

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

OA 340/99

DATE OF ORDER: 25-4-83

1. Gyanendra Saini son of Shri Panna Lal Saini.
2. Sushil Kumar Sharma son of Shri Om Prakash
3. Prahlad Kumar Saini son of Shri Gulab Chand
4. Shri Bhagwan Sharma son of Shri Radha Charan Sharma
5. Bansidhar Saini son of Shri Ram Deo
6. Sunil Kumar Jain son of Late Shri H.C. Jain
7. Anil Kumar Verma son of Shri Chagan Lal
8. Purshotam Lakvani son of Late Shri Jetehandand.
9. Ramanujendra Pratap Chauhan son of Late Shri Raghuraj Singh
10. Ramavtar Sharma son of Shri Ramji Lal
11. Shiv Chand Fanda son of Shri Umrao Singh
12. Mohan Lal Khandelwal son of Shri H.N. Khandelwal
13. Ranjeet Singh son of Shri Pras Ram
14. Amarjeet Singh son of Shri Raghunath Singh
15. Mahaveer Singh son of Shri Narain Singh
16. Jai Kishan son of Shri Mangtuu Ram
17. Dinesh Chand Sharma son of Shri Ramji Lal Sharma
18. Bhagwan Dutt Kaushik son of Shri D.R. Kaushik
19. Rajneesh Kumar son of Shri Phool Chand Sharma
20. Mannu Ram Meena son of Shri Birja Ram Meena
21. Hari Ram son of Shri Beerbal
22. Vinay Singh son of Shri Rangi Lal

.... Applicants

VERSUS

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai
2. Divisional Railway Manager, Western Railway, Jaipur Division, Jaipur.

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3. The Sr. Divisional Traffic Manager(Establishment),
Western Railway, Jaipur Division, Jaipur.

4. Shri Manish Kumar

5. Shri Jugal Kishore Joshi

6. Shri G.K. Dadhich

7. Shri Shanker Kumar Gaud

8. Shri Laxman Meena

9. Shri Rajiv Gupta

..... Respondents

Mr. P.N. Calla, Counsel for the applicants.

Mr. T.P. Shamna, Counsel for the respondents nos. 1 to 3.

Mr. Sunil Sandaria, Counsel for the respondents nos. 4 to 8.

Mr. Shiv Kumar, Counsel for the respondent no. 9.

CORAM:

Hon'ble Mr. H.G. Gupta, Member (Administrative)

Hon'ble Mr. M.L. Chauhan, Member (Judicial)

ORDER (ORAL)

The applicants initially entered in Railway Service as Train Clerk (TNC)/Commercial Clerk in the pay scale of Rs. 950-1500. The post in the higher grade was that of Goods Guard in the pay scale of Rs. 1200-2040/- . The method of recruitment to this post was by way of direct recruitment as well as by promotion from TNC/ Commercial Clerk. The applicants belong to Ranks quota whereas private respondents nos. 4 to 9 were appointed as Goods Guard by way of direct ~~exam~~ recruitment. It is admitted case of the parties that the applicants were promoted as Goods Guard pursuant to the panel prepared in the month of February, 1989 and they were sent for training at Udaipur which commenced from 17.2.1989. After completion of successful completion of training, they were declared passed and were promoted as Goods Guard vide order dated 17.5.1989.



