

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM EBNCH**

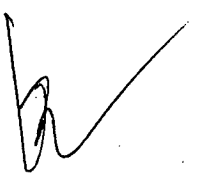
Original Application No. 234 of 2007

Monday..., this the 22nd day of October, 2007.

CORAM :

**HON'BLE Mrs. SATHI NAIR, VICE CHAIRMAN
HON'BLE Dr. K B S RAJAN, JUDICIAL MEMBER**

1. Jayasanker P.V.
S/o. Sankara Marar,
Assistant Guard, Shornur Junction,
Southern Railway, Now residing at
'Thulasi', Manikkulathuparambu,
Tenhipalam (P.O), Malappuram District
2. K.A. Mohammed Ismail,
S/o. K. Assanar,
Assistant Guard, Erode,
Southern Railway, now residing at
'Raziya Manzil', Melemurali,
Near Mariyamman Temple,
Industrial Estate (P.O.), Paduppariyaram,
Palakkad District.
3. Rajagopalan C,
S/o. M. Govindan Nair,
Assistant Guard, Station Manager Office, Shornur,
Now residing at Mangat House, Paruthipra,
Shornur (P.O.) : 679 121
4. K.K. Vijayan,
S/o, Krishnan
Assistant Guard, Shornur, Southern Railway,
Now residing at Karamana House,
Paruthipra, Shoranur (P.O.): 679 121




5. Girjavallabhan,
S/o. Late M. Sankaran Nair,
Assistant Guard, Station Manager Office, Erode,
Now residing at Ammu Nivas, Kavassery P.O.,
Palakkad District. : Applicants

(By Advocate Mrs. K. Girija)

versus

1. Union of India represented by its
General Manager, Southern Railway,
Headquarters Office, Park Town P.O.,
Chennai : 3
2. The Additional Divisional Railway Manager,
Southern Railway, Palakkad Division,
Palakkad.
3. The Senior Divisional Personnel Officer,
Southern Railway, Palakkad Division,
Palakkad.
4. Gopinathan P.
Cabin Master, Somanur Station,
Southern Railway, Tamil Nadu
5. Rajamanickam,
Cabin Master, Vanjipalayan Railway Station,
Southern Railway, Tamil Nadu.
6. Sathyanathan,
Cabin Master, Annangur, Southern Railway,
Tamil Nadu.
7. Arunachalam K,
Cabin Master, Uttukuli, Southern Railway,
Tamil Nadu.
8. Sugunan E.V.,
Cabin Master, C/o Traffic Inspector,
Erode Junction, Southern Railway.
9. Abdul Rahiman,
Senior Commercial Clerk, Pugalur,
Southern Railway.



10. Pakianathan,
Senior Train Clerk, Control Office,
Southern Railway, Palakkad.
11. Balan K,
Senior Train Clerk, Control Office,
Southern Railway, Palakkad.
12. Abdul Hameed M,
Senior Commercial Clerk,
Southern Railway, Palakkad Junction
13. Sujith A.M,
Senior Train Clerk, Control Office,
Southern Railway, Palakkad.
14. Pushparaj V,
Senior Train Clerk, Control Office,
Southern Railway, Mettur Dam.
15. Aru Amretha Raja Rajan,
Senior Train Clerk,
Southern Railway, Erode Junction.
16. Vankitasamy,
Cabin Master, Southern Railway,
Perundurai Railway Station,
Tamil Nadu.
17. Paramasivam P,
Cabin Master, Southern Railway,
Perundurai Railway Station,
Tamil Nadu.
18. Vijayakumar V.T,
Senior Train Clerk, Control Office,
Southern Railway, Palakkad.
19. Santhakumar M.M,
Senior Train Clerk, Control Office,
Southern Railway, Palakkad.
20. R. Subramani,
Cabin Master, Southern Railway,
Irugur, Tamil Nadu.



21. M.K. George,
Cabin Master, Dasampatty,
Southern Railway, Tamil Nadu
22. Thangavelu M,
Cabin Master, Mavelipalayam,
Southern Railway, Tamil Nadu.
23. Sivalangim K,
Cabin Master, Veerapanida Road,
Southern Railway, Tamil Nadu.
24. M.J. Babu,
Senior Commercial Clerk,
Nilambur Road, Nilambur,
Southern Railway, Malappuram Distt.
25. Sajeev C.K.,
Cabin Master, Kakkenkarai,
Southern Railway, Tamil Nadu.
26. Devamani,
Senior Train Clerk, Mettur Dam,
Southern Railway.
27. Ramadas ,
Senior Assistant Guard, Shornur,
Southern Railway.
28. Ninan C.J,
Senior Assistant Guard, Shornur,
Southern Railway.
29. Venugopal M.C.,
Senior Assistant Guard, Shornur,
Southern Railway.
30. Unnikannan K,
Assistant Guard, Erode,
Southern Railway.
31. Gunasekaran K,
Assistant Guard, Erode,
Southern Railway.
32. Krishnan C,
Assistant Guard, Erode,
Southern Railway.

: Respondents


(By Advocate Mr. Thomas Mathew Nellimoottil)

The application having been heard on 13.09.2007, delivered the following :

O R D E R

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

The facts as contained in the OA are as under :

(a) The applicants are working as Assistant Guards and are fully qualified for being promoted to the post of Goods Guard. The 3rd respondent, Senior Divisional Personnel Officer, Palghat invited applications for filling up of 29 vacancies of Goods Guard in the scale of Rs.4000-5000 against 60% promotional quota filled up by a process of selection vide Annexure A-1. The feeder categories comprise of Assistant Guards /Senior Assistant Guards, Ticket Collector,/Senior Ticket Collector, Commercial Clerk/Senior Commercial Clerk, Train Clerk/Senior Train Clerk, Cabin Master, Shunting Master Grