

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00019/2020

Thursday, this the 25th day of March, 2021

C O R A M :

**HON'BLE Mr.P.MADHAVAN, JUDICIAL MEMBER
HON'BLE Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER**

1. Leju R, aged 34 years
S/o.Ramesan Pillai
Pointsman-A
Ernakulam, South, Trivandrum Division
Southern Railway, Residing at KB House
Nellettil P.O, Kollam
Ph.9995262659
2. Sajimon P.K, aged 35 years
S/o.Karunakaran P.K, Pointsman-A
Kumbalam, Southern Railway, Trivandrum Division
Residing at Aswathi Nivas,
Olavaipu, Cherthala, Alappuzha
Ph.9562603066
3. Rahul C.K, aged 34 years, S/o.Raghavan K.,S
Pointsman -A, Wadakkancherry, Southern Railway
Trivandrum Division, residing at Govindam
Kaithery 11th Mile, Nirmalagiri P.O
Kannur, Ph.9633967521
4. K.B.Babu, aged 51 years, S/o.Balakrishna Nair
Pointsman-A, Irumpanam, Southern Railway, Trivandrum Division
Residing at Kalapurakal House, SRRA-59, Maradu
Ph.9446492150
5. Jomon C.N, aged 38 years, S/o.Lukose, Pointsman-A
Piravam Road, Southern Railway, Trivandrum Division
residing at Cheriyam Kunnel, Vadayar P.O
Kottayam- ph:9846137498

6. Shiny P, aged 44 years, D/o.Pathrose, Pointsman-A, Kollam Southern Railway, Trivandrum Division, residing at Rose Bhavan Kilikolloor Nagar, House No.59, Kollam Ph.9400147424
7. Krishna Deo Kumar, aged 31 years S/o.Sumrit Sahu, Pointsman-A Irumpanam, Southern Railway, Trivandrum Division, residing at Railway Quarters No.2070, Irumpanam, Ph:9995319534

...Applicants

(By Advocate M/s.Varkey & Martin)

v e r s u s

1. The General Manager, South Railway, Park Town Chennai – 600 003
2. The Additional Division Railway Manager South Railway, Trivandrum Division Trivandrum – 14
3. The Senior Divisional Personnel Officer South Railway, Trivandrum Division, Trivandrum – 14
4. The Railway Board, Railway Bhavan, New Delhi – 110 001 represented by its Chairman

....Respondents

(By Advocate : Mr.Sunil Jacob Jose)

This application having been heard on 17.3.2021, this Tribunal on 25.03.2021 delivered the following :

O R D E R

HON'BLE MR.K.V.EAPEN, ADMINISTRATIVE MEMBER

The applicants who are working as Pointsman A in the Trivandrum Division of Southern Railway have filed this Original Application seeking a declaration that they

are eligible to be included in the panel of selected candidates for the post of Goods Guard against 60% of promotional quota in the place of eight other selected candidates in the panel who have declined and refused to attend the prescribed training course, mandatorily required for the appointment as Goods Guard. While working as Pointsman A at level -2 with Grade Pay of Rs.1900 under the Trivandrum Division the applicants responded to a Notification issued to fill up 25 vacancies of Goods Guard against 60% promotional quota, as produced at Annexure A-1. As per the Annexure A-1 circular dated 12.04.2019, it was proposed to conduct a selection for filling up 25 vacancies of Goods Guard in Level of Pay-5 against 60% promotional quota from among the volunteers of different categories, as per the quota indicated against each. These categories also include Pointsman to which the applicants belong. It has been mentioned in the said notification at paragraph V that:

“ In case of adequate number of employees from the specified categories are not qualifying, the shortage would be made good from among the staff qualified from the other categories. The left over shortfall in the promotional quota will be made good by LDCE. The overall shortfall, if any, will be made good by Direct Recruitment Quota. There will be only one panel formed from the different categories having the prescribed percentage against Promotional Quota. “

(Emphasis Added)

It has also been indicated at paragraph VI of the same circular that:-

“ The employees should secure 60% marks both in written test and in aggregate. ”

It has also been indicated in the Notification that the panel will be formed in the order of merit based on the aggregate marks of written test, record of service and

APAR's/Performance report wherever applicable, as per the instructions contained in Railway Board's letter No.RBE 113/2009 dated 19.06.2009. The Notification also contains details of the syllabus for the written examination in connection with the selection for the post of Goods Guard against 60% promotional quota.

