

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

OA No. 417/2002.

Jaipur, this the 17th day of November, 2005.

CORAM : Hon'ble Mr. A. K. Agarwal, Vice Chairman.
Hon'ble Mr. M. L. Chauhan, Judicial Member.

1. Prem Chand Verma
S/o Shri Gordhan Lal,
Aged 40 years,
R/o Loco Colony Gangapur City.
Kota.
2. Dinesh Kumar
S/o Shri Ram Narain,
R/o Gangapur City,
Kota.

... Applicants.

By Advocate : S. C. Sethi.

Vs.

1. Union of India through
The General Manager,
Western Railway,
Church Gate
Bombay.
2. Divisional Railway Manager,
Western Railway,
Kota Division,
Kota.
3. Senior Divisional Operating Manager (ESTT)
Western Railway,
Kota Division,
Kota.
4. Magan Lal
Senior Guard,
Kota Division,
Kota.
5. Heera lal,
Senior Guard,
Western Railway, Gangapur City,
Kota Division, Kota.

... Respondents.

By Advocate : Mr. Tej Prakash Sharma for Respondent No.1 to 3.
None is present for private respondents.

: O R D E R :

M. L. Chauhan, Judicial Member.

The applicants have filed this OA thereby praying for the following reliefs :-

- "1. That the seniority list Annexure A/1 and the eligibility list Annexure A/2, to the extent of showing the applicants junior to the Respondent No.4 & 5 may be declared illegal.
2. That the position of the applicants in the seniority list Annexure A/1 and eligibility list Annexure A/2 be ordered to be revised and they be shown senior to the respondent No.4 & 5.
3. That the selection to the post of passenger guard be ordered to be held after correction of the seniority list, assigning the position to the applicants higher than the Respondent No.4 & 5.
4. That any other relief which the Hon'ble Tribunal deem fit may be allowed to the applicants."

2. Briefly stated, the facts of the case, which are relevant for the purpose of deciding the matter, are that the applicants who initially joined as Rankers with the respondent department were granted promotion to the post of Goods Guard in the scale of Rs.1200-2040 after qualifying the selection test vide letter dated 29.5.1991 (Annexure A/6). The case of the applicants is that Respondent No.4 & 5 were not even eligible for promotion to the post of Goods Guard, hence they were neither called for in the selection held in the year 1990, nor they were promoted to the post of Goods Guard along with

the applicants. It is further stated that during the year 1993-94, subsequent selection were held in which respondents No.4 and 5 were allowed to take chance and they were declared successful and thereafter they were promoted to the post of Goods Guard on 26.5.1994 and 31.5.1993 respectively. It is further stated that by virtue of the seniority as Goods Guard, the applicants were further promoted to the post of Senior Goods Guards vide order dated 27.1.1999 (Annexure A/7). The Respondent No.4 & 5 were not promoted as Senior Goods Guard along with the applicants or prior to them. It is further stated that because of the fact that applicants were promoted to the post of Goods guard and Senior Goods Guard earlier than Respondent No.4 & 5, they were senior to private respondents on the basis of earlier selection and promotion as per rules. Accordingly, the seniority list of Senior Goods Guard was circulated vide DRM, Kota, letter dated 9.4.1999 (Annexure A/8) in which the applicants were shown at Sl. No.60 & 61 respectively. It is further stated that in this seniority list, the name of Respondent No.4 & 5 were not included because they were not promoted as Senior Goods Guard up to the time this seniority list was circulated. However, Respondent No.4 & 5 were promoted to the post of Senior Goods Guard on 11.6.2000 and 30.9.1999 respectively i.e. much after the applicants. Thus, they were junior to the applicants.

1a

3. The grievance of the applicants is that the Senior Divisional Operative Manager, Kota, issued further seniority list of Senior Goods Guard dated 26-27/6/01 in which the applicants were shown junior to Respondent No.4 & 5. It is case of the applicants that they submitted representation on 9.7.2001 which was ignored by the Respondent and thereafter issued the eligibility list for promotion to the post of Passenger Guard vide order dated 23.10.2001 (Annexure A/2), in which the name of the private respondents were shown senior to the applicants. It is this order as well as the seniority list dated 26-27/6/2001 which is under challenge in this OA.

