

ALLAHABAD HIGH COURT

J.C. Malik

Vs.

Union of India

Civil Misc. Writ No. 1809 of 1972

(K.N. Singh and S.D. Agarwala, JJ.)

09.12.1977

JUDGMENT

K.N. Singh, J.

1. By means of this petition under Article 226 of the Constitution, the Petitioners, who are in the service of the Northern Railway as Grade B Guards and Grade C Guards, have challenged the selection of Respondents Nos. 4 to 8 for appointment to the posts in Grade A Guards. The Petitioners have claimed relief for quashing the Railway Circulars dated 27th August, 1968 and 20th April, 1970 but during the course of the argument, the Petitioners have confined their relief to the quashing of the selection of the aforesaid Respondents.

2. In the Railway service, there are three classes of Guards, namely, Guards A Grade in the pay scale of ₹ 205-7-240-8-280, Guards B Grade in the pay scale 150-5-175-6-205-EB-7-240 and Guards C Grade in the pay Scale of 130-4-170-EB-5-200-EB-5-225. The three categories of Guards belong to the category of Class III posts in Railway Service. Under the existing service rules and the circulars issued by the Railway Board, initial recruitment is made in the Grade C Guards, B Grade Guards are appointed by promotion from Guards Grade C on the basis of seniority while appointments to the post of Grade A Guards are made by selection from the aforesaid two lower Grades. A departmental Selection Committee is constituted for holding selection. On the basis of the list prepared by the Selection Committee, promotion is made to the post of A Grade Guards as and when vacancy arises. In 1972, selections were made for promotion to A Grade Guards. The Petitioners Nos. 1 to 3 are B Grade Guards while Petitioners Nos. 4 to 6 are C Grade Guards in the Northern Railway

posted within Moradabad Division. They were not selected while junior to them were considered and selected. Respondents Nos. 4 to 8 were selected against the reserved vacancies as they belonged to the Scheduled Castes even though they were C Grade Guards. Reservation for Scheduled Castes candidates were made in accordance with the Railway Board's Circular dated 20th April, 1970. According to the Respondents, the Selection Committee selected the Respondent Nos. 4 to 8 against the 15% quota reserved for the Scheduled Castes candidates in the vacancies which were available at the time of selection in the A Grade Guards.

3. Learned Counsel for the Petitioners urged that the Railway Board's Circular dated 20th April, 1970 did not permit reservation for Scheduled Castes in excess of 15% of the posts of the A Grade Guards. He urged that the Respondents have wrongly interpreted and implemented the said circular and if the interpretation of the Respondents is accepted to be correct, the said circular would practise discrimination against the Petitioners in matters relating the employment. Railway Board is competent to issue circulars making reservation for promotion to the Scheduled Castes candidates and also to fix quota for the purpose. The Railway Board, by its circular letter dated 27th August, 1968 fixed 12-1/2% as reserved quota for Scheduled Castes in class III and Class IV posts of the Railways. This quota was revised by the Railway Board by its circular letter dated 20th April, 1970. 12-1/2% of reservation was raised to 15% for Classes III and IV employees. The relevant portion of the said circular as applicable to Classes III and IV posts is as under:

"It has also been decided that in vacancies in posts filled by promotion in which reservations have been provided vide Railway Board's letter No. E (SCT) 68 CM 15/10 dated 27-8-1968, the percentages of reservation for Scheduled Castes and Scheduled Tribes in such posts shall also be raised from 12-1/2% to 15% in favor of Scheduled Castes and from 5% to 7 1/2% in favor of Scheduled Tribes.

The above paragraph clearly lays down that there would be reservation for Scheduled Castes to the extent of 15% for appointment to the posts filled by promotion. The reservation of 15% has been made for appointment to the posts and not to the vacancies which may occur in the posts. This view finds support

from the opening part of the said circular letter which clearly states that the question of revising the percentages of reservation for Scheduled Castes and Scheduled Tribes in posts and services under the Government of India in the light of the population of these communities as shown in the 1961 census has been under consideration of the Government for some time. The circular further states that it has now been decided in modification of the decisions contained in paras 2 and 4(1) of the Ministry of Home Affairs' Resolution of 13th September, 1950 that the following reservations will hereafter be made for Scheduled Castes and Scheduled Tribes in posts and services which are filled by direct recruitment. The circular thereafter prescribed different quota for direct recruitment and for promotion to different class of service. It is thus clear that reservation for Scheduled Castes has been made in posts and services and not in vacancies occurring from time to time.

4. If the contention of the Respondents that percentage of reservation relates to the vacancy and not to the posts is accepted, serious consequences would ensue which would certainly result in discrimination against the employees not belonging to Scheduled Castes. In the instant case, the total number of posts of A Grade Guards is 37 including 32 permanent posts and 5 temporary posts. If 15% of the vacancies occurring in a particular year is filled by promotion of Scheduled Castes, the result would be that after some time percentage of Scheduled Castes candidate in the A Grade Guards would reach up to 60% which would obviously be to the detriment of other persons who may be senior or meritorious but they cannot be promoted on account of the reservation made in favor of Scheduled Castes. It is pertinent to note that the circular letter dated 20th April, 1970 further lays down that if Scheduled Castes candidates are not available for selection from B Grade Guards, then the Selection Committee is required to consider the case of Scheduled Castes candidates belonging to the C Grade Guards and if they are selected they would be entitled to promotion to A Grade Guards. Thus Scheduled Castes employees belonging to the lowest category of C Grade Guards will always have edge over B Grade Guards who are admittedly senior to C Grade Guards. The Petitioners have drawn up a chart Annexure 5 to the petition giving the details of the vacancies which would be available upto 1984 on account of the retirement of A Grade Guards on attaining their age of superannuation. The figures as mentioned in the Chart have not been disputed by the Respondents. The chart indicates that if 15%

quota is against the available vacancies, the result would be that by December, 1984, Scheduled Castes will be having 56% of posts in the cadre of A Grade Guards. This would be in violation of Clause (1) to Article 16 of the Constitution. Article 16(1) ensures equality of opportunity to all citizens in matters relating to appointments to any office under the State. Clause (4) of Article 16 is an exception to Clause (1) which confers power on the State to make reservation in the matter of appointment in favor of Scheduled Castes, Scheduled Tribes and other backward classes. The power conferred under Clause (4) cannot be exercised in a manner to make the reservation so excessive that it may practically deny a reasonable opportunity of employment to members of other communities. See *T. Devadasan v. Union of India*,¹

5. In view of the above discussion, we are of the opinion that the Railway Board's circular letter dated 20th April, 1970 made reservation to the extent of 15% in favor of Scheduled Castes in respect of appointment to the posts and not to the vacancies which may occur in the cadre of posts. Admittedly, Respondents Nos. 4 to 8 have been selected by the Selection Committee and appointed to the post of A Grade Guards on the basis of an erroneous interpretation of the Railway Board's circular letter. If the circular was correctly followed and if the reservation quota was confined to the posts in that event Respondents Nos. 4 to 8 could not have been considered or selected for appointment to the posts of A Grade Guards. In our opinion, their selection was not in accordance with law as their selection has been made in excess of the 15% quota fixed for Scheduled Castes candidates.

6. In the result, we allow the petition and quash the selection and appointment of Respondents Nos. 4 to 8 as A Grade Guards. Respondents Nos. 1 to 3 are directed to make the selection in accordance with the terms contained in the Railway Board's Circular dated 20th April, 1970 and in the light of the observation made in this judgment. In the circumstances of the case, parties shall bear their own costs.

Petition allowed.

Cases Referred.

1. AIR 1964 SC 179