 of Counter of private respondents) even at this time applicants did not raise any objection, meaning thereby that they accepted the position and rightly so, because ~~that is~~ ^{that is}, what is stipulated under the rule as well. Rule 312 of IREM Vol. I has already been quoted above, which makes it abundantly clear that ^{if} one seeks transfer on request from one Division to other, he would be placed at the bottom of the seniority list in new Division. Not only this ^{that is} seniority list was issued in the year 1994, but thereafter private respondents were given

upgradation also vide order dated 24.10.96 as per their seniority and even at that time these applicants did not raise any objection because they knew fully well that the respondents have been given their upgradation rightly according to their seniority. Thereafter, seniority list was issued on 15.5.99, this was only the provisional list whereby objections were called from those who were aggrieved but even at this time applicants did not file any objection. Accordingly, seniority was finalised on 10.3.2000. This seniority list cannot be said to have ~~been~~ given a fresh cause of action to the applicants as they knew their placement in Moradabad Division right from the day when they were transferred to Moradabad Division. In the given circumstances, judgments relied-upon by the counsel for private respondents would be fully applicable in the present case. In the case of V. Bhasker Rao (supra) it was held that the seniority list was published 12 times during 8 years showing the petitioner below the respondents, but it was never challenged by them. In such circumstances, the petitioners held were not entitled to invoke Article 32 to seek claim seniority over the respondents.

20. Similarly, in the case of B.S. Bajwa (supra) it was held that where the grievance was made in 1984 regarding fixation of seniority long after they had entered the department in 1972 - rights inter-se had crystalised which ought not to have been re-opened after the lapse of such long period. It was held that service matters the question of seniority should not be re-opened in such situation after the lapse of a reasonable period because that results in disturbing the settled position which is not justifiable and it was, thus, held that this ground was sufficient to decline interference under Article 226 of the Constitution of India and to reject the writ petition. In the present case also, the same principle ^{I would apply. B. both B} is applied since the applicants knew their placement would be at the bottom of the seniority list at Moradabad Division on their own request and they were indeed placed at the bottom

of the seniority list which was issued in 1994 itself, therefore the applicants cannot be ^{allowed to} turned around at this stage and say that their seniority ~~was~~ wrongly fixed. Even otherwise, once they had accepted the appointment in Delhi Division in the year 1991, they cannot say in the year 2002 that in case they have been sent for training earlier than the private respondents their seniority would have been different because these are only presumption of the applicants. *Eg. any case B* and if they were aggrieved, they ought to have challenged the action of the respondents at that particular time. In any case, in this case what is relevant is that in the year 1992, applicants themselves sought transferred to Moradabad and once they sought transfer on request, it was the natural consequence that they would be placed at the bottom of the seniority list in Moradabad Division and even if they had been given appointment earlier that would be of no relevance because the starting point would be from this ^{12 point B} in the seniority list in Moradabad Division. The law on this point is well settled and rule position is also clear, therefore, we cannot go by assumption and presumption.

21. In view of the above discussions, we do not find any merit in the applicants' claim. As far as they have challenged the order dated 23.10.2002 is concerned because we find that this order ^{is} to be based on rules as well as settled position in law *therefore it can't be said to be illegal B* or arbitrary. *B*

22. Coming to the next, ^{contention} applicants have challenged the panel dated 23.8.2001 on the ground that since the reservation quota for SC & ST was already full as on 30.5.2000, they could not have ~~been~~ empanelled these SC candidates. We have seen the notification dated 30.5.2000 (page 55). It clearly shows that 41 vacancies ^{B were notified B} for General, three for ST and none for SC. Counsel for the applicants invited our attention to the seniority list of Guard(passenger) wherein 31 posts were shown to have been held by reserved candidates, but

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as per applicants' own showing ~~that~~ there was short fall of 3 ST candidates, therefore, the respondents have rightly reserved only three vacancies for ST candidates and no post was reserved for SC candidates. Now, admittedly, private respondents were coming within the zone of consideration as per their seniority so naturally they had to be considered for the next promotion. The word SC has been written in front of their names because they belonged to SC ^{category} candidates, but since there was no reservation for SC candidates, naturally they could not have been given any relaxation or ~~not~~ on account of being SC candidates. The respondents have explained and clarified that they were empanelled as per their own merit according to their seniority, therefore, we find no force in the contention of the applicants' counsel that these persons belonging to SC ^{category} candidates should not have been considered for the posts of Guard (Passenger).

In any case, Railway Board's O.M. dated 3.10.2002 (page 44) makes position absolutely clear wherein it is clarified that if the candidates belonging to reserved category are promoted on their own merit without giving them any

reservation or relaxation, it shall be treated as General promotion, ^{12 This new has already been taken by Jaipur bench Judgment reported in ATJ 2013(1) CAT 554. 12} therefore, we find no merit in the contention

raised by the applicants' counsel, ^{However} There is ~~only~~ one aspect which we feel need some consideration, though the private respondents have stated in their Counter that the applicant no.1 had given in writing that he would have no objection or grievance if the promotions are issued, but in para 8 of the O.A., applicants have specifically stated that he has been denied ^{the right} to appear in the said selection at that time ^{as} he was purposely sent on duty to deprive him of his right to appear in the selection. This averment has not been denied by the ^{official} respondents in their Counter. On this point, we would agree with the applicants' counsel that once his name had been shown in the list of eligible candidates, he could not have been denied the right of consideration

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therefore, ignoring the averments made by the private respondents because no such document is annexed with the Counter.

We would like to direct the respondents to consider the candidature of the applicant/^{no.1}as well, for the post of Guard (passenger). In case he qualifies and ^{is} successful, he should be promoted as Guard (passenger) from the same date when the other empanelled candidates were so promoted. In case, ^{and given the consequential benefits also} he is not able to qualify ~~or~~ is not selected, he shall be ^{in accordance with law} intimated about it by passing a reasoned and speaking order. This exercise shall be completed by the respondents within ^B a period of three months from the date of receipt of copy of this order.

23. With the above directions, O.A. stands disposed off with no order as to costs.



MEMBER (J)



MEMBER (A)

GIRISH/-