

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 480 of 2004

Bilaspur, this the 24<sup>th</sup> day of November, 2004

Hon'ble Mr.M.P.Singh, Vice Chairman  
Hon'ble Mr.A.K. Bhatnagar, Judicial Member

1. Awadhesh Pathak,  
S/o Shri Hridayanand Pathak,  
Date of birth 12.8.1965,  
R/o RB-II 287/B,  
Papa Nagar, Itarsi Yard,  
District Hoshangabad(M.P.)
2. Sourabh Kumar Jain,  
S/o Late Santosh Kumar Jain  
R/o Bajrangpura, Gandhinagar,  
Near School, behind Raj Talkies  
Itarsi, District Hoshangabad(MP)
3. Arvind Kumar,  
S/o late Gendalal Pal,  
Date of birth 17.11.1973,  
R/o Sai Colony, New Yard,  
Itarsi, District Hoshangabad(MP)

APPLICANTS

(By Advocate - Shri S.Paul)

VERSUS

1. Union of India,  
Ministry of Railway  
Through General Manager,  
West Central Railway,  
Indira Market,  
Jabalpur.
2. Divisional Railway Manager,  
West Central Railway,  
Bhopal Division,  
Bhopal

RESPONDENTS

(By Advocate - Shri S.P.Sinha)

O R D E R

By M.P. Singh, Vice Chairman -

By filing this OA, the applicant has sought the following main reliefs :-

" (ii) Set aside the impugned selection initiated pursuant to notification dated 26.3.2004 Annexure-A-2 as it runs contrary to the circular dated 7.8.2003 Annexure-A-1;

(iii) Consequently, command the respondents to conduct a fresh selection for the post of Goods Guard in accordance with the provisions/rules/law."



2. The brief facts of the case are that the applicants are working on the post of Trains Clerks under the respondent no.2 in the pay scale of Rs.4000-6000. According to them they had promotional avenue for consideration for the post of Goods Guard. A notification was issued by the respondent no.2 on 26.3.2004(Annexure-A-2) whereby 60% posts of Goods Guard (departmental quota) <sup>were</sup> was decided to be filled up by way of suitability test/interview. Later on, the applicants came to know that only an interview/viva voce was taken as a suitability test. On 18.5.2004, while declaring the partial result of certain vacancies, certain number of persons were declared selected out of 29 posts. According to the applicants, the respondents are going to issue another select list of remaining 8 candidates. According to the applicants, the post of Goods Guard is a selection post and the selection for the said post is required to be held through written test and as per the letter dated 7.8.2003 (Annexure-A-1) issued by the Railway Board, the selection consists of both written test and viva voce. According to the said circular letter dated 7.8.2003, 15 marks allotted to viva voce in the selection, which consisted of both written test and viva voce test will now be added to written test. Accordingly, the total marks allotted to written test for assessing professional ability of the candidates shall be 50 (both in cases where presently written and viva voce or only viva voce form part of selection to posts in the categories of Teachers, Law Assistants, Physiotherapists and Telephone Operators for which the existing distribution of marks namely, 35 for written test and 15 for viva voce will continue to be in force. They have further stated that the selection for the same post of Goods Guard took place recently in the year 2004 at Jabalpur Division also. However, in the said selection, the department/Jabalpur division conducted a written examination. The respondent no.2, in all fairness ought to have followed the aforesaid order dated 7.8.2003 in letter and spirit. It is further stated by them that by non-compliance of

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the order dated 7.8.2003 the entire selection stood vitiated and is nullity in the eye of law. Apart from this, there are other irregularities in the selection. They have further submitted that they are senior to certain persons who are declared selected by the respondents. The applicants have submitted their representation on 25.5.2004 (Annexure-A-4). The respondents are not paying any heed to the said representation. Hence this OA.

