

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO.1036/92

Wednesday this the 11th Day of October, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE SMT. SHANTA SHAstry, MEMBER (A)

1. I.M.Mistry
2. B.P.Patil
3. N.V.Saverkar
4. Radhakisan B.
5. S.L.Patel
6. U.V.Bhagat

Guards working at BCT/CCT
Western Railway
Bombay

.... Applicants

(None)

VS.

1. Union of India
Ministry of Railway
through the General Manager
Western Railway, Churchgate
Bombay-400 032.
2. The General Manager
Western Railway, Churchgate
Bombay-400 032.
3. The Divisional Railway Manager
Bombay Central, Bombay
4. N.C.Garg
5. R.L.Mathur
6. J.G.Shaikh
7. S.N.Tiwari
8. Mohamed Umar
9. T.K.Eppan
10. R.L.Singh
11. L.C.Awasthi
12. V.H.Nachnani

Through Respondent No.2
Guards working at BCT/CCT
Western Railway, Bombay

.... Respondents

(None)

ORDER (ORAL)

Smt. Shanta Shastry, Member (A):-

None is present either in person or through counsel on behalf of both, the applicants as well as the respondents even on second call. The matter pertains to the year 1992. We, therefore, proceed to dispose of the OA on merits with the

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available records in the absence of the parties and their counsel in terms of Rules 15 and 16 of the Central Administrative Tribunal (Procedure) Rules, 1987.

2.....The applicants have filed the present OA challenging the duty list cum seniority list register maintained by the respondents as also the orders promoting/upgrading the respondent Nos.4 to 12 out of turn, completely depriving the right of the applicants for promotion and upgradation.

3. The applicants are at present working as Guards 'A' Special at Churchgate/Mumbai Central. They were duly promoted and upgraded within SC/ST quota of 15% and 7-1/2% respectively available at that time and were given the present grade in which they have been working with effect from 1.1.1984. While restructuring the cadre of Guards, the applicants were shown senior to the respondent Nos. 4 to 12. By order dated 4.6.1986, a list of Guards Grade 'A' Special was prepared after restructuring. This was based on combined seniority of BCT and KTT Divisions. While the respondent Nos.4 to 12 were shown at lower serial numbers, objections had been called against the seniority list and the same has now been published and circulated.

4. It is the case of the applicants that the respondents also printed and published Duty List for Guards at Churchgate. In the said duty cum seniority list the placements of the applicants were given till 18.4.1992. Till then, the applicants were senior to respondent Nos. 4 to 12. Thereafter, however, new duty list register was introduced for the first time during April 1992 changing the over all picture of seniority of Guards. This list was published, without first publishing the seniority

list of Guards. The duty list is against the earlier seniority list of 1987. It is the grievance of the applicants that this change in the seniority has resulted in changing their status and depriving their future upgradation in the higher scale and future retirement benefits by the respondents by their letters dated 13.9.1981, 21.10.1991, 20.12.1991, 7.5.1992 and 18.8.1992. The applicants state that the respondents have been misinterpreting the interim orders of the Tribunal dated 24.4.1987 and 17.11.1987. The operative part of the order of the Tribunal dated 24.4.1987 is as under:-

"It is hereby clarified that if any SC/ST candidate is appointed or promoted in his present cadre on the basis of his overall merit and/or seniority and not on the basis of reservation alone, the respondents are not prevented from promoting him to the higher cadre if he is found otherwise suitable for promotion even if the reservation quota fixed for SC/ST candidates has been already achieved in the higher cadre."

Similarly, the order dated 17.11.1987 reads as follows:

"It appears that the interim order of this Tribunal passed on 24.4.87 is to govern all the promotions and is not restricted to the applicants in the case in which the order has been passed. Hence, an ex-parte interim order is passed restraining the respondents from making promotion of Scheduled Castes and Scheduled Tribe candidates in excess of 15% and 7-1/2% posts respectively."

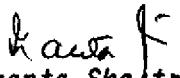
Applicants made representation to the respondents on 21.9.1992 pointing out the error in issuing the seniority of the applicants. There has been no response. The applicants have, therefore, prayed for a direction to the respondents to forthwith withdraw or cancel the duty list register of Guards at present maintained at Churchgate and also promotion orders dated 13.9.1991, 21.10.1991, 20.12.1991, 7.5.1992, 18.8.1992 and

25.2.1993 and to consider the case of the applicants strictly in accordance with the seniority list of 1987 for upgradation in the pay scale of Rs.1400-2600.

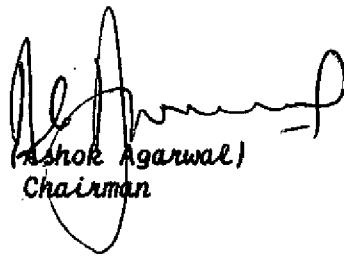
5. In their reply, the respondents have explained that the duty list is maintained by the Station Superintendent, Churchgate is not a seniority list. The seniority list is maintained by the Divisional office for the purpose of promotion etc. No right of the applicants for promotion/upgradation has been deprived as alleged by them. The respondent Nos.4 to 12 have been promoted as Mail Guards i.e. Guards 'A' Special in the grade of Rs.1400-2600 as per their turn in general seniority. The total cadre of Mail Guards is 40 and the requirement of SC and ST works out to 6 and 3 respectively as per 15% for SC and 7-1/2% for the ST employees. Since the SC/ST employees were already in excess of the percentage of the SC & STs working in the cadre, respondents 4 to 12 were promoted as they were general category candidates and senior to the applicants in the initial/base grade seniority of Rs.1200-2040 (RPS) and this was done as per the interim orders of the Tribunal dated 24.4.1987. The applicants were promoted to the scale of Rs.425-640 as per the then existing rules applicable to SC/ST employees according to the roster points. The seniority list claimed to be in force by the applicants published on 12.10.1987 is not a combined seniority list of Mail/Express Guards and Passenger Guards. It was seniority list of Passenger Guards only. A fresh seniority list of Passenger Guards has been published on 25.2.1993. The respondents have reiterated that the duty list has nothing to do with the seniority and the seniority list of Mail Guards was

published on 6.8.1992. It is stated that the seniority list of 1987 is no longer in force. There is no out of turn promotion given to the respondents 4 to 12. It is the contention of the respondents that they have followed the general principles in regard to the seniority and, therefore, the applicants have no case.

6. We have perused the relevant pleadings. As per the general principles of seniority if a candidate belonging to the SC or ST is promoted to a immediate higher post/grade against a reserved vacancy earlier than his senior general/OBC candidate who is promoted later to the said immediate higher post/grade, the general/OBC candidate will reckon his seniority over such earlier promoted candidates of the SC & ST in immediate higher post/grade. (OM order dated 13.1.1987 of the Department of Personnel and Training). In view of this general principle, we cannot find any fault with the action of the respondents in treating the respondents 4 to 12 as senior to the applicants. There is no merit in the case. Accordingly the OA is dismissed. No costs.


(Shanta Shastry)
Member (A)

sns


(Ashok Agarwal)
Chairman

SB/5/oe

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