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OF C.A.T. (PROCEDURE) RULES

OA 509 & 618/10

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A No.509 and 618 of 2010

Friday, this the 13<sup>th</sup> day of January, 2012.

CORAM

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

O.A.509/2010

1. K.M.Ummar, S/o K.K Mohammed,  
Pointsman I, Chief Yard Master's Office,  
Southern Railway, Irimpanam.
2. M.P.Vidhyasagar, S/o M.E.Prabhakaran Pillai,  
Pointsman I, Chief Yard Master's Office,  
Southern Railway, Ernakulam.
3. V.Jayakumar, S/o Viswanathan Achari,  
Pointsman Gr.I, Southern Railway,  
Kollam. Applicants

(By Advocate Mr R Sreeraj)

v.

1. Union of India represented by the  
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. Chandrakumar.K.S.,  
Sr. Gatekeeper, Southern Railway,  
Ernakulam Jn.
6. K.K.Mohanan, Pointsman I,  
Ernakulam South Railway Station,  
Ernakulam.

7. A.S.Ajayan, Pointsman I,  
Ernakulam South Railway Station,  
Ernakulam. .... Respondents

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

(By Advocate Ms Jishamol Cletus (for R.5 to 7)

O.A.No.618/2010

A.Rajesh, S/o Appukuttan Nair,  
Commercial Clerk, Trivandrum Parcel Office,  
Southern Railway, Trivandrum. ....Applicant

(By Advocate Mr Martin G Thottan )

v.

1. Union of India represented by Secretary,  
Government of India, Ministry of Railways,  
Rail Bhavan, New Delhi.
2. The General Manager, Southern Railway,  
Headquarters Office, Park Town, Chennai-3.
3. The Senior Divisional Personnel Officer,  
Southern Railway, Trivandrum.
4. Nandakumar Koodathoor, Commercial Clerk,  
O/o Commercial Superintendent,  
Thrissur Railway Station, Thrissur.
5. A.S.Ajayan, Pointsman I, Ernakulam South Railway  
Station, Ernakulam. .... Respondents

(By Advocate Mr Thomas Mathew Nellimoottil for R.1 to 3 )

(By Advocate Ms Jishamol Cletus (for R. 4 & 5)

This application having been finally heard on 10.11.2011, the Tribunal on 13.01.2012  
delivered the following:

ORDER

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

As the legal issue involved in the above two O.As is one and the  
same, this common order would govern both the O.As.

2. In so far as OA 508 of 2010 is concerned, this case was originally decided by the Tribunal vide order dated 04-11-2010 and on the applicant's moving the matter before the High Court, the matter was remanded to the Tribunal with the following directions, vide judgment dated 23-05-2011 in OP (CAT) No. 820 and 874 of 2010:-

"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.

11. In the meanwhile, status quo as on today, as far as the promotions made either on the basis of Annexure A-1 select list or on ad hoc basis, shall continue till the disposal of the Original Applications. The Tribunal may make an endeavour to dispose of the matter as expeditiously as possible, at any rate, within three months from the date of receipt of a copy of this judgment."

3. Counsel for the applicant has filed a statement of case in OA 509 of 2010 to hammer home the point that the applicants therein are more meritorious than the party respondents who have been selected for the post of Goods Guard due to undue favouritism shown to them. It has been stated by the Counsel for the applicants in this OA that initially the marks awarded were for 100 and the same had been halved to 50 which resulted in the reduction of the margin of difference. Such conversion from 100 to

50 had virtually pushed the applicants No 1 and 2 from the very zone of consideration and ushered the 4<sup>th</sup> and 6<sup>th</sup> respondents. This conversion having taken place at the middle of the selection stream, and the same being without any authority, such a conversion is illegal. The counsel has also filed a copy of the counter reply filed by the respondents herein before the High Court wherein, in para 8 thereof, it has been averred as under:-

*"8. ... It is submitted that the awarding of marks for record of service is purely at the discretion of the Committed and it is on the basis of the records perused by them. It is also submitted that the records are maintained years together and hence, the awarding of marks is not as if decided at once. "*

