

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O.A. No. 350/93 and O.A. No. 395/93.
~~XXXXXX~~

DATE OF DECISION 25th January, 1995.

All India Guard's Council and ors. Petitioner s

Shri M.M.Xavier, and Shri K.K.Shah Advocate for the Petitioner(s)

Versus

Union of India and others. Respondent

Shri R.M.Vin, Shri M.S.Trivedi Advocate for the Respondent(s)
Shri B.R.Kyada.

CORAM :

The Hon'ble Mr. V.Radhakrishnan : Member (A)

The Hon'ble ~~Mr~~ Dr.R.K.Saxena : Member (J)


- 2
1. All India Guard's Council
Registered Trade Union.
Reg. No. 1140, Represented by
(a) Their Divisional Secretary,
Bhavnagar Division-Bhavnagar
namely by S/Shri Siraj S. Malvat
Guard, Bhavnagar, (b) Shri Shailendra
Kumar R. Mehta, Guard Bhavnagar.
(c) Pritamsingh Avtarsingh Sardar
Guard Bhavnagar C/o. Station
Superintendent, Bhavnagar Terminus
(d) Babubhai Manubhai Raghuvani,
Goods Guard, Bhavnagar.
Moti Talao Opposite Bhavnagar
Terminus Railway Station Bhavnagar,

(e) Khimjibhai Popatbhai, Assistant
Guard, Under Station Supdt. Bhavnagar,
Plot No. 108, Nirmalnagar St. No.6,
Bhavnagar.

Applicants in
O.A. 350/93.

Advocate in Mr. M.M. Xavier.

Versus

1. The Union of India
Notice to be served through
The Secretary, Ministry of
Railways, Rail Bhavan, New Delhi
 2. The Chairman, Railway Board,
Rail Bhavan, New Delhi.
 3. The Divisional Railway Manager
Western Railway, Bhavnagar Division,
Bhavnagar 364 003.
 4. The Divisional Operating Manager (Estt.)
Divisional Railway Manager's Office
Western Railway, Bhavnagar Para.
 5. Shri J.V. Vaishnav,
Guard, C/o : Railway Station
Botad, Western Railway, Botad.
 6. Shri Hiralal Gobar
C/o Principal Zonal Training
School Udaipur.
 7. Shri Dinesh Jadhav
C/o Station Supdt.,
Jetalsar Junction,
Western Railway,
 8. Shri D.V. Chauhan
C/o Station Supdt.,
Jetalsar Junction,
Western Railway,
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9. The General Manager
Western Railway,
Churchgate, Bombay.

Respondents in O.A.350/93

Advocate Mr. R.M. Vin
Mr. M.S. Trivedi for respondents No. 5 to 8.

1. All India Guards Council
Registered Trade Union-
Ajmer Division, represented
by the Joint Secretary,
Shri H.S. Parmar.
2. Deva Ram B. (Guard)
3. P.P. Sharma (Guard)
4. Gangaram S. (Assitant Guard)
5. Ram Preet Prasad (Assitant Guard).

All India Guard Council
C/o R.K. Sharma
7-186-A Railway Colony
Abu Road-307 026.

Applicants in O.A. 395/93.

Advocate Mr. K.K. Shah
Versus

1. Union of India
Notice to be served through
The Secretary,
Railway Board, Rail Bhavan
New Delhi.
2. The General Manager,
Western Railway,
Head Quarter Office,
Church gate Bombay.
3. The Divisional Railway Manager (E)
Divisional Office, Western Railway
Ajmer.
4. The Area Manager
Area Manager Office, Western Railway
Gandhidham.
5. Shri R.U. Shaikh
6. Shri Basant K. Kulkarni
7. Shri Omprakash Varma

8. Shri Ramswaroop Sharma.
9. Shri Ramprakash Sharma.
10. Shri Mohhemed Hasmi
11. Sakhan Kumar Mana
12. Ashok Kumar R.
13. Chandra Shekhar Sharma
14. Amarchand N.
15. Omprakash Yadav.

Respondents in O.A. 395/93.

Advocate Mr. B.R. Kyada

J U D G M E N T

Date: 25.01.1995.

