

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/451/2018

O.A.No.260/452/2018

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O.A.No.260/454/2018

Date of Reserve:04.09.2019

Date of Order: 02.12.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)

HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

In O.A.No.260/451/2018

Jagannath Patra, aged about 49 years, working as Goods Guard of East Coast Railway, Khordha, S/o. Late Narasingh Patra, resident of Gurupalli, PO-Bhegiput, PS-Khalikote, Dist-Ganjam.

In O.A.No.260/452/2018

Nilakantha Mohapatra, aged 57 years, Working as Railway Goods Guard at East Coast Railway, Khordha Road, Khordha, S/o. Late Banamali Mohapatra of Villaage-Sidhamahabir, PS-Kumbharapada, P.S.-Talabania, Dist-Puri.

In O.A.No.260/453/2018

Basudeba Behera, aged 44 years, working as Goods Guard of East Coast Railway, Khordha, S/o. Late Dhani Behera, At/PO-Biribadi, PS-Tangi, Dist-Khordha.

In O.A.No.260/454/2018

Ramesh Chandra Pariad, aged 50 years, working as Goods Guard of East Coast Railway, Khordha, S/o. Late Adhikari Parida of Vill-Ankula, PO-Belapada, PS-Balguan, Dist-Khordha.

...Applicants

By the Advocate(s)-M/s.T.Panigrahi

D.Nayak

S.K.Biswal

-VERSUS-

Union of India represented through:

1. The General Manager, East Coast Railway, Khordha Road, At-Chandrasekharpur, Bhubaneswar, Dist-Khordha-751 023.
2. D.R.M.(P), East Coast Railway, Khordha Road, Khordha, Dist-Khordha-752 050.
3. Chief Personnel Officer, East Coast Railway, Rail Sadan, Chandrasekharpur, Bhubaneswar-17, Dist-Khordha.
4. Chief Operation Manager, East Coast Railway, Rail Sadan, Chandrasekharpur, Bhubaneswar-17, Dist-Khordha.

5. Senior Divisional Operation Manager, East Coast Railway, Khordha Road, Dist-Khordha-752 050.

...Respondents

By the Advocate(s)-Mr.T.Rath(O.A.Nos.454 & 452/18)
Mr.S.K.Ojha (O.A.Nos.453 & 454/18)

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J)

All the above mentioned OAs involve identical question of facts and law and therefore, the same are being disposed of through this common order. For the sake of convenience, the facts of O.A.No.260/00 451/2018 are being dealt and discussed hereunder:

2. The applicant in O.A.No.260/00/451/2018 has sought for the following reliefs:

- i) In view of the facts mentioned in Para-4 above, the applicant prays to pass an order for continuance of applicant in Goods Guard post with observe him said post under regular establishment as per Annexure-A/5 which he has been continuing since 09.09.2013 under kind disposal of respondents without any adverse order for reversion by respondents or any superior authority of East Coast Railway, Khordha against his discharging duty as Railway Goods Guard vide Annexure-A/2.
- ii) Pass an order for payment of scale of salary of Goods Guard under the respondents in favour of the applicant with effect from 09.09.2013 including payment of all service benefit and arrears as admissible in the said post for the purpose of revision of salary of applicant with a view to proper pensionary benefits of applicant in future.
- iii) Pass any order/orders/direction/directions in favour of humble applicant as deem just and proper for sake if interest of justice and fairness.

3. Facts of the matter in brief are that in view of large number of vacancies in the cadre of Goods Guard in the year 2013, it was proposed by the Railway authorities to utilize TPM-A in lieu of Goods Guard and the same was approved by the Divisional Railway Manager, East Coast Railway, as a

temporary arrangement. However, onetime special permission was also accorded by the East Coast Railway Headquarters in this regard vide letter dated 05.09.2013 (A/2), as communicated by the Chief Passenger Transportation Manager subject to the following conditions:

