

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

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ORDERS OF THE BENCH

Date of Order: 25.05.2012

OA No. 57/2009

Mr. C.B. Sharma, counsel for applicants.
Mr. Anupam Agarwal, counsel for respondents.

Learned counsel appearing for the respondents is directed to produce the relevant record, on the next date of hearing before this Bench of the Tribunal, by which the determination of vacancies has been done.

Put up the matter on 04.07.2012 for hearing. Certified copy of this order be made available to the learned counsel for the respondents.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

K.S. Rathore
(JUSTICE K.S. RATHORE)
MEMBER (J)

Kumawat

04/07/2012 [OA No. 57/2009]

Mr. C.B. Sharma, Counsel for applicants.
Mr. Anupam Agarwal, Counsel for respondents.

Heard.

O.A. is disposed of by a separate order on the separate sheets for the reasons recorded therein.

Anil Kumar
[Anil Kumar]
Member (A)

K.S. Rathore
[Justice K.S. Rathore]
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 04th day of July, 2012

ORIGINAL APPLICATION No. 57/2009

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

1. S.N. Bhardwaj son of Shri Maniram Bhardwaj, 53 years, Road No. 5, Chopra Farm, Kota.
2. V.K. Singh son of Shri Jawahar Singh aged about 44 years, resident of 28, Railway Housing Society, J.N. Marshal, Kota.
3. G.P. Gupta son of Shri Devi Lal Gupta aged 52 years, resident of Near Murgi Farm, Dadwara, Kota Junction.
4. Mukesh Jain son of Shri Madanlal Jain, aged about 40 years, resident of Railway Housing Society, J.N. Marshal, Kota Junction, Kota.
5. A.J. Khan son of Shri S.R. Khan, aged 42 years, resident of 127, R.K. Nagar Police Lines, Kota.
6. S.K. Bhola son of Shri Bhagmal Bhola, aged about 43 years, resident of near Dr. B.K. Sharma, Rangpur Road No. 5, Dadwara, Kota Junction.
7. A.R. Khan son of Shri Chote Khan, aged about 41 years, resident of Gali No. 10, Sanjay Nagar, Kota Junction.
8. Aziz son of Shri Chote Khan, aged about 40 years, resident of Akaswani Colony, Near Akashwani Nayapura, Kota.
9. Sunil Tandon son of Shri Kedarnath Tandon, aged 40 years, House No. D-11, MBS Nagar, Kota Junction.
10. Ashok Saxena son of Shri Om Prakash Saxena, aged about 52 years, resident of Plot No. 08, Opp. Mangal Bhawan, RMS Rest House Road, Kota Junction.
11. L.N. Pachori son of Shri Sher Singh, aged about 42 years, resident of Rangpur Road No. 4, Block No. 08, House NO. 59, Dadwara, Kota Junction.
12. Anil Sharma son of Shri J.S. Sharma, aged 43 years, resident of Opposite Petrol Pump, Brij Bhawan, Near Soni Diagnostic, Kota Junction.
13. Raj Kumar Sharma son of Shri Rambabu Sharma, aged 41 years, resident of Shrinath Regency, Flat No. B-304, Near M.B.S. Nagar, Kota Junction.
14. P.K. Saraswat son of Shri K.S. Saraswat, aged about 52 years, resident of Road No. 2, Janakpuri, Near St. Paul School, Kota.
15. Hemant Sharma son of Shri Ramesh Chand Sharma, aged 42 years, resident of Flat No. 404, Nanak Palace, Bal Mandir Road, Kota Junction.
16. M.C. Johari son of Shri S.K. Johri, aged 54 years, resident of Flat No. A-3/1, Shri Nath Palace, M.B.S. Nagar, Kota Junction.

(All the applicants are working in West Central Railway, Kota).

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... Applicants

(By Advocate : Mr. C.B. Sharma)

Versus

1. Union of India through its General Manager, West Central Railway, Jabalpur.
2. Divisional Railway Manager, West Central Railway, Kota.

