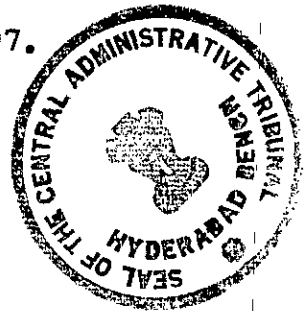


CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH:
AT HYDERABAD.

O.A.Nos. 42 & 802 of 1994.

Date of order : 14th August, 1997.



OA No.42/94.

1. Y. Sreenivasa Rao
2. V. Ravikumar
3. Ch.L.V.Nageswara Rao

All Goods Guards, in the
office of the Chief Yard Master,
South Central Railway,
Vijayawada R/o Vijayawada. ... Applicants

Vrs.

1. The Railway Board represented by
its Secretary (Establishment),
Rail Bhavan, New Delhi-110 001.

South Central Railway,
Rail Nilayam,
Secunderabad.

3. The Divisional Railway Manager,
Personnel Branch,
South Central Railway,
Vijayawada. ... Respondents

Counsel for the Applicants - Mr. V. Venkateswara Rao

Counsel for the Respondents- Mr. V. Bhimanna, CGSC

OA No.802/94.

1. N.H.Subrahmanyam
2. Md. Maqbool Basha,
3. K. David Gabriel

All are Goods Guards,
Vijayawada Division
South Central Railway,
Vijayawada. Applicants

Vrs.

1. The Railway Board, represented by
its Secretary (Establishment),
Rail Bhavan, New Delhi.

2. The Chief Personnel Officer,
South Central Railway,
Secunderabad.

3. The Divisional Railway Manager,
South Central Railway,
Vijayawada.

4. Sri M.M.Basha, Goods Guard,
O/o D.R.M., Vijayawada.

5. Jejappa, Goods Guard,
O/o D.R.M., Vijayawada. ... Respondents

R

Counsel for the Applicants - Mr. T. Lakshminarayana
 Counsel for the Respondents - Mr. V. Bhimanna, CGSC.

CORAM :

HONOURABLE MR. R. RANGARAJAN, MEMBER (ADMN.)
 HONOURABLE MR. B. S. JAI PARAMESHWAR, MEMBER (JUDICIAL)

O R D E R.

(As per Hon. Mr. B. S. Jai Parameshwar, Member (Judicial))

1. Heard Mr. V. Venkateswara Rao, learned counsel for the applicants in O.A. NO. 42/94 and Mr. V. Venkateswara Rao, learned counsel for the applicants in OA No. 802/94 on 28.7.97. The learned counsel for the respondents remained absent. Hence, we decided to pronounce the orders in these OAs, on the basis of the material on record.

2. These two OAs are filed under Section 19 of the Administrative Tribunals Act on 17.1.94 and 6.4.94 respectively. Since the grounds urged in these OAs and the reliefs claimed are identical and similar, both these OAs are clubbed together and are being disposed of by this common order. Both these OAs pertain to restructuring of Group 'C' and 'D' posts in the Transportation Division of South Central Railway.

3. There are three applicants in each of these OAs. As on the date of filing of these OAs, the applicants were working as Goods Guards in the Vijayawada Division. Their next promotion is to the post of Passenger Guard. Passenger Guard is a feeder line of promotion to the post of Mail Guard. As per the recommendations of the Fourth Pay Commission, four grades of Guards were categorised which are as follows:

Name of post.	Scale of pay.
1. Mail Guard ..	Rs.1400-2600/-
2. Passenger Guard ..	Rs.1350-2200/-
3. Goods Guard. ..	Rs.1200-2040/-
4. Asst.Guard ..	Rs. 950-1400/-

Only direct recruitment element is present in the category of Goods Guards.

(a) On 27.1.93 the Railway Administration restructured certain Group C & D categories of posts. The applicants have produced the copy of the Railway Board's letter bearing No.PC.III/91/CRC/1 dated 27.1.93. It is at Annexure-1 to OA 12/91. The said restructuring of categories came into force effective from 1.3.93. Further 20 percent of the posts in the category of Assistant Guards, Goods Guards and Passenger Guards were upgraded. Accordingly vide Office order No. T/56/93 dated 5.4.93, the Vijayawada Division revised the strength of Passenger Guards on account of restructuring. The revised strength of Passenger Guards in the Division was 26. Likewise, vide office order No.T/185/93 dated 15.9.93 the Vijayawada Division revised and upgraded the strength of Goods Guards. The revised strength of Goods Guards in the Division came to 72.