(Annexure A/2) and were posted against the working post ~~at~~ Phulera vide order dated 8.6.1989 (Annexure A/3). The private respondents nos. 4 to 8 were appointed as Goods Guard against eleven vacancies sanctioned for Jaipur Region by the Railway Headquarter after qualifying entrance examination, result of which was declared vide letter No. RRE/1/87-88 dated 5.10.88 (Annexure R(4-8)/2. However such appointments were made after undergoing training at Udaipur and after completion of successful training, they were declared successful which result was declared on 17.12.88. The respondents were shown to have qualified against the post meant for Jaipur Division. They were, however, appointed as Goods Guard on 2.2.1989. Initially out of eleven candidates appointed against the vacancies of Goods Guard meant for Jaipur Division, five candidates were allotted to Kota Division and rest six were allotted Ajmer Division. However, subsequently vide letter dated 2.2.1989, respondents nos. 4 to 8 were posted at Jaipur Division, copy of this order is placed on record at Annexure A/4. As regards private respondent no. 9, it has been stated in the application that he was transferred to Jaipur Division on his own request and he submitted his joining report on 18.5.1989. However, the case of the applicants is that while allowing these private respondents at Jaipur Division, it has been specifically/categorically mentioned in the order dated 2.2.1989 (Annexure A/4) that their posting at Jaipur Division is temporary and they were allowed to work against the vacancies meant for rankers. It was further specified that as soon as rankers are available, their services will be transferred back to the divisions allotted to them. The applicants have further stated that the private respondents could not have been appointed as Goods

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Guard on regular basis at Jaipur Division. Thus according to the applicant in view of the condition laid down in the appointment letter (Annexure A/4), the private respondents are not entitled to the seniority as Goods Guard at Jaipur Division. The applicants have further stated that thereafter the private respondents nos. 4 to 8 were transferred to Kota Division vide orders dated 29.6.89 and 8.6.89 but despite these orders, they were allowed to continue to work at Jaipur Division. The applicants have further stated that on 7.7.97, a provisional seniority list of Goods Guard of Jaipur Bench was issued and objections were invited from the staff within a period of one month. In the said seniority list, the names of private respondents nos. 4 to 9 who according to the applicant belonged to other Divisions were shown at sl. nos. 39) to 43 whereas the name of the applicants finds place just below them. Thus being aggrieved of the placement of private respondents in the seniority list, the applicants represented ~~the~~ Unions^{through} and also submitted a representation on 21.7.97 whereby praying that the names of private respondents shown at sl. nos. 39 to 43 in the provisional seniority list may be deleted and the seniority list may be amended accordingly. Nothing was heard from the respondents. The applicants also served notice of demand of justice dated 24.3.1999, copy of which has been annexed as Annexure A/8. According to the applicants, nothing was heard from the respondents till date. Hence aggrieved by the inaction on the part of the respondents, they have filed the present OA whereby praying of passing appropriate order or direction to the official respondents to delete the name of private respondents nos. 4 to 9 from the provisional seniority list and seniority list (Annexure A/1) be amended accordingly. The grounds of challenge taken by the applicant in this OA are that

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(i) the seniority list providing higher seniority to respondent no. 9 who was transferred from Vadodara Division to Jaipur Division is contrary to the provisions of IREM as according to the applicants, they were appointed against the vacancy of 1992 whereas the respondent no. 9 who was transferred on his own request joined subsequently when the order dated 26.5.1989 came to be issued. (ii) As regards to private respondents nos. 4 to 8, it has been stated that the private respondents belonged to the division other than Jaipur Division. As a matter of fact they were allowed to work against the vacancies meant for rankers i.e. applicants who were at the relevant time undergoing selection/training. It was categorically mentioned in the order dated 2.2.1989 (Annexure A/4) that as soon as rankers are made available, they will be sent back to their Divisions. In this view of the matter, the action of the official respondents providing seniority to the private respondents at Jaipur is absolutely illegal.

2. The official respondents nos. 1 to 3, private respondents nos. 4 to 8 and 9 have contested this application by filing separate reply. By way of preliminary submissions, it has been stated that the applicant has challenged the provisional seniority list dated 7.7.1997 (Annexure A/1). It is not a final seniority list. As such the action of the applicants is premature. The second objection taken by the respondents is that the applicants in the guise of challenging the seniority list dated 7.7.1997 (Annexure A/1) have virtually challenged the seniority list dated 28.7.1992, which had attained finality. The provisional seniority list of 1997 contains additional names of employees whose recruitment have taken place after 1992. The provisional seniority list itself states that the seniority list of 1992 has not been altered and have remained the same as amended from time to time. Challenge of seniority list after seven years suffers from gross delay and laches and hence the present application is liable to be rejected *ad l.*

