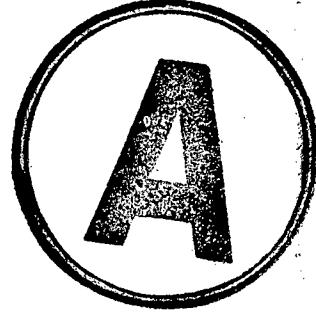


CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH



OA Nos. 875/05 & 146/06

Thursday this the 8th day of Febrary, 2007

CORAM

Hon'ble Mr. N.Ramakrishnan, Administrative Member
Hon'ble Mr. George Paracken, Judicial Member

O.A. 875/2005:

- 1 K.Sivasankaran, Server, Parasuram Venad Express Batch No.II, Southern Railway, Trivandrum Central.
- 2 O.P.Muhammed Koya, Server, Kerala Express Batch No.II Southern Railway, Trivandrum Central.
- 3 K.V.Muraleedharan, Cleaner, Vegetarian Light Refreshment Room, Southern Railway, Ernakulam North.
- 4 N.Muraleedharan,
Server, Happa Express Batch No.II
Southern Railway, Trivandrum Central.
- 5 K.Sukumaran,
Server, Happa Express Batch No.II
Southern Railway, Trivandrum Central.
- 6 D.Surendran, Server,
Vegetarian Refreshment Room,
Southern Railway, Ernakulam South.Applicants

(By Advocate Mr. P.K.Madhusoodhanan)

V.

- 1 The Senior Divisional Personnel Officer,
Southern Railway, Divisional Office,
Trivandrum.14.
- 2 The Chief Personnel officer,
Southern Railway, Park Town,Chennai.3.

- 3 Union of India through the General Manager,
Southern Railway, Park Town
Chennai.3.
- 4 A.Joy, Pointsman Grade II
Southern Railway, Iruppanam.
- 5 P.V.Preman, Pointman Grade II
Southern Railway, Guruvayur.
- 6 K.P.Mani, Assistant Cook
Southern Railway, Trivandrum.
- 7 K.V.Raman, Assistant Cook,
Southern Railway, Trivandrum.
Now working as Commercial Clerk at
booking office Kanyakumari).
- 8 M.Gafoor, Assistant Cook
Southern Railway, Trivandrum.
- 9 A.R.Rama Narayanan,
Assistant Cook, Southern Railway,
Trivandrum.
- 10 M.P.Sudersanan, Pointsman II
Ernakulam, Southern Railway.
- 11 K.Ravindran Nair, Gate Keeper,
Kayamkulam Junction, Southern Railway.
- 12 T.D.Antony, Gate Keeper,
Southern Railway, Kumbalam.
- 13 D.Thankchan, Gate Keeper II
Southern Railway, Mayyanad.
- 14 C.F.George Carvalho,
Gate Keeper II, Southern Railway,
Mayyanad.
- 15 G.Viswanathan Pillai, Gate Keeper II
Karunagapally, Southern Railway.
- 16 T.P. Unni Krishnan,
Pointsman II, Southern Railway,
Guruvayoor.

....Respondents

(By Advocates Mrs.Sumati Dandapani (Senior Counsel)
with Ms.P.K.Nandini (R.1to3)
Mr.Martin G.Thottan (R.5,8,9,10,12&16)

O.A.146/2006:

R.T.Busharamani, aged 46 years
S/o Shamsudeen,
Senior Sweeper Cum Porter,
Southern Railway,
Varkala Railway Station.Applicant

(By Advocate Mr. P.K.Madhusoodhanan)

V.

- 1 The Senior Divisional Personnel Officer,
Southern Railway, Divisional Office,
Thiruvananthapuram.
- 2 Union of India, through the General Manager,
Southern Railway, Park Town,
Chennai.3.
- 3 A.P.Asokan, Pointsman,
Cochin Harbour Terminus Yard,
now provisionally promoted as Ticket Collector,
Southern Railway, Ernakulam South.
- 4 P.S.varadarajan, Senior Gate Keeper
(Engineering), Varkala, now provisionally
promoted as Ticket Collector,
Southern Railway,Quilon.
- 5 A.Sasidharan, Pointsman I,
Southern Railway, Trivandrum,

now provisionally promoted as Ticket Collector,
Southern Railway, Trivandrum Central.

