

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore-560038.

Dated: 14 OCT 1993

APPLICATION NO(S) 554 of 1990.

APPLICANTS: N. Ulaganathan & s

RESPONDENTS: Secretary, Ministry of
Railways, New Delhi & Others.

TO.

1. Sri. M. RAGHAVENDRA ACHAR,
Advocate, No. 1074 and 1075,
Fourth Cross, Sreenivasanagar
First Stage, Banashankari II Phase,
Bangalore-560 050.
2. The Divisional Personnel Officer,
Bangalore Division, Southern Railway,
Bangalore City.
3. Sri. N. S. Prasad, Advocate,
No. 242, Fifth Main,
Gandhinagar, Bangalore-9.

Subject:- Forwarding of copies of the Order passed by
the Central Administrative Tribunal, Bangalore.

Please find enclosed herewith a copy of the
ORDER/STAY/INTERIM ORDER, passed by this Tribunal in the
above said application(s) on 06-10-1993.

For *N. S. Prasad*
DEPUTY REGISTRAR
JUDICIAL BRANCHES.

14/10/93

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Issued
En

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS DAY THE 6TH OF OCTOBER, 1993

Present: Hon'ble Justice Mr.P.K. Shyamsundar Vice Chairman
Hon'ble Mr.V. Ramakrishnan Member(A)

APPLICATION NO.554/1990

N. Ulaganathan, Major,
S/o S. Narasimhalu,
Passenger Guard,
No.356-E,
M.G. Railway Colony,
Bangalore - 23

Applicant

(Shri M.R. Achar - Advocate)

v.

1. The Secretary,
Ministry of Railways,
Railway Board,
New Delhi
2. Divisional Railway Manager,
Southern Railway,
Bangalore
3. Divisional Personnel Officer,
Bangalore Division,
Southern Railway,
Bangalore
4. Divisional Safety Officer,
Southern Railway,
Bangalore
5. D. Bageswara
6. K. Janardhana Mudali
Thangamurthy
7. Venkateswara Rao
8. R. Shivakumar
10. K.P. Joseph



11. Syed Ahmed
12. H. Shankar
13. Gurudas
14. S.K. Rahamathulla
15. C. Govindan
16. D. Gunasheelan
17. B.S. Jayaprakash
18. S. Venkatareddy
19. C. Raghunandanshetty
20. Satyanarayana
21. M.V. Damodaran
22. M. Nanjundiah
23. M.S. Patil
24. D. Aravind
25. Syed Mustafa
26. N. Seshagiri
27. K. Sundaresh Pradhan
28. Abdul Rehman
29. Syed Gaffar Sab
30. R. Jayaraman
31. R. Manoharan
32. A. Rozario

Respondents

(Respondent Nos.5 to 32 are working
as Passenger Guards C/o Station
Superintendent, Bangalore City Rly
Station, Southern Railway, Bangalore)

(Shri N.S. Prasad - Advocate)

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This application has come up today before
this Tribunal for orders. Hon'ble Mr.V. Ramakrishnan
Member(A) made the following:

ORDER

The applicant Shri Ulaganathan who was earlier a Goods Guard was appointed on a regular basis as a Passenger Guard in the scale of Rs.1350-2200 by an order dated 23.9.91 (Annexure A-2) on the basis of a test taken by him in August, 1991. He is aggrieved that he was not appointed as a Passenger Guard on a regular basis in the vacancies arising in the year 1989. It is seen that he appeared in the test for appointment as a Passenger Guard in December, 1989, but could not secure the minimum qualifying marks.

2. The main grounds adduced by Shri M.R. Achar *for the applicant* are:

- 1) The post of Passenger Guard is a non-section post and that it was wrong on the part of the Railways to insist on the applicant to take a test before such appointment. He should, therefore, have been appointed as a Passenger Guard in the vacancy for 1989 without being obliged to take any test.
- 2) In the test taken by him in 1989, he had secured 59.85 % and it is the normal practice in the Railways that anything over .5 is taken to next higher figure. If this had happened, he would have qualified in the test in the year 1989.



19/ 2. We have gone through the records and also the relevant instructions of the Railway Board in this regard. It is seen from Bahri's Railway Board's Orders on Establishment (1987 Vo.1) RBE No.40/87 at page 50 that the post of Passenger Guard was a non-selection post prior to revision of pay structure as recommended by the Central Fourth Pay Commission. This became a selection post consequent on such revision with effect from 1986 and after issue of orders by the Railway Board which were stated to have been received on 5.2.87. As the applicant's grievance relates to the year 1989, the post of Passenger Guard was a selection post at the relevant time. The fact that some others were promoted without undergoing the test is not relevant when ^{promotion in their cases} ~~such selection~~ took place prior to 5.2.87.

