

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Dated of order: 17.10.2003

OA No.623/92 JPR (OA No.912/89)

Anupam Mandal s/o Shri A.K.Mandal r/o Q.No.781-A, Railway  
New Colony, Kota Junction, Rajasthan.

.. Applicant

Versus

1. Union of India through the General Manager,  
Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager, Western Railway,  
Kota.
3. Senior Divisional Operating Superintendent  
(Estt.), Western Railway, Kota.

.. Respondents

Mr.Vinod Goyal, counsel for the applicant.

Mr. Anupam Mandal, counsel for the respondents.

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)

HON'BLE MR. A.K.BHANDARI, MEMBER (ADMINISTRATIVE)

O R D E R

PER HON'BLE MR. M.L.CHAUHAN.

The applicant has filed this OA thereby praying  
for the following reliefs:-

- "1. The letter dated 16.1.89 may kindly be directed  
to be revised so as to treat it as if the  
petitioner was permitted to take up the test as  
SC Guard and his candidature may be considered  
against the roster point No.37.
2. That the final panel dated 27.10.89 may be  
directed to be revised so as to include the name  
of the petitioner while considering his  
candidature at roster point No.37 and to assign

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corresponding position in the panel.

3. The respondents may be restrained from reverting the petitioner."

2. Brief facts of the case are that the applicant was initially appointed as Guard Grade-C and he joined as such on 5.10.78. Next post in the hierarchy was that of Assistant Trains Controller. This post was <sup>to be</sup> filled in the ratio of 25% from direct recruit Traffic Apprentices and 75% from ranker quota through selection categoriwise according to distribution as under:-

SM/ASM category	- 30%
MVI/AMVI/Sr.TNC	- 15%
Guards	- 30%

2.1 It is alleged that the applicant being eligible for being promoted as Assistant Trains Controller (ATNL) was directed to discharge duty of higher post of ATNL from January, 1985 and he was also promoted vide order dated 27.6.86 (Ann.A2). It is further alleged that since the post of ATNL was to be filled in from 4 categories viz. 25% from direct recruit Traffic Apprentices and remaining 75% from ranker quota in the manner as stated above, the respondents issued a 52 point model roster which provides the points of reservation categoriwise. Copy of the said model roster has been placed on record as Ann.A3. Further case of the applicant is that as per this model roster point No. 2, 37 and 47 were required to be filled in by promotion from the Guards belonging to SC category. It is further alleged that after issuance of the model roster first promotions were made vide order dated 19.2.77 (Ann.A4) and in all 12 persons were promoted as ATNL. Thereafter vide order 13.2.81 (Ann.A5), four persons were

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promoted. It is further alleged that thereafter vide order dated 9/10.8.84 (Ann.A6) 9 more persons were promoted as ATNL (Ann.A6). In this way in all 25 persons had already been promoted as ATNL. Further case of the applicant is that 15 more posts of ATNL were sought to be filled in by promotion. For that purpose, vide communication dated 23/24.6.88 (Ann.A7) it was notified that a regular selection will be held for preparing the panel for 15 posts. It is further stated that the respondents vide letter dated 15.12.88 (Ann.A8) issued a list of eligible candidates for consideration for the purpose of preparing the panel in which name of the applicant did not figure. Consequently, the applicant made representation dated 27.12.88 (Ann.A9). He was permitted as general candidate in the written examination and he qualified the written test, as can be seen from letter dated 5.9.89 (Ann.A10). The grievance of the applicant in this OA is that prior to issuance of communication dated 23/24.6.88 whereby 15 posts of Section Controller which is also known as ATNL were notified for the purpose of regular selection, 29<sup>u</sup> points of the roster had already been operated upon and 15 more points were to be operated upon. Thus, according to the applicant, as per 52 point roster (Ann.A3) atleast 3 SC Guard were required to be considered for promotion. The respondents have not reserved any post of Guard (SC) vide letter dated 23/24.6.88 (Ann.A7). The applicant ought to have been considered against point No.37 earmarked for Guard (SC). It is on these facts that the applicant has filed the present application thereby praying for the aforesaid reliefs.

