

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.488/2001

Dated Wednesday this the 29th day of January, 2003.

C O R A M

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

1. B.Sivadasan Nair
S/o P.Bhaskaran Nair
Senior Goods Guard
Southern Railway
Palghat.
2. T.S.Gopalakrishnan
S/o Subramanya Iyer
Senior Goods Guard
Southern Railway
Palghat.

Applicants.

[By advocate Mr.T.C.Govindaswamy]

Versus

1. Union of India represented by
The General Manager
Southern Railway
Headquarters Office
Park Town P.O.
Chennai.
2. The Divisional Railway Manager
Southern Railway
Palghat Division
Palghat.
3. The Senior Divisional Personnel Officer
Southern Railway
Palghat Division
Palghat.
4. M.K.Selvaraj
Passenger Guard
Southern Railway
Palghat Division
Palghat.
5. T.K.Raveendranathan
-do-
6. A.Raghunathan
-do-
7. C.Subramani
-do-
8. A.K.Raveendran
-do-
9. K.Chandran
-do-

10. K.P.Vasudevan
-do-

11. C.Jayarajan
-do-

12. Prabhakaran
-do-

13. T.G.Suresh
-do-

14. M.Krishnaswamy
-do-

15. K.Sainaba
-do-

16. C.R.Madhavan
-do-

17. M.C.Balakrishnan
-do-

18. S.Karuppan
-do-

19. P.N.Sivaraman
-do-

20. L.Palani Respondents
-do-

[By advocate Mr.Thomas Mathew Nellimootttil R1-3]
[Mr.N.Balakrishna Pillai for R5-14,16,17]

The application having been heard on 29th January, 2003, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant, aggrieved by their non-inclusion in the panel of Passenger Guards in the scale of Rs.5000-8000 published in A-2 letter dated 8.9.2000 issued by the third respondent, filed this Original Application seeking the following reliefs:

[a] Call for the records leading to the issue of Annexure A2 and quash the same, duly declaring that the entire process of selection was arbitrary and unconstitutional.



- [b] Direct the respondents to conduct a fresh selection and to consider the applicants for promotion in accordance with law, with a further direction that the applicants be given the benefit of pro motion from the date of promotion of the applicants' juniors in A-2.
- [c] Award costs of and incidental to this Application.
- [d] Pass such other order or directions as deemed just, fit and necessary in the facts and circumstances of the case.

2. According to the averments of the applicants in the OA, by A-1 letter dated 9.8.2000, the applicants and others, who were in the field of consideration, were alerted to be in readiness to appear for a viva-voce test proposed to be conducted at 10.00 hrs in the Divisional Office on 29.8.2000 and 1.9.2000 for promotion to the post of Passenger Guards in the pay scale of Rs.5000-8000. In the said A-1 letter which they claimed was arranged in the order of seniority, their names were at S1.Nos. 4 & 3 respectively. By a telegraphic message, they and 18 others were directed to appear for the viva-voce test on 29.8.2000 at 10.00 hrs. According to them, they reported at 10.00 hrs. in the Divisional Office on 29.8.2000 but no viva-voce was held till 16.00 hrs in the evening when they were informed that there would be a written examination and that they were expected to participate in the same. They claimed that when they objected, they were informed that they had to participate in the written examination as otherwise they would not be promoted. They claimed that they participated under coercion and threat. Thereafter all those who attended the written examination were directed to attend the viva-voce test on the same day. The viva-voce proposed on 1.9.2000 was postponed by 4/5 days and they were informed that there would be a written examination also. Third respondent thereafter published A2 Panel dated 8.9.2000 in which the applicants' names were not included. The applicants submitted A-3 and A-4 representations dated 15.9.2000 and

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16.9.2000 respectively to the second respondent. Finding no response, they submitted a joint representation (Annexure A5) dated 16.12.2000 to the first respondent. According to them, the entire process of selection conducted by the respondents was arbitrary and contrary to law. They claimed that they were the senior most Goods Guards officiating for long as Passenger Guards. Relying on para 215 of Section B of Chapter II of the Indian Railway Establishment Manuel (IREM), it was submitted that whenever a written test was proposed to be held, advance intimation should be given to all eligible candidates. It was submitted that in this case no such advance intimation was given and it was only at 16.00 hrs on the day of the selection the intimation regardomg written test was given. It was also submitted that the selection was vitiated as the same was against the provisions of para 219 of IREM.