- 6 M.Mohammed Ismail, First Class Coach Attendant, Southern Railway, Trivandrum.14 now provisionally promoted as Ticket Collector, Southern Railway, Trivandrum Central.
- 7 M.P.Sudarshan, Pointsman II Southern Railway, Triandrum, now provisionally promoted as Ticket Collector, Southern Railway,Emakulam South.
- 8 P.P.Joshva, Gateman, Mattancherry Halt, now provisionally promoted as Ticket Collector Southern Railway, Ernakulam North.
- 9 K.P.Satheesan, Gateman, Mattancherry Halt, now provisionally promoted as Ticket Collector, Southern Railway, Ernakulam North.
- 10 A.G. Bhuvanadasan, Gatekeeper, Pudukkad, now provisionally promoted as Ticket Collector, Southern Railway, Alwaye.
- 11 A.Joy, Pointsman II, Iruppanam, now provisionally promoted as Ticket Collector Southern Railway, Ernakulam North.
- 12 P.V.Preman, Pointsman II,Southern Railway Guruvayur, now provisionally promoted as Ticket Collector, Southern Railway, Thrissur,

- 13 P.S.Suresh Babu, Gate Keeper, Kumbalam now provisionally promoted as Ticket Collector, Southern Railway, Alleppey.
- 14 K.P.Mani, Assistant Cook, Southern Railway, Trivandrum now provisionally promoted as Ticket Collector Southern Railway, Trivandrum Central.
- 15 M.Gafoor, Assistant Cook, Southern Railway, Trivandrum now provisionally promoted as Ticket Collector, Southern Railway, Trivandrum Central.
- 16 A.R.Ramanarayanan, Assistant Cook Southern Railway, Trivadnrum now provisionally promoted as Ticket Collector Southern Railway, Ernakulam South.
- 17 K.Raveendran Nair, Gate Keeper, Kayamkulam Junction, Now provisionally promoted as Ticket Collector, Southern Railway, Chenannur.
- 18 T.D.Antony, Gate Keeper, Southern Railway, Kumbalam. Now provisionally promoted as Ticket Collector, Southern Railway, Alleppey.
- 19 D.Thankchan, Gate Keeper II Southern Railway, Mayyanad. Now provsionally promoted as Ticket Collector, Southern Railway, Chengannur.
- 20 George F Carvahlo, Gate Keeper II, Southern Railway, Mayyanad. Now provisionally promoted as Ticket Collector, Southern Railway, Chengannur.
- 21 Smt.N.A.Sarojini, Traffic Porter, Trichur now provisionally promoted as Ticket Collector,

Southern Railway, Alwaye.

....Respondents

(By Advocates Mrs. Sumati Dandapani (Senior Counsel)
with Ms.P.K.Nandini (R.1&2)
Mr.Martin G.Thottan for R.3,4,5,7,8,12,15,16 and 18)

These applications having been jointly finally heard on 11.01.2007,
the Tribunal on 8th February 2007 delivered the following:

O R D E R

Hon'ble Mr. George Paracken, Judicial Member

The applicants in both these O.As are aggrieved by the very same order of the respondents dated 9.11.2005 by which 22 Group -D employees of the Traffic and Commercial Departments of the Trivandrum Division have been selected and placed in the panel for promotion to the Group -C posts of TC/TNC in the scale of Rs. 3050-4590 against the 33 1/3 percent quota to Group-C as recommended by the duly constituted selection board and on having successfully undergone training course held from 22.12.2005 to 27.1.2006 and line training at various stations were promoted as T.Cs in the scale of Rs. 3050-4590 and posted to various stations. The contention of the applicants is that they were illegally excluded from the list and those who were selected and promoted were ineligible and unqualified. As the issue raised in both the O.As are same, they are disposed of by this common order.

Brief facts.

