

CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH,
JABALPUR

Original Applications Nos. 763, 822, 1016 and 1090 of 2004

Indore, this the 18th day of August, 2005.


Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr. Madan Mohan, Judicial Member

(1) Original Application No. 763 of 2004

1. Govind Das, S/o Shri Bhagwandas,
aged about 49 years,
R/o PWD H-2, Defence Colony,
Civil Line, Jabalpur
 2. O.B.C. Railway Employees Association
(A registered Trade Union bearing
Registration No.5560 under Trade
Union Act, 1926)
Through its President, GN Kumar S/o Late Govindan,
aged about 61 years, House No.591,
Dias Compound, South Civil Lines,
Jabalpur
- Applicants

(By Advocate - Shri S.Paul)

VERSUS

1. Union of India through its Secretary,
Ministry of Railways (Railway Board).
Rail Bhawan, New Delhi.
 2. Union of India Ministry of Railways
Through its General Manager
West Central Railway, Jabalpur.
 3. The General Manager
West Central Railway Jabalpur
 4. The Divisional Railway Manager (P)
West Central Railway
Divisional Railway Manager Office
Jabalpur
 5. The Sr. Divisional Personnel Officer
West Central Railway, Jabalpur.
- 

6. The Sr. Divisional Mechanical Engineer
West Central Railway, Jabalpur - Respondents

(By Advocate – Shri M.N. Banerjee)

(2) Original Application No. 822 of 2004

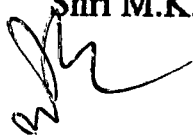
1. Sant Sharan (S.C.) S/o Ram Prasad
Aged about 47 years
R/o East Railway Colony, Bungalow No.106-A,
Railway Station, Bina, District : Sagar.
2. Kamlesh Kumar Shrivastava S/o Raj Kishore
Aged about 50 years,
R/o Railway Qr. No. J. Type-50-D
West Colony, Bina Sagar.
3. Mohar Singh (SC) S/o Halke
Aged about 47 years
R/o Shiwaji Ward, Jhansi Gate, Bina
Distt. Sagar.
4. Bhagwan Singh (SC) S/o Shri Bhujbal
Aged about 52 years
R/o Railway Colony, Qr. No. RB-I-II-D
District-Guna. - Applicants

(By Advocate – Shri S.Paul)

V E R S U S

1. Union of India Through its Secretary,
Ministry of Railways Railway Board.
New Delhi.
2. The General Manager, West Central Railway
Jabalpur
3. The Divisional Railway Manager (P)
West Central Railway, Bhopal
4. The Sr. Divisional Personnel Officer
West Central Railway Bhopal Division, Bhopal
5. The Sr. Divisional Mechanical Engineer
West Central Railway, Bhopal - Respondents

(By Advocate – Shri M.N. Banerjee
Shri M.K. Verma for interveners)



(3) Original Application No. 1016 of 2004

1. Ramesh Kumar, S/o Shri Ram Prasad
Date of birth 5.3.1951
R/o RB-1293 B West Colony,
Bina and 34 others Applicants

(By Advocate – Shri S. Paul)

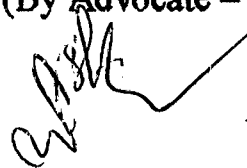
VERSUS

1. Union of India, Through its Secretary,
Ministry of Railways Railway Board
New Delhi.
 2. The General Manager, Jabalpur
 3. The Divisional Railway Manager (P)
West Central Railway Bhopal
 4. The Sr. Divisional Personnel Officer
West Central Railway Bhopal Division, Bhopal
 5. The Sr. Divisional Mechanical Engineer
West Central Railway, Bhopal - Respondents
- (By Advocate – Shri S.P.Sinha)

