

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH 'GULESTAN' BUILDING NO.1  
PRESCOT ROAD, BOMBAY:1

Original Application No. 142/96

25 the        day of September 1996

CORAM: Hon'ble Shri B.S. Hegde, Member (J)  
Hon'ble Shri M.R. Kolhatkar, Member (A)

Shri A.K. Sadani  
Senior Goods Clerk on  
Bhusawal Division,  
Residing at Railway Quarter  
No. RB II, 578-C, 15- Blocks,  
Bhusawal, Dist. Jalgaon.

Shri V.R. Gargav,  
Senior Goods Clerk Guard on  
Bhusawal Division  
Residing at Gandhi Nagar,  
Behind Hindu High School,  
Bhusawal.

Shri G.D. Sarin,  
Goods Guard Clerk on  
Bhusawal Division,  
Residing at Central Railway  
Quarter No. RB II, 1060  
F-15, Blocks, Bhusawal,  
Dist. Jalgaon.

... Applicants.

By Advocate Shri G.K. Masand alongwith  
Shri R.S. Tulaskar.

V/s.

Union of India  
Through General Manager,  
Central Railway, Bombay VT.

Chief Personnel Officer,  
Central Railway, Bombay VT.

Divisional Railway Manager,  
Bhusawal, Division, C.Rly.  
Bhusawal.

... Respondents.

By Advocate Shri V.S. Masurkar.

ORDER

In this O.A. the applicants have challenged the two notifications issued by the respondents dated 21.12.95 and 2.1.96 is illegal and bad-in-law, in calling for selection for the post of passenger guards, to form a panel of suitable candidates for the post of Goods Guard Rs. 1350 -2200 (RPS) from amongst the staff working in the grade Rs. 1350 - 2200 (RPS) and Rs. 1200 -2040(RPS) as Senior Goods Guard and Goods Guard respectively.

2. The contention of the applicants is that 21 posts of Passenger guards in the grade of Rs.1350 - 2200, are being filled in, applicant No.1 and 2 are senior goods clerk in the grade of 1350 -2200 and applicant No.3 in the grade of 1200-2040. Prior to 1.3.93 only one grade was prevailing for the goods guards. After 1.3.93 the Railway Administration effected the restructuring of the cadre with the result that 80% posts of the total strength were retained in the initial grade of Rs.1200-2040 and 20% posts have been upgraded in the grade of Rs.1350-2200 as Senior Goods Guards whose recruitment in the grade of Rs.1350-2200 is made on the basis of the 'seniority cum-suitability' from and amongst Goods Guard working in the grade of Rs. 1200-2040. The contention of the applicants is that respondents were called for the selection of passenger guards. 21 vacancies consists of 13 General, 7 for S.C. and 1 for ST Administration called for written examination by notification dated 21.12.95. The entire cadre consists of 66 posts which is not in dispute. Therefore, applying the reservation percentage, 51 posts will be of General candidate, 10 will be SC and 5 will be ST as on 21.12.95. 45 passenger guards were working on Bhusawal Division, out of these 14 have been selected and working against the reserved quota of SC and 4 reserved quota ST and remaining 27 posts are held by General candidates. Therefore, there is no scope for filling up any vacancies against the reserved quota of SC. As such, there is no need for any scope for further calling selection of SC candidates for filling up the vacancies and so called 7 vacancies shown against SC should be allotted to the General candidates and further assessment of the vacancies for the selection of Passenger Guards as on 21.12.95 is not in accordance with the decision of the Apex Court.

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3. The applicants made representations to the Competent Authority, despite the same the respondents finalised the selection for 41 Passenger Guards on 11.10.94 and the same has been challenged by the applicants in separate O.A. before this Tribunal. The applicants are at much higher position in seniority of the Goods Guard and they would have got their promotion to the Passenger Guards from much earlier date had the respondents adopted proper course of calling for selection in view of the stand taken by the respondents on the basis of the vacancies with regard to posts. The applicants also allege that by this process the chances of their getting further promotions is weakened. In this connection they made representation to Competent Authority on 19.1.96. But no reply has been received by the applicants.

4. The respondents in their reply denied the various contentions, but submitted that Passenger guards is a selection post and the feeder cadre is 'Senior Goods Guards and Good Guards respectively, 37 persons have been passed the written test. Applicant No.1 is at serial No.40. As per guidelines only 39 people have been called for written test, thereby, applicant No.1 has not come in the zone of consideration. Applicant No.2 and 3 are not eligible and were not in the zone of consideration, hence the application is not maintainable as per law. The respondents have also contended that the applicants have not impleaded the necessary parties. Since the panel has already been prepared, the interim relief passed on 20.2.96 has to be modified because the respondents would not be able to carry out the smooth functioning of the Railways in the absence of the operation of the panel, therefore seeking for vacation

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of the interim order or in the alternative modify the earlier interim order restraining the respondents from declaring results keeping limited posts vacant in so far as the applicants are concerned and release the balance posts to be filled in accordance with the Rules.

4. The point raised by the applicants are contentious one. In this connection the learned counsel for the applicants Shri Masand relied upon the decision of the Apex Court, Union of India V/s. Virpal Singh Chauhan 1995(2) SCSLJ 4176 which reads as

follows:

The percentage of reservation must be vis-a-vis posts and not vis-a-vis vacancies. Once the percentage reserved for a particular reserved category is satisfied in that service category or grade the rule of reservation and roster should not longer be followed.

The seniority between the reserved category candidates and general candidates in the promoted category shall continue to be governed by their panel position i.e. with reference to their inter-se seniority in the lower grade. The rule of reservation gives accelerated promotion, but it does not give the accelerated consequential seniority. If a SC/ST candidate is promoted earlier because of the rule of reservation/roster and his senior belonging to the general category candidate is promoted later to that higher grade the general category candidate shall regain his seniority over such earlier promoted scheduled caste/Tribe candidate.