2. The respondents have issued Annexure A1 notification dated 27.11.2002 and the Annexure A2 notification dated 3.7.2003

proposing to fill up the posts of Ticket Colectors/Train Clerks (TC/TNC for short) against 33 1/3rd percent promotion quota from Group-D to Group-C posts. The applicants have applied against the first notification dated 27.11.2002. According to the Recruitment Rules as contained in Paras 126 and 127 of the Indian Railway Establishment Manual (IREM for short) Vol.I, the posts have to be filled up in the following manner:

- "(i) 66 2/3% by direct recruitment through the Railway Recruitment Boards; and
- (ii) 33 1/3% by promotion by a process of selection from eligible Group -D categories of staff as specified by the Zonal Railway Administrations.

As envisaged in Para 189 of the IREM, selection was made by a written test to assess the educational attainment of the candidates followed by interview. In terms of Para 189(4) of the IREM the written tests to fill up the vacancies in the aforementioned posts were held by the respondents on 1.11.2003, 2.11.2003 and 8.11.2003 in the Trivandrum Division and all those who qualified in the written and oral tests were rearranged in the order of their seniority for promotions against the yearly vacancies available in the Group-C posts. The applicants came out successful in the written test and their names appeared at Sl.Nos.53,18,57,45,69 and 99 respectively in the Annexure.A3 letter dated 5.3.2004 published by the respondents.

The applicants alleged that the interview was held in a most

unscientific manner and it was a farce, based on subjective satisfaction of the members of the interview board who were guided by the extraneous considerations and not by accepted standards or guidelines as only their service records were verified in the interview and hardly any questions were asked to them to test their competence. In the final list of 22 persons published by the respondents vide the impugned Annexure.A4 letter dated 9.11.2005, the names of the applicants were not included.

3. The applicants have challenged the non-inclusion of their names on various grounds. They submitted that the Annexure.A4 and A6 were per se illegal, erroneous, perverse, highly arbitrary and highly opposed to the relevant Recruitment Rules, since the 33 1/3% quota is meant for promotion of Group-D employees to Group -C, the inclusion of Group-C employees like Pointsman Grade I, Senior Gate Keeper and Commercial Clerk are against the statutory Recruitment Rules as contained in paras 126, 126 and 189 of the IREM and the respondents have no authority or power to enlarge the zone of consideration. Moreover, the category of Assistant Cooks and Cooks have not been specified as eligible Group-D categories and they were not entitled to be considered for promotion against 33 1/3% quota of TC/TNC and there cannot be any promotion from one Group-C post to another Group-C post in the same scale of pay or from a higher scale of pay. The applicants further submitted that the respondents were required to prepare the year-wise panel and while

doing so they should have taken into account only those vacancies which arose during that year and only those candidates who became eligible upto that year. They have also challenged the procedure of selection for non-allocation of marks under different heads in the interview test. The oral interview was irrational and was influenced by many uncertain factors and it was capable of being abused inasmuch as no assessment was made with regard to the suitability of the candidates for the post and the whole interview process itself was farce and violative of the dictum laid down by the Apex Court in Ajay Hasia's case. Since the method of recruitment of Ticket Collector is by promotion of Group-D category employees and the applicants being senior to all those personnel who have been selected, the respondents should have followed the methodology of seniority-cum-merit as interpreted by the Apex Court in NM Thomas case AIR 1976 SC 490 and AIR 1998 SC 2565 and 2000(6) SCC 698. The respondents illegally clubbed together the vacancies which arose over 6 years and prepared the list of more than 114 candidates and all of them were called for interview in an arbitrary manner, thereby ineligible persons were considered for selection.