2. It appears that subsequent to this Notification and after all necessary steps were taken, a Memorandum was issued on 5.12.2019, a copy of which is produced at Annexure A-3. In this Memorandum, 25 employees were shown as selected and placed on the Panel for the post of Goods Guard in Level-5 of VII Pay Commission Pay Matrix against 60% promotional quota based on merit as recommended by the duly constituted Selection Committee. It is also recorded in this Memorandum that the proceedings of the Selection Committee have the approval of ADRM/TVC on 05.12.2019. It was further indicated that the absorption as Goods Guard will be subject to passing the prescribed training which is scheduled to be commenced from 9.12.2019. Subsequent to this, on 13.12.2019, another Memorandum was published, in which, in term of circulars of the Southern Railway, the marks of the written test conducted for the selection held on 14.9.2019 and 21.9.2019 and aggregate of marks obtained by the qualified employees in the selection out of 80 was indicated. This has been produced as Annexure A-2.

3. The applicants in the Original Application have termed the list at Annexure A-2 as the "eligibility list".(However, on full scrutiny, it appears to be a list containing the marks obtained in the written test and aggregate of marks of all candidates who had

appeared in the examination). The applicants submit that out of the 25 candidates included in Annexure A-3, around 18 had already been selected for appointment to the post of Ticket Examiners. They were undergoing the training for Ticket Examiners by the time Annexure A3 panel was published. Out of the above said 18 who were already selected for promotion to the Group C post of Ticket Examiner, 8 declined and refused to undergo training as provided for in Annexure A3 select list, thus disqualifying themselves for appointment/promotion to the post of Goods Guard. The names of these 8 persons have been indicated in the Original Application. The applicants submit that as the selection was initiated for filling up 25 vacancies of Goods Guard against 60% of promotional quota and when 8 candidates, who were initially included in Annexure A3, had declined/refused to undergo training disentitling them for appointment to the post of Goods Guard, it is reasonable that they (the applicants) should be included in Annexure A3 list in the place of these candidates. Their case is that they did not appear in Annexure A-3 select list only because they did not secure marks as high as those who appeared in Annexure A-3 list even though they had otherwise passed the written test, as well as obtained the required qualifying marks overall. After knowing that 8 candidates who were initially included in Annexure A-3 had declined to join, they had represented in person to the third respondent i.e, the Senior Divisional Personnel Officer, Trivandrum Division and requested him to include them in the select list and send them for training. They state, however, that this request was turned down. Since they did not have an efficacious remedy, they have filed this application seeking justice and praying for the following reliefs:-

"I) Declare that the applicants are eligible to be included in Annexure A3 panel and to direct the respondents accordingly with all attendant benefits.

II) Direct the respondents to consider the applicant for promotion as Goods Guard on the basis of the marks scored by them in the Selection conducted in pursuant to Annexure A1 notification.

III) Pass such other orders or directions as deem fit."

4. The main argument of the applicants is that the respondents ought to have initiated steps to include the applicants in the Panel at Annexure A-3 by replacing those in the Panel who had declined and refused to undergo training. They submitted that the currency of the Panel is for two years or till the vacancies notified are filled up by eligible candidates. Since the selection was initiated for filling up of 25 vacancies and the applicants have qualified in the selection conducted by the Selection Committee, they are entitled to be considered in the place of 8 candidates who had declined and refused to undergo training as they have selected to the post of Ticket Examiner.

