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Central Administrative Tribunal,
Cuttack Bench, Cuttack.

ORIGINAL APPLICATION NO:111 OF 1988.

Date of decision: February 4, 1993.

T.Venkata Rao and others ... Petitioners.

-Versus-

Union of India and others ... Opp.Parties.

For the petitioners : Mr. G.A.R.Dora, Advocate.

For the Opp.Parties : Mr. Bijay Pal, Sr. Standing
Counsel(Railway).

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CORAM:

THE HONOURABLE MR.K.P.ACHARYA, VICE CHAIRMAN
AND
THE HONOURABLE MS.USHA SAVARA, MEMBER (ADMN.)

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1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporters or not? NO
3. Whether Their Lordships wish to see the fair copy of the judgment? Yes.

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J U D G M E N T

K. P. ACHARYA, V.C.

Petitioners are 8 (eight) in number.

Petitioner No.1 was selected by the Railway Service Commission as a Trains Clerk and was appointed on 17-11-1950. Thereafter he was promoted as Guard 'C' on 6th June, 1956. Rest of the Petitioners were directly recruited through Railway Service Commission as Guards Grade 'C' on different dates in the year 1957. Later all the petitioners were promoted as Guard Grade 'B' on different dates. The Grade 'C' Guards were working on goods trains and ~~Grade~~ Grade 'B' Guards were working on passenger trains and Grade 'A' Guards were meant for Mail/Express Trains. The lowest Grade was Guards 'C' and the next higher Grade was Guard 'B' and the highest grade was grade 'A'. With effect from 1st June, 1981, 'B' Grade was merged with 'C' Grade and Grade 'B' Guards who were working in passenger trains were placed in the Grade 'A' and those who were working in the Mail/Express Trains as Grade 'A' Guards were designated as Grade 'A' Special. After merger of Grade 'B' with Grade 'C', two grades were created for Goods Train. One is Rs. 330-530/- for erstwhile 'C' Grade and Rs. 300-560/- for the erstwhile 'B' Grade. The erstwhile 'B' Grade Guards of Passenger Trains were placed as 'A' Grade Guards in the Pay scale of Rs. 425-600/- and the erstwhile Grade A Guards meant for Mail or Express Trains having been placed as Grade 'A' Special were entitled to a pay scale of Rs. 425-640/-. After 9th July, 1985 certain categories were restructured as a result of which guards working

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in the passenger trains having a run of 250 K.Ms or above were upgraded to Guard 'A' Special in the scale of Rs. 425-640/-. The petitioner was subjected to a suitability test. All the petitioners were held to be suitable as it would be evident from Annexure 2 dated 26th February, 1986. Having turned out successful in the suitability test, the petitioners were promoted to Grade A Special with effect from 1st January, 1984, as per the letter dated 12th March, 1986 contained in Annexure 3, the cadre strength was raised from 18 to 33 and the petitioners were placed against Sl. Nos. 21 to 28 in the seniority list dated 10th September, 1986 Vide Annexure 4.

2. Incidentally, it may be mentioned that the pay scale of the Guards A Special was revised as per the recommendations of the fourth Central Pay Commission to Rs. 1400-2600/-. Such being the position, though the petitioners are entitled to the pay scale of Rs. 1400-2600/- they have been placed in a lower scale of pay i.e. Rs. 1350-2200/- and that as per the letter dated 23rd February, 1988 contained in Annexure 5, the petitioners have been called upon to take a suitability test for promotion to Grade 'A' Special. Further case of the petitioners is that since they have been working in Express Trains, in regular manner, from different dates of the years 1985, 1986 and 1987 they are entitled to the pay scale of Rs. 1400-2600/- and they cannot be subjected to another suitability test. Hence this application has been filed under Section 19 of the Administrative Tribunals Act,

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1985 with a prayer to quash Annexure 5 calling upon the petitioners to take suitability test and for a declaration that the petitioners are entitled to revised scale of Rs. 1400-2600/-.

3. In their counter, the Opposite Parties have not disputed the initial appointment of the petitioners as Grade 'C' Guards and subsequent promotion to Grade 'B' and Grade 'A'. Equally no dispute was presented in regard to the case of the petitioners, that they had undergone a suitability test for promotion to Guards 'A' special. The only question over which dispute has been raised is that the petitioners are entitled to a pay scale of Rs. 1350-2200/- instead of Rs. 1400-2600/- because the scale of Guards 'A' Special, employed in the Mail/express and Super first Trains is to be fixed at Rs. 1400-2600/- and it is further more maintained that as per the letter issued by the Chief Personnel Officer, South Eastern Railway, vide his letter No. P/L/11/4/1001/TN/KUR/Guard dated 20.1.1988, it has been directed in future such posts are to be filled up by process of seniority-cum-suitability basis and since the present petitioners were found suitable for the posts of Guards 'A' on the basis of scrutiny of service sheet and confidential reports, they have been called upon to take a suitability

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test for promotion to the Grade of Guards 'A' Special. The crux of the case put forwarded by the Opposite parties is that the case being devoid of merit is liable to be dismissed.

4. We have heard Mr. G.A.R.Dora learned counsel for the petitioner and Mr. B.Pal learned Senior Standing Counsel (Railway) for the Opposite Parties. From Annexure 2 it is crystal clear that all the eight petitioners had undergone a suitability test for promotion to the post of Grade 'A' Special in the scale of Rs. 425-640/-. Vide Annexure 3 dated 26th February, 1986, the result has been published and all the petitioners have been found to be suitable and in pursuant thereto vide Annexure A/3, dated 12th March, 1986 all the petitioners have been promoted as Guard A Special with a pay scale of Rs. 425-640/-. Guards A Special were initially entitled to Rs. 425-640/- and the revised pay scale has been fixed at Rs. 1400-2600/-. All these facts are undisputed except that in the counter the Opposite Parties have made an attempt to distinguish the pay scale to the extent that the guards who were working as Guards 'A' Special in the Mail/Express and Superfirst Trains are entitled to Rs. 1400-2600/-. We could not find any such distinction to have been made by the Government from any documents filed by either parties. Once the promotion has been given to the Petitioners to the Grade of Guards A Special they cannot be asked to undergo another test by virtue of the letter issued by the Chief Personnel Officer at a subsequent stage. Such direction has to be prospective

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and cannot have retrospective operation. All these have now become academic because from Annexure R/5 it is found that the Petitioners M/s. T.V.Rao, D.S.Champati T.N.Sahoo, P.N.Mohanty and G.Sahoo have been designated as Mail Guards entitling them to a pay scale of Rs.1400-2600/- and vide Annexure R/6 dated 8.12.1987 petitioner Shri R.N.Mohanty has also been made entitled to Rs.1400-2600/- being a Mail Guard. The only two petitioners who now remain to get the benefit are M/s Radhanath Misra and Asis Ray. No reason has been assigned by the Opposite Parties as to why they have been deprived of the same benefit. Therefore, it is directed that the Petitioners M/s Radhanath Misra and Asis Ray be given the pay scale of Rs.1400-2600/- with effect from their date of promotion as contained in Annexure 2 and equally other petitioners be given the pay scale of Rs.1400-2600/- with effect from the date of their promotion as contained in Annexure 2. They shall not be required to undergo a further suitability test and therefore Annexure 5 is hereby quashed. Arrears be calculated and paid to them within ninety days from the date of receipt of a copy of the judgment.

5. Thus, the application stands allowed leaving the parties to bear their own costs.

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MEMBER (ADMINISTRATIVE)

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VICE CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench, Cuttack/K. Mohanty.

4.2.1993

