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OA Nos. 58/2006, 79/2006 and 86/2006

Jodhpur, this the 4th July, 2014

CORAM:

Hon'ble Mr. Justice Kailash Chandra Joshi, Member(J)

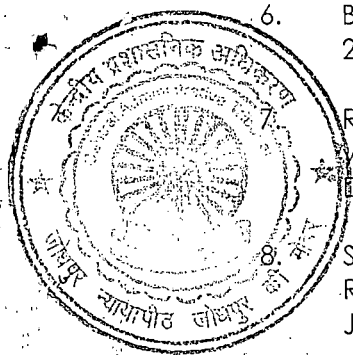
Hon'ble Mrs. Meenakshi Hooja, Member (A)

OA No.58/2006

1. Naresh Pal Singh s/o Shri Madan Singhji, aged about 47 years, r/o Railway Quarter No.L-48 B, Railway Colony, Merta Road, Distt. Nagaur (Ra).
2. Bhanwar Lal s/o Shri Ramji Ram Ji, aged about 39 years r/o Qtr. No. T-78 Traffic Colony, Merta Road, Distt. Nagaur (Raj.)
3. Ram Bahor s/o Shri Babu Lal Ji, aged about 42 years, r/o Railway Quarter No. T-78 A Railway Colony, Merta Road, Distt. Nagaur (Raj.)

Applicants No. 1 to 3 are presently working on the posts of Senior Goods Guards under Station Superintendent, North Western Railway, Merta Road, Dist. Nagaur, Rajasthan.

4. Vinay Kumar Saxena s/o Shri Virendra Kumarji Saxena, aged about 46 years, r/o Saraswati Nagar, Basani 1st Phase, Jodhpur Distt. Jodhpur
5. Jugal Kishore Dadhich s/o Shri Banshi Lalji aged about 55 years, r/o Mahamandir 3rd Pole, Jodhpur, Distt. Jodhpur (Raj.)
6. Bigta Ram s/o Shri Bhra Ramji, aged about 52 years, r/o L-218 B Old Loco Jodhpur, Distt. Jodhpur (Raj.)
7. Rana Lal Solanki s/o Shri Bhola Ramji, aged about 50 years, r/o Outside Chand Pole, Badi Bhil Basti, Jodhpur Distt. Jodhpur (Raj.)
8. S.K.Lakhara s/o Shri Chunni Lal ji, aged about 52 years, r/o Railway Station Luni, Beldaron Ka Bass, Luni, Jodhpur Distt. Jodhpur
9. Bhanwardan Rawal s/o Shri Indudanji, aged about 49 years, r/o Plot No.36 Sanjay Colony, Basani 1st Phase, Jodhpur, Distt. Jodhpur (Raj.)



10. N.K.Dave s/o Shri Mishrilalji, aged about 40 years r/o c/o Bhola Raj House, Sardarpura 1st B- Road, Behind Gole Building Jodhpur, Distt. Jodhpur (Raj.)
11. Dilip Kumar Singh s/o Shri Bhanwar Singhji aged about 39 years, r/o 18/697, Chopasani Housing Board, Jodhpur, Distt., Jodhpur (Raj.)

Applicants No: 4 to 11 are presently working on the posts of Senior Goods Guards under Station Superintendent, North Western Railway, Jodhpur, Distt. Jodhpur.

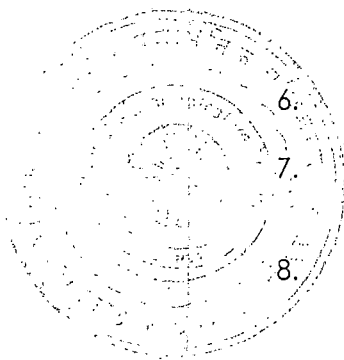
12. Lakha Ram s/o Shri Joga Ramji, aged about 57 years r/o Railway Colony, Samdari, Dist. Barmer (Raj.), present working on the post of Senior Goods Guard under Station Superintendent, North Western Railway Samdari, Distt. Barmer (Raj.)

