

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO. 605/2001

WEDNESDAY.....THIS THE 22ND DAY OF OCTOBER, 2003

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

1. T. Santhakumar, Pointsman,
C/o Station Manager, Southern Railway,
Shoranur residing at Swan House,
Ammattile Compound, Shoranur.1.
2. P. Peethambaran, Pointsman A
C/o Station Manager, Southern Railway
residing at PRA Nivas, Karuvanthuruthy PO
Feroke.
3. K.V. Krishnan, S/o K. Chempen,
C/o Station Master, Southern Railway
Kuttipuram, residing at
Kottelingal Valappil, Naduvattom
Sukapuram PO, Malappuram.
4. T. Balan S/o T. Aryan, C/o Station Master,
Southern Railway, Badakara residing
at Thekkil House, Kuttadeth PO
Mappayur Via. Calicut Dist.
5. C. Raveendradasan, Pointsman A
C/o Station Master,
Southern Railway, Feroke,
residing at Thursharakulakkara Veedu
Puthiyara PO, Calicut.4.
6. P. Vasudevan, Pointsman A C/o
Station Manager, Southern Railway
Shoranur residing at Parakkal House
Kanniyampuram, Ottappalam.
7. K. Sudhakaran, Pointsman A
C/o Station Manager, Southern
Railway, Shoranur, residing at
Railway Quarter 242 B
Ganesh Giri, Shoranur.3.
8. S. Kumaraswami, Leverman I
C/o Stationmaster, Irugur
residing at Sellappam Palayam,
Pungambadi PO, Erode Dist
Tamilnadu.
9. K.K. Kunhikrishnan,
Cabinman, 1 C/o Station Master
Southern Railway, Tirur
residing at Railway Quarter
15B Tirur.

10. M. Mohandas, Pointsman A
C/o Station Manager,
Southern Railway, Shoranur
residing at Mullakkal House
Ganesh Giri, Shoranur. 3.
11. A. Komalaswaran, Pointsman A
C/o Station Master, Southern
Railway, Feroke, residing at
Anikkathveedu, Koduthurapulle
PO, Palakkad Dist.
12. A. Sivasankaran, Cabinman
C/o Station Master, Southern
Railway, Tirunavaya residing
at Thonikalam House, Manamkavu PO
Palakkad Dist.
13. P. Samkutty Samuel, Cabinman I
C/o Station Master, Southern
Railway, Karakkad, residing at
Pottamundakal House,
Melukavu PO, Kottayam Dist.Applicants

(By Advocate Mr. Dinesh P.T.)

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1. Union of India, represented by
the Secretary to Govt. of India
Ministry of Railways,
New Delhi.
2. The General Manager, Southern Railway
Headquarters Office,
Park Town PO, Chennai.
3. Divisional Railway Manager,
Southern Railway, Palakkad.
4. The Senior Divisional Personnel Officer,
Southern Railway, Palakkad.
5. P. Shanmugasundaram, Assistant Guard,
Southern Railway, Erode.
6. C. Thangamuthu, Pointsman A
Southern Railway, Erode RS and PO.
7. T.V. Janardhanan, Relieving Pointsman
Southern Railway, Shoranur RS and PO.
8. K. Chandran, Cabin Man, Karakkad RS and PO.
9. K. Rajagopalan, Cabin Man, Buddireddipatti
RS and PO.
10. K.V. Murali, Cabin Man I, Tirur RS and PO.

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11. K.Radhakrishnan, Cabin Man I
Southern Railway, Tirur RS and PO.
12. P.Subramanian, Assistant Guard,
Southern Railway, Erode RS and PO.
13. K.Girijavallabhan, Assistant Guard
Southern Railway, Erode RS and PO.
14. P.V.Jayasankar, Assistant Guard,
Southern Railway, Shoranur RS and PO
15. K.P.Sankarankutty, Goods Guard
Southern Railway
Erode RS and PO.
16. P.B.Sugunan, Cabin Man I
Southern Railway, Calicut RS and PO.
17. S.Chinnaselvam, Gate Keeper
Southern Railway, Poddanur Jn.RS and PO.
18. K.K.Vijayan, Assistant Guard
Southern Railway Shoranur RS and PO.
19. M.Nandakumar, Cabin Man I,
Southern Railway, Feroke RS and PO.
20. C.Rajagopal, Assistant Guard,
Southern Railway, Shoranur.
21. R.Rathinam, Goods Guard
Southern Railway, Erode.
22. T.V.Gopakumar, Pointsman A
Southern Railway, Mangalore.
23. U.Kunhimon, Goods Guard,
Southern Railway, Palghat JnRS and PO
24. K.P.Appu, Ticket Collector
Southern Railway, Calicut.
25. R.Thiagarajan, Pointsman B
Instructor, Training School,
Southern Railway, Erode.
26. C.Sadasivan, Goods Guard,
Southern Railway, Erode.
27. R.Karuppasamy, J/T 2251, Cabin Master(suu)
Southern Railway, Sulur Road R.S. and PO.
28. K.Gopalakrishnan, Ticket Collector,
Southern Railway, Palghat Jn RS and PO.
29. R.Balasekharan, Pointsman B
Southern Railway, Erode RS and PO.....Respondents