4. The respondents 1-3 in their reply to OA 875/05 has raised certain objections regarding its maintainability itself. They have submitted that while the prayer in Para 8(i) is to set aside Annexure A4 and Annexure A6 in so far as they do not include the applicants' name, the prayer in Para 8(ii) is for a direction to the

respondents 1 to 3 to include the applicants' name in the Annexure A4 list and for their appointment, which is contrary to each other. They have submitted that for the non-joinder of the necessary and proper parties also the OA has to be dismissed as the applicants have impleaded only 13 out of the 22 employees selected. Further, they have submitted that the applicants should be estopped from questioning/challenging the viva voce already held in which they have participated. They have also submitted that the viva voce was held by a committee of officers nominated by the competent authority and the applicants were tested in their communication skills as the nature of job required of them is giving proper guidance and communication to the traveling public. They were also tested on the knowledge of General English as the Ticket Collectors were expected to take down small messages in English and pass on the same to the authorities concerned. The other submission of the respondents is that the applicants have not made any request to conduct the selection year-wise and after having taken part in the selection without any demur all along they should not be permitted to make the averment to the contrary at a later stage. Regarding the statement that the ineligible class of persons like Pontsman Gr.I, Sr.Gateman, Assistant Cook, Cook and Commercial Clerk were considered in the selection, they have submitted that the employees selected from these categories were in Group 'D' service at the time the Annexure A1 call notice was issued and the fact that they had been promoted to the higher grade

posts during the pendency of the selection proceedings should not deprive them from being considered for selection. They have also denied any violation of the provisions of paras 126, 127 and 189 of the IREM as alleged by the applicants.

5. In the reply statement filed by Respondents 5,8,9,10, 12 and 16 through their Advocate Shri Martin G.Thottan, it was submitted that the respondents are senior to all the original applicants and they were working in posts having higher scale and grade than the original applicants. They have contended that the non-inclusion of the applicants in the Annexure A4 select list was due to the fact that they were not senior enough to be included in the same taking into account the number of vacancies existed. Further they have submitted that the applicants were not in any manner prejudicially affected on account of the non-preparation of the year-wise panel and after having participated in the selection pursuant to Annexure A1 and A2 wherein it was specifically stated that the vacancies already notified have been reassessed. They have also submitted that as per para 126, 127 of IREM, employees in the category of Assistant Cooks are also eligible to be considered for the selection as the post of Assistant Cook is a Group -D post in the catering department.

6. The applicants have filed rejoinder to the reply statement of the respondents. They have submitted that the material issue to be considered in the O.A is whether the employees included in the

Annexure.A4 are junior to the applicants or not as on the dates from which Annexure.A1 and A2 were issued taking into consideration of their initial continuous regular appointment in Group-D service as per the relevant rules. They have also submitted that this Tribunal in OA 440/90 has already decided similar issues and the same should be made applicable in the present case also.

7. Both the counsels of the applicants as well as party respondents have filed their written arguments. The main thrust of the arguments of the applicants' counsel is that the present case is fully covered by the order of this Tribunal in OA 440/90 (supra). On the other hand the counsel for the respondents argued that the very same issue involved in this OA has already been decided by this Tribunal recently on 31.8.2006 in common order in OA 833/05, 861/05 and 2/06. In fact he contended that the pleadings in OA 2/06 and the present two O.As 865/05 and 146/06 are verbatim the same.

8. In OA 440/90 the applicant was a Lascar in the Operating (Traffic)Department of the Southern Railway in Group-D category. He was also a candidates for promotion to the Group-C post on the basis of selection through written test followed by an interview. Based on the Railway Board's letter dated 29.2.1988 which was annexed as Annexure.A2 in the said OA, he has challenged the selection made by the respondents by clubbing of vacancies of more than one year. The contention of the applicant therein was that by

holding a single test covering all vacancies for five years, the applicant was denied the equality of opportunity by extending the field of eligibility which has also negated his chances for being considered more than once, if annual selections were held. By clubbing the vacancies of five years the records of service were also considered by clubbing earlier and subsequent vacancies. The respondents also did not prepare the integrated seniority list of eligible candidates coming from different seniority units. After considering the aforesaid arguments, this Tribunal allowed the OA on 22.11.1991 with the following order:

"We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. This Tribunal has been consistently taking the view that preparation of a single panel by clubbing the vacancies is illegal as it makes persons who were ineligible for vacancies in an earlier year, eligible for the same vacancy, if that vacancy is clubbed with those of the subsequent years. The Government of India also have been issuing instructions to the effect that where annual promotions could not be made for certain reasons, year-wise panel should be prepared against the vacancies arising in each year by considering those candidates who were eligible in each particular year. Clubbing of vacancies for a number of years also distorts the assessment of confidential reports by bringing in reports of those years which were not available when the vacancies in a particular year arose or including confidential reports of earlier years which would not have been relevant against vacancies of later years. The respondents have admitted that "it was the single panel that evidenced and showed that the selection was lump sum and there was no separate selections." As a matter of fact there should have been separate selections for each years vacancies. By the preparation of single panel the entire selection process is vitiated.

