

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No.163/2017

Date of Decision :- 28.02.2017.

CORAM: HON'BLE DR. MRUTYUNJAY SARANGI, MEMBER (A)
HON'BLE SHRI ARVIND J. ROHEE, MEMBER (J)

1. Umesh Shripad Kubal
Working as Sr.Passenger Guard,
(Suburban), (gROUP 'C' Post),
Under Station Manager (Suburban),
Central Railway, Mumbai, CST,,
Mumbai 400 001.
R/at A/504, 5th Floor, Pratik
Apartment, Ramchandra Nagar No.3,
Vaity Wadi, Thane, Dist. Thane
400 604.
2. Anwar Ahmed
Working as Sr.Passenger Guard,
(Suburban), (gROUP 'C' Post),
Under Station Manager (Suburban),
Central Railway, Mumbai, CST,,
Mumbai 400 001.
R/at A/14, 3rd Floor, Berkeley Palace,
Sir J.J. Road, Byculla,
Mumbai 400 008.
3. Umesh Pratap Singh,
Working as Sr.Passenger Guard,
(Suburban), (gROUP 'C' Post),
Under Station Manager (Suburban),
Central Railway, Mumbai, CST,,
Mumbai 400 001.
R/at A/103, 1st Floor, Shri Ambika
Complex, CHS Ltd., Bhayander (E),
Dist. Thane – 401 105.
4. Vivek Ranjan Sahai
Working as Sr.Passenger Guard,
(Suburban), (gROUP 'C' Post),
Under Station Manager (Suburban),
Central Railway, Mumbai, CST,,
Mumbai 400 001.

R/at 201, 2nd Floor, Kalpataru,
Murbad Road, Kalyan (W),
Kalyan, Dist. Thane – 421 301.

5. Jaswant Singh
Working as Sr.Passenger Guard,
(Suburban), (gROUP 'C' Post),
Under Station Manager (Suburban),
Central Railway, Mumbai, CST,,
Mumbai 400 001.
R/at 983/1, MS RBII Railway Colony,
Murbad Road, Kalyan (W), Kalyan,
Dist. Thane 421 301.

6. Anand Bhargava
Working as Sr.Passenger Guard,
(Suburban), (gROUP 'C' Post),
Under Station Manager (Suburban),
Central Railway, Mumbai, CST,,
Mumbai 400 001.
R/at Flat No.602, 6th Floor, Tulip
Tycoons Building, Khadagpada,
Kalyan (W), Kalyan,
Dist. Thane 421 301. ... *Applicants*

(*By Advocate Shri R.G. Walia*)

VERSUS

1. Union of India,
Through General Manager,
Central Railway, Headquarters Office,
CST, Mumbai 400 001.

2. DRM, (Divisional Railway Manager)
Headquarters Office, Mumbai Division,
Central Railway, CST, Mumbai 400 001.

3. Senior Divisional Personnel Officer
Headquarters Office, Central Railway,
CST, Mumbai 400 001.

4. Railway Board,
Through the Secretary,
Railway Board, Rail Bhavan,
Raisina Road, Rafi Ahmed Kidwai
Marg, New Delhi 110 011. ... *Respondents*

ORDER (ORAL)

Per: Dr. Mrutyunjay Sarangi, Member (A)

The Applicants who are working as Sr. Passenger Guards (Suburban) in the Central Railway, Mumbai, are aggrieved by the impugned order granting them promotion and posting as Mail/Express Guards in Mumbai Division. It is their contention that para 224 of IREM Vol.I permits a Railway employee to refuse promotion. Accordingly, the applicants have refused promotion and have given their willingness to continue as Sr. Passenger Guards (Suburban) in their present place of posting. They have filed the present OA praying for the following reliefs:

"8.a This Hon'ble Tribunal will be pleased to call for the records which led to the passing of impugned Promotion Order dated 14.02.2017 (i.e. Annx.'A1') and after going through its propriety, legality and constitutional validity be pleased to quash and set aside the same only to the extent in respect of applicants.

b. This Hon'ble Tribunal will be pleased to hold and declare that the impugned act of the respondents of not acting on the refusal of promotion letter by allowing the applicants to continue in the post of Sr.Passenger Guard (Suburban) is illegal and wrong and accordingly direct the respondents to retain and continue the Applicants in the post of Sr.Passenger Guard (Suburban) as once the applicants have tendered their Refusal of Promotion Letter of the applicants, they cannot be forced to join the promotional post of Passenger Guard (Mail/Express).

c. This Hon'ble Tribunal will be pleased to hold and declare that the impugned act of the respondents

of not considering the representation/letter of Refusal of Promotion of the applicants is contrary to the directions as given in the judgment dated 17.08.2016 and accordingly, direct the respondents to Not Force the applicants to join the promotional post of Passenger Guard (Mail/Express).

d) Any other and further orders as this Hon'ble Tribunal may deem fit, proper and necessary in the facts and circumstances of the case.

e) Costs of this Original Application may be provided for."

2. The Applicants have also prayed for the following interim orders:

"9.a Pending hearing and final disposal of this Original Application this Hon'ble Tribunal will be pleased to STAY the effect and operation of the Promotion Order dated 14.02.2017 and to further direct the respondents to allow the applicants to work on the post of Sr. Passenger Guard (Suburban) till disposal of this Original Application.

b. Ex-parte Ad-interim and interim orders in terms of prayer 9(a) above."

3. We have briefly heard Shri R.G. Walia, learned counsel for the Applicants. He has produced a list of certain other Sr. Passenger Guards who have refused promotion for a number of times and continued as Sr. Passenger Guard (Suburban) in different Railways.

4. The records also reveal that the applicants have submitted representations on 15.02.2017 to the Senior Division Personnel Officer, Central Railway (Respondent No.3)

(Annexure A-2) conveying their refusal to accept the promotion due to their family problems.

5. After perusing the representations, the documents attached to the OA and after hearing Shri Walia, it is our view that the representations submitted by the applicants dated 15.02.2017 should be considered and an appropriate decision should be taken by the respondents on the prayer for refusal of promotion by the applicants.

6. Accordingly, the Respondent No.3 is directed to consider the representations of the applicants and pass a reasoned and speaking order within a period of four weeks from the date of receipt of a copy of this order. Meanwhile, the operation of the order of promotion dated 14.02.2017 in respect of the applicants shall not be given effect to. The Applicants will have the liberty to approach the appropriate legal forum, if their grievances persist.

7. The Original Application is disposed of with the above directions.

8. *DASTI.*

(A.J. Rohee)
Member (J)

(Dr.Mrutyunjay Sarangi)
Member (A)