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(By Advocate Mrs. Sumati Dandapani for R.1to4)

The application having been heard on 22.9.2003, the Tribunal on 22.10.2003 delivered the following:

O R D E R

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

The applicants 13 in number who were on the basis of a process of selection for appointment to the post of Assistant Guards included in the panel Annexure.A4 dated 22.7.1999 have filed this application for a declaration that they have priority for appointment as Assistant Guards as against the persons placed in the panel Annexure.A8 dated 28.5.2001 including the private respondents and for a direction to the official respondents to promote the applicants to the post of Assistant Guards with seniority and giving preference to Annexure.A4 panel as against Annexure.A8 panel.

2. The material allegations in the application are as follows. 34 vacancies in the grade of Assistant Guards were notified by the 4th respondent and names of 356 lower grade employees eligible to participate in the written test were also published. Pursuant to the above notification the applicants and others appeared in the written test. According to the result published on 11.6.99 (A3) 39 persons including the applicants passed in the written test. After the viva-voce Annexure.A4 panel containing 29 names including that of the applicants were approved by the third respondent on 19.7.99. Although all the 29 were sent for

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training at the Zonal Training School, Thiruchirapally only 27 including the applicants completed the training successfully. In terms of the intimation dated 16.1.2000 (A5) since appointments were not made from the panel, the matter was taken up by the employees through the Joint Action Council by representation dated 17.7.2000. Finding no response thereafter on 6.4.2001 the applicants made representation to the third respondent (Annexure.A7). Excepting seven persons who had been appointed others including the applicants are still waiting for appointment. While so the 4th respondent on 28.5.01 notified another panel of 29 candidates which had been approved by the third respondent on 5.4.01 (A8) wherein it was mentioned that the panel was prepared after cancellation of the earlier panel by the General Manager afte a revluation of the answer books and after a fresh viva-voce in terms of the judgment of the Ernakulam Bench of the Tribunal in OA 23/96 and connected cases. Since the panel Annexure.A4 was prepared and approved by the General Manager, the competent authority much earlier than the Annexure.A8 panel the applicants are entitled to be appointed against the existing vacancies and Annexure.A8 panel cannot be operated without exhausting the Annexure.A4 panel, submit the applicants. Despite instructions contained in the letters of the Railway Board Annexure.A9, A10 and A11 the official respondents did not make appointment to the existing vacancies on the basis of Annexure.A4 which is arbitrary, irrational an opposed to the guidelines. Since vacancies were existing and the Annexure.A4 panel was approved long prior to Annexure.A8

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panel the applicants are entitled to be appointed against the vacancies in preference to those included in Annexure.A8 panel. With these allegations the applicants have sought the reliefs as aforesaid.

3. The respondents 1 to 4 have filed a reply statement. The material contentions raised are as follows. That the applicants were included in the select panel Annexure.A4 is not disputed. It is also not disputed that only seven persons from Annexure.A4 panel were appointed. The claim of the applicants for appointment is resisted on the ground that there is no vacancy against which the applicants could be appointed in view of the reduction of sanctioned strength of Assistant Guard from 92 to 59 as also because persons included in the panel (Annexure.A8) approved by the General Manager on 5.4.01 had a prior claim for appointment since they were selected in a process which commenced in the year 1995 and the present Annexure.A8 panel had to be prepared after revaluation of the answer books and a fresh viva-voce in terms of the direction contained in the order of the Ernakulam Bench of the Tribunal in OA 23/96 and connected cases. In terms of Paragraph 306 of the Indian Railway Establishment Manual (IREM for short) candidates selected for appointment at an earlier selection are to be treated as senior to those selected later irrespective of the date of appointment, those placed in Annexure.A8 panel have to be considered seniors and given appointment to the then existing vacancies and therefore, the applicants in the absence of sanctioned post have no right to claim.

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appointment as Assistant Guards in preference to persons placed in Annexure.A8 panel, contend the respondents. It is also contended that the validity of Annexure.A4 panel has expired on the lapse of two years.

