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CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. 23/96, 495/96 & 1222/97

THURSDAY, THIS THE 23rd DAY OF SEPTEMBER, 1999.

C O R A M:

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

O.A. 23/96

T.R. Raveendran S/o P. Ramalingam
Traffic Porter, Erode
r/o No. 357-B, Railway Colony
Erode.

..Applicant

By Advocate Mr. T. C. Govindaswamy
Vs.

1. Union of India through the General Manager,
Southern Railway, Park Town Post,
Madras-3.
2. The Chief Personnel Officer,
Southern Railway, Park Town Post,
Madras-3.
3. The Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat.
4. The Divisional Railway Manager,
Southern Railway, Palghat Division,
Palghat.
5. G. Chakrapani, Pointsman 'A'
Tirupur Railway Station,
Tirupur, Coimbatore District.
6. P. Shanmuga Sundaram,
Relieving Pointsman,
Erode Railway Station and Post Office,
Erode.
7. C. Thangamuthu, Pointsman 'A'
Erode Railway Station and Post Office,
Erode.
8. P.T. Sasidharan, Pointsman,
Southern Railway, Shornur Railway Station,
Shornur.
9. T.V. Janardhanan, Relieving Pointsman 'A',
Southern Railway, Shornur Railway Station,
Shornur.
10. K. Mohana Dasan, Pointsman,
Southern Railway,
Walayar Railway Station & Post,
Palghat District.

11. P. Subramanian, Assistant Guard,
C/o Station Manager, Southern Railway,
Erode Railway Station, Erode.
12. K. Girija Vallabhan, Sr. Gate Keeper,
Southern Railway, Podanur Junction,
Podanur.
13. P.V. Jayasankar, Cabinman-I
Southern Railway, Farooq Railway Station,
Farooq.
14. K.P. Sankkarankutty,
Gate Keeper, Southern Railway,
Podanur Railway Station,
Podanur.
15. K.K. Vijayan, Cabinman,
Southern Railway, Karakkad Railway Station,
Karakkad (Near Shornur).
16. C. Rajagopalan,
Pointsman 'B'
Southern Railway, Shornur Railway Station,
Shornur.
17. P. Rathinam, Pointsman,
Southern Railway,
Erode Railway Station, Erode.
18. U. Kunhimon, Pointsman 'B'
Southern Railway, Shornur Railway Station,
Shornur.
19. C. Sadasivan, Pointsman 'B'
Southern Railway, Erode Railway Station,
Erode.
20. R. Murugesan, Porter,
Southern Railway, Erode Railway Station,
Erode.
21. R. Gopinathan Kurup, Sweeper cum Porter,
Southern Railway, Tanur Railway Station,
Tanur.
22. V.N. Bhanuman, Sweeper cum Porter
Southern Railway, C/o Traffic Inspector,
Cannanore Railway Station,
Cannanore.
23. K. Paramasivan, Sweeper Cum Porter,
Southern Railway, Magnesite Junction 'Cabin'
Near Salem Junction Railway Station,
Salem. .. Respondents

By Advocate Mr. K.V. Sachidanandan for R1-4

Advocate Mr. M.R. Rajendran Nair for R8,9,10,12,14,15,16 & 18

O.A. 495/96


C. Krishnan, Pointsman 'A'
Southern Railway, Shornur.

P.V. Sahadevan, Sr. Gate Keeper,
Southern Railway, Shoranur.

3. T. Santhakumar, Pointsman A,
Southern Railway, Shoranur.
4. K.A. Abdul Latheef Pointsman A,
Southern Railway, Shoranur.
5. P.K. Balakrishnan, Pointsman A
Southern Railway, Shoranur.

..Applicants

By Advocate Mr. G. Madhavan Nair

Vs.

1. Union of India represented by the General Manager,
Southern Railway, Madras.
2. The Chief Personnel Officer,
Southern Railway, Madras.
3. The Divisional Railway Manager,
Southern Railway, Palakkad,
4. The Divisional Personnel Officer,
Southern Railway, Palakkad,
5. The Superintendent of Police,
Central Bureau of Investigation,
Kathrikadavu, Ernakulam.
6. G. Chakrapani, Pointsman A,
Southern Railway, Tirupur.
7. P. Shanmuga Sundaram,
Assistant Guard, Southern Railway,
Erode.
8. C. Thankamuthu, Assistant Guard,
Southern Railway, Erode.
9. P.T. Sasidharan, Pointsman,
Southern Railway, Shornur.
10. T. V. Janardhanan, Relieving Pointsman 'A'
Southern Railway, Shornur.
11. K. Mohanadasan, Pointsman A,
Southern Railway, Valayar.
12. P. Subramaniyan, Assistant Guard,
Southern Railway, Erode.
13. K. Girija Vallabhan, Assistant Guard,
Southern Railway, Erode.
14. P.V. Jayasankar, Cabinman-I
Southern Railway, Farooke
15. K.P. Sankarankutty, Gatekeeper,
Southern Railway, Pothanur Junction.
16. K.K. Vijayan, Assistant Guard,
Southern Railway, Erode.