(b) The Vijayawada Division while upgrading the posts, identified the upgraded posts with prefixing the word 'senior'. Thus the upgraded posts in the category of Assistant Guards were identified as Senior Assistant Guards. The upgraded posts in the category of Goods Guards were identified as Senior Goods Guards. The upgraded posts in the Passenger Guards were identified as Senior Passenger Guards. Further the Division took into the 40-point roster system and followed the reservation policy in upgrading the posts.

Dr

(c) The applicants being aggrieved by the method of restructuring and upgrading of the posts of Goods Guards in the Vijayawada Division and apprehending that their chances of promotion would become bleak, have filed these OAs challenging the action of the respondents. Thus they have prayed the following reliefs in the OAs:

- (i) To call for the records pertaining to the office order No.T/240/1993 dated 3.12.1993 issued by the 3rd Respondent ;
- (ii) To quash the same in so far as it related to the grant of scale of pay of Rs.1350-2200/- against the Goods Guards upgradation of persons between 1 to 13 and 54 to 66;
- (iii) To hold that the applicants herein are entitled for grant of scale of pay of Rs.1350-2200/- as per their seniority in the grade of Rs.1200-2040/- as Goods Guards in terms of Railway Board's letter No.PC III/91/SRC/I dated 27.1.1993 w.e.f. 1.3.1993;
- (iv) To declare that excess operation of Reservations against S.C. and S.T. community by application of 40 point Roster in the case of Passenger Guards/Mail Guards as illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India ;

(d) Their main attack is that the Division had not at all maintained the seniority list of Goods Guards; that the seniority list was prepared as early as in 1987; that the seniority list was not maintained; that the seniority list was not maintained; that before upgradation and restructuring, certain persons who were in the category of Goods Guards were already discharging the duties of Passenger Guards on ad hoc basis; that while upgrading the persons who were already working as Passenger Guards on ad hoc basis have been recognised as Senior Passenger Guards; that the office Division/committed an error in locating the upgraded posts by prefixing the word 'senior'; that the respondents

have no authority to make such classification in the category while upgrading the posts; that the respondents adopted the reservation policy and brought in to the upgrading of certain persons who were junior to them and thereby ~~they~~ they have been deprived of their chances of promotion; that the reservation policy adopted by the respondents while upgrading was not called for; that now in view of that, there is excess of reservation; that the reservation under any circumstances cannot exceed 10% for S.T. category for the S.T. category; that now in view of the respondents' adopting the reservation method in the process of upgrading, it has resulted in excess of reservation and that therefore, the actions of the respondents are not called for; that the respondents operated the 40 point roster in upgrading the posts; that the list of Goods Guards prepared by the respondents located the applicants in OA No.42/94 at Sl.nos.39 and 45; that the respondents exercised power mala fide in upgrading the posts and thereby denied them their chances of promotion and that the action of the respondents is unconstitutional, arbitrary and illegal.

4. The respondents have filed their counter in these proceedings that in terms of the Railway Board's orders dated 27.1.93 for restructuring of certain Group 'C' and 'D' posts, 72 posts of Goods Guards in the scale of pay of Rs.1350-2200/- (RSP) were sanctioned to Vijayawada Division; that those 72 posts included 11 posts against S.C.category and 5 posts against S.T. category; that those posts were fitted in the restructured grade vide office order dated 15.9.93; that the applicants can have no grievance against these promotions under the

restructuring; that the applicants were satisfied that they were not eligible for such fitment on account of restructuring; that the Railway Board's letter dated 14.7.93 (Annexure-1 to the reply) 20% of the total posts in a particular category of running cadre were created under the orders of restructuring which were to be in the higher grade prefixing the word 'senior' to the already existing designation; that accordingly in the category of Goods Guards, 66 employees who were working as Goods Guards in the scale of pay of Rs.1200-2040/-(RSP) and as Passenger Guards on ad hoc basis in the scale of pay of Rs.1350-2200/-(RSP) were promoted as Senior Goods Guards in the scale of pay of Rs.1350-2200/- observing the reservation for S.C. and S.T.

