

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

DATED WEDNESDAY, THE TWENTY FOURTH DAY OF MAY  
ONE THOUSAND NINE HUNDRED AND EIGHTY NINE

PRESENT

HON'BLE SHRI S.P.MUKERJI, VICE CHAIRMAN

&

HON'BLE SHRI G.SREEDHARAN NAIR, JUDICIAL MEMBER

ORIGINAL APPLICATION NO.178/89

P.Peethambaran & 26 others - Applicants

Vs

1. Senior Divisional Personnel  
Officer, Divisional Office,  
(Personnel), Southern Railway,  
Palghat.

2. The Divisional Railway Manager,  
Divisional Office, Southern  
Railway, Palghat.

3. The General Manager, - Respondents  
Southern Railway, Madras.

M/s Asok M Cherian & C.A.Joy - Counsel for the  
applicants

M/s M.C.Chерian, Saramma - Counsel for the  
Cherian & T.A.Rajan respondents

O\_R\_D\_E\_R

(SHRI G.SREEDHARAN NAIR, JUDICIAL MEMBER)

Pursuant to the notification issued by the  
first respondent on 6.7.1988, the applicants volunteered  
for the post of Assistant Guard. The written examination  
was conducted followed by viva-voce. Thereafter the  
first respondent by the proceedings dated 28.2.1989  
cancelled both the written examination and the viva-voce  
test and directed that a fresh selection be conducted.

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This order of the first respondent is assailed by the applicants. It <sup>is</sup> ~~has~~ urged that the first respondent was not competent to cancel the examination. It <sup>is</sup> ~~has~~ also stated that by the cancellation, the applicants have been illegally denied opportunity for promotion as Assistant Guards.

2. A reply has been filed on behalf of respondents where it <sup>is</sup> ~~has~~ stated that as the competent authority was ~~specified~~ <sup>from</sup> that the entire selection proceedings ~~in~~ the very beginning have been vitiated, the examination was cancelled, and as such the cancellation is not open to challenge. On merits it is contented that 20 senior employees were disallowed from participating in the examination and an anomalous situation of virtually permitting some of the confirmed employees to participate in the proceedings while denying the same facilities to others arose.

3. At the time of hearing Shri Asok Cherian, counsel of applicants invited our attention to Clause(c) of paragraph 213 of the Indian Railways Establishment Manual which provides that promotion to a selection posts shall be made by the competent authority in accordance with the recommendations of <sup>a</sup> Selection Board, and if in any case such authority is <sup>unable</sup> ~~only~~ to accept

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the recommendation a reference shall be made to <sup>the</sup> General Manager, who may if necessary, constitute a fresh Selection Board at a higher level and whose decision in the matter shall be final. It was submitted by him that there is <sup>the</sup> ~~infraction~~ <sup>violation</sup> of aforesaid provision as no reference has been made to the General Manager as is ordained therein. It was pointed out by counsel of respondents that the aforesaid provision can have application only where the competent authority disagrees with the Selection Board or where the Selection Committee has disqualified itself due to some reason or other. On a reading of the Clause, we are not in a position to subscribe to the said view, for the Clause takes in all cases where the competent authority is unable to accept the recommendation of the Selection Board, due to whatever reason. As, in the instant case, the competent authority was unable to accept the recommendation it should have made the reference to the General Manager as provided for in Clause(c) of Paragraph 213 of the Manual. It ~~will~~ follows that the order passed by the first respondent on 28.2.1989 cancelling the written examination and the viva-voce cannot be sustained as ~~the second respondent,~~ <sup>the</sup> the competent authority was not entitled to do so. We ~~do so~~ <sup>quash</sup> the said order.

4. The application is disposed as above.

  
( G.SREEDHARAN NAIR )  
JUDICIAL MEMBER

  
( S.P.MUKERJI )  
VICE CHAIRMAN

24.5.89

trs