

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.536/2001

O.A.No.562/2001

O.A.No.563/2001

Wednesday this the 22nd day October 2003

C O R A M

Hon'ble Mr.A.V.Haridasan, Vice Chairman
Hon'ble Mr.T.N.T.Nayar, Administrative Member.

R.Murugesan, S/o P.Ramasamy Pillai,
Goods Guard,
Southern Railway,
Erode, residing at
No.115/266C Lenin Street,
Durai Gounder Medu,
Erode.2.

Applicant in OA 536/01

(By Advocate Mr. T.C.Govindaswamy)

V.N.Bhanuman,
Assistant Guard,
Southern Railway, Erode.

Applicant in OA 562/01

(By Advocates M/s Santhosh and Rajan)

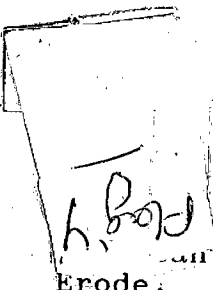
R.Gopinatha Kurup,
Assistant Guard,
Southern Railway,
Thiruvananthapuram.

Applicant in OA 563/01.

(By Advocates M/s Santhosh and Rajan)

V.

1. Union of India represented by
The Secretary to the Govt of India
Ministry of Railways, Rail Bhavan
New Delhi.
2. The General Manager,
Southern Railway,
Headquarters Office,
Park Town PO, Chennai.3.
3. The Chief Personnel Officer,
Southern Railway,
Headquarters Office,
Southern Railway
Chennai.3.
4. The Senior Divisional Personnel Officer,
Southern Railway, Palakkad.
5. The Senior Divisional Personnel Officer,
Southern Railway, Trivandrum
Division, Trivandrum.

6.  ghassundaram,
Assistant Guard, Southern Railway
Erode.
7. C.Thangamuthu, Pointsman A
Southern Railway Erode.
8. V.Gangadharan, Assistant Guard
Southern Railway
Erode.
9. K.Raveendran, Assistant Guard
Southern Railway, Erode.
10. T.V.Janardhanan, Relieving Pointsman
Southern Railway, Shoranur.
11. Shri K.Chandran, Cabinmaster
Karakkad, Kerala.
12. K.Rajgopalab
Cabin Master, Buddireddipatti
Dharmapuri District, Tamil Nadu.
13. K.V.Murali
Cabinman I, Tirur Railway Station
14. D.Venkitaraju, Pointsman A
Coimbatore North, Coimbatore.
15. P.Subramanian, Assistant Guard,
Southern Railway, Erode, Tamil Nadu.
16. K.Radhakrishnan
Cabinman I Southern Railway,
Tirur.
17. Girija Vallabhan,
Assistant Guard, Southern Railway
Erode.
18. P.V.Jayashanker,
Assistant Guard, Southern Railway
Shoranur.
19. K.P.Sankarankutty,
Goods Guard,
Southern Railway, Erode.
20. G.Chandran
Gate Keeper, Southern Railway,
Calicut.
21. P.B.Sugunan,
Cabinman I, Southern Railway
Calicut.