that those promotions have nothing to do with the fitments made under the restructuring order; that those promotions to the higher posts were under the Railway Board's order dated 14.7.93 and not under the restructuring of categories order dated 27.1.93; that the 20% of Goods Guards were upgraded on the basis of seniority-cum- suitability; that 20 % of Goods Guards of Vijayawada Division worked out to 72 posts and accordingly 72 posts of Goods Guards in the order of seniority were fitted in against the restructured posts of Goods Guards i.e. in the scale of Rs.1350-2200/-(RSP); that incidentally all these 72 employees were already working as Passenger Guards on ad hoc basis having lien in the category of Goods Guards; that the posts were created by the respondent No.1 not only for the Vijayawada Division but also for all the Indian Railways; that the applicants have no prescriptive right to claim seniority in the category of Passenger and Guards/in view of their ad hoc nature of promotion, they were deemed to be regular incumbents in the posts of

Goods Guards; that 72 persons in the post of Senior Goods Guards continued to work as Passenger Guards on ad hoc basis; that another batch of 72 Goods Guards in the order of seniority were promoted as Senior Goods Guards; that the prospective effect with the fitment of the Goods Guards who were working as Passenger Guards in the scale Senior Goods Guards was occurred and was in order; that Annexure-R.2 indicates the position of the posts after restructuring and reservation; that the contention of the applicants have no basis whatsoever; that the existing instructions in regard to reservation of S.C. and S.T. category was continued in accordance with Para-11 of the restructuring order dated 27.1.93; that, therefore, the concept of reservation was required to be followed while filling up of the upgraded posts; that the existing instructions for promotion of S.C. and S.T. employees were circulated by the Railway Board in their letter No.89E(S&T)I/49/5/(PT) dated 16.6.92 according to which, if there was a short fall of the eligible S.C. and S.T. employees by adopting 15% and 7½ % respectively on the total strength, then the 40-point roster system requires to be followed; that the posts of Senior Goods Guards never existed prior to 1.3.93 and it were newly introduced with effect from 1.3.93; hence the question of S.C. and S.T. employees already available in the cadre does not arise and hence the 40 point roster system was required to be followed; that the allowable number of S.C. and S.T. posts in the newly created posts of

Senior Goods Guards by applying the prescribed percentage worked out to S.C.-11 and S.T.- 5 respectively; that while implementing the restructuring order, the said 11 posts and 5 posts and 56 un-reserved posts were filled up on promotion in compliance with the instructions of the Railway Board; that in view of the foregoing facts, the question of allowing excess reservation while implementing the restructuring order did not arise; that the cadre position of the Passenger Guards as well as Goods Guards are shown in Annexure-R.2; that the seniority list of Mail Guards as well as Passenger Guards has been published on 30.3.90 and 5.7.91; that the seniority list of Goods Guards was published on 23.6.94; that 55 employees working in the cadre of Goods Guards were promoted as Senior Goods Guards in the scale of pay of Rs.1350-2200/- against the higher grade vacancies on ad hoc basis since the seniors were working as Passenger Guards on ad hoc basis; that the post of Passenger Guard is a selection post and that, therefore, there are no merits in these OAs and the OAs be dismissed with costs.

REASONS :-

6. The upgradation and restructuring of Group 'C' and 'D' categories in the Railway Administration were made in pursuance of the Railway Board's letter No.PC.III/91/CRC/1 dated 27.1.93 (RBE No.19/93), which came into force and with reference to the sanctioned strength as on 1.3.93. We feel it appropriate to reproduce ~~the relevant~~ the para(s) ~~of the letter~~ under :

" 4.1. Vacancies existing on 1.3.1993 except direct recruitment quota and those arising on that date from this cadre restructuring including chain/resultant vacancies should be filled in the following sequences :
and current on that date;

(ii) the balance in the manner indicated in para 4 above.

