CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.67/99 and O.A.68/99

Tuesday, this the 22nd day of May, 2001.

CORAM;

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

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

O.A.67/99

M.Murugesan,
Corridor Coach Attendant,
Southern Railway,
Palghat. - Applicant

By Advocate Mr TC Govindaswamy

Vs

1. Union of India through
the General Manager,
Southern Railway,
Headquarters Office,
Park Town.P.O.
Madras-3.

2. The Divisional Personnel Officer,
Southern Railway,
Palghat Division,
Palghat.

3. The Divisional Railway Manager,
Southern Railway,
Palghat Division,
Palghat. - Respondents

By Advocate Mrs Sumathi Dandapani

O.A.68/99

S.Venkataramani,
Corridor Coach Attendant,
under Chief Travelling Ticket Inspector,
Sleeper/Southern Railway,
Coimbatore. - Applicant

By Advocate Mr TC Govindaswamy

Vs

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

2. The Divisional Personnel Officer,
Southern Railway,
Palghat Division,
Palghat.

3. The Divisional Railway Manager,
Southern Railway,
Palghat Division,
Palghat. - Respondents

By Advocate Mrs Sumathi Dandapani

The applications having been heard on 22.5.2001, the Tribunal on the same day delivered the following:

O R D E R

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

The facts of these two cases are similar and the question of law is identical. Therefore, the reply statement in O.A.68/99 has been adopted as the reply statement in O.A.67/99 and these two cases are being heard and disposed of by this common order.

2. The applicant in O.A.67/99, Shri M Murugesan, a Corridor Coach Attendant had applied for selection and appointment to the post of Ticket Collectors/Trains Clerks, pursuant to a notification dated 26.5.98(R-1). The examination was scheduled to be held on 4.7.98. However, the applicant's immediate superior, the Chief Travelling Ticket Inspector directed the applicant to work in 2617 Express from Palghat to Nizamudin on 3.7.98, as the reliever was not available, promising that a supplementary examination would be held. The applicant undertook the duty and could not appear in the examination on 4.7.99. Coming back and finding that no

supplementary examination was being held, the applicant made a representation A-2 to the second respondent on 20.8.98. As there was no response, he made another representation. Finding no response, he filed O.A.1698/98 which was disposed of by order dated 9.12.98(A-8) directing that the representation of the applicant should be considered taking note of the fact the circumstances under which he was disabled from appearing the examination and that one vacancy in the post of Ticket Collector/Train Clerk should be kept unfilled. In obedience to the above direction, the respondents reserved one vacancy, but by the impugned order dated 24.12.98, turned down the request of the applicant for a supplementary examination on the ground that as per the extant instructions, there was no provision for holding such an examination. The applicant, therefore, has filed O.A.67/99 praying that the impugned order A-1 and A-9 refusing to hold supplementary examination as also A-10 instructions may be set aside and the respondents may be directed to consider the applicant for promotion to the post of Ticket Collector/Train Clerk by holding a supplementary examination.

3. In O.A.68/99, the applicant Shri S Venkataramani had applied for selection and appointment to the post of Ticket Collector/Train Clerk pursuant to the notification dated 26.5.98. The examination was to be held on 4.7.98. However, the applicant was directed by the Chief Travelling Ticket Inspector to proceed on duty in 2617 Mangalore Express bound to Delhi, promising that a supplementary examination would be

held. The applicant, believing the assurance, undertook the duty and could not appear for the examination which was held on 4.7.98. Coming back and finding that no supplementary examination was being held, the applicant made a representation on 18.11.98(A-2) requesting that a separate examination may be held. Finding no reply, the applicant filed O.A.1680/98 which was disposed of on 7.12.98(A-4) directing that the applicant's representation should be considered with the background of the case that he was prevented from appearing the test for no fault of his, keeping one vacancy of Ticket Collector/Train Clerk unfilled. Pursuant to the above order, a post was kept unfilled and by the order dated 24.12.98(A-5), the claim of the applicant for holding supplementary examination was rejected on the ground that there was no provision to the extant instruction to hold a supplementary examination.

