

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

OA 434/2004

Friday this the 27th day of October, 2006

CORAM

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN  
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

N.Chandrasekharan,  
Senior Gangman,  
Section Engineers Office,  
Permanent Way, Southern Railway,  
Kottayam, residing at  
Nithin Vihar, Parampuzha PO  
Kottayam.4. ....Applicant

(By Advocate Mr. George Varghese Perumpallikuttyil)

V.  
1 Union of India, represented by  
the General Manager,  
Southern Railway, Park Town  
Chennai.  
2 Senior Divisional Personnel Officer,  
Divisional Office, Personnel Branch  
Southern Railway, Trivandrum.  
3 Senior Divisional Engineer (Works)  
Divisional Office, Southern Railway,  
Trivandrum. ....Respondents

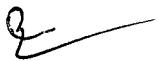
(By Advocate Mrs. Sumati Dandapani)

The application having been finally heard on 13.10.2006, the Tribunal on 27.10.2006 delivered the following:

ORDER

**Hon'ble Mr. George Paracken, Judicial Member**

The applicant is a Senior Gangman under the Southern Railway and he was performing the duty as Ballast Train Checker (B.T.Checker for short) from 1993 to 10.6.03. During this period, he was deputed for



special training course in guard duties at the Zonal Training Centre, Tiruchirapally and was awarded certificate as Guard for material/goods Trains. The respondents vide Annexure.A1 notification dated 1.2.2001 invited applications from volunteers belonging to the categories of Keymen, Sr.Trackmen in the scale of Rs. 2750-4400, Gangman, Gate Keeper and Trollymen in the scale of Rs. 2650-4000 who fulfilled the following conditions to undergo written test for filling up of four temporary and two work-charged "ex-cadre non-selection posts" of B.T.Checker in the scale of Rs. 3050-4590 in the Trivandrum Division:

- "1 Should have sufficient working knowledge in English to prepare daily reports and ballast journals.
- 2 Should be liable to writ out reports to S.Es J.Fs (P.Ways), ADENs on day to day working of Bt whenever necessary.
- 3 Should have an elementary knowledge of Arithmetic and Mensuration to enable him to record stack measurements etc. in the B.T.Journals.
- 4 The candidates will have to come out successful in the written examination."

The applicant applied for the said post but while shortlisting the candidates on the basis of their eligibility to appear in the written examination, the respondents excluded his name, though he was already performing the duties of B.T.Checker from 1993. Aggrieved by the said exclusion of his name, he approached this Tribunal vide OA 725/01 seeking a direction to the respondents to consider him in the selection process. The said OA was admitted but no interim relief sought by the applicant to permit him to appear in the examination was granted. He, therefore, approached the Hon'ble High Court of Kerala vide OP No.24654/2001 and it permitted him to participate in the written test, which was to be held on 18.2.2001 subject

to the outcome of the aforesaid pending OA. The contention of the respondents in the said OA was that the applicant was not eligible to be considered for selection as he belonged to Senior Gangman in the scale of Rs. 2650-4000 and he could be considered only in the absence of volunteers in the scale of Rs. 2750-4400. However, this Tribunal vide order dated 5.2.2003 disposed of the said OA declaring that the applicant was entitled to be considered for appointment to the post of B.T.Checker and directed the respondents to consider for appointment along with the three other successful persons in the written examination, if he succeed in the viva-voce. Out of the 26 candidates who appeared against the four notified vacancies only four candidates including the applicant came out successful in the written test and all of them also subjected to viva voce test held on 12.11.2001. However, vide Annexure A6 impugned order dated 5.6.03 the applicant was informed that he did not secure the minimum requisite qualifying marks of 60% both in the professional ability and in aggregate and as such he was not qualified for selection to the post of B.T.Checker. The applicant challenged the said letter dated 5.6.03 on the ground that according to the Annexure A.1 letter dated 1.2.2001 inviting applications from the eligible candidates to fill up the post of B.T.Checkers, there was no such conditions and the only condition regarding test was to come out successful in the written test. He further contended that the viva-voce test envisaged under Annexure A3 letter dated 31.10.2001 could only be understood to mean as a method to asses the fitness of the candidates and it could not have been considered as qualifying test and any method of recruitment other than what is prescribed in the Annexure A.1 notification was illegal and unreasonable, unjust and arbitrary. He has

also contended that after having permitted him to work as B.T.Checker in an officiating capacity from 1993 to 10.3.2003 the respondents were estopped from raising any conditions as they have stated in the Annexure.A6 letter. He has also relied upon the judgment of the Apex Court in the case of **K.Prabhakar Rao Vs. Union of India, AIR 2002 SC 2016** where the question whether the fixation of minimum percentage of marks in the viva voce test as per paragraph 205 of the Indian Railway Establishment Manual can be held to be in accordance with law or not was considered. Upholding the orders of this Tribunal in OA 149/92 and OA 837/01 and setting aside the orders of Madras Bench on the very same issue, the Apex Court directed the respondents to consider those candidates, as if there was no qualifying marks for the viva voce test, as indicated in paragraph 205 of the Indian Railway Establishment Manual Chapter-II. The applicant, has therefore, sought a direction from this Tribunal to declare that the fixation of the minimum percentage of marks in viva voce test for selection to the post of BT Checker is illegal and arbitrary and also to declare that he is entitled to be appointed as BT Checker pursuant to the selection made on the basis of the conditions contained in Annexure.A.1 notification as if there was no qualifying marks in the viva voce test.