3. The respondents in their counter have stated that

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2 persons belonging to SC community from the category of Guard had already been promoted as ATNL, as such posts could not have been reserved for SC from Guard category ~~as~~<sup>as</sup> per 40 point roster on the face of the stay order granted by this Hon'ble Tribunal as the quota of SC candidates in the cadre of ATNL is fulfilled. In the reply it has also been stated that against point No.2, Shri Phool Chand Arya (SC) has been promoted against Guard category.

4. The applicant has filed rejoinder. In the rejoinder it has been stated that atleast 3 candidates were required to be promoted from Guard Grade-C (SC). The applicant has also annexed with the rejoinder, copy of the letter dated 21.6.83 (Ann.A15) whereby 13 vacancies which were assessed for selection to the post of ATNL, 5 vacancies were reserved for Station Master/Assistant Station Master category including one for SC and one of ST category, 5 for Guards (including one ST) and 3 for Yard category (including 1 SC), contends that one Shri B.S.Verma (SC) whose name appeared in the said eligibility list was not promoted against the reservation point earmarked for SC candidate. As such it is denied that the respondents have operated 2 points for Guard Grade-C (SC). It is further contended that Shri B.S.Verma (SC) has been wrongly considered to have been appointed against Guard (SC) category. Thus, there was a backlog of 2 Guards for the post of Guard Grade-C (SC).

5. We have heard the learned counsel for the parties and gone through the material placed on record.

5.1 The main contention of the learned counsel for the applicant is that as against 3 vacancies reserved for

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Guard (SC) only one person has been promoted. The applicant was entitled to be considered for promotion to the post of ATNL against SC Guard quota against point No.37, as such action of the respondents in including the name of the applicant in the eligibility list as a general candidate is illegal. The learned counsel for the applicant further submitted that the applicant is working as ATNL since January, 85 and he was also promoted on ad-hoc basis on 27.6.86 and in case he is reverted at this stage he will suffer irreparable loss and as such he <sup>should</sup> ~~could~~ not be reverted from the post of ATNL.

5.2 We have considered the submissions made by the learned counsel for the applicant and we are not inclined to accept the same. At the outset, it may be mentioned that as per letter dated 4.12.76 (Ann.A3), <sup>40</sup> ~~57~~ point roster was laid down regulating the intake of staff from various categories eligible for selection and promotion to the post of Section Controller which post is also known as ATNL. According to this letter, point No. 2 and 37 were reserved for Guard (SC) whereas point No. 22 was reserved for Guard (ST). This letter in para 4 further clarifies that out of 3 categories meant for promotion to the post of Section Controller/ATNL, cycle of 40 point roster with reservation are as under:-

1. Guards- 30% = 2 SC (Pts.No.2 and 37), 1 ST (Pt.No.22).
2. SMS/ASMs - 30% = 2 SC (Pts.No.10 & 29) 1 ST (Pt.No.5)
3. Yard Staff/AMVI 15% = 1 SC (Pt.No.18) with 1 SC and 1 ST points as spare.

Thus from this para it is clear that only 2 <sup>posts</sup> of SC were reserved for Guards against point No 2 and 37.

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The contention of the learned counsel for the applicant that 3 points were reserved for Guard (SC) is incorrect, as can be seen from para 6 of this letter that spare point No.47 was required to be filled in alternatively between Guards and SMs/ASMs at points 47/48 of the Roster in every alternate cycle in the following manner:-

- |             |                       |
|-------------|-----------------------|
| "Next Cycle | 47) SMs/ASMs.         |
|             | 48) Guards            |
|             | 49) SMs/ASMs          |
|             | 50) Guards            |
|             | 51) Yard Staff/AMVIs. |

and reverted back to the roster as in para 3 above in the third cycle".

