

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A. No. 1608/2012
M.A. No. 3406/2016

The 6th day of September, 2018

HON'BLE MR. V. AJAY KUMAR, MEMBER (J)
HON'BLE MR. A.K. BISHNOI, MEMBER (A)

1. Arvind Mohan Saxena,
S/o Shri Chandra Prakash Saxena,
Sr. Booking Clerk,
North Eastern Railway, Kasganj.
2. Rakesh Babu,
S/o Shri Ram Chandra Singh,
DCI, Izatnagar,
Rly. Colony Kushi Ramnagar, UP.
3. Rajesh Singh,
S/o Shri C.K. Singh,
DCI, PBE,
R/o T/12A, Railway Colony, Pilibhit.
4. Chandra Prakash Sahu,
S/o Late Shri Umrai,
Sr. BC/PBE,
E/27C, Railway Engg. Colony,
Pilibhit-262001.

.. Applicants

(By Advocate: Mrs. Meenu Mainee)

Versus

Union of India through :

1. Secretary,
Railway Board,
Rail Bhawan, New Delhi.
2. General Manager,
Northern Eastern Railway,
Gorakhpur (UP).
3. Divisional Railway Manager,
Northern Eastern Railway,
Izatnagar.

.. Respondents

(By Advocate: Shri Rahul Pandey)

ORDER (ORAL)**By Mr. V. Ajay Kumar, Member (J)**

The applicants, who are presently working as Senior Commercial Clerks and drawing the pay scale of Rs.4500-7000 with Grade Pay of Rs.2800/-, filed the O.A. questioning the action of the respondents in not permitting them to participate in the selection process for promotion to the post of Goods Guard, which is also in the pay scale of Rs.4500-7000 with Grade Pay of Rs.2800/-.

2. The learned counsel for the applicants mainly submits that the respondents denied the applicants opportunity to participate in the selection process for promotion to the post of Goods Guard basing on the Annexure A-1 Circular dated 11.08.2011, which stipulates that "the staff working in grades lower than Rs.4500-7000 were made eligible to appear in the selection". The learned counsel for the applicants submits that the said circular is violative of para 124 of Indian Railway Establishment Manual Vol.-II.

3. Heard both the sides and perused the pleadings on record.

4. The relevant part of para 124 of Indian Railway Establishment Manual Vol. II reads as under:

"124. (1) The posts in the category of Goods Guards in the pay scale of Rs.4500-7000(RSRP) will be filled as under:

- (i) 60% by general selection from amongst serving regular employees with a minimum of three years service

working in grade(s) Rs.3050-4590/3200-4900/4000-6000 in the categories of Train clerks/Sr. Train Clerks, Commercial Clerks/Sr. Commercial Clerks, Ticket Collectors/Sr. Ticket Collectors, Switchmen, Asstt. Guards/Sr.Asstt. Guards and Yard Staff individual quotas for each of these categories being fixed by the Zonal Railways.

- (ii) 15% by LDCE plus shortfall, if any, against (i) above, from amongst serving regular non-ministerial Group 'C' employees in the Operating and Commercial Deptts. with a minimum of three years service, working in grade(s) Rs.3050-4590/3200-4900/4000-6000, upto 40 years of age (45 years in the case of SCS/ST) and having the qualification of Graduation; and
- (iii) 25% by direct recruitment through Railway Recruitment Boards plus shortfall, if any, against (ii) above.

(2) Qualification etc. for direct recruitment are as under:

- (i) Educational : A university degree or its equivalent.
- (ii) Age : Between 18-28 years
- (iii) Training & Stipend: Period of training will be for a duration (upto one year) as decided by the Railway Administration on a stipend of Rs.4500/-

(Authority Board's letter NO. E(NG)I-96/PM2/3 dated 05-06-1998, 13-08-1998 and 04-02-1999-ACS No.47, 57 & 71)

5. A bare perusal of para 124 of Indian Railway Establishment Manual Vol.-II clearly indicates that though the staff who are working as Senior Commercial Clerks are permitted to participate for selection to the post of Goods Guard, but those Senior Commercial Clerks who are drawing Rs.4000-6000 only were permitted. However, in the present case, the applicants are already drawing pay scale of Rs.4500-7000 and, hence, we do not find any merit in the submission of the learned counsel for the applicants.