.... Applicants

By Advocate: Mr. S.K.Malik

Versus

1. Union of India through the General Manager, North Western Railway, Jaipur.
2. The Divisional Railway Manager, North Western Railway, Jodhpur
3. The Senior Divisional Personnel Officer, North Western Railway, Jodhpur
4. Hukam Chand Meena s/o Shri Duli Chand Meena, aged 46 years, Senior Goods Guard r/o Jodhpur, presently working in the office of Superintendent, North Western Railway, Jodhpur
5. Rajpal Upadhyay, s/o Shri Khayali Ram Upadhyay, aged 50 years, Senior Goods Guard, r/o Jodhpur, presently working in the office of Station Superintendent, North Western Railway, Merta Road.
6. Goma Ram Choudhary s/o Shri Jag Ram, aged 42 years.
7. Subhash Chandra Srivastava, s/o Shri Sunder Lal, aged 50 years.
8. Suresh Kumar Yadav, s/o Shri Banshi Lal Yadav, aged 44 years.
9. Narpat Singh s/o Heer Singh, aged 38 years
10. Mangal Singh Hada s/o Shri Ghamandu Singh, age 43 years.
11. Gopal Krishna Ujjwal, s/o Shri Jas Karan Ujjwal, aged 39 years.



12. Chigna Ram s/o Shri Mangu Ram, aged 39 years.
13. Bhabhoota Ram s/o Shri Chauga Lal, aged 37 years.
14. Mohd. Iqbal s/o Shri Gaffur Khan, aged 41 years
15. Chiman Lal, s/o Shri Hazari Ram, aged 56 years
16. Ravikant Meena, s/o Shri Baldeo Singh, aged 46 years
17. Gopal Chouhan s/o Shri Laxmanji, aged 45 years
18. Dharmendra s/o Shri Rawta Ram, aged 31 years.

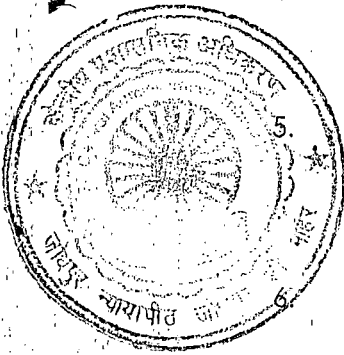
All above respondents No. 4 to 18 are resident of Jodhpur and presently working on the post of Sr. Goods Guard in the office of Station Superintendent, North Western Railway, Jodhpur.

..... Respondents

By Advocate: Shri Salil Trivedi for resp. Nos. 1 to 3.
Shri A.K. Khatri for resp. Nos. 4 to 18

OA No.79/2006

1. Naresh Rai Joshi s/o Shri Raj Kuldeep Joshi, by caste Joshi, aged 44 years resident of Railway Qr. No.109, Hanumangarh Junction and presently working as Senior Goods Guard at Hanumangarh Junction.
2. Sayed Ahmed Khan s/o Shri Abdul Mazid Khan, by caste Mohammedan, resident of Gali No.8 Rampura Basti, Lalgargh, Bikaner and at present working as Senior Goods Guard at Bikaner.
3. Mahaveer Singh s/o Dane Singh, by caste Rajput, resident of Near Major Puran Singh Bera, Bhudhoka Bas, Bikaner and at present working as Senior Goods Guard at Bikaner.
4. Balwant Singh s/o Shri Kundan Lal, r/o Railway Qr. No.291 E Rewari Railway Division, Bikaner and at present working as Senior Goods Guard at Bikaner.
5. Rajendra Singh s/o Shri Bhim Singh, resident of Railway Colony, Rewari Railway Division, Bikaner and at present working as Senior Goods Guard at North Western Railway Division, Bikaner.
6. Ram Babu s/o Shri Ram Deva, resident of Railway Colony, Rewari Railway Division, Bikaner and at present working as Senior Goods Guard at North Western Railway, Division, Bikaner.