Thus practically there were only two posts meant for Guards in the category of SC against point No. 2 and 37. The respondents in their reply have categorically stated that one Shri Phool Chand Arya (SC) was promoted from the category of Guard (SC) against point No. 2. This fact is also clear from the letter dated 13.2.81 (Ann.A5) wherein the name of Shri Phool Chand Arya, Guard appears at Sl.No.4 and who has been promoted as ATNL vide this letter. Thus, point No.2 stands already exhausted. The respondents have specifically also stated in para 2 of their reply that two persons belonging to SC community of Guards had already been promoted as ATNL, as such one more reserved post of SC from Guards category as per 40 point roster cannot be filled in on the face of the stay order granted by this Hon'ble Tribunal as the quota of SC candidates in the cadre of ATNL is fulfilled. Thus, the question which requires our consideration is whether even if according to 40 point roster, the vacancy is required to be filled in from SC Guard category, can further promotion be made from that category in excess of quota

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prescribed for that category with respect to number of posts.

5.3 According to us the matter is no longer res-integra and is squarely covered by decision of the CAT, Calcutta Bench in the case of Dwaraka Nath Das and Ors. vs. Union of India and ors., (1989) 9 ATC 526. In that case total number of sanctioned post in the grade of Chief Clerk were 12 and applying the ratio of 15%, two posts were required to be filled in from reserved quota. The 40 point roster system was fixed on the basis of fixed ratio. The respondents in that case have stated that 4 vacancy points, namely 27,28,29 and 30 are due to be filled up. Out of these, point No.28 is reserved for SC candidates as per 40 point roster. The other 3 points are available to general category candidates. Accordingly, they have called three times the number of eligible candidates of the respective communities to appear in the test. The Hon'ble Tribunal held that by blindly applying the roster point rules in the manner indicated, the respondents are creating a situation by which the employees of the SC community are being given more than double the quota of the number of posts due to them. Instead of two out of 12 posts to be given to the reservation quota, the application of roster point would result in 4 posts to that community in that cadre of Chief Clerk/OS Grade-II. In this connection the Hon'ble Tribunal also relied upon the judgments of the Madhya Pradesh High Court in the case of G.C.Jain vs. Divisional Railway Manager, Jabalpur thereby quoting the following observations:-

"The 40 point roster, which was the medium for the reserved candidates, would also come to an end and came to be applicable provided the limit

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of 15 per cent of 7½ per cent total of 22½ percent of the reserved candidates has been reached. The Railway are not justified in applying 40 point roster as and when vacancies occur in any grade."

The Tribunal agreed with the above conclusion and also applied the decision of the Allahabad High Court in the case of J.C.Malik vs. Union of India. It was held that mechanical application of the roster point system would result in excessive reservation for the SC community denying reasonable opportunities to the members of the other communities.

5.4 In the instant case also, as per Ann.A3 only two posts are meant for the category of Guard (SC). According to the reply filed by the respondents, two posts stand already filled in. Thus, we see no infirmity in the action of the respondents if vide letter dated 23/24.6.88 (Ann.A7) while preparing the panel for 15 posts out of which 6 posts were reserved for Guards including one ST, no reservation was provided for the category of Guard (SC).

5.5 This CA is also liable to be dismissed yet on another ground. As can be seen from letter dated 23/24.6.88 (Ann.A7) 15 posts were notified for the purpose of selection to the post of ATNL, out of which 6 posts were reserved for SM/ASM category (including 1 SC and 1 ST), 6 for Guard category and out of which only one was required to be filled from ST category whereas 5 were meant for general category. The applicant has not challenged this letter. Subsequently vide letter dated 15.12.88 a panel of eligible candidates based on the aforesaid notification was prepared in which name of the

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applicant did not find mention. However, the name of the applicant was subsequently included in the panel as general candidate. He appeared in the written test and qualified the same vide letter dated 5.9.89 and he was asked to appear in the viva-voce test and in the viva-voce test he was not selection as a general candidates and as such could not be promoted to the post of ATNL. Therefore, the applicant cannot be permitted to contend at this stage that he ought to have been considered against the category of Guard (SC) once he has appeared against the general category. Moreover, the post of Guard (SC) was never notified by notification dated 23/24.6.88. In case the applicant was aggrieved that the vacancies have not been properly worked out and one post ought to have been filled in from the category of Guard (SC), he should have challenged the impugned order dated 23/24.6.88 (Ann.A7). This having not done, according to us, the applicant is not entitled for any relief.