- a) Onetime special permission is given upto 31.8.2014 and it will be automatically treated as withdrawn WEF 01.09.2014. Meanwhile, division should expedite the selection of guards to fill up the vacancies.
- b) Not more than 50 TPMAs (but not TPMB) shall be utilized. Only those TPMAs shall be called for training who gives their written willingness to work as goods guard temporarily at KUR base only. The willingness application should also contain declarations regarding not claiming of running allowance, absorption in guard category permanently, etc. If the options are more than required, senior most TPMAs should be given priority over juniors.
- c) The optees who are overdue PME (A-2 category) shall be utilized only after clearance in medical examination.
- d) The optees should undergo training for a period of 14 working days at Divl. Traffic Training Institute, KUR in which duties of goods guard during normal and abnormal working are to be taught. At least one period on First Aid should also be given. Sufficient classes on Automatic section shall also be given. DOM(G)/KUR to conduct a formal written examination followed by viva-voce and only successful candidates shall be utilized for the purpose and the record of which should be kept with operating safety cell. No competency certificate is required to be issued for this purpose. However, automatic section competency is to be given after thorough examination.
- e) They shall not be utilized to work in passenger carrying trains under any circumstances.
- f) Running Room facilities are to be given to them at par with goods guards.
- g) Such TPMAs are to be provided with safety equipment like detonators, flag, tri colour LED torch, tail lamp/L.V. broad, copy of working time tables, torch light. Air Pressure gauge, walkie talkie set with batteries and any other equipment is required.

- h) Such TMPs shall be given minimum three trips for section pick up/learning duties. Any additional trips, if considered necessary may also be given.

4. In the above backdrop, the applicant was spared on 09.09.2013 vide Order No.DTTS/Sparing/TPMA/Guard/01 dated 09.09.2012 with an instruction to report his requested Guard base on 10.09.2013 (FN) for section pickup/learning duty (Minimum three trips).It was further indicated therein that he should be spared to DTTS/KUR for further theory training after completion of the learning duties. Be that as it may, in pursuance of letter dated 05.09.2013 (A/2), the applicant being a TPM-A was utilized as an acting Guard after having rendered proper special training on temporary basis upto 31.08.2014. However, the fact remains that later on, due to continuing vacancy in Goods Guard cadre, this special permission was extended from time to time, as under:

- i) From 01.09.2014 to 31.08.2015
- ii) From 01.09.2015 to 31.08.2016
- iii) From 23.09.2016 to 31.08.2017.
- iv) From 01.09.2017 to 31.08.2018.

5. Grievance of the applicant is that utilization of his service in the grade of Goods Guard is on the basis of promotion inasmuch as, before such induction, he has undergone the required training as per rules. Hence, his basic claim is that he should be regularly promoted and/or absorbed in the post of Goods Guard in pursuance of corrigendum dated 07.03.2014 (A/5) issued by the Respondent-Railways on the subject of selection to the post of Goods Guard inPB-1, GP Rs.2800/- in Operating Department against 60% DPQ with all consequential benefits.

6. Respondents by filing a detailed counter have opposed the prayer of the applicant. According to them, the applicant has never undergone through a

process of promotion, i.e., written test as per the laid down procedure. For the smooth running of Goods Train, his service has been utilized after obtaining his willingness, declaration to the effect that he would work in place of Goods Guard in temporary basis for administrative convenience without claiming mileage and running allowance. He will also not claim status quo of Goods Guard and that it is one time special permission given upto 31.08.2014 which would stand automatically withdrawn with effect from 01.09.2014 as per CPTM/ECOR/BBS's letter No.ECOR/Optg.SC/55/XV/Spl.Inst/Guard dated 05.09.2013. According to respondents, notification for filling up the posts of Goods Guard was issued by the Board vide their letter dated 12.05.2017 (R/4). In the said notification, nowhere there has been a stipulation that only on completion of three years in the grade of TPM, promotion could be made to the post of Goods Guard. On the contrary, a TPM has to render three years' regular service in order to be eligible for consideration to the post of Goods Guard. They have pointed out that mere eligibility by itself is not quite enough to get promotion unless a TMP comes out successful in the selection. Respondents have stated that in the meantime, based on the revised instructions, posts of Goods Guards have been filled up and under the circumstances, no further extension was issued by the Headquarters as per the percentage of vacancy reduced to a great extent. In the above background, the applicant was returned back to his substantive post which he was holding permanently, vide order dated 04.05.2018. Respondents have contended that mere continuance that too basing on the unequivocal undertaking does not confer any right on the applicant to claim promotion. Since he having known fully well that his continuance is an interim arrangement for the administrative convenience, he will have to go back after the regular

incumbent is selected and join, the relief sought for by him in this O.A. is not justiciable and therefore, the O.A. being devoid of merit should be dismissed.

