

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH  
ALLAHABAD**

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(THIS THE 20<sup>th</sup> DAY OF May, 2011)

**Hon'ble Dr. K.B.S. Rajan, Member (J)  
Hon'ble Mr. D.C. Lakha, Member (A)**

**Original Application No. 952 of 2007**  
(U/S 19, Administrative Tribunal Act, 1985)

Sri Niwas, aged about 48 years, S/o Late Sorti Ram, R/o Gobardhan Railway Station, District Mathura.

..... **Applicant**

**By Advocate: Shri K.K. Mishra**

**Versus**

1. Union of India through General Manager, North Central Railway, Allahabad.
2. Divisional Railway Manager, North Central Railway, Agra Cantt.
3. Senior Divisional Personnel officer, North Central Railway, Agra Cantt.
4. Senior Divisional Commercial Manager, North Central Railway, Agra Cantt.

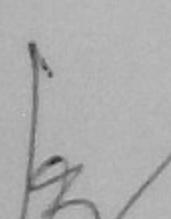
..... **Respondents**

**By Advocate: Shri P. Mathur**

**O R D E R**

**(Delivered by Hon. Dr. K.B.S. Rajan, Member-J)**

1. The matter is short and simple. O.A. No.1270 of 1999 (Chandan Lal and Others v. Union of India & Ors) was registered in this Tribunal, which was originally filed before the Principal Bench. The relief prayed for in that case are as under:-



“8.1 That this Hon’ble Tribunal may be pleased to allow this application and quash the impugned order at Annexure A-1 in so far as it excludes the eligibility of Pointsmen ‘A’ Grade Rs. 950-1500 for promotion to the post of Guard.

8.2 That this Hon’ble Tribunal may be further pleased to direct the Respondents to include the category of Pointsmen ‘A’ grade 950-1500 in the file of eligibility of promotion to the post of Goods Guard Gr. Rs. 1200-2040.

8.3 That this Hon’ble Tribunal may be further pleased to direct the Respondents to fill up the vacancies of Goods Guard which had arisen prior to 7.5.1997 in accordance with unamended Rules and direct the Respondent to consider the applicants in order of seniority for promotion against the said vacancies with all consequential benefits.”

2. Ultimately, the aforesaid O.A. was disposed of with a direction to the Respondent No. 2 to decide the representation filed by the applicant with liberty to the Applicant to make fresh representation within a stipulated time. In implementing the order of the Tribunal, the Respondents, who had initially obtained some further time showed no interest which had compelled the Applicant to file Contempt Petition No. 35 of 2002 and the same was, however, rejected as by that time the representations were disposed of. In the communication dated 10.07.2001, the applicant had been informed that he would be considered for Goods Guard on the basis of the 10% posts earmarked for Pointman. However, the said assurance remained only on paper without being executed. As sufficient time has elapsed, the Applicant has moved this O.A. seeking the following relief:-

“That this Hon’ble Court may graciously be pleased to direct the respondents to promote the applicant to the post of Goods Guard in terms of letter dated 10.07.2001 (Annexure A-4)”

*[Signature]*

3. Respondents have contested the O.A.. According to them, the O.A. is bad for non-joint of necessary party, as Jhansi Division, which issued Annexure A-4 order, has not been made a party. As regards merits, according to the Respondents provisions exist for 10% post of Goods Guard for appointment from the feeder grade of Point-man. There is, however, no reason for increasing the said percentage. The Applicant along with other eligible candidates were called for written test held in 2006 but the Applicant could not qualify in the written test. As such, the application is devoid of merits.

4. Applicant has filed his Rejoinder Affidavit reiterating his contention as contained in the Original Application. According to him after creation of Agra Division carving out from Jhansi Division, the records of the Applicant having been sent to Agra Division there is absolute not need to implead Jhansi Division in this O.A..

5. In the Supplementary Counter Affidavit Respondents once again stated that the Applicant had appeared in the examination but could not qualify in the same. They have also indicated that certain letters relied upon by the Applicant including one dated 10.07.2001 alleged to have signed on 21.02.2007 was never issued at all.