threshold.) The further objection taken by the respondents is that the applicant has suppressed material facts. The respondents nos. 4 to 8 were selected at Jaipur Division, which were ratified and sanctioned by Headquarter. After having qualified the competitive examination, Jaipur Bench sent respondent nos. 4 to 8 for training at Udaipur. After successful training at Udaipur, Zonal training School sent the names of respondents nos. 4 to 8 to Jaipur Division for appointment. All these facts have been concealed by the applicants which have material bearing on the matter in issue. On merits, it has been stated that the seniority list of 1992 has attained finality. The same have not been challenged and accepted by the applicants. They are now estopped and precluded from challenging the same after gross delay of more than seven years. It is further stated that respondents nos. 4 to 8 came to be appointed as Goods Guard on 2.2.1989 when even selection process for the applicants as Goods Guard has not been initiated whereas the respondent no. 9 was appointed as Goods Guar on 18.5.89 and thereafter he was posted against the working post ~~of~~ Phulera vide order dated 23.5.1989 whereas the applicants were posted against the working post of Phulera vide order dated 8.6.89 after the appointment of respondents nos. 4 to 9 as Goods Guard. As such, seniority of the respondents vis-a-vis applicants were rightly determined in terms of provisions of IISM Para 303.

3. The applicants have not filed the rejoinder. The applicants have filed an application which was registered as MA No: 209/99 whereby submitting that despite receipt of the representation and the notice for demand of Justice (Annexure A/7 and A/8), the final seniority list has not been issued nor the reply to the representation has been given by the official respondents.

5. In compliance of the aforesaid order, an MA No. 529/2002 was filed on behalf of the applicants whereby annexing the copy of the representation dated 8/10.8.1992 filed by one Shri Vinay Singh who is applicant no. 22 in OA which was marked as Annexure MA/10 and it was further averred ~~that~~ in the said MA ~~the other~~ ^{that this} representation was sent to the Personnel department through proper channel. The official respondents as well as private respondents have filed reply to this MA. It has been stated on behalf of the private respondents that even it is assumed that representation dated 8/10.8.1992 was filed against the seniority list issued in the year 1992, the said representation was filed by one of the applicant and the objection filed by one applicant cannot be taken objection taken by all the applicants. It is further submitted in the reply that after submission of the representation dated 8/10.8.1992, the applicant slept over and in case their representation ^{was} not decided, the applicant should have challenged immediately thereafter within the time prescribed under the Administrative Tribunals Act and even no reminder was sent to the official respondents. The official respondents in their reply have categorically stated that representation dated 8/10.8.1992 (Annexure MA/10) was never received by the respondents. If had any representation been submitted by the applicant at the relevant time, then the same could have been mentioned in the representation dated 21.7.1997 (Annexure A/7) which is a representation against the provisional seniority list ~~issued~~ issued vide Annexure A/1. Thus according to the respondents, the plea taken by the applicant cannot be entertained at this stage. The applicant had filed rejoinder to the reply filed by the official respondents whereby in Para 5, it has been stated that representation dated 8/10.8.1992 (Annexure MA/10) was filed by the

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The official respondents are going to make further promotion acting upon the provisional seniority list (Annexure A/1). In these circumstances, the applicants have left with no option except to approach this Hon'ble Tribunal for the redressal of their grievance and under these circumstances, their application may be treated as application within limitation. In other words from the content of this MA, what the applicant wants to convey is that no ~~xx~~ cause of action has arisen as yet against the provisional seniority list and the official respondents are making promotion on the basis of provisional seniority list, the application may kindly be entertained and may not be dismissed as premature.

