

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 614 of 2006

Thursday this the 31st day of July 2008

**Hon'ble Mr. Justice Khem Karan, Vice Chairman
Hon'ble Mr. K.S. Menon, Member (A)**

1. Uma Pati Dubey, aged about 46 years, S/o Late A.N. Dubey, R/o T-160 A Officer Colony, N.E. Railway, Laharatar, Varanasi.
2. Ganesh Prasad Sharma, aged about 39 years, S/o Late M.L. Sharma, R/o Q. No. 207 (J), New Loco Colony, N.E. Railway, Varanasi.

By Advocate Sri A.K. Dave

Applicants

Vs.

1. Union of India through the General Manager, North Eastern Railway, Gorakhpur.
2. The Divisional Railway Manager, North Eastern Railway, Varanasi.
3. Divisional Railway Manager (Personnel), North Eastern Railway, Varanasi.
4. Senior Divisional Manager (Operating) North Eastern Railway, Varanasi.

By Advocate Sri Prashant Mathur

Respondents

O R D E R

By K.S. Menon, Member (A)

This O.A. has been filed against the impugned order dated 19.04.2006 (Annexure No. A-1) issued by respondent No. 3 by which the entire selection process for promotion to the post of Passenger Guard initiated vide Notification dated 07.07.2005 has been cancelled.

2. The facts of the case are that applicant No. 1 was initially appointed as Trains Clerk in the scale of Rs.950-1500 on 24.08.1990 at North Eastern Railway, Muzaffarpur. He was



promoted as Senior Trains Clerk and subsequently to Goods Guard in the scale of Rs.1200-2040 on 20.09.1996 and was then promoted as Senior Goods Guard in the grade Rs.5000-8000 on 20.07.2005 while working as North Eastern Railway, Varanasi.

3. The respondents issued a notification dated 07.07.2005 for selection to the post of Passenger Guard in the scale of Rs.5000-8000. The selection was to be through a written examination as per Railway Board Circular dated 07.08.2003 and scheduled for 30.07.2005, 06.08.2005 and 13.08.2005 and supplementary examination on 21.08.2005. Alongwith the aforesaid notification a list of eligible candidates alongwith the syllabus for the examination was also issued in which the applicant was at serial No. 44. Out of the 43 posts notified, 27 were for General, 5 for SC and 11 for ST. The applicant was declared successful among 30 successful candidates and ^h~~were~~ placed at serial No. 14 in the merit list dated 31.08.2005. All that was left was for the respondents to issue the posting order in respect of the selected candidates.

4. Some of the unsuccessful candidates in the above examination filed an O.A. No. 1110 of 2005 before this Tribunal challenging the validity of the results of the above examination. They impleaded all the successful candidates in the O.A. and prayed that they should be promoted in the regular cadre of Passenger Guard on the basis of their seniority-cum-suitability with all consequential benefits as they had already been working as Senior Goods Guard in the same scale of pay Rs.5000-8000/-. It is pointed out that while the private respondents filed their Counter Affidavit, the official respondents did not file their Counter Affidavit instead they issued the impugned order dated 19.04.2006 by which the whole selection was cancelled. The Tribunal after hearing the parties dismissed the O.A. as infructuous in view of the fact that the notification regarding the written examination/selection was withdrawn/cancelled by the respondents due to unavoidable reasons. The applicant submits that the act of the respondents in canceling the notification/selection is totally arbitrary and illegal as no reasons have been given for the said action nor has any notice been given or an opportunity of being heard given to the selected

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candidates before canceling the selection process. Regular vacancies do exist and even if the selected candidates were promoted, there would have been two General, one SC and ten ST vacancies.

5. The applicant submitted a representation on 06.09.2005, 26.09.2005, 21.11.2005, 07.03.2000 and through the Union of 25.11.2005 requesting posting orders be issued, but there was no response. Even after the impugned orders were issued on 19.04.2006, he submitted a representation dated 09.05.2006 followed by a reminder dated 1.02.2006. As there was no response, this O.A. was filed.

