

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE OF DECISION: 22-12-1989

PRESENT

HON'BLE SHRI S.P.MUKERJI, VICE CHAIRMAN

&

HON'BLE SHRI A.V.HARIDASAN, JUDICIAL MEMBER

ORIGINAL APPLICATION NO.490/89

1. P.Peethambaran
2. P.M.Raghunathan
3. A.Vijayakumar
4. V.Balan
5. P.K.Balakrishnan
6. R.Balakrishnan
7. C.Balakrishnan
8. K.Kali
9. C.Krishnan
10. B.Nandakumar
11. M.Parameswaran Nair
12. K.Chandran
13. V.Gangadharan
14. A.Narayanankutty
15. S.Hamsa
16. K.Paneer Selvam
17. K.Raveendran
18. T.Santhakumar
19. P.Vasudevan
20. M.T.Ramachandran
21. P.Chandran
22. R.Rangaraj
23. C.Ravindradasan
24. V.C.Kunhiraman

- Applicants

V.

1. The Senior Divisional
Personnel Officer,
Divisional Office(Personnel),
Southern Railway, Palghat.
2. The Divisional Railway
Manager, Divisional Office,
Southern Railway, Palghat.
3. The General Manager,
Southern Railway, Madras.
4. The Chief Personnel Officer,
Southern Railway, Madras.

- Respondents

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|------------------------------------|---|-----------------------------|
| Mr Asok M Cheriyan | - | Counsel for the applicants |
| M/s MC Cheriyan & Saramma Cheriyan | - | Counsel for the respondents |

O_R_D_E_R

(SHRI A.V.HARIDASAN, JUDICIAL MEMBER)

In this application filed under Section 19 of the Administrative Tribunals Act, the applicants pray that the order of the General Manager, Southern Railway, No.CPD/MAS letter No.P(S)529/11/Avenue Charts/C1.IV dated 23.6.1989 giving approval to the order of the first respondent dated 28.2.1989 cancelling the written examination and viva voce test conducted for the selection of Assistant Guards and calling for fresh applications, and Annexure-A4 order of the first respondent dated 7.7.1989 allowing confirmed Cabinman also to take part should be set aside in the recruitment test proposed to be held/and also for a direction to the respondents to make appointment from the select list prepared in the process of selection initiated by Annexure-A1.

2. The facts of the case can be briefly stated as follows. The applicants employed in the Traffic Department under the respondents were officiating in the posts of Cabinman Grade I, Pointsman 'A' and Gateman Grade I, the in/scale of Rs.950-1500 while they were holding substantive posts of Cabinman Grade II, Pointsman 'B' and Gateman Grade II

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in the scale of Rs.800-1150. While so, in response to the notification issued by the first respondent on 6.7.1988, they applied for the post of Assistant Guard in the scale of Rs.950-1500 which is a selection post. A written examination and viva-voce test were held and the select list prepared by the Selection Board was sent to the second respondent. The applicants ~~xxxx~~ participated in the written test and viva-voce and were confident of being selected. At that time, the first respondent issued an order on 28.2.1989 cancelling the written examination and viva-voce and calling for fresh applications for selection to fill the post of Assistant Guard without assigning any reason as to why the selection process already initiated and about to be completed was to be cancelled. The validity of the above order of the first respondent was challenged by the applicants before this Tribunal in OA-178/89. The Senior Divisional Personnel Officer had sworn an affidavit in OA-178/89 in which it was inter-alia contended that ^{while 20 senior} ~~13~~ persons who had only officiated in the grade of Rs.950-1500 were not allowed to participate in the test ~~xxxxx~~ 13 others who had already been confirmed in the grade of Rs.950-1500 ^{with retrospective effect} / were wrongly allowed to participate and that for these reasons, the selection process had to be cancelled and fresh selection made. Anyway, finding that the first respondent had no

authority to cancel the selection since if the competent authority was not in a position to accept the recommendations of the Selection Board, the course open was to refer the matter to the General Manager as provided for in Clause-3 of the paragraph 213 of the Indian Railway Establishment Manual, this Tribunal held that the order of the first respondent dated 28.2.1989 cancelling written examination and viva-voce could not be sustained. Subsequently, the first respondent issued Annexure-A4 dated 7.7.1989 directing continuance of the selection process afresh stating that the General Manager had accorded approval as per CPD/MAS letter No.P(S)529/11/Avenue Charts/V1.IV dated 23.6.1989 for cancelling the proceedings of the selection conducted earlier and also including a fresh category, namely, the confirmed Cabinman Grade I, Livermen Grade I, Pointsman'A'/Gatemen I in the scale of Rs.950-1500 as feeder category for the selection. The Annexure-A4 order and the order of the General Manager quoted therein are challenged in this application. It is averred in the application that the order of the General Manager approving the action which has been set aside by the Tribunal in OA-178/89 is illegal and unsustainable and that the inclusion of an additional category namely, Cabinmen Grade I, Gatemen Grade I etc. in the feeder category for the selection to the post of Assistant Guard is

unsustainable and since it is prejudicial to the interest of the applicants, who had already undergone the process of selection in the first process, the applicants pray that the impugned orders may be cancelled and that the respondents be directed to appoint the persons/^{selected} on the basis of the written test and viva-voce already held.