22. S.Chinnaselvan, Gate Keeper,
Southern Railway
Podanur Junction.
 23. K.K.Vijayan,
Assistant Guard,
Southern Railway, Shornur.
 24. M.Nandakumar,
Cabinman I Southern Railway
Feroke Railway Station,
Kozhikode.
 25. C.Rajagopl, Assistant Guard
Southern Railway, Shoranur.
 26. R.Rathinam, Goods Guard
Southern Railway, Erode.
 27. T.V.Gopakumar,
Pointsman A Southern Railway
Mangalore.
 28. K.P.Appu, Ticket Collector
Southern Railway, Calicut.
 29. U.Kunchumon,
Goods Guard, Southern Railway,
Palakkad.
 30. R.Thiagarajan, Pointsman B
Instructor, Training School
Southern Railway, Erode.
 31. C.Sadasivan, Goods Guard
Southern Railway, Erode.
 32. K.Karuppasamy
Cabinman/Sly (through the
Senior Divisional Personnel
Officer, Southern Railway,
Palakkad)
 33. K.Gopalakrishnan,
Ticket Collector,
Southern Railway
Palakkad Junction.
 34. R.Balasekharan, Pointsman B
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Erode.
- Respondents in OA 563/01
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3. The Chief Personnel Officer,
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Headquarters Office,
Park Town PO,
Madras.3.
4. The Divisional Railway Manager,
(Personnel)Southern Railway,
Palghat Division, Palghat.
5. P.Shanmughasundaram,
Assistant Guard,Southern Railway
Erode.
6. C.Thangamuthu, Pointsman A
Southern Railway Erode R.S&PO.
7. V.Gangadharan,Assistant Guard
Southern Railway
Erode R.S.&PO.
8. K.Raveendran, Assistant Guard
Southern Railway, Erode R.S.&PO
9. T.V.Janardhanan, Relieving Pointsman
Southern Railway, Shoranur R.S.&PO
10. Shri K.Chandran, Cabinmaster
Karakkad RS&PO, Kerala.
11. K.Rajgopalan
Cabin Master, Buddiredippati R.S.&PO
Dharmapuri District.
12. K.V.Murali
Cabinman I,Tirur RS & PO.
13. D.Venkitaraju, Pointsman A
Coimbatore North R.S. &PO,Coimbatore.
14. K.Radhakrishnan, Cabinman I
Southern Railway, Tirur RS & PO.
15. P.Subramanian, Assistant Guard,
Southern Railway, Erode RS&PO
16. Girija Vallabhan,
Assistant Guard,Southern Railway
ErodeRS & PO
17. P.V.Jayashanker,
Assistant Guard,Southern Railway
Shoranur RS& PO.

18. K.P.Sankarankutty,
Goods Guard,
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19. G.Chandran
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Calicut RS & PO.
20. P.B.Sugunan,
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21. S.Chinnaselvan, Gate Keeper,
Southern Railway
Podanur Junction RS & PO.
22. K.K.Vijayan,
Assistant Guard,
Southern Railway, Shornur RS & PO
23. M.Nandakumar,
Cabinman I Southern Railway
Feroke Railway Station & PO,
Calicut.
24. C.Rajagopl, Assistant Guard
Southern Railway, Shoranur.
25. R.Rathinam, Goods Guard
Southern Railway, Erode.
26. T.V.Gopakumar,
Pointsman A Southern Railway
Mangalore.
27. U.Kunhiman,
Goods Guard, Southern Railway,
Palakkad.
28. K.P.Appu, Ticket Collector
Southern Railway, Calicut.
29. R.Thiagarajan, Pointsman B
Instructor, Training School
Southern Railway, Erode.
30. C.Sadasivan, Goods Guard
Southern Railway, Erode.
31. K.Karuppasamy
Cabinman Master, S.Rly.
Samalpatti Rly.Station,
Tamilnadu.
32. K.Gopalakrishnan,
Ticket Collector,
Southern Railway
Palakkad Junction RS & PO.

33. R.Balasekharan, Pointsman B
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Southern Railway,
Erode.

Respondents in OA 562/01

(By Advocate Mr.P.Haridas for R.1to4 in OA 536/01

Mr.G.Sukumara Menon for R.8,16,17,22 & 24 in OA 536/01.

Mrs.Sumati Dandapani for R.1to4 in OA 562/01

Mr.G.Sukumara Menon for R.8,16,17,22 & 24 in OA 562/01

Mrs.Sumati Dandapani for R.1to5 in OA 563/01

Mr.G.Sukumara Menon for R.9,17,18,23 and 25 in 563/01/.

These three applications having been heard on 24.9.2003, the Tribunal on 22.10.2003 delivered the following:

O R D E R

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

Since the facts, circumstances and question of law involved in all these three cases are similar and common orders are under challenge in these cases, these three applications were jointly heard and are being disposed of by this common orders.