4. We have heard the learned counsel for the parties and have gone through the material placed on record. The parties were heard at length on 9.7.2002 and the judgement was reserved on the basis of submissions made by the parties. While perusing the material placed on record and submissions made by the learned counsel for the applicant it was found that there was nothing on record to establish that the applicants had represented individually/through Unions against the seniority list published in 1992 though the learned counsel for the applicants had argued that applicants have represented individually/through Unions not only against the provisional seniority list issued on 7.7.1997 but also against the seniority list issued in the year 1992. In order to decide the matter and to do justice, this Tribunal had passed the following order:-

"During the course of arguments, the learned counsel for the applicants submitted that the applicants had represented individually/through Unions against the seniority list published in 1992. Nothing is available on record to establish this submission. For proper adjudication of this case, it may be necessary to have the relevant documents on record. Accordingly, the order dated 9.7.2002 is recalled. Let the applicants file the said document(s) within 3 weeks and the case be listed for final hearing as part heard case on 27.8.2002."

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5.3 In compliance of the aforesaid order, an MA No. 529/2002 was filed on behalf of the applicants whereby annexing the copy of the representation dated 8/10.8.1992 filed by one Shri Vinay Singh who is applicant no. 22 in OA which was marked as Annexure MA/10 and it was further averred ~~that~~ in the said ~~MA~~ ^{the} ~~other~~ ^{This} representation was sent to the Personnel department through proper channel. The official respondents as well as private respondents have filed reply to this MA. It has been stated on behalf of the private respondents that even it is assumed that representation dated 8/10.8.1992 was filed against the seniority list issued in the year 1992, the said representation was filed by one of the applicant and the objection filed by one applicant cannot be taken objection taken by all the applicants. It is further submitted in the reply that after submission of the representation dated 8/10.8.1992, the applicant slept over and in case their representation ~~is~~ ^{was} not decided, the applicant should have challenged immediately thereafter within the time prescribed under the Administrative Tribunals Act and even no reminder was sent to the official respondents. The official respondents in their reply have categorically stated that representation dated 8/10.8.1992 (Annexure MA/10) was never received by the respondents. If Had any representation been submitted by the applicant at the relevant time, then the same could have been mentioned in the representation dated 21.7.1997 (Annexure A/7) which is a representation against the provisional seniority list issued vide Annexure A/1. Thus according to the respondents, the plea taken by the applicant cannot be entertained at this stage. The applicant had filed rejoinder to the reply filed by the official respondents whereby in Para 5, it has been stated that representation dated 8/10.8.1992 (Annexure MA/10) was filed by the

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applicant no. 22 in the office of SS Phulera which was duly received by Smt. Manta Alan and in token thereof Smt. Manta Alan affixed the seal of SS Phulera under her initial on 10.8.1992.

6. The respondents have filed additional reply to this rejoinder. Alongwith this additional reply, the official respondents have annexed two documents Annexure MA/R-1 which is a letter written by Smt. Manta Alan pursuant to the letter dated 1.8.2003 written by Station Superintendent Phulera. Vide letter dated Annexure MA R/1, Smt. Manta Alan had specifically ~~stated~~ requested that she had not received any such ~~any~~ representation dated 8/10.8.1992 from Shri Vinay Singh, applicant no. 22. At relevant time as she was dealing with the work 'Inward/Outward' and endorsement made on document (Annexure MA/10) regarding receipt was not signed by her and was not in her handwriting. Vide Annexure MA/R-2, the Station Superintendent Phulera had intimated that the seniority list issued on 28.7.92 was received in the office on 21.8.92 and the same was ~~not~~ noted by the applicant Shri Vinay Singh on 22.8.92. Before this date, the applicant has not submitted any representation. These facts remained uncontrov erted as the applicant has not filed further counter.

