

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,  
JABALPUR

Original Application No 894 of 2004

Jabalpur, This the 24<sup>th</sup> day of October, 2005.

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

1. R.K. Dubey S/o Shri G.D. Dubey,  
Aged about 58 years Chief Office Superintendent  
Under Senior Divisional Mechanical  
Engineer, in the O/o Divisional  
Railway Manager, West Central  
Railway Bhopal.
2. Smt. Sadhna Bhargav W/o Shri Shashi Mohan Bhargav  
Aged about 45 years, Office Superintendent (I)  
In the Office of Sr. Divisional  
Safety Officer, O/o Divisional Railway  
Manager, West Central Railway Bhopal.
3. <sup>Late</sup> Y.B. Gupta, S/o Shri D.B. Gupta,  
Aged about 37 years, Personnel Inspector (I)  
(Formerly Welfare Inspector (I)),  
O/o Chief Personnel Officer,  
West Central Railway, Jabalpur.

Applicants

(By Advocate – Shri Manoj Sharma With Shri S.Ganguli)

V E R S U S

1. Union of India, Through General Manager,  
West Central Railway, Jabalpur.
2. The General Manager, Central Railway,  
North Block, Chhatrapati Shivaji  
Terminus, Mumbai.
3. The Railway Board, Rail Bhavan,  
New Delhi. Through its Secretary.
4. The Chief Personnel Officer,  
West Central Railway, Jabalpur.
5. Satendra Singh.
6. Madhu Sudan Gadgil

7. Sanjay Kumar Oswal
8. Zaheer Ahmad Khan.
9. Arun Kumar Adlakha
10. Arif Ali.
11. Upendra K Singh
12. Anil Kumar Tiwari
13. Kuriarose Matthew
14. Dr. Ramesh Prasad Rao
15. G.L.Gupta.
16. N.G. Hardas
17. N.K. Verma
18. Ram Lal Patankar.

Respondents No.5 to 18 are through Chief Personal Officer, West Central Railway, Jabalpur (M.P.)

Respondents

(By Advocate – Shri M.N. Banerjee for official respondents.

Shri S.Paul for respondents No.7, 10 and 18

Shri H.B. Shrivastava for respondents No.12 &14

Shri L.S. Rajput for respondents No. 15 & 16

Shri M.K. Verma for respondent No.17

### ORDER

#### By M.P.Singh, Vice Chairman

By filing this Original Application, the applicants have sought the following main reliefs :-

“ii) Quash and set aside the impugned panel dated 15.10.2004, Annexure-A/1.

iii) Direct the respondents to take appropriate action in the matter of selection from the stage after written examinations and to prepare a panel strictly in accordance with the rules and law in order to do complete justice to all concerned.



2. The brief facts of the case are that a notification dated 29.1.2004 was issued from the office of respondent no.4 i.e. the Chief Personnel Officer, West Central Railway, Jabalpur to fill up 14 (11 UR + 2 SC +1 ST) posts of Assistant Personnel Officer (for short 'APO') (Group-B) in the grade of Rs.7500-12,000 against 70% LGS quota (selection). The provisions pertaining to promotion and induction into Group B are contained in Paragraphs 203 and 204 of the Indian Railway Establishment Manual (for short 'IREM'). A written examination was held on 29.5.2004 and 19.6.2004. All the applicants had qualified in the written test, which was notified on 3.9.2004. Thereafter, the applicants had appeared in the viva voce test. The impugned order dated 15.10.2004 intimating formation of panel for the post of APO was pasted on the Notice Board. According to the applicants, applicant no.1 is superseded by all his junior private-respondents, while the applicants nos.2 & 3 have been superseded by Dr.Ramesh Rao (respondent no.14) and G.L.Gupta (respondent no.15) besides Sanjay Kumar Oswal (respondent no.7) and Arif Ali (respondent no.10), despite the fact that there is a dispute pertaining to their seniority. One Madhu Sudan Gadgil has also been empanelled despite not being in the feeder grade, as he is from the Stores department which has its regular channel of promotion. Since the applicants have not been selected, the present O.A. has been filed by the applicants claiming the aforementioned reliefs.

3. The respondents have filed their reply stating that a written examination was held on 29.5.2004 and supplementary examination was held on 19.6.2004 and the result of written examination was declared on 3.9.2004. The viva voce was held on 27<sup>th</sup> & 28<sup>th</sup> September,2004. Before the viva voce test, an integrated seniority list was issued on 10.9.2004 (Annexure-R-1) and modified seniority list was issued(Annexure-R-II) which was got noted by all the candidates. Therefore, any claim of seniority at

this stage is devoid of any substance. The candidates after participating in the examination and failed may not be permitted to challenge the select list merely on technical grounds. According to the respondents applicants nos.1 & 2 have been adjudged unsuccessful based on their marks while the applicant no.3 could not be empanelled as per his seniority position. As per provisions of Para 204(10) of the IREM, the panel was placed before the General Manager of West Central Railway, Jabalpur, who sought certain clarifications from the Chief Personnel Officer of West Central Railway, Jabalpur and thereafter approved the panel on 14.10.2004. As regards the submission of the applicants that the applicant no.3 is senior to the private-respondents nos.14 & 15, the same is denied by the respondents. The applicants had no objection on the integrated seniority list issued before the viva voce. In view of these submissions, the OA is without any merit.