x x x

5. While implementing the restructuring orders, instructions regarding minimum period of service for promotion with Gr.C issued under Board's letter No. E(NG/I/85/PM-1/12(RRC) dated 19.2.1987 and Board's letter No.E(NG)I/75/PM-I/44 dated 26.5.84 will stand modified to the extent that the minimum eligibility period for the first promotion for filling up vacancies covered in para 4.1. would be reduced to one year as a one time exception. Thereafter the normal minimum eligibility condition of two years will apply.

x x x

10. The existing instructions with regard to apply while filling additional vacancies in the higher grades arising as a result of restructuring. "

It is not disputed that basing on the above letter, the respondents have classified and upgraded the posts in Assistant Guards, Goods Guards and Passenger Guards.

7. The Principal Bench of this Tribunal relying upon the Full Bench decision of the Hon'ble High Court of Kerala in the case of M.G. PRABHU VS. CHIEF JUSTICE, KERALA

(reported in 1972(2) SLR 251) and the Allahabad Bench of this Tribunal in V.K.SIROTHIA Vs. UNION OF INDIA (O.A.No.384 of 1986, decided on October 1, 1986) has observed that upgrading or restructuring of posts do not amount to promotion as such. The Hon'ble High Court of Kerala has observed as under :

" ... In other words, if the upgradation relates to all the posts in a category naturally there is no sense in calling it a promotion of all the persons in that category. That is because there is no question of appointment from one post to another. If a higher scale is provided to hold the same posts it is not all the posts in a particular category that are so upgraded, but only a part of it. Normally, the benefit of such upgradation could go to the seniors in the category. They would automatically get a higher scale of pay. That is because though their posts continue in the same category, a higher scale of pay is fixed for those posts. It is appropriate then to say that the seniors have been nominated to the higher grade which has been so created by upgradation. The phenomenon does not differ from the case where all the posts are upgraded, and it appears to us that those who get the higher grade cannot be said to have been 'promoted' because here again there is no question of appointment from one post to another. They continue to hold the same post, but because of seniority in the same post they are given a higher scale of pay."

The Allahabad Bench of this Tribunal has observed as follows :

~~provide relief in terms of posts as done to~~
avenues. No additional posts were created. Some posts out of existing total were placed in higher grade to provide these avenues to the staff who were stagnating. The placement of these posts cannot be termed as creation of additional posts. There were definite number of posts and the total remained the same. The only difference was that some of these were in a higher grade. It was deliberate exercise of redistribution with the primary object of betterment of chance of promotion and removal of stagnation.

Upgradation of cadre by redistribution of posts will lose its primary objective if it is taken on generation of additional posts in the upgraded posts which it rightly is not. There has to be rationality in the implementation of directions and instructions. The criterion has to be formulated keeping the aims and safeguards

R

in view. The keynote thought behind the exercise should not be lost sight of. It is to improve prospects, remove stagnation and provide avenues. The very purpose is defeated if the end result is anything else."

Further the Principal Bench relied on the Full Bench of the Patna High Court in MADAN MOHAN PRASAD Vs. STATE OF BIHAR (reported in AIR 1970 Patna 432). Further, the view of the Patna High Court was upheld by the Hon'ble Supreme Court in the case of STATE OF BIHAR Vs. MADAN MOHAN PRASAD.

- CHANDAN SINGH GUPTA Vs. UNION OF INDIA (reported in (1973)3 SCC 1) the Hon'ble Supreme Court of India dealt with the seniority of the Income Tax Officers and upheld the upgrading of Class I of 100 temporary posts of Income Tax Officers of Class II. The Hon'ble Supreme Court observed that "upgrading of a post involves the transfer of a post from the lower grade to the higher grade and the promotion of one of the incumbents of that post to the upgraded post."

In view of the principles deduced from the cases cited above, we feel that the upgradation and restructuring as such do not involve an element of promotion. Further the 20 % of posts were added in the category of Assistant Guards, Goods Guards and Passenger Guards.