In

O.A. 350/1993 & O.A. 395/1993.

Per Hon'ble Shri V. Radhakrishnan

Member (A)

As both the Original Applications challenge the action of the respondents Railway Department in proposing to absorb surplus Telegraph Signallers in the grade of Goods Guard, in Ajmer, Bhavnagar Divisions, they are dealt with and disposed of by a common judgment.

2. Heard Mr. M.M. Xavier for the applicants and Mr. R.M. Vin for the respondents No.1 to 4 and 9 and Mr. M.S. Trivedi for the private respondents No. 5 to 8, respectively in O.A. 350/93.

3. Heard Mr. K.K. Shah and Mr. B.R. Kyada, learned advocates for the applicants and the respondents respectively in O.A. 395/93.

4. The applicants in O.A./395/93, have challenged the letter of the respondents no.3 i.e. Divisional Railway Manager, Ajmer, dated 14.7.1993, (Annexure-A), proposing to absorb surplus Telegraphic Signallers as Goods Guards on the grounds mentioned therein and declare the same as illegal and bad in law (Annexure-A). The applicants have also challenged the Railway Board's circular dated 21.4.1989, regarding absorption of surplus staff.

Applicant no.1 is a registered Trade Union, i.e. All India Guard's Counsel, Ajmer Division, having the membership of the Guards and representing their interest. The applicant no.2 to 5, who are Members of the Union are joined as applicants in a representative capacity. Respondent no.5 to 15 are the surplus signallers who are proposed to be absorbed as Guards.

5. The applicants in O.A./350/93, have challenged the letter issued by Divisional Railway Manager's Office, Western Railway, Bhavnagar, directing surplus Telegraph Staff for prescribed training at PZTS - UD for the post of Goods Guards, dated 12.4.1993, (Annexure-A/1). The applicants herein are All India Guards Council, Bhavnagar Division, represented by the Divisional Secretary, Bhavnagar, and Guards Grade 'A' & 'C' and S/Shri Siraj S.Malvat, Pritamsingh Avtarsingh Sardar, Guard, and Shri Khimjibhai Popatbhai, Assistant Guard. Respondents no.1 to 4 and 9 are official respondents and 5 to 8 are Assistant Head Signallers.

6. The contention of the applicants in both O.A.s is that by absorbing the surplus Signallers the promotion opportunities available to the Guards will be very much reduced thereby affecting their prospects. Moreover,

conditions regarding completion of number of years of service for promotion have also been relaxed in the case of Signallers rendered in order to absorb them as Surplus Goods Guards. Further, the surplus staff are proposed to be absorbed after giving weight to their previous seniority. The applicants have also referred to the judgment given by this Bench of the Tribunal in O.A./26/92, wherein the General Manager, Western Railway, was one of the respondents. In that O.A. a similar question was raised by the All India Guards Counsel and ors. of the Baroda Division. In that O.A. challenge was made in respect of the order issued by the Baroda Division, Western Railway, to depute surplus Signallers for Guards Training as a preliminary step for getting them absorbed as Guards.

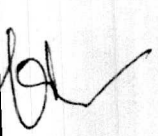
7. After hearing both the parties the Tribunal allowed the application and quashed the order of the respondents to absorb surplus Signallers in the grade of Goods Guard.

8. In view of the judgment given in O.A./26/92, the applicants pray that the General Manager who was also one of the respondents as in this O.A.'s should follow the judgment given in that case.

9. Respondents have filed their repl. It has been stated that after getting a copy of the judgment in respect of O.A./26/92, reference was made to Railway Board for filing S.L.P. against that judgment in Hon'ble Supreme Court and they had not implemented the judgment so far. They have further stated that they have not received copy of the decision in O.A./26/92, and they have not taken action to file S.L.P. They have adopted the Railway Board's

order dated 21.4.1939 as applicable to the Zonal Railway. They have stated that surplus Telegraphic Staff having more than five years service were absorbed as Goods Guards after adjusting their suitability. They have stated that the surplus staff ought to be absorbed in the Division in the available vacancy and Railway Board circular has to be strictly followed. According to them the surplus staff is deployed in the available vacancies of different cadres and categories on the basis of the suitability as per Railway Board's directions being a normal avenue for promotion to Telegraph Signallers as A.S.M. According to them the selection for Goods Guards was held in which "A" Guards were called but they were not successful in the test. After consultation with the Union in order not to put Senior Surplus Telegraph Staff already absorbed, in a disadvantageous position, it was decided to call for fresh options from them and accordingly they were absorbed as they were found eligible. In filling up vacancies preference has to be given to surplus staff as per Railway Board's directions. They have denied that "A" Guards having five years service were not considered and Telegraph Staff with less than five years were absorbed. According to them the seniority is to be determined on the basis of the length of the service.

