

CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 03/2011
WITH
MISC. APPLICATION NO. 291/00446/2014

ORDER RESERVED ON: 06.05.2015

DATE OF ORDER: 8.5.2015

CORAM

HON'BLE MR. JUSTICE HARUN-UL-RASHID, JUDICIAL MEMBER
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

1. Man Mohan Usparia S/o Kishan Lal, aged about 49 years, R/o House No. 89, New Lodha Kothi, Rangpur Road No. 3, Dadwara Colony, Kota Junction, Kota, at present employed on the post of Goods Guard in Western Central Railway, Kota Division, Kota.
2. Karim Bux S/o Rhim Bux, aged about 47 years, at present employed on the post of Goods Guard in Western Central Railway, Kota Division, Kota.
3. M.H. Farooq S/o Mohd Idrish, aged about 39 years, at present employed on the post of Goods Guard in Western Central Railway, Kota Division, Kota.

Address for correspondence: House No. 89, New Lodha Kothi, Rangpur Road No. 3, Dadwara Colony, Kota Junction, Kota, Rajasthan.

...Applicants

Mr. Shobhit Tiwari, counsel for applicant.

VERSUS

1. Union of India through General Manager, Western Central Railway, Jabalpur (M.P.).
2. Senior Divisional Operating Manager (Personnel), Western Central Railway, Kota Division, Kota.
3. Divisional Railway Manager, Western Central Railway, Kota Division, Kota, Rajasthan.
4. Ram Prakash B at present employed on the post of Senior Goods Guard, Western Central Railway, Kota Division through Senior Divisional Operating Manager (Personnel), Western Central Railway, Kota Division, Kota (in representative capacity).

...Respondents

Mr. Y.K. Sharma, counsel for respondents.

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3. Further the learned counsel for the applicants submitted that the respondents have issued eligibility list dated 25.10.2010 for promotion to the post of Senior Goods Guard pay scale Rs. 9300-34800 + 4200 for 52 posts. Out of 52 posts, 42 posts have been shown for General Category and 10 posts have been shown for reserved category. The respondents have shown these 10 posts for reserved category without quantifying the figures of Schedule Caste and Schedule Tribe candidate to enable a decision to be arrived at that reservation was required in promotion or not. The respondents have also not given any reasons to show that they have passed such order for compelling reasons, such as, backwardness, and inadequacy of representation of Schedule Caste and Schedule Tribe candidate.

4. He further submitted that as per the decision of the Hon'ble Supreme Court in the case of **M. Nagaraj and Others vs. Union of India and Others** (2007) 1 SCC (L&S) 1013 : 2006 (8) SCC 12, the promotion to the posts by Scheduled Castes and Scheduled Tribes candidates can be given only when exercise is made with regard to inadequate representation of SC/ST category candidates. The Railway Administration has not carried out any such exercise. Therefore, reservation of ten posts for Schedule Caste employees is illegal. Thus, the selection/promotion of the 10 Schedule Caste employees on the post of Senior

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ORDER
(Per Mr. MR. ANIL KUMAR, ADMINISTRATIVE MEMBER)

The applicants have filed the present Original Application praying for the following reliefs: -

"(i). That the impugned order 28-10-2010 Annexure A-1 and impugned order dated 25-10-2010 Annexure A-2 may please be quashed and appointment of Schedule Caste candidates may please be quashed with all consequential benefits. Further the respondents may please be directed to conduct the selection for the post of Senior Goods Guard pay scale Rs. 9300-34800 + 4200 after correcting the cadre strength of senior goods guard and after quantifying the figures of Schedule Caste and Schedule Tribe candidate to enable a decision whether reservation is required in promotion or not and whether adequate representation of Schedule Caste is there or not.

(ii) Any other order/direction may please be passed in favour of applicant who may be deemed fit just and proper under facts and circumstances of the case.

(iii) The cost of original application may please be awarded."