(4) Original Application No. 1090 of 2004

1. Munna Lal Soni S/o Late Kishan Lal Soni
Date of birth 01.06.1956
R/o MIG-30, Maharishi Nagar Surajganj, Itarsi.
 2. Mahesh Kumar Sen, S/o Late Gulab Chand Sen
Date of birth 15.5.1949
R/o Nyas Colony, LIG 37, Itarsi.
 3. Madan Lal Soni, S/o Late Shri shyamlal Soni
Date of birth 25.5.1955
R/o House of Ramesh Rajput, Near D Cabin, Itarsi.
 4. Mohd. Arif Khan, S/o Late Abdul Ajij
Date of birth 24.8.1966 R/o Tirupati Nagar,
R/o H.No.66, Surajganj Itarsi.
 5. P.C. Shrivastava, S.O. V.K. Shrivastav, aged about
48 years R/o LIT-37, Nyas Colony, Itarsi. -Applicants
- (By Advocate – Shri S.Paul)

VERSUS



1. Union of India, Through its Secretary,
Ministry of Railways Rail Bhawan
New Delhi.
2. The General Manager, West Central Railway
Jabalpur
3. The Divisional Railway Manager (P)
West Central Railway
Divisional Railway Manager Office, Bhopal
4. The Sr. Divisional Personnel Officer
West Central Railway Bhopal Division, Bhopal
5. The Sr. Divisional Mechanical Engineer
West Central Railway, Bhopal - Respondents
(By Advocate – Shri M.N. Banerjee)

COMMON ORDER

By M.P.Singh, Vice Chairman—

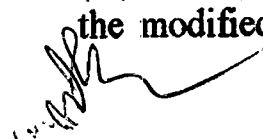
As the issue involved in all the aforementioned four Original Applications is common and the facts involved and grounds raised are identical, for the sake of convenience these OAs are being disposed of by this common order.

2. MA No.1117/04 filed in OA 763/04; MA No.1184/04 filed in OA 822/2004; MA No.1335/2004 filed in OA 1016/2004; and MA dated 5.12.2004 filed in OA 1090/2004, under Rule 4(5)(a) of Central Administrative Tribunal (Procedure) Rules, 1987 for joining together are allowed.

2. By filing the Original Application No. 763 of 2004, the applicants have sought the following main reliefs :-

“7(ii) That upon holding the action of the respondents No.2 in conducting the normal selection as per notification dated 30.7.2004 is bad in law, set aside the selection in pursuance to notification dated 30.7.2004 and impugned order Annexure A-1.

(iii) Consequently command the respondents to conduct the modified selection as per the Railway Boards letter



(Supra) within the stipulated time as deemed fit by this Hon'ble Tribunal

(vii) Set aside the order dated 5.1.2005 Annexure A-9. In alternatively, set aside the clause 4.5. of the letter dated 6.1.2004 Annexure A/4 being ultra vires and unconstitutional."

2.1 By filing the Original Application 822 of 2004, the applicants have sought the following main reliefs :-

"7(ii) That upon holding the action of the respondents No.2 in conducting the normal selection as per notification dated is bad in law, set aside the selection dated 20.9.04 A-I.

(iii) Consequently command the respondents to conduct the modified selection as per the Railway Boards letter (Supra) within the stipulated time as deemed fit by this Hon'ble Tribunal

(vii) Set aside the order dated 5.1.2005 Annexure A-11. In alternatively, set aside the clause 4.5 of the letter dated 6.1.2004 Annexure A/4 being ultra vires and unconstitutional."

2.2 By filing the Original Application 1016 of 2004, the applicants have sought the following main reliefs :-

"7(ii) That upon holding the action of the respondents No.2 in conducting the normal selection as per notification dated 30.9.2003 ^{Annexure-A-5} is bad in law, set aside the selection dated 20.9.04 A-1.

(iii) Consequently command the respondents to conduct the modified selection as per the Railway Boards letter (Supra) within the stipulated time as deemed fit by this Hon'ble Tribunal".

