

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 508 and 509 of 2010

Thursday, this the 4th day of November, 2010.

CORAM

HON'BLE Ms. K NOORJEHAN, ADMINISTRATIVE MEMBER

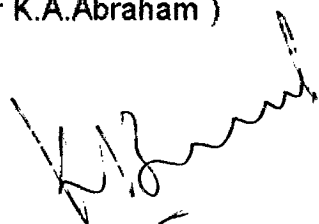
HON'BLE DR K.B.SURESH, JUDICIAL MEMBER

O.A.No.508/2010

1. V.Vikraman Nair,
Working as Goods Guard (Adhoc),
Office of the Station Manager,
Southern Railway, Quilon.
2. N.Hariharan,
Working as Goods Guard (Adhoc),
Southern Railway, Quilon.
3. A.Periyasamy,
Working as Goods Guard (Adhoc),
Office of the Station Manager,
Southern Railway, Ernakulam Junction.
4. A.Premarajan Kani,
Working as Goods Guard (adhoc),
O/o the Station Master,
Varkala.
5. M.G.Sivadas,
Working as Senior Gate Keeper Goods Guard(adhoc),
Southern Railway, Ernakulam South.
6. S.Prabhakaran,
Working as Goods Guard (adhoc),
Office of the Station Master,
Southern Railway, Kollam.
7. Elwin Dhas.E.,
Working as Goods ?Guard (adhoc),
Office of the Station Master,
Southern Railway, Nagarcoil.
8. S.Sukumaran Nair,
Working as Pointsman I,
Station Manager's Office,
Southern Railway,
Trivandrum.

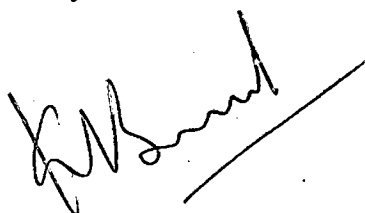
....Applicants

(By Advocate Mr K.A.Abraham)



v.

1. Union of India represented by
Secretary,
Railway Board, Rail Bhavan,
New Delhi.
2. The General Manager,
Headquarters Office,
Southern Railway, Chennai.
3. Chief Personnel Officer,
Headquarters Office, Personnel Branch,
Chennai-600 003.
4. Senior Divisional Personnel Officer,
Southern Railway, Trivandrum.
5. Nandakumar Koodathur,
Commercial Clerk, Southern Railway,
Thrissur.
6. T.P.Unnikrishnan,
Pointsman-I,(adhoc Train Clerk),
Southern Railway, Ernakulam.
7. P.Ramadas,
Pointsman I,
Southern Railway, Kochi.
8. M.Abubacker,
Pointsman I,
Southern Railway, Alappuzha.
9. Harinarayana Meena,
Ticket Examiner,
Southern Railway, Ernakulam North.
10. S.Meenakshi Sundaram,
Commercial Clerk,
Southern Railway, Edava.
11. C.O.Seejan,
Sr.Train Clerk,
Ernakulam Marshalling Yard,
Southern Railway, Ernakulam.
12. A.Murugesan,
Ticket Examiner,
Southern Railway,
Trivandrum Central,
Trivandrum.
13. P.Francis,
Pointsman, O/o the Traffic Inspector,
Southern Railway, Trivandrum.



14. V.Chelladurai,
Commercial Clerk,
Southern Railway, Chouvara.
15. T.Giridharan,
Pointsman-I,
Southern Railway, Irimpanam, Kochi.
16. C.P.Ajayakumar,
Points I, Southern Railway,
Ernakulam South Station,
Ernakulam.
17. Basudev Soran,
Ticket Examiner,
Southern Railway, Alwaye.
18. Ajeesh T Thomas,
Sr Train Clerk,
Southern Railway, Trivandrum.
19. Bhagun Jharika,
Ticket Examiner,
Southern Railway, Alwaye.
20. Chandrakumar K.S.
Sr. Gate Keeper,
Southern Railway, Ernakulam Jn.
21. K.V.Isaac,
Sr. Gate Keeper, Southern Railway,
Angamaly for Kalady, Angamaly.
22. C.Balusamy,
Ticket Examiner,
Southern Railway, Trivandrum.
23. M.Pushparaj,
Sr. Gate Keeper,
Southern Railway, Murukumpuzha.
24. T.A.Unnikrishnan,
Pointsman I,
Ernakulam Marshalling Yard,
Southern Railway, Ernakulam.
25. K.KMohanam,
Pointsman I,
Ernakulam South Railway Station,
Ernakulam.
26. A.S.Ajayan,
Pointsman I,
Ernakulam South Railway Station,
Ernakulam.