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17. C. Rajagopalan, Pointsman B,
Southern Railway, Shornur.
18. P. Rathinam, Assistant Guard,
Southern Railway, Erode.
19. U. Kunhimon, Pointsman B,
Southern Railway, Shornur.
20. C. Sadasivan, Pointsman-B
Southern Railway, Erode.
21. R. Murugesan, Assistant Guard,
Southern Railway, Erode.
22. R. Gopinathankurup,
Sweeper cum Porter,
Southern Railway, Tanur.
23. V.N. Bhanuman, Sweeper cum Porter,
Southern Railway, Kannur.
24. K. Paramasivam, Assistant Guard,
Southern Railway, Erode.
25. G. Tharanathan,
Divisional Commercial Manager,
Southern Railway, Palakkad.

..Respondents

By Advocate Mr. K.V. Sachidanandan for R 1-4

Advocate Mr. T.A. Rajan for R-7, 9 to 13, 15 to 24

O.A. 1222/97

1. P. Shanmughasundaram, Assistant Guard,
Southern Railway, Erode.
2. P.T. Sasidharan, Assistant Guard,
Southern Railway, Erode.
3. C. RAjagopalan, Assistant Guard,
Southern Railway, Erode.
4. V.N. Bhanuman, Assistant Guard,
Southern Railway, Erode.

..Applicant

By Advocate Mr. T. A. Rajan

Vs.

1. Union of India represented by the General Manager,
Southern Railway, Madras.
2. The Chief Personnel Officer,
Southern Railway, Madras.
3. The Divisional Railway Manager,
Southern Railway, Palakkad.

The Divisional Personnel Officer,
Southern Railway, Palakkad.

..Respondents

By Advocate Smt. Sumathi Dandapani



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The application having been heard on 8.7.99, the Tribunal delivered the following on 23.9.99.

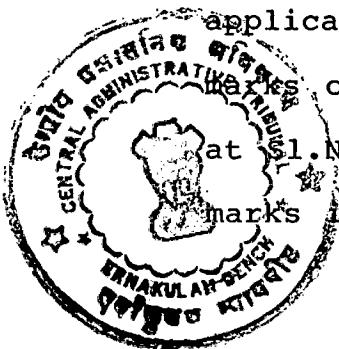
O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

This is a common judgment in respect of O.A. 23/96, 495/96 and 1222/97 which were heard together as they were all in respect of the same selection for the post of Assistant Guard conducted by the Palghat Division of the Southern Railway. O.A. 958/96 filed against the selection for the post of Assistant Guard conducted by the Trivandrum Division of the Southern Railway was also heard along with these three O.As, but as the same pertained to Trivandrum Division, separate order has been made.

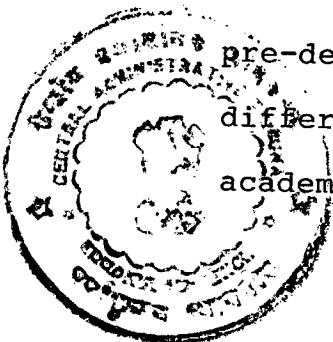
2. In O.A. 23/96, the applicant challenged letter No.J/P 608/VIII/Asst. Guards dated 9.10.95 (A3) under which the panel for the post of Assistant Guard had been published pursuant to the selection and No.J/P.608/VIII/Asst. Guard dated 22.11.95 (A5) of the third respondent to the applicant disposing of his representation dated 13.10.95 (A4).

3. The applicant stated in the O.A. that he while working as Traffic Porter at Erode Railway Station of Palghat Division, applied in response to the notification issued by the third respondent under No. J/P 608/VIII/Asst. Guard dated 17.5.94 (A1) for filling up 32 vacancies in the cadre of Assistant Guards scale Rs. 950-1400. Applicant stated that he appeared in the written test whose result was published under letter No.J/P 608/VIII/Asst. guards dated 18.8.95 (A2) according to which he was one of the 28 who had qualified. According to the



applicant the names in A2 were arranged in the order of the marks obtained in the written examination and as his name was at Sl.No.2 he claimed that he had secured the second highest marks in the written examination. The applicant further stated