7. We have heard the learned counsels for both the sides and perused the records. We have also gone through the rejoinder filed by the applicant as well as the written notes of arguments submitted by the parties concerned. In the written notes of submission, the applicant has relied on the decision of Hon'ble Supreme Court in Baisampayan Kar vs. The Registrar (Admn.) High Court of Orissa, Cuttack & Another reported in 2003 (II) OLR 473 to buttress his claim.

8. From the pleadings of the parties the short point to be decided is whether the applicant has an indefeasible right to continue in the post of Goods Guard or alternatively, he could be absorbed against that post.

9. The main stay of authority of the applicant is corrigendum dated 07.03.2014 (A/5) which states that 5% post out of the total 83 posts under Puri Division of TMP shall be promoted to the post of Goods Guard to work under Operating Department having 3 years experience in TPM. Accordingly, in the year 2013, the applicant was temporarily given promotion to the post of Goods Guard. It is the case of the respondents that mere eligibility is not sufficient to get promotion without coming out successful in the selection.

10. It is to be noted that the Respondents issued a corrigendum dated 07.03.2014 (A/5) with reference to an earlier notification dated 05.03.2014 in the matter of selection to the post of Goods Guard in PB-1, GP Rs.2800/- in Operating Department against 60% DPQ. The mode of selection as provided therein, reads as under:

"The selection will be based on written examination, i.e., professional ability. Goods Guard being a safety category post, the qualifying marks in professional ability is 60% and 60% aggregate, for all candidates as per Estt.SrI.No.266/99

& 113/09. Question paper for written test will be of two parts. About 50% subjective and 50% objective (8% marks on Rajabhasa which will be optional to the candidates. Questions will be based on the Railway matters like to be faced by the candidates & on which they have already worked). Panel will be drawn as per merit on the basis of marks obtained by the candidates in the "professional ability" and "record of service". Those securing less than 60% marks in professional ability and 60% in aggregate will not be considered eligible for inclusion in the panel".

10. Respondents have laid emphasis on the instructions dated 12.05.2017 (R/4) issued by the Railway Board on the subject of "modification in the AVC for promotion to Guard (Goods) in Grade Pay Rs.2800(Level-5).

11. A few of Zonal Railways have reported difficulties in filling up the posts of Guards. Both the federations (AIRF and NFIR) have also raised the issue in PNM forum.

2. The issue has been examined in consultation with Traffic Directorate of Railway Board and both the federations. Accordingly, it has been decided to add some additional categories in the feeder list for promotion to Guards (Goods) under different Quota. Hence, the mode of filling up of the post of Guards will be as under:

- (i) 60% by general selection from amongst serving regular employees with a minimum of three years service working in Grade Pay Rs.1900/- (level-2) to Rs.2400/- (level-4) in the categories of Train Clerks (GP Rs.2000), (Level-3)/Sr.Train Clerks, (GP Rs.2400), (level-4), Commercial Clerks (gp Rs.2000), (level-3), Ticket Collector (GP Rs.2000),(level-3), Cabinman (GP Rs.1900), (level-2) & GPRs.2400), (level-4), Switchmen/Leverman/Pointsman/Shutman (GP Rs.1900), (level-2), and Asst.Guards (GP Rs.1900), (level-2)/Sr.Asstt. Guards (GP Rs.2400), (level-4): 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 employees in Operating and Commercial Departments with a minimum of three years regular service, working in GP Rs.1800(level-1) to GP Rs.2400 (level-4) up to 40 years of age (45

years in case of SC/ST) with educational qualification of Graduation.

(iii) 25% by direct recruitment through Railway Recruitment Boards with graduate qualification.

(iv) Shortfall in General Selection as per (i) above to be added to LDCE and shortfall in LDCE will be transferred to GDCE quota open for all Departments.

3. Accordingly, Para-124(1) of the Indian Railways Establishment Manual, Vol-I, Revised Edition-1989 (First Reprint Edition 2009) is amended as reflected in the ACS No.237".