2. The brief facts of the case, as stated by the learned counsel for the applicants, are that the cadre strength of Goods Guard and Senior Goods Guard is 453. The posts of Senior Goods Guard and Goods Guard are divided in the ratio of 27% and 73%. 27% is fixed for Senior Goods Guard and 73% is fixed for Goods Guard. Thus, according to this ratio, the cadre strength of the Senior Goods Guard comes to 122 posts whereas the respondents have shown 110 posts and accordingly they conducted the selection on the basis of 110 posts instead of 122 posts.

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Goods Guard be quashed and set aside. He also drew our attention to the order of this Bench of the Tribunal in the case of **S.N. Bhardwaj & Ors. vs. UOI & Anr.** (OA No. 57/2009 decided on 04th July, 2012).

5. Learned counsel for the applicants also submitted that the respondents have not carried out the cadre restructuring on the basis of so called ban on cadre restructuring. He submitted that the ban on cadre restructuring was not applicable on the running staff and in support of his arguments, he drew our attention to the letter dated 24.05.2012 (Annexure A/16). He referred to the letter dated 04.01.2011 by which certain posts were created / abolished and this was done during the ban period. Similarly, he drew our attention to the letter dated 25.06.2008 wherein again certain posts were created for the running staff during the ban period. Therefore, the learned counsel for the applicants argued that there was no ban on restructuring of running staff posts. Therefore, learned counsel for the applicants submitted that the order dated 28.10.2010 (Annexure A/1) and order dated 25.10.2010 be quashed and set aside and appointment of Scheduled Castes candidates may be quashed and that the applicants may be considered for promotion to the post of Senior Goods Guard.

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6. On the other hand, the respondents have filed their written reply. In their written reply, the respondents have stated that no junior general category candidate to the applicants has been placed on the select list. The applicants could not find place in the panel of Senior Goods Guard on account of being junior on the select list panel issued by letter No. ET/1026/1/ Vol. III dated 25.10.2010 and no junior general category candidate to the applicants is placed on the select list. Therefore, the applicants have no case in the present Original Application.

7. The respondents have submitted that 52 vacancies in the Senior Goods Guard category were assessed, in which 10 posts were reserved for SC category and the remaining 42 posts were for general category candidates. The posts for SC category were reserved on the basis of the requirement of SC candidates which was carried out on the basis of 15% for SC category candidates.

8. They have submitted that the percentage of Senior Goods Guard (27%) and Goods Guard (73%) cadre is worked out on the total number of posts of Goods Guards and Senior Goods Guard posts as per Railway Board letter No. PC-III/2003/CR/6/dated 09.10.2003 (Annexure R/1). In their written reply, the respondents have submitted that at the time of assessment of vacancies for preparing the select list for the post of Senior Goods Guards pay scale Rs.

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9300-34800 + 4200 GP, the strength of Senior Goods Guard and Goods Guard is 110 and 343, respectively.

9. The applicants have filed a rejoinder to the reply filed on behalf of the respondents. They have also filed MA bearing No. 291/00446/2014 praying for taking documents on record.

10. Heard learned counsels for the parties, perused the documents available on record and the case law as referred to by the learned counsels for the applicants.

11. Heard the M.A. No. 291/00446/2014 praying for taking documents on record. Having considered the submissions made on behalf of the parties, the documents annexed along with the M.A. are taken on record. The Misc. Application is disposed of accordingly.

12. One of the grievances of the learned counsel for the applicants is that when the total strength of Goods Guard and Senior Goods Guard is 453 then on the basis of that cadre strength, the number of posts of Senior Goods Guard @ 27% would work out to 122 instead of 110. The respondents could not show us any calculation as to why the respondents have not calculated the vacancies of Senior Goods Guard on the basis of correct determination of the strength of Senior Goods Guard. The respondents in para