7. We have considered the submissions made by the learned counsel for the parties.

8. The learned counsel for the applicant has argued that respondents nos. 4 to 8 do not belonged to Jaipur Division. They were appointed as Goods Guard vide order dated 2.2.89 while the applicant were under training till regularly promoted Goods Guard of the Jaipur are made available. This fact is also seen from Annexure A/4. They were also relieved and as 2000

they cannot be assigned seniority over and above the applicants. Regarding respondent no. 9, it has been argued that he was transferred to Jaipur Division on ^{out of} turn basis and he joined at Jaipur on 8.5.1989 and thereafter he was posted at Phulera whereas the applicants were appointed ^{against} the post arisen in the year 1988 and as such they are entitled to seniority over respondent No. 9. As regards the representation ^{to} the seniority list issued in the year 1992, his submission is that the representation has not been decided and the seniority list issued in the year 1992 has not become final as such the applicants are within their right to challenge the subsequent seniority list as circulated vide Annexure A/10.

9.4 On the other hand, the learned counsels for the respondents ~~has~~ argued that the seniority list dated 28.7.92 had attained finality and the applicant cannot be permitted to challenge the same at this later stage. They have further argued that no representation against the seniority list was ever filed either by the applicant individually or through Unions and the representation (Annexure MA/10) filed subsequently by one of the applicants, applicant no. 22, is a forged document and no reliance can be made on such document. They have further argued that the private respondents were appointed as Goods Guard against the quota meant for direct recruits and not against the vacancies of the applicants who belonged to Ranker quota and the private respondents were appointed as Goods Guard earlier to the applicants and as such the seniority was rightly assigned to them in terms of Para 303 of IREM.

10.1 We have considered the submissions made by the learned counsel for the parties and we are of the view that the applicants are not entitled to any relief for the reasons stated hereinafter. Admittedly the applicants were appointed as Goods Guard against the Ranker Quota after completion of selection training and they were given offer of appointment vide order dated 4.

17.5.1989 (Annexure A/2) and were posted against the working post at Phulera vide order dated 8.6.1989 (Annexure A/3). It is also not disputed that respondents nos. 4 to 9 were appointed as Goods Guard by way of direct recruitment after qualifying the competitive examination and after successful training, the Zonal Training School sent names of respondents nos. 4 to 8 to Jaipur Division for appointment. After successful completion of training, they were allotted Kota/Ajmer Divisions but subsequently vide order dated 2.2.89 (Annexure A/4), they were posted at Jaipur Division. The respondents nos. 4 to 8 have placed on record Annexure R(4-8)/1 in order to establish that eleven vacancies were invited for Jaipur Division which were ratified as sanctioned by Head Office. The respondents nos. 4 to 8 also qualified the competitive examination vide Annexure R(4-8)/2 which shows ^{their names against the} ~~other~~ vacancies meant for Jaipur Division. Annexure R(4-8)/4 is a copy of the result declared by Zonal Training School in which against the names of respondents nos 4 to 8, Jaipur Division has been shown and they were asked to report at Jaipur Division for appointment. From these Annexures, it is quite evident that the respondents nos. 4 to 8 were appointed against the vacancies of direct recruitment meant for Jaipur Division and they were not adjusted against the Rikher quota meant for the applicants. From the facts as stated above, it is quite evident that respondents nos. 4 to 8 have joined as Goods Guard on 2.2.1989 much before when the applicants were sent for training. As such the contention of the learned counsel for the applicant that the applicants are senior to respondents nos. 4 to 8 cannot be accepted. Similarly, respondent no. 9 was appointed as Goods Guard on 8.10.87. He sought his transfer to Jaipur where he joined on 13.5.1989 and thereafter he was posted at Phulera. Thus respondent no. 9 joined the Goods Guard on 13.5.1989 whereas the applicants were posted against the working post of Goods Guard vide order dated 8.6.1989 as pleaded by them. That apart as per material placed on record,

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seniority list of Goods Guard were circulated on 28.7.1992. The names of respondents nos. 4 to 9 were shown over & above the applicants. It is not the case of the applicants that the said seniority list was never circulated or any objection were not invited from the concerned officials. Their grievance in the present OA as can be seen from Para 4.VII 'A' is regarding the seniority list dated 7-7-1997 (Annexure A/1) against which the objections were filed. One of the copy of such representation has been annexed as Annexure A/7. The case of the applicants as can be seen from Para 4.VIII is that nothing was heard from the Railway authorities regarding

