

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD

(THIS THE 01ST DAY OF JUNE 2010)

PRESENT

HON'BLE MR. GEORGE PARACKEN, MEMBER-J
HON'BLE MRS. MANJULIKA GAUTAM, MEMBER-A

ORIGINAL APPLICATION NO. 601 OF 2007.
(Under Section 19, Administrative Tribunal Act, 1985)

1. Anil Kumar Srivastava, aged about 47 years, son of late Rameshwar Prasad Lal, Resident of Qr. No. 544-A, Daya Colony, Mughal Sarai, District Chandauli. Presently working on the post of Mail Express/Guard and posted at Mughal Sarai under the East Central Railway.
2. Braj Kishor Singh, aged about 49 years, son of late B.P Singh, Resident of 751-B, Central Colony, Mughal Sarai, Chandauli. Presently working on the post of Mail Express/Guard and posted at Mughal Sarai under the East Central Railway.

.....Applicants

By Advocate: Shri S. Narain

Versus.

1. The Union of India through the General Manager, East Central Railway, Hajipur.
2. The Railway Board, through its Chairman, Rail Bhawan, Baroda House, New Delhi.
3. The Divisional Railway Manager, East Central Railway, Mughal Sarai, Chandauli.
4. The Senior Divisional Personnel Officer, Office of the Divisional Railway Manager, East Central Railway, Mughal Sarai, Chandauli.
5. The Senior Divisional Operating Manager, Office of the Divisional Railway Manager, East Central Railway, Mughal Sarai, Chandauli.

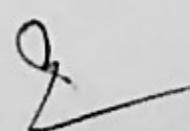
.....Respondents

By Advocate: Shri U.S. Mishra
Shri V. Budhwar

ORDERDELIVERED BY Mr. GEORGE PARACKEN, MEMBER (JUDICIAL)

The applicants are Guards working under the East Central Railway. They are aggrieved by the Annexure A-3/letter dated 26.10.2006 issued by Railway Board by which a separate class of Guard has been created for operating all Rajdhani and Shatabdi express trains i.e. trains with maximum speed exceeding 115 kmph. Consequent to the aforesaid order, the respondents have issued another letter No. T/26/Pune/Gd.Link/MGS/07 dated 23.04.2007 by which a separate link of Mail/Express Guards of Mughal Sarai Headquarter including Rajdhani Express was prepared. In the said letter, it was stated that in case of causality of link Guards of Rajdhani Express next Senior most Mail/Express Guards will work out the train and all the links should be followed strictly according to the seniority of Guards. By the letter NO. ECR/OPT/506/Guard Link dated 10.04.2007 from Chief Passenger Traffic Manager, East Central Railway, Hajipur to the Divisional Railway Manager, East Central Railway there is a direction to prepare and send the Guard's Duty Roster of his division on the following pattern.

- (a) *A separate duty link of Guard working all Rajdhani and Shatabdi based on Seniority. Efficiency and Experience, provided duty hours in a fortnight is of the same level as that of other Mail Exp. Guard's Link. (Copy of Board's letter attached for your ready reference).*
- (b) *Guard's Link of other Mail/Express trains.*
- (C) *Duty link of Guard's of Passenger trains.*



The above Guard's link must reach this office by 16.04.2007 without fail.

2. As the result of aforesaid orders, the applicants who were working as Guards in Mail/Express trains including the Rajdhani Express have been taken away from their duty roster. They have, therefore, challenged the aforesaid orders in this O.A. and sought following reliefs/interim reliefs:-

RELIEFS

- "(a) Issue a suitable order or direction quashing the impugned orders dated 23.4.2007, 10.04.2007 and 26.10.2006 (Annexure Nos. A-1, A-2 and A-3 to Compilation NO.1) to the extent they seek to exclude/withdraw the applicants from the Guard links of Rajdhani/Shatabdi group of trains prepared in respect of the Mughal Sarai Division of East Central Railway.
- (b) Issue a suitable order or direction commanding the respondents to include the applicants in the Guard links of the Rajdhani/Shatabdi group of Trains and permit them to work as Mail/Express Guards on the said trains as they were working since before the passing of the impugned order dated 23.4.2007, without any hindrance, whatsoever.
- (c) Issue such other suitable orders or directions as might be found just and proper in the facts and circumstances of the case.
- (d) Award the costs of this Original Application in favour of the applicants, throughout".

