

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO:560/2001

Date of Decision: 11/03/2003

Shri Khanubhai G Makwan & 37 Ors.

Applicants

Shri G.S.Walia

Advocate for the
Applicant

Versus

Union of India & 5 Others

Respondents

Shri V.S.Masurkar R-1&2

Shri M.S.Ramamurthy R-3 to 6

Advocate for the
Respondents

CORAM:

Hon'ble Smt. Shanta Shastry, Member(A)

Hon'ble Shri K.V.Sachidanandan, Member(J)

- (i) To be referred to the reported or not? ✓
- (ii) Whether it needs to be circulated to other
Benches of the Tribunal?
- (iii) Library. ✓

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(SMT. SHANTA SHASTRY)
MEMBER(A)

abp

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:560/2001
DATED 21st MARCH, 2003.

CORAM:HON'BLE SMT.SHANTA SHASTRY, MEMBER(A)
HON'BLE SHRI K.V.SACHIDANANDAN, MEMBER(J)

S/Shri

1. Kanubhai G Makwan
2. Perumootil Thomas Joseph
3. Bachubhai N Patel
4. Krishnarao M Borkar
5. Harishkumar K Patel
6. Sanjay B Dubey
7. Anant V Kshirsagar
8. Jagannath S Singh
9. Pancho Kesan A Iyer
10. Mansingh L. Singh
11. Pramod K Chaudhary
12. Subhash K Pandey
13. Sandeep N. Hulalkar.
14. Rajesh J Sangpal
15. Jayanand J Talekar
16. Mohd. Taufiq Khan
17. Prasad Prabhakar
18. Vinod G Joshi
19. Devisharan Shrivastav
20. Sopan Ingale
21. Seiman Duning Girkar
22. Shantilal M Patel
23. Kiranbagaraan
24. Umesh Singh
25. Babulal Meena
26. Mohd. Shamid Qureshi
27. Panesar M
28. Gulam Mohd. G. Sheikh
29. Jaishankar S Tiwari
30. Prem Balram Batcham
31. S.P. Chaturvedi
32. H.R. Patel
33. P.G. Patel
34. D.R. Patil
35. G.A. Nishad
36. S.L. Shukla
37. M.T. Pandey
38. Louise Baptista

All working as Guards Under
Mumbai Division of Western
Railway, Mumbai Central,
Mumbai-400 008.

... Applicants

By Advocate Shri G.S.Walia

...2.

V/s.

1. Union of India, through
General Manager,
Western Railway,
Head Quarters Office,
Churchgate,
Mumbai - 400 020.
2. Divisional Railway Manager,
Bombay Division,
Western Railway,
Mumbai Central,
Mumbai - 400 008.
3. Amarnath J Gupta,
working as Guard Under
(BAMY)
4. M.A.Shaikh
working as Guard Under
(NDB)
5. Kirtikumar K,
working as Guard Under
(WDN)
6. Tukaram G Shendge
working as Guard Under (BL)
Valsad

... Respondents

By Advocate Shri V.S.Masurkar for R-1 and 2.
Shri M.S.Ramamurthy for R-3 to R-6)

O R D E R

Per Smt.Shanta Shastri, Member(A)

By this OA the applicants have challenged the impugned seniority list dated 18/4/2000 and the impugned letter dated 11/6/2001. Further, the applicants have sought a declaration that the seniority of Goods Guards is to be based on the merit obtained in the selection and not on the basis of seniority from which the applicants and private respondents were promoted.

2. The applicants were originally appointed as Group 'D' employees and were subsequently promoted as Commercial Clerks (ACC) in the pay scales of Rs.975-1540 (RP). They were further promoted as Senior ACC in the scale of Rs.1200-2040 (RP).

...3.