... Applicants

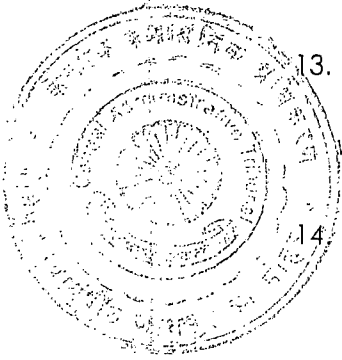
By Advocate: Shri Nitin Trivedi

Versus

1. Union of India through the General Manager, North Western Railway, Headquarter Building, Jaipur
2. The Divisional Railway Manager, North Western Railway, DRM's Office, Bikaner
3. The Senior Divisional Operating Manager, North Western Railway, DRM's Office, Bikaner.
4. The Divisional Personnel Officer, North Western Railway, DRM's Office, Bikaner
5. Vijaypal Yadav s/o Shri Hari Singh yadav, aged 46 years.
6. Harkash Meena s/o Shri Ramulal Meena, aged 32 years.
7. S.R.Gothwal s/o Shri Birbal Gothwal, aged 47 years
8. Nanak Chand s/o Shri Kishan Lal, aged 47 years.
9. Raju Sharma s/o Shri Ishwarchand Sharma, aged 44 years
10. Nawal Singh s/o Shri Om Prakash, aged 47 years.

Respondents 5 to 10 are presently working on the post of Senior Goods Guard under Station Superintendent, Rewari, North Western Railway, Bikaner Division (Raj.)

11. Sunil Kumar (sic s/o) Shri Om Prakash, aged 46 years, presently working on the post of Senior Goods Guard under Station Superintendent, Hissar North Western Railway, Bikaner Division.
12. Mahendra Singh s/o Shri Mangal Chand, aged 33 years, presently working on the post of Senior Goods Guard under Station Superintendent, Churu North Western Railway, Bikaner Division (Raj.)
13. Devilal Sankhla s/o Shri Dana Ram Sankhla, aged 33 years, presently working on the post of Senior Goods Guard under Station Superintendent, Churu, North Western Railway, Bikaner Division (Raj.)
14. Rajpal s/o Shri Parmeshwar Dass, aged 47 years, presently working on the post of Senior Goods Guard under Station Superintendent, Sadulpur, North Western Railway, Bikaner Division (Raj.)
15. Devendra Singh, s/o Shri Khanwar Singh Yadav, aged 35 years, presently working on the post of Senior Goods Guard under Station Superintendent, Rewari, North Western Railway Bikaner Division (Raj.)
16. Arjun Lal Bairwa s/o Shri Kamna Lal Bairwa aged 39 years, presently working on the post of Senior Goods Guard



under Station Superintendent Hanumangarh, North Western Railway, Bikaner Division.

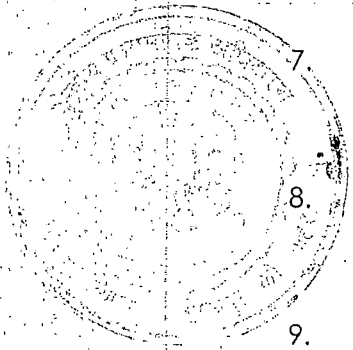
17. Krishan Kumar s/o Shadi, aged 46 years, presently working on the post of Senior Goods Guard under Station Superintendent, Rewari, North Western Railway, Bikaner Division (Raj.)
18. Trilokinath Sharma s/o Shri Sohan Lal Sharma, aged 47 years, presently working on the post of Senior Goods Guard under Station Superintendent, Hanumangarh, North Western Railway, Bikaner Division (Raj.)
19. Mangilal Sharma s/o Shri Trilokchand Sharma, aged 42 years, presently working on the post of Senior Goods Guard under Station Superintendent, Hanumangarh, North Western Railway, Bikaner Division (Raj.)

.. Respondents

By Advocate : Shri Salil Trivedi for resp., Nos 1 to 4
Shri A.K.Khatri, for resp. Nos. 5 to 19 .