27. R.Madhavan Pillai,
Asst. Guard,
Southern Railway, Quilon.
28. O.P.Mohamed Koya,
Train Clerk,
Ernakulam Marshalling Yard,
Southern Railway, Ernakulam.Respondents

(By Advocate Mr KM Anthru for R.1 to 4)

(By Advocate Mr TC Govindaswamy for R.11, 18 & 28)

(By Advocate Mr TA Rajan for R.5 to 8, 13, 15, 16, 17, 19 21 to 25)

(By Advocate Ms Jishamol Cleetus for R.20 & 26)

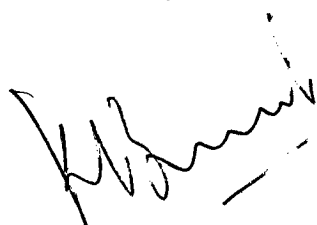
O.A.No.509/2010

1. ^m
K.K.Ummar,
Working as Pointsman I,
Chief Yard Master's Office,
Southern Railway,
Irimpanam.
2. M.P.Vidhyasagar,
Working as Pointsman I,
Chief Yard Master's Office,
Southern Railway,
Ernakulam.
3. V.Jayakumar,
Working as Pointsman Gr.I,
Southern Railway, Kollam. - Applicants

(By Advocate MrK.A.Abraham)

v.

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4. Senior Divisional Personnel Officer,
Southern Railway, Trivandrum.



5. Chandrakumar K.S.
Sr. Gatekeeper,
Southern Railway, Ernakulam Jn.
6. K.K.Mohanan,
Points I, Ernakulam South Railway Station,
Ernakulam.
7. A.S.Ajayan,
Pointsman I,
Ernakulam South Railway Station,
Ernakulam. - Respondents

(By Advocate Mr Thomas Mathew Nillimoottil for R.1 to 4)

(Advocate Ms. Jishamol Cleetus for R. 5 to 7)

This application having been finally heard on 27.10.2010, the Tribunal on 4.11.2010 delivered the following:

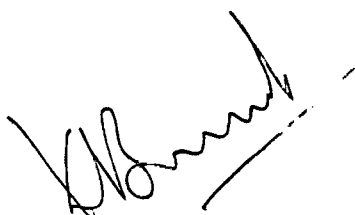
ORDER

HON'BLE DR K.B.SURESH, JUDICIAL MEMBER

The applicants are Railway Goods Guards working under Southern Railway, Trivandrum Division. In response to Annexure A-2 notification calling for volunteers for selection to fill up 24 vacancies of Goods Guards in terms of CPO/Madras letter No.P(S)529/II/12/Vol.2 dated 26.10.1999 and to form a panel for the same amalgamating different avenues available in order to serve different categories restricting to posts assigned to each group, a notification was published for the conduct of written test. The notification apparently was issued vide R.B.E.No.263/1998 for filling up general selection post No.E(NG)I-98-PMI/11 dated 16.11.1998 in terms of provisions contained in Para 219(g) sub clause (i) of the Indian Railway Establishment Manual, the procedure for conducting for selection including drawing up of the final panel were fixed and in response to and in compliance with the order of the Hon'ble Apex Court in **M.Ramjayaram v. General Manager, South Central Railway and others** [1996 (1) SC SLJ 536] which held that it is illegal to award marks for seniority and therefore, the Ministry of Railways had decided to modify the existing