2.3 By filing the Original Application 1090 of 2004, the applicants have sought the following main reliefs :-

"7(ii) That upon holding the action of the respondent No.2 in conducting the normal selection as per notification dated 4.11.2004 Annexure-A-3 is bad in law, set aside the selection, if any, conducted in pursuance to notification dated 4.11.2004 and impugned order Annexure A-3.



(iii) Consequently command the respondents to conduct the modified selection as per the Railway Boards letter (Supra) within the stipulated time as deemed fit by this Hon'ble Tribunal

(vii) Set aside the order dated 9.12.2004 Annexure A-9. In alternatively, set aside the clause 4.5 of the letter dated 6.1.2004 Annexure A/2 being ultra vires and unconstitutional."

3. The brief facts of OAs 822/2004 and 1016/2004 are that : in OA 822/2004 the applicants were appointed as YKC and thereafter they were promoted as Fireman, Diesel Assistant, Goods Driver and Senior Goods Driver; and in OA 1016/2004 the applicants were working as Sr.Goods Driver. The Divisional Railway Manager, Bhopal had issued a notification dated 3.9.2003, notifying 61 posts (52 Gen. + 5 SC + 4 ST) of Passenger Driver in the scale of Rs.5500-9000. Subsequently vide notification dated 9.1.2004, 16 more posts of Passenger Drivers were further notified. Accordingly, 77 posts (65 Gen.+7 SC+5 ST) of Passenger Drivers were required to be filled up in the pay scale of Rs.5500-9000.

3.1 The brief facts of OA 1090/2004 are that the applicants in this OA were working as Senior Goods Guard. The Divisional Railway Manager, Bhopal had issued a notification dated 19.11.2003, notifying 32 posts^{of} Passenger Guard in the scale of Rs.5500-9000. Subsequently vide notification dated 4.11.2004, 6 more posts of Passenger Guard were further notified. Accordingly, 38 posts (28 Gen.+8 SC+2 ST) of Passenger Guard were required to be filled up in the pay scale of Rs.5000⁵⁵⁰⁰ - 9000.

3.2 The brief facts of OA 763/2004 are that the applicant no.1 in this OA is working as Sr.Goods Guard and applicant no.2 is an association of OBC employees; The Divisional Railway Manager, Jabalpur had issued a notification dated 30.7.2004,



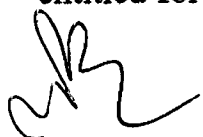
notifying 64 posts (42 Gen.+16 SC+6 ST) of Passenger Guard were required to be filled up in the pay scale of Rs.5500-9000.

4. The applicants in all the aforementioned four OAs have stated that selection was conducted from amongst the candidates whose names were mentioned in the zone of consideration. They have contended that the Railway Board has issued circulars dated 9.10.2003 and 6.1.2004 regarding restructuring of certain Group 'C' and 'D' cadres. The applicants have contended that as per the cadre restructuring scheme, the aforementioned vacancies of the post of Passenger Driver/ Passenger Guards were required to be filled up on the basis of 'modified selection procedure prescribed in the aforementioned Railway Board's circulars. The applicants have contended that in terms of para 4.5 of the Railway Board's circular dated 6.1.2004 "in case where percentage have been reduced in the lower grade and no new posts become available as a result of restructuring, the existing vacancies as on 1.11.2003 should be filled up by normal selection procedure". Since there is no reduction in percentage of selection posts of Passenger Driver/ Passenger Guard, arising out of the implementation of the restructuring, as ordered by the Railway Board, the promotion to the posts of Passenger Driver / Passenger Guard was required to be made as per the provisions contained in para 4 of the Railway Board letter dated 6.1.2004, and para 4.5 of the said letter has no application in the facts and circumstances of the case. Therefore, the selection conducted by the respondents for the posts of Passenger Driver/ Passenger Guard is contrary to the policy of the Railway Board dated 9.10.2003 and 6.1.2004. Hence these Original Applications have been filed by the applicants with the prayers as contained above.