3. A notification was issued by the official respondents on 22/2/1996 for holding a written test for forming of panel of employees for the post of Goods Guards in the payscale of Rs.1200-2040. Sr.TNC/TNC, Sr.ACC/ACC, Sr.TC/TC, Shunting Jamadar, Switchman and Assistant Guards were made eligible to appear for the selection. Subsequently, the condition of five years service was relaxed to three years service and a notification was issued to that effect vide office order dated 16/5/1996. The applicants appeared in the selection and they were selected after holding a suitability test. They were declared successful by order dated 26/7/1996. They passed the medical examination and also the prescribed training at Zonal Training School, Udaipur and practical training. They were posted vide order dated 15/10/1996 as Goods Guards in the payscale of Rs.1200-2040/-. Thereafter the official respondents issued a seniority list of Goods Guards by letter dated 4/3/1998. In this list the applicants were senior to the persons who were taken as Guards from posts of Sr.TNC. The applicants were at Serial Nos.137 to 180. The Senior TNCs were at Serial Nos.181 to 204. However, by the impugned order dated 18/4/2000, the seniority has been changed and the Sr.TNCs have been made senior to the Sr.Commercial Clerks in the capacity as Guards. According to the applicants, they were promoted to the scale of Rs.1200-2040 earlier than the TNCs on 30/3/1994 whereas the TNCs were promoted on 25/5/1995. The applicants have further contended that the orders have been passed against principles of natural justice in as much as no notice was given to the applicants before effecting the change in the seniority list.

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They made representations by their letters dated 12/4/1999 and 14/9/1999 against another earlier seniority list dated 15/3/1999. The applicants had filed OA-135/2000 challenging the seniority list dated 15/3/1999 whereby their seniority had been changed. The Tribunal disposed of the OA on 26/2/2001 and the applicants were given liberty to make representation against the seniority list dated 18/4/2000. Accordingly they made representations on 19/3/2001. Their representation was considered and rejected by letter dated 11/6/2001.

4. The contention of the applicants is that the post of Goods Guards is filled up by considering persons from various categories and therefore it is a general selection. It is evident from the letter dated 22/6/1996 that the categories which are in different grades are made eligible to appear in the selection. This is not a post which is in the normal channel of promotion considering the various categories which were made eligible. Therefore according to the applicants, their seniority is to be maintained on the basis of the marks obtained in the selection as there is no question of inter se seniority amongst them. However, in the impugned seniority list the applicants have been assigned seniority vis-a-vis others on the basis of the alleged seniority in the lower cadres. The applicants submit that there was no common or inter se seniority in the lower categories from which the applicants and other private respondents were promoted. Infact, the higher or the lower grades in which the applicants and private respondents were working is immaterial for the purpose of seniority in the cadre of guards. Designation and grades were only for eligibility for the purpose of selection. The grades or period of service

rendered in such grades cannot be treated as the basis for assigning seniority in the promoted post of Goods Guards. Therefore, the official respondents have erred in assigning seniority in the grade of Rs.1200-2040/- and therefore the impugned seniority list deserves to be quashed and set aside.

5. The official respondents in their reply have pointed out that the action of the respondents is strictly in accordance with the rules on the subject. The applicants were promoted in the scale of Rs.1200-2040/- in the year 1994 whereas the TNCs were promoted in the year 1993. Thus, the applicants cannot make any grievance for seniority over them. According to the respondents, the contentions raised by the applicant are not maintainable in law since this very grievance of the applicant was decided by the Tribunal vide order dated 26/2/2001. As per the directions of this Tribunal, the Competent Authority examined the representations of the applicants and after applying their mind on the seniority rules on the subject, decided the representation.

6. The respondents state that the avenue of channel of promotion was revised in the year 1998 for the post of Goods Guards by making it a General Selection in terms of correction slip advised vide GM(E) letter dated 6/8/1998. As the selection in the instant case was held in the year 1996, it was not to be treated as a General Selection. Since the Railway Board's decision will have only prospective effect, and therefore the assignment of seniority was done on the basis of date of entry in the lower grade i.e. Feeder grade.

