

this the 7 th day of March, 2008.

CORAM :

Hon'ble Mr. Justice A.K.Yog, Judicial Member
Hon'ble Mr. R.R.Bhandari, Administrative Member

O.A.No. 40/2007

1. Sunil Panwar S/o Shri Achlu Ram by caste Panwar, aged 39 years, Goods Guard.
2. Jeevan Singh S/o Shri Purshottam Singh by caste Gehlot, aged 36 years, Senior Goods Guard.
3. Mohammed Sharif S/o Shri Mohammed Sadiq by Caste Mohammed, aged 27 years, Senior Goods Guard.
4. Prabhu Ram S/o Shri Ramdev by caste Gurjar, aged 36 years, Goods Guard.
5. Gopal Krishna Joshi S/o Shri Champa Lal Joshi, by caste Brahmin, aged 33 years, Goods Guard.
6. Prabhu Shanker S/o Shri Johri Lal by caste Brahmin, aged 42 years, Goods Guard and
7. Lal Singh S/o Shri Pusha Singh by caste Rajput, aged 31 years, Goods Guard.

All the above applicants No. 1 to 7 are residents of Jodhpur and are presently working under the Station Superintendent, North Western Railway, Jodhpur(Raj).

.....Applicants.

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. The Divisional Personnel Officer, North Western Railway, Jodhpur.
5. The Senior Divisional Operating Manager, North Western Railway, Jodhpur.

.....Respondents.

COMPARED &
CHECKED



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(2)

CONNECTED WITH -

OA NO. 197/2007

1. Sunil Panwar S/o Shri Achlu Ram by caste Panwar, aged 39 years, Goods Guard.
2. Jeevan Singh S/o Shri Purshottam Singh by caste Gehlot, aged 36 years, Senior Goods Guard.
3. Mohammed Sharif S/o Shri Mohammed Sadiq by Caste Mohammed, aged 27 years, Senior Goods Guard.
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3. The Senior Divisional Personnel Officer, North Western Railway, Jodhpur.

.....Respondents.

Present :

By Mr. A.K.Khatri, Advocate, Counsel for applicants.

By Mr. Selli Trivedi, Advocate, for respondents.



ORDER

[PER R.R.BHANDARI, MEMBER(A)]

1. Shri Sunil Panwar and six others preferred OA 40/2007 on 21.2.2007 under Sec. 19 of the Administrative Tribunals Act, 1985.

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(3)

These applicants had preferred another OA 197/2007 on 27.8.2007. These two O.As. deal with similar matters. OA No. 197/2007 was filed due to some subsequent developments (after filing of O.A. No. 40/2007) in the process of selection. The basic matter, however, remained the same. It is, therefore, proposed to deal with both the OAs in this joint Order. Three respondents are common in the two OAs, while O.A. No. 40/2007 have two more respondents but, of the same Department and dealt by the same counsel.

OA 40/2007

The applicants asked for the following reliefs :-

"(a) The applicants be allowed to file the present original application jointly.

(b) By an appropriate order, writ or direction, the respondents be directed to issue a revised or additional panel of Passenger Guard interpolating names of the applicants in continuation of notification dated 26.12.2006 (Annex.A/7) on the basis of result of the written test dated 21.6.2005 (Annex.A/3).

©Any other order, which this Hon'ble Tribunal deems fit, just and proper in the facts and circumstances of this case, may kindly be passed in favour of the applicants.

(d) Costs be awarded to the applicants."



2. A brief matrix of the case as emerged from the OA and Documents on record, is as follows :

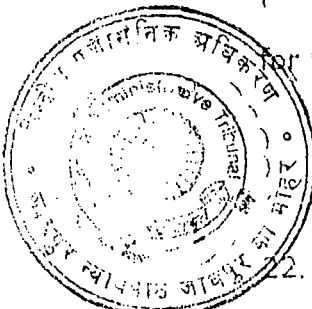
2.1 The Divisional Railway Manager, Jodhpur, vide his Office Order dated 18.2.2005 (Annex.A/1) proposed a Written Test for selection to the post of Passenger Guard (Grade Rs. 5000-8000) for fifteen vacancies (13 General and 2 S.C.). In this written test, 45 eligible candidates were called. The Written Test for this selection was to be conducted as per Indian Railway Establishment Manuary (IREM) Para 215 with Advance Correction Slip No. 150, issued vide letter No. E(NG) (I)/2000/PM-1/41 dated 7.8.2003 quoted as RBE No. 137/2003 and kept at Annex. A/2.

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Vide Annex.A/3 dated 21.6.2005, respondents declared 22 persons suitable for paper screening.