5. The respondents in their replies in OAs 822 & 1016 of 2004 have contended that the selection to the post of Passenger Driver has been made under normal rule of selection as per Railway Board's letter dated 6.1.2004. The applicants took part in the examination and having failed in the same, they cannot challenge the result. The panel of selected candidates for passenger Driver (Rs.5500-9000) was declared on 20.9.2004. The respondents have further submitted that as a result of the restructuring on the basis of Railway Board's letters dated 9.10.2003 and 6.1.2004 the vacancies in Passenger Driver category got reduced from 80% to 73%, therefore, the selection for vacant posts was to be conducted on normal procedure as prescribed in para 4.5 of circular dated 6.1.2004 and not on modified selection basis. Therefore, these Original Applications have no merit and are liable to be dismissed.

5.1 The respondents in their reply in OA 763/2004 have submitted that in the restructuring circular dated 9.10.2003, the percentage of the post of Passenger Guard has been reduced from 80% to 73% and no new posts became available and, in para 4.5 of the circular dated 6.1.2004 it has been clarified by the Railway Board that where percentage has been reduced such selection posts should be filled up by the normal selection procedure and on this basis the notification dated 30.7.2003(sic) has correctly been issued by the respondent no.2. The respondents have further submitted that the correct procedure has been adopted for filling up the vacancies of Passenger Guard. The applicant made a representation dated 11.8.2004 to the Railway Board and without waiting for the result of the said representation, the applicant has filed the present OA. Therefore, the present OA is premature. The applicants are, therefore, not entitled for any relief and this OA is liable to be dismissed.

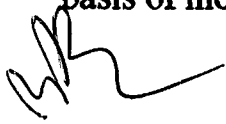


5.2 The respondents in their reply in OA 1090/2004 have submitted that the grievance of the applicants in this OA are similar to those in the case of Govind Das & others (OA763/2004) wherein the representation of the applicants therein was pending before the Railway Board, which has now been decided by the Railway Board vide order dated 9.12.2004 (Annexure-R-1). The respondents have further submitted that the selection to the post of Passenger Guard has been made under normal rules of selection as per Railway Board's letter dated 6.1.2004. They have also contended that as a result of restructuring on the basis of Railway Board's letters dated 9.10.2003 and 6.1.2004 the vacancy in the category of Passenger Guard did not increase, therefore, the selection for vacant post was to be conducted ^{as per} on normal procedure and not on modified selection basis. Therefore, this OA is liable to be dismissed.

6. We have heard the learned counsel of both sides and perused the pleadings carefully.

7. We find that as a result of the implementation of restructuring instructions, 106 employees have been promoted as Senior Goods Guards and 10 employees have been promoted as Senior Passenger Guards by the West Central Railway. ^{As regards} On the aspect of selection procedure to be adopted for filling up of the vacancies in a grade – existing as on 1.11.2003, and those arising as a result of restructuring, Board's instructions are clear and in terms thereof the following stipulations have been made by the Railway Board:-

“(i) As regards those grades where posts/ vacancies have arisen due to implementation of cadre restructuring instructions dated 9.10.04 & 6.1.04, the vacancies existing as on 1.11.03 in the said grade (for which panels had not been approved by 5.1.04) are to be filled up along with the vacancies arising as a result of restructuring on the basis of modified selection procedure).



(ii) For those grades where percentage has been reduced and no fresh post becomes available as a result of restructuring, the vacancies existed on 1.11.04 in the said grade are to be filled up by normal selection procedure".