Annexure A/7, they issued notice of demand of justice vide order dated 24.3.1999 (Annexure A/8). It will be useful to reproduce Para 4.VII and Para 4.VII 'A' of OA in order to appreciate the grievances raised by the applicants in this OA, which reads as under:-

"4.VII That the official respondents on 7.7.1997 issued a seniority list of Goods Guards in the pay scale of Rs. 1200-2040. In the said seniority list, private respondents have been shown from sl. no. 39 to 43 whereas the names of the applicants find place just below them. A copy of the said seniority list dated 7.7.1997 is filed herewith and marked as Annexure A/1."

4.VII 'A' That the aforesaid seniority list is provisional and while issuing the same objections were invited from the aggrieved employees, the applicants submitted their separate representations on dated 21.7.1997. One of such representation is filed by Shri Vinay Singh is filed and marked as Annexure A/7."

Thus from the portion as quoted above, it is quite evident that the applicants have grievance regarding proposed seniority list dated 7.7.1997 (Annexure A/1) and they have not agitated the matter regarding the seniority list as issued vide letter dated 28.7.1992. The applicants have for the first time placed Annexure MA/10 on record when the matter was argued, judgement reserved and the same was released. The learned counsel for the applicant has argued that the representation was also filed against the seniority list of 1992 individually and through Unions, the receipt of the so called representation dated 8/10.8.1992 (Annexure MA/10) has been

categorically denied by the respondents. It has been argued that this document is a false documents as can be gathered from the letter dated 1.3.2003 written by Clerk, Smt. Manta Alan, whereby she had specifically stated that at the relevant time, she was not doing the work 'Inward/Outward' and neither Annexure MA/10 was ~~not~~ received by her nor she had put in her signature on that letter and the same has been signed by some other person. Be that ^{as} it may, the respondents have placed substantial material on record in order to establish that no objection were filed against the seniority list issued in the year 1992. As can be seen from Annexure A/7, representation filed by one of the applicants, applicant no. 22, dated 21.7.1997 against the provisional seniority list dated 7.7.97, no reference has been made by the applicant regarding having filed any objection against the seniority list of 1992. Had the applicant filed representation which has been annexed now with the MA as Annexure MA/10 dated 8/10.8.1992, he would have certainly mention this fact in his subsequent representation (Annexure A/7). That apart, the official respondents alongwith MA No. 529/2002 have annexed Annexure MA/R-2, a letter written by Station Superintendent Phulera, whereby he has categorically stated that the seniority list as issued on 28.7.1992 was received in the office on 21.8.92 and the same was got noted from the applicant, Shri Vinay Singh, on 22.8.92. When the seniority list was got noted by the applicant no. 22 on 22.8.92, how he could have filed objection on 8.8.92. This is also one of the circumstance which shows that document Annexure MA/10 has been created subsequently by the applicant No. 22. However, as already stated above, the case of the applicant in this OA is against the provisional seniority list as issued on 7.7.97 (Annexure A/1) and they have not made any grievance regarding the seniority list dated 28.7.92. In case the applicants had filed objection against the seniority list dated 28.7.92, which according to them has not become final, they should have pleaded this fact in this OA.

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Thus we are of the firm view that in the garb of challenging the provisional seniority list as issued on 7.7.1997, the applicants in fact wants to challenge the seniority list of 1992 which has become final and thereby unsettling the settled position between them and the respondents nos. 4 to 9 and that too after lapse of more than seven years. For the reason, as stated above, we ~~see~~ see no force in the present OA and the same is dismissed accordingly with no order as to costs.


(M.L. CHAHAN)
MEMBER (J)


(H.O. GUPTA)
MEMBER (A)