10. They have also stated that the applicants have not exhausted alternative remedy by representing to the higher authorities and as such they could not file a case.




11. In so far as the judgment in the case of O.A./26/92, they have stated that it is being challenged in the Supreme Court and the applicant could not ask any benefit under that judgment. More over according to them the judgment is not applicable to Ajmer Division, as this Division is not a party to that O.A.

12. The private respondents have given reply in O.A./350/93, wherein they have objected to the application by Guards Council. They also stated that as per Supreme Court's decision in the case of Shri P.K.Das Versus Union of India and others reported in ATR-1993 (1) CAT 41, the applicants cannot question the policy decision of the respondents to absorb the Signallers as Goods Guards.

13. The applicants have filed rejoinder. According to them no decision is taken by the respondents ^{file} to S.L.P. Further the General Manager, Western Railway, a party to hold a proceeding in O.A./26/92, cannot plead ignorance of the judgment and he has to implement the same in Ajmer Division also. Even the interim relief ordered by the Tribunal were not complied with by the respondents but have been flouted and some officers have taken on charge.

14. Mr.K.K.Shah and Mr.M.M.Xavier learned counsel for the applicants stated that surplus staff in the category of Telegraphic Signallers have so far being absorbed in ASM/Clerical cadres. The first time decision is taken to absorb the Signallers in the Goods cadre in the pay scale of Rs.1200-2040. He argued that as per Recruitment Rules as contained in para - 124 of IREM Vo.I.,



the post of Goods Guards in the scale of Rs.1200-2040/- which filled-in by promotion from various feeder categories and 15% by direct recruitment out of the promotion quota, 31% is filled by selection from amongst Senior Train Clerks and Train Clerks remaining 54% is filled by selection from amongst the Ticket Collectors, Commercial Clerks, Switch-men, Yard Staff and Breaks-men. Telegraphic Signallers are not eligible to be promoted as Goods Guards. The post of Goods Guards carries a running allowance of 30% of their pay. In fact because of this running allowance which is a higher post than of the scale of pay of Rs.1200 - 2040 indicates, the pay scale of Telegraph Signallers is Rs.1200-2040, without any running allowance. Hence, if Telegraph Signallers are posted as Goods Guard he should in fact be given promotion. Hence, considering the Recruitment Rules and taking into account the fact the posting as Goods Guards can be considered as promotion only and respondents who were Traffic Signallers cannot be absorbed in the post of Goods Guard.


15. The applicants are adversely affected as the respondents are sought to be given seniority by interpolation among Goods Guards taking into account their past service also. Further this action of the official respondents has determined the Assistant Guards who are members of the Association of their chances of promotion and also has reduced the chances of the goods guards for further promotion. Another point of consideration is that the private respondents are sought to be absorbed in the grade of Goods Guards without subjecting them to any selection test. It is also contended that fresh option was been given to surplus staff who are in fact not opted

for Goods Guards in the first instance.

16. Mr.K.K.Shah also mentioned that the decision taken in O.A./26/92, quashing similar action by the respondents in the Baroda Division should also apply in this Ajmer Division. He also mentioned that a Review Application above O.A. has been dismissed and the S.L.P. made by the respondents to Supreme Court is also been turned down. In the circumstances he prayed that respondents be restrained from absorbing Signallers as Goods Guards.

17. Mr.R.M.Vin and Mr.B.R.Kyada learned counsel for the respondents no.1 to 4 and 9 contended that a policy matter is involved in the question of absorption of surplus staff and the respondents were within the rights to absorb the surplus Signallers in the category of the Goods Guards. He stated that in certain categories of the staff became due ~~to~~ to abolition of str am traction and absorption of surplus staff. The Traffic Signallers have become surplus and it is necessary to absorb them in different categories of posts. He also stated that I.R.E.M. is only an office Manual and has no statutory authority and accordingly not binding on the policy makers.

