



**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 670 of 2006
with

O.A. Nos. 795, 802, 819, 857 of 2006 and 6/2007

Wednesday, this the 17th day of January, 2007

C O R A M:

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

1. O.A. No. 670/2006

1. P. Viju,
Son of Pushpangathan, Trackman,
O/o. Section Engineer, Permanent Way,
Southern Railway, Alleppey.
Residing at Paruthivila,
Maruthancode Post, Kuzhithura,
Kanyakumari
2. Chandra Sekhar Bharti,
S/o. Nipendra Narayan Singh, Trackman,
O/o. Section Engineer, Permanent Way,
Southern Railway, Alleppey.
Permanent Address: Misirmaniyadda &
P.O. Jamui Dist., Bihar.
3. Ramesh Jha,
S/o. Gokulesh Jha, Trackman,
O/o. Section Engineer, Permanent Way,
Southern Railway, Kottayam,
Permanent Address: Nathudwar Post,
Samastipur Dist., Bihar.

... Applicants.

(By Advocate Mr. T.C. Govindaswamy)

v e r s u s

1. Union of India, represented by
The General Manager, Southern Railway,
Headquarters Office, Park Town P.O.,
Chennai - 3.

2. The Railway Recruitment Board,
No.5, P.V. Cherian, Crescent Road,
(Near Ethiraj College), Egmore,
Chennai - 8 : through its Chairman
3. Senior Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum : 14 ... Respondents.

(By Advocate Mrs. Sumathi Dandapani, Sr. & Ms. P.K. Nandini)

2. O.A. No. 795/2006

1. R. Magesh,
S/o. S. Rangasamy, Helper Grade I,
Southern Railway/Office of the
Section Engineer/Electrical/Loco Shed/Erode,
Permanent Address : No.14, V.P. Chinthan Street,
Kabilar Nagar, Thiruvallur P.O., Tamil Nadu.
2. O.G. Praveen Kumar,
S/o. O.K. Gopalakrishnan, Senior Trackman/
Somanur/Southern Railway,
Residing at : Railway Quarters,
Somanur RS & PO, Coimbatore District.
3. T. Santhi,
W/o. Sakthivel, Track Woman,
Southern Railway / Erode,
Residing at No.19, T.J. Sherafudeen Street,
Shastri Nagar, Erode, Tamil Nadu.
4. K. Balasubramanian,
S/o. A. Karuppusamy, Trackman,
Southern Railway/Anangur, Palghat Division,
Residing at No. D/87, Housing Unit,
Kollampalayam, Erode : 638 002 ... Applicants.

(By Advocate Mr. T.C. Govindaswamy)

v e r s u s

1. Union of India, represented by
The General Manager, Southern Railway,
Headquarters Office, Park Town P.O.,
Chennai - 600 003.
 2. The Railway Recruitment Board,
No.5, P.V. Cherian, Crescent Road,
(Near Ethiraj College), Egmore,
Chennai - 8 : through its Chairman.
 3. Senior Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat.
 4. The Chief Personnel Officer
Southern Railway, Headquarters Office,
Park Town P.O., Chennai : 600 003
- ... Respondents.

(By Advocate Mrs. Sumathi Dandapani, Sr. & Ms. P.K. Nandini)

3. O.A. No. 802/2006

1. Dhanman Singh Meena,
S/o. Ram Prasad Meena,
C&W Helper-I, Mangalore Railway Station,
Mangalore, Residing permanently at
Gram Khedli, Baglai P.O.,
Sawai Madhopur, Rajasthan : 322 205
 2. Ram Kripal Meena,
S/o. Badri Prasad Meena, Trackman,
Kanakanadi Railway Station, Padil P.O.,
Mangalore : 575 007, Residing permanently
at Kheelpurkhera, Rajgarh, Alwar,
Rajasthan : 301 409
- ... Applicants

(By Advocate Mr. M.R. Hariraj)

v e r s u s

1. Union of India, represented by
The General Manager, Southern Railway,
Headquarters Office, Park Town P.O.,
Chennai - 600 003.

2. The Railway Recruitment Board,
No.5, P.V. Cherian, Crescent Road,
(Near Ethiraj College), Egmore,
Chennai - 8 : through its Chairman

3. Senior Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat.

... Respondents.

(By Advocate Mrs. Sumathi Dandapani, Sr. & Ms. P.K. Nandini)

4. O.A. No. 819 /2006

Prem Singh Meena,
S/o. Govind Ram Meena, Trackman,
Thrikkaipur Railway Station,
Section Engineer/PWAI, Kasargode,
residing at : V/P Badoli, Gangapur City,
Sawai Madhopur, Rajasthan : 322 219

... Applicant.

(By Advocate Mr. M.R. Hariraj)

v e r s u s

1. Union of India, represented by
The General Manager, Southern Railway,
Headquarters Office, Park Town P.O.,
Chennai - 600 003.