4. Notice of this application was given to the respondents. Respondents have filed reply. In the reply, the fact as stated above, has not been disputed. It is, however, stated that private respondent were promoted as Goods Guard retrospectively. The reason for promoting Respondent No.4 & 5 as Goods Guard vide order dated 23.2.93 and interpolation of their names in the Select List notified vide order dated 27.12.90 is that the Headquarter issued a clarification dated 19.3.1991 thereby stating that the ad hoc promotees as Sr. ACC/Sr.ALC/Sr.AGC in the pay scale of Rs.1200-2040 will be eligible for the post of Goods guard in the pay scale of Rs.1200-2040. Accordingly, in terms of the aforesaid clarification, a suitability test was ordered to be conducted in continuation of office notification dated

17.8.89 and 1.8.90. Since the private respondents have applied for the post of Goods Guard pursuant to the selection held in the year 1990 but their name could not be considered, as already stated above, as they were already working in the grade of Rs.1200-2040, accordingly, their names were considered in the light of the aforesaid clarification by the Headquarter and Respondent No.4 & 5 were called for selection test held on 31.8.91 and 16.1.93, the result of which was declared on 23.2.93. Thus, their names were interpolated in the select list notified on 27.12.90. So far as the inclusion of the names of Respondent No.4 & 5 in the impugned seniority list dated 26/27-6.2001 at Sl. No. 67 & 68 is concerned, the stand taken by the respondents is that as per select list the name of Respondent No.4 was at Sl. No.38 of the select list whereas the name of the applicants were at Sl. No.40 and 41 of the select list dated 13.1.99. It is further stated that the name of Respondent No.5 was subsequently interpolated in the select list dated 13.1.99 at Sl. No. 38 A vide letter dated 23.1.99. Therefore, the respondent No.4 & 5 were senior to the applicants. The fact that the applicants were promoted on the post of Senior Goods guard in the scale of Rs.5000-8000 vide order dated 27.1.99 has not been denied. The respondents have also admitted that both Respondent No.4 & 5 could not be promoted vide order dated 27.1.99 along with the other persons as the punishment of withholding of increment was imposed

against Respondent No.4 & 5 and they were promoted as Senior Goods Guard in the scale of Rs.5000-8000 only after the expiry of the said punishment.

5. We have heard the Learned Counsel for the parties and gone through the material placed on record.

6. It is not in dispute that the applicants were promoted as Goods guard in the scale of Rs.1200-2040 pursuant to the selection held vide circular dated 1.8.90 vide which the applications from the eligible persons for suitability test were notified and the result of which was declared vide letter dated 27.12.90. It is also not in dispute that pursuant to the said selection, the applicants along with 29 persons were promoted vide order dated 29.5.1991. Admittedly, the name of Respondent No.4 & 5 is not included in the said promotion order. It is pursuant to the order dated 23.2.93 that the name of Respondent No.4 & 5 along with three other persons were incorporated in the Select List dated 27.12.90 without there any intimation to the persons who were selected vide notification dated 29.5.1991. Respondents have failed to placed on record any material to suggest that persons including the applicants who were affected by the order vide which Respondent No.4 & 5 were promoted on the post of Goods Guard in the scale of Rs.1200-2040 pursuant to the notification dated 23.2.93 were apprised about their inclusion in the select list dated 27.12.1990

pursuant to the written test held subsequently. Thus, there is substance in the submission made, by the applicants that Respondent No. 4 & 5 who have undergone written test subsequently to the post of Goods Guard and were given promotion after a lapse of about two years when the applicants were promoted on the post of Goods Guard cannot be held to be senior to them. Even if for argument sake, this aspect of the matter is ignored and even if it is held that name of the respondent No.4 & 5 were rightly incorporated in the Select list of Goods Guard notified vide letter dated 27.12.90 pursuant to order dated 23.02.93, the applicants are entitled for relief yet on another ground. Admittedly, the selection for the promotion to the post of Senior Goods Guard in the scale of Rs.5000-8000/- was held in the year 1999 and as many as 38 persons were promoted vide order dated 27.1.99 and the place where they were to be posted has also been indicated. The name of the applicants find mention at Sl. No.36 & 37. However, the names of Respondent No.5 does not find mention in the said promotion order and in respect of Respondent No.4, it has been categorically stated that he is not promoted to the post of Goods Guard in the scale of Rs.5000-8000 because of the penalty of stoppage of increment is operative in his case. Thus, admittedly the applicants were promoted as Senior Goods Guard in the grade of Rs.5000-8000 much earlier to Respondent No.4 & 5 who were promoted in the grade of Senior Goods Guard after a considerable lapse of

time i.e. Respondent No.4 on 11.6.2000 whereas Respondent No.5 on 30.9.99. It is also admitted fact that the name of Respondent No.4 & 5 does not find mention in the seniority list of the Senior Goods Guard as circulated on 9.4.99 (Annexure A/8). However, the name of Respondent NO.4 & 5 were, for the first time, incorporated in the seniority list dated 26/27-6-2001 (Annexure A/1) whereby the name of Respondent No.4 & 5 were shown at Sl. No.67 & 68 and the name of the applicants find mention at Sl No. 70 & 71 respectively. The case of the applicants is that the representation against this seniority list was filed but the respondents have denied that they have ^{not} ~~have~~ received any representation against this provisional seniority list. However, this so called provisional seniority list was made basis for further selection to the post of Passenger Guard and the respondents issued eligibility list dated 23.10.2001 (Annexure A/2) in which the name of the applicants was included much below the name of private respondent No. 4 & 5. According to us, such a course was not permissible for the respondents.

