

IV

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK.

Date of decision : September 12, 1990.

ORIGINAL APPLICATION NO:224 OF 1988.

Trilochan Sarangi .... Applicant  
- Versus -  
Union of India and others .... Respondents.

For the applicant : M/s: B.P.Tripathy,  
Biswa Mohan Patnaik,  
P.R. Barik, Advocate

For the Respondent Nos.  
(9,10,12,7,14,15,13) M/s. Ananga Patnaik,  
L.Pangari and  
Sanjeev Udgata,  
M.C.Patnaik, Advocate

For other Respondents : Mr. Ashok Mohanty, learned  
Standing Counsel for  
the Railway Adminis-  
tration.

ORIGINAL APPLICATION NO:225 OF 1988.

Kommuri Appalaswamy .... Applicant  
- Versus -  
Union of India and others .... Respondents.

For the applicant : M/s B.P.Tripathy,  
Biswa Mohan Patnaik,  
P.R. Barik, Advocate

For the Respondent Nos. : M/s Ananga Patnaik,  
(9,11,12 and 13) L.Pangari, N.C.Patnaik,  
Sanjeev Udgata,  
Advocate.

For the other Respondents : Mr. Ashok Mohanty, learned  
(1 to 5) Standing Counsel, Railway  
Administration.

ORIGINAL APPLICATION NO:226 OF 1988

Braja Kishore Kar

.... Applicant

- Versus -

Union of India and others

.... Respondents

For the applicant

: M/s.B.P.Tripathy,  
Biswa Mohan Patnaik,  
P.R.Kar, AdvocateFor the Respondent Nos. :  
(7, 9, 10, 11, 12, 13, 14, 15)M/s.Ananga Patnaik,  
L.Pangari, N.C.Patnaik,  
Sanjeev Udgata, Advocate.For the Respondent Nos :  
(1 to 5)Mr. Ashok Mohanty, learned  
Standing Counsel for the  
Railway Administration.ORIGINAL APPLICATION NO:382 OF 1988.

Braja Kishore Kar and others

.... Applicants

- Versus -

Union of India and others

.... Respondents

For the applicant

: M/s. Biswa Mohan Patnaik,  
D.R.Patnaik,  
S.Patnaik,  
P.R.Barik, Advocate

For the Respondents

: Mr. Ashok Mohanty, Sisir Das,  
and B.K.Bal, Learned Counsel  
for the Railway Administra-  
tion.

ORIGINAL APPLICATION NO:39 OF 1990.

R.N.Das Adhikary and others .... Applicants

- Versus -

Union of India and others .... Respondents

For the applicant : M/s.A.K.Mohapatra,  
R.C.Patnaik, D.Patra,  
M.K.Mohanty, K.N.Parida,  
R.K.Patnaik, Advocate

For the Respondents : Mr. Ashok Mohanty, learned  
Standing Counsel for the  
Railway Administration.

DATE OF DECISION : SEPTEMBER, 12, 1990.

C O R A M:

THE HON'BLE MR. B.R. PATEL, VICE-CHAIRMAN

A N D

THE HON'BLE MR. N.SENGUPTA, MEMBER (JUDICIAL)

1. Whether reporters of local paper may be permitted to see the Judgment ? Yes.
2. To be referred to the Reporters or not ? *Y*
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

## JUDGMENT

B. R. PATEL, VICE CHAIRMAN As the facts and law involved are similar we have heard these cases analogously. This common order would govern all these cases.

2. The applicants of O.A. No. 382 of 1988 are also the applicant in O.A. No. 226 of 1988, in O.A. No. 224 of 1988 and in O.A. No. 225 of 1988. There are four applicants in O.A. No. 39 of 1990 but none of them are applicants in the other cases. All these applicants are Goods Train Guards and have the common grievance that they have been denied promotion to the Posts of Passanger Guards in the Scale of Rs. 1350-2200/-. There was a written examination in which all the applicants were asked to appear. The examination was held on more than one day. There was a viva-voce test for those who qualified in the written examinations. The applicants in all these cases took the qualifying examination but they could not qualify to be called to the Viva-voce tests and ultimately they were not selected for promotion to the posts of Passanger Guards though, some of their juniors were so selected. The applicants have challenged the examinations held on more than one day on the ground that there was a separate set of question papers for each day which has