OA No.86/2006

1. Rajesh Kumar Puniya s/o Shri Bhimraj Ji Choudhary, by caste Choudhary, aged about 41 years r/o Gali No.1 7, Rampura Lalgah, Bikaner.
2. Jetha Ram s/o Shri Raghunath Ji by caste Gehlot Mali, aged 49 years, r/o Purani Ginnai, Near Ghantel House, Bikaner.
3. Dayanand, s/o Shri Jai by caste Punjabi aged 46 years r/o Railway Quarter No. T-4-F, Churu
4. Sanjay Sharma s/o Shri Laxmi Narain ji by caste Brahmin, aged 32 years r/o Dhillon Colony, Near Railway Gate, House No. 7 Hanumangarh.
5. Ram Bhagat s/o Shri Chajju Ram Ji by caste Yadav, aged 40 years, r/o V.P.O. Dhansu Hisar.
6. Gulab Chand s/o Shri Narain Lal ji by caste Meena, aged 53 years, r/o Railway Colony, Qr. No.T-3-D, Rewari.
7. Rajneesh Katariya s/o Shri Janak Raj Katariya by caste Katariya, aged 37 years, r/o House No. 135, Ward No. 37, Gandhi Nagar, Hanumangarh.
8. Ramesh Chandra Upadhyay s/o Shri K.C.Upadhyay by caste Brahmin, aged 39 years r/o T-27 A Railway Colony 9 MG Hisar Haryana.
9. Yakub Ali s/o Shri Hasam Khan by caste Muslim, aged 36 years r/o Makdi Nath School, Ward No.16, Ratan Garh.



10. Mohal Lal s/o Shri Gheesa Ram by case.... Aged 45 years, Sec.9, Gandhi Nagar Ward No:37, Gurutegh Bahadur Ke Samne, Hanumangarh.
11. Santosh Kumar Vyas s/o Shri Fateh Raj Vyas, by caste Brahmin, aged 50 years, r/o c/o Gyan Prakash Ji Acharya, Dhobi Dhora, Bikaner.
12. Amar Singh s/o Shri Man Singh by caste Rajput, aged 51 years, r/o Gali No. 4 Purani Shibari Road, Ambedkar Colony, Bikaner.
13. Bal Ram s/o Bhagwana by caste.... aged 45 years, r/o T.356 B. Railway Colony, Rewari.Haryana
14. Kasim Ahmad s/o Abib Ahmad, by caste Muslim, aged 57 years, r/o Qr. No.T-28, B Near IOW, Darbar, Bikaner.

All are at present working as Senior Goods Guard under DRM, Bikaner Division.

.... Applicants

By Advocate: Shri Nitin Trivedi

Versus

1. Union of India through the General Manager, North Western Railway, Hqr. Building, Jaipur
2. The Divisional Railway Manager, North Western Railway, DRM Office, Bikaner.
3. The Senior Divisional Operating Manager, North Western Railway, DRM Office, Bikaner.
4. The Divisional Personal Officer, North Western Railway, DRM's Office, Bikaner.

.. Respondents

By Advocate: Shri Salil Trivedi

ORDER

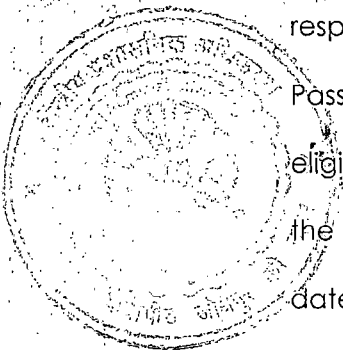
Per Hon'ble Justice Mr. K.C. Joshi, Member (J)

The issues involved in these three OAs i.e. OA No. 58/2006, OA No.79/2006 and 86/2006 are common and the reliefs claimed are similar. Therefore, with the consent of counsels for the parties, these cases are being heard together and are being disposed of by this common order.

2. So far as prayer regarding filing of joint application is concerned, since the applicants have approached this Tribunal against same cause of action and have common interest in the matter, therefore, they are allowed to pursue their remedy jointly.