In terms of Railway Board' cadre restructuring instructions dated 9.10.03, the category of Guards has been restructured as under:-

Category	Grade (Rs.)	Existing % age	Revised %age
Mail Guards	5000-9000	100	100
Passenger Guards	5500-9000 5000-8000	20 80	27 73
Goods Guards	5000-8000 4500-7000	20 80	27 73
Assistant Guards/ Brakesman	4000-6000 3050-4590	20 80	27 73

7.1 It is evident from the above table that in respect of Guards category (except- Mail Guards), consequent upon cadre restructuring, the percentage available for two grades of a post have been so revised that the existing percentage for the posts in lower grade stands reduced from 80% to 73% by increasing the percentage for the posts in higher grades from 20% to 27% thus² benefiting the staff. However, as the ^{total number of posts} ~~posts strength~~ remains constant, the above decision providing more posts in higher grades has simultaneously resulted in drop in the number of posts in the lower grades. As such, no fresh vacancy arose in the lower grade of any post of Guards as a sequel to the above cadre restructuring leading to adoption of normal selection procedure for filling up the existing vacancies.

7.2 In view of the above, we find that the case of filling up of vacancies existing as on 1.11.2003 for the post of Passenger Guards in grade Rs.5000-8000 is covered by instructions contained in para 4.5 of Board's letter dated 6.1.2004 and the

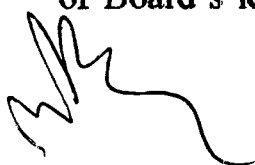
respondents action in adopting normal selection procedure for filling up of such vacancies is in order.

8. The vacancy position of Passenger Driver had also got reduced as a result of restructuring as under :-

	Existing %	Existing post	Revised %	Revised post
Sr.Passenger Driver 6000-9800	20	10	27	14
Passenger Driver 5500-9000	80	42	73	38
Sr.Goods Driver 5500-9000	20	69	27	93
Goods Driver 5000-8000	80	276	73	252

It is evident from the above table that in respect of Driver category, consequent upon cadre restructuring, the percentage available the post of Passenger Driver has been reduced from 80% to 73% by increasing the percentage for the post of Senior Passenger Driver in higher grade from 20% to 27% ^{for 2} benefiting the staff. However, as the posts strength remain constant, the above decision providing more posts in higher grades has simultaneously resulted in drop in the number of posts in the lower grades. As such, no fresh vacancy arose in the lower grade of any post of Passenger Driver as a sequel to the above cadre restructuring leading to adoption of normal selection procedure for filling up the existing vacancies.

8.1 In view of the above, we find that the case of filling up of vacancies existing as on 1.11.2003 for the post of Passenger Driver is also covered by the instructions contained in para 4.5 of Board's letter dated 6.1.2004 and the respondents action in



adopting normal selection procedure for filling up of such vacancies is in order.

9. We further find that a similar matter relating to Goods Driver has recently been dismissed by this Tribunal in O.A.No.287/2004 vide order dated 13.7.2005.

10. As regards the relief claimed by the applicants to set aside clause 4.5 of the Railway Board's circular dated 6.1.2004, we do not find any mala-fide or arbitrariness on the part of the respondents in incorporating the said clause in the circular dated 6.1.2004. It is a settled legal position that a policy decision is not open to judicial review unless it is mala fide, arbitrary or bereft of any discernible principle (see: The Director Lift Irrigation Corpn. Ltd. & others Vs. P.K.Mohanty & others, 1991(1) SCALE 399 (SC)).

11. In the conspectus of the aforesaid facts and circumstances of these cases, we do not find any merit in the present Original Applications, and these are dismissed, however, without any order as to costs.

12. The Registry is directed to enclose a copy of array of parties of OA No.1016/2004 along with this order for record; and also issue the same while supplying a copy of this order to the concerned parties.

(Madan Mohan)
Judicial Member

(M.P.Singh)
Vice Chairman

Rkv.

पूरांकन नं. १०१६/२००४
प. वि. नं. १०१६/२००४
(1) सचिव
(2) उपाध्यक्ष
(3) अध्यक्ष/पदाधीन
(4) निदेशक/सहायक
सूचना एवं आचरण
1-9-05
उप रजिस्ट्रार
S. Paul B.N. 2004 (1)
M. L. Bhangra (2)
J. P. Singh B.N. 2004 (3)
M. K. Verma B.N. (4)