Posture

prejudiced them. They have therefore, challenged the order promoting other Goods Train Guards on the basis of the written examinations and Viva-voce tests. In Original Application Nos. 224 and 225 of 1988 Annexure-3 which is a copy of the letter dated 4.6.1987 and Annexure-4 dated 14.1.1988 which a copy of the Panel are impugned and prayer have been made to quash the order at Annexure-3 and Annexure-4. In O.A. No.226 of 1988 the prayer has been made to quash Annexures 4 and 5 which are respectively the letter dated 4.6.1987 asking the several Goods Train Guards along with the applicants to appear at the qualifying written examinations and the Panel which has been published on 14.1.1988. In O.A. No.39 of 1990 there are four applicants who were all called to appear at the qualifying written examination which was held on 24.11.1988, 27.11.1988 and 30.11.1988 vide Annexure - 1. Annexure -2 dated 6.10.1989 contains the list of candidates who were called to the Viva-voce test on the basis of the result of the aforesaid written examination. In this case the applicants have sought orders declaring the selection procedure adopted by the Respondents to be illegal and discriminatory and also declaring the written examinations to be illegal and discriminatory and ask the Respondents to hold necessary tests as per the Rules and prevailing practice. In O.A. No.382 of 1988 the letter asking the

*Dattu*

applicants and other Goods Train Guards to appear in the written examination to be held on 24.11.88, 27.11.88 and 30.11.88 was issued by the Divisional Railway Manager (D.R.M.) Office on 10-11-1988 (Annexure-1) and it is this letter which the applicants seek to quash.

3. The common grounds urged are that the qualifying examinations has been vitiated by holding it on more than one day with separate sets of question papers on each day and that as the promotion was to be based on the principle of seniority subject to elimination of the unfit there was no need for a qualifying written examination and viva-voce.

4. The Respondents in all these cases have maintained that promotion was to be on the basis of selection, which involves assessment of merit of the eligible candidates and according to rules the merit of the candidates has been assessed on the basis of written examination and the Viva-voce test. They have further averred that the applicants took the examination but they did not succeed. As they have participated in the process of selection it is no longer open to them to challenge it.

5. We have heard Mr. Biswa Mohan Patnaik, learned counsel for the applicants in O.A. Nos. 224,

*Ranjan*

225, 226 and 382 of 1988 and Mr. A.K. Mohapatra, learned Counsel for the applicants in O.A. No. 39 of 1990. We have heard Mr. A.K. Mohanty learned Standing Counsel for the Railway Administration in all these cases. Mr. Patnaik has taken the additional ground that the applicants in O.A. Nos. 224, 225 and 226 of 1988 rendered service in Passenger and Mail/Express Trains as Guards and this they were allowed to do because they were found suitable to perform such duties and as such they should be allowed the promotion. In this connection he drew our attention to Annexure-1 and Annexure-6 of O.A. Nos. 224 and 225 of 1988 and to Annexure-2 and Annexure-7 of O.A. No. 226 of 1988. Mr. A.K. Mohanty explained that when Guards of the Passenger and Mail/Express Trains are not available for reasons of sickness, leave, Court attendance and late running of Trains etc. guards of other grades who are available are asked to man the train and this arrangement is done to ensure that no train is held up on account of non-availability of a Guard. As this arrangement is done in the interest of maintaining the Train Service which is in public interest and dictated by exigencies of circumstances it will not entitle the applicants to automatic promotion to the posts of Passenger Guards. In order to enable us to appreciate the merit in the rival contentions Mr. Mohanty explained

Ans

that on the basis of the Report of the Fourth Central Pay Commission which came into effect from 1.1. 1986, Train Guards have been recategorised into three grades with different scales of pay namely (i) Goods Guards for Goods Trains in the scale of Rs. 1200-2040/=, (ii) Passanger Guards for working in all Passanger Trains in the scale of pay Rs. 1350-2200/=, (iii) Mail Guards for working in Mail/Express Trains in the scale of pay of Rs. 1400-2600/=. The Goods Guards are promoted to the next higher grade of Passanger guards and the Passanger guards are in turn, promoted to the rank of Mail Guards. Prior to 1.1.1986 the guards who are equivalent to Goods Guards were promoted on non-selection basis but since 1.1.1986 the promotion is required to be done on selection basis. In this connection he drew our attention to the letter of the Railway Board bearing No. E(NG)I-86PMI-II dated 12.3.87 a copy of which is at annexure-A/7. The revised classification has been provided in columns-5. As the promotion was required to be done on the basis of selection there was more emphasis on merit than on seniority and appropriate procedure has to be evolved to assess the merit of the eligible candidates. There is a selection Board to select suitable candidates for promotion according to the prescribed procedure. The written

*Pratik*

examination is held to assess professional ability. Marks are allotted and the candidates who have secured the prescribed minimum of marks qualify for the Viva-voce test. In other words the applicants were called to appear at the written examinations along with other Goods Train Guards and such of them as qualified in the written examination were subjected to a vivavoce test. Unfortunately, the applicants who took the examination did not qualify and could not be orally tested and consequently, they could not be empanelled. As the applicants have been given due opportunity and they have availed of the opportunity given they should have no further grievance. From Annexure-1 and Annexure-6 in OA Nos. 224 and 225 of 1988 and in O.A. No.226 of 1988 Annexures-2 and 7 the applicants on different dates were called upon to perform duties in some Trains. There is however, no continuous period and according to the requirement of exigencies of circumstance the services of the applicants have been utilised . This, in our opinion, would not entitle the applicants to automatic promotion without going through the prescribed selection process. We are therefore, unable to accept the contention of Mr. B.M.Patnaik in this regard.