The respondents cancelled the written examination conducted by them and this was conveyed vide letter dated 23.8.2005, copy kept at Annex.A/4. This was challenged vide O.A. no. 253/2005 before this very Bench of the Tribunal. This O.A. was allowed on 27.1.2006 and orders for cancellation of the Written Test was set aside, this was further confirmed by the Rajasthan High Court at Jodhpur in D.B.C.W.P. No. 1264/2006 on 22.11.2006.

2.2 In the meantime, the respondents issued an order promoting 19 persons as Passenger Guard (Grade Rs. 5000-8000) on ad hoc basis for three months vide Annex.A/6 dated 16.11.2006.



In compliance to Rajasthan High Court's judgement dated 22.11.2006, a provisional panel of 15 persons (as a result of Written Test on 14.5.2005, Supplementary Written Test on 25.5.2005 and Paper Screening on 27.6.2005), was issued on 26.12.2006 (Annex.A/7). Out of this panel of 15 persons, nine persons who were earlier promoted on ad hoc basis for three months (Annex.A/6), were regularized by the respondents on 9.1.2007 (Annex.A/8). Annex. A/8 also mentioned promoting five persons from this panel of 26.12.2006. Thus, out of the panel of 15 persons, excepting for one, Shri Mangal Singh Hada, all others were promoted.

2.3 The 7 applicants of these two O.As, though have cleared the written test (Annex.A/3), were not promoted as the vacancies available were only to the extent notified in Annex.A/1 keeping one vacancy for Shri Mangal Singh Hada, as reserved.

2.4 The respondents vide their letter dated 15.2.2007 at Annex.A/9 promoted six more persons purely on ad hoc basis for a period of three months. They were, however, reverted later.

3. The learned Advocate for the applicants argued on the following issues :-

The applicants passed the written test but their names did not figure in the panel (Annex.A/7) as they were junior to other candidates in their respective categories (General/S.C.). If there were more vacancies then notified in Annex.A/1, these applicants who had cleared the written test could have been brought on the panel and promoted as Passenger Guard. The learned Advocate stressed on this issue. To quote para 4.14 of the O.A.



"4.14 That the Railway Authorities are very much empowered to issue a revised or additional panel interpolating names of passed candidates in the panel earlier issued on accrual of vacancies during the period when the declaration of panel has been delayed for whatever reason may be. And in fact, the Railway Authorities on many occasions have issued a revised panel interpolating names of passed candidates in the panel already issued on accrual of vacancies between the dates of notification to hold selection and declaration of panel.....".

4. The learned Advocate for the respondents put-forth his arguments that the panel size cannot be increased subsequent to the initiation of the process of selection. The learned advocates averments on this issue as mentioned in para 7 of the counter is reproduced :

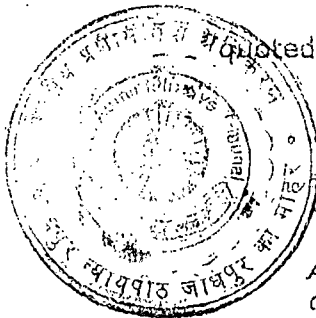
"That in reply to para 4.13 of the Original Application, it is submitted that as has been submitted supra that the aforesaid 15 vacancies of Passenger Guard were filled, in view of the vacancies notified in the year 2005 and after the selection was held for the same and the panel of successful candidates for filling of those 15 vacancies was issued by the respondents. It is also pertinent to submit that the selection has been initiated in the month of February 2005, while issuance of Notification issued 15 vacancies for the post in question, and accordingly, panel of 15 posts vide order dated 26.12.2006. It is also pertinent to submit that in selection, many senior did not place in the panel and as such they were rightly required to be depriving back to their substantive post as they were promoted on adhoc basis, when they did not find place on the panel. It is also pertinent to submit that the size of the panel is restricted upto the number of vacancies advertised and cannot be increased irrespective of the fact that the number of vacancies might be increased in due course inasmuch as after the selections were held in pursuance of

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the Notification dated 18.02.2005 for 15 vacancies of Passenger Guard, certain more persons have become eligible for the vacancies arisen subsequent to the holding of selection in pursuance of Notification dated 18.02.2005. Therefore, in view of this matter the legitimate right of those aspirants, who become eligible for the vacancies arisen subsequently, cannot be taken away by giving promotion to the applicants after exhausting the complete panel of 15 eligible candidates."

5. The issue thus focuses on the point that whether the applicants (who had passed the written test) could be considered for promotion over and above the size of the panel notified in the original notification or otherwise ?