5.6 Now let us consider the last submission made by the learned counsel for the applicant that he has been discharging duties of the higher post of ATNL since January, 85 and he was also promoted vide order dated 27.6.86 (Ann.A2), as such he should not be reverted after a lapse of long period. In this regard it is suffice to say that as can be seen from Ann.A2 order dated 27.6.86, 9 persons were promoted/posted as ATNL on ad-hoc basis. There is a note No.4 with this order which is relevant in this case, is as follows:-

" Till such time item No. 6,8, and 9 joined to work in control office in the meantime to meet with the shortage in control office S/Shri A.K.Mandal (SC) Guard Kota Gr. 330-560 (R) and

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Shri S.C.Pandey, HTNC Kota control Gr. 425-640 (R) may be utilised to work in control office, Kota as ATNL in Gr. 420-750 (R) temporarily on ad-hoc basis in stop gap arrangement with immediate effect which will not confer any right for their permanent retention as ATNL."

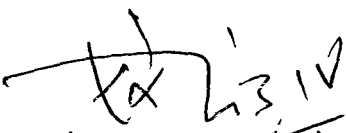
Thus from the portion as quoted above, it is clear that the applicant was never promoted on ad-hoc basis. Services of the applicant alongwith other person were utilised to work in the control office, Kota as ATNL temporarily on ad-hoc basis in stop gap arrangement till person mention at item No. 6,8 and 9 joined to work in control office. Thus, it was a purely stop gap arrangement. When the selection to the post of ATNL was made on regular basis and when the applicant was not selected, he filed this OA and obtained stay order against his reversion vide order dated 27.11.89 which is still operative. Therefore, services of the applicant were utilised in the control office, Kota as stop gap arrangement till regular selection was not made to the post of ATNL and thereafter he continued by virtue of the stay granted by this Tribunal, as such the applicant has no indefeasible right to continue against the higher post of ATNL which according to the respondents is safety operation post relating to movement of trains and being a public utility services of great important and has to be filled in by the qualified persons.

5.7 At this stage it may also be relevant to mention that the respondents have filed MA No.263/03 thereby placing certain facts on record. In this application it has been stated that during the pendency of the OA many developments had taken place. The applicant had appeared

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in the selection held in the year 1989, 1993 and 1995 and has since failed. Thus, he has no right to hold the post of Assistant Trains Controller despite being called and appeared in the said selections. The respondents have also placed on record copy of the attendance sheet of the said selection and final panel prepared thereon vide the order as Ann.MA/1 collectively. It is further submitted that the applicant even failed in the selection held in the year 2001 and by this application they have requested that the interim stay may be vacated. It is further mentioned in this application that this matter was kept pending as the matter was sub-judice before the Hon'ble Apex Court in the case of J.C.Malik. Now the Apex Court has decided the matter thereby confirming the decision rendered by the Allahabad High Court. Thus, in view of what has been stated above, no direction can be given to the respondents not to revert the applicant from the post of ATNL especially when he is not eligible to hold the post as he has not qualified the requisite selection test for the post of ATNL.

6. For the reasons stated above, we see no force in this OA. It is accordingly dismissed with no order as to costs. Interim stay granted on 27.11.89 and continued thereafter shall stands vacated.

  
(A.K.BHANDARI)

Member (A)

  
(M.L. CHAUDHARY)

Member (J)