6. Further in WP(C) No. 7705 of 2015, in **Union of India & Ors.** vs. **Surender Mohan Prashad and Anr.**, the Hon'ble High Court vide order dated 28.02.2017, after considering the same issue i.e. the effect of Circular dated 11.08.2011 vis-a-vis para 124 of Indian Railway Establishment Manual Vol.II, observed as under:

"4. The respondents herein were working as Senior Commercial Clerks and had applied for selection as Guards Goods under the 60% quota fixed for serving regular employees. They had relied upon the Correction Slip No.47 in the Indian Railway Establishment Manual Vol.II 1989 Edition to establish their claim. Correction Slip No. 47 reads:

"Substitute the following for the existing Para 124 (1) & (2):-

124 (1) The posts in the category of Goods Guards in the Pay scale of Rs.4500-7000 (RSRP) will be filled is under:-

i) 60% by general selection from amongst serving regular employees with a minimum of three years service working in grade (s) Rs.3050-4590/3200-4900/4000-6000 in the categories of Train Clerks/Sr. Train Clerks, Commercial Clerks/Sr. Commercial Clerks, Ticket Collectors/Sr. Ticket Collectors, Switchmen, Asstt. Guards/Sr. Asstt. Guards and Yard staff;

ii) 15% by LDCE plus shortfall, if any, against. (i) above, from amongst serving regular non-ministerial Group 'C' employees in the Operating and Commercial Deptts with a minimum of three years service, working in grade (s) Rs.3050-4590/3200- 4900/4000-6000, upto 40 years of age (45 years in the case of SC/ST) and having the qualification of Gradation; and

iii) 25% by direct recruitment through Railway Recruitment Boards plus shortfall, if and, against (ii) above.

(2) Qualification etc. for direct recruitment are as under:-

(i) Educational: A University degree or its equivalent.

(ii) Age: Between is 18-28 years

(iii) Training & stipend period of training will be for a duration (upto one year) as decided by the Railway

Administration on a stipend of Rs.4500/- (Authority, Ministry of Railways, letter No.E(NG) I-96/PM2/3 dt. 5.6.98)."

5. However, the aforesaid correction slip was superseded vide Circular dated 11.8.2011, issued by the Railway Board which has been reproduced in the quotation of the impugned order.

6. The reason why the Circular dated 11.8.2011 was issued is apparent. The post of Senior Commercial Clerk had been upgraded from the pay scale of Rs.4,000-6,000 to that of Rs.5,200-20,200, i.e. grade pay of Rs.2,800 in PB-1, which was the same pay band and grade pay as applicable and payable in the post of Guard Goods.

7. The legal effect of the Circular was and would be the amendment of the Correction Slip No.47. Thus, there is no conflict between the Circular dated 11.8.2011 issued by the Railway Board under Rule 157 of the Indian Railway Establishment Code and the Correction Slip No. 47. The Tribunal has erroneously held that the circular dated 11.8.2011 would not override the Correction Slip No.47. The Correction Slip No.47 has to be treated as amended, by and in terms of the Circular dated 11.8.2011.

8. In view of the aforesaid provision, the present writ petition is allowed. The impugned order dated 10.12.2014, allowing OA No.2122/2011 is set aside. The said OA would be treated as dismissed. No order as to costs.

7. In the circumstances and in view of the above referred decision of the Hon'ble High Court, we do not find any merit in the O.A. and, accordingly, the same is dismissed. Pending MA, if any, also stands disposed of. No order as to costs.

(A.K. BISHNOI)
Member (A)

(V. AJAY KUMAR)
Member (J)

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