

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH: CALCUTTA

Original Application No. 420/96
Miscellaneous Application No. 329/97

Date of decision: 21-12-94

Hon'ble Mr. Mukesh Kumar Gupta, Judicial Member.

Hon'ble Mr. M.K. Misra, Administrative Member.

Shiv Shankar Giri and 8 others

vs.

UOI and others.
(Eastern Railway)

Mr. S.N. Ray: Counsel for the applicants.

Mr. R.K. De : Counsel for the respondents.

Mr. Mukesh Kumar Gupta, Judicial Member.

9 applicants in this O.A seek a direction to the respondents to regularise them in the post of Assistant Guard from the date of their respective officiation in terms of the memorandum dated 27.03.95 and also to release mileage allowance and other incidental benefits and privileges attached to the said post.

2. The admitted facts of the case are that the applicants initially joined the Railways as Shuntman/Porter during the period between 1958 and 1979 and were promoted to officiate as Assistant Guard from various dates ranging from 1984 to 1993. Assistant Guards are entitled to Mileage allowance as well as 30% of benefits of last pay drawn at the time of retirement for pensionary purposes, besides, first class pass

so long as they survive in terms of the Railway Pass rules. They made representations for regularisation which remains unattended to.

3. It is contended that since the applicants Assistant have been officiating in the post of Guards for a pretty long time without any break, they were entitled to regularisation in the said post. The inaction on the part of the respondents in not regularising them is illegal, arbitrary and violative of instructions issued by the Railway Board from time to time on such adhoc/officiating promotion.

4. The respondents contested the applicants claim stating that Assistants Guards carries the pay scale of Rs.950-1400 and circulars were issued inviting applications from eligible Class IV employees of Transportation, Commercial departments like Labour, Mate, Coach Attendant, Marksman, Shuntman Gr.II Pointsman, Porter and Lampman etc. Applications were also invited from Shuntman Gr.II/Cabinman Gr. II in the scale of pay of Rs.210-270 (Rs. 850-1150), who have been promoted to the scale of Rs. 260-400 (Rs. 950-1500) as a result of restructuring till they were not confirmed as Shuntman Gr.I/Cabinman Gr.I The applicants were Shuntman in the Grade of Rs. 260-400(Rs. 950-1500) and were confirmed in the present capacity. The post of Assistant Guard carries a lower pay scale of Rs. 950-1400 and as such the applicants were not called for selection to the post of Assistant Guard. The applicants were utilised locally since empanelled candidates were not available and they were asked to perform the duties of Assistant Guard till the formation of a panel for Assistant Guard. The post of Assistant Guard is a

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selection post. As such it was contended that the applicants are being in a higher scale and also not being in the feeder grade to the post of Assistant Guard, they were not eligible ~~and~~ entitled to regularisation.

5. We heard both sides and perused the pleadings. The respondents pointed out, that the applicants have filed M.A. No. 195/96, seeking a direction to the respondents to pay mileage allowances etc, which was dismissed by a speaking order on 16.10.96, against which CO CT No. 10/97 was filed before the Hon'ble High Court of Calcutta. The Hon'ble High Court of Calcutta vide its judgement dated 12.09.97 upheld the order of this Tribunal dated 16.10.96. The post of Assistant Guard is a selection post, which is required to be filled by following the rules, the applicant cannot claim regularisation on the post of Assistant Guard. It is also not disputed that the post of Assistant Guard carries the pay scale of Rs. 950-1400, while the applicants are holding the posts in the pay scale of Rs. 950-1500. It is also not disputed that the applicants were asked to officiate in the post of Assistant Guard without following the rules in question. Officiating/appointment made dehorsing the rules did not confer any right on a individual to continue in the said post.

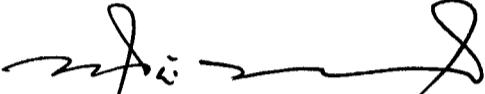
6. Such being the fact, we do not find any merit in the present application and we hold that the

applicants had no right to continue in the said post, particularly when they were used on local officiating basis till a regular panel for the said post was prepared.

7. In view of the above discussion, this application is without any merit and it is dismissed.

No order as to costs. The M.A. 329/97 seeking directions, not to revert them, requires no further order.


(M.K. Misra)
Administrative Member


(Mukesh Kumar Gupta)
Judicial Member.

jsv.