4. Counsel for the applicants has also filed a copy of the reply of the applicants to the counter reply filed by the respondents before the High Court, in which in respect of the above averment, it has been mentioned that in matter of selection, no discretion other than merit can be brought in indirectly and in contra to the notification.
5. OA No. 618 of 2010 also is a case filed by the Commercial Clerks at Trivandrum Parcel Office as their non selection to the post of Goods Guard in the Trivandrum Division was on account of disproportionate marks awarded to the records of service, which has enabled the party respondents to steal a march over the applicant.
6. The applicant in the above OA has challenged the legality of order dated 27-05-2010 which is the list of candidates selected for the post of Goods Guard in the scale of Rs 4500 – 7000 in PB 1, Rs. 5200 – 20200

plus Rs 2800 GP against the 60% promotional Quota. (which order is the impugned order in the above said OA No. 509/2010). In this case also, the contention of the applicant is that in the written examination, the applicant has secured the third position by securing as many as 90% while the party respondents have secured only less 84.5% marks which is less than that of the applicants. They have, however, been selected as they had been awarded high marks for the record of service, and the applicants who have no adverse remarks, instead who have been granted certain awards, were awarded less marks for the record of service. It is the case of the applicant that even if the applicant could not be accommodated against the vacancies earmarked to the commercial clerks cadre to which he belongs, he could certainly fit in, in other faculties as there is a provision in this regard, as notified in the very notification at Annexure A-1.

7. The contention of the applicant has been objected to by the respondents by filing the reply. Private respondents have also filed their reply.

8. The applicant has filed the rejoinder wherein he had added a copy of the list of marks awarded to each and every candidate participated in the selection.

9. Counsel for the applicant in both the above OAs have argued that the respondents have gone wrong in two aspects:-

(a) Reduction of the marks from 100 to 50 which has reduced the margin of difference. This has telescopically affected the selection prospect of the applicant, as this difference has been unduly taken advantage of by the respondents to select their own interested persons by grant of higher marks for record of service.

(b) There is no rationale in the awarding of marks on records of service. The respondents have themselves stated that the same is left to the discretion of the respondents and hence, there cannot be any right to the applicants to agitate against the same.

(c) The respondents try to twist the matter by stating that though from commercial department the vacancies were only two, as many as eight have been selected. The difference is not with a view to accommodating the commercial clerks but only on the ground that they had secured high marks in the integrated seniority.

(d) The applicant has secured 90 marks in the written examination and the average marks for records of service is 18.5 whereas, the party respondents have been awarded as many as 24.5 marks out of 30, which is obviously with a view to ensuring that they come in the merit list. Had 18.5 marks which is the average been granted to the party respondent, the applicant would have been in the select panel. Likewise, had the applicant been awarded 24.5 marks, then also, it would be the applicant who would have been selected.

(e) There has been a change in the percentage of allocation to various streams on the basis of the directions from the Chief Personnel Officer which is impermissible as the rule of the game cannot be changed in the midstream. In this regard, attention was invited to the averment made in para 8 of the reply wherein the need to make changes in the distribution of vacancies to various

streams has been explained. Such a change is, according to the counsel for the applicants, impermissible.

10. Counsel for the official respondents submitted that the selection was as per the prescribed procedure and the marks awarded are on the basis of prescribed procedure. The counsel made available the records containing the recommendation of the selection committee. He has, thus, submitted that the OAs deserve dismissal.

11. Counsel for the party respondents submitted that the seniority aspect having been removed from the scene, the entire selection has been based only on merit. According to the counsel for the party respondents, the term merit includes the academic merit through the examination and professional merit through the record of service.

12. Arguments were heard and documents perused. Earlier, selection was based upon the performance in the examination, record of service tempered with seniority. By virtue of certain decisions of the Tribunal as upheld by the High Court and the Apex Court, the seniority aspect has been removed from the scene and now, it is only on the basis of performance in the examination coupled with the record of services that selection is made.

13. The records made available for the perusal of the Tribunal indicate the following:-

(a) The authority nominating the selection board shall also nominate

an officer of the concerned department to set the question paper. As far as possible, the officers so nominated to set the question papers would be different from the one who is to evaluate the answer sheet.

(b) Evaluation is made in a most confidential method, without any scope for the examiner to know about the examinee, as dummy numbers are given. Answer sheets and marks sheets are sent in sealed covers.

(c) In so far as marks awarded for records of service, Selection Committee has decided to award a maximum of 15 marks for ACRs/Performance Reports and 15 marks for Service records. Again, in so far as ACR is concerned, different marks for different gradings (3 for good, 4 for very good and 5 for outstanding) have been allocated and similarly, in so far as Record of Service is concerned, the same takes into account discounts for punishments awarded, such as 1 mark for censure, 2 marks for increment cut etc., and there would be addition of marks for awards/Merit certificates under the Head 'Record of services'.