... Respondents

(By Advocate : Mr. Anupam Agarwal)

ORDER (ORAL)

The applicants have filed this OA thereby claiming for the following reliefs:-

- "(a) By an appropriate order and direction your lordship may be pleased to direct the respondents to re-determine the posts and vacancies for promotion in regard to cadre of Passenger Guard and they may be further directed to modify the order dated 07.01.2009 (Annexure A/1).
- (b) By an appropriate order and direction your Lordship may be pleased to direct the respondents not to determine 7 vacancies for SC out of 28 vacancies as per order dated 07.01.2009 and they may be restrained not to give 7 posts for SC out of 28 in view of the order dated 07.01.2009 or any other order like this nature.
- (c) By an appropriate writ and direction your Lordship may be pleased to direct the respondents to re-determine the vacancies of Passenger Guard in scale Rs.9300-34800 by counting the vacancies which are likely to be arise in future and new created post and accordingly the respondents may be directed to re-determine the reservation in such posts.

2. Learned counsel for the applicants argued that all the applicants are working as Senior Goods Guard under the respondents. That the applicants are eligible and are entitled for promotion as Passenger Guard in the scale of Rs.9300-34800 plus 4200 Grade Pay. They have also successfully passed their training which is essential for promotion as Passenger Guard.

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3. He further argued that there are total 35 posts of Passenger Guard. Out of strength of 35 posts of Passenger Guard 8 are working, out of which 2 are SC and 2 are ST. It is not disputed that there is reservation quota in promotion to the post of Passenger Guard. The Government of India has prescribed this quota as 15% for SC and 7.5% for ST. He further argued that Ministry of Railways has declared a model roster to determine the reserve number of vacancies. The copy of the model roster declared on 21.08.1997 has been annexed as Annexure A/2. He also drew our attention to eligibility list for Passenger Guard as on 01.12.2008 (Annexure A/3).

4. Learned counsel for the applicants further argued that selection has to be made on the basis of seniority cum merit and there will be no written test and promotion shall be made on the basis of viva-voce only. To support his averment, he referred to the RBE No. 28/2007 dated 23.02.2007 (Annexure A/4). He further argued that respondents have mentioned in their order dated 01.12.2008 that selection is to be made for 28 posts, out of which 7 posts have been reserved for SC and 1 post has been reserved for ST. This ratio has been determined illegally, arbitrarily and against the roster and reservation policy. In view of such facts, the objections were made by the applicants (Annexure A/5 & A/6). That the respondents have not decided the applications of applicants nos. 1 & 2 by a speaking order but they have passed an order dated 07.01.2009 (Annexure A/1) vide which the respondents have again repeated the same in the order and they have changed some persons in the list. They have included the candidates

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belonging the SC community from sr. no. 73 to 84 of the said list. This inclusion of SC candidates is against the provisions of law and rules on the subject. This is an act of discrimination and an act to give illegal benefit to particular class which is not eligible and qualified and is not entitled.

5. Learned counsel for the applicants further argued that there is no carry forward position in the cadre. As per the roster position, only 6 vacancies can be reserved for SC and 3 can be reserved for ST. Since two SC candidates and 2 ST candidates are working, therefore, the respondents cannot determine 7 vacancies for SC. So determination of SC is illegal, arbitrary and against the law.

6. He further argued that Hon'ble Supreme Court of India has settled the law in respect of the reservation and has approved a model roster prepared by the Government of India. Therefore, now the respondents are bound to act in accordance with the terms of model roster but they are ignoring the same without any reason. The respondents cannot fill up the vacancies by giving excess benefit to a particular class. Therefore, he argued that the action of the respondents is against the provisions of law and the relevant instructions on the subject. Therefore, the OA be allowed and the respondents be directed to re-determine the vacancies particularly with reference to SC candidates.

7. He also drew our attention to the order sheet dated 18.02.2009 where this Tribunal had directed the respondents that while filing the

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reply, they shall indicate whether the reservation has been made based upon the law laid down by the Apex Court in the case of R.K. Saberwal but the respondents have nowhere in their reply have explained this aspect.