5. The respondents have filed a reply statement submitting that the applicants have not availed of all remedies available to them under the relevant service rules unlike what is indicated in paragraph 6 of the Original Application (O.A). As seen from the records, they submitted a representation to the Additional Divisional Railway Manager on 3.1.2020 and without waiting for the disposal of the representation as mandated by Section 20(2) of the Administrative Tribunals Act, 1985, they have filed the O.A on 5.1.2020, concealing the fact of that a representation

submitted before the respondents is pending. The respondents have included a copy of the representation at Annexure R-1. Further, the respondents submit that the applicants have not averred that they are next in the line of marks obtained after the employees who had submitted their unwillingness for the post of Goods Guard. They had not impleaded the other passed candidates, who were not selected for not having sufficient marks to be placed in the Panel but had obtained more marks than the applicants. Hence the Original Application also suffers from non-joinder of necessary parties and is liable to be dismissed. The respondents submit that there is no provision to include candidates after publication of a Panel. As per the Master Circular No.31, a Panel once approved should not be normally cancelled and can be done only if procedural irregularities or other defects were found. For this, the approval of the authority next higher than the one who approved the panel will have to be obtained. In this case, there are no irregularity or defects in the panel. As per Paragraph 219(k) and (l) of the IREM Vol.1, after the competent authority has accepted the recommendations of the Selection Board, the recommendations of the Board would be notified to the candidates. The applicants have scored less marks than the 25 selected candidates and hence they could not find place in the Panel. The list at Annexure A-2 is only a matter of record and is not the "eligibility list" as stated by the applicants. It is just a list showing the marks scored by the candidates who had participated in the examination and it has been published as per the instructions contained in PBC No.42/2007 and 116/2009 issued by the Chief Personnel Officer, Southern Railway.

6. Further, as regards the issue regarding selection to the post of Ticket Examiner, it is submitted that the selection for that post had been notified on 22.8.2017 i.e, much before the selection for the post of Goods Guard was notified. Due to pending decisions in O.A and WP(C) filed before this Tribunal and Hon'ble High Court, finalisation of the result was delayed. The notification for the post of Goods Guard was issued on 12.4.2019 and, in both posts, a few employees working as Pointsman in the Operating Department were selected. Some candidates who had found place in both lists opted to continue as Ticket Examiners and submitted their unwillingness after formation of Panel. However, since there is no provision in the IREM to amend the Panel, normally it is not possible to include the applicants herein. There is no provision to include them in place of those candidates who expressed their unwillingness as there is no rule provision to do so. Further, the Hon'ble Apex Court has observed that no one has a vested right for promotion.

7. In their rejoinder, the applicants submit that from Annexure A-2 select list, it is clear that the last selected unreserved candidate scored 55.5 marks. Applicants have scored marks between 55.08 to 49.335. The 7th applicant who qualified in the selection scored 49.33 marks, the least scored among all the applicants. No other candidates who participated in the selection scored more marks than the 7th applicant to be placed above them. There are no other passed candidates who have scored more marks than the applicants to have better claim than them as contended by the respondents. A mere look at Annexue A2 will show that the applicants are next in the line to be included in Annexure A3 Panel. It appears that the respondents have issued

another Notification (produced at Annexure A-4 in a Miscellaneous Application by the applicants) dated 01.10.2020 proposing to conduct a selection for filling up 47 vacancies (tentative) of Goods Guard in Level of Pay-5 against 60% promotional quota from among various categories. The applicants prayed for a direction in M.A 180/623/2020 that since the 8 vacancies against which the applicants claimed consideration and obviously also included in these 47 vacancies, filling up these vacancies will frustrate the relief sought by the applicants in the Original Application. It was prayed to direct the respondents to keep Annexure A4 notification in abeyance provisionally and subject to the final outcome of the Original Application. M.A 180/623/2020 was disposed of on 20.10.2020 by this Tribunal by granting an interim order to the effect that any appointment made as per the new notification will be subject to the final outcome of this O.A.