4. Heard the learned counsel for the parties.
5. During the course of arguments, the learned counsel for the applicants has taken five main grounds :

- (i) The competent authority, who is the General Manager has not approved the panel. At the relevant point of time, the General Manager, West Central Railway was on leave and the General Manager, Central Railway was given the additional charge of General Manager, West Central Railway, who could not have exercised the statutory functions as he was appointed as a stop gap arrangement during the leave of the General Manager, West Central Railway.
- (ii) Proper seniority has not been assigned to the applicants vis-à-vis private-respondents, keeping in view the pay scale of Rs.5500-9000 with three years regular service.
- (iii) There were adverse remarks existing in the confidential report of applicant no.1. The same were communicated to the applicant no.1 and he had submitted his representation to the respondents. His representation was still pending before the respondents when the panel for the selection to the post of APO was formed. The adverse remarks of the applicant no.1, against which representation was

pending, could not have been taken into consideration, which is in violation of the settled legal position and existing rules that adverse remarks should be ignored if representation challenging those adverse remarks is pending with the official respondents.

- (iv) In the case of applicant no.2 only four confidential reports have been supplied and the assessment of her work has been made only on the basis of 4 CRs instead of 5 CRs.
- (v) Mr.M.S.Gadgil, who has been selected as APO was working in the Stores Department, which had its regular channel of promotion and, therefore, could not have been considered for promotion to the post of APO.

Besides the above five grounds, the learned counsel for the applicants has also taken certain other grounds.

6. On the other hand, the learned counsel for the official-respondents has submitted that as regards the approval of the competent authority for finalizing the panel is concerned, the same has been obtained. He has drawn our attention to paragraphs 10 & 11 of their short reply dated 25.10.2004, in which it has been mentioned that Shri D.K.Gupta, General Manager, West Central Railway proceeded on leave w.e.f. 4.10.2004 to 15.10.2004. Accordingly, Shri D.K.Gupta, relinquished the duties of General Manager of West Central Railway, Jabalpur on 1.10.2004 and Shri S.B.Ghosh Dastidar assumed the charge of General Manager of West Central Railway, Jabalpur on 2.10.2004 (Annexure-R-IV). The panel for promotion to the post of APO was declared on 15.10.2004 with the approval of General Manager of West Central Railway, Jabalpur.

6.1 The learned counsel for the official respondents has further submitted that the decision relied upon by the applicants in the case of **T.R.Pandey Vs. The Chief Commissioner, Andaman & Nicobar, 1978 Lab.IC 41**, is not applicable in the present case, as in the said case the competent authority was performing the current duties of an appointment and was not appointed on regular basis, whereas in this case the General Manager Central Railway, has



taken the full charge of General Manager of West Central Railway, Jabalpur and, therefore, he could ~~not~~ exercise his statutory functions by approving the panel prepared for the post of APO in that capacity. There is no bar that the General Manager of Central Railway, Jabalpur, who was given the charge of General Manager of West Central Railway, Jabalpur could not have exercised the statutory powers to approve the panel and, therefore, this contention of the learned counsel for the applicants is without any substance.

6.2 As regards the contention of the applicants that Mr. M.S. Gadgil, who has been selected as APO was working in the Stores Department, which had its regular channel of promotion and, therefore, could not have been considered for promotion to the post of APO, the learned counsel for the respondents has submitted that Shri M.S. Gadgil belongs to the Ministerial stream of Stores Department, as such he has been rightly permitted to appear in the selection of APO.

6.3 As regards the ground taken by the applicants that the inter se seniority was to be decided only with reference to the pay scale of Rs. 5500-9000 drawn by the railway servant and not with reference to the next higher grade, the learned counsel for the respondents has submitted that this issue has already been decided by this Bench in the case of Dharmendra Singh Yadav Vs. Union of India and others, O.A.No.1054/2004 decided on 22.8.2005

6.4 As regards the other two grounds taken by the applicants i.e. only 4 ACRs have been considered in respect of applicant no.2 Smt. Sadhna Bhargav, and that adverse remarks in respect of applicant no.1 R.K. Dubey have been taken into consideration by the selection committee, the learned counsel for the respondents has contended that these facts can be verified from the records submitted by the respondents.

6.5 According to the learned counsel for the respondents, the selection has been made strictly in accordance with the rules. The

applicants had participated in the written test and have qualified the same and upto that stage, they have not challenged the selection nor they have objected to the combined seniority list of the applicants prepared for the purpose of making selection to the aforesaid posts. It is only after the applicants had failed in the selection, That they have raised these objections with regard to inter se seniority in the feeder grade and other similar issues.