2. The Railway Recruitment Board,
No.5, P.V. Cherian, Crescent Road,
(Near Ethiraj College), Egmore,
Chennai - 8 : through its Chairman

3. Senior Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat.

... Respondents.

(By Advocate Ms. P.K. Nandini)

5. O.A. No. 857/2006

K. Jayaraman,
S/o. R. Karalam, Sr. Trackman,
O/o. Section Engineer, Permanent Way,
Trivandrum Central, Permanent Address:
North Street, Arasapuram Kurandi Post,
Virudu Nagar Dist.

... Applicant.

(By Advocate Mr. T.C. Govindaswamy)

v e r s u s

1. Union of India, represented by
The General Manager, Southern Railway,
Headquarters Office, Park Town P.O.,
Chennai - 3.
2. The Railway Recruitment Board,
No.5, P.V. Cherian, Crescent Road,
(Near Ethiraj College), Egmore,
Chennai - 8 : through its Chairman
3. Senior Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum : 14

... Respondents.

(By Advocate Mr. Thomas Mathew Nellimoottil)

6. O.A. No. 6/2007

N. Adarsh,
S/o. P. Natarajan, Trackman,
O/o. Section Engineer, Permanent Way,
Varkala, Southern Railway Trivandrum Division,
Residing at "Geetha Mandiram",
Near Railway Station, Kazhakkootam P.O.
Trivandrum : 695 582

... Applicant.

(By Advocate Mr. T.C. Govindaswamy)

v e r s u s

1. Union of India, represented by
The General Manager, Southern Railway,
Headquarters Office, Park Town P.O.,
Chennai - 3.
2. The Railway Recruitment Board,
No.5, P.V. Cherian, Crescent Road,
(Near Ethiraj College), Egmore,
Chennai - 8 : through its Chairman
3. Senior Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum : 695 014 ... Respondents.

(By Advocate Mr. Thomas Mathew Nellimoottil)

These Original Applications having been heard on 3.1.07, this Tribunal on 17.1.07 delivered the following:

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

As the issue involved in all these cases is one and the same, this common order is passed in respect of all the O.As.

2. **The issue:** Under the existing provisions of rules and regulations, whether second stage examination for appointment (through General Departmental Competitive Examination - 'GDCE' for short) to the post of Commercial Clerks and ticket Collectors etc., is permissible

3. **The facts:** In the Railways, in 1993, a scheme was introduced whereby 25% of the Direct Recruitment Vacancies in certain Group 'C'

categories was sought to be filled up by holding GDCE. This scheme was periodically extended as well as widened for subsequent years including for the year 2006. Accordingly, vide notification No. P/S0608/III/CC/GDCE dated 15-11-2005, the Headquarters Office, Personnel Branch, Southern Railway, Chennai, it was proposed to conduct General Departmental Competitive Examination for filling up of 50% of the direct recruitment quota vacancies in the category of Ticket Collectors in scale of Rs. 3,050-4,590, the examination being sought to be conducted by the Railway Recruitment Board, Chennai. Likewise, another notification of even number of the very same date, i.e. 15-11-2005 was issued in respect of filling up of 50% of the direct recruitment quota vacancies in the category of Commercial Clerk in scale of Rs 3,200 – 4,900/-. The extent of vacancies in respect of the afore-said two posts to be filled in through this Examination is as under:-

Post	SC (Age limit 47)	ST (Age limit 47)	OBC (Age limit 45)	UR (Age limit 42)	Total
Ticket Collector	29	19	47	96	101(This was later increased to 258)
Commercial Clerks	5	14	9	12	40(This was later increased to 109)

4. Applicants in all the above O.As, who were eligible to participate in the

above examinations, applied for such posts and were allowed to participate in the examination. Necessary admit card was issued by the Railway Recruitment Board and the written examination was held on 18-06-2006. Results of the examination were published through website in August 2006 and the applicants were all successful in the written test. As per the information published through the Website, counselling/verification of certificates was to take place on 29-08-2006. While the applicants (as per their averment) were awaiting call letters for counselling/verification of certificates, these were issued with another admit card for participating in the 2nd stage examination, scheduled to be held on 29-09-2006. The applicants participated in the second stage but prior to the same some of the applicants have approached the Tribunal challenging the method adopted by the respondents. However, by an interim order, it was directed that appointments made shall be subject to the outcome of the respective OA and the selected candidates should be duly informed by the respondents relating to the interim order (Order dated 27-09-2006 in OA 670/06 refers). According to the applicants, the second stage examination was conducted allowing a number of candidates who did not come out successful in the written examination the results of which were announced through web-site were also permitted to participate in the same. The applicants, after they took up the second stage examination were not called for verification of certificate (A few of the applicants who have been called for verification sought permission to withdraw from the OA and the same were permitted).