3. Shri Achar also relies on paras 5 and 6 of PB Circular No.258/87. This is the gist of the Railway Board's Circular R.B.E.No.20/87 (No.E(NG) I-86-PM 1-11 dated 5.2.87. Para 3(vi) of the circular reads as follows:

"In case where the classification of a lower grade post is changed from selection to non-selection and that of the immediate higher grade post is changed from non-selection to selection, persons who have been promoted to the lower grade on a regular basis after a due process of selection will not be required to undergo a selection again for promotion to the immediate higher grade, which is now classified as selection. However, their suitability for promotion to such immediate higher grade will be adjudged in the same manner through which such higher grade post was being filled before the crucial dates as non-selection post."

4. Shri Achar contends that the applicant's appointment as a Goods Guard was on the basis of

selection and as such, his subsequent promotion to the level of Passenger Guard should be taken to be non-selection. We find from the Railway Board's Circular BRE No.40/87 referred to supra that the post of Goods Guard B in the pre-revised scale of Rs.330-560 was a non-selection post prior to the revision of pay scale consequent on the Fourth Pay Commission's recommendations. This is also supported by the reply statement filed by the Railways. ^{pages} Pages 1 and 2 of the reply statement read as follows:

"The details towards the classification of posts of Guards in the Traffic Deptt. for the purpose of selection and non-selection prior to 1.1.86 are furnished below:

1. Guard 'C' Goods Train in Recruitment Grade/
scale Rs.330-530 Selection
2. Guard 'B' Goods Train in Non-selection
Scale Rs.330-560
3. Guard 'A' Passenger Train Non-selection
in Scale Rs.425-600
4. Guard 'A' Spd. Pass. Non-selection
Train in scale
Rs.425-640

With effect from 1.1.86 as per IV Pay Commission these scales were revised as under:

xx

xx

xx

Consequent to the merger of certain grades as a result of IV Pay Commission, the classification for the purpose of selection and non-selection are revised as follows:



Prior to 1.1.86

After 1.1.86

- 1) Guard 'A' Special Non
in scale Rs.425- selection
640

Passenger Guard in
scale Rs.1350-2200
*Selection (Written Test &
Viva Voce)*

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- | | | |
|-------------------------------------|-------------------------------------|--|
| 2) Guard 'A' in scale
Rs.425-600 | Non
selection | { Selection(Written
test & Viva voce) |
| 3) Guard 'B' in scale
Rs.330-560 | non-
selection | |
| 4) Guard 'C' in scale
Rs.330-530 | Recruitment
Grade/
selection) | { Goods Guard in scale
Rs.1200-2040 - Selection.
(Viva only) |
| | | |

The respondents submit that the applicant was initially appointed as TNC in scale Rs.110-180 w.e.f. 11.12.69, subsequently promoted as Sr.TNC in scale Rs.330-480 w.e.f. 22.9.76 and promoted as Guard 'C' in scale Rs.330-530 w.e.f. 11.9.80 and as Guard 'B' in scale Rs.330-560 w.e.f. 1.1.84 against restructuring. He is presently working as Goods Guard in scale Rs.1200-2040.*

5. The applicant also admits in person that he was in the scale of Rs.330-560. In other words, he was holding the post of Goods Guard B which was a non-selection post prior to revision. As such, the instructions in para 3(vi) is not relevant in his case, as the lower grade post namely Goods Guard B continued to be non-selection both prior to the revision of pay scale and after such revision, and this is not a case where the classification of lower grade post i.e. Goods Guard B has been changed from selection to non-selection.

6. As regards second contention of Shri Achar, the learned Standing Counsel for the Railways disputes the correctness of the statement and says that the marks obtained by the applicant were not 59.85 as stated by the Applicant. In any case, no rules or instructions have been produced by the applicant to support his contention that anything over ^{to him} 50.5 should be increased ~~non~~ next higher figure.

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7. In the light of the position stated above, we see no merit in this application which is accordingly dismissed with no order as to costs.



Sd/-
MEMBER (A)

Sd/-
VICE CHAIRMAN

TRUE COPY
M. S. S.
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

14/10/93