7. We have given careful consideration to the rival contentions.

8. The admitted facts of the case are that a selection for the post of APO has been made by the respondents. They have conducted the written test and the applicants have qualified in the written test. Thereafter a viva voce test has been held in which the applicants have also participated, but they have not been finally selected.

9. We have gone through the original records relating to the selection produced by the learned counsel for the official-respondents.

10. We find that in the written test, the applicants R.K.Dube, Smt. Sadhna Bhargav and Y.B.Gupta have obtained 93.0, 90.0 and 95.0 out of 150 marks respectively. We further find that the qualifying marks in the selection were 120 and the applicants 1,2 & 3 have obtained 117.5, 117.3, 123.7 marks.

11. We have also perused the ACRs, for the relevant period, of the applicants R.K.Dubey and Smt Sadhna Bhargav, produced by the respondents. On perusal of the same, we find that there were adverse remarks in the ACR of the applicant for the year 2003-2004. These remarks were communicated to him vide letter dated 15.12.2004. Thereafter he had submitted his representation against the adverse remarks on 10.1.2005 which was rejected vide order dated 13.4.2005. We find on perusal of the record of selection that the aforesaid ACR of the applicant for the year 2003-2004 has been taken into consideration by the selection committee. The Hon'ble Supreme Court in the case of Gurdial Singh Fiji Vs. State



of Punjab, 1979 SCC (L&S) 197 has clearly held that an adverse report in a confidential roll cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned and he has an opportunity to explain the circumstances leading to the report. Thus, it is clear that at the relevant time when the assessment of the CRs of applicant R.K.Dubey was made by the selection committee, the adverse CR of applicant R.K.Dubey for the year 2003-2004 should have been ignored. The adverse remarks for the year 2003-2004 were communicated to the applicant on 15.12.2004 i.e. after the impugned appointments were made on 15.10.2004. In this view of the matter, the respondents <sup>ought to</sup> should have considered the ACR for the applicant for the earlier period i.e. 1998-1999. On perusal of the selection record and ACRs of applicant R.K.Dubey we <sup>also</sup> find that in the year 1998-99 the applicant R.K.Dubey has been graded as 'very good', whereas in the ACR for the year 2003-2004, against which representation was pending, the applicant has been graded as 'average'. If the representation against the adverse remarks for the year 2001-2002 which were communicated to the applicant vide letter dated 2.4.2003 was still pending at the time of selection, then the earlier CR of the applicant for the year 1997-98 should also have been taken into consideration.

12. As regards the confidential report of applicant no.2 Smt. Sadhna Bhargav is concerned, we find that vide letter dated 1.10.2004 it has been stated by the office of the DRM, Bhopal that her ACR for the year 2001-2002 was 'under process' and, therefore, the ACR for the earlier period of 1998-99, (in which she was graded as 'average') has been sent. The respondents have relied on the instructions issued by the Railway Board vide circular dated 29.9/ 5.10.1989 in which it has been stated that "where one or more CR have not been written or are not available, the CRs of the earlier years including those earned in the lower grades may be taken into account to complete the requisite number of CRs



required for assessment". In fact that in the letter dated 1.10.2004, the office of the DRM has intimated that the CR of applicant Smt.Sadhna Bhargav for the year 2001-2002 was "under process". ~~In fact~~ <sup>sh</sup> these two words 'under process' do not figure in the aforesaid letter dated 29.9/5.10.1989. It is also seen that the ACR for the year 2001-2002 cannot be 'under process' in October,2004, i.e. after expiry of a period of more than two years. It is also seen that in the ACR for the year 1998-1999 which has been considered by the selection committee, the applicant Smt.Sadhna Bhargav has been graded as 'average'. It is not the case of the respondents that the ACR of the applicant Smt.Sadhna Bharagav for the year 2001-2002 had not been written for any reason during the relevant period. In this view of the matter, the ACR of the applicant for the year 1998-99 could not have been taken into consideration and the <sup>want to do</sup> respondents should have produced the ACR of the applicant for the year 2001-2002 for consideration by the selection committee.

13. In view of the discussions made above, the case of applicants nos. 1 & 2 is required to be re-considered in the light of the discussions made above. As regards the applicant no.3 is concerned, we find that though he was selected, he could not be empanelled because of limited number of vacancies and his comparative lower position in the combined seniority list.

14. In the result, the OA is allowed partly. The respondents are directed to review the selection made vide order dated 15.10.2004 and reconsider the case of the applicants nos. 1 & 2 in terms of the discussions made above, within a period of two months from the date of communication of this order and if the applicants 1 & 2 are found suitable for appointment, they shall be appointed to the post of APO, from the date their immediate juniors were appointed, and granted all the consequential benefits. No costs.

(Madan Mohan)  
Judicial Member

(M.P.Singh)  
Vice Chairman