

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**OA NO. 479 of 2007.**

*Friday* this the 4<sup>th</sup> day of April, 2008.

**C O R A M**

**HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER  
HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER**

**1** G.N. Ram Mohan Unni S/o C.G. Narayanan  
Goods Guard/Southern Railway  
Ernakulam Marachalling Yard  
residing at Ganapathy Veli Madam  
Panangad PO, Ernakulam District.

**2** Savul Rocha S/o Stephen Rocha  
Goods Guard/Southern Railway  
Ernakulam Marchalling Yard  
residing at Thaikkattu House  
Elamkunnapuzha, Ernakulam District.

**Applicants**

By M/s. TC Goivindaswamy, D. Heera, P.N. Pankajakshan Pillai, P.V. Abdul Sarmad, K.C.  
Sarala and R.R. Rejitha

**Vs.**

**1** Union of India represented by  
the Secretary to the Government of India  
Ministry of Railways, Rail Bhavan  
New delhi.

**2** The General Manager, Southern Railway  
Headquarters office, Park Town PO  
Chennai-3

**3** The Divilsional Railway Manager,  
Southern Railway, Trivandrum Division  
Trivandrum-14.

**4** The Senior Divisional Personnel Officer,  
Southern Railway, Trivandrum Division  
Trivandrum-14

**5** The Secretary,  
Southern Railway Mazdoor Union  
Trivandrum Divisional Office  
Trivandrum-14

**6** The Secretary,  
Southern Railway Employees Sangh,  
Trivandrum Divisional Office  
Trivandrum-14

**Respondents**

By Advocate Mr. Thomas Mathew Nellimoottil for R 1-4  
By Advocate Mr. M.P. Varkey, for R-5

**ORDER**

**HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER**

The applicants in this OA are working as Goods Guards in the Trivandrum Division of the Southern Railways. They are aggrieved by the cancellation of the selection for the post of Passenger Guard. For filling up 13 vacancies of Passenger Guard the respondents issued a notification dated 31.10.2006 and 29 eligible employees were alerted for written test. The applicants' names are at serial No.22 and 23 of the list of eligible employees. The written test was conducted on 24.2.2007. Instead of publishing the result of the written test and finalising the selection process, the respondents cancelled the selection process by their letter dated 28.5.2007 (the impugned order at A1). The applicants have sought the following relief through this OA:

- (i) Call for the records leading to the issue of Annexure A1 and quash the same
- (ii) Direct the respondents to finalise the process of selection for promotion to the post of Passenger Guards initiated in terms of Annexure A2 by considering the candidates who have qualified in the written examination, within a time frame as may be found just and proper by this Hon'ble Tribunal and to grant the applicants the consequential benefits thereof.
- (iii) Award costs of and incidental to this application
- (iv) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case.

2 In support of the relief, the applicants have contended that the selection process was cancelled on account of extraneous considerations such as pressure from trade unions. In reply to a query under the Right to Information Act the respondents informed the applicant that the cancellation was necessitated due non-compliance of instructions contained in the Railway Board's letter dated 6.11.2006. The applicants have produced a copy of the relevant file notings

obtained under the RTI (A6). These file notings show that the cancellation was done at the instance of the trade unions. The reason cited for cancellation by the Divisional Railway Manager is that question No.IV is not of objective type and therefore the instructions of the Board in this regard are not complied. Question No.IV asks the candidates to define certain terms. The definition sought for are one sentence answers contained in the general rules required to be learnt by every Guard, Station Master, Driver who are responsible for running the trains. The respondents have not considered to what extent this particular question may have affected the performance of the candidates. There were no complaints by any of the candidates appearing in the written test. Such questions were asked in Palghat Division, but the selection was not cancelled. The applicants have also pointed to the timing of the representation by the trade unions. The representation was made by the unions on 4.5.2007 when the results were about to be published.

3 The respondents have contested the OA. In their reply and additional reply filed they have contended that it is in the domain of the administration to cancel a selection midway on noticing certain lapses and to start fresh selection. There is nothing wrong if the trade unions represent the grievances of the employees. Before the result was published the recognised unions represented that certain guidelines prescribed by the Railway Board has not been followed and therefore the written test should be cancelled. The matter was carefully examined and submitted before the DRM who after analysing the same gave orders for cancelling the written test held on 24.2.2007. There were two allegations about the written test. One was that the objective type of questions were less. The second is that Question Bank was not supplied. Out of these two, the reason that weighed with the competent authority was the presence of some non-objective type questions in the question paper which was against the guidelines of the Railway Board. Question No.IV cannot be said to be objective-type. As a result,

the proportion of objective-type questions became less than the prescribed level of 45%. For ad hoc promotion which was done subsequently only seniority is to be considered.