2. The historical background in which the cases came to be filed and the material particulars relevant for the proper understanding of the cases can be briefly stated as follows. During the year 1994-95, a selection was conducted by the Railway Administration for promotion to the post of Assistant Guards in which the lower grade officials including the applicants in these three cases participated. The selection process involved written test as also viva voce. After the selection process, a panel of 19 persons were drawn up and approved by the DRM on 5.10.95 and published on 9.10.95, (Annx.A1 in all these cases). The applicant in O.A 536/2001 who commenced his service initially as a Casual Labourer in the year 1971, absorbed as a Gangman on 24.12.80 and was transferred to the Traffic Department as a Traffic Porter in the year 1991, being successful was placed at serial No.16 in Annx.A1 panel. The applicant in O.A 562/01 who commenced service as a Sweeper cum Porter on 10.10.88 was placed at serial No.18 in Annx.A1 panel. The applicant in O.A 563/01 who commences his service in the Railways as Sweeper cum Porter, was placed at serial No.17 in the Annx.A1 panel. The applicants and all other persons

selected and placed at Annx.A1 panel were sent for training which commenced from 22.4.96 and on successful completion of training, they were promoted as Assistant Guards. While working as Assistant Guard, the applicant in O.A No.536/01 was selected for further promotion as Goods Guard and was promoted as Goods Guard on 22.4.98. The applicant in O.A 562/01 was empaneled for promotion as Commercial Clerk vide order dated 11.11.96 but he did not complete the training as he was promoted as Assistant Guard w.e.f. 24.11.96. The applicant in O.A 563/01 having been promoted as Assistant Guard did not appear for any other selection. While so, the applicant in O.A 562/01 was served with a show cause notice calling upon him to explain why his name should not be deleted from the panel and he should not be reverted. Therefore, he alongwith three others filed O.A 1227/97 before this Bench of the Tribunal challenging the action to delete their names from the panel. Even before O.A 1227/97 was filed the validity of Annx.A1 panel under which the applicants were promoted as Assistant Guard was challenged by some officials who were not satisfied with the selection process alleging the irregularity and malpractices in the selection in O.A No.23/96 before this Bench of the Tribunal. O.A 23/96, 1227/97 and other connected cases were disposed of by this Bench of the Tribunal by a common orders on 23.9.1999 reported in SLJ 2000(3) CAT 114, directing the General Manager, Southern Railway, to review the whole matter by appointing a Committee at a level higher than the one which made the selection which led to the preparation of Annx.A1 panel to revalue all the answer papers of the written test and that on the basis of the report on revaluation if the General Manager was satisfied that irregularities had been committed, and the panel had to be

amended and promotions cancelled he might take appropriate action after giving due notices and opportunities to those persons who might be adversely affected. After the report of the higher level committee on revaluation of the answer papers was scrutinised, the General Manager decided to cancel the Annx.A1 panel and to subject all the candidates who secured the minimum qualifying marks in the revaluation for a fresh viva-voce and to draw a fresh panel. Since the applicants in these three cases had secured the minimum qualifying marks in the revaluation, letter dated 8.1.01 Annx.A7, Annx.A4 and Annx.A5 in O.A536/01, 562/01 and 563/01 respectively were issued to the applicants informing them of the proposal to hold a fresh viva-voce and that they would be allowed to continue on the post on ad hoc basis til finalisation of the result of the fresh viva-voce. After the fresh viva-voce, a panel of 29 officials was published by letter dated 28.5.2001, Annx.A9 in O.A 536/01, Annx.A5 in O.A 562/01 and Annx.A7 in O.A 563/01. Applicants in the three cases were not recommended by the Committee and therefore their names were not seen in the panel. Applicant in O.A 562/01 was served with Annx.A6 show cause notice dated 11.6.2001, informing him that as he had not been empaneled by the higher level committee, it was proposed to revert him from the post of Assistant Guard in the scale Rs.3050-4590 and giving him an opportunity to show cause as to why he should not be reverted giving him 15 days time to submit his explanation, if any. Aggrieved by Annx.A7 and Annx.A9 orders the applicant in O.A 536/01 has filed this application seeking to set aside Annx.A7 and Annx.A9, applicant in O.A 562/01 has filed this application seeking to set aside Annx.A4, Annx.A5 and Annx.A6 orders and applicant in O.A 563/01 has filed this application