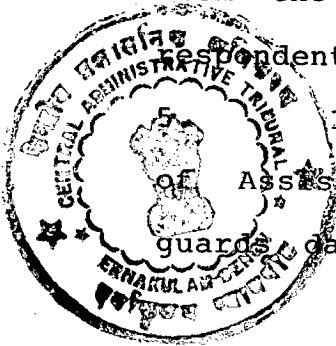
that viva voce was fixed on 5.10.95 and the panel was published on 9.10.95 (A3). Finding that he had not been included in the final panel, the applicant submitted a representation dated 14.10.95 (A4) to the 4th respondent for which he received a reply at A5. The applicant claimed that he had secured second rank in the written examination, answered all the questions in the viva voce, had passed SSLC, belonged to Scheduled Caste and he had no adverse confidential report. According to him as he belonged to the S.C. community and as the post of Assistant Guards came under a non-safety category, for SC employees to be empanelled, the marks required was only 50 and submitted that there was no reason to exclude him in A3 panel and he termed the exclusion as arbitrary and illegal. According to the applicant there was no prescribed minimum qualifying marks for the viva voce for inclusion in the final panel and the reasons given in A5 that he did not secure the requisite marks in the viva voce was ex-facie arbitrary, discriminatory, contrary to law and hence illegal and violative of the Articles 14 and 16 of the Constitution of India. The applicant stated that viva voce was conducted by the Senior Divisional Personnel Officer, the Divisional Electrical Engineer and the Divisional Safety Officer and further in terms of Paragraph 218(a) of the Indian Railway Establishment Manual read with A6 there should be at least one member belonging to the Transportation Department in the Selection Committee and the very constitution of the selection board was contrary to the rules and therefore the selection and the panel were void, inoperative, illegal and hence unconstitutional. According to the applicant, the selection committee did not have a pre-decided policy or guidelines for allotment of marks under different heads for personality, address, leadership and academic qualification and they did not give separate marks for



the different heads and therefore, he claimed that the entire process of assigning marks for viva voce was arbitrary, discriminatory and contrary to law and therefore violation of Articles 14 and 16 of the Constitution of India. Further, the applicant stated that in terms of Para 16 of Chapter VIII of "A Rule Book on Raillway Establishtment & Personnel Management" in the case of reserved community candidates who were not empanelled papers should be put up to the General Manager irrespective of the fact whether the reservation quota had been filled or not and that this had not been done and hence exclusion of his name was illegal and arbitrary. The applicant sought the following reliefs:

- (a) Declare that the applicant is eligible to be included in the appropriate place at A3 panel and direct the respondents accordingly; or in the alternative
- (b) call for the records leading to the issue of Annexure A5 and quash the same;
- (c) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

4. The applicant had taken a further ground in the rejoinder based on the reply statement filed by the respondents that for promotion to the post of Assistant Guards the respondents had admittedly followed the procedure which was prescribed for a selection post whereas the post of Assistant Guard was a non-selection post and as non-selection posts were to be filled up on the principles of seniority-cum- suitability from the feeder categories, the procedure adopted by the respondents in this particular case was arbitrary.



In O.A. 495/96, five applicants challenged the panel of Assistant Guards published under No.J/P.608/VIII/Asst. guards dated 9.10.95 (A3) and the reply given by the 4th

respondent to them vide No.J/P.O.A.1431/95 dated 15.1.96 (A7) in reply to their representations. According to the applicants while working in various posts such as Pointsman, Sr. Gate Keeper etc. as regular employees they had volunteered and appeared in the written examination for selection to the posts of Assistant Guards. Applicants stated that 28 persons were declared as passed and called for viva voce out of which 19 persons were finally empanelled vide letter dated 9.10.95.(A3). As the names of the applicants were not in the panel, being not successful in the written examination, they had approached this Tribunal through O.A. 1431/95. They stated that as per the directions of this Tribunal in that O.A. their representations dated 6.10.95 was disposed of by the 4th respondent vide A7 and against this order dated 15.1.96 they approached this Tribunal through this O.A. seeking the following reliefs:

- i) to set aside the selection to the post of Assistant Guards as per Annexure Al as the entire selection is hit by malafides.
- ii) to direct the 5th respondent to make available the report of the Central Bureau of Investigation regarding the selection to the post of Assistant Guards and peruse the same;
- iii) to direct the respondents 1 to 4 to conduct a fresh selection as per rules with common question paper at different stations with the same time;
- iv) to quash Annexure A3 and A7 orders and
- v) grant such other further reliefs that this Hon'ble Tribunal may deem fit and proper."

The applicants sought the above reliefs on the following grounds.

(i) The examination for the post of Assistant Guards was conducted on different dates in four centres with different question papers and different examiners valued the papers.



According to them since the papers were valued at various centres it could not be a uniform method of selection and as such the entire selection was hit by malafide. They also submitted that this procedure was different from the procedure followed by the respondents earlier and that in the earlier selection seniors had been selected and no juniors had been selected overlooking the seniors.

(i.i) They referred to a newspaper report at A8 and submitted that malpractice and illegality were there in the selection, therefore, they prayed for setting aside the entire selection. They submitted that according to A8, the 25th respondent in the O.A. had shown favouritism by giving more marks to certain candidates, had revalued the papers and that the applicants had written the examination fairly well and their failure was by way of influence exerted by the 25th respondent and therefore the entire selection was hit by malafide and had to be interfered with and quashed by the Tribunal.