4 We have heard the learned counsel for the applicants Shri T.C.Govindswamy and the learned counsel for the official respondent Shri Thomas Mathew Nellimoottil and the learned counsel for the private respondents R5 Shri M.P.Varkey. We have also perused the documents on record carefully.

5 Learned counsel for the applicants relied on the following citations:

- (i) Union of India & Ors. Vs. Rajesh P.U. Puthuvalinikathu and another (2003 SCC (L&S) 1048)
- (ii) Rajesh Vs. Union of India (2002(1) KLT 492)
- (iii) 2006(1) SLJ CAT 1(Hyderabad)
- (iv) 2007(1) SLJ CAT 53(Mumbai)

6 Learned counsel for the private respondents R5 reiterated the points made by the official respondents. He also stated that some of the sub-questions of Question IV were out of syllabus. Question No.IV was not objective-type. As a result, right to get 20 marks was denied to the candidates who appeared for the examination.

7 The issue for consideration in this OA is whether the decision of the respondents to cancel the selection process was on account of boafide reasons. From the reply statement of the respondents it is seen that the only reason for cancellation was the presence of non-objective-type questions in the question paper and the consequent violation of the guidelines prescribed by the Railway Board in RBE123/2006 dated 30.8.2006 The contents of this circular reads as follows:

**Subject:- Introduction of Objective type questions in the written test held as part of selection for promotion to posts classified as 'Selection'-extending the provision of 50% objective type questions to lower grade selection posts.**

As the Railways are aware in terms of para 219(c) of IREM Vol.1, 1989 while the written test held as part of the selection for promotion to the highest grade selection post in a category includes objective type questions for about 50% (in the range of 45%-55%) of the total marks for the written test, the one held for promotion to lower grade selection posts, the extent of objective type questions is limited to 25% (in the range of 20% -30%) of the total marks for the written test.

2 A demand has been raised in the form of PNM-AIRF that the existing provision of setting up of 50% objective type questions in written tests held as part of selection for promotion to higher grade selection post in a category may be extended to selection posts in lower grades also.


3 The matter has been carefully considered by the Board and it has been decided that the existing provision of setting up of objective type questions to the extent of 50% of the total marks prescribed for written test held as part of selection for promotion to the highest grade selection post in a category should be extended to all selection posts in lower grades also.

3.1 The opportunity is also taken to clarify that objective type questions besides including the type of questions in the form of multiple choice, filling up the blanks, tick true or false, right or wrong, match the following, may include questions requiring one word/line answer, "yes or no" naming e.g. 5 States, Railways, posts, grades, etc. This is to avoid unnecessary rigidity in framing the questions.

4 Accordingly, the Indian Railway Establishment Manual Vol.1, 1989 may be amended as per the following advance Correction Slip.

8 We may now look at question No.1V about which there is a controversy. It is extracted below

#### **IV DEFINE THE FOLLOWING**


- 
- (a) ADEQUATE DISTANCE
  - (b) TRAIN
  - (c) SUBSIDIARY RULE
  - (d) AUTHORITY TO PROCEED
  - (e) COMPETENT RAILWAY SERVANT
  - (f) FOULING MARK
  - (g) GUARD
  - (h) BLOCK SECTION

9 We have perused the file notings containing the decision recorded by the Divisional Railway Manager. The correctness of these notings has not been disputed by the respondents. The relevant file noting (A6) reads as follows:

"DRM- DISCUSSED REPRESENTATIVES AT f-63 & 67 WERE ..... THE REPRESENTATIVES IS IN..... THE SELECTION WERE ALREADY CONDUCTDED AND RESULTS PUBLISHED IN PASSENGER GUARD ON THE PLEA THAT THE QUESTION PAPER SET UP WAS NOT IN ACCORDANCE WITH BOARDS LETTER ... DT. 2003 AND THAT OF 30.8.06 AS F-69


1 HAVE ALSO SEEN THE QUESTION PAPER SET UP IN THIS EXAMINATION AS F-11(OFF REF V/P.608/11/ PG/CON/2006) VIDE SR.DOM'S LETTER DT. 27.2.07 . QUESTIONS 1 TO 6 ARE SUPPOSED TO BE OBJECTIVE TYPE CARRYING 50% MARKS AND 7-11 FOR OTHERS. HOWEVER QUESTION 4 IS NOT REALLY OBJECTIVE TYPE AS IT.... DETAILED EXPLANATION . BOARDS LETTER DT. 30.8.06 PARA 3.1 IS VERY CLEAR THAT THE ANSWERS TO OBJECTIVE TYPE QUESTIONS SHOULD BE MULTIPLE CHOICE/FILL UP THE BLANKS/TRUE OR FALSE/RIGHT/WRONG/MATCH THE FOLLLOWING /YES OR NO/NAMING OF...IT ALSO INCLUDES ANSWERES OF ONE WORD/LINE. THE EMPLOYEES SEEM TO LIMIT THE ANSWERS TO ONE OR TWO WORDS, NOT REQUIRING TO WRITE IN DETAIL AND TO WRITE FROM MEMORY EASILY. THAT OBJECTIVE HAS NOT BEEN SECURED BY QUESTION NO.4"

