

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

OA No. 480/2003 with MA No. 435/2003.

Jaipur, this the 2nd day of February, 2006.

CORAM : Hon'ble Mr. M. L. Chauhan, Judicial Member.
Hon'ble Mr. A. K. Bhatt, Administrative Member.

1. Rajesh Gautam
S/o Shri Ram Swaroop Gautam
Aged about 39 years,
R/o 247, Adarsh Colony, Kherali Phatak,
Kota (Rajasthan).
2. Bhagirath Mal
S/o Shri Rudha Ram,
Aged 44 years,
R/o Qtr. No.528-A, New Railway Colony,
Kota Junction (Rajasthan).
3. Ashok Sharma
S/o Shri Ramesh Chand Sharma,
Aged about 20 years,
R/o Qtr. No.T-268/B, near G.R.P. Police Station,
Gangapur City, District Sawai Madhopur (Rajasthan).
4. Rakesh Upadhyaya
S/o Shri Ninua Ram,
Aged 37 years,
R/o Behind 'B' Cabin Bapu Colony,
Kota Junction (Rajasthan).
5. Satyendra Saxena
S/o Shri Mahendra Sahay Saxena,
Aged 35 years,
R/o 767-RE Railway Quarters,
Railway Colony, Gangapur City,
District Mahopur, Rajasthan.

... Applicants.

By Advocate : Mr. P. P. Mathur.

Vs.

1. Union of India
Through General Manager,
Western Central Railway,
Jabalpur (M.P.)
2. Divisional Railway Manager,
West Central Railway,
Kota.

3.. General Manager,
Western Railway,
Church Gate, Mumbai.

... Respondents.

By Advocate : Shri Anupam Agarwal.

: O R D E R (ORAL) :

The applicants, who are five in number, have filed this OA thereby praying for the following reliefs :-

- "a) by issuing an appropriate order or direction in the nature thereof this Hon'ble Tribunal may call for the record of the case, quash and set aside the seniority list dated 16.8.2001 (Annexure A-11) of Goods Guards, published by the respondents and quash and set aside the select list dated 12.12.2001 for promotion to the post of Sr. Goods Guards (Rs.5000-8000).
- b) by issuing an appropriate order or direction in the nature thereof the Hon'ble Tribunal may order for giving appointment to the applicants and give them consequential seniority from the date on which other persons of their batch were so appointed and given benefit of seniority.
- c) by issuing an appropriate order or direction the respondents may be directed that if any posting order made in pursuance to the select list/panel dated 12.12.2001, it may be modified and passed if the need so arise and the applicants may also be included in the select list/panel and accordingly benefit may be granted to them by giving promotion to the post of Sr. Goods Guards.
- d) Costs of and incidental to this Original application may be ordered to be paid to the applicant and
- e) any other appropriate order or direction which this Hon'ble Tribunal thinks just and proper in the facts and circumstances of the present case may be passed in favour of the applicant."

2. The facts of the case are that the Railway Recruitment Board issued an Advertisement No.1/1989 calling application from the eligible candidates for

recruitment to the post of Goods Guard. Pursuant to the said notification/advertisement, applicants submitted their applications and they were called to appear in the written test which was held on 30.01.1989. After successfully passing the written test, the applicants appeared before the Interview Board and vide Panel dated 23.06.1989, the names of the applicants appeared at Sl. No.104, 141, 105, 82 & 112, respectively of the select list Annexure A/1. Accordingly, applicant No.1 was informed vide letter dated 28.06.1989 that his name is recommended by the Railway Recruitment Board to the General Manager, Western Raililway, Churchgate, Mumbai, for appointment to the post of Goods Guard Grade 'C'. Similarly, the communications were also received by other applicants. It is further stated that the Divisional Railway Manager, Ratlam, vide communication dated 27.9.1989 directed Applicant No.1 to undergo training as his name has been recommended for appointment in Ratlam Division. Similar communication was issued to other applicants also. It is further pleaded that before training would begin, the applicants have to pass the medical examination. The grievance of the applicants is that though certain successful persons were directed to undergo training commencing from 9.10.1989 on the basis of "pick and choose" method ignoring the merit position whereas the applicants were not sent for training but on 7.3.1990 they were sent back to Ratlam Division for further instruction, even though the vacancies against

the direct recruitment quota were available in the Ratlam Division in which the rankers were officiating. Ultimately, the applicants were directed to undergo training vide letter dated 6.3.1992 and after completion of six weeks training the applicants were appointed on the post of Goods Guard on 8.7.1992. Vide letter dated 16.8.2001, the respondents notified the Provisional Seniority List in the grade of Goods Guard in which the applicants were shown junior to the persons promoted from ranker quota to the post of Goods Guard after the empanelment of the applicants but before the appointment of the applicants. Vide another order dated 12.12.2001, the respondents prepared select list for promotion on the post of Senior Goods Guard in the scale of Rs.5000-8000. It is this Provisional Seniority List and Select List dated 12.12.2001 which are under challenge in this OA.