procedure and it was decided that marks will be awarded strictly in accordance with merit alone and weightage earlier given to seniority will be given up. It would appear that the concerned notification of the Railways which was apparently issued in compliance of R.B.E. No.19/1999 No.E(NG)I-96/PM2/3 dated 4.2.1999 it was decided that Zonal Railways may lay down individual quotas for each of the categories of staff like the Train Clerks, Commercial Clerks, Ticket Collectors, Switchmen, Assistant Guards and Yard staff and fix a quota for each category in consultation with their Unions. But when this notification was issued, the earlier notification issued by the Railway was not taken into account. But having realised that a mistake was made apparently, corrective steps were taken by deleting the marks allotted to each candidate on the basis of calculation of professional ability and records of service alone, in compliance with the Railway Board letter No.113/2009 circulated vide CPO/MAS/PBC No.121/2009 dated 7.7.2009. Annexure A-6 was thereupon issued. The applicant would urge that they had legitimate expectation of being selected in terms of the notification above mentioned as they have qualified and having obtained more marks, apparently, than others who are now selected. They urge that their legitimate expectation cannot be defeated by a retrospective operation of an order which was made later by the Railway Board. But on a closer inspection, it was revealed that in fact the order of the Apex Court was made in 1996 itself which had declared that merit shall be the sole criterion and the seniority cannot have any role to play in a selection involving merit being declarative of the law which apply from then on. Even the Railway Board cannot go against it. The Zonal Railway admits that they made a mistake in issuing the notification and if it caused any prejudice to others, it was clarified by Annexure A-6 that this is the methodology they have utilised and there is no illegality in the method they have now adopted. The question then would be whether any prejudice was caused to the applicants so as to entitle to them the overriding of



the Railway circular mentioned above. It would be seen that the method now advocated is only an expression of merit being recognised and per se there is no illegality at all. When different streams merged together, merit can be the only criteria which is available to test the selective merit of each candidate. Therefore, the method adopted is legal and even per se just. By notification wrongly made by Zonal Railways attaching a weightage to the seniority in ignorance of the declaratory order made by the Hon'ble Apex Court, no prejudice can be said to be caused to the applicants as there is no promissory estoppel which are binding the Railways from correcting a mistake based on a judicial order.

2. We heard all the learned counsel in extenso and perused the argument notes, pleadings and documents submitted by all of them. After going through the documents we could not find anything illegal and unjust in the stand now adopted by the Railways which call for interference. There does not seem to be any allegation other than the non-computation of the seniority weightage and after having gone through the records relating to the matter, we find that prima facie, the selection is correctly done and it was done in accordance with the judgment of the Hon'ble Apex Court following which the Railway Administration had actually issued circulars inviting corrective methods by Zonal Railways. Therefore, there is no merit in the contention raised by the applicants. Therefore, the Original Applications fail and are therefore dismissed, but with no order as to costs.



DR K.B.SURESH
JUDICIAL MEMBER



K NOORJEHAN
ADMINISTRATIVE MEMBER

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No.508 of 2010

~~Thursday~~, this the 15th day of September, 2011


CORAM:

Hon'ble Dr. K.B.S Rajan, Judicial Member
Hon'ble Ms.K Noorjehan, Administrative Member

1. V.Vikraman Nair,
Working as Goods Guard (Adhoc),
Office of the Station Manager,
Southern Railway, Quilon.
2. N.Hariharan,
Working as Goods Guard (Adhoc),
Southern Railway, Quilon.
3. A.Periyasamy,
Working as Goods Guard (Adhoc),
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Southern Railway, Ernakulam Junction.
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Working as Goods Guard (adhoc),
O/o the Station Master,
Varkala.
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Working as Senior Gate Keeper Goods Guard(adhoc),
Southern Railway, Ernakulam South.
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Working as Goods Guard (adhoc),
Office of the Station Master,
Southern Railway, Kollam.
7. Elwin Dhas.E.,
Working as Goods ?Guard (adhoc),
Office of the Station Master,
Southern Railway, Nagarcoil.
8. S.Sukumaran Nair,
Working as Pointsman I,
Station Manager's Office,
Southern Railway,
Trivandrum.Applicants

(By Advocate Mr K.A.Abraham)

Vs

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Southern Railway, Edava.
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(By Advocate Mr TA Rajan for R.5 to 8, 13, 15, 16, 17, 19 21 to 25)

(By Advocate Ms Jishamol Cleetus for R.20 & 26)

This Original Application having been heard on 25.07.2011, the Tribunal on 15.9.2011 delivered the following :

ORDER

By Hon'ble Dr.K.B.S Rajan, Judicial Member -

1. This case, originally decided by the Tribunal vide order dated 04-11-2010 on being remanded by the Hon'ble High Court for considering the entire issue, have been heard.