5. In the light of the above, we are of the view that the facts of the present case is fully covered by the ratio laid down in Virpal Singh's case. Accordingly, the O.A. is admitted, and the interim relief

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passed earlier, 20.2.96 stands modified, in so far as the three applicants are concerned. The respondents are at liberty to fill up the remaining vacancies as per Rules, however, they shall not fill up 3 posts till the disposal of the O.A. Any further promotion given to the other candidates will be subject to the out come of the O.A. and the respondents are further directed not to give any further promotion to reserved categories i.e. SC/ST till the disposal of the O.A. The applicants are directed to implead the affected parties as party respondents.

6. List the case in Sine-die list.

*M.R. Kolhatkar*

(M.R. Kolhatkar)  
Member (A)

*B.S. Hegde*

(B.S. Hegde)  
Member (J)

NS

order/Judgement despatched  
to Applicant/Respondent (s)  
on 11/9/96

*Q*  
11/9/96

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GULESTAN BLDG. NO. 6, 4TH FLR, PRESCOT RD, FORT,  
MUMBAI - 400 001.

C.P.No. 40/97 and M.P.No. 101/99  
in O.A.No. 142/96.

Dated: 4/3/99.


TRIBUNAL'S ORDER:

We have heard Shri R.S. Tulaskar for Applicant and Shri V.S. Masurkar for Respondents on CP-40/97 and MP-101/99.

This Tribunal vide Interim order dated 25/9/96 directed the respondents to keep three posts vacant, that any further promotions shall be subject to the outcome of the OA and there is a further direction that respondents should not make further promotion of SC/ST Candidates till the disposal of the OA.

Now the applicant has filed CP-40/97 to say that inspite of this order, the respondents have issued orders to SC/ST candidates and thereby they have violated order of this Tribunal dated 25/9/96. Respondents have filed reply to CP.

2. We must keep in mind that this OA was filed challenging the process of selection of notification dated 21/12/95. Therefore, the interim order passed was with reference to notification of 1995. No doubt, the interim order says that respondents should not make further promotion of SC/ST candidates, but <sup>in</sup> the promotion order issued by respondents, they have given promotion to 5 SC/ST candidates which is technically contrary to the order of Tribunal dated 25/9/96, but we find that <sup>in</sup> the order of promotion, and posting <sup>dated</sup> 10/3/97, there is a note at the end that promotion of SC/ST Candidates is provisional and subject to the outcome and final decision of OA.142/96 and stating that in pursuance of Interim



order passed by this Tribunal they have kept three posts of SC vacant and they have even mentioned that the three selected SC candidates whose names are given are not promoted in view of the Interim order of this Tribunal.

3. Although, technically this order is contrary to the order of this Tribunal, however we have an affidavit of Shri T.N.Bhosale, Senior Divisional Personnel Officer at Bhusawal tendering an unconditional apology for any violation committed in not following the order of the Tribunal dated 25/9/96. He has however added that he has highest regards for the order of this Tribunal and that he has not committed contempt at any time. In view of the statement made by respondents, we feel that no action should be taken under the law of contempt. We only observe that respondents should be careful while interpreting the orders passed by Tribunals or Courts and should not give any room for contempt action in future. With this observation CP-40/97 is disposed of.

4. Now, MP-101/99 is filed by respondents for vacating the interim order dated 25/9/96. We feel that at this stage, we do not want to vacate the interim order since very lengthy order was passed after lengthy arguments heard on both sides. We have also clarified in our further orders dated 27/4/98 that the interim order dated 25/9/96 will not apply to future vacancies which can be filled according to law.

In the interim order dated 25/9/96, one of the directions is that three posts should be kept vacant, to safeguard the applicants in case the applicants succeed in the OA. Now, it is brought to our notice, that in a recent selection process a fresh panel has been prepared in which all the applicants have appeared and Shri A.K.Sadani has been selected. Further, if Shri A.K.Sadani is now promoted, there is no necessity




to keep three posts vacant. Therefore, we feel only two posts out of 1995 panel should be kept vacant. The question is whether the first applicant Shri A.K.Sadani though selected in the recent panel dated 4/1/99 should get retrospective benefit from 1995 or not is left open to be considered at the time of final hearing of the OA.

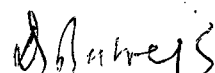
5. At this stage, we may also note that the applicants have not impleaded the persons who are likely to be affected by any order to be passed by this Tribunal in the interim order dated 25/9/96. Now, we direct the applicants to take necessary action and implead the parties who are likely to be affected if the 1995-96 panel is quashed. Even now we direct the applicants to implead the three SC candidates though they were selected, in the panel on 6/1/97 could not be promoted in view of the interim order dated 25/9/96.

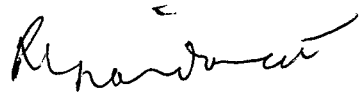
since the interim order says that any promotions of that panel will be subject to outcome of the OA, it is desirable that applicants should implead all the SC/ST candidates who were selected in the said panel as party respondents to OA.

6. In the result, it is ordered as follows:-

CP-40/97 is discharged subject to observations made above.

 is partly allowed. It is now ordered that interim order dated 25/9/96 is modified by directing the respondents to keep 2 SC/ST posts vacant in the panel of 1995. subject to this modification, interim order dated 25/9/96 is ordered to be continued till the disposal of the OA.

  
(D.S. BAWEJA)  
MEMBER(A)

  
(R.G. VAIDYANATHA)  
VICE CHAIRMAN

abp.