12. Admittedly, there were a large number of vacancies in the cadre of Goods Guard under the Respondent-Railways. It is a matter of fact that onetime special permission was also accorded by the East Coast Railway Headquarters in this regard vide letter dated 05.09.2013 (A/2) inter alia with a stipulation that DOM(G)/KUR to conduct a formal written examination followed by viva-voce and only successful candidates shall be utilized for the purpose and the record of which should be kept with operating safety cell. It was also one of the stipulations that the optees who are overdue PME (A-2 category) shall be utilized only after clearance in medical examination. From the above, it is quite clear that the applicant having been successful in the written examination followed by viva voce as well as undergoing the prescribed training and having attained the prescribed medical standard, i.e., A-2 category was spared to work in the cadre of Goods Guard from 10.09.2013 to 31.08.2014 as per CPTM/ECOR/BBS's letter No.ECOR/Optg.SC/55/XV/Spl.Inst/Guard dated 05.09.2013 with a condition that this temporary arrangement would stand automatically withdrawn with effect from 01.09.2014. Respondents in the counter have disclosed that later

on, due to continuing vacancy in Goods Guard cadre, this special permission was extended from time to time, i.e., from 01.09.2014 to 31.08.2015, 01.09.2015 to 31.08.2016, 23.09.2016 to 31.08.2017 and 01.09.2017 to 31.08.2018.

13. It is the case of the respondents that for the smooth running of Goods Train, his service of the has been utilized after obtaining his willingness, declaration to the effect that he would work in place of Goods Guard in temporary basis for administrative convenience without claiming mileage and running allowance. He will also not claim status quo of Goods Guard and that it is one time special permission given upto 31.08.2014. This fact of the respondents is not at all disputed. The willingness had been exercised by the applicant upto 31.08.2014 with an understanding that on 01.09.2015 this arrangement will automatically stand withdrawn. But as admitted by the respondents because of continuation of the vacancies of Goods Guard, the applicant's service as such was extended from time to time, i.e., till 31.08.2018, without obtaining his willingness. This apart, it is not in dispute that the applicant's service as Goods Guard had been utilized after he having been come out successful in the written examination followed by viva voce and the prescribed medical standard. It is also not in dispute that the Respondents utilized the service of the applicant as Goods Guard from 01.09.2015 to 31.08.2018, although as per stipulations vis-a-vis the willingness submitted by the applicant, onetime special permission given upto 31.08.2014 should have automatically treated as withdrawn with effect from 01.09.2014. Apart from the above, it is not the case of the respondents that the applicant that the applicant is not eligible to get promotion to Goods Guard on the basis of corrigendum dated 07.03.2014 (A/4). The contention of the

respondents that vide Board's letter dated 12.05.2017 (R/4), it was decided to fill up the posts of Goods Guard and in the said notification, nowhere it has been specified that only on completion of three years TPM shall be promoted to the post of Goods Guard. As quoted above, R/4 lays down a provision to add some additional categories in the feeder list for promotion to Goods Guard under different quota. Therefore, the emphasis laid by the Respondents on R/4 does not in any way is germane to the issue. At this stage, we would like to note that the respondents in their counter have pointed out that based on the revised instructions, posts of Goods Guards having been filled up, no further extension was issued by the Headquarters and the applicant was returned back to his substantive post which he was holding permanently, vide order dated 04.05.2018. This statement of the respondents is belied upon. On the one hand, the respondents have come up in their counter regarding extension granted to the applicant as Goods Guard upto 31.08.2018 and on the same breath, they point out that vide order dated 04.05.2018, the applicant has been directed to revert back to his substantive post. This amounts to approbation and reprobation of a statement and since, the respondents have not produced any such order dated 04.05.2018, this Tribunal is unable to accede to this statement.

14. Coming to the eligibility and other conditions of the recruitment rules, it is not the case of the respondents that the applicant is neither eligible nor has he come through the test as per the provisions of Corrigendum dated 07.04.07.03.2014 (A/5) or any other rules for the time being in force for promotion to the post of Goods Guard. Under the circumstances, the plea taken by the respondents that the applicant's posting as Goods Guard was a temporary measure and on the basis of willingness submitted by him, as mentioned

above, does not stand to reason, particularly, on the ground that the applicant was allowed to hold the post of Goods Guard from 01.09.2014 upto 31.08.2018 in the interest of the administration, without obtaining any willingness. Therefore, from the period from 01.09.2014 upto 31.08.2018, it cannot be said that the applicant's acting as Goods Guard was as a temporary measure. In view of this, we answer the point in issue affirmatively and against the applicant.

15. Having regard to what has been discussed above, we leave this matter to the discretion of the General Manager, East Coast Railway (Respondent No.1) to look into the matter as to whether the applicant could be absorbed as Goods Guard in the light of the corrigendum dated 07.03.2014 (A/5) vis-a-vis the observations made by us in the preceding paragraphs and pass an appropriate orders within a period of ninety days from the date of receipt of copy of this order.

16. The status quo order granted shall remain in force

17. In the result, all the four O.As are disposed of as above, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)