9. The respondents redesignated the upgraded posts as Senior Assistant Guards, Senior Goods Guards and Senior Passenger Guards. The applicants contended that the respondents had no competency to redesignate as such and thus they interpreted the action of the respondents in making such redesignation as creation of posts in the category. In reply, the respondents relied upon the instructions contained in letter dated 14.7.93 (Annexure-R.1 to the reply in O.A.No.42/94). In paras-2, 3 and 4 of the said letter, instructions were given for

redesignation of the posts as Senior Assistant Guards, Senior Goods Guards and Senior Passenger Guards etc. Further the upgraded posts were required to be filled up on the basis of seniority-cum-suitability. It was further clarified that the induction of the upgraded staff in their normal promotional grades in the identical scale of pay would be as per the existing of posts.

10. The further grievance of the applicants is that while filling up the upgraded posts, the respondents followed the 40 point roster formula. It is their contention that such reservation on 40 point roster formula could not have been adopted while filling up the upgraded posts. It is their case that only the seniormost employees in the category should have been redesignated as Senior Guards and filled into the upgraded posts. Thus they contended that by adopting the 40 point roster system, the respondents brought up certain persons belonging to the S.C. and S.T. communities into the upgraded posts and thus deprived them of their chances of promotion. It is now to be seen whether the respondents were justified in following the 40 point roster system in filling up the upgraded posts.

11. As already observed, para-10 of the Railway Board's letter dated 27.1.93 clearly indicates that while filling up the vacancies in the higher grades arising as a result of restructuring, the existing instructions with

Dr

regard to reservation of S.C. and S.T. shall continue to apply.

12. The other grievance of the applicants is that by adopting the 40 point roster system, the reservation has exceeded the limit. The limit of reservation is 15% for S.C. category and 7½ for S.T. category. In the case of RAMACHANDRA Vs. UNION OF INDIA (reported in 1988(4)SLJ (CAT) 485), the ~~judicial bench~~ as soon as the prescribed per centage of 22½ % is reached, the reservation roster should be suspended. No doubt, the applicants have not specifically demonstrated that the fixed 22½ % had exceeded the limit in adopting the roster point while filling up the upgraded and restructured posts.

13. In the case of R.S. BELDAR AND OTHERS Vs. UNION OF INDIA AND OTHERS (reported in 1991(3)SLJ(CAT) page 323) the Allahabad Bench of this Tribunal has observed as follows : (para-7)

" It is immediately noticeable firstly that the authority to make provision for reservation vests in the State. Secondly, the requisite reservation has to be made, in other words the provision of the particular reservation sought for must be "made", it cannot be mere inferential or presumptive. Thirdly, the reservation has to be confined to appointments or posts. Fourthly, reservation has to be made only if, in the opinion of the State, some backward class is not adequately represented in a service."

The Allahabad Bench considered the scope of Article 16(4) of the Constitution of India in observing so.

14. The applicants can contend that the restructuring and upgradation of posts and filling up such posts by adopting the 40 point roster system has deprived them of their chances of promotion.

The respondents while filling up the restructured and upgraded posts, have followed the Railway Board's letter and the instructions contained in the letter dated 14.7.1993. They have also categorically stated how much additional posts were available in the Vijayawada Division on account of restructuring and upgradation of posts. The applicants have given their own version regarding the posts available after restructuring and upgradation. The respondents have to check and verify these facts and figures from the records.

15. The applicants have approached this Tribunal without exhausting the normal channel of redressal. They have submitted a representation to the respondents and explained their claim or grievance if they felt that any injustice has been caused to them on account of upgradation and restructuring of certain posts in Group 'C' and 'D' posts. They should have clearly stated as to how the additional posts were created and whether there was any anomaly in doing so.

16. Without approaching the departmental authorities, they have rushed to this Tribunal. We humbly feel that the applicants have to submit a detailed representation. It is appropriate to give an opportunity to the applicants in these OAs to submit a detailed representation, if they are so advised, explaining their grievances. They should submit such a representation within one month from today. In case such a representation is not received, then the respondents 1 and 2 shall consider the

Or

same and furnish a suitable reply to the applicants.
The respondents 1 and 2 shall dispose of the representation of the applicants within four months from the date of its receipt.

17. With the above directions, the O.As. are disposed of. No order as to costs.

प्रमाणित प्रति
CERTIFIED TO BE TRUE COPY

[Signature]

न्यायालय अधिकारी
COURT OFFICER
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
HYDERABAD BENCH