INTERIM RELIEFS

- "(a) That this Hon'ble Tribunal be pleased to stay the effect and operation of the impugned orders dated 23.4.2007, 10.4.2007 and 26.10.2006 (Annexure Nos. A-2, A-2 and A-3 to Compilation NO.1) to the extent they seek to exclude/withdraw the applicants from the Guard links of Rajdhani/Shatabdi group of trains prepared in respect of the Mughal Sarai Division of East Central Railway and direct the respondents to allow the applicants to work on the Guard links of Rajdhani/Shatabdi group of trains and permit them to work as Mail/Express Guards on the said

trains as they were working since before the passing of the impugned order dated 23.4.2007 without any hindrance, whatsoever".

3. When this matter was initially considered on 25.7.2007, this Tribunal stayed the aforesaid orders dated 10.04.2007 and 23.4.2008 as an interim measure. The operative portion of the said interim order is as under:-

"11. Having considered the submissions of both counsels and on an overall assessment of all these situation we are of the view that the balance of convenience is in favour of the applicants. These two applicants are those who had for quiet some time worked as Guard in Rajdhani/Shatabdi trains. If they are allowed to continue as such it is not likely to be to the detriment to efficiency of the operation. We, therefore, allow the prayer for interim order and direct that the two applicants would continue to work as Guard in Rajdhani/Shatabdi group of trains notwithstanding the directions of the two orders dated 10.4.2007 and 23.4.2007 until such time as a decision otherwise is issued by this Tribunal. The operation of the two orders dated 10.04.2007 and 23.4.2007 will not be given effect to in so far as the two applicants of this O.A. are concerned".

4. The contention of the respondents is that the aforesaid impugned orders have been issued by the respondents pursuant to the order of the Tribunal in O.A. no. 805 of 2006-Basarat Ullaha Chauhan Vs. The Chairman, Railway Board, New Delhi decided on 21.11.2006. Learned counsel for the respondents has also submitted that in the said order, this Tribunal has affirmed the order of the Railway Board dated 26.10.2006. For convenience perusal, operative portion of said order of the Tribunal is reproduced below:-

"4. With the above development, there should be no more grievance that may subsist with the applicant in this O.A. Nevertheless, learned counsel for the applicant submits that he apprehends that, despite the above, various Division may adopt different norms. According to us his apprehension is only a distant astrology and not an imminent futurology. If at all different norms are followed, it is always subject to rectification by the General Manager who has the overall control with reference to the various Divisions. It is expected that before implementing the order dated 26.10.2006 by passing necessary orders, the Division will approach the General Manager for his concurrence so that uniformity shall be maintained through out the zone".

5. Learned counsel for the applicant has, however, submitted that after the aforesaid orders of this Tribunal, Railway Board themselves have reviewed position and a separate order No. 2006/Chg.II/22/17-Pt (Guard Links) dated 16.10.2007 was issued. It has been clarified therein that letter dated 26.10.2006 impugned in this O.A. has been issued only a broad guidelines in the matter and it is recommendatory in nature. The Railways have also been called upon to make links to achieve maximum efficiency and optimum utilization of assets complying with HOER instructions etc. The said Railway Board letter dated 16.10.2007 is as under:-

"In view of the discussions and opinion expressed by CPTMs in the conference held in Board on 20th and 21st September 2007, it is informed that aforementioned letter is broad guidelines in the matter and it is recommendatory in nature. Zonal railways should make links to achieve maximum efficiency and optimum utilization of assets complying with HOER instructions etc."

6. Learned counsel for the applicant has submitted that the aforesaid letter dated 16.10.2007 conduced by this

Tribunal in O.A. NO.834 of 2008 – B.C. Pandey and Ors. Vs.

Union of India and Ors. The applicants in the said O.A. were challenging the order dated 24.7.2008 issued by Chief Passenger Traffic Manager whereby the decision was taken by the respondent NO. 3 i.e. Chief Passenger Traffic Manager to merge the Guard link of Mail/Express/Rajdhani and Shatabdi Expresses (on the grounds that it would result in saving of 12 posts of Guards in the Division) to the detriment of the applicants. After having heard rival contentions, the Tribunal dismissed the said O.A. holding that merger of Guard links of Mail/Express/Rajdhani/Shatabdi trains is primarily a policy matter decided by the Railways based on the recommendation of a high powered technical committee and the Railway Administration is the best judge to formulate and issue policies in the best interest of the Railways, its employees and the public at large to ensure efficient management of the Railways. The operative part of the said Order is reproduced hereunder:-