3. By way of these OAs the applicants have challenged the selection for promotion to the post of Passenger Guard in the payscale of Rs 5000-8000 which is subject to the hurdle of the written test to be held by the respondents. Admittedly all the applicants are working as Sr. Goods Guard in the grade of Rs 5000-8000 and the post of Passenger Guard is in the same scale of pay. The applicants contend that since both the posts are carrying the same scale of pay no written test should be held since it is a lateral induction and the applicants should not be subject to written test for promotion/selection to the post of Passenger Guard. However, the respondents have conducted the written test in view of RBE Circular No. 137/2003 and further the Advance Correction Slip No. 150 which is not just and legal.

4. The official respondents as well as private respondents in all these OAs have filed detailed separate replies. The official respondents by way of reply have averred that the post of Passenger Guard is a selection post and Sr. Goods Guard are eligible to be promoted to the post of Passenger Guard, therefore, the selection process conducted in pursuance to the notification dated 18.02.2005 in OA No.58/2006 and similar notification in other two OAs is legal and justified.



5. Counsel for the official respondents further contended that during the selection for Passenger Guard, the examination process was challenged before this Tribunal in OA No.253/2005 by the successful candidates in the written test held in the Jodhpur Division (reference Ann.A/1 and A/2 in OA No.58/2006) and was further challenged before the Hon'ble Rajasthan High Court; and the Hon'ble Rajasthan High Court while deciding the D.B.C.W.P. Nos. 2515 & 2516 of 2006 upheld the judgment of this Tribunal and quashed the order of official respondents of cancelling the examination including that for Passenger Guards.

6. In the context of these OAs, it is relevant and important to say that after hearing these OAs, the Division Bench of this Tribunal vide order dated 26.09.2008 referred the following 4 questions before the Full Bench:

- i) Whether the post of Passenger Guard (Rs. 5000-8000) is a promotion post to the post of Senior Goods Guard (Rs. 5000-8000).
- ii) If so, the Senior Goods Guard who are in the same scale of pay as that of Passenger Guard could be subjected to written test for selection to be posted as Passenger Guard.
- iii) Whether written test contemplated for the post of Passenger Guard is illegal or irregular and stood against the process of selection.
- iv) Whether in identical scales pay could it be said a promotion or lateral induction.

7. These points have been referred by the Division Bench in view of the divergent views taken by the Allahbad Bench, Jaipur Bench and Bangalore Bench of Central Administrative Tribunal as well as by the respective Division Benches of Hon'ble High Court at



Jodhpur and Allahabad. The Hon'ble Chairman, Central Administrative Tribunal constituted Full Bench consisting of Hon'ble Mr L.K. Joshi, Vice Chairman, Hon'ble Mrs Meera Chhibber, Member (J) and Hon'ble Mr Shankar Prasad, Member (A) and the Full Bench heard the matter at length and vide order dated 06.03.2009 in para No. 55 of the order held as under :-

"55. We are accordingly of the view that it would not be appropriate at this stage to consider the questions till either the Hon'ble Apex Court decides this issue or Hon'ble Karnataka High Court pronounces its judgment in the Writ Petition filed against the decision of Bangalore Bench."

8. The Hon'ble Full Bench considered the judgment of Allahbad High Court in Mithilesh Kumar and A. Haldar. The Hon'ble Allahbad High Court held that advancement from Sr. Goods Guard to Passenger Guard is lateral induction. Further the Full Bench relied upon the judgment of Tarsen Singh & Another vs. State of Punjab & Ors. AIR 1995 SC 384 and also relied upon the judgment of Constitution Bench in Lalit Mohan Deb vs. UOI 1973 SCC (L&S) 272 in which it has been held as under :

"It is well recognized that a promotion post is a higher post with a higher pay. A selection grade is intended to ensure that capable employees who may not get a chance of promotion on account of limited outlets of promotion should at least be placed in selection grade to prevent stagnation at the maximum of the scale. Selection grades are, therefore, created in the interest of greater efficiency."