2. Briefly stated, the facts of the case are as hereinafter. The applicants are Railway Goods Guards working under Southern Railway, Trivandrum Division. In response to Annexure A-2 notification calling for volunteers for selection to fill up 24 vacancies of Goods Guards in terms of CPO/Madras letter No.P(S)529/II/12/Vol.2 dated 26.10.1999 and to form a panel for the same amalgamating different avenues available in order to serve different categories restricting to posts assigned to each group, a notification was published for the conduct of written test. The notification apparently was issued vide R.B.E.No.263/1998 for filling up general selection post No.E(NG)I-98-PMI/11 dated 16.11.1998 in terms of provisions contained in Para 219(g) sub clause (i) of the Indian Railway Establishment Manual, the procedure for conducting for



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clarified by Annexure A-6 that this is the methodology they have utilised and there is no illegality in the method they have now adopted. The question then would be whether any prejudice was caused to the applicants so as to entitle to them the overriding of the Railway circular mentioned above. It would be seen that the method now advocated is only an expression of merit being recognised and per se there is no illegality at all. When different streams merged together, merit can be the only criteria which is available to test the selective merit of each candidate. Therefore, the method adopted is legal and even per se just. By notification wrongly made by Zonal Railways attaching a weightage to the seniority in ignorance of the declaratory order made by the Hon'ble Apex Court, no prejudice can be said to be caused to the applicants as there is no promissory estoppel which are binding the Railways from correcting a mistake based on a judicial order (These facts as given in the earlier order, have not been disputed at all).

3. When the OAs were dismissed, two of the Applicants in OA No. 508 of 2010 moved the Hon'ble High Court in OA No. 820 of 2010, the High Court had rendered the following judgment on 23-05-2011:-

"7. As has been noticed already, Annexure A-2 notification was issued by the Administration inviting applications from eligible volunteers for selection to the post of Goods Guard against the respective quota as indicated in the said notification. It is seen from the notification that twenty four vacancies were sought to be filled up from the following four categories:

" 1. Senior Assist Guards/Assistant Guards in scale of Rs.4000-6000/Rs.3050-4590 (12 posts)

2. Sr.TNC/TNC in scale of Rs.4000-6000/Rs.3050-4590 (5posts)

3. Shg.Jamedar/Pointsman/Leverman/Sr.GK in scale Rs.4000-6000/Rs.3050-4590 (5posts)

4. JTE/Sr/YC/TC/Sr/CC/CC in scale of Rs.4000-6000/Rs.3200-4900/Rs.3050-4590 (2 posts)."

More importantly, the notification referred to (CPO/MAS Letter No.P (S) 529/III/12/Vol.III dated October 26, 1999 (Exhibit P11) interalia stipulated or prescribed how the seniority list had to be prepared from among the selected candidates under various categories "based on the seniority based on the length of non fortuitous service in the grade and the person in the higher grade being senior to the one in the lower grade".

8. It is the admitted position that the Administration completed the selection process on the basis of Annexure A-7 order dated June 19, 2009 issued by the Railway Board. It is also on record that the Administration had published the result of the written examination on January 13, 2010, as revealed from Annexure A-6 communication. In this order/communication, it was specified by the Administration that the panel of selectees will be prepared "based on merit with reference to marks obtained by the candidates in professional ability and record of service as per Railway Board's Letter No.113/2009 circulated vide CPO/MAS PBC No.121/2009 dated 07.07.2009". Later, on May 27, 2010, the Administration came out with Annexure A-1 final select list. Significantly, in this list, it was stated that the list was prepared against 60% Promotional Quota purely based on merit as per ACS 209 to IREM Vol.I 1989, as recommended by a duly constituted Selection Committee, who met on 21.05.2010". According to the petitioners, this is a further deviation from Annexure A-6 referred to earlier, leave along Annexure A-2 notification, on the basis of which the entire process of selection was set in motion. Several decisions of the Apex Court have been cited before us in support of their contention that the mode or basis of selection cannot be changed midstream. We refrain from making any observation on this contention at this stage in view of the order that we propose to pass in these original petitions.

9. A perusal of the impugned order passed by the Tribunal will show that none of the above aspects were adverted to or dealt with by the Tribunal while disposing of the Original Applications. The entire issue has been considered in paragraph 2 of the impugned order, which we do not propose to refer to in detail. Apparently, the Tribunal has not considered the gamut of the issue in its proper perspective, to say the least. In any view of the matter, we do not deem it proper at this stage to consider the merit or demerit of the various contentions raised by the parties before us.