6. Mr. B.M.Patnaik and Mr. A.K.Mohapatra have further contended that holding of examination on

Prb

more than one day on different sets of question papers has vitiated the selection process in as much as the candidates were subject to different sets of question papers and consequently different standard of assessment. Mr. Mohanty on the other hand has reiterated that this plea is no longer available to the applicants as they have participated in the selection process. In this connection he drew our attention to a Judgment of the Patna Bench of the Tribunal in O.A. No. 415 of 1988 which was decided on July, 12, 1989. The Judgment has been reported in (1989) 11 Administrative Tribunals Cases 690. Though the facts are somewhat different in that the applicant in the case before the Patna Bench was an Extra Departmental Branch Post Master <sup>whose</sup> ~~her~~ service <sup>in</sup> had been terminated. But the similarity of that case and the case before us is that the applicant before the Patna Bench participated in the subsequent selection process but as she was not finally selected she challenged the selection process. Paragraph 6 of the Judgment of the Patna Bench reads as follows:

" It is clear from the records that when the applicant's services were terminated she did not protest. Nor did she raise any complaint when fresh selection was proposed to be conducted. Without demur she staked her claim for the fresh appointment, and took part in the process of selection. Only when she was able to find that the seventh respondent was being selected she approached the Tribunal with this application. It is trite that in such circumstances the attack against the termination of service and the challenge against the fresh selection cannot be successfully made".

*Prat*

In the cases before us the applicants not only acquiesced in the prescribed procedure for selection but also participated in the selection process and as such we would hold that it is no longer open to them to plead that the selection process was vitiated. We therefore, find no merit in Original Application Nos. 224, 225 and 226 of 1988 and 39 of 1990 which stand dismissed.

7. The Case Original Application No.382 of 1988 is somewhat different from other cases, in that applicants filed this case on 22.11.1988 challenging the examination which was fixed on 24.11.1988 vide Annexure-1. In other words, the case was filed two days before the examination was held. Mr. Patnaik has argued that filing of the case prior to the examination should be deemed to be a protest against the selection process and as such the plea of participation of the applicants in the selection process is no longer available to the Respondents. The applicants are within their rights to contest the selection process on the ground that the examination was held on more than one day with different sets of question papers and as such there was no uniformity in the norms of assessment of merit of the candidates. Accordingly Mr. Patnaik has contended that lack of uniformity in assessment of

merit has completely vitiated the selection process and all the eligible Goods Train Guards should have been made to appear in the qualifying examination on one day so as to avoid different standard being applied for judgment the merit of candidates similarly placed, which is clearly discriminatory.

Mr. Mohanty has countered the argument on the ground that running of Train is an essential service and its dislocation would jeopardise public interest. To withdraw all the Goods Train Guards numbering as many as 51 candidates on a single day for the purpose of examination would have seriously affected the running of the Trains. In our opinion in such matters the Respondents are the best authority to take a decision. Holding the examination for more than one day with separate sets of question papers for each day of examination by itself cannot be held to be objectionable if there is no serious variation in the questions.

Mr. Mohanty has produced the questions but we are not competent to decide as to whether the different sets of question are comparable or not. We would therefore, direct that ~~Respondent~~ <sup>Mr</sup> the Divisional Manager, South Eastern Railway, Khurda Road, PO:Jatani, District:Puri, Respondent No.2 appoint a Committee of three to four experts to go into the question papers for the examination which was held on 24.11.88, 27.11.88 and

30.11.88 with a view to determining if the questions are comparable in standard. If the Committee of experts hold that they are comparable nothing further is required to be done. But if, on the other hand, the experts would come to the conclusion that they are not comparable then another examination should be held with comparable questions for the applicants. The process should be completed within two months from the date of receipt of a copy of the judgment. The O.A. No. 382 of 1988 is accordingly disposed of.

8. In the circumstances of the case the parties should bear their costs in all these cases.

*Mea Engt*  
12/9/90  
MEMBER (JUDICIAL)

*Banikul*  
12.9.90  
VICE-CHAIRMAN



Central Administrative Tribunal,  
Cuttack Bench/K.Mohanty.