8. On the contrary, learned counsel for the respondents argued that the cadre strength of Passenger Guard is 35 whereas 7 employees are working as such. Out of these 7 employees, 2 belong to SC and 2 belong to ST category. He further argued that respondents in terms of the Railway Board directives had counted 2 higher grade vacancies of SC category by temporarily downgrading the same because no eligible SC candidate was available in the cadre to fill up those vacancies. Therefore, the action of the respondents of providing 7 posts of SC candidates is as per the instructions of the Railway Board and as per RBE No. 151/99 and 272/99, which have been enclosed as Annexure R/1. He drew our attention to Para 3 of RBE No. 151/99, which reads as under:-

"3. It may be stated that the issue was earlier deliberated in the CPOs' Conference held in Board office on 10.12.1998 and the consensus emerged that the temporary downgradation of the reserved posts and filling up of the same by candidates belonging to SC/ST category is done with a view to achieve the prescribed percentage of representation in the higher grade at a future date. Therefore, the downgraded posts will continue to be counted against the cadre strength of the higher grade posts. In such cases, as and when the reserved community candidates become available for promotion in future, the reserved posts shall be restored to the original grades and shall be filled up by promotion of reserved candidates."

Similarly, he drew our attention to Para No. 2.4 of RBE No. 272/99, which is with regard to Assessment of Vacancies, particularly

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to Para 2.4.1.1. In this regard, he laid emphasis on this portion of the circular:-

"Vacancies in the higher grade in the channel which will ultimately reflect in the grade for which selection is to be conducted."

9. Learned counsel for the respondents also shown us the record. He referred to the statement with regard to the Cadre – Men on Roll – Vacancy position of Guards category. The statement shown by the respondents is reproduced as under:-

**"CADRE – MEN ON ROLL – VACANCY POSITION OF GURDS CATEGORY
(MAIL EXRESS/SR.PASSENGER/PASSENGER)**

ALONG WITH BIFURCATION OF SC/ST (REQUIREMENT AND SHORTFALL)											
Sr. No.	Category/ Scale (RSRP)	Cadre	MOR	Vacancy	Requirement		Working		Shortfall		Total
					SC	ST	SC	ST	SC	ST	
1.	Mail Exp. Guard 5500-9000	55	41	14	8	4	2	10{	6	-1	
2.	Sr. Pass. Guard 5500-9000	9	-	9	5*	3*	1	2	4	1	
3.	Pass. Guard 5000-8000	35	33	2	5	3	8	4	+3	1	
	Total				18	10	11	9	7	1	

* As per 4 type Roster i.e.

1st Cycle - SC point No. 4, 12 ST point 8

2nd Cycle - SC point No. 4, 12 and ST point 8 Total short fall is 5 for SC and 3 for ST

3rd Cycle - SC point No. 4 and ST point 8

{ Out of 10 ST employees 7 were promoted as per general category"

According to this statement, the cadre strength of Passenger Guard is 35, Men on Roll are 33 and the vacancy position is 2. As per the requirement, there should be 5 SC and 3 ST candidates working against these posts. While actually 8 SC and 4 ST candidates have been shown as working. Thus according to this statement, there is surplus of 3 SC and 1 ST candidate on the post of Passenger Guard. However, there are vacancies in the cadre of Mail Express Guard

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where there is shortfall of 6 SC candidates. Similarly, there is short fall of SC/ST category candidates in the cadre of Sr. Passenger Guard. Thus they have stated that there is a short fall of 7 vacancies belonging to SC while taking Mail Express Guard and Sr. Passenger Guard and Passenger Guard posts collectively. This statement is not in conformity with the written reply submitted by the respondents. In Para No. 4.2 of the reply, they have stated that cadre of Passenger Guard is 35 where 7 employees are presently working as such. Thus there is discrepancy in the two statements. According to one statement, out of 35 Passenger Guards, 33 employees are working while in written statement, it has been stated that 7 employees are presently working as Passenger Guard. Learned counsel for the respondents heavily relied upon the provisions of Para No. 3 of RBE No. 151/1999 (Annexure R/1) in which it has been stated that temporary downgradation of the reserved posts and filling up of the same by candidates belonging to SC/ST category is done with a view to achieve the prescribed percentage of representation in the higher grade at a future date. However, the downgraded posts will continue to be counted against the cadre strength of the higher grade posts. In view of this position, he argued that the vacancy position in the cadre of Mail Express Guard and Sr. Passenger Guard have been taken into consideration at the level of Passenger Guard vacancies. Therefore, there is no illegality/infirmity/arbitrariness in the action of the respondents and the vacancy position has been correctly determined and, therefore, the OA being devoid of merit needs to be dismissed with costs.