10. Therefore, the impugned order passed by the Tribunal is set aside. The Tribunal shall consider the entire issue uninfluenced by any of the observations made by us in this judgment. It will be open to the parties to raise all their contentions before the Tribunal."

4. Parties have filed some more documents in support of their respective cases and the cases have been heard.

5. Counsel for the applicant argued that the sequents of events right from the date of issue of the notification till the declaration of the final result as hereunder would go to prove that there has been a significant variation during the midstream of the procedure adopted in selection, which is impermissible as per various decisions of the Apex Court as well as the High Court of Kerala:

(a) **20-08-2008:** Issue of notification, wherein details of the feeder grades and the number of posts for each feeder grade have been duly indicated and the same is as under:-

- " 1. Senior Assist Guards/Assistant Guards in scale of Rs.4000-6000/Rs.3050-4590 (12 posts)
2. Sr.TNC/TNC in scale of Rs.4000-6000/Rs.3050-4590 (5posts)
3. Shg.Jamedar/Pointsman/Leverman/Sr.GK in scale Rs.4000 6000/Rs.3050-4590 (5posts)
4. JTE/Sr/YC/TC/Sr/CC/CC in scale of Rs.4000-6000/Rs.3200-4900/Rs.3050-4590 (2 posts)."

6. It has been clearly mentioned as under:-

In terms of CPO/MAS letter No. P(S)529/II/12/Vol 2 dated 26-10-1999 the panel formed will be one for the notified vacancies amalgamating all the qualified personnel belonging to different categories restricted to the posts assisstned to each group. It will be based on the seniority based on the length of non-fortuituous service in the grade and the persons in the higher grade being senior to the one in the lower grade.



(b) 19-06-2009: Order passed by the Railway Board changing from the earlier system of preparation of the panel on the basis of seniority to one of pure merit. The instructions regarding formation of panel in the order of seniority having been struck down by the High Court of Haryana in Writ Petition No. 4746/2002 vide judgment dated 09-04-2008, promotion to such posts should be made only on the basis of merit, uninfluenced by seniority of the candidates. These instructions shall be applicable with immediate effect, i.e. From the date of issue of the order, to all panels for promotion to General Posts. Any previous selection panel drawn up otherwise, before the issue of this order, need not be reopened. Consequent to the above order, an Advance Correction Slip No. 209 to the IREM Volume I (1989 Edition) was issued substituting the following for the existing clause (iii) below sub para (j) of Para 219:-

The final panel should be drawn up in the order of merit based on aggregate marks of 'Professional ability' and 'Record of service'. However, a candidate must secure a minimum of 60% marks in 'Professional ability' and 60% marks in the aggregate for being placed on the panel. There will be no classification of candidates as 'Outstanding'

(c) Letter from the Personnel Branch, Southern Railway dated 26-10-2009 revising the individual quota prescribed for various feeder categories:-

| Sl.No. | Category | Individual quota prescribed (%) |
|--------|--|---------------------------------|
| 1. | Asst.Guards & Sr.Asst.Guards | 30% |
| 2. | Train Clerk & Sr.Train Clerk | 15% |
| 3. | Switchman, Shunting Master, Shunting Jamedar, Pointsman, Leverman, Cabinman and Gate Keeper (Yard Staff) | 10% |
| 4. | Ticket Collector, Sr.Ticket Collector, Comml. Clerk & Sr.Comml. Clerk | 5% |
| | | ----- 60% |

(d) 27-05-2010: Preparation of the panel purely based on merit as per ACS 209 to IREM Vol I, 1989.