7. The private respondents 3 to 6 have also filed their reply. They have raised the preliminary plea that the new OA has

been filed after the rejection of the representation vide letter dated 11/6/2001. It is not maintainable because all the employees except four are not made party respondents. The application suffers from non-joinder of necessary parties and therefore is liable to be dismissed on this ground alone.

8. The private respondents state that by an order dated 15/3/1999 correct seniority was assigned to the private respondents. They were working as Sr.TNCs in the scale of Rs.1200-2040/- similar to the scale of Senior ACC in which the applicants were working when the notification for selection of Goods Guards was issued. The private respondents were selected on regular basis as Sr.TNC in the scale of Rs.1200-2040/- in 1993 whereas the applicants were promoted only in 1994 to the same scale. The date of entering the payscale of Rs.1200-2040/- in the case of private respondents was wrongly shown as 1995 instead of 1993 and therefore when this was pointed out, the administration corrected the seniority list of 4/3/1998 by order dated 15/3/1999. According to Rule-320 of Indian Railway Establishment Manual Volume-I, when a post is filled by considering staff of different seniority units, the total length of continuous service in the same or equivalent grade held by the employees shall be the determining factor for assigning inter se seniority irrespective of the date of confirmation of the employees. Since the private respondents were holding the post in the grade of Rs.1200-2040/- from 1993 as against the applicant who got the same only from 1994, the private respondents are entitled to be shown senior to applicants as Goods Guards. The private respondents were also selected for the post of Goods Guards and had also undergone the prescribed

training course successfully.. They were also promoted as Goods Guards in the same order dated 12/12/1996.

9. The private respondents have further drawn attention to the grounds (b) and (d) in para 5 of the OA which are contradictory to each other and therefore both the grounds get wiped out.

10. The learned counsel for the applicants has relied on a judgement of this Tribunal in OA-570/2000 decided on 19/2/2001 in a similar matter. In that OA, the post of Console Operator in the office of the Chief Commercial Manager (PM)'s office was the post in question. Considering the Rule 219 (i) and (j) of the IREM, Volume I, the Tribunal held that the post of Console Operator, being an ex cadre post, the clause (i) of Rule 219 would apply and therefore the seniority had to be fixed based on interse merit. The Tribunal did not accept the contention of the respondents that the procedure for ex cadre post had been laid down in clause (j) as the interse seniority even in respect of ex cadre post has to be prepared in terms of directions contained in clause (j). The Tribunal held that candidates appearing for the ex cadre post have been drawn from different categories whether in the same department or from different departments, there can therefore be no question of there being interse seniority in respect of such candidates belonging to different categories as also different departments. It would be impractical to accord seniority to different candidates based on their seniority in their respective cadres and in their respective departments based on the instructions contained in clause (j). Accordingly, the OA was allowed. The learned counsel for the applicants submits that applicants case is fully

covered by the judgement of the Tribunal. The Learned counsel has further drawn our attention to the Supreme Court Judgement in the case of M.Ramjayaram V/s. General Manager, South Central Railway & Ors 1996 (1) SC SLJ 537. In this case though the appellant had secured higher marks in the written and viva voce test, the private respondents were given 15 marks over the appellant in terms of Rule 320 of IREM Volume I because they were senior to him and were drawing higher payscale and therefore the appellant could not get selected. The Hon. Supreme Court ruled that selection is required to be made in terms of Rule 219 (g) on the basis of over all merit. In this case also the contesting respondents were not from the same unit but from different units and it was held that Rule-320 stands excluded. The direction was given to consider the selection of the appellant according to the rules. In short, the ratio is that seniority cannot be given weightage when the selection is to be by merit.