(d) Marks awarded for Record of Services range between 16 to 24, and of 58 individuals, as many as 38 were awarded 18 marks, and three have been awarded 24 marks. Of the three individuals who had been awarded maximum marks for record of services, two could not qualify.

14. A glimpse at the above information culled from the records would go to show that the respondents have adopted the most scientific way of evaluation of the papers and record of service and no flaw could be deduced from the procedure. The marks 18 obtained by the applicant should have been based on the basis of marks to various heads/discounts

if any, and addition of marks for the awards and testimonials.

15. Thus, allegation that favouritism has been shown or the applicant has been discriminated is without any base. Grounds A and C of the OA are therefore, untenable.

16. In so far as reduction from 100 to 50 is concerned, the same is uniformly applied to all and 30 out of 60 has been prescribed for qualifying marks and 60% is the aggregate requirement. Earlier, the question papers were set for 100 marks and the marks obtained have been halved to have the same for 50 marks. Added to such halved marks is the mark obtained for record of service. This kind of evaluation equally applies and as such, there cannot be said to be any discrimination nor can the method followed could be held to be legally unsustainable.

17. A feeble attempt has also been made by the counsel for the respondents that merit means only merit in the examination conducted. Counsel for the private respondents contended that merit includes record of service as well. It is appropriate to refer to the definition of the term 'merit' in service jurisprudence. The Apex Court in the case of **Guman Singh vs State of Rajasthan** (1971) 2 SCC 452 has held as under:-

"No doubt the term "merit" is not capable of an easy definition, but it can be safely said that merit is a sum total of various qualities and attributes of an employee such as his academic qualifications, his distinction in the University, his character, integrity, devotion to duty and the manner in which he discharges his official duties. Allied to this may be various other matters or factors such as his punctuality in work, quality and outturn of work done by him and the manner of his dealings with his superiors and subordinate officers and the general public and his rank in the service. We are

only indicating some of the broad aspects that may be taken into account in assessing the merits of an officer. In this connection it may be stated that the various particulars in the annual confidential reports of an officer, if carefully and properly noted, will also give a very broad and general indication regarding the merit of an officer. Therefore, it cannot be stated that Rules 28-B and 32 are in any manner vague or do not give any guide line for assessing the merit of an officer. No doubt, sub-rule (2) of Rule 27 dealt with certain factors which are to be taken into account for considering the claims for promotion, but when it comes to a question of merit, not only those factors but also certain additional factors and circumstances will have to be taken into account and such an evaluation of merit has been left under the rules to a Committee consisting of responsible, senior and experienced officers of the State."

Referring to Guman Singh Supra, the Apex Court in the case of K.K. Parmar vs H.C. Of Gujarat (2006) 5 SCC 789 stated as under:-

"28. For the purpose of judging the merit, thus, past performance was a relevant factor. There was no reason as to why the same had been kept out of consideration by the Selection Committee."

18. We have already held that the evaluation of Record of Service has been so scientific that no legal infirmity could be fastened to the same. Thus, combining this fact with the observation of the Apex Court in the case of Guman and Parmar (supra), it can be safely stated that the term merit in the case of selection to the post of Goods Guard is merit in the exam coupled with the merit on the basis of records of services.

19. As regards the contention that there has been change in the percentage of representation from various streams, which has been effected on the basis of an order of the CPO in midstream of selection, this contention also has no leg to stand in view of the fact that such a change is permissible under the Rules itself in that if sufficient number of candidates in one stream are not available, the vacancies in respect of that stream could be filled up from the meritorious

candidates in the integrated seniority. In fact, it is for this reason that in respect of commercial staff, though the vacancies were only two, on merit basis against the unfilled vacancies in the other streams, at least six from the commercial wing have been taken.

20. The counsel for the applicant also argued about the disproportionate representation of pointsman selected to the post. These are not material as the focus is only on the way the selection has been conducted and the Tribunal is fully satisfied over the method followed for such selection.

21. In view of the above, the OAs lack merit and are accordingly, dismissed.

No costs.



K NOORJEHAN  
ADMINISTRATIVE MEMBER

Dr K.B.S.RAJAN  
JUDICIAL MEMBER

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