The argument that the applicant did not raise any objection to the notice which indicated that vacancies of 5 years are being taken into account cannot be held against him. This is because one could still have concluded from

the notice that even if the vacancies are clubbed together the selections could have been on the basis of each year's vacancies. The respondents having stated that qualifying marks is 37 1/2 in the combined marks of written examination and interview cannot be heard to say that the applicant was not selected because he failed in the interview. Since no qualifying marks in the interview per se have been fixed, the question of failure in the interview does not arise.

In the conspectus of facts and circumstances we allow the application, set aside the panel dated 23.4.1990 at Annexure A7 and direct the respondents to prepare year-wise separate panels for year-wise vacancies arising between 1.4.84 and 31.3.1989. For preparing year-wise panels only those vacancies which arose during that year should be taken into account, only those candidates who were eligible during that year should be considered and the confidential reports subsequent to that year should not be taken into account. The marks in the written test and the interview of the candidates, however, should not be altered but as per rules the qualifying marks should be taken as 50 per cent of the total of marks obtained in the interview and the written test. Those candidates who have already been selected, trained and promoted, however, should be allowed to continue till the annual panels are available on the above lines and such of those who are not included in any of the panels should either be reverted to give place to empanelled officials or allowed to continue on an adhoc basis if necessary. There will be no order as to costs."

9. The contention of the party respondents is also in agreement with the official respondents. They have also submitted that the present OA is fully covered by the recent common order of this Tribunal dated 31.8.2006 by which the OA 833/05 and connected cases were dismissed.

10. We have heard Advocate Mr.P.K.Madhusoodhanan for the applicants, Smt. Sumati Dandapani (Senior) with Advocate Ms.Nandini PK for the official respondents and Mr.Martin G.Thottan

for the party respondents. In our considered opinion, the present O.As are fully covered by the order of this Tribunal in OA 440/90 (supra). Though the applicant in OA 861/05 (supra) challenged the selection of some of the private respondents on the ground that the respondents have not made the year-wise selection based on the existing seniority list of the Group-D employees which is mandatory, the arguments were mainly on the following points as narrated in para 8 of the order.

- (a) The promotional post carries the scale of pay of Rs 3050–4590 and among those who were called for written test, there were persons holding the post of PM 1/CM.1/LM.1/Sr. GM, whose scale of pay also is Rs 3,050 – 4,590. Thus, for the same pay scale the individuals have been called for selection and this is illegal.
- (b) The applicants are senior and those who are in the higher pay scales have joined the Railways only at a later date. In one case (OA 861/05) the applicant was not promoted to the post of Pointsman (Rs 2,650 – 4,000) while those who had joined the post of parcel porter subsequent to her have been promoted to the post of Pointsman extraneous consideration and that too after the commencement of selection process.
- (c) Applicants have secured more marks than many of those who have been selected and thus the selection is arbitrary and against the Rules.
- (d) The viva voce test is a farce, as the same did not last for even a few minutes; nor were questions asked and only the service records were verified. Percentage of marks allotted for viva voce is also violative of the law laid down by the Apex Court in the case Ajay Hasia (1981) 1 SCC 722, Liladhar (1981) 4 SCC 159 etc.
- (e) Selection is accentuated by malafide.
- (f) In so far as SC/ST is concerned, candidates who did not obtain the qualifying marks has been selected to the exclusion of the applicants who have obtained more marks

and who are also senior.