7. Counsel for the applicant thus, compared the contents of notification which specifically spelt out about the panel to be based on seniority, and ultimate panel which is purely based on merit and contended that this is one of the midstream variation of the procedure.
8. Counsel also indicated that the number of vacancies for each of the stream (feeder category) has also not been followed, which is evident from the select list.
9. The counsel has, thus, contended that the change of procedure is illegal.
10. Again, the counsel for the applicant argued that deviation from Annexure A-2 notification by the respondents is after the finalization of the selection as per Annexure A-5 dated 22-12-2009 , through A-6 dated 13-01-2010 wherein they have stated, **"Panel will be prepared based on merit with reference to marks obtained by the candidates in Professional ability and record of service as per Railway Board's letter No. 113/2009 circulated vide CPO/MAS PSC No. 121/2009 dated 07-07-2009"**
11. To substantiate his point, the applicant has relied upon the following decisions -
 - (i) Sharafudheen Kunju & Ors Vs. Manoharan Pillai 2011(2)KLJ 218
 - (ii) Maharashtra State Road Transport Corporation and others Vs. Rajendra Bhia Mandve and others 2001(10) SCC 51



- (iii) K.Manjusree Vs.State of AP and another 2008(3) SCC 512
- (iv) District Collector and Chirman Vizianagaram Social Welfare Residential School Societies 1990 (3) SCC 655
- (v) 2008(7) SCC 11
- (vi) 2010 (3) SCC 104

12. As regards the general rule position that selection shall be made to the notified vacancies as per the then existing Rules, the applicant's counsel has relied upon the decision of the Apex Court in the case of **Y.V. Rangaiah and Others vs J. Sreenivasa Rao and others (1983) 3 SCC 284** wherein it has been held, ***"the vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules"***

13. Counsel for the applicant has also stressed the fact that the original notification indicated the distribution of the 24 vacancies in the ratio of 12:5:5:2 among the four categories, whereas in the ultimate result, there is utter imbalance in that only one person has been through in the first category (for which the vacancies notified were 12) and 3 in the place of 5 in respect of the second category, and this short fall of 13 should have been distributed amongst the third and fourth category in the prescribed ratio of 10:5. This ratio has not been followed and thus, the selection is illegal.

14. Thus, the prayer of the applicants is that the entire selection being vitiated, selection should be conducted strictly in accordance with the notification



vide Annexure A-2.

15. Counsel for the official respondents submitted that the Railway Board's orders dated 19-06-2009 are specific about the application of those orders in respect of all the cases where selection panels were not drawn up. In the instant case though the notification was anterior to the aforesaid orders of the Railway Board, as no panel was then prepared, the procedure as laid down by the Railway Board in the order dated 19-06-2009 had been rightly adopted. The counsel further submitted that the decision of the Railway Board is not one of arbitrary in nature but had been issued in pursuance of the Apex Court's decision in the case of M. Ramjay Ram vs GM/SCR & Others 1996(1) SCD SLJ 536. Allegation that the CPO letter dated 26-10-1999 referred to in the Annexure A-2 notification had not been followed, has been contended to be irrelevant in the light of Annexure A-7 Railway Board's Instructions dated 19-06-2009. As regards the select list, it has been stated that the same is based on the merit of the candidates. As regards Annexure A-5 (result which had to be modified by Annexure A-6, the counsel for the respondents submitted that the same is only an internal note which is subject to variation on the basis of the facts/rule position. The following decisions have also been cited by the counsel for the respondents in support of the case of the respondents:-

(i) Y.V Rangaiah and Others V.J Sreenivasa Rao and Others, 1983(3) SCC 284

(ii) Punjab & Haryana High Court in WP(C) No.4746/2002 dated 09.04.2008

16. Counsel for the private respondents argued as under:-



(a) The senior Commercial Clerk post is equivalent to the post of Goods Guards and hence not a promotional post and yet the same had been included.

(b) The party respondents having fared well in the written examination vide Annexure A-6, these were sent for due training including applicants 1 to 7 and on successful completion of the training they were appointed as Goods Guard on ad hoc basis as per Annexure A-4. The training or ad hoc appointment, however, would not confer any indefeasible right to any one unless the individuals are ultimately found merit as per the merit list.

(c) Having participated in the selection, it is too late on the part of the day for the applicants to challenge the mode of selection when they found themselves not qualified in the selection. Reliance had been placed to the decision of the Apex Court in the case of **Dhananjay Malik vs State of Uttaranchal** reported in **2008(2) KLT 969 (SC)** and **Madan Lal vs Sstgate of J & K (1995) 3 SCC 486** (para 9 thereof)

(d) The procedure adopted is strictly on the basis of the judgment delivered by the Apex Court in the case of **Ram Jayram (supra)**.