4. Aggrieved, the applicant has filed O.A.68/99 seeking to have A-1 notification, A-5 order as also the instruction contained in A-6 set aside, declaring that he is entitled to be considered for promotion as Ticket Collector/Train Clerk holding a supplementary examination and for appropriate direction accordingly.

5. A common reply statement has been filed in these cases by the respondents stating that as per the extant instructions, there was no provision for holding a supplementary examination and that this was stated in the

notification calling for application from intending candidates. However, the fact that the applicants in these cases were drafted for duty under the exigencies of service and for that reason, they lost their chances to appear for the test which was scheduled to be held on 4.7.98 has been admitted by the respondents. The reasons stated for not holding the examination was that though supplementary examination was recommended, the CPO did not agree to it as the relevant instructions did not provide for such a course.

6. Giving the facts and circumstances disclosed from the pleadings and the submission of the learned counsel on either side our anxious consideration, we are of the view that the stand of the respondents that a supplementary examination cannot be held as there was no provision in the instructions, cannot be upheld. Though generally, supplementary examination cannot be held freely on requests because if that is done, selection cannot be finalised within the expected time, When an employee is deprived of an opportunity to appear in a selection process for career advancement on account of reasons wholly attributable to the administration, he being utilised for duties in the exigencies of service, the administration has a duty to safeguard his interest by giving him a chance to appear in a supplementary examination. To take a stand that it cannot be done as it was not provided in the rules, is wholly unjust and unrealistic. We, therefore, find that the respondents in this case are bound to give the applicants in these cases a chance to appear in the supplementary test.

Since two posts in the cadre of Ticket Collectors/Train Clerks have been left unfilled, we are of the view that the interest of justice would be met if the respondents are directed to hold supplementary test for the applicants and then only finalise the select panel.

7. In the result, in the light of what is stated above, the impugned orders A-9 in O.A.67/99 and A-5 in O.A.68/99 are set aside. It is declared that the applicants, in the circumstances of the cases are entitled to have a chance to appear in the supplementary examination. We direct the respondents to hold a supplementary examination exclusively for the applicants in these cases for selection to the post of Ticket Collector/Train Clerk, supplementary to which was held on 4.7.98 within a period of three months from the date of receipt of copy of this order and then only finalise the panel. If the applicants succeed to get placement in the panel and come up within the number of vacancies including the vacancies left unfilled, they shall be considered for appointment. The above direction shall be complied with in three months from the date of receipt of copy of this order. There will be no order as to costs.

Dated, the 22nd of May, 2001.

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

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

trs

LIST OF ANNEXURES REFERRED TO IN THE ORDER:

O.A.67/99

1. A-2: True copy of representation dated 20.8.98 submitted by the applicant to the 2nd respondent.

2. A-8: True copy of judgement in O.A.1698/98 dated 9.12.98 of this Tribunal.

3. A-9: True copy of order No.J/P.O.A.1698/98 dated 24.12.98 of the 2nd respondent.

4. A-10: True copy of Personnel Branch(S.Rly.) Circular No.99/86 dated 15.6.86.

5. R-1: True copy of the letter No.J./P.531/Viii/Vol.9 dated 26.5.98 issued by the Divisional Officer, Southern Railway, Palghat to the SMM/SS/Sms of Palakkad Division.

O.A.68/99

1. A-1: True copy of letter No.J/P.531/Vol.9 dated 1.7.98 issued by the 2nd respondent.

2. A-2: True copy of representation dated 18.11.98 submitted by the applicant to the 3rd respondent.

3. A-4:True copy of judgement in O.A.1680/98 dated 7.12.98 by this Tribunal.

4. A-5:True copy of order No.J/P.O.A.1680/98 dated 24.12.98.

5. A-6: True copy of Personnel Branch Circular No.99/86 dated 15.6.86.