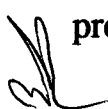
3. The respondents in their reply have stated that the applicants are working as TNC, which is a stationary post and their promotional avenue is Head TNC in the scale of Rs.5000-8000 and Chief TNC in the scale of Rs.5500-9000. The post of Guard is in running cadre and is filled as per letter dated 15.9.1999 (Annexure-R-2). Thus, for TNC there is no promotional avenue for the post of Guard. The posts of Guard being in running cadre are filled from different departmental candidates as per quota fixed by screening and viva voce test on option basis who possessed the prescribed qualifications. In the category of Senior TNC/TNC, the quota prescribed is 15% and there are seven posts out of which 5 posts are for general community; one post for SC, and one post for ST. Accordingly, in general community 10 senior most employees amongst who had given option were called for suitability test. Out of these 10 employees of Sr.TNC/TNC category, five employees were declared suitable by the committee and five posts are lying vacant due to non-availability of suitable candidates in other different categories. In sub-para (a) of Para 214 of IREM it is clearly mentioned that the suitability will be judged on the basis of record of service and or departmental test if necessary. Accordingly, the Chief Personnel Officer, Mumbai CST had declared that suitability will be judged on the basis of viva voce and record of service as per Annexure-R-1. They have further stated that in the Bhopal Division the suitability test i.e. viva voce for filling up the posts of Goods Guard against 60% departmental quota was previously held in the year 2002 for which notification was issued on 22.11.2001 and the zone of consideration was declared vide letter

dated 18.3.2002 (Annexure-R-IV and R-V respectively). In response to the notification dated, 22.11.2001 all applicants of this OA had given their options for Goods Guard against 60% departmental quota and all of them were under the zone of consideration as evidenced from circular dated 18.3.2002 (Annexure-R-V). All the applicants appeared in the viva voce test held on 8.4.2002 and 9.4.2002 but their names did not figure in the select list, being not found fit and/or due to lower seniority. Thus once they have accepted the procedure, now they cannot challenge the same in the subsequent selection. The representation dated 25.5.2004 submitted by the applicants was received in their office and is under consideration and the applicants have rushed to the Tribunal without awaiting for the decision.

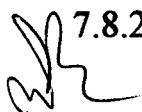
4. Heard both the parties. The learned counsel for the applicant has stated that the post of Goods Guard is a selection post and as per the procedure issued by the Railway Board vide their letter dated 7.8.2003 (Annexure-A-1) the selection posts are required to be filled up by conducting a written test. On the other hand, the learned counsel for the respondents has stated that the post of Goods Guard is a non-selection post. It is the lowest post in the cadre and it is not filled up by promotion but selecting candidates 60% by holding selection from different categories, and the cadre of Ticket Collectors is one of the categories. Since it is not a direct line of promotion to the TNC/ Sr.TNC, the candidates are selected on the basis of suitability/ holding the suitability test, which is normally done based on the assessment of service records and holding of interview. He has also drawn our attention to Annexure-R-1 issued by the Headquarters Office, Central Railway, Mumbai CST whereby it has been clarified that 60% departmental quota for promotion to the post of Goods Guard will now be filled up by taking the screening test and viva voce only. He has also drawn our attention to letter dated 15.9.1999 (Annexure-R-II) wherein it has been stated that there will be a suitability test for all the employees to the extent of twice the number of vacancies will be called for suitability test as per seniority from amongst the

volunteers. He has also stated that the applicants had earlier appeared for the post of Goods Guard on the basis of the circular issued in 2001. At that time also the selection was held by way of viva voce test held on 8.2.2001. The applicants did not object to this procedure followed by the respondents-authorities. At that time they were declared failed. Now also both the divisions have issued circular for making selection to the post of Goods Guard stating that the selection will be made through a suitability test. Now in the present case also the applicants have appeared in the suitability test conducted on 30.4.2004 and in continuation on 11.5.2004. The result of the candidates appeared in the aforesaid selection was declared vide order dated 18.5.2004 (Annexure-A-3). In this order dated 18.5.2004 21 employees were declared suitable for the post of Goods Guard. The applicants have appeared in the said selection and have failed. They cannot challenge the manner of selection after they had participated and declared failed in the test. The candidates who had been selected are required to be sent at zonal training center.