7. O.A. 1222/97 was filed by the four applicants who had been empanelled on the basis of the above selection and who after screening had been promoted and posted as Asst. Guards. They were also among the array of respondents in O.A. 23/96 and O.A. 495/96. They had approached the Tribunal against order No. J/ p 608/VIII/Asst. guard dated 18.9.97 (R1) issued by the 4th respondent by which their names had been deleted from the panel of Asst. Guards published by letter dated 9.10.95. According to the applicants after empanelment vide letter dated 9.10.95 they were sent for Asst. Guard training for one month vide A5 from 22.4.96 to 21.5.96 and after completion of the training they had been declared passed vide A6 and issued certificate to the effect that they were qualified to work as Asst. Guards. Specimen certificate was enclosed as A7. They were promoted to work as Asst. Guard vide order dated 29.4.96. A8) While they were working as Asst. Guards, the third



respondent issued a notice dated 24.7.97 asking them to show cause as to why they should not be reverted deleting their names from the panel of employees selected to the post of Asst. Guards and to cancell their promotion order on the ground that they had not actually got 60% or above marks in the written test and that the officer who had valued the papers awarded 60% or more marks than what they were actually eligible. The applicants replied to the show cause notice in which they specifically pointed out that they had been given marks after evaluation of the papers by the competent authority and after such a lapse of time there could not be any move from the administration to delete their names as they had undergone the training which was in English and had secured good marks and that they were discharging their duties as Asst. Guards effectively and honestly. The applicants claimed that without considering the explanation of the applicants to the show cause notice the administration had taken a decision to delete their names and revert them to their original posts by order dated 18.9.97. Hence, they had approached this Tribunal through this O.A. seeking the following reliefs:

- i) to direct the respondents to produce the order No.J/P.608/VIII/Asst., Guards dated 18.9.97 of the 4th respondent reverting the applicants from the post of Asst. Guards and quash the same;
- ii) to declare that the deletion of the names of the applicants from the panel and the reversion of the applicants to their earlier posts as illegal;
- iii) to issue a declaration that the applicants are entitled to continue in the category of Asst. Guards by virtue of their selection and passing of the training in the category of Asst. Guards and;
- iv) to grant such other further reliefs that this Hon'ble Tribunal may deem fit and proper.



8. Applicants pleaded that when the written test was conducted in December, 1994, and the panel was published in October, 1995, action of the respondents after a lapse of about 3 years, of reverting them stating that they had not secured 60% marks, could not be sustained. Further, they stated that they had also shown their merit in the training at Trichy especially when the training was conducted in English and had secured high marks. According to them they had been given the syllabus of training prescribed for higher grade of posts of Guards. Moreover, they claimed that from the date of occupying the post of Asst. Guards they had discharged their duties very effectively and efficiently and therefore the respondents could not revert them to their erstwhile posts. They pleaded that in A9 the marks attained by the applicants had not been indicated so also the contents of the investigation report conducted by the CBI and therefore, the proposal to revert them was illegal and incorrect. They claimed that the currency of the panel had exhausted on 24.9.96 and there was no rule or order to amend or cancel a panel which had already exhausted and hence the action of the respondents for deletion of their names and reversion was against existing rules.

9. The respondents filed a reply statement in each of these O.As. In O.A. 23/96, respondents submitted that even though the applicant had secured more than 60% marks in the written test he could not secure the minimum marks of 60% in the aggregate in terms of para 219(g) of the Indian Railway Establishment Manual. They submitted that 671 employees had volunteered for the selection and the written test was conducted at various centres on different dates in which 601 employees attended and 28 employees including the applicant came out successful in the written test. They submitted that the



applicants' representation had been replied vide A5. They denied that the applicant had secured second highest marks in the written test and that his performance in the viva voce test had been exemplary. They also denied that the post of Asst. Guard came within the purview of non-safety category and denied the applicant's claim that the minimum marks required was 50%. Further, they submitted that there were no vacancies reserved for S.C. community and the vacancies were for Unreserved-29 and S.T.-3 and therefore the applicant was not entitled for application of relaxed standards. Regarding the constitution of the Selection Committee, respondents submitted that the Senior Divisional Safety Officer belonged to the Operating Department and hence was fully competent to be included in the Selection Committee for selection of Asst. Guards as an officer of the department. They also denied that there were any arbitrariness or discrimination in the allotment of marks and averred that the panel was approved by the competent authority- the Divisional Railway Manager. They submitted that the post of Asst. Guard came within the purview of non-selection posts and hence claimed that there was no need for placing the papers before the General Manager for obtaining his orders regarding supersession if any of senior employees belonging to reserved community and DRM's approval was sufficient.