3. Respondents 1 to 3 filed reply statement resisting the claim of the applicants. They claimed that the selection proceedings to the post of Passenger Guards were completed strictly in accordance with the provisions on the subject. They did not dispute the factual aspects regarding the conduct of the written test as contained in the OA. They submitted that in the light of the order of this Tribunal dated 3.10.94 in OA Nos. 59/01, 1048/91, 1843/91 and 1108/92 regarding assignment of marks in selection where only viva-voce was conducted, the selection of candidates decided by interview only would be arbitrary where the subjective element would override the objective element, the Chief Personnel Officer, Southern Railway, Madras had issued R-1 letter dated 19.7.2000 in which it was stated that the procedure was only in respect of 20 marks under the head personality,

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address, leadership and academic/technical qualification and that in regard to the professional ability for which 50 marks continued to be decided by viva-voce, a simple objective type test for 50 marks required to be held before viva-voce test to assess the professional ability of the candidates. It was submitted that in accordance with R1 letter, a simple test of objective type questions for 1/2 an hour duration of what would have been asked in the viva-voce had been tested on the same day before conducting viva-voce to all the candidates who were present. It was further submitted that all the candidates appeared in the written test and viva-voce and no candidate was left over. The selection committee recommended 17 employees for empanelment and with the approval of the Divisional Railway Manager, a panel had been published on 8.9.2000 and all those who were placed in the panel had been promoted as Passenger Guards vide office order dated 9.10.2000.

4. Applicants filed rejoinder reiterating the points made in the OA.

5. Respondent No.13 filed a separate reply statement on behalf of respondents 5 to 14, 16 and 17 resisting the claim of the applicants. According to him, the written examination as alleged by the applicants in the OA was not actually a written examination but a common objective type test and all the candidates who participated in the objective type test were called for the viva-voce test without any screening. It was submitted that the applicants, instead of making any protest for the objective type test, participated in it as also in the viva-voce test. The panel of the selected candidates was

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published on 8.9.2000 and till then the applicants had not even cared to raise their voice against the selection proceedings conducted by the respondent Railways. When the applicants found that their names were not in the list of selected candidates, they moved this Tribunal through this OA and this proved that the intention of the applicants was not bonafide. According to them, there was nothing irregular in the tests conducted by the respondents and the applicants were estopped from challenging the test and selection process after participating and failing in it. In the additional reply statement filed by respondents 1 to 3, they submitted that the applicants were working as senior Goods Guards in scale Rs.5000-8000 and not officiating as Passenger Guards and that they had been selected and empanelled for promotion to the post of Passenger Guards in scale Rs.5000-8000 in the panel which had been published on 1.2.2002.

6. Heard the learned counsel for the applicants and for respondents 1 to 3. None appeared for the party respondents. Learned counsel for the applicants took us through the factual aspects as contained in the OA and reiterated the ground of violation of the provisions of Rule 215 (ee). According to him, the process of selection was contrary to para 219 of IREM and hence the said selection was arbitrary, discriminatory and unconstitutional. Even though in the OA, the ground regarding constitution of selection committee was advanced by the applicants, learned counsel for the applicant submitted that the said ground was not being pressed by him. He further submitted that the process of selection was against para 219 of IREM and that it was not knownn how marks were assigned nor the procedure adopted by the respondents nor was supported by any rules or

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instructions. Learned counsel for the applicants cited the judgement of the Hon'ble Supreme Court in S.G. Jaisinghani Vs. Union of India & others [AIR 1967 SC 1427] in support of his submissions. According to him, the respondents' action in conducting a written test at 16.00 hrs on the day of selection, after announcing that the selection would be based on viva-voce alone, was arbitrary and hence the selection was liable to be set aside and quashed. Learned counsel for respondents 1 to 3 reiterated the points made in the reply statement. He submitted that the written test conducted was not a written test under the rules in that it was part of the viva-voce as stated in the reply statement. All the candidates who appeared in the written test were also subjected to viva-voce.