5. The grounds:

- (a) Conducting of the second stage examination is arbitrary, illegal and is violative of Art. 16 of the Constitution.
- (b) There is no provision to hold a second stage examination.
- (c) Written examination held on 18-06-2006, result in respect of which was declared, has not been cancelled or varied by any known process of law. As such, the authorities ought to have proceeded further with the result of that examination.
- (d) Even during the 2003 examination, there was no second stage examination.
- (e) It is understandable that such a second stage examination is necessary for direct recruits, where the number of candidates would be much more than the total number of vacancies, while in respect of GDCE participants, the number would be meagre compared to those of direct recruitment. Identity of standard of written test forming part of GDCE and that for Direct Recruitment cannot be a ruse to automatically add in the second stage examination also.

6. The Prayer: The applicants have prayed for a declaration to the effect that the conducting of the second stage examination held for filling up the vacancies under the GDCE quota for the post of Commercial clerks and Ticket Collectors is illegal and as a consequence thereof to quash and set

aside the same; to direct the respondents to act on the result published in respect of the written examination held on 18-06-2006 and consider the appointment of the applicants on the basis of the result of the said written examination.

7. The respondents have contested the O.A. According to them, there is no arbitrariness in holding the second stage examination in respect of the GDCE participants too. It has been made clear in the very first notification inviting application for participating in the GDCE that **"the standard of the written examination under GDCE shall be that of the written test prescribed for direct recruitment."** As per Board's circular dated 18.03.1999 it was made clear that for the post of Non-Technical Popular Categories (NTPC) two stage written examination is the mode of selection and there is no interview. Hence the second stage examination is applicable in the case of GDCE candidates also. As the examination is conducted jointly both for direct recruitment and GDCE, the standard set for direct recruitment is to be followed for GDCE as per Notification issued. Though the examination result was declared in the Website, it was by oversight and on realizing the error, all the call letters were withdrawn and those who presented themselves for verification in pursuance of the result/call letters were informed of the conducting of the second stage of the examination. Due and advance notice to all concerned, as to the second stage of the examination, was given and all participated without any protest. It was only

after participating in the examination but having not found themselves successful, that the applicants have filed the OA. As per the dictum laid down by the Apex Court in Om Prakash Shukla vs Akhilesh and also in Madanlal and 4 others vs State of Jammu and Kashmir and others (1995 (2) SLR 209), the applicants are estopped from raising untenable contention against the second stage of written examination. Since the recruitment method that was followed for direct recruitment for the open market was adhered to and in the same way, the first stage written examination was conducted on 18-06-2006, the Railway Recruitment Board followed the same procedure for GDCE candidates also. In fact there is practically no difference in the methodology adopted in the selection both in respect of direct recruitment from open market and the GDCE. After the written examination, along with the open market recruits, GDCE selected candidates also have to undergo the same initial training and as such, the applicants cannot claim any exemption in respect of second stage examination. As regards non holding of the second stage examination in 2003, the respondents have admitted the same and gave explanation that in that year since the number of candidates were less, the second stage examination was not conducted both for the open market recruits as well as for the GDCE participants.

8. Counsel for the applicants argued that selection of candidates under the GDCE category is one of the Railways and not of the Railway Recruitment Board. The Recruitment Board may come into picture only for a limited

purpose of conducting the examination and informing the Railways of the results of the same. That far, and no further. The Railway Recruitment Board cannot state that results declared were by mistake and that there should be the second stage of the examination even for GDCE. That would mean taking the power of the Railways by the Railway Recruitment Board. In fact, the admit card for second examination issued directly by the R.R.B. reflects that the card was meant for Direct Recruitment. Secondly, when in the first examination, the applicants were among the 367 successful candidates, their names are not sent for verification, whereas, many others whose names did not figure in, in the results of the first examination had stolen a march over such meritorious candidates which would go to show that fairness is absent in the entire process.

9. Counsel for the Respondents submitted that there cannot be a distinction between the open market recruits and GDCE candidates in so far as standard of selection is concerned. The second stage of examination is of a higher standard and the applicants cannot be exempted from passing the same, for, the standard for both the streams is one and the same. In fact, not only the standard, but the pattern of selection is also the same. In order dated 7th May, 1999 (Annexure A-6 in OA No. 670.05), it has been specifically stated, *"The question of elimination of viva vice test (interview) in selections held under the scheme of General Departmental Competitive Examinations (GDCE) under which 25% of the net direct*

recruitment vacancies in specified categories are required to be filed on RRB pattern from amongst regular serving employees fulfilling the qualifications prescribed for direct recruitment, has been considered by the Ministry of Railways." (underlining supplied). In so far as the contention that the RRB cannot be the authority to decide any matter in respect of selection under the GDCE stream, the counsel for the respondents has contended that the Chairman Railway Recruitment Board has only addressed his communication to the Railways pointing out the initial error of publishing through web site the results without conducting the second stage examination and sought to rectify the mistake so that the same standard of selection in both the streams is maintained.

