

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
(CAMP OFFICE AT INDORE)

Original Application No. 227 of 2001

Jabalpur, this the 15th day of June, 2004

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

Mukesh Jagdhane S/o Balkishan
Guard & 2 ors.

APPLICANTS

(By Advocate - Shri S.L. Vishwakarma)

VERSUS

Union of India & 12 Ors.

RESPONDENTS

(By Advocate - Shri Y.I. Mehta, alongwith Shri Ravi Jain)

ORDER

By Madan Mohan, Judicial Member -

By filing this OA, the applicants have sought the following reliefs :-

1. "8.1 to quash Divl. Rly. Manager's letter dt. 2.8.2000 (Annexure-A-1).

8.2 to declare that the applicants are due for promotion as Guard Passenger on the basis of their selection as Guard Passenger on 31.3.98 Annexure-A-3 from the date of occurrence of vacancies/date of promotion of their juniors selected on 9.9.2000 Annexure-A-8, with consequential benefits as due."

2. The brief facts of the case are that the applicants are working as Goods Gaurd. A notification was issued by the respondents for the selection to the post of Passenger Guard on 25.9.97 (Annexure-A-2). A panel of 71 employees found suitable by the selection board was notified as per merit with approval of the competent authority on 31.3.98 (Annexure-A-3) in which the applicants name are shown at serial Nos. 67, 70 and 71. The applicants have stated that the names of other Goods Guards for promotion to the post of Guards (Pass.) Annexure A/3 including the applicants were recommended by

the Selection Board for promotion against vacancies reserved for Scheduled Caste, as per Railway Board's orders dated 9.8.1990/25.9.1990. D.R.M., Ratlam has promoted all the Guards who were placed on panel for Guard (Pass) on 31.3.1998 (Annexure A/3), except the humble applicants who belong to the downtrodden class of the society for the reasons not known to them. The applicants represented for their promotion as Guard (Pass.) on 25.7.2000, 31.8.2000, 28.11.2000 (Joint Annexure A/5) but these representations did not yield any results. Applicant no. 2 Ashok Arya has officiated on various occasions during the currency of the panel and worked as Guard Passenger. Applicant No. 3 Atul Kumar has also officiated as Guard Passenger during the currency of the panel. The D.R.M., Ratlam prepared and notified a fresh panel of 11 guards passenger in the scale of Rs. 5000-8000 on 7.9.2000 (A/8) and has selected and promoted all the eleven Guard Goods as Guard Passenger (Annexure A/9) ignoring the genuine claim of the applicants. It is further contended that the eleven Guards promoted as Guard Passenger had failed in the year 1998 whereas the applicants were declared successful. The applicants having been placed on the panel formed on 31.3.1998 when other Guards placed on panel on 7.9.2000 had failed and did not find a place on the panel, having officiating during the currency of the panel, and vacancies for scheduled caste being available during the currency of the panel, have been overlooked for promotion. Hence, the applicants have filed the present original Application for seeking the aforesaid reliefs.

3. Heard the learned counsel for both the parties and perused the material on record very carefully.
4. It is argued on behalf of the applicant that as per para 220 of the I.R.E.M. an employee who once officiates in his turn against non fortuitous vacancy on the panel, whether against a leave arrangement deputation a temporary transfer for another employee vacating the post shall not be required

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to appear again for fresh selection. The learned counsel for the applicants argued that the applicants have fulfilled the required conditions and rather this fact is admitted by the respondents in para 6 of the reply in which it is mentioned that the services of the applicants nos. 2 and 3 were utilized as Passenger Guard in exigencies of service like against sick/leave period of any other Passenger Guard though not worked in clear and regular vacancies. Therefore, they are not required to appear again for fresh selection. Similarly, applicant no. 1 is also not required to appear in the fresh selection because of the fact that para 220 (c) of the I.R.E.M. that "In case an employee lower in the panel has officiated whereas one higher in the panel has not officiated beyond the latter's controlled such as sickness non-released by the administration on promotion, the latter employee will not be required to appear for fresh selection. ..." Since the employee lower in the panel to the applicant has officiated the applicant cannot be compelled to appear in the fresh selection.

5. Learned counsel for the respondents argued that the currency of panel (Annexure A/3) was two years which expired on 28.3.2000. After expiry of the panel, para 220 clause (b) of I.R.E.M. do not help the applicants because none of them officiated on non-fortuitous vacancy nor were any such orders passed in favour of the applicants no. 2 and 3 for officiating on any higher post and the deeming provision of para 220(c) for applicant no. 1 is misplaced. It is further argued that the panel drawn in furtherance of the selection process commenced on the basis of notification issued on 23.5.2000 when the previous panel (Annexure A-3) had already expired.

6. We have given careful consideration to the rival contention of the parties and we find that the respondents have admitted in their reply that the services of the

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applicants nos. 2 and 3 were utilized in exigencies of service like against sick/leave period of any other Passenger Guards for some times, but the applicant no. 1 is not admitted to have officiated. However, in the case of applicant no. 1 we have gone through para 220(c) of I.R.E.M. according to which if an employee lower in the panel has officiated whereas one higher in the panel has not officiated beyond the latter's controlled such as sickness non-released by the administration on promotion, the latter employee will not be required to appear for fresh selection. Since applicant no. 3, who was lower in the panel, has officiated, the applicant cannot be compelled to appear in the fresh selection.

7. In view of the rule position, we are of the considered view that all the applicants have officiated and they are not required to be appeared for fresh selection for the purposes of their promotion to the post of Guards Passenger and are entitled to be considered for promotion as such, irrespective of the fact that the panel had expired on 28.3.2000. Therefore, the impugned order dated 2.8.2000 (Annexure A-1) is quashed and set aside and the respondents are directed to consider the case of the applicants for promotion to the post of Guards Passenger as per their selection as Guards on 31.3.1998 (Annexure A-3) from the date of occurrence/date of promotion of their juniors selected on 9.9.2000, as the case may be, in accordance with the rules and law without compelling them to appear for fresh selection.

8. In the result, the O.A. is allowed with no order as to costs.

(Madan Mohan)
Member (Judicial)

/na/

(M.P. Singh)
Vice Chairman