Further, as is evident from para 10 of the said order dated 31.8.2006, the operative part of the order dismissing the O.A was based on the three questions framed by the Tribunal which were as follows:

- (a) Whether the inclusion of those whose scale of pay is Rs. 3,050 - 4,590 for selection to the post of Ticket Collector with the same scale of pay is illegal and thus, the same vitiates the entire selection;
- (b) Whether the viva-voce held by the respondents could be legally held valid and
- (c) What should be the basis for assigning seniority to the group D employees - on the basis of the scale of pay or length of service.

It was after considering only the aforesaid arguments and the three issues framed thereafter, the co-ordinate Bench of this Tribunal came to the conclusion that no lacuna could be discerned from the impugned order dated 9.11.2005 which ultimately resulted in the dismissal of those Original Applications as being devoid of any merit. The scope and ambit of arguments in the present Original Applications were different and larger. The applicants have pressed the ground that the impugned order dated 9.11.2005 is vitiated because the selection was made in violation of the mandatory requirements of preparing the year-wise eligibility list

and the panel of recommended candidates. It was on this specific ground, another co-ordinate Bench of this Tribunal in the earlier OA 440/90 set aside the similar selection. Since the order of the coordinate Bench of this Tribunal dated 31.8.2006 (supra) was passed without having the applicants pressed and therefore not considered all the material issues raised in those OAs but in the order of the other co-ordinate Bench in OA 440/90 dated 22.11.1991 all these issues were pressed and considered, we respectfully follow the order of the co-ordinate Bench of this Tribunal in OA 440/90 dated 22.11.1991. Ordinarily the vacancies which occurred in a particular year have to be filled up according to the Recruitment Rules without any delay. Undue delay in making promotions causes frustrations and hardship among the eligible feeder categories of employees. It is only for reasons beyond the control of the respondents, the vacancies should be allowed to accumulate. In such circumstances, when promotions were actually made, it shall be based on year-wise panels prepared on the basis of seniority list/eligibility list depending upon the number of vacancies occurred in the corresponding years.

11. Accordingly, we quash and set aside the impugned Annexure A4 letter dated 9.4.2005 by which the Respondent Railways has selected the respondent employees and placed them in the panel for the post of TC/TNC in the scale of Rs. 3050-4590 against 33 1/3rd quota from Group-D from Traffic and Commercial

Department of Trivandrum Division as recommended by the selection board. The respondents 1 to 3 are directed in the first instance to prepare the seniority list/eligibility list of the Group-D Staff entitled to be considered for selection to the post of TC/TNC in the scale of Rs. 3050-4590 of the 33 1/3rd quota vacancies and thereafter prepare the year wise separate panels for the year wise vacancies. For preparing the year-wise panels, only those vacancies which have arisen during that year alone should be taken into account and only those candidates who were eligible during that year should only be considered and the confidential reports subsequent to that year should not be taken into account in their case. The marks obtained by the candidates in the written test and interview shall remain the same. In the present facts and circumstances of the cases, the employees who have already been selected and or promoted shall be allowed to continue till the annual panels are prepared and published on the above lines. However, any of the candidates who are not included in any of the panels should be reverted to give place to the empanelled officials. The respondents are at liberty to allow such reverted employees to continue on adhoc basis, if necessary till the vacancies in the subsequent years are filled. They would also be entitled to participate in the selection if they are not disqualified otherwise. The respondents shall prepare and publish the seniority/eligibility list as directed above within a period of one month from the date of receipt of this order granting time for another one

month for the employees concerned to raise objections, if any. After considering all the objections received within the stipulated time, the respondents shall publish the seniority/eligibility list within fifteen days thereafter. Based on the said list, the year-wise panels of candidates for consideration for promotion shall be prepared and the list of selected candidates on the basis of the marks already secured by them shall be published within a period of one month thereafter.

OA 146/06: As the issue raised in this OA is identical as noted above, this OA is also allowed in the same manner as in OA 875/05.

12. In the circumstances, there shall be no order as to costs.

Dated this the 8th day of February, 2007

**GEORGE PARACKEN
JUDICIAL MEMBER**

**N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER**

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