6. The applicant was given to understand that a fresh notification is likely to be issued for selection to the same post of Passenger Guard and the applicant who already stood selected will be forced to appear in the test again. Recognizing this situation this Tribunal vide Order dated 07.08.2006 passed a status quo order as on that date which is still continuing. The applicant has therefore sought the following reliefs: -

- (i) *To quash and set aside the impugned cancellation order dated 19.04.2006 (Annexure No. A-1) issued by the respondent No.3.*
- (ii) *To direct the respondents to issue posting letter in favour of the applicants pursuance of result declared on 31.08.2005 for the post of passenger guard in the grade of Rs.5000-8000/-.*
- (iii) *To direct the respondents to grant all the consequential benefits to the applicants.*
- (iv) *To issue any other and further order as the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.*
- (v) *To Award cost of the application."*

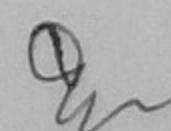
7. The respondents have refuted the contentions of the applicant and in para-3 of their Counter have averred that after publication of result of the examination and before the selection could be finalized there were certain complaints, which ultimately became the subject matter of a detailed enquiry by the Competent Authority and on the

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basis of this enquiry and scrutiny of proceedings they were of the opinion that there were certain irregularities in the selection which warranted the cancellation of the entire selection process. The entire selection process was accordingly cancelled. They submit that an O.A. No. 1110 of 2005 was filed by some individuals before this Tribunal alleging irregularities in the selection so initiated. Since the notification was cancelled by the Railway Administration there was no option but to pass the impugned order dated 19.04.2006. The applicant counters this by saying that details regarding the complaints have not been furnished by the respondents and also the findings of the enquiry on the basis of which the selection was cancelled. Applicant also rebuts the submission that since the notification ^{was} ~~was~~ cancelled there was no option but to issue the impugned order dated 19.04.2006. They claim that this gives the impression that two cancellation orders were issued which is not so. While these are matters of detail the main issue is that the respondents have not provided detail of the said complaints received or whether the enquiry conducted was prompted by the O.A. No. 1110 of 2005 filed by the unsuccessful candidates.

8. In order to appreciate the exact reason for cancellation of the selection, which has been challenged in this O.A., the respondents' counsel Sri Mathura ^{was} directed by this Court vide its order dated 24.05.2007 to file a supplementary reply specifying the irregularity, if any, that necessitated the cancellation of the whole selection process.

9. In their Supplementary Reply filed in pursuance of this Court's Order dated 24.05.2007 the respondents submit that firstly as per instruction, the respondents were to given pre selection coaching to SC/ST candidates prior to conducting the selection. A detailed representation in this regard was made by the candidates concerned and on enquiry the allegation was confirmed. Providing such pre-selection training was a mandatory requirement as per Railway Board instruction 20.5 of Indian Railway Establishment Manual Vol. I (Copy at annexure SCA-1). Secondly after restructuring of Group C staff in traffic transportation 20% posts of Goods Guard were placed in the higher grade of Rs. 1350-2200



(revised scale) Rs.5000-8000/- and are designated as Senior Goods Guard, which is a non selection post, promotions to which are on the basis of seniority cum suitability and not written examination as per Railway Board, instruction dated 14.07.1993. Senior Goods Guard were to therefore be considered by lateral induction as Passenger Guards by process of selection in the same scale. Thirdly the seniority list of Guards cadre published in 1995 and 2005 on the basis of which selection was initiated was not in accordance with the rules and the incumbency register. Resultantly Goods Guards were placed on the panel without working as Senior Goods Guard. In view of the foregoing the respondents had to set right the seniority list before any selection was made to avoid further complications and complaints. There was therefore no alternative but to withdraw the notification dated 07.07.2005 and cancel the entire selection vide the impugned order dated 19.04.2006.

