

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.225/08

Tuesday this the 28th day of July 2009

C O R A M :

**HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER**

1. J.Victor Immanuel,
S/o.late Jagathis Azariah,
Peon, Works Branch, Divisional Office,
Southern Railway, Salem.
Residing at L2/62 Housing Unit,
Railar Nagar, Madurai.
2. P.V.Asokan,
S/o.Velayudhan,
Lascar, Works Branch, Divisional Office,
Southern Railway, Palghat.
Residing at Sri Chithra, Pathiri Nagar,
Dhoni, Palghat.
3. Magdalene Fernandez,
D/o.Joseph,
Record Sorter,
O/o. Senior Divisional Electrical Engineer,
Southern Railway, Palghat.
Residing at Quarter No.630 F,
South Colony, Hemembika Nagar, Palghat.
4. C.Sobhana,
W/o.Balan Nair,
Record Sorter,
General Branch, Divisional Office,
Southern Railway, Palghat.
Residing at Chaithram, Near Police Station,
Kallekulangara, Palghat.

...Applicants

(By Advocate Mr.T.A.Rajan)

V e r s u s

1. Union of India represented by the General Manager,
Southern Railway, Park Town P.O., Chennai – 3.
2. The Divisional Railway Manager,
Southern Railway, Palghat.



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3. The Senior Divisional Personnel Officer,
Southern Railway, Palghat. ...Respondents

(By Advocate Mr.Sunil Jose)

This application having been heard on 28th July 2009 the Tribunal on the same day delivered the following :-

ORDER

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

The applicants have filed this Original Application seeking the following reliefs :-

1. Direct the respondents to review the selection procedure and to prepare a fresh panel either by refixing the aggregate marks as 60 by and qualifying marks as 36 deleting the 40 marks of Part A or by awarding grace marks for the Part A questions and also direct the respondents to promote the applicants to the post of Office Clerks from the revised panel thus prepared.
2. Direct the second respondent to consider and dispose of Annexure A-8 and Annexure A-10 representation of the applicants without further delay.
2. The brief facts of the case are that the respondents have issued the Annexure A-1 notification dated 25.10.2006 inviting applications for filling up the posts of Office Clerks in scale Rs.3050-4590 from Group 'D' employees against 33 1/3 % quota. The requisite qualification for applying to the aforesaid posts is that they should have put in continuous service of not less than three years as on 25.10.2006 ie. the date of issue of notification. Casual Labour Service on daily wages and service as substitutes prior to attaining temporary status will not count as qualifying service of three years for this purpose. Casual Labour Service and service as substitutes after attaining temporary status will be counted as qualifying for this purpose provided this service is followed by regular absorption after

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screening and there is no break in service. The other condition is that the candidates should be literate in English. Though minimum educational qualification is not prescribed the candidates must possess a reasonable standard of English so as to enable them to write the written test. The written test is divided into two parts, namely, Part 'A' and Part 'B'. Part 'A' is intended to test the working knowledge of the candidates in English language and Part 'B' covers general standard of intelligence and proficiency in Arithmetic. General knowledge mainly pertaining to Railway matters and matters pertaining to the work of the employee which he has acquired during the Railway Service. The number of vacancies notified under the 33 1/3% quota were 14 including 3 for SC category, 2 for ST category and 9 for UR category. Vide Annexure A-2 letter dated 21.11.2006, 44 candidates including the applicants volunteered for the proposed examination. Side by side, the respondents have also issued the Annexure A-3 notification inviting applications for filling up 13 posts of Office Clerks under the 16 2/3% quota including 2 for SC category and 11 for UR category in the scale Rs.3050-4590 from Group 'D' employees. The qualification for the candidates to appear in the aforesaid examination was they should have a minimum of two years of regular service as on 31.10.2006 with the educational qualification of matriculation (passed). The standard of selection consists of written test which will commensurate with qualification of matriculation. The panel of qualified candidates was strictly based on merit. Thereafter, the respondents have issued Annexure A-4 letter dated 29.11.2006 indicating the list of employees who have volunteered for the post of Office Clerks under the said quota of 16 2/3%.

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3. The learned counsel for the applicant, Shri.T.A.Rajan submitted that out of 14 persons volunteered, 13 were persons who have volunteered for the examination under the 33 1/3% quota as they were all matriculates. The applicants have also produced Annexure A-5 question paper given to the candidates who appeared for the examination under the 33 1/3% quota. He has specifically pointed out that the first question was to write an essay in English on the topic "office automation" and the second question to write a letter in English to the DRM inviting him to a retirement function in section. According to him, the said questions and many other were out of the syllabus and of higher standard, not expected of the non matriculate to answer. He has also brought the provisions contained in IREM wherein it has been stated that the written test should consist of one paper of 3 hours duration divided into two parts to our notice. Part 'A' is intended to test the working knowledge of the Railway servant of the English language and Part 'B' is to test the general standard of intelligence and proficiency through questions in Arithmetic, General Knowledge mainly pertaining to Railway matters and matters immediately pertaining to the work he has been acquainted with during his Railway service. In drawing up the questions it was to be ensured that they are not set at such a standard as to make it impracticable for a Group 'D' railway servant of average intelligence and normal standards of efficiency to qualify in the test. He has also invited our attention to Annexure A-7 Office Order dated 21.12.2006 by which only two persons, namely, R.Vennila and K.M.Remani were selected against 33 1/3% promotional quota. He submitted that the question papers were much above the standard expected of a matriculate to write. He