6. Counsel for the parties were heard and in addition, they were permitted to file written arguments. The counsel for the Applicant relied upon the Railway Board's letters dated 05.06.1998

*[Handwritten signature]*

and 04.02.1999 which are annexed by the Respondents as Annexure CA-3 and 4. Vide order dated 26.06.2001, the ultimate decision regarding promotion chance of the point-man to the post of Goods Guard are as under;-

*"The average of promotion to Goods Guard has however, again been revised in terms of Railway board's letter No.E(NG)I-968/PM/2/3 dated 05.06.98 and 04.02.99 and Pointsman 'A' Scale Rs.950-1500 (RPS)/Rs. 3050-1590 (RPS) and Rs.1200-1800 (RPS) Rs. 4000 - 6000 (RSRP) have become eligible for promotion to the post of Goods Guard Grade Rs.4500-7000 (RSRP) and 10% posts have been earmarked for pointsman 'A' and Cabiman consultation with the recognized trade Union. These instructions have been circulated vide letter dated 15.09.99. "*

7. Thus, there is no quarrel or dispute about the eligibility of the Applicant for the post of Goods Guard. The only aspect is that as per the Respondents the Applicant could not succeed in the examination conducted in 2006.

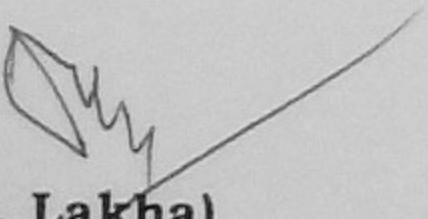
8. It is not the case of the Respondents that there is only one chance for the applicant to qualify in the written examination. Subject to age limit if any prescribed, the Applicant could appear in the subsequent examination as well. In the instant case, in so far as age limit is concerned, there does not appear to be any restriction as order dated 26.06.2006 does not indicate any such restriction. If, however, there is any restriction and the Applicant is now found over aged he cannot be penalized or deprived of his chance to appear in the examination, since when he moved this O.A. he was 27 years only and as such, interest of justice would be met if the Applicant is given one more chance to appear in the examination and subject to his qualifying in the examination (if not

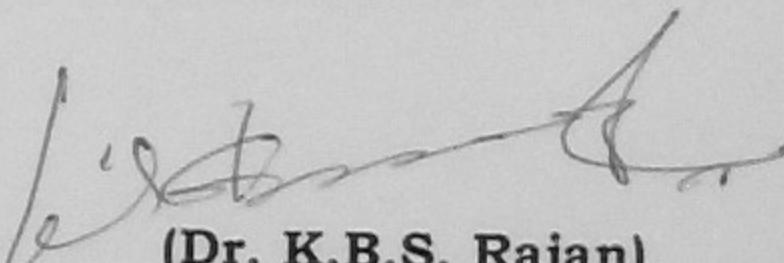
*[Signature]*

already qualified) he should be considered for promotion as Goods Guard.

9. The Applicant has been fighting this case for substantial period by now his claim for promotion cannot be denied for any trivial reasons. Thus, dispassionately **the respondents should conduct the test and if the Applicant is found suitable he may be given promotion.** Further, if, there is any periodicity/frequency for conducting the test which could not for any reason be conducted in the past, the applicant, on his qualifying in the examination, should be treated as if he had qualified in the year in which such examination was to have been conducted and his promotion shall be on notional basis from that date.

10. The **O.A. is disposed of** on the above terms. Respondents shall comply with this order within a period of three months before which, with the approval of the General Manager necessary examination should be conducted. If there be any other pointsman similarly situated as the applicant, then opportunity should be given to all other similarly situated individuals for appearing in the examination. This part of the order is passed invoking the provisions of Rule 24 of the CAT Procedure Rules, 1987 to render substantial justice. No costs.

  
(D.C. Lakha)  
Member-A

  
(Dr. K.B.S. Rajan)  
Member-J

Sushil