10. In O.A. 495/96, the respondents filed reply statement and resisted the claim of the applicants. Referring to O.A.495/98, they submitted that the applicants who did not come out successful in the selection cannot challenge the selection. Respondents submitted that as it was not practicable to relieve all the 671 employees who had opted for the written test simultaneously as the same would affect train running, written tests were conducted on three days at three stations followed by a supplementary test on a fourth date and in all 601 employees attended the written test. As the applicants had not



secured 60% marks in the test, they did not become eligible to be called for viva voce test. They further averred that same question paper was distributed at all the centres on a particular date and further the question papers were of the same standard on different dates and that there were no malafide intention or arbitrariness in conducting the tests on different dates with different question papers. They further contended that the applicants had no vested right as such for promotion. They denied the contention that in the previous selections, seniority was considered for selection. They admitted that the CBI which was probing into some allegations regarding malafides in the selection and had not completed the investigation. They affirmed that valuation was done by only one officer nominated for the purpose. They also submitted that as the applicants had filed O.A. 1431/95 earlier where the grounds and reliefs sought for were the same as that of the present O.A. and therefore this case was hit by resjudicata.

11. The private respondents 7, 9 to 13, 15 and 24 also filed reply and resisted the claim of the applicants in this O.A.

12. In the additional reply filed by respondents 1 to 4 referred to para 188, 219(i) and 213(a) and explained regarding the procedure followed for promotion to the post of Asst. Guard.

13. In O.A. 1222/97 the respondents filed reply statement and justified their action proposing to revert the applicants stating that steps were taken for deleting the names of the applicants on the basis of the report of the Supdt. of Police, CBI, Ernakulam who probed into the selection, in which it was found that 8 employees including the applicant in O.A. 23/96 and the applicants in O.A. 1222/97 who were declared as qualified in the written test and found eligible for the viva



voce test based on the marks given by the valuing officer, had not actually obtained 60% marks in the written test and hence were not qualified for attending viva voce test. They annexed copies of letters dated 10.4.97 (R-3) and 29.4.97 (R-4) from the Chief Vigilance Officer and Dy. Chief Vigilance Officer respectively.. They submitted that as the applicants had not secured the required marks in the written test they were not eligible for the viva voce test and therefore their selection was on the basis of incorrect marks obtained by them. They submitted that the contention that the applicants were duly selected was not tenable.

14. Heard learned counsel for parties. We have given careful consideration to the pleadings in the O.As and the lengthy submissions made by the learned counsel for the parties and have also perused the records. Some of the judgments relied upon by the learned counsel for the parties are as follows:

- (i) S.q. jaisinghani Vs. Union of India and Others (AIR 1967 SC 1427)
- (ii) Omprakash Shukla Vs. Akhilesh Kumar Shukla & Others (AIR 1986 SC 1043)
- (iii) Kanhaiya Lal Vs. Union of India and Others (1987) 4 ATC 83
- (iv) Gurdeep Singh Vs. State of Jammu & Kashmir and Others (1995 SCC (L&S) 378)
- (v) Satpal & Others Vs. State of Haryana & Others (1995 SCC (L&S) 424)
- (vi) Hanuman Prasad & Others Vs. Union of India and Others (1996) 10 SCC 742)
- (vii) University of Cochin VS. N.S. Kunjoonjamma & Others (AIR 1991 SC 2083)



15. The position that emerges is that in O.A.No. 23/96 and O.A. No.495/96, the applicants are challenging the selection, seeking amendment/quashing of the panel at Al whereas in O.A.1222/97 five employees who had been promoted as Assistant Guards as a result of the selection have approached the Tribunal against their reversion consequent on the decision taken by the respondents to delete their names from panel.

16. The learned counsel for the applicants appearing in O.A.No. 23/96 invited our attention to the pleadings in O.A.No. 23/96 and O.A. No.495/96 and submitted that the selection has to be quashed as a number of irregularities have taken place in the same. The first ground taken by him was that the selection was conducted at four different places with four sets of question papers. According to him, the standard could not be the same and therefore, the selection was vitiated. The respondents submitted that the selection had to be conducted on four dates as it was not be practically possible to call all the candidates who had volunteered in the selection on the same date as it would have affected the train running. They submitted that the question papers used were of the same standard and all the answer papers had been valued by the same authority. They also stated that at all the centres on a particular date the same question paper was used. In view of the reasons advanced by the respondents and also their averment that the same authority had valued all the answer papers and the four question papers were of the same standard, we do not hold that the selection is vitiated on this ground.

17. The learned counsel for the applicant relying on the provisions of the Indian Railway Establishment Manual (IREM for short) Rule 218 submitted that no departmental officer was a member of the Selection Committee, as Divisional Safety Officer, Divisional Personnel Officer and the Divisional Electrical Engineer, do not belong to Operating Department to which the



post of Asst. Guard belong. He submitted that the Divisional Safety Officer was not an officer of the Operating Department. According to the respondents the Sr. Divisional Safety Officer belonged to the Operating department and hence the selection was not vitiated on this ground. We have given careful consideration of the rival submissions. We accept the plea of the respondents and do not find anything illegal in the constitution of the Selection Committee as the post of Asst. Guard and the Divisional Safety Officer belong to Transportation Department.