seeking to set aside Annx.A5 and Annx.A7 orders. The impugned orders in all these cases are assailed mainly on the ground that the cancellation of the panel Annx.A1 and preparation of a fresh panel having been done without giving notice to the applicants before doing so he is oppressed the principles of natural justice as also the direction contained in the order of the Tribunal in O.A No.23/96 and connected cases, to take appropriate action after giving due notice to the person who may be adversely affected, that the applicants were not placed the panel drawn up after revaluation only because their seniority was not reckoned in the light of the relevant instructions and that as the applicant in O.A 536/01 had already been promoted to a still higher post of Goods Guard on which post he should be deemed to have been confirmed, the action is wholly unjustified.

2. The respondents 1 to 4 in these cases have filed reply statements in all these cases. However although notices were issued to the private respondents, only some of them appeared through their counsel but did not file any reply statement. The respondents have raised similar contentions in all these cases as the issue in these three cases is virtually the same. It is contended that the action taken by the respondents is perfectly in order as per rules as also in strict compliance with the directions contained in the order of the Tribunal in O.A 23/96 and connected cases. It has been contended that notices have been issued to the applicants giving them opportunity to show cause as to why they should not be reverted. The notice issued to the applicant in O.A 536/01 has been produced and marked as Annx.R3. The respondents have further contended that the

applicant in O.A 536/01 was promoted as Goods Guard or that the applicant in O.A 562/01 was empaneled for appointment as Commercial Clerk or that the applicant in O.A 563/01 did not participate in any other selection is not a ground or reason which would affect the legality of the impugned orders.

3. We have heard Sh.T.C.G.Swamy, the learned counsel of the applicant in O.A 536/01, Sh.P.Haridas, the learned counsel of the official respondents and Sh.G.Sukumara Menon, the learned counsel of private respondents and Sh.T.A.Rajan who appeared for the applicants in O.A 562/01 and 563/01, Smt.Sumathi Dandapani of respondents 1 to 4 in O.A 562/01 & 1 to 5 in O.A 563/01 and Sh.G.Sukumara Menon who appeared for the private respondents.

4. The undisputed facts of the case emerging from the pleadings and the materials placed on record are that the applicants in these three cases were initially placed in the select panel Annx.A1 that after successful completion of the training they were appointed as Assistant Guards, that the panel containing the names of the applicants were subject matter of challenge before the Ernakulam Bench of the Tribunal in O.A 23/96 and connected cases, that the Tribunal disposed of these applications directing the General Manager to have the answer papers of the candidates in the written test revalued by a higher level committee than the one which initially held the selection and if the General Manager was satisfied that there has been irregularity committed and that the panel had to be amended and promotions cancelled, he should take appropriate action after giving due notice and opportunities to the person

who might be adversely affected. From the pleadings, it is further evident that the General Manager constituted a Committee, that being satisfied that the irregularities had been committed directed holding up of a fresh viva-voce for those who secured qualifying marks in the written examination and then draw up a panel. It was, according to that the panel dated 28.5.2001 was drawn up in which the names of the applicants were not included. While deciding to hold a fresh viva-voce and to prepare a fresh panel, a notice dated 8.1.2001 was issued to the applicants and they were informed that they would continue on ad hoc basis till finalisation of the fresh panel. They were not disturbed from the post of Assistant Guard but when the names of the applicant were not placed in Annx.A9 panel, they were issued show cause notices giving them an opportunity to state why they should not be reverted.