7. On the basis of material placed on record, it is clear that Respondent No.4 & 5 were also considered along with other persons for selection to the post of Senior Goods Guard in the scale of Rs.5000-8000 and they were placed at Sl. No.38 and 38 A in the Select list whereas name of applicants find mention at Sl. No.40 & 41 but were not given any appointment order. Vide order dated

27.1.99 as in the case of Magan Lal, Respondent No.4, it has been specifically recorded that he is not eligible for promotion on account of imposition of penalty. Similarly in the case of Respondent No.5 no promotion order was passed in his favour despite his inclusion in the select list. Admittedly, they were promoted as Senior Goods Guard subsequently. In the case of Respondent No.4 such promotion was granted vide order dated 11.6.2000 almost after a lapse of one and a half year whereas Respondent No.5 was also granted promotion after a lapse of about 8 months i.e. on 30.9.1999. Thus, it cannot be said that Respondent No.4 and 5 are senior to the applicants who had joined the post of Senior Goods Guard earlier to Respondent No.4 & 5 who were not promoted due to currency of penalty. As such, the applicants have superseded Respondent No.4 & 5, though their name appears in the select list below Respondent No.4 & 5. The Apex Court in the case of Union of India vs. K. Krishnan, 1992 SCC (L&S) 995, has held that denial of promotion during the currency of penalty is not a second punishment. There is only one punishment visiting the respondents as a result of the conclusion reached in the disciplinary proceedings leading to the withholding of increment, and the denial of promotion during the currency of the penalty is merely a consequential result thereof. It was further observed that "On the other hand, to punish a servant and at the same time to promote him during the currency of punishment may justifiably be

termed as self-contradictory." At this stage, it would be useful to quote Para 29 of the judgment of the Apex Court in the case of Union of India vs. K. V. Jankiraman, 1993 SCC (L&S) 387, which is in the following terms :-

"An employee found guilty of a misconduct cannot be placed on par with the other employees and his case has to be treated differently.' There is, therefore, no discrimination when in the matter of promotion, he is treated differently. The least that is expected of any administration is that it does not reward an employee with promotion retrospectively from a date when for his conduct before that date he is penalised in praesenti. When an employee is held guilty and penalized and is, therefore, not promoted at least till the date on which he is penalized, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct." (emphasis supplied)

8. Thus, viewing the matter from the law as laid down by the Apex Court, we are of the view that Respondent No.4 & 5 who were found guilty of misconduct cannot be placed on higher footing than other employees who though junior were promoted from the early date. Further the inclusion of the name of Respondent No.4 & 5 in the selection panel during the currency of penalty will amount to rewarding an employee who has been held guilty of misconduct in terms of the law laid down by the Apex Court in the case of K. V. Jankiraman (supra). The assigning of seniority to Respondent No.4 & 5 amounts to granting promotion to them from retrospective date when the applicants were promoted, which is not permissible under law as admittedly the Respondent No.4 & 5 could not have been promoted on 29.1.99 when the applicants were

promoted and were undergoing the penalty. Placing the Respondent No.4 & 5 above the applicants who were promoted earlier to them amount to rewarding these private respondents for their conduct before that date they were penalized ~~in~~ praesenti, which action has been deprecated by the Apex Court as can be seen from the portion of judgment rendered by the Apex court in the case of K. V. Jankiraman (supra).

9. For the foregoing reasons, the present application is allowed. The impugned seniority list dated 26/26-6-2001 (Annexure A/1), so far as it shows applicants junior to Respondent No.4 & 5, is hereby quashed and set aside. Respondents are directed to assign the seniority on the basis of their appointment in the cadre of Senior Goods Guard. Further the eligibility list Annexure A/2 made on the basis of impugned seniority list Annexure A/1, so far as it shows the applicants junior to Respondent No.4 & 5, is also hereby quashed and the respondents are further directed to take steps pursuant to the direction given above and make a fresh seniority list within a period of two months from the date of receipt of a copy of this order. No order as to costs.



(M. L. CHAUHAN)
JUDICIAL MEMBER



(A. K. AGARWAL)
VICE CHAIRMAN

P.C./