18. Learned counsel submitted that the applicant in O.A. No.23/96 secured qualifying marks in the written test for being called for viva voce and his non-empanelment for the reason that he had not secured the requisite qualifying marks in the viva voce was not sustainable as per the provisions of Rule 219 of IREM. Respondents submitted that those who secure 60% marks in the written test were called for viva voce test and those who secure 30 marks out of 50 for professional ability (35 for written + 15 for viva voce) and 60% in the aggregate are empanelled according to seniority and as the applicant did not secure the same he was not selected. Further, respondents submitted that applicant (in O.A.No.23/96) was one of the candidates in whose answer books wrong marks were found to have been awarded according to the CBI's report. In the light of the above, we are unable to accept the plea to declare him as selected at present.

by

19. The next issue submitted/the learned counsel for the applicant in O.A.No.23/96 was that in accordance with para 15 of the reply statement filed by the respondents it had been admitted by them that the post of Assistant Guard was a non-selection post and therefore conducting a selection and forming a panel was not at all necessary and the vacancies of Assistant Guards should have been filled up on



seniority-cum-suitability basis. The learned counsel for respondents drew our attention to the additional reply statement filed in this O.A. and O.A.No.495/96 and Para 188 and 219(i) of the IREM. He also relied on the CPO, Southern Railway's letter dated 7/94 copy of which was produced as Annexure R-1 with the addl. reply statement and the Avenue Chart of Asst. Guards (Annexure R-2 of addl. reply statement) in O.A. 23/96 and submitted that the vacancies of the posts of Assistant Guard were to be filled up through a process of selection and that the post was not a 'selection post'. We have carefully considered the submissions made at length by the learned counsel for the parties on this specific issue. What is required to be decided is whether the vacancies of Assistant Guard are to be filled up by a process of selection or on the basis of seniority-cum-suitability. Para 188 of IREM (Chapter I, Section B, Sub section iv,page 41) is reproduced below:

Promotion to lower grades in Group 'C'

Lower grades in Group 'C' like Junior Clerks, Material Checkers, etc. in scales such as Rs. 825-1200 should be wholly filled by promotion from Group 'D' railway servants who have put in 5 years service. In the case of posts which are in the normal avenue of promotion to Group 'D' railway servants, promotion should be made from amongst the railways servants of the Deptt. concerned in each promotion unit on the basis of seniority-cum-suitability after holding such written and/or practical tests as may be considered necessary. In the case of posts which are not in the normal avenue of promotion, promotion should be made on the basis of selection after holding such written and/or practical test as may be considered necessary and from panel drawn and according to prevailing rules in respect of selection posts.

19.1 It is evident from the notification at A1 that the post of Asst. Guard is to be filled up from Groups D and C employees. It is one of the lower grade Group 'C' posts. It is not in the normal avenue of promotion of any Group 'D' category. Therefore, we are of the considered view that as per 188 of IREM the vacancies of the posts of Asst. Guard are



to be filled up on the basis of selection. We are also of the view that the post in question is not a 'selection post.' The applicants had not produced any order of the Railway Board declaring this post as a 'selection post' in terms of para 211 of Chapter-II of the IREM. Apart from the above, the applicant is also estopped from raising these issues having participated in the selection and not succeeding as per the ratio of the judgment of the Hon'ble Supreme Court in the case of Om Prakash Shukla Vs. Akhilesh Kumar Shukla & Others (AIR 1986 SC 1043) and in the case of University of Cochin Vs. N.S. Kanjoonjamma and Others (AIR 1997 SC 2083)

20. In O.A. No. 495/96 the respondents initially contested the allegations made by the applicants based on the newspaper report that the Senior Divisional Commercial Manager of the Southern Railway, Palghat had misused his official position had conducted a second valuation of the answer papers and had awarded more marks to certain candidates and had reduced the marks obtained by some others. At that time, they only admitted that a CBI probe was in progress. Subsequently, they filed true copies of the two letters of the Chief Vigilance Officer, Southern Railway addressed to the Chief Personnel Officer, Southern Railway, Madras and of the Deputy Chief Vigilance Officer addressed to ADRM/PGT dated 10.4.97 (R-4) and dated 29.4.97 (R-5) respectively in O.A. No. 23/96 along with the additional reply statement. These were also filed in O.A. 1222/97 and CBI investigation was referred in O.A. No. 495/96. As these letters have substantial effect on these O.As, they are reproduced below:



...