“6. The respondents in their Counter Affidavit have denied the averments made by the applicants. They submit that there is no special category of Guards, which have been specifically earmarked for running of Rajdhani and Shatabdi Express trains and that Guards on other Mail/Express trains can also work on Rajdhani Shatabdi trains as there is no difference in the technology. The respondents say that the applicants have in no way demonstrated how the so called impugned order is discriminatory as is prejudicial to their interest, anywhere in the O.A. or in the Rejoinder Affidavit/ Written Submissions. The grievance basically seems to be that only they should be

assigned Rajdhani/ Shatabadi Group of trains to the exclusion of other Guards working on Mail and Express trains. Admittedly the Railway Board's Circular dated 22.02.1969 provides for assigned Rajdhani/ Shatabadi trains being assigned to Senior Guards (and not senior most, as contained by the applicants), who have been given orientation training in operation of Air Break System and holding competency certificates issued by the DSO and DME (C&W). However, the applicants failed to show as to how only they possess the aforesaid required qualifications and not other Guards and hence only they should be assigned Guard duties on Rajdhani and Shatabadi Trains. They point out that one Basarat Ullah Chauhan being aggrieved by the said Circular of Railway Board of the year 1969, filed O.A. NO. 805 of 2005, protesting against the anticipated move of Railways to have separate set of Guards of Rajdhani/ Shatabadi and other super fast trains on the ground that such separation of Guards from out of Mail/ Express Guards would result in certain imbalances. This O.A. was disposed of by this Tribunal by order dated 21.11.2006, giving directions to the Railways to ensure that if different norms are followed by different divisions of the Railways, it was always subject to rectification by the General Manager, who is in overall control. The respondents state that several Original Applications were filed by one group or the other of the Guards, running Rajdhani and Shatabadi and other Mail and Express trains. The Railway administration then finally issued Circular dated 26.10.2006, in which it was submitted that all Rajdhani/ Shatabadi Express Trains i.e. the trains with maximum speed exceeding 115 km. per hour should be worked by the guards as per their experience, seniority and efficiency as per laid

down instructions. The applicants are relying very heavily on this particular order but have made no reference whatsoever in their O.A., R.A. and Written Submission about the fact that the aforesaid letter dated 26.10.2006 contains several anomalies which were then deliberated on in a meeting of all Chief Passenger Traffic Managers (CPTM). Based on the feed back got from the said meeting that the instructions contained in Railway Board's letter dated 26.10.2006 has caused a hurdle in the implementation of Guard links and that the said letter should be withdrawn, the Railway Board issued another Circular dated 16.10.2007 on the subject of preparation of Guard links of Rajdhani/Shatabadi and Super Fast trains, stating clearly that the letter dated 26.10.2006 is to be treated as broad guide lines in the matter and are commendatory in nature. The respondents, therefore, submit that letter dated 26.10.2006 on which applicants are relying so heavily, was superseded by Circular dated 16.10.2007, besides the fact that the applicants have not indicated clearly as to how the latest circular/instructions dated 16.10.2007 in any way jeopardizes their interest. The respondents, therefore, submit that O.A. is badly misconceived and devoid of merit hence is liable to be dismissed with exemplary cost.

7. Heard, Shri Ashish Srivastava, learned counsel for the applicants, Shri S.K. Rai, learned counsel for the respondents NO.1 to 4 and Shri Shyamal Narain, learned counsel for the respondents NO. 5 to 21 and perused the pleadings.
8. The issue under consideration in this O.A. is about the applicants being aggrieved with the decision of the respondents to bring about a merger of Guard

links whereby all Mail Express Guards have been included in a Common/Merged Guard link for all Mail/Express trains as well as Rajdhani Shatabadi group of Trains. Their claim is that being senior Guards, they alone should be assigned duties relating to Rajdhani/Shatabadi group of trains to the exclusion of other Mail/Express Guards. Admittedly this claim stems from the Railway Board circulars dated 22.02.1969 (Annexure A-3 to Compilation II of this O.A.) and dated 26.10.2006 (Annexure A-5 to Compilation II) which provides that only Senior Guards, who have been given Orientation training in operation of Air Break System and holding Competency Certificate issued by the Competent Authority, should be assigned Guard duty on Rajdhani/Shatabadi group of trains.