5. The learned counsel of the applicants argued that before taking a decision to cancel the panel and draw up a fresh panel the General Manager should have given an opportunity to the applicants and the decision could have been taken only after considering their objections, if any, and therefore, the order dated 8.1.2001 and the panel prepared on 28.5.01 are bad for denial of principles of natural justice and also amounts to violation of the directions contained in the order of the Tribunal in O.A 23/96 and connected cases. The learned counsel of the respondents on the other hand argued that the General Manager was not under any legal obligation either on the principles of natural justice or in view of the direction contained in the order of the Tribunal to give a notice and

opportunity to show cause against each step towards cancellation of the panel and drawing up of a fresh panel, because in terms of the directions contained in the Tribunals order in O.A 23/96 and connected cases as also according to the broad principles of natural justice an opportunity to show cause is to be given only when an order having adverse civil consequence is made. In this case before reverting the applicants from the post of Assistant Guard show cause notices having been issued, the contention that the impugned action in this case is vitiated for violation of the principles of natural justice and disobedience of the directions contained in the orders of the Tribunal has no substance, argued the counsel.

6. We are not tempted to agree with the argument raised by the counsel of the applicants but find considerable force in the argument of the learned counsel of the respondents. The Tribunal in its order in O.A No.23/96 and connected cases left it to the General Manager on receipt of the revaluation report from the high level committee to decide whether the panel is to be cancelled or amended but specifically directed that prior notice should be given to the persons who would be affected. It is evident from the direction that prior notice is to be given only if and when an order which would affect the applicant or similar others is passed. Since the General Manager after scrutinizing the report of revaluation was satisfied that there had been irregularities in the process decided that panel will have to be redrawn after holding a fresh viva-voce to those who obtained qualifying marks in revaluation he ordered such a viva-voce to be held and issued notice dated 08.01.2001 to the

applicants informing them of the development and that as all of them had obtained qualifying marks to be called for viva-voce they would continue on adhoc basis till the selection is finalised after the fresh viva-voce. The applicants obviously were not adversely affected, and therefore it was not necessary to give them any opportunity to oppose that action. Thereafter, after the viva-voce the impugned panel was published. Therefore, the applicants names were not included in the panel. There was no legal obligation to get the views of the applicants before finalisation and approval of the panel by the General Manager because the panel had to be prepared on the basis of the marks obtained by the candidates in written test, viva-voce etc. It is meaningless and impossible to obtain the view of all the participants in a selection before the panel is prepared by the Board and approved by the competent authority. The applicants would be adversely affected only as and when an order of reversion be issued. The respondents have issued notices before ordering revision. Hence we hold that there is no merit in this argument on behalf of the applicants that the impugned orders are bad for violation of the principles of natural justice or disobedience the direction contained in the order of the Tribunal in O.A 23/96 and connected cases.

7. The learned counsel of the applicants argued that the applicants' names were not placed in the panel dated 28.5.01 only on account of a wrong interpretation of the seniority and therefore the principles adopted in the preparation of the panel is wrong. We do not find any substance in the argument. In the reply statement of the respondents in all the three cases, it has been specifically mentioned that the applicant's names were

not recommended by the committee for placement in the panel because they did not obtain the necessary qualifying marks either in the viva-voce or in the aggregate. It has also been clearly stated that the seniority of all the participants have been reckoned taking into account their length of service in the equivalent grade which is a sound principle in terms of the extant instruction for governing seniority while making selection from officials belonging to various streams. This has not been controverted nor is there any evidence to the contrary.

8. The further argument of the learned counsel of the applicants that the applicant in O.A 536/01 having been promoted to a still higher post of Goods Guard, he cannot be reverted and that the applicants in O.A 562/01 and O.A 563/01 having lost their chances in other channels of promotion on account of they being placed at Annx.A1 panel in equity they have to be allowed to continue as Assistant Guard is also untenable because their right to continue on the post of Assistant Guard would depend upon the validity of Annexure.A1 panel alone. Annx.A1 panel having been cancelled and a fresh panel was prepared for valid reason and in terms of the direction contained in the judgment of the Tribunal in O.A 23/96 and connected cases, we find absolutely no force in this argument.

9. In the conspectus and facts and circumstances discussed above finding no merits we dismiss these three applications leaving the parties to bear their own costs.

Dated 22nd October, 2003

Sd/-
(T.N.T.NAYAR)
ADMINISTRATIVE MEMBER

Sd/-
(A.V.HARIDASAN)
VICE CHAIRMAN