(i) Letter No.VI/GS/SPE/KER/166/95 dated 10.4.97 (R-4 in O.A.No.23/96)

"The Superintendent of Police, CBI, Cochin, vide his letter No.3/23(A)/95-KER/MR784 dated 11.12.96 has indicated that Sri C. Tharanathan, Sr. Divisional Commercial Manager, Southern Railway had in his capacity as Sr. Divisional Safety Officer, Palghat committed certain irregularities in connection with the selection for Assistant Guards held during the year 1994-95. The Supdt. of Police, CBI, Cochin has recommended regular departmental action for major penalty against Sri C. Tharanathan for his role in the above mentioned selection.

The CBI has also recommended that Railways may consider taking up a proposal for cancellation of selection or revaluation of the answer papers by a competent body of officers before the Central Administrative Tribunal. Based on the above, PHOD viz. Chief Operations Manager's comments and General Manager's Order were obtained and major penalty charge sheet had been issued to Sri C. Tharanathan, for the irregularities noticed pertaining to the above mentioned selection.

When the papers were sent to the PHOD, he has opined that if the selection were to be cancelled it would upset the working. He has further stated that the view of the CPO can be obtained regarding this and that it would be fair if the 4 candidates who have been failed "can be declared as having been selected." When the file of papers was sent to CPO for his comments, CPO has mentioned as under.

"The panel was approved on 5.10.95. The life of the panel being 2 years, within 5.10.97 we can take action to modify it after issue of the necessary show cause notice to the affected persons. A copy of the investigation report be made available so that the necessary direction can be issued to DRM|PGT to take action. The panel has to be modified by COM as it was approved earlier by DRM, however, only after finalising the show cause notice and it has to be done if modified before 5.10.97."

Thus the 3 options emerge on the issue of selection:

- 1) Cancellation of entire selection; this could however be impractical taking into consideration the shortfall in Asst. guard category.
- 2) Partially modifying the panel to include the 4 candidates who had failed as a result of modification made by Sri C. Tharanathan, Sr.DCM/PGT. Since in this case there is no guarantee that the 4 candidates would have been successful in the viva this option was not considered proper.
- (3) The last option was to issue show cause notice to 8 candidates who have passed in the written examination due to corrections made by C. Tharanathan and disqualify them from the selection.



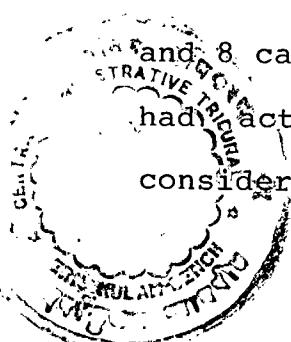
Considering all the options available and keeping in view the practical aspects, so as not to disturb the Railway working substantially, option No.3 i.e. to process for issuing show cause notice to the 8 candidates who have passed as a result of modification made by Sri C. Tharanathan and disqualify them from the panel has been recommended by GM and may be proceeded with. Hence, it is requested that necessary action may be initiated by Personnel Branch."

(ii) Letter No. VI/GS/SPE/KER/166/95 dated 29.4.97 (R5 of O.A. 23/96)

Kindly refer to this Office letter cited (1) above which was forwarded by CPO/MAS to you wherein 3 options were given regarding the above selection. The option No.3 to process for issuing show cause notices to the 8 candidates who have passed as a result of modification made by Sri C. Tharanathan and disqualify them from the panel has been recommended by GM, hence it is requested to take immediate action to issue show cause notices to the 8 candidates. The dummy No. and name of the candidates are given below:

Sl.No.	Dummy No.	Name & Designation S/Shri
1.	125	C. Thangamuthu PMA/ED J/T 829
2.	135	T.R. Raveendran Tfc Pr/ED/J/T 2528
3.	136	P. Shanmuga Sundaram RPM/ED J/T 237
4.	197	G. Chakrapani, PMA TULP J/T 414
5.	312	P.T. Sasidharan PM/SRR J/T 766
6.	876	K. Chandran CM/KUL/JT 1276
7.	902	C. Rajagopoalan PMB/SRR J/T 1910
8.	920	V.N. Bhanuman SCP/KMQ J/T 2800

21. It is evident from the above letter that the CBI recommended either for cancellation of the selection or for re-valuation of the answer books by competent body of the officers of the Railway administration. It would also appear from the letter of the Chief Vigilance Officer that 4 candidates who have been declared as failed in the written test had actually passed and 8 candidates who have been declared passed in the written test had actually failed. The Railway administration had after consideration of the matter at the level of Chief Operations



Manager, Chief Personnel Officer and General Manager had decided to adopt the option No.3 mentioned in the above letter i.e. to take action against only the eight employees who have actually failed in the written test but had been irregularly declared as passed.