4. The applicants in their rejoinder and additional rejoinder have reiterated their stand that since Annexure.A4 panel approved by the competent authority earlier than the approval of the Annexure.A8 panel are entitled to be appointed in preference to those placed in Annexure A8 panel. They have also while admitting in the rejoinder and the additional rejoinder that there has been proposal for reduction of the sanctioned strength of Assistant Guards from 92 to 59 in the year 1999 stated that actual surrender of posts having not taken place to their knowledge, the contention of the respondents that the applicants cannot offer appointment is unsustainable.

5. We have carefully gone through the pleadings and materials placed on record and have heard the arguments of Shri Dinesh, learned counsel for the applicants and Smt.Sumati Dandapani, learned counsel for the official respondents. On our direction the learned counsel of the respondents produced for our perusal the file relating to the cadre review and sanctioned strength of running staff in the operating branch of Palakkad Division of Southern Railway. We have seen that the sanctioned strength of Assistant Guards of running staff, Palakkad Division as on 1.7.2000 was only 52 while the same was 92 as on 1.10.97. We have seen that the sanctioned strength was reduced as a result of the cadre review. The contention of the

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respondents that there is a reduction in the cadre strength of the Assistant Guards from 92 to 59 is found to be true. The contention of the applicants that although there was a proposal for reduction of the cadre strength surrender of posts had not actually taken place and therefore, the applicants could have been appointed does not appeal to us as a sound argument, for, when a decision had been taken to reduce the cadre strength from 92 to 59 no authority can make appointments in excess of this requirement. Actual orders reducing the cadre strength and surrendering posts might have been issued later but that does not mean that the posts in the cadre before actual orders surrendering the posts have been passed should be filled up making the process of cadre review and restructuring a futility. The contention of the applicants, therefore, that vacancies are still available and the applicants are required to be appointed against these vacancies has no force at all. Learned counsel of the applicants made an attempt to state that as on the date on which the application was being heard vacancies have subsequently accrued against which the panel should have been operated. This is also not a sound argument because the vacancies which arose in 2001 and 2002 are not to be filled by persons who were selected against the 34 vacancies notified as existing in the year 1998. The argument of the learned counsel of the applicants that Annexure.A4 panel has to be operated before operating Annexure.A8 panel because Annexure.A8 panel was approved only in April, 2001 whereas Annexure.A4 panel was approved on 19.7.1999 also has no force because Annexure.A8 panel

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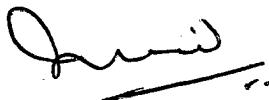
which is impugned in this case was final panel prepared and approved in the selection process which was initiated in the year 1995. ~~Although~~ Ahtough a panel was prepared in 1995 itself that had to be cancelled and redrawn after revaluation of the answer books and after holding a fresh viva-voce test in terms of the decision of the Ernakulam Bench of the Tribunal in OA 23/96 and connected cases. Annexure.A8 panel though prepared and approved in April, 2001 is the final result of the selection process which was started in the year 1995. In terms of paragraph 306 of the Indian Railway Establishment Manul, those who are placed in the panel at an earlier selection are to be treated as seniors of those who are placed in the panel of subsequent selection. The selection in which the respondents 5 to 29 were placed in the Annexure.A8 panel having commenced in the year 1995 those in Annexure.A8 panel are according to Paragraph 306 of the Indian Railway Establishment Manul entitled to be treated as seniors and offered appointment prior to operation of Annexure.A4 panel. Therefore, the prayer in the Original Application for a declaration that applicants have priority of posting than those placed in Annexure A8 panel cannot be allowed as that is against the settled principle that those selected in the earlier selection process should be appointed earlier as also against the provisions of Paragraph 306 of IREM. The argument of the learned counsel of the applicants that the panel (Annexure.A8) has also expired now and the same cannot be operated is unsustainable. The period of Annexure.A4 panel



has expired after two years of preparation of Annexure.A4 panel. As no vacancies for appointment of persons from that panel existed the panel necessarily has to expire. While the appointment from Annexure.A8 panel could not be made immediately after the preparation of the panel earlier in the year 1995 on account of the irregularities which led to the litigation and resulted in a decision for revaluation and redrafting of the panel, that panel has to be given preference to Annexure.A4 panel. Therefore, the claim of the applicants that they are entitled to be preferred for appointment against the private respondents has no merit at all.

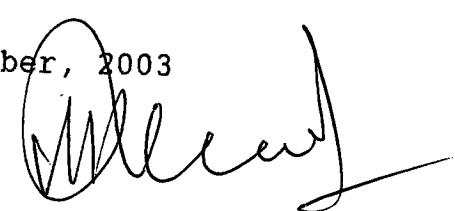
In the light of what is stated above, we do not find any merit in this application and therefore, we dismiss the same leaving the parties to bear their own costs.

Dated this the 22nd day of October, 2003



T.N.T. NAYAR
ADMINISTRATIVE MEMBER

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A.V. HARIDASAN
VICE CHAIRMAN