10. The applicants in their Supplementary Rejoinder Reply refute the averments made by the respondents in their Supplementary Counter Affidavit. They contend that respondents have not furnished copies of the complaints received or the enquiry report on the basis of which the impugned order dated 19.04.2006 was passed. In the absence of these it would not be ~~able~~^{in possible} to exactly determine the veracity of the submissions made by the respondents. Besides, in case the SC/ST candidates did have a grievance regarding denial of pre-selection coaching, they should have represented before the Written Examination and not after they failed in the said examination. They further submit that all such candidates had undergone refresher course related to their duties as Goods Guard as well as Passenger Guard as such the requirement of pre-selection coaching had substantially been met. Applicant further contends that there is no specific rule that Goods Guard cannot be promoted as Passenger Guard without having worked as Senior Goods Guard.

11. We have heard Sri A.K. Dave, learned counsel for the applicant and Sri Prashant Mathur, learned counsel for the respondents and perused the pleadings on record.

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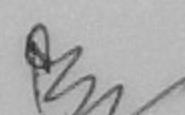
12. The two main reasons on the basis of which the notification and the selection process were cancelled as per the respondents are:

- (i) *Non-provision of pre-selection coaching to SC/ST candidates*
- (ii) *Seniority list incorrectly prepared which necessitated correction.*

The number of SC/ST posts for which selection was conducted was 5 and 11 respectively out of which 4 and 1 respectively were selected. It is, however, not known how many SC/ST candidates appeared in the written examination and who were deprived of the pre selection coaching hence have a ground to feel aggrieved. Having said that we are constrained to observe that all the SC/ST candidates could have represented to the respondents not to conduct the selection without the pre-selection coaching, which is mandatory, which they did not do. Even if they had objections after having failed in the examination respondents could have easily rejected such complaints. As mentioned respondents have not annexed copies of the complaints said to have been submitted to the respondents. The main grounds in the O.A. No. 1110 of 2005 are also not on record to appreciate the exact nature of complaints/grievances of the applicants in that O.A. It was therefore possible for the respondents to segregate those aggrieved candidates and declare the result for the remaining and issue posting orders, if everything else was in order.

13. In view of the above, the reason given in sub para (i) above cannot be a ground to cancel the entire selection process. In this regard we cite the relevant extract of the Supreme Court Judgment (2003) 7 Supreme Court Cases 285-Union of India & Ors. vs. Rajesh P.U. Puthuvalinkathu and another relied on by the applicant, which reads as under: -

"In the light of the above and in the absence of any specific or categorical finding supported by any concrete and relevant material that widespread infirmities of an all-pervasive nature, which could be really said to have undermined the very process itself in its entirety or as a whole and it was impossible to weed out the beneficiaries of one or the other irregularities, or illegalities, if any, there was hardly any justification in law to deny appointment to the other selected candidates . . ."



14. In view of this we are of the view that the results of the reserved category candidates could have easily been segregated and dealt with separately, while the other selected candidates could have been given their appointments. The stand of the respondents as far as sub para (i) above is concerned cannot therefore be accepted as a reason for cancellation of the entire selection process. The argument of the applicant on this issued is therefore upheld.

15. Coming to sub para (ii) above the submissions of the respondents indicate that in the category of Goods Guard twenty percent were upgraded to Senior Goods Guard in the pay scale of Rs.1350-2200 (revised scale Rs.5000-8000/-) on seniority cum suitability basis. Therefore, Senior Goods Guard to Passenger Guard which takes place (also in the same scale of pay of Rs.5000-8000) by lateral induction will be by ~~seniority in selection~~ only. Therefore, Goods Guard are entitled to be considered for next higher post of Passenger Guard only by selection. It appears the respondents had not published the Guards cadre in 1999 and 2005 correctly as per Railway Board's instructions of 1993 as mentioned above nor did it tally with the incumbency register. In view of the foregoing it was incumbent upon the respondents to initiate corrective action to get the records straight as far as seniority was concerned (as Guards Goods without working as Senior Goods Guard were placed on the panel) to avoid future complication and complaints. There was no option for the respondents but to cancel the entire selection process vide order dated 19.04.2006. This particular action of the respondents appears justified in order to avoid future complications and litigation. We would like to cite relevant extracts of the Judgment of this Tribunal dated 01.01.2003 passed in O.A. No. 829 of 2001 (Ghulam Mustafa & Ors. vs. Union of India and others) which reads as under: -

"11. The second question however, is of utmost importance in as much as in A.B.C. issued by the official respondents it is clear that the Senior Goods Guard have not been placed at par with the Goods Guard in order to constitute feeder cadre for promotion to the post of Passenger Guard. The Railway Board's Circular dated 27.01.1993 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

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induction, meaning thereby posting from one post to another in the same Pay scale and obviously it does not have any element of promotion.