8. The respondents then filed an additional reply statement against the rejoinder filed by the applicants. They pointed out that in the case of ***I.Chuba Jamir & ors. v. The State of Nagaland & ors***, the Hon'ble Supreme Court has observed that, it is elementary and well settled that mere eligibility does not confer any right for promotion. As regards Annexure A-4 notification, the same has been issued as many vacancies were existing in the promotional posts of Mail Guard, Passenger Guard and Sr.Passenger Guard, all Safety Category posts, wherein the post of Goods Guard is the feeder cadre. In order to fill up the promotional posts of Mail Guard, Passenger Guard and Sr.Passenger Guard, the existing vacant posts were downgraded and Annexure A4 notification was issued. It is submitted by the respondents that the

applicants can also respond to the Notification, if they are so interested, to appear at the examination. The Respondents objected to the prayer of the applicants for staying the subsequent selection as it is against the interest of administration and detrimental to the general public. They submitted that the category of guard is a safety category and the Loco Pilots run trains in tandem with the Guards. As such, non-filling up of the category of Goods Guard will lead to cancellation of trains which will ultimately affect the economy of the Country.

9. We have gone through the records provided and also heard Adv.Mr.Martin G Thottan, learned counsel for the applicant and Adv.Mr.Sunil Jacob Jose, learned counsel for the respondents. A copy of part of the Indian Railway Establishment Manual Volume I, as pertinent to the constitution of Selection Boards and procedures to be adopted etc., has been provided to the Tribunal during the course of hearing. It is indicated as follows in Paragraph 219(l):

"(l) After the competent authority has accepted the recommendations of the Selection Board, the names of candidates selected will be notified to the candidates. A panel once approved should normally not be cancelled or amended. If after the formation and announcement of the panel with the approval of the competent authority it is found subsequently that there were procedural irregularities or other defects and it is considered necessary to cancel or amend such a panel, this should be done after obtaining the approval of the authority next higher than the one that approved the panel."

Further as regards currency of panels, under paragraph 220, it is indicated as

follows:

“Panels drawn by the Selection Board and approved by the competent authority shall be current for two years from the date of approval by the competent authority or till these are exhausted whichever is earlier.”

10. Thus, from the above, it appears that once a Panel is approved, there cannot normally be any amendment and the currency of the panel will be until either it is exhausted or for two years, whichever is earlier. In this case, there has been no allegation of procedural irregularities or any other defects and hence the Panel produced. Annexure A-3 is valid. No provisions are available in the IREM or any other rules to amend this Panel. Learned counsel for the applicants submits that it is commonsensical in case if 8 candidates in the Panel did not join the promoted post, then the next highest mark procuring candidates in the list of those who had qualified, should substitute them. While this may be commonsense, the fact is that the Railways do not have any provisions for changing or amending the panel perhaps for good administrative reasons once it is finalised. Thus even if the persons in the Panel have not joined the post, there is no provision for replacement of the candidates with the next eligible ones. Meanwhile, as indicated by Annexure A-4, steps have already been taken to notify and conduct the examination for preparation of the another Panel for the post of Goods Guard. The validity of the Annexure A-3 Panel may not be there any more as all in the list were offered appointment and those who were interested have joined and others refused. Thus, it is not possible for this Tribunal to interfere at this stage with directions on the procedure of selection as no malafide or

irregularity or injustice on the part of the respondents has been made out in the drawing up of the Panel.

11. We, therefore, do not allow the Original Application and same is dismissed without cost.

(K.V.EAPEN)
ADMINISTRATIVE MEMBER

(P.MADHAVAN)
JUDICIAL MEMBER

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List of Annexures

Annexure A1 - A true extracted copy of the notification dated 12.04.2019

Annexure A2 - True copy of the list of qualified candidates dated 13.12.2019

Annexure A3 - True copy of the panel containing the name of 25 candidates published by the 3rd respondent

Annexure R1 - True copy of the representation dated 3.1.2019 submitted by the applicants

Annexure A4 - True copy of the notification bearing No.V/P. 608/II/Goods Guard/Vol-IX dated 1.10.2020

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