

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 315 OF 2007

Vinod G. Joshi and others .. Petitioners

Versus

Union of India and others .. Respondents

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Mr. Sandeep V. Marne for the Petitioners.

Mrs. Neeta V. Masurkar for the Respondents.

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**CORAM : SMT. V.K.TAHILRAMANI ACTING C.J.
AND M.S.KARNIK, J.**

DATE : 23rd FEBRUARY, 2018

ORDER [PER M. S. KARNIK, J.] :

1. The Petitioners, by this petition, challenge an order dated 24/11/2006 passed by the Central Administrative Tribunal, Mumbai Bench Mumbai in O.A.No.189 of 2006.

2. The facts of the case in brief are :-

The Petitioners by filing O.A. before the Tribunal challenged the notification dated 27/06/2005 convening the selection for formation of panel for filling up of 39 vacancies of

Passenger Guard in the scale of Rs. 5000-8000. The Petitioners also challenged the letter dated 09/03/2006 whereby panel of 24 candidates has been published.

3. Learned Counsel for the Petitioners contended that the Petitioners at the relevant time were working on the post of Senior Goods Guard in Mumbai division of Western Railway in the pay scale of Rs. 5000-8000. Prior to their promotion to the post of Senior Goods Guard they were working on the post of Goods Guard in the scale of Rs. 4500-7000. By notification dated 27/06/2005 the Respondent No.2 convened the selection for formation of panel to the post of Passenger Guard in the scale of Rs.5000-8000. By the said notification Senior Goods Guard in the scale of Rs. 5000-8000 and Goods Guard in the scale of Rs.4500-7000 were called for selection. The names of the Petitioners were included in the list of candidates eligible to appear for the selection. Prior to the selection convened, the official respondents never used to conduct the written test to fill up the post of Passenger Guards and only viva-voce test used to be conducted. However, Respondent No.2 announced written test for the post of Passenger Guard by letter dated 30/09/2005. By the said letter,

eligibility list was also revised and fresh list was published. The names of the Petitioners figured in the revised list also. The written test was held on 22/10/2005 and 09/11/2005. Respondent No.2 published the result of written test on 06/02/2006 and the Senior most Goods Guards from serial No.1 to 32 were declared as failed in the written test, whereas, the most junior Goods Guard at serial No.104 in the list of eligible candidates was declared passed. By representation dated 17/02/2006 a request was made that the promotion should be as per seniority. The Petitioners aggrieved by the decision of the Respondents in making the Senior Goods Guards in the scale of Rs.5000-8000 for appearing for written test in the selection to the post of Passenger guard carrying the pay scale of Rs. 5000-8000, approached the Tribunal by filing O.A. The Tribunal dismissed the O.A.

4. Learned Counsel for the Respondents on the other hand contended that the post of Passenger Guard in the pay scale of Rs. 5000-8000 is classified as "Selection Post" and mode of filling up of post was viva-voce test. In terms of Railway Board letter dated 07/08/2003, rules governing promotion of Group 'C'

staff para 215 substituted that “selection post shall be filled by a positive act of selection made by Selection Boards, from amongst the staff eligible for selection. The positive act of selection shall consist of only written test to assess the professional ability of the candidates.” The procedure as revised is applicable to selections notified on or after the date of issue of letter dated 07/08/2003. The eligibility list was notified on 27/06/2005 and the date of written test fixed on 22/10/2005. The Tribunal for the reasons recorded in the impugned order came to the conclusion that the post of Passenger Guard is selection based.

5. We are in agreement in view taken by the Tribunal. Merely because the pay scale of post of Senior Goods Guard and Passenger Guards is the same will not confer any right on the petitioners to be laterally appointed to the post of Passenger Guard. The Petitioners in fact subjected themselves to written test held. They cannot now turn back and question the process. Having participated in the process, the petitioners would then not be justified in questioning the holding of the written test. The post of Passenger Guard is a selection post.

6. The order passed by the Tribunal is a well considered order and we do not find any infirmity in the view taken by the Tribunal. The present petition is therefore dismissed. Rule is discharged with no order as to costs.

(M.S.KARNIK, J.)

(ACTING CHIEF JUSTICE)