22. The specific grievance of the applicant in O.A. 495/96 was that because of malpractice and irregularity they had been declared as failed in the written test. From the CBI's investigation report as revealed from the letter reproduced above and as per their recommendations contained therein, it would appear that all was not well in the valuation of the answer papers of the written test. Therefore, there is reason to conclude that there is substance in the grievance of the applicants in this O.A. It is well known that written test is the first step in the selection process and in this it appears that irregularities have been committed in valuing the answer papers. When such is the case, the panel formed on the basis of the marks obtained in the written test also becomes suspect. However, the respondents without acting on the recommendations of the CBI of either completely cancelling the selection or re-valuation of all the answer papers have adopted a third course of action for which there is neither any foundation nor is it equitable. It had also not been established that irregularities in the award of marks for the written test had been committed only in these eight plus four cases. Such arbitrary action cannot be allowed in matters which result in civil consequences to the railway employees as in the case of applicants in these three O.As. Further, out of the 28 employees who were declared as passed the written test, 8 employees have been included irregularly according to the CBI. This would mean that more than 25% of the employees have been irregularly declared qualified in the written test. When this the position, any conclusion arrived on the basis of the CBI report alone will be arbitrary and without a proper foundation. Further,



perhaps the CBI themselves were very well aware of their limitation of not being an expert body in the matter of valuation of answer papers perhaps that was the reason for suggesting revaluation of all the answer papers instead of action against only candidates in whose answer papers they had found irregularity, perhaps in their sample valuation/checking. When this is the case, the respondents' action of taking action selectively against the applicants in O.A. 1222/97 without coming to any conclusion regarding the correctness of the valuation of the rest of the answer papers cannot be sustained. If some irregularities have taken place in the valuation of the answer papers of the written test, none should be allowed to enjoy the fruits of such irregularities or allowed to suffer as a result of such irregularities. In this view, we are guided by the dictum of the Hon'ble Supreme Court in the case of Gurdeep Singh Vs. State of J & K and Others (1995 SCSC (L&S) 378). Therefore, the first requirement in a case of this type is to arrive at the factual position regarding the selection before deciding the course of action to be adopted as far as the already selected candidates are concerned. Any piece-meal action will be arbitrary and without basis. In our view, this can be done only if all the answer papers of the written test are revalued.

23. In view of the foregoing, the General Manager, Southern Railway has to review the whole matter. For this purpose, we direct the General Manager to appoint a Committee at a level higher than the earlier one, consisting of officers who were not members of the earlier Selection Committee to revalue all the answer papers of the written test and submit report to him. On the basis of the report thus received, if the General Manager is satisfied that irregularities have

been committed, and panel has to be amended and promotions cancelled, he may take appropriate action after giving due notice and opportunity to the persons who may be adversely affected. The three Original Applications are disposed of with the above direction and setting aside the impugned order Annexure A-11 in O.A. 1222/97. In the circumstances, the parties will bear their respective costs.

Dated the 23rd September, 1999.

Sd/-
G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

Sd/-
A.V. HARIDASAN
VICE CHAIRMAN

kmn

List of Annexures referred in this Order

O.A. 23/96

A3 : A true copy of the letter No.J/P 608/VIII/Asst.Guards dated 9.10.95 issued by the 3rd respondent.

A5: A true copy of the letter No.J/P 608/VIII/Asst.Guard dated 22.11.95 issued by the 3rd respondent

A4: A true copy of the representation dated 13.10.95 submitted by the applicant to the 4th respondent.

A2: A true copy of the letter No. J/P 608/VIII/ Asst. Guards dated 18.8.95 issued by the 3rd respondent.

A1 A true copy of the order No. J/P 608/VIII/ Asst. Guards dated 17.5.94 issued by the 3rd respondent.

R1 True copy of letter No.P(S)608/II/G/vol.I dated 7/94 from; the CPO, Southern Railway, Madras.

O.A. 495/96:

A3 True copy of the order No.J/P.608/VIII/Asst. Guards dated 9.10.95 of the 4th respondent

A7 True copy of the letter No. J/P C.A.No. 1431/95 dated 15.1.96 of the 4th respondent to the applicants

Order No.J/ p 608/VIII/Asst. guard dated 18.9.97



CERTIFIED TRUE COPY

Date

Deputy Registrar

A8 True copy of the news item in the Indian Express daily dated 22.12.95.

A5 True copy of the Order No.J/P 608/VIII/Asst. Guards dated 19.9.90 of the 4th respondent

A9 True copy of 1 the order No.J/P.535/VIII/Asst. Guards dated 1.4.96 of the 4th respondent.

O.A. 1222/97

R1 & All True copy of the order No.J/P 608/VIII/Asst. Guards dated 18.9.97 of the Divisional Office, Personal Branch, Palghat.

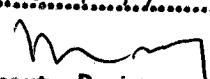
A5 True copy of the order No.J/P.535/VIII/Asst. Guards dated 1.4.96 of the 4th respondent

A6 True copy of the order No.J/P. 673/VIII vol.V dated 3.6.96 of the 4th respondent.

A8 True copy of the order No.J/P.535/VIII/-Asst. Guards dated 24.9.96 of the 4th respondent.

CERTIFIED TRUE COPY

Date 28.9.99


Deputy Registrar