2 The respondents resisted the contentions raised by the applicant. They have stated that the applicant was only in the scale of Rs. 2650-4000 and there were many persons in the scale senior to him who volunteered for the selection to the post of B.T.Checker. They have relied upon the provisions contained in paragraph 219(g) Note (iii) of the Indian Railway Establishment Manual Volume-I, according to which, candidates must

obtain a minimum of 60% marks in professional ability and 60% marks of the aggregate for being placed on the panel and in a few cases where both written and oral tests are held for adjudging the professional ability, the written test should not be of less than 35 marks and the candidates must secure 60% marks in written test for the purpose of being called in viva-voce test. The another contention of the respondents was that the post of B.T.Checker is a selection post and therefore the applicant has no right to be selected on the basis of the written test alone.

3 The applicant has filed a rejoinder denying the contentions of the respondents.

4 We have heard Shri George Varghese Perumpallikuttyil for the applicant and Smt.Sumati Dandapani for the respondents and perused the records relating to the selection for the post of B.T.Checker held in the year 2001 and 2003. Since the A.1 notification dated 1.2.01 clearly indicates that the post is a non -selection ex-cadre post and the contention of the respondents was contrary to it, this Tribunal directed the respondents to file an affidavit and to state clearly whether the post of B.T.Checker was to be filled up by the method of selection or non-selection. They have accordingly filed an affidavit stating that the post of B.T.Checker was to be filled up on selection basis which consisted of written test and viva-voce and the word "non selection post": indicated in the A.1 notification was an inadvertent error. However, from the records of the Respondents themselves we find that the aforesaid affidavit is contrary to the actual facts and therefore, we do not agree with the contentions of the respondents that the post of B.T.Checker has been shown as a 'non-selection post' in the Annexure.A1 letter dated 1.2.2001 by an inadvertent mistake. From the

proceedings of selection of the year 2001 and 2003, it was seen that the post was meant to be a 'non -selection post' and the conditions for selection did not include viva voce. The applicant's counsel Shri George Varghese Perumpallikuttyil also produced a copy of the common order of this Tribunal in an almost identical case in O.A.K.239/87 and K.174/88 dated 27.7.1989. The applicant in those cases was one Shri S.Rahumudeen who was a candidate for the post of B.T.Checker. The respondents in that case conceded that the post of B.T.Checker is a "non-selection post", and the procedure for filling up the post was the following:

"The eligible candidates should be summoned to sit for a written qualifying examination in which they should be tested on the above subjects. All those who pass in the written test will be eligible for promotion as Ballast Checkers, promotion being made in the order of seniority. (emphasis added).

It was thus clear that the written test was not a competitive test but only qualifying test and the appointment as B.T.Checker was to be made from amongst the candidates who passed the qualifying examination in the order of their seniority. In spite of the above known postition, it is seen that the respondents have filed the aforesaid false affidavit to mislead this tribunal and to frustrate the just cause of the applicant. As held by the Apex Court in the case of K.Prabhakr Rao (supra) the Respondents cannot insist for separate minimum aggregate marks in the written test as well as viva -voce. The applicant could be bound only by the conditions for selection as intimated to him by Annexure A.1 notification and imposing any unnotified conditions for selection is absolutely illegal and arbitrary. Since there were only 4 posts and only 4 persons including the applicant have qualified in the written examination, the applicant is entitled to be appointed as B.T.Checker pursuant to the selection contained as per

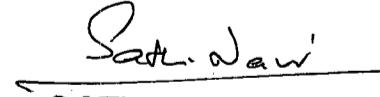
Annexure A.1 notification, as if there is no qualifying marks for the viva voce test. We accordingly, direct the respondents 2&3 to appoint the applicant as B.T.Checker against the vacancy notified under Annexure.A.1 within one month from the date of receipt of this order. Seniority of the applicant in the post of B.T.Checker shall be reckoned from the date the other selected persons along with him have been appointed to the said post and his inter-se seniority shall be determined on the basis of the seniority position of the 4 qualified candidates.

5 This Tribunal takes serious view of false affidavit filed by Shri N.Govinda Karanavar, Divisional Personnel Officer, Southern Railway stating that the post of B.T.Checker is to be filled up on Selection basis. Such an affidavit could have frustrated the just cause of the applicant unless the applicant himself was not vigilant to produce the copy of the order of this Tribunal in O.A.K. 239/87 & K.174/88 (supra). The applicant has been fighting for his legitimate right to be considered for the post of B.T.Checker in accordance with the departmental instructions and get appointed to that post for the second time. In these circumstances, we award a cost of Rs. 3000/- (Rupees three thousand) which shall be recovered from the pay of Shri N.Govinda Karnavar, Divisional Personnel Officer, Trivandrum who filed the false affidavit and paid to the applicant within the aforesaid period of one month.

Dated this the 27th day of October, 2006

  
GEORGE PARACKEN  
JUDICIAL MEMBER

S.

  
SATHI NAIR  
VICE CHAIRMAN