

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, P A T N A

O.A.No.: 209 of 1996.

(Patna, this Friday the 2nd Day of April, 2004).

C O R A M

HON'BLE MRS. SHYAMA DOGRA, MEMBER (JUDICIAL)

HON'BLE MR. MANTRESHWAR JHA, MEMBER (ADMINISTRATIVE)

1. Bined Kumar, aged 40 years, S/o Shri Ramjee Prasad, resident of Singrauli, P.S.: Singrauli, District Sidhi (Madhya Pradesh, at present post as Senior Goods Guard at Singrauli.
2. R.J.Choudhary, S/o Shri Ramesh Choudhary, resident of Burbadih, P.S.: Burbadih, District Palamau, Bihar, at present posted at Burbadih. APPLICANTS.

By Advocate :- N o n e.

Vs.

1. Union of India through General Manager, Eastern Railway, Calcutta.
2. Divisional Railway Manager, Eastern Railway, Dhanbad.
3. Senior Divisional Personnel Officer, Eastern Railway, Dhanbad. RESPONDENTS.

By Advocate :- Shri G.Chatterjee.

O R D E R

Shyama Dogra, Member(J) :- None has put appearance on behalf of the applicants. Even on earlier occasions it is found in the official record that neither the applicant was present in person nor represented through counsel and it was ordered to decide the matter on the basis of the material available on the record. Therefore, the present case being very old one pertaining to the year 1996, the same is hereby disposed of under Rule 15 of the Central Administrative Tribunal (Procedure) Rules, 1987, on the basis of materials available on record.

2. Since the cause of action and the reliefs prayed for by the applicants are the same, their prayer for filing this O.A. jointly stands allowed.

3. This OA has been preferred by the applicants for quashing of office order dated, the 22nd January, 1996, issued by the respondents no.2 with further prayer for direction to the respondents to include Scheduled Cast & Scheduled Tribe candidates in the list of 72 Goods Train

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Guard ~~earl~~-marked for consideration for filling-up 31 unreserved vacancies who fall in consideration zone on the basis of their seniority in the cadre of Goods Train Guard and not to fill-up 31 unreserved vacancies and to call 93 Goods Train Guard as per their seniority in view of the principle being laid down by the Hon'ble Apex Court and reservation roster prescribing therein ratio of 1 : 3.

2. On perusal of the case file it is also found that the applicants have moved an application for amendment of the O.A. However, the same has not been registered wherein they have prayed for quashing of the order dated, the 17th October, 1996, which is a list of selected candidates to the post of Passenger Guard alongwith prayer to implead these 33 selected persons as respondents in their respective capacity.

3. The case of the applicants as per contents in the application is that they were working as Sr. Goods Train ~~Guard~~ in the Eastern Railway at the time of filing of the OA and were fully eligible for being considered ~~for~~ for the post of Passenger Train ~~Guard~~.

4. There are three categories of Guards in the Railway establishment; namely, Goods Train Guard, Passenger Train Guard and Mail/Express Train Guard. The vacancies of Passenger Train Guard are filled-up through Goods Train Guard after selecting them on the basis of their inter-se seniority and viva-voce test. Till now if a reserved category candidate compete with general category candidate than he was considered and appointed on unreserved vacancies of Passenger Train Guard and was not bracketed for reserved quota. Reserved quota vacancies fixed on 40 point roaster system were filled up only by such Scheduled Caste/Scheduled Tribe candidates who could not compete and qualify alongwith general category candidates for unreserved vacancies.

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5. However, while issuing Annexure-A/1 the respondents have come up with the notice dated, the 22nd January, 1996, notifying 72 Goods Guard, 9 Scheduled Caste Goods Train Guard, 3 Scheduled Tribe Goods Train Guard for filling-up 31 unreserved vacancies, three Scheduled Caste vacancies and one Schedule Tribe vacancy of Passenger Train Guard stating therefein that the persons mentioned in the said notice should be ready for facing viva-voce test for the aforesaid purpose.

6. In the said letter the list of 72 persons earmarked for unreserved vacancies did not contain any name of SC, ST candidate although many including the applicants are senior to persons mentioned in the said list which is evident from Annexure-A/2, wherein, the applicant no.1 is at sl.no.35 and the applicant no.2 is at sl.no. 34.

7. The main contention of the applicants is that as per rule the ratio of vacancies and interviews is to be 1 : 3 whereas ~~against~~ 31 unreserved vacancies only 72 Sr. Goods Guard have been selected for interview and that also not a single reserved category candidate have been included inspite of the fact that 72 candidates have been selected for being interviewed for unreserved vacancies.

8. The further contention of the applicants is that taking into consideration the said ratio laid down as per rules, the respondents should have called 93 candidates against 31 unreserved vacancies for said selection and the applicants should have automatically come within the purview of zone of consideration for calling them for the viva-voce test also on the basis of their seniority and placement in the list of Sr. Train Guard (Annexure-A/2) as they are similarly situated persons with the candidates who have been called upon for appearing in the interview vide Annexure-A/1. Therefore, the said action on the part of the respondents have caused grave mis-carriage of justice to the applicant.