6. Subsequently, the Ministry of Railways issued Circular No. RB/Estt.No.28/2007 (Letter No. E(NG) 1-2000/PM1/41 dated 23.2.2007 along with Advance Correction Slip No. 191, (kept at Annex. A/11 of O.A. - 197/2007), wherein, the provisions of para 215 of the IREM were further revised. Relevant paras of the aforesaid Circular is



quoted hereunder :-

Sub : Procedure for holding selections for promotion to posts classified as 'Selection' - Selection on the basis of Viva-voce for Motorman and Passenger Guard.

As the Railways are aware, instructions for elimination of viva-voce in departmental selections, except in the categories of Law Assistants, Physiotherapists, Telephone Operators and Teachers, where viva-voce alongwith written test continues to form the part of selection process, were issued vide this Ministry's letter of even number dt. 07.08.2003. Further vide this Ministry's letter of even number dt. 12.09.2005 etc. more categories viz. Instructors in Zonal Training Schools etc., Stenographers, Chief typists, Protocol Inspectors, Receptionists, Publicity / Advertising Inspectors, Photographers / Cameramen, Hostel Superintendents were added to the list of above categories where viva-voce is to be conducted in addition to the written test. Apart from this in view of the difficulties being faced by Zonal Railways in conducting selections for promotion as Passenger Drivers {re-designated as Loco Pilot (Passenger)}, in terms of revised procedure as contained in this Ministry's letter dt. 07.08.2003 and demands raised by the Federations the Zonal Railways were allowed to conduct selection for promotion as Loco Pilot (Passenger) on the basis of viva-voce only after passing the prescribed promotional course vide this Ministry's letter No.E(NG)1-2003/PM7/10 dt.06.09.2005.

2. Pursuant to the proposals received from some of the Zonal Railways for conducting selections on the basis of skill test in a few categories instead of written test as indicated in the extant procedure as mentioned above and reiteration of demand by the Staff Side in the DC-ICM for restoring the status quo ante in the categories where the earlier selection procedure consisted of only viva-voce, the matter has again been considered by the Board and it has been decided that like the special selection procedure prescribed for promotion to the post of Loco

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Pilot (Passenger) the selection for promotion from the post of Goods Guard to Passenger Guard and for promotion as Motorman may also be done on the basis of viva-voce only after passing the prescribed mandatory promotional courses. The revised selection procedure in the above two categories will be applicable to selections notified on or after the date of issue of this letter.

(emphasis provided)

Thus, the procedure of selection for Passenger Guard (Scale Rs. 5000-8000) was revised from 23.2.2007. The written test was done away with and 'Viva-Voce after passing the prescribed mandatory provisional course was introduced. This will be further discussed later.

7. Prior to 23.2.2007, RBE 137/03, with Advance Correction Slip No. 150 of IREM Vol. I (Annex.A/2) was in force wherein, a written test was necessary for selection of Passenger Guards (5000-8000). The selection was done as per these provisions at that point of time. This selection process begun on 18.2.2005 by calling 45 candidates for 15 posts (13 General and 2 SC) The written test was conducted and 22 candidates were considered suitable for paper screening vide order dated 21.6.2005 (Annex.A/3)/ The subsequent development of cancellation of this selection and nullifying that order by this Tribunal (later confirmed by High Court), is now only for record. The respondents promoted persons according to the seniority from the list of 22 candidates found suitable for paper screening. It is, thus, clear that the respondents issued the panel and promoted the candidates as per the rules in existence at that point of time. Since number of vacancies notified were only 15, these seven applicants of this O.A. could not be brought on the panel and promoted. The learned counsel for applicants' argument that the vacancies could be increased, is not fair one. We agree with the arguments put forth by the learned advocate for the respondents on this issue.



Since the size of the panel was maintained as per the notification and the issue of panel and subsequent promotions thereof, have been

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done as per the rules in force at that point of time, we find no merit in the O.A. The O.A. No. 40/2007 is liable to be dismissed.

OA No. 197/2007

1. In this OA, applicants have prayed for the following reliefs :-

(a) By an appropriate order, writ or direction, the notification dated 21.8.2007 (Annex.A/1) issued by the respondent No. 3 may kindly be declared illegal and be quashed and set aside and

(b) By an appropriate, writ or direction, the respondents be directed to promote the applicants on the post of Passenger Guard before issuing notification for fresh selection, and

(c) Any other order, which this Hon'ble Tribunal deems fit, just and proper, in the facts and circumstances of this case may kindly be passed in favour of the applicants, and

(d) Costs be awarded to the applicants"

2. The respondents were restrained to conduct Viva-Voce Test by this Tribunal vide its order dated 7th September, 2007, relevant portion of the said order is reproduced below :

"Heard the learned counsel for the applicants as well as for the respondents on the point of interim relief. Reply to interim relief has not yet been filed.

