

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A Nos.576/2010, 617/2010 and 605/2011

Friday this, the 23rd day of September, 2011.

CORAM

**HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms. K NOORJEHAN, ADMINISTRATIVE MEMBER**

O.A 576/2010

Mr.K Soman, S/o Kutty, aged 55,
Working as Pointsman/Ticket Examiner (Adhoc)
Station Manager's Office (Information)
Southern Railway, Kollam
residing at Siji Bhavanam
Aithottuva
West Kallada P.O, Kollam Applicant

(By Advocate – Mr.K.A Abraham)

V e r s u s

1. Union of India represented by the General Manager,
Headquarters Office, Southern Railway, Chennai
 2. Chief Personnel Officer, Headquarters Office,
Personnel Branch, Chennai – 600 003
 3. Senior Divisional Personnel Officer, Southern Railway
Trivandrum
 4. T.A Unnikrishnan, Pointsman I, Ernakulam, Marshalling Yard,
Southern Railway, Ernakulam
 5. K.K Mohanan, Pointsman I, Ernakulam South Railway Station,
Ernakulam
 6. A.S Ajayan, Pointsman I, Ernakulam South Railway station,
Ernakulam.
- Respondents

(By advocate – Mr.K.M Anthru for R1-3
Ms.Jishamol Cleetus for R 4-6)

O.A 617/2010

R Perumal, S/o G Ramaswamy, aged 59 years
Goods Guard, Kollam Junction,
Trivandrum Division, Southern Railway
Residing at Ramnivas Behind Railway Health Unit
Kottayam Applicant

(By Advocate – Mr.Rajmohan R Pillai)

V e r s u s

1. Union of India represented by the Secretary
Ministry of Railways, New Delhi
 2. The General Manager, Southern Railway
Headquarters Office, Chennai
 3. Senior Divisional Personnel Officer, Southern Railway
Trivandrum Division, Trivandrum
 4. Vasudev Soran, Ticket Examiner, Aluva Railway Station
Aluva
 5. Bhagun Jharika, Ticket Examiner, Aluva Railway Station
Aluva
- Respondents

(By advocate – Mr.K.M Anthru for R 1-3,
Mr.T.A Rajan for R 4-5)

O.A 605/2011

Mr.S Subbiah, Pointsman I, Office of the Station Manager,
Nagarcoil, Aged 56, S/o P Sudalaimuthu, residing at
10 H.Railway Colony, Kottar P.O, Nagar Coil,
Kanniyakumari Dist Pin 629 002

..... Applicant

(By Advocate – Mr.K.A Abraham)

V e r s u s

1. Union of India represented by the Secretary,
Railway Board, Rail Bhavan,
New Delhi – 1
 2. The General Manager, Headquarters Office,
Southern Railway, Chennai – 600 003
 3. Senior Divisional Personnel Officer, Southern Railway
Trivandrum - 14
 4. Nandakumar Koodathur
Commercial Clerk, Southern Railway, Thrissur - 3
- Respondents

(By advocate – Mr.K.M Anthru)

This application having been finally heard on 19.8.2011, the Tribunal on 23.09.2011
delivered the following:

ORDER

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER

The above three O.As were heard along with O.A.508/2010. While a common order in all these four cases, order in O.A.508/2010 came to be pronounced first. In the said O.A, the decision taken is as under:

"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 and hence 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."

2. Since the issue involved in all the above O.As is the same as that in the other O.A.508/2010, order in the said O.A has to be necessarily extended to these cases as well.

3. In view of the above, all the three cases stand dismissed. No costs.


K NOORJEHAN
ADMINISTRATIVE MEMBER


Dr K.B.S.RAJAN
JUDICIAL MEMBER

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