3. Notice of this application was given to the respondents. The Respondents in their reply denied the allegation of the applicants that the persons recommended as per Panel List dated 23.6.1989 for the post of Goods Guard were sent for training on the basis of "pick and choose" method. In fact, the respondents have categorically stated that the persons were sent for training as per merit list. It is further stated that in fact, the persons as per merit No.1 to 46 were appointed on Ratlam Division as per availability of vacancies and remaining were returned to Headquarters office for non

availability of vacancies in Ratlam Division in which the names of the applicants were also existing because they are at merit Nos. below 46 i.e. at 104, 141, 105, 82 and 112 respectively. The respondents have further stated that the position regarding existence of vacancies at different zonal headquarter and division thereof are available at Central Recruitment Agency, Mumbai and once it was found that the vacancies are available for remaining persons empanelled vide Panel List dated 23.6.1989, the applicants and other persons were sent for training. Thus, according to the respondents no infirmity can be found in the action of the respondents whereby the applicants were sent for training after the availability of vacancies. The respondents have further stated that the seniority in respect of direct recruitee as well as person promoted from ranker quota has to be determined in the light of provisions contained in Para 302 and 303 of Railway Establishment manual and, as such, the impugned seniority list was prepared strictly in accordance with the aforesaid provision. The respondents have further stated that the present OA is also not maintainable inasmuch as the applicants have not impleaded any person who has been promoted from ranker quota to the post of Goods Guard during the intervening period of preparation of Panel on 23.6.1989 and after the applicants were appointed in July 1992. As such, no relief can be granted to the applicants in the instant case as number of persons who have been promoted from

ranker quota to the post of Goods Guard will be seriously affected and their further promotion to the post of Senior Gods Guard would be jeopardized. Thus, no relief can be granted to the applicants.

4. The respondents have also pleaded that the present application is time barred as the present application is directed against the seniority list dated 16.8.2001 whereas the present OA has been filed after statutory period as prescribed under Section 21 of the Administrative Tribunal Act, 1985 filed on 14.10.2003 that is almost after two years from the date of the issuance of the impugned seniority list dated 16.08.2001.

5. Despite repeated opportunities, the applicants have not filed rejoinder. Therefore, the averments made by the respondents in the reply to the OA remain uncontroverted.

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

7. It is not in dispute that the Panel for the post of Goods Guard was prepared on 23.6.1989 wherein the names of the applicants were also included at Sl. No.104, 141,105, 82 and 112, respectively. It is also not in dispute that 46 persons as per merit list were sent for training which commenced on 9.10.1989. However, the

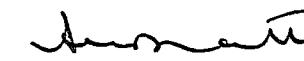
applicants and other persons were not sent for training as according to the respondents in Ratlam Division there were only 46 vacancies and other persons were directed to seek instructions from Assistant Personal Officer Recruitment training, Mumbai as according to the respondents it is the central recruitment agency located at Headquarter Mumbai ~~which~~ works on the basis of feed back received by it from different zonal headquarters and divisions thereof. Once the intimation regarding existence of vacancies were made available, remaining persons were sent for training vide order dated 26.5.1992. Thus, allegation leveled by the applicants that persons from the Select Panel were sent for training by resorting "pick and choose" method remained unsubstantiated and has to be rejected outrightly. Similarly the submissions made by the Learned Counsel for the applicants that the remaining persons were not sent for training purposely when other senior persons were sent for training, in order to, favour the persons from ranker quota who were occupying the vacancy of Goods Guard cannot be accepted at this stage as it was open for the applicants to agitate the matter at the relevant time thereby requesting the respondents to sent them for training and not to promote the persons from ranker quota against the vacancies of direct recruit. Having not done so, the applicants cannot be granted any relief at this state. Moreover, the applicants have not impleaded ^{if} number of persons who were promoted from ranker quota to

the post of Goods Guard after the empanelment of the applicants and before they were appointed to the post of Goods Guard after undergoing training. Even on this ground, the applicants are not entitled to any relief. In case the version of the applicants is accepted at this stage it will unsettle the settled position and the persons who have been promoted from ranker quota would not be eligible for further consideration to the post of Senior Goods Guard. As such, according to us, the applicants are not entitled to any relief.

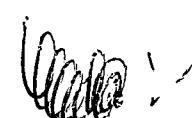
8. At this stage, it will be useful to notice the decision of the Apex Court in the case of Food Corpn. Of India and Others vs. Bhanu Lodh and Others, 2005 (2) SLJ 126, whereby the Apex court has held that Government is not obliged to fill up all the notified vacancies unless there is some provision to the contrary in the concerned rules. It was further held that where a decision not to fill up the vacancies has been taken in bonafide manner and vacancies are proposed to be filled up on the basis of merit prepared, the action of the government cannot be faulted. The ratio as laid down by the Apex Court in the aforesaid case is squarely applicable in the facts and circumstances of this case. In the instant case, 46 persons were sent for training on the basis of merit prepared by the Selection Board against clear cut vacancies falling under Ratlam Division. The respondents have given the reasons why the applicants and other persons

who were empanelled by the Recruitment Board could not be sent for training as according to them there were no clear cut vacancies available and the matter was referred to the Headquarter Office and it was only after the existence of the vacancies that the persons were sent for training. Thus, the action of the Railway Board for not sending the applicants for training along with 46 persons cannot be said to be arbitrary. Further all this happen in the year 1989 and in case the applicants were aggrieved when their names were not sent for training along with other persons on 9.10.1989 and they were sent for training after a lapse of 3 years in order to give undue benefit to the ranker quota, it was permissible for the applicants to approach the appropriate forum at the relevant time. Having not done so, the applicants are precluded from raising this contention at this stage especially when the respondents are going to make further promotion to higher post of Senior Goods Guard. Further we are of the view that the seniority list in the present case has been prepared in accordance with Para 302 and 303 of IREM, as such, the applicants are not entitled to any relief.

9. The OA is bereft of merit. Accordingly the OA as well as MA No.435/2003 filed for condonation of delay is hereby dismissed with no order as to costs.



(A. K. BHATT)
ADMINISTRATIVE MEMBER



(M. L. CHAUHAN)
JUDICIAL MEMBER