7. We have given careful consideration to the submissions made by the learned counsel for the parties and the rival pleadings and have also perused the documents brought on record.

8. The main question to be decided in this case is whether the action of the respondents in conducting a written test after having announced that the selection for Passenger Guards in scale Rs.5000-8000 would be based on viva voce alone is illegal and whether by such action, the applicants' interests have been prejudiced. The selection procedures of the Railways are prescribed in para 215 of IREM. Learned counsel for the applicants relied on para 215(a) of IREM which reads as under:

"215. Selection Post

(a) Selection post shall be filled by a positive act of selection made with the help of Selection Boards from amongst the staff eligible for selection. The positive act of selection may consist of a written test and/or viva-voce test; in every case viva-voce being a must. The staff

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in the immediate lower grade with a minimum of 2 years service in that grade will only be eligible for promotion. The service for this purpose will include service if any, rendered on adhoc basis followed by regular service without break. The condition of two years service should stand fulfilled at the time of actual promotion and not necessarily at the stage of consideration."

9. According to him, the positive act of selection may consist of a written test and/or viva-voce test and in every case viva-voce must be held. He further referred to para 215 (ee) as contained in Advance Correction Slip No.82 to IREM Vol.I. The said para reads as under:

"(ee) It is desirable to hold written test as part of a selection in respect of all initial selection grade posts in the different channels of promotion, but in every case a viva-voce test shall be held. If a written test is proposed to be held, advance intimation shall be given to all eligible candidates."

10. Relying on the above, he submitted that whenever a written test was proposed to be held as part of the selection, advance intimation had to be given and in this case, since the written test was announced only at 16.00 hrs on the same day on which the viva-voce was proposed to be held, there was no advance intimation and hence the selection was vitiated. According to the respondents, the written test was part of the viva-voce. Their specific averment was that what would have been asked in the viva-voce had been asked by a simple objective type test of half an hour duration in the written test. We find from IREM that para 215 deals with selection post. Further, para 219 deals with the procedure to be adopted by Selection Board. Para 219 reads as under:

(a) When a selection post is to be filled, the authority empowered to constitute a Selection Board shall direct to the Board to assemble and make recommendations. It shall also nominate the Officer who shall act as the Chairman of the Board. The responsibility for selection will be of all members.



(b) An officer of the concerned Department who is also a member of the Selection Board must be authorized to set the question paper for written test. Where possible, another Officer, who is also a member of the Selection Board should be nominated to evaluate the answer books if such a test is held as a part of the Selection or determining the professional ability. The test should be confidential system with roll numbers.

(c) In the written test, if any held as part of the selection for promotion to the highest grade selection post in a category, objective type questions may be set for about 50% of the total marks for the written test. The figure of 50% for objective type questions is intended to be for guidance and should not be construed to mean as constituting a inflexible percentage.

(d) Moderation of results by way of awarding grace marks to candidates shall not be resorted to without the authority of the Selection Board or the authority competent to accept the recommendations of Selection Board. No grace marks shall be allowed in individual cases.

(e) Before the Selection Board assembled to make the selection the papers connected with the proposed selection, the names of the candidates to be considered, the confidential reports, if any on such candidates and other relevant data concerning them shall be circulated for the information of the members of the Board as also the qualifications prescribed for the particular post under consideration.

(f) The Selection Board will examine the service record and confidential reports (if kept) of the staff eligible. All the members of the Selection Board should independently assess the candidates under different headings of personality, leadership etc. and record the marks awarded by them in the mark sheet given to them and the same should be signed and handed over to the Personnel Officer who should average the marks given by the members of the Selection Board and be responsible to compile the results on the basis of marks given by the members of the Selection Board. This evaluation chart prepared by the Personnel Officer should thereafter be signed by all the members of the Selection Board. The members nominated on a Selection Board should be advised clearly that there should not be any cuttings and over writings in the proceedings of the Selection Board and serious objection of any cuttings and overwriting will be taken.

(g) Selection should be made primarily on the basis of overall merit, but for the guidance of Selection Board the facts to be taken into account and their relative weight are laid down below:



(ii) The Selection Board should call for viva-voce test all candidates who secure not less than 60% marks in the written test. The final panel should be drawn up on the basis of marks obtained in the written and viva-voce test in accordance with the procedure for filling section posts.