(e) The original applicants could at best have any claim with reference to vacancies pertaining to their stream and not any other stream. Especially, in so far as respondents 11, 18 and 28, these belong to a different stream in respect of which the total number of vacancies earmarked was 5 and as such, none of the applicants could stake any claim against the selection of these respondents.

(f) The claim of the applicant to stick to the procedure specified in the notification cannot be accepted as the procedure notified had already been nullified by the High Court of Punjab and Haryana way back on 09-04-2008 as upheld by the Apex Court and as such, it is only Annexure A-7 order dated 19-06-2009, that has to hold the fort and the respondents have rightly adopted the same.

(g) The provisions of Rule 124 and 219 of the IREM have also been referred to by the counsel for private respondents 11, 18 and 28. The counsel has distinguished the two stating that the former is the recruitment rule and the latter the procedural part. The former is as per the provisions of the IRECode.

17. In his rejoinder, the counsel for the applicant stated that if there by a mistake occurred in the notification, then what should have been done is issuance of a fresh notice calling for applications and in this regard, counsel relied upon the decision in the case of **Ponnappan vs Antony** decided by the High Court of Kerala, reported in 1982 K.L.T. 778.

18. Arguments were heard and documents perused. It is true that the Apex Court has held in a number of cases that midstream change is not permissible. See *K Manjusree vs State of Andhra Pradesh* (2008) 3 SCC 512, *P.K. Ramachandra Iyer v. Union of India* (1984) 2 SCC 141; *Umesh Chandra Shukla v. Union of India* (1985) 3 SCC 721 and *Durgacharan Misra v. State of Orissa* (1987) 4 SCC 646

19. When the Apex Court holds that the stipulations in the notification should not vary, the same only means that if the notification is in conformity with the rule

position. For, any judgment, as held by the Apex Court in the case of **Gajaraj Singh vs State of UP (2001) 5 SCC 762** is delivered consistently with the provisions of law and, a course or procedure in departure from, or not in conformity with, statutory provisions cannot be said to have been intended or laid down by the Court unless it has been so stated specifically.

20. In the cases relied upon by the counsel for the applicant, there was no deviation from the rules and the notification. In the case of the railways, the decision of **Ramjayram (1996) 8 SCC 266** relied upon by the counsel for the respondents holds the fort. The said decision inter alia held that when 219(1)(g) is invoked, and induction is from different units and not from the same unit, applicability of Rule 320 gets excluded and the entire selection shall be made purely on merit. It is on the strength of the above that orders were issued as early as in 1998 that selection would be purely on merit. Various other communications save the notification also contain the same stipulation.

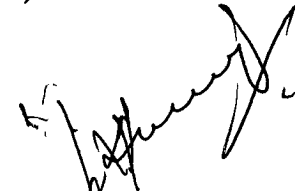
21. Now the question is where the notification is manifestly erroneous, just because the notification has been issued, whether the same should be strictly followed. Answer to this question should be an emphatic NO. For, always, any action of the respondents should conform to the extant Rules and prescribed procedure and unless specified otherwise with justifiable reasons, deviation from the rules or procedure cannot be entertained. Giving weight to notification which is admittedly not in conformity with the rules and decisions of the Apex Court would mean ignoring the statutory provisions and the mandate of the Apex Court which cannot be permitted.

22. As such, it cannot be said that there has been a change in the rules of game in the midstream. The OAs, therefore, fail^r and hence ^{is} are dismissed.

23. Before parting with the case, one aspect has to be seen at this juncture. There are four categories and each category has been provided with the percentage of posts. Provision exists for diversion of the number of posts to other categories in case adequate number of individuals do not qualify in any of the categories. A perusal of the selection panel reflects that category 1 (Senior Assistant Guards/Assistant Guards) which has a total of 12, posts earmarked for it has only one selected candidate and in so far the second category (Sr. TNC/TNC) is concerned, here again, the number of posts indicated is 5 while only 2 have been empanelled, while the other two categories, where the number of posts earmarked are respectively only 5 and 2, as many as 12 and 8 have been selected. Thus, the select panel needs verification to ensure that the same is in accordance with the laid down rules/procedure. This is only a passing reference.

(Dated this the 15th day of September, 2011)


(Ms.K Noorjehan)
Administrative Member


(Dr.K.B.S Rajan)
Judicial Member

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