18. Mr.M.S.Trivedi, counsel for the private respondents No.5 to 8, argued that the Supreme Court has rejected the S.L.P. of the official respondents on the grounds of limitation and no reasons were given in the rejection. Accordingly as per the decision taken in Union of India and ors. Versus Sayed Mohd.Razak, 1992 JT Vol.3, SC 309, it will not have general applicability.




19. In view of this decision the Tribunal has to apply only to the employees of Baroda Division who were the applicants in that case and cannot apply to the applicants in the present O.A. who belong to Ajmer Division.

20. We are not impressed with this argument of Mr. M.S.Trivedi, counsel for private respondents no.5 to 8. The rejection of SLP may not be law in terms of Article 141 but it certainly debars the same parties to raise the issue ^{again.} ~~in~~ In the SLP which was rejected and ~~the~~ present O.A.s, Union of India and General Manager are the common respondents. Divisional Railway Manager or Area Manager are the officers working under General Manager. ~~Where~~ the judgment of the Tribunal is binding on Union of India and General Manager, Western Railway, because of appeal having not been entertained by way of rejection of SLP, they cannot deny applicability of the principle laid down by the Tribunal in the case of the similarly situated employees of Bhavnagar and Ajmer Divisions of Western Railway.

21. A similar case in O.A./26/92, has already been decided by this Bench in similar matter. In that case it was decided that a surplus employee cannot be absorbed in a higher post as it will be unjust to those for holding similar post and who are in queue for promotion to such post. The post of Goods Guard has been held to a post higher than of its pay scale of Rs.1200-2040, suggest as it carries a 30% running allowance along with it. The running allowance for a nature of a special pay which makes it superior scale. In fact as per Rule - 124 of I.R.E.M. Senior Train Clerks who are in the same scale of Rs.1200-2040, as Goods Guard are shown as eligible for promotion to the later post.

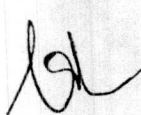
Even the post of Head Train Clerks in the scale of Rs.1400-2300, are not eligible to appear for the post of Goods Guard, as both are considered to be equivalent grades. Taking into account of the above it was held that the post of Goods Guard in the pay scale of Rs.1200-2040 is higher post compared to senior Signallers in the scale of Rs.1200-2040, and hence surplus Senior Signallers cannot be absorbed as Goods Guard without violating the norms for such absorption, viz., that a surplus employee can be considered for absorption in equivalent or lower post only and cannot be absorbed in a higher post.

"Rules regarding recruitment to various categories of posts under the Railways are contained in the Indian Railway Establishment Manual (IREM) Volume-I-para-124 of the IREM relates to the appointment of Goods Guards in the scale of Rs.1200-2040. For our purposes, it is sufficient to note that 15% is by direct recruitment and the remaining 85% is filled by promotion from various feeder category posts. 31% is filled by selection from amongst Senior Train Clerks and Train Clerks. The remaining 54% is filled by selection from amongst the Ticket Collectors, Commercial Clerks, Switch-men, Yard Staff and Breaks-men. It is worth noting at this stage that all the feeder category posts, except Senior Train Clerks, are in pay scale lower than Rs.1200-2040, while the feeder category post of Senior Train Clerks alone is in the pay scale of Rs.1200-2040, i.e. the same as the pay scale of Goods Guards. Telegraph Signallers are not eligible to be promoted as Goods Guards under Rule 124 and hence it is alleged that the Annexure-A order is illegal.



Another important point to be noticed is that Goods Guards are in receipt of running allowance, which is 30% of their pay. Therefore, though the pay scale of Guards is nominally Rs.1200-2040, in effect, it is much higher. This fact has been recognised by providing that, in case a Goods Guard is medically decategorised, he should be given an alternative job in a pay scale of Rs.1400-2300. It is contended that for this reason the Telegraph Signallers on the pay scale Rs.1200-2040 cannot be absorbed as Goods Guards because this absorption will not be on an equivalent post but on a higher post of promotion."