10. Arguments were heard and documents perused. Holding of two stages of examination in respect of recruitment to the Non Technical Popular Categories (NTPC) has been in vogue in the Railways since 1999, vide Annexure R2 in OA No. 819/05. This fact is known to the applicants also. When the regulations stipulate that the standard of selection would be the same both in respect of Direct Recruitment and also for GDCE, it is to be ensured that the same is maintained. The selection consisted of written exam followed by training. Earlier, viva voce (interview) was also prescribed, which was, however, done away with and according to the Respondents, holding of the second stage for the NTPC became essential in view of the discontinuance of the viva voce test. For the purpose of ascertaining

whether there is any difference in the standard in the first and second stage examination, question papers of the two stages of the examinations were called for which the respondents produced. A perusal of the same confirms that the standard in the second stage is higher than that of the initial examination. For example, the second stage examination question paper consists inter alia of questions from Trigonometry, while the initial examination does not contain so. Thus, in so far as the standard of the exam is concerned, if same standard should be followed in respect of the two streams, when holding of second stage examination has not been dispensed with for Direct Recruits, the same cannot be dispensed with in respect of GDCE. When the initial examination is along with the direct recruits, when post examination training is along with the direct recruits and duration of training is also on par with the direct recruits, there cannot be a deviation in respect of the second stage examination. Thus, the applicants cannot be allowed to object to the holding of the second stage of the examination on the ground that they belong to GDCE and their results already stood declared. (It is however, to be pointed out that the explanation given by the respondents in not holding the second stage examination in 2003 for the reason that in that year there were limited number of candidates does not appeal to logic, for, when for selection to a particular post, a particular standard is prescribed, the same cannot be diluted based on the number of participants. Non holding of the second stage examination in 2003, however, does not improve the case of the applicants).

11. By erroneous declaration of results, whether the applicants have crystallized any rights or by not proceeding further after the declaration of result (i.e. calling for verification), whether any of the vested rights of the applicants have been infringed is the question to be answered. "An administrative order can be recalled. A mistake can be rectified." is the law declared by the Apex Court in Maharashtra State Seeds Corpn. Ltd. v. Hariprasad Drupadrao Jadhao, (2006) 3 SCC 690. It is precisely the same which the respondents have done by withdrawing the call letter for verification and issuing admit card for participating in the second stage of the examination.

12. Calling for the second stage of the examination has been uniform in respect of all the participants. It is not the case of the applicants that they have been discriminated from a section of candidates similarly situated and provisions of Art. 16 have been violated. Thus, there can be no violation of the equality clause. In not continuing the process after publishing the result, none of the vested rights of the applicant has been infringed, for, till that time no right of appointment has been crystallized. For plausible reasons earlier action taken can well be reviewed and rectified if need be by the Respondents. In the case of ***State of M.P. v. Raghuveer Singh Yadav***, (1994) 6 SCC 151, the Apex Court has held as under:-

It is settled law that the State has got power to prescribe qualifications for recruitment. Here is a case that pursuant to amended Rules, the Government has withdrawn the earlier notification and wants to proceed with the recruitment afresh. It is not a case of any accrued right. The candidates who had appeared for the examination and passed the written examination had only legitimate expectation to be considered of their claims according to the rules then in vogue. The amended Rules have only prospective operation. The Government is entitled to conduct selection in accordance with the changed rules and make final recruitment. Obviously no candidate acquired any vested right against the State. Therefore, the State is entitled to withdraw the notification by which it had previously notified recruitment and to issue fresh notification in that regard on the basis of the amended Rules.

13. It was contended by the counsel for the applicants that in so far as the second stage examination is concerned, the admit card would go to show that the same is meant only for direct recruitment. We are not able to discern any such exclusiveness in the admit card, which though in brackets reflects "DR quota", equally reflects "General Departmental Competitive Examination".

14. The contention that the Railways being the authority for selection in respect of GDCE stream, the Recruitment Board cannot order withdrawing the result published should also be summarily rejected since, it is for the Railway Recruitment Board to hold the examination and recommend candidates and within that arena, if there be any mistake, the Recruitment Board has full right and power (rather it is obligatory on its part) to rectify the mistake and that too at the earliest and this is what has been precisely

done by the Recruitment Board.

15. In view of the above discussions, the applications are devoid of merits and hence, all the O.As are dismissed. No costs.

(Dated, the 17th January, 2007)

Dr. K B S RAJAN
JUDICIAL MEMBER

SATHI NAIR
VICE CHAIRMAN

CVR.