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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 vitiate in law and is liable to be set aside."

16. The applicant has relied on the following Judgments: -

1. AIR 1978 Supreme Court 851 *Mohinder Singh Gill and another vs. The Chief Election Commissioner, New Delhi and others*
2. 1986 Supreme Court Cases (L&S) 644 *Om Prakash Shukla vs. Akhilesh Kumar Shukla and others*
3. 2002 Supreme Court Cases (L&S) 830 *Chandra Prakash Tiwari and others vs. Shakuntala Shukla and others*
4. *Brijesh Kumar Srivastava and others vs. Union of India and others.*

We have perused these Judgments and find that the circumstances and facts are different from circumstances and facts in the present O.A. and therefore do not cover this case fully or for the reasons enumerated in the above paras.

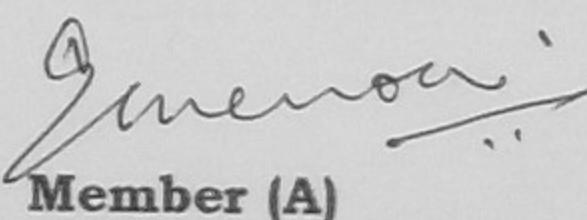
17. We are of the view that the eligibility list published by the respondents was erroneous, in the sense that both Goods Guard and Senior Goods Guard were both shown in the eligibility list and made to appear in the selection process through the Written Examination. The respondents have clearly brought out in their Supplementary Counter Affidavit that the channels of promotion in respect of the above two categories is different while Goods Guard have to undergo a selection to the post of Passenger Guard that is through a Written Examination, Senior Goods Guards are merely inducted laterally to the post of Passenger Guard by transfer from one post to another and does not involve any promotion. The seniority list drawn for the said written examination comprising



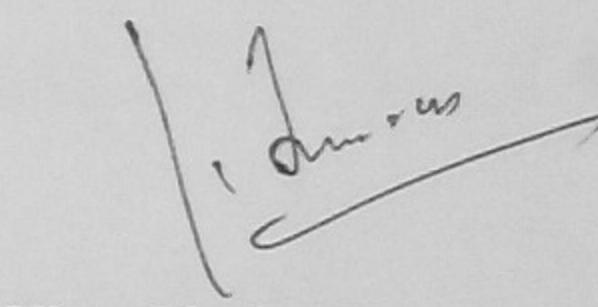
seniority list drawn for the said written examination comprising these two categories was therefore faulty. Therefore, in view of the observations in Ghulam Mustafa's case mentioned in the previous paragraph, the entire selection is vitiated by law and needs to be set aside, which the respondents have done. It is also well settled that an individual on the basis of mere placement of his name in the list of successful candidates in the Written Examination does confer any right or entitlement for promotion, especially when certain required formalities were yet to be completed. The impugned order dated 19.04.2006 also indicates that the cancellation has the approval of the competent authority in terms of para 219 (1) of I.R.E.M. Volume I on this Count also there is no illegality in the impugned order dated 19.04.2006.

18. In view of the above analysis, we are of the view that the Order dated 19.04.2006 by which the entire selection stands cancelled, is ~~cannot be characterized as bad in law~~ ^{in law and is fraught with infirmities of an all} ~~in law and is~~ ^{in law and is} pervasive nature. There is, therefore, no valid ground for this Tribunal to interfere in the aforesaid Order and give rise to a plethora of unwanted litigations.

19. We, therefore, find no merit in the O.A. and the O.A. is accordingly dismissed. No costs.



Member (A)



Vice Chairman

/M.M/