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has, therefore, stated that in such circumstances, the respondents should have resorted to the method of moderation as circulated by the Railway Board P.B.C.No.152/97 which reads as follows :-

P.B.C. No.152/97

**MODERATION OF RESULTS BY AWARDING GRACE MARKS IN
SELECTION PROCEEDINGS.**

1. Para 219 (a) of Indian Railway Establishment Manual Vol. I. 1989 Edition authorizes the selection board or the authority competent to accept the recommendations of the selection boards to allow moderation of results by way of awarding grace marks.
2. The number of selection in which the panel formed is significantly short of the assessed and notified vacancies is absorbed to be on the increase. Apparently, when the required number of candidates failed to obtain the minimum qualifying marks in the written examination (without any modification) no conscious effort or serious consideration is given by the authorities concerned for moderation by award of grace marks to ensure that adequate number of employees are available for placing in the panel.
3. The recent trend of selections indicates that the questions papers are difficult with the result that many of the candidates do not qualify in the written examination. This also enhances the administrative work as further action for ad-hoc promotion and conducting repeated selections are required to be undertaken.
4. The Central Administrative Tribunal in one of their recent orders disposing of several original applications filed challenging the selection process resulting in short empanelments had observed that sense of proportion should be attempted by the selection committee and the selection process should not lead to serious grievances arising out of unfair, non-responsive or uncaring administrative processes. This is of greater relevance which candidates marginally fail to clear the threshold qualifying marks.
5. Keeping in view that the objective of a selection process is to yield a panel of required size from the staff in the eligibility, the Selection Committee should hereafter in every selection, meet and review the results as made available by the Officer evaluating the answers in the written examination. The review should be done before the dummy numbers are decoded and an objective exercise is to be undertaken at this stage to decide whether recourse to moderation should be resorted to. Suitable recommendations in this regard should be made by the Selection Committee, to the authority competent to consider and accept their recommendations and orders sought, with regard to the extent of moderation to be allowed. It should however, be ensured that together with the moderation marks, no candidate will score more than 100% in the written examination.



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6. If the number of candidates qualified are substantially below the assessed and notified vacancies in the written examination of a selection, then the case will normally be a fit case for considering moderation of marks.

7. All PHODs/DRMs/CWMs are required to ensure that the above procedure is followed.

8. This issues with the approval of the General Manager.

P(R)608/P Vol.XII(Pt)dt 29.10.97.

4. Shri.Sunil Jose, counsel for the respondents, raised a preliminary objection that once the applicants have appeared in the examination, they cannot turn around later and say that the examination was not in accordance with the rules. He has also submitted that the applicants have approached this Tribunal after a gap of ten years. On merits he has submitted that the Annexure A-5 question papers are mainly in accordance with the standard prescribed in the notification. Thus the applicants cannot say now that it is above the standard expected of them.

5. We have considered the contentions of both the parties. Obviously when there were 14 vacancies and only 2 could qualify for the same, that too they were matriculates, the obvious conclusion is that the question papers were much above the standard expected of non matriculate to answer. In such circumstances the respondents should have resorted to the method of moderation as prescribed by the Railway Board before the final list of qualified persons has been issued. There is no merit in their contention that moderation cannot be adopted now as the selection has already been made. In these circumstances, we direct the competent authority in the respondent Railways to review the results of all the candidates who appeared in terms of the Annexure A-1 notification dated



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25.10.2006 and to adopt the procedure of moderation. After awarding the grace marks as prescribed under the aforesaid instructions, if any persons are found to be qualified, they shall also be considered for appointment. The aforesaid exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

6. Before we part with this order, it is observed that the post of Clerks in all departments of the Central Government, State Government, Public Sector Undertakings including Banks etc are filled up by candidates having the minimum qualification of matriculation/Plus Two/Graduate. It appears that only in Railways non matriculates who do not have sufficient basic knowledge are permitted to appear in the promotional post of Office Clerk. However, it is for them to make necessary amendments in the relevant rules to bring them in conformity with other rules issued by Central Government, State Government, Public Sector Undertakings etc.

7. With the aforesaid directions/observations this OA is disposed of. There shall be no order as to costs.

(Dated this the 28th day of July 2009)


K. NOORJEHAN
ADMINISTRATIVE MEMBER

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GEORGE PARACKEN
JUDICIAL MEMBER