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4.5 of their reply have clearly stated that at the time of assessment of vacancies for preparing the select list for the post of Senior Goods Guard pay scale Rs. 9300-34800 + Grade Pay Rs. 4200, the strength of Senior Goods Guard and Goods Guard is 110 and 343, respectively. If these two numbers i.e. 110 (Senior Goods Guard) and 343 (Goods Guard) are added then the total cadre strength would be 453 of Senior Goods Guard and Goods Guard. The respondents have themselves admitted that the percentage of Senior Goods Guard is 27% of the cadre of total number of posts of Goods Guard and Senior Goods Guard as per Railway Board letter dated 09.10.2003 (Annexure R/1). Therefore, if this circular is followed then the total number of posts of Senior Goods Guard should have been 122. Even if the submissions of the learned counsel for the respondents are admitted that there was a ban on the annual cadre review even then according to their own submission at the time of assessment of vacancies for preparing the panel dated 28.10.2010 (Annexure A/1) and 25.10.2010 (Annexure A/2) the determination of posts of Senior Goods Guard would be 122 and not 110 as submitted by the respondents.

13. With regard to the submissions of the learned counsel for the applicants that the Railway Administration should have carried out the exercise as directed by the Hon'ble Supreme Court in the case of **M. Nagaraj and Others vs.**

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Union of India and Others (supra) before making any promotion for reservation to S.C. employees and since they have not carried out such an exercise, therefore, the selection of 10 SC category candidates should be quashed and set aside, we are not convinced with the submissions of the learned counsel for the applicants under the facts and circumstances of the present OA. It is not disputed that 10 candidates of Scheduled Castes category have been selected on the post of Senior Goods Guard but the applicants have not made them party-respondents. Learned counsel for the applicants has made only Shri Ram Prakash 'B' one of the candidates as party-respondent in the representative capacity. In our opinion, ten is not such a larger number that the applicants could not have made all of them as party respondents especially when they are all employees of the Railways and are working with the same Railways as the applicants. Therefore, in our opinion no adverse orders can be passed against the 10 Scheduled Castes selected candidates behind their back without giving them a chance of hearing. According to us, it will be against the principle of natural justice.

14. With regard to the submissions of the learned counsel for the applicants that the Railway Administration should have carried out the cadre review since the cadre of Goods Guard belongs to the running cadre and the ban was not applicable on them, we are not convinced with the

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arguments of the learned counsel for the applicants for the reasons that even if there was no ban on cadre restructuring of the running staff, no positive direction can be issued to the respondent-department to do the cadre restructuring in a particular manner. It is for the respondent-department to carry out the cadre restructuring as and when there is a requirement for such an exercise to be done.

15. We have carefully considered the order passed by this Bench of the Tribunal in the case of **S.N. Bhardwaj & Ors. vs. UOI & Anr.** (supra), as referred to by the learned counsel for the applicant, and we are of the opinion that under the facts and circumstances of the present case, the ratio decided by this Tribunal in the case of **S.N. Bhardwaj & Ors. vs. UOI & Anr.** (supra) would not be applicable in the present O.A.

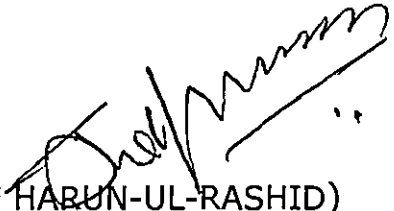
16. Thus, on the basis of the above discussions, we direct the respondents to calculate the vacancies of the Senior Goods Guard on the basis of the cadre strength of 122 of Senior Goods Guards rather than 110 posts of Senior Goods Guard and accordingly revise the list of Senior Goods Guard issued vide order dated 28.10.2010 (Annexure A/1) and order dated 25.10.2010 (Annexure A/2). Those employees who would be promoted to the post of Senior Goods Guard on the basis of this exercise, would be entitled to all

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consequential benefits. The respondents are directed to carry out this exercise within a period of three months from the date of receipt of a copy of this order.

17. With these observations and directions, the Original Application is disposed of with no order as to costs.


(ANIL KUMAR)
ADMINISTRATIVE MEMBER


(JUSTICE HARUN-UL-RASHID)
JUDICIAL MEMBER

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