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9. The respondents have filed written statement and contested the claim of the applicants on the grounds that Annexure-A/1, dated, the 22nd January, 1996, has been issued in strict compliance of the judgment passed by the Hon'ble Apex Court in SLP No. 18594 of 1995 on the basis of which this Bench has passed one order in OA No. 116 of 1993 (B.P.Srivastava & Ors. Vs. Union of India & Ors.) decided on 19th May, 1995, wherein, it has been clearly instructed in para 24(iii) that 'vacancies are to be filled in by the same category of persons whose retirement caused the vacancy.' Accordingly, to fill-up 31 posts of unreserved category, three posts of Scheduled Caste and one post of Scheduled Tribe category, 72 persons from unreserved group, 9 persons from scheduled caste group and three persons from scheduled tribe category were advised for readiness to appear in the selection based on viva-voce test. The applicants were not advised for readiness because sufficient number of senior to the applicants were available against the said vacancies. Similar was the case with regard to reserved category post as the applicants belong to scheduled caste community and their names were not included in the name of unreserved group in view of the decision given by the Hon'ble Apex Court in above referred SLP.

10. So far as ~~calling~~ calling the less number of unreserved group is concerned as per rule of the ratio of 1 : 3 the same has been done due to non-availability of staff of unreserved group in the Sr. Goods Train Guard and, therefore, only 72 staff were called instead of 93, but in the case of SC/ST candidates they were called in the ratio of 1 : 3 and since the applicants were not coming as per seniority amongst SC group they were not advised to get ready for the viva-voce test.

11. It is further submitted by the learned counsel for the respondents that the order passed in the above

referred OA 116 of 2003 has also got finality due to the fact that the Hon'ble Apex Court has dismissed the SLP preferred by the official respondents, copy thereof has also been placed on record alongwith copy of order passed in above referred OA in B.P.Srivastava's case.

12. ^{not} The applicants have/ filed rejoinder to rebut the contentions as submitted by the respondents in the written statement.

13. We have heard the learned counsel for the respondents and carefully gone through the entire record. After perusal of the decisions passed by this Court in B.P.Srivastava's case, it is found that B.P.Srivastava and other applicants were also working with the applicants as their names are found to be contained in Annexure A/2 and they have challenged the action of the respondents whereby, excess promotion has been given to SC/ST Guards in the cadre of Passenger Guard in excess of their quota of 15% & 7½% respectively.

14. While relying on the judgment of the Hon'ble Apex Court in R.K.Sabarwal's case, it has been observed and held by the Bench in para 24(iii) as under :

"The roster should operate till the total posts in the cadre are filled-up i.e., in a cadre of 52, 40 posts are to be given to the general category; 8 posts to Scheduled Caste and four posts to Schedule Tribe category."

Thereafter, as the Hon'ble Supreme Court has directed 'vacancies are to be filled-in by the same category of persons whose retirement caused the vacancy.' The selection process and drawing up the panel, however, are entirely within the competence and jurisdiction of the official respondents.

15. In the above referred OA, the ~~Court~~ has also quoted the three principles enunciated by the Hon'ble Supreme

Court in R.K.Sabarwal's case and to understand the case in a better way, the same are also re-quoted here as under :

- "(i) The roster point for reserved category has to be filled up by way of appointment/promotion of a member of the said category and no general category candidate can be appointed against this post in the roster which is reserved for the reserved category.
- (ii) Reservation has to be operated in accordance with the roster to be implemented in the form of a running account from year to year so that there is no excessive reservation. The running account is to be operated till quota is reached and not thereafter as the roster does not survive after the quota is filled in.
- (iii) If the roster is permitted to operate till the total posts in a cadre are filled and thereafter vacancies are to be filled in by same category of persons whose retirement caused the vacancies, then the balance will always be maintained. When there is non-availability of reserved candidates the State can carry forward the point."

16. The Court has also referred to the decision of Veerpal Singh Chauhan's case decided by the Madhya Pradesh High Court wherein it has been held that once 22½% is reached by promotion of reserved quota, promotion on the basis of reservation would come to an end. After reserved quota is already full in the next grade, SC & ST candidates will have to wait till vacancy occurs in the higher grade in the reserved quota as the reservation for ST pertained to posts and not to vacancies.

17. So far as the quashing of selection of these persons vide Annexure A/3, dated, 17th October, 1996, is concerned, since the said M.A. for amendment of the O.A. has not been registered till date and since the said selected candidates have been working on the said post for the last more than eight years, therefore, the plea of the applicants is otherwise also not tenable to implead the selected persons as parties as it would amount to create chaos of the matter.

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by unsettling it at this stage which has already been settled long time back in the year 1996.

18. After careful consideration of the written statement filed by the respondents, we are of the considered opinion that Annexure-A/1 has been passed in compliance of the orders passed by this Court in B.P.Srivastava's case to avoid the excess promotion to the reserved category in excess of their percentage of reservation in view of the decision passed by the Hon'ble Apex Court as referred to hereinabove (supra).

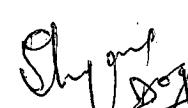
19. Moreover, the applicants admittedly belong to SC category and the respondents have called for viva-voce test the candidates of this category as per 1 : 3 ratio and as per their seniority. Therefore, we find no force in the contentions raised by the applicants in this regard to quash the impugned orders.

20. Therefore, we find no reason to interfere in the matter as the impugned order (Annexure-A/1), dated, the 22nd January, 1996, followed by the subsequent order dated, the 17th October, 1996, whereby, the list of selected candidates has been issued in accordance with law and, therefore, the same are hereby upheld.

21. In view of overall discussion and analysis of the matter, we find no force in the contentions being raised by the applicants in the present OA and the same being devoid of merit is hereby rejected and disposed of accordingly with no order as to costs.


(Mantreshwar Jha)
Member (A)

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(Shyama Dogra)
Member (J)

24/10/96