9. This system embodied in Railway Board's letter dated 26.10.2006 not only gave rise to anomalies (as far as the operational implementation was concerned) but also gave rise to litigations by the aggrieved Guards adversely affected by the non-merger and subsequent merger of the Guard links respectively.
10. Letter of the Railway Board dated 26.10.2006 was the subject matter of detailed discussions by all Chief Passenger Traffic Managers at a meeting held on 20/21-09-2007, wherein it was held that instructions contained in the letter dated 26.10.2006 could be a hindrance in implementation of suitable links. The meeting therefore recommended withdrawal of the said letter of the Railway Board dated 26.10.2006. Railway Board, in pursuance of the aforesaid recommendation, issued letter dated 16.10.2007 stipulating that provisions of letter dated

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26.10.2006 was to be taken as broad guidelines in the matter and treated *recommendatory* in nature; Zonal Railways were directed to make Guard links to achieve maximum efficiency and optimum utilization of assets complying with HOER instructions (Annexure - 9 of C.A. of impleaded respondents Nos. 5 to 21). The applicants have failed to refer in the O.A. to this important communication emanating from the Railway Board giving rise to the impugned letter dated 24.07.2008. This letter of the Railway Board dated 16.10.2007 is the latest instructions/policy on the issue of Guard links, the answering respondents have accordingly issued the order contained in their letter dated 24.07.2008 (impugned in the O.A.).

11. The applicants on their part have neither demonstrated how the letter dated 24.07.2008 which is an *inter office note* and not on 'order' as claimed by them is specifically detrimental to their interests nor have they shown how they are more qualified to be assigned as Guards on the Rajdhani/ Shatabdi group of trains than the respondents NO. 5 to 21.
12. We are of the considered view that it is neither necessary nor appropriate to go into the genesis or the details of divergent views taken by the parties or anyone else in this issue. Judicial orders passed in various cases (which attained finality on this subject) required Railway Administration to adopt a 'uniform procedure' within each Zonal Railways, giving paramount importance to relevant factors/circumstances including Passenger safety also.

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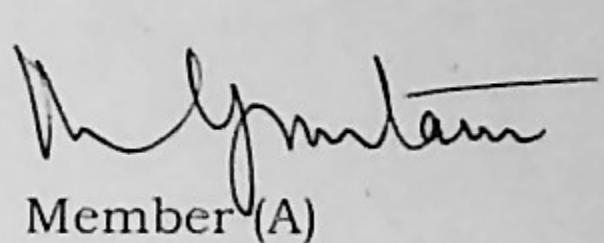
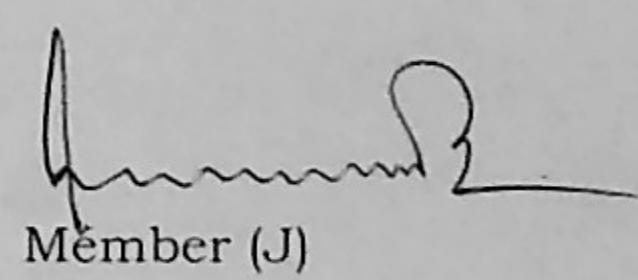
13. *Merger of Guard links of Mail/Express/Rajdhani/Shatabadi Trains is primarily a policy matter decided by the Railways based on the recommendation of a high powered technical committee. The Railway Administration is the best judge to formulate and issue policies in the best interest of the Railways, its employees and the public at large to ensure efficient management of the Railways. It is therefore not within the ambit of this Court to interfere with the laid down policy of the respondents.*
14. *We would however like to emphasise that whatever be the policies formulated and adopted for implementation, paramount concern of the Railway Administration should be safety of public at large including passengers and public goods. Public welfare has to be the touch-stone to test a policy and the 'object' sought to be achieved.*
15. *In view of the above, it will suffice to say that the applicants jointly or through their 'Unions' are free to approach Competent Authorities/Railway Board to apprise them with their grievances and, we have no doubt as to why Railway Board at the helm of affairs shall not consider their genuine and just grievances on the issue in hand or any other similar issue.*
16. *Admittedly, the applicants have not approached and agitated their grievances before Respondents authorities for their consideration.*
17. *From the above, it is clear that the applicants have not been able to make out a case which calls for any interference by this Court and the relief(s) sought in this O.A cannot be given.*

18. The O.A is dismissed with the above observations.
No costs".

7. Respondents are opposing this Original Application only on the ground that the impugned order in the present O.A. has been issued pursuant to the decision of the Tribunal in the case of Basarat Ullaha Chauhan (supra). The respondents, however, have not mentioned in the counter affidavit about the subsequent Railway Board order dated 16.10.2007 and order of the Tribunal in this case of B.C. Pandey and Ors (supra).

8. In our considered opinion, this O.A. is squarely covered by the decision of this Tribunal B.C. Pandey's case (supra) and consequently we allow this O.A. and quash and set aside the impugned orders dated 23.4.2007, 10.04.2007 (Annexure A-1 and A-2). We also direct the respondents to include the names of the Applicants and similarly placed persons in Guard links of Rajdhani/Shatabdi group of trains and permit them to work in those trains accordingly as was done before the issuance of the impugned letters.

No order as to costs.


Member (A)
Member (J)

Manish/-