The learned counsel for applicants' argued that the operation of the impugned Notification dated 21st August, 2007 at Annex. A/1 regarding selection for the post of Passenger Train Guard scheduled to be held on 10th and 11th of September, 2007, be stayed in view of Para 215 (a) and Correction Slip 191 of the I.R.E.M.

I have gone through the Correction Slip 191 kept at Sl. No. 55, which makes it very clear that the selection for promotion for the post in question, will consist of Viva Voce only to assess the professional ability of the candidates after passing the prescribed promotional courses. After hearing arguments of either side, it is quite clear that the prescribed promotion course has not been held and the respondents are planning to conduct a Viva Voce test for the post of Passenger Train Guard Grade Rs. 5000-8000 on Monday/Tuesday i.e. 10th and 11th of September, 2007. Since the selection is not as per the advance Correction Slip 191, the scheduled Viva Voce test is stayed till the next date....."

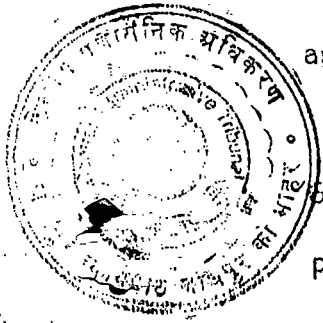
3. RBE Circular No. 28/07 dated 23rd February, 2007 along with the Advance Correction Slip No. 191 to Para 215 of the I.R.E.M. is at Annex.A/11. Relevant portions of the Circular has been quoted on previous pages.

4. The respondents issued a Notification dated 21.8.2007 (Annex.A/1) for selection of 15 posts (13 General & 2 SC) of Passenger



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 Guards (5000-8000) to fill 15 posts by conducting a Viva Voce Test. 40 candidates were called for in the Viva Voce Test. The applicants approached this Tribunal that the said selection was not as per the Guidelines issued by the Railway Board and that resulted in the interim order mentioned earlier. It is quite clear from the Advance Correction Slip No. 191 and RBE Circular No. 28/07 that the positive act of selection for the post of Passenger Guard will consist of Viva Voce Test only to assess the professional ability of the candidates after passing the prescribed promotional courses (emphasis provided).

5. The respondents had not followed these instructions issued by the Ministry of Railways as the prescribed promotional course had not been held at that point of time and thus, the relief asked for in para (a) is granted allowing the OA to that extent. The respondents' order / Notification dated 21st of August, 2007 at Annex.A/1 is liable to be set aside.



6. As far as the relief (b) is concerned, applicants have asked for promotion to the post of Passenger Guard on the basis of having passed the Written Test in the year 2005 as per the provisions at that point of time. The learned counsel for the applicants strongly argued on this issue, stressing that once the applicants have passed the written test, they should not be subjected to any further test. In support, he has quoted sub para (c) (iv) of Para 214 of the I.R.E.M. The same is reproduced below :

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"214(c) In respect of promoting to non-selection post, the following principles should be followed :-

- (i)xxxxxx xxxxx xxxxxx
- (ii)xxxxxx xxxxx xxxxx
- (iii)xxxxxxxx xxxxx xxxxxx

(iv) An employee who has passed a suitability test once need not be called for the test again and should be eligible for promotion as and when vacancies arises."

Respondents on their part, argued that this cannot be granted as the post of Passenger Guard is to be filled in by a process of selection and that Para 214 is not relevant in this case.

7. We have gone through the complete Para 214 and notice that it deals with non-selection posts only and thus, there is not much force in the arguments put forth by the learned counsel for the applicants.

8. In view of the above, we are inclined to deny the relief asked in relief Para Clause (b) of the application and this O.A. No. 197/2007 is liable to be allowed partly to the extent indicated in para 5 above.



In the result - (i) O.A. No. 40/2007 - Sunil Panwar and Ors. Vs. UOI & Ors., is dismissed with no orders as to costs and (ii) O.A. No. 197/2007 - Sunil Panwar and Others Vs. UOI & Ors. - stands partly allowed; Notification dated 21st August, 2007 / Annex.A-1 to the O.A. issued by respondent No. 3 / Senior Divisional Personnel Officer, North Western Railway, Jodhpur, is set aside with liberty to the respondents to make promotions in accordance with Act/Rules, Circulars, etc. in the light of the observations made above.

10. No order as to costs.

[K.K.DHANDA] CERTIFIED TRUE COPY [A.K.YOG]
MEMBER[A] Dated 7.13.2008 MEMBER[J]

केन्द्रीय प्रशासनिक अधिकरण (न्याय)
Section Officer (Judicial)
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
जोधपुर न्यायपीठ जोधपुर
Jodhpur Bench Jodhpur.

R/C
10/10/08
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11/3/08