9. The Full Bench also referred the judgment of Apex Court in State of Rajasthan vs. Fateh C. Soni (1996) 1 SCC 562, ICICI Bank vs. Municipal Corporation of Greater Bombay (2005) 6 SCC 404, Kalyan Chandra Sarkar vs. Rajesh Ranjan (2005) 2 SCC 42, Collector of Customs vs. Elephanta Oil & Industries Ltd. (2003) 4 SCC 325. As the judgment of Allahbad High Court was under challenge before the Hon'ble Apex Court, therefore, the Full Bench deferred the

answer to the referred questions. Later on, a status report was called from both the parties as well as by the Registry and it was found that Special Leave to Appeal (Civil) No. 26787/2008 preferred against the judgment dated 15.09.2006 of the Allahabad High Court in Civil Miscellaneous Writ Petition No. 51293/2006 was decided and following order was passed:

"One of the additional documents placed on record on behalf of respondent Nos. 4, 12, 13, 14, 17 and 19 is a letter dated 4th May, 2009 issued by the Headquarter Office, Personnel Department, Allahabad. In the said communication, addressed to the Senior Divisional Personnel Officer North Central Railway, Allahabad, it is stated as follows:

"In order to avoid the acute shortage and hardship for smooth running of trains, as a one time exemption, the matter was considered by the General Manager and the following order have been passed:

"This selection has got held up due to dispute regarding "written test" and the involved litigation, as a result of which goods guards continue to work in passenger services and this has been going for over 4 years. Further, Board have in 2007, issued direction to do away with the written test for these selections and base it on viva-voce only, subject to pre-promotional training. However, keeping in mind the contents of Northern Railway, in their letter No. 81-T- 13/guard Training/Optg. Safety/ 06 dated 02.03.2009 from COM/G to Principal ZRT1/CH, mentions of the needlessness of such training & therefore in consideration of all the above, a one time dispensation to conduct the viva-voce without the pre- promotional training is accorded. Rest of the selection process may be processed expeditiously."



The division may finalize the selection and operate the passenger train services by duly selected passenger guards and put the staff to complete the promotional course batch wise in accordance with the

administrative convenience in due course.

This exemption is a one time measure and will not be quoted as precedence in future selections."

Although, prima facie, we have our reservations on the said decision taken by the North Central Railway, yet in light of the said instructions, no cause of action survives for the Union of India to challenge the impugned judgment. Accordingly, both the petitions are dismissed on the ground of delay as well as on merits".

10. The Hon'ble Apex Court held that as the North Central Railway has been granted one time exemption, the matter was considered by the General Manager and the above order was passed by the General Manager, therefore, in light of the said instructions, no cause of action survives for the Union of India to challenge the impugned judgment. Accordingly, both the petitions were dismissed on the ground of delay as well as on merits.

11. In view of the Apex Court's decision, the Hon'ble Chairman, Central Administrative Tribunal was accordingly requested to constitute the Full Bench and the Full Bench consisting of Justice Mr K.C. Joshi, Member (J), Mr George M. Parackan, Member (J) and Ms Meenakshi Hooja, Member (A) vide order dated 22.05.2014 answered the referred questions as follows :-

"The Post of Passenger Guard is not a promotional post for the post of Senior Goods Guard since both the posts are in the same pay scale. Since post of Passenger Guard is not a promotional post for Senior



Goods Guard, vacancies in the posts of Passenger Guards shall be filled up for lateral induction and, therefore, there is no question of holding any written test for selection to the post of Passenger Guard. Therefore, the written test contemplated by the Respondents in these cases to fill up the post of Passenger Guard is unwarranted. As far as the question whether in identical scales of pay, could it be said a promotion or lateral entry is concerned, it depends upon facts and circumstances of each but in view of the factual matrix of this case advancement in the identical scales is not promotion but lateral induction."