10 The answers to the Question IV is provided in A13. For instance 'adequate distance' is defined as 'the distance sufficient to ensure safety'. Block section is defined as 'that portion of the running line between two Block Stations on to which no running train may enter until Line Clear has been received from the Block Station at the other end of the Block Section'. It is evident from these answers that the definitions can be given in one line. In some cases, the line could be longer. But it is not necessary to write a paragraph or a page to give the definition sought. We therefore cannot accept the argument of the respondents that the questions did not conform to the guidelines prescribed by the Railway Board.

 11 It is also important to note the timing of the decision to cancel the written test. From the reply filed by the respondents it is seen that the results of the written were sent to the Section on 2.5.2007 for publication. And on 4.5.2007 there is written representation from the trade union to cancel the written test. On

7.5.2007 the representation is examined and submitted for orders of the Divisional Railway Manager (DRM) The note submitted to DRM clearly states that Question Bank has not been circulated by Headquarters, and therefore the results need not be delayed on that count. It also goes on to say that 50% of the questions are of objective-type. However DRM disagrees with this interpretation and gives his order for cancellation. The DRM's note is already extracted supra. The DRM refers to discussions with representatives in his note. But he has not taken into consideration the fact that complaints are being raised on the eve of the publication of the result. The written test was held on 24.2.2007. If the candidates who appeared for the test had any grievance, they could have immediately represented about the question paper, either directly or through their unions. No candidate has made any representation. The timing of the cancellation makes it amply clear that it was done on account of the intervention made by the unions rather than the seriousness of the alleged deficiencies in the question paper.

12 The issue of cancellation of selection midway has been the subject matter of several judicial pronouncements. In Union of India Vs. Rajesh PU, the Hon'able Supreme Court has held that there was no justification to cancel the entire selection process in the absence of widespread infirmities which undermine the very process itself. The following extract from the judgment of the Apex Court is very relevant in this regard:



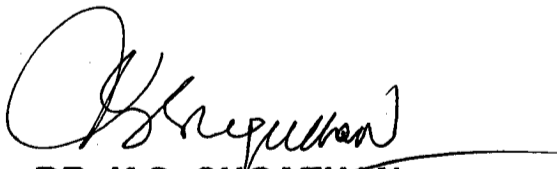
“....In the light of the above and in the absence of any specific or categorical finding supported by any concrete and relevant material that widespread infirmities of an all pervasive nature, which could be really said to have undermined the very process itself in its entirety or as a whole and it was impossible to weed out the beneficiaries of one or the other irregularities, or illegalities, if any, there was hardly any justification in law to deny appointment to the other selected candidates whose selections were not found to be in any manner, vitiated for any one or the other reasons. Applying a unilaterally rigid and arbitrary standard to cancel the entirety of the selections is nothing but total disregard of relevancies, giving a complete go-by to contextual

considerations throwing to the winds the principle of proportionality in going farther than what was strictly and reasonably to meet the situation. In short, the competent authority completely misdirected itself in taking such an extreme and unreasonable decision of cancelling the entire selections, wholly unwarranted and unnecessary even on the factual situation found too, and totally in excess of the nature and gravity of what was at stake, thereby virtually rendering such decision to be irrational.”

13 In view of the above discussion we have no hesitation in concluding that the cancellation of the selection process was not bonafide. There were no infirmities of an all pervasive nature which warranted cancellation of the whole selection process. The action of the respondents in cancelling the selection was not only arbitrary but demonstrates a total lack of concern for the impact such decisions will have on the career of the candidates who prepare seriously for such examinations.

14 For the reasons stated above, the OA is allowed. The cancellation of the selection is quashed and set aside. The respondents are directed to publish the results of the written test held on 24.2.2007 and finalise the selection process within a period of three months from the date of receipt of copy of this order. No costs.

Dated 4<sup>th</sup> April, 2008

  
**DR. K.S. SUGATHAN**  
**ADMINISTRATIVE MEMBER**

  
**GEORGE PARACKEN**  
**JUDICIAL MEMBER**

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