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10. Heard learned counsel for the parties and perused the relevant documents on record. The main controversy in this OA is with regard to the determination of the vacancies for SC candidates in the cadre strength of Passenger Guard. It is not disputed between the parties that the cadre strength of Passenger Guard is 35 as per the statement shown by the respondents regarding cadre- Men in roll- vacancy position of Guards category. It has been mentioned therein that as against cadre strength of 35 Passenger Guards, Men in roll are 33 and there are only two vacancies and according to this chart, there is surplus of 3 SC candidates in the cadre of Passenger Guards. However, the respondents in their written reply of Para 4.2 have stated that as against the cadre strength of Passenger Guards of 35, 7 employees are presently working. Out of these 7 employees who are working, 2 belong to SC and 2 belong to ST. Thus it is not clear whether as against the cadre strength of 35 Passenger Guards, 33 employees are working or 7 employees are working. Therefore, the respondents are directed first to determine the actual number of employees who are working on the post of Passenger Guard against the cadre strength of 35 employees. In the cadre of Sr. Passenger Guards, the cadre strength is of 9 and all vacancies are vacant. As per the statement shown by the respondents during the arguments, the requirement of SC candidates is 5 and ST candidates is 3. It does not appear logical that in the cadre of Sr. Passenger Guards that 8 posts can be reserved for SC/ST out of 9 posts and only one post is meant for General category. In the working strength of this category of Sr. Passenger Guard, 1 employee of SC category and 2 employees of ST category have been shown as working. While in the vacancy position of Sr.

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Passenger Guard, all 9 posts have been shown as vacant. If all posts are vacant then how can 1 SC employee and 2 ST employees have been shown as working as Sr. Passenger Guard. Thus, it appears that there is anomaly in this statement, which needs to be re-examined by the respondents.

11. According to the written statement of the respondents in Para No. 4.2, it has been mentioned that as against 35 posts of Passenger Guards, 7 employees are working. Out of which 2 are SC and 2 are ST. The Government of India and Ministry of Railways have provided a model roster for filling up of the vacancies from amongst the General category, SC category and ST category. The respondents are expected to follow the model roster. The Apex Court has also laid down the law with regard to the roster system for filling up the posts of SC & ST employees. The averments made by the learned counsel for the respondents that action of the respondents is covered by RBE 151/99 and RBE 272/99 is not applicable in the present case. The instructions in RBE 151/99 are clear that downgraded posts will continue to be counted against the cadre strength of the higher grade posts. Therefore, if any post is to be downgraded then it cannot be counted in the cadre strength of lower post. In this case, if the posts of Mail Express Guard or Sr. Passenger Guard have been downgraded then that cannot be counted against the cadre strength of Passenger Guard, which is 35. The Passenger Guard cadre is separate than the cadre of Mail Express Guard and Sr. Passenger Guard. Therefore, reservation policy is to be followed as per the guidelines provided by the

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Government of India and as per the law laid down by the Apex Court in this regard.

12. Therefore, the respondents are directed to re-determine the vacancies in the cadre of Passenger Guard and re-determine the vacancies for SC & ST category. The respondents are directed to complete this exercise of re-determination of vacancies within a period of three months from the date of receipt of a copy of this order. The respondents are also directed not to act upon the letter dated 07.01.2009 (Annexure A/1) till the exercise of re-determination of vacancies is completed by them.

13. With these observations, the OA is disposed of with no order as to costs.

Anil Kumar
(Anil Kumar)
Member (A)

AHQ

K. S. Rathore
(Justice K.S.Rathore)
Member (J)