22. a The circular of the Railway Board dated 24.1.1989, gives/summary of the instructions regarding absorption of surplus staff. It was mentioned in the judgment referred to above in O.A./26/92, that the tenor of the entire circular of Railway Board makes it clear that the surplus staff can be absorbed in posts carrying identical scales, in which case their full seniority can also be protected. It is however, decided in O.A./26/92, that only General Managers or the Chief Personnel Officer have power to relax the rules regarding absorption of Surplus Staff. The post of Goods Guard is higher to the post of Senior Telegraph Signaller, the Tribunal questioned the propriety of absorption of the surplus staff on a higher post. Hence, the order of the respondents proposing the absorption of Signallers to the post of Goods Guard was found to be contrary to the guidelines issued by the Railway Board. Accordingly, the judgment of the case was given as follows :



"In the circumstances, we dispose of this application (i.e. O.A./26/92) with a declaration that the senior Signallers in the grade Rs.1200-2040, who have been rendered surplus, cannot be absorbed as goods guards in the grade Rs.1200-2040, because the latter post is not in an equivalent grade but is in effect, on a much higher grade and the absorption would, therefore, amount to be a promotion which is unjustified and discriminatory".

23. We are in respectful agreement with the above judgment in the present application and allow the present applications in respect of Ajmer Division and Bhavnagar Division where also the Surplus Signallers are proposed to be absorbed as Goods Guards. Accordingly, the impugned orders of the third respondent Annexure-A and Annexure-A/1, dated 14.7.1993 and 12.4.1993, in O.A./395/93, and 350/93, are quashed and set aside. Consequently, Signallers in the grade of Rs.1200-2040, who have been rendered surplus, cannot be absorbed as goods guards in the grade Rs.1200-2040, because the latter post is not in an equivalent grade but is in effect, on a much higher grade and the absorption would, therefore, amount to be a promotion which is unjustified and discriminatory. If any surplus Signaller has already assumed the charge of the post of Goods Guard he should be reverted forthwith to his original grade. The application stands disposed of accordingly. No order as to costs.

Sd/-
(Dr.R.K.Saxena)
Member (J)

Sd/-
(V.Radhakrishnan)
Member (A)

Section-IX

D.No. 1720/95/IX
Supreme Court of India,
New Delhi.

Dated:- 2/1/96

From:-

Section Officer,
Supreme Court of India,
New Delhi.

To:-

The Registrar,
Central Administrative Tribunal,
Ahmedabad Bench.

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NOS. 27527-28 of 1995
(Petition under Article 136 of the Constitution of India,
from the Judgment and Order dated 25/1/95
of the Central Administrative Tribunal, Ahmedabad Bench
in D.A.Nos. 350 and 395 of 1993).

Union of India & Ors.

..Petitioner(s)

--VERSUS--

All India Guards Council & Ors.

..Respondent(s)

Sir,

I am directed to inform you that the Petition
above-mentioned filed in the Supreme Court was listed
before the Court on 1/12/95 when the
Court was pleased to pass the following Order:-

"We have heard the learned counsel on delay as
well as on merits. There is a delay of 176
days in filing of the special leave petition
for which no satisfactory explanation has been

....2/-

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offered. The xx application for condonation of delay is, therefore, dismissed. Even otherwise, we do not find any merit in the special leave petition and the same is dismissed on the ground of delay and merits. The dismissal of this special leave petition would not stand in the way of the concerned employees from being absorbed on other equivalent posts."

Yours faithfully,



Section Officer

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

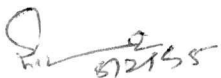
Application No. 04/350/93 of
Transfer Application No. _____ of

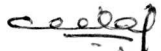
CERTIFICATE

Certified that no further action is required to be taken and
the case is fit for consignment to the Record Room (Decided).

Dated : 07.02.95

Countersign :


Section Officer.


Signature of the Dealing
Assistant

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AT AHMEDABAD BENCH

INDEX - SHEET

CAUSE TITLE 04/350/93

NAME OF THE PARTIES All India Guards Council Bangalore & Co.

VERSUS

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