3. This application is opposed by the respondents.

The first respondent has filed a counter affidavit on behalf of respondents 1 to 4. The approval of the General Manager for cancellation of the selection process already initiated is justified on the ground that the selection process was vitiated as certain persons who were ineligible have been allowed to participate in the selection while 13 others who were really eligible have been kept out. The inclusion of an additional category is also justified.

4. We have heard the arguments of the counsel on either side and have also carefully perused the documents produced.

5. The grievance of the applicants/^{is} that they have already undergone a written examination and viva-voce test in which they had done fairly well and that if they are again compelled to participate in another written test and viva-voce that too with a larger number of competitors since a new category has been included that would be highly

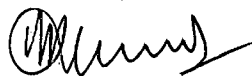
prejudicial to them. They have also a grievance that the inclusion of confirmed Cabinmen Grade I etc. who are seniors to them in the feeder category would prejudicially affect their chances of being selected. At the first flush it would appear that there is merit in this argument and that the action of cancelling the selection and ordering a new selection adding a new class of competitors would appear to be rather unjust. The learned counsel for the applicant invited our attention to TR Kapur and others V. State of Haryana and others reported in 1986 (Supple.) SCC 584 wherein a notification issued by the State Government on 22nd June 1984 purporting to amend Rule 6(b) of the Punjab Service of Engineers, Class I, Public Works Department (Irrigation Branch) Rules, 1964 with retrospective effect from July 19, 1964 whereby members of Class II service who were Diploma holders like the petitioners in that case were rendered ineligible for promotion to the post of Executive Engineer changing the eligibility condition and making a degree in Engineering an essential qualification was held to be ultravires. Seeking support from the above decision of the Supreme Court, the learned counsel argued that at the time when the selection process was initiated and almost completed pursuant to the notification dated 6.7.1988 at Annexure-A1, the confirmed Cabinmen Grade I etc. were not a category allowed to participate in the selection and that inclusion of this category after the selection process has been almost completed is arbitrary, illegal and unsustainable and that such an act divesting the applicants of their

vested rights cannot be sustained. By taking part in a written test and viva-voce, the applicants have not obtained any vested right to any post. They had only a right to be considered for selection to the post of Assistant Guards. The inclusion of a new category in the feeder category does not in any way alter the service conditions of the applicants or takeaway of their right to be considered for selection. That only enables another section of employees also to participate in the selection. That was not the case in TR Kapur and others V. State of Haryana. In that case by amending the eligibility condition with retrospective effect members of Class II service who had only diploma in Civil Engineering and ~~who~~ were eligible for promotion as Executive Engineers in Class I till then were made ineligible. So the ratio of that decision has no application to the facts of this case. Since the first selection was cancelled by the order of the General Manager for the reasons that certain persons who were ineligible had been allowed to participate in the selection process while some others who were eligible had been disallowed it cannot be said that the cancellation of the selection process is unsustainable. The question is whether the General Manager has taken an independent decision to cancel the selection process or ~~has~~ ^{has} he only endorsed the cancellation done by the first respondent which has been set aside by the order of this Tribunal in OA 178/89. What was stated in Annexure-A4 is that the General Manager has accorded approval for cancelling the proceedings of selection that means the General Manager has considered

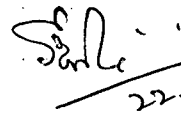
the various aspects of the matter independently and has decided that the selection process had to be cancelled. So there is no merit in the argument of the learned counsel for the applicants that the General Manager has only approved the action which has been set aside by this Tribunal. This Tribunal in OA-178/89 has only stated that the proper course is to refer the matter to the General Manager ~~xxxxxx~~ to take a decision and that the first respondent has no authority to cancel⁶ the selection. Now that the matter had been referred to the General Manager and that the General Manager has cancelled the selection after giving the matter independent consideration, we are of the view that the action of the General Manager is quite in order. Further by the inclusion of the ^{confirmed} Cabinmen Grade I etc. in the feeder category, no vested right of the applicants have been affected. The competent authority is free to make alterations in the feeder category taking into account the administrative convenience and the qualification required for the post. Therefore, we are not in a position to agree with the learned counsel for the applicant that Annexure-A4 order is unsustainable. It cannot be said that the second selection process initiated should be confined to the persons concerned in the first selection because the first selection was set aside solely for the reason that persons who were not qualified had been

considered while persons who were qualified had been left out of consideration. The learned counsel for the applicant at this juncture argued that it is well accepted principle that selection to posts should be on the basis of qualifications fixed during the time when the vacancies arose and that therefore when the vacancies in the post of Assistant Guards arose, the confirmed Cabinmen Grade I etc. were not feeder categories, the process of selection proposed allowing them also to participate is unsustainable. It is true that the qualification has to be determined with reference to the dates on which the vacancies arose, but here, no additional qualification has been prescribed after the vacancies arose. Therefore we find that there is absolutely no legitimate grievance for the applicants in this case.

6. For the reasons aforesaid, we find no merit in this application and hence the same is dismissed without any order as to costs.



(A.V. HARIDASAN)
JUDICIAL MEMBER


22.11.89

(S.P. MUKERJI)
VICE CHAIRMAN

22-12-1989

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