(j) The names of selected candidates should be arranged in order of seniority but those securing a total of more than 80% marks will be classed as outstanding and placed in the panel appropriately in order of their seniority allowing them to supersede not more than 50% of total field of eligibility.

(k) The list will be put up to the competent authority for approval. Where the competent authority does not accept the recommendations of a Selection Board, the case could be referred to the General Manager, who may constitute a fresh Selection Board at a higher level, or issue such other orders as he considers appropriate.

(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.

(m) **SELECTION OF PERSONS ON DEPUTATION ABROAD:**-The panel should be finalized without waiting for the employees who are on deputation abroad. On return of the employee from abroad, if it is found that any one junior to him has been promoted on the basis of a selection in which he was not called because of his being abroad, he may be considered in the next selection and if selected, his seniority may be adjusted vis-a-vis his juniors. In case such an employee is declared outstanding in the next selection he should be interpolated in the previous panel in accordance with the seniority and gradation in the subsequent selection.

11. From para 219 (g) above, we find that for professional ability, the maximum marks prescribed is 50 and the qualifying marks prescribed is 30. 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. In this case, from the pleadings, we find that on the basis of the written test, no screening was done and none was weeded out, no pass in the written test was prescribed and all those who appeared in the written test had been called for viva-voce. This leads us to the conclusion that the written test which was conducted in this selection is not one that was contemplated in para 219(g) of the IREM and we find force in the respondents' contention that it was part of what would have been asked in viva-voce had been asked in the written test conducted by them. When such is the case, we hold that the applicants could not have been prejudiced by the conduct of the written examination. When this was put across to the learned counsel for the applicants, he submitted that the very fact that the selection was being conducted on the basis of viva-voce having been announced, conducting a written test at 16.00 hrs on the same day had prejudiced the applicants. He further submitted that the test which was proposed on 1.9.2000 was postponed by another 3/4 days and this had given more time to those people who were due to appear for the test on that day and this had also prejudiced them. We find no force in these arguments. The respondents could very well have given a piece of paper, could have asked the very same questions which were included in the written test and asked the applicants and others to reply them in writing during the viva-voce and based on that they could have decided their professional ability. In that case, perhaps the written test during the course of the viva-voce could not have been objected to. But we are of the view that this would have put those who were subjected to viva-voce later in an

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advantageous position in that they could have found out from their predecessors what questions were being asked. By subjecting all in a written test, nobody is given this advantage. In this view of the matter, we are of the considered view that the conduct of the selection as done by the respondents in this case could not be faulted. Respondents had also relied on R1 letter dated 19.7.2000 issued by the CPO in support of the action taken by them and this letter is not under challenge in this OA.

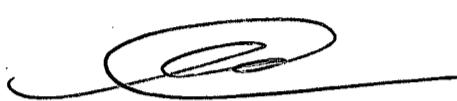
12. This Tribunal in its order in OA 59/01 and other OAs had held that awarding of marks on the basis of viva-voce was unreasonable and arbitrary. From the action of the respondents in the selection, we find that the respondents had adopted a procedure by which this arbitrariness is eliminated as the replies given by each of the candidates in the written test would be available for scrutiny and verification. By this procedure, in our view, the element of subjectivity and hence arbitrariness is practically eliminated. In this view of the matter, we hold that the judgement relied on by the learned counsel for the applicants has no applicability in the facts and circumstances of the case.

13. Apart from the above, the applicants having participated in the written test and waiting till the results were announced for challenging the procedure adopted by the respondents for the selection, leads us to the conclusion that they have challenged the same finding that they had not been selected. It is well settled that a person who has participated in a selection, finding that he has not been selected cannot challenge the procedure in the selection later on.

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14. In the result, we hold that the applicants in this OA are not entitled for the reliefs sought for. Accordingly we dismiss this OA leaving the parties to bear their respective costs.

Dated 29th January, 2003.



K.V.SACHIDANANDAN
JUDICIAL MEMBER

aa.



G.RAMAKRISHNAN
ADMINISTRATIVE MEMBER