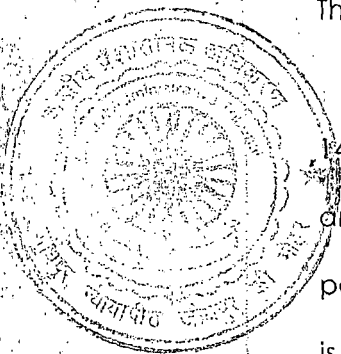
12. Counsels for private respondents as well as official respondents submit that when this Tribunal and the Hon'ble Rajasthan High Court in Ram Ratan & Ors. vs UOI & Ors. reported in 2007(5) WLC (Raj.) 77 have already taken a view, now on the same issue this Bench cannot take a different view. Therefore, the written test held for the Passenger Guard in pursuance to the notification of 2005 in OA No.58/2006 and similar notification of separate date in other two OAs, based on RBE Circular No. 137/2003 and further Advance Correction Slip No.150 is valid and this Tribunal cannot take a different view than what has been taken by the Hon'ble Rajasthan High Court in Ram Ratan's case. Therefore, OAs filed by the applicants are required to be dismissed. Counsel for the official respondents as well as private respondents also contended that RBE circular No. 137/03 has never been challenged and has never been quashed by any Tribunal or Court and the test was held as



per RBE Circular No. 137/03, and as per RBE Circular No. 137/03 for all posts of selection, the written test was necessary.

13. Per contra, counsels for the applicants contended that issues involved before the Hon'ble Rajasthan High Court were different from the present case because in that case order of the cancellation of the written test was challenged by the successful candidates and this cancellation order was based on the ground of certain irregularities and illegalities. The Hon'ble Rajasthan High Court quashed the order of the cancellation of examination and as the cancellation order was mechanical and passed without proper application of mind, therefore, judgment of the Hon'ble Rajasthan High Court does not come in way while deciding the present controversy in issue. It was further contended that while relying upon the judgment of Allahabad Bench of this Tribunal and Allahabad High Court and certain judgments of the Hon'ble Apex Court, the Full Bench answered the referred questions in favour of the applicants and they further contended that it has been discussed in the Full Bench judgment that in view of the Advance Correction Slip No. 150 no written test can be held for the posts particularly for those which are in the same and equal pay scale. The written test can be held in case of any lower grade employees.

14. We have considered the rival contentions of both the parties and also perused the judgment of Hon'ble Rajasthan High Court passed in Ram Ratan's case (supra). From a perusal of judgment, it is clear that in this judgment the challenge was regarding cancellation order of the written test held by the official respondents and therefore, in our considered view, the judgment



of the Hon'ble Rajasthan High Court bears different facts from the present controversy although it is noted that the failed candidates of the examination did not challenge the very holding of examination in that case. However, by way of these separate applications they have challenged the holding of the written examination itself. So far as the existence of RBE Circular No. 137/03 is concerned, the Full Bench has considered the same as well as the Advance Correction Slip No. 150 in its judgment and held that for the employees having same pay scale no such test can be held. Therefore, the arguments advanced by the official respondents and the private respondents do not carry any force.

15. In view of the questions referred and answered by the Full Bench these OAs are allowed and notification for written test dated 18.2.2005 (Ann. A/1) and order dated 21.6.2005 by which candidates were found eligible for paper screening (Ann.A/2) in OA No.58/2006, notification dated 31.5.2005 (Ann.A/2) and result of the written test dated 7.4.2006 (Ann.A/1) in OA No.79/2006 as well as notification and result of even date in OA No.86/2006 are quashed. The respondents are directed to consider the case of the applicants for selection to the post of Passenger Guard in the pay scale of Rs 5000-8000 without written test, if otherwise found suitable. In case they are posted as Passenger Guard on the basis of suitability they shall be entitled to all the consequential benefits and further so far as grant of consequential benefits is concerned, each applicant shall also file a detailed application separately before the official respondents and official respondents will decide the consequential benefits as per law and relevant rules.

9. Accordingly, all three OAs i.e. OA Nos. 58/2006, 79/2006 and 86/2006 are allowed with no order as to costs.

(MEENAKSHI HOOJA)
Administrative Member

(JUSTICE K.C. JOSHI)
Judicial Member

CERTIFIED TRUE COPY

Dated 14/7/2019

SS/

J.R. Sharma

REGIONAL SECRETARY (JUDG.)

Deputy Officer (Judg.)

Room No. 101, 102, 103

General Administrative Tribunal

Office of the Secretary

Indira Nagar, Indraprastha

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