5. We have given careful consideration to the rival contentions. We find that the applicants are working as Trains Clerk (for short 'TNC') and their promotional avenues to the next higher grades are Head TNC and Chief TNC. The post of Goods Guard is not in the direct line of promotion for the persons posted as Goods Guard and it is because of this reason, this post is filled up by way of selection on transfer/absorption basis. It is because of this reason also that persons from different categories in the Railways are made eligible for selection as per their quota fixed for particular category. As per the instructions issued by the Headquarters Office of Central Railway at Mumbai, CST, in the year 2000 (Annexure-R-1), the post of Goods Guard is required to be filled up by conducting a screening test i.e. viva voce only. This letter issued by the General Manager in 2000 has referred to the Railway Board's letters dated 5.6.1998 and 4.2.1998. Although the subject matter of this letter is 'revision of percentage prescribed for promotion to the post of Guard Gr.Rs.4500-7000



selection of candidates against 60% departmental quota', but this letter also prescribe the procedure to be followed for making the selection. The letter issued by the Zonal Headquarters dated 15.9.1999 (Annexure-R-II) makes it further clear that there will be only a suitability test. It does not mention that a written test is to be conducted for the post of Goods Guard. The aforesaid letter dated 15.9.1999, issued in pursuance of Railway Boards letter dated 5.6.1998 and 4.2.1999, states that "there will be a suitability test for all the employees to the extent of twice the number of vacancies will be called for suitability test as per seniority, from amongst the volunteers", which makes ample clear that this post is not filled up by way of promotion but filled up by way of transfer/absorption basis from amongst the candidates belonging to different categories and only those candidates are considered for selection who volunteers themselves. In the case of promotion, the persons who come in the zone of consideration generally have the right to consideration and have to be considered for promotion, irrespective of the fact whether they are willing or not willing for promotion. In the case of promotion individual does not have the option to state that he should not be considered. In fact, while considering the candidates for promotion, all eligible persons who are within the zone of consideration are required to be considered irrespective of the fact whether they are willing to be considered or not. In the case of appointment to the post of Goods Guard, only those volunteers who are willing to be appointed as Goods Guard submits their option. This is normally done in the case when selection is made to fill up the posts by way of deputation or by way of transfer on deputation. The post whether required to be filled up on transfer/ transfer on deputation, the written test is not mandatory and, therefore, the instructions issued by the Railway Board on 7.8.2003 are not applicable in the present case. Those instructions are applicable only to the posts which are filled up by way of selection. The instructions contained in the letter dated 7.8.2003 (Annexure-A-1) specifically states that written test will form



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part of selection held for promotion to the posts classified as 'selection'. The posts which required to be filled up by way of promotion is classified as 'selection' or 'non-selection'. For the posts categorised as 'selection' posts, a written test is required to be held as per the provisions issued vide letter dated 7.8.2003. Since in the present case the post of Goods Guard is not in direct line of promotion for TNC and is not categorised as a selection post or a non-selection post, the instructions contained in letter dated 7.8.2003 are not applicable. The posts of Head TNC and Chief TNC are the posts which are in direct line of promotion for the post of TNC and for selection to these posts only the persons of that particular category are considered.

6. Moreover, apart from the above facts, the applicants had earlier participated in the selection conducted for the post of Goods Guard in 2002 but they have not objected the mode of that selection, even after they have failed in the said selection. Now, in the present selection also they have appeared in the suitability test and have failed. Therefore, they cannot challenge the mode of selection after having participated and failed in the selection. We are fortified in our aforesaid view with the decisions of Hon'ble Supreme Court in the cases of **Om Prakash Vs. Akhilesh Kumar**, AIR 1986 SC 1043 and **Union of India Vs. N. Chandrasekharan**, (1998)3 SCC 694.

7. In the result, for the reasons stated above, this OA is devoid of any merit and is accordingly dismissed, however, without any order as to costs.

  
(A.K. Bhatnagar)  
Judicial Member

  
(M.P. Singh)  
Vice Chairman

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