11. We have heard the learned counsel for the applicant as well as the respondents. A plea has been taken by private respondents about non joinder of necessary parties. We find that in the earlier OA No.135/2000 all were made parties and put to notice. In the present OA it is not that no one has been made a party, 4 employees have been made parties. In our considered view therefore this cannot be made a ground for dismissal of OA. The contention of the applicants is that the post of Goods Guard is a general selection post and therefore the seniority in the lower cadres cannot be a criterion when there is a selection by a written test and viva voce and further training. Therefore the seniority has to be based only on merit. The respondents on the

other hand have taken the stand that the post of Goods Guards is not at all a general selection post, and therefore the seniority in the lower cadres or units from which the private respondents as well as the applicants case needs to be considered.

Rule-219(i) and (j) are reproduced below:-

(i) For general posts i.e. those outside the normal channel of promotion for which candidates are called from different categories whether in the same department or from different departments, the selection procedure should be as under:-

(i) All eligible staff irrespective of the department in which they may be working who satisfy the prescribed conditions of eligibility and volunteer for the post should be subjected to a selection which should consist of both written test and viva-voce test; and

(ii) The Selection Board should call for viva-voce test all candidates who secure not less than 60% marks in the written test. The final panel should be drawn up on the basis of marks obtained in the written and viva-voce test in accordance with the procedure for filling selection posts.

(j) The names of selected candidates should be arranged in order of seniority but those securing a total of more than 80% marks will be classed as outstanding and placed in the panel, appropriately in order of their seniority allowing them to supersede not more than 50% of total field of eligibility.

12: It will be seen that the final panel is to be drawn up on the basis of marks obtained in the written test and viva voce test in accordance with the procedure for filling up selection post. When candidates from different units/departments are competing for a post through selection, it would be difficult to assess the interse seniority of such candidates. All are no doubt eligible but when it comes to selection it has to be on the

merit. Otherwise there is no point in holding the written test as well as a viva-voce test and sending a candidate for further training. The post of Goods Guards is not shown as a promotion post for the various cadres such as Sr.TNC/TNC, Sr.ACC/ACC, Sr.TC/TC, Shunting Jamadar and Switchman, etc. As it is not a regular post of promotion and these are not the feeder cadres for promotion to that post, it is to be taken as a general post and being a general post, the seniority in the lower cadres cannot be considered for seniority in the ex cadre post of Goods Guard. In this case the applicants are fully covered by the judgement in OA-570/2000 which has come to be final as it has not been pointed out that the order has been challenged further.

13. We are not persuaded to take a view different than the view expressed in the aforesaid OA No.570/2000. Accordingly, therefore the seniority in the selection post has to be on the basis of merit i.e. marks obtained in the written test and viva voce test and at the end of the training. Accordingly, we quash and set aside the impugned seniority list of Goods Guards dated 18/4/2000 as well as the letter dated 11/6/2001 and direct the respondents to recast the seniority list based on merit obtained in the selection and assign proper seniority to the applicants. This shall be done within a period of three months from the date of receipt of copy of this order. Accordingly, the OA is allowed. No costs.



(K.V.SACHIDANANDAN)
MEMBER(J)



(SMT.SHANTA SHASTRY)
MEMBER(A)

abp

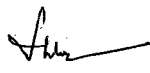
OA 560/2001

Dated:28.2.2005

Applicant by Shri R.G. Walia. Respondents by Shri V.S. Masurkar.

Shri Masurkar states that the matter has been taken by the respondents to the Hon'ble High Court of Bombay in Writ Petition No. 436/2004. The High Court heard the case on 25.6.2004 and ad-interim relief has been given against the order of the Tribunal. Shri Masurkar States that in view of the stay order given by the Hon'ble High Court the C.P. filed by the applicant has become infructuous.

In view of the stay given by the High Court the C.P. ^hHas become infructuous. C.P. is closed. Notice issued are dis-charged. The applicant is at liberty to come before the Tribunal if he gets any relief from the High Court.


(Muzsaffar Husain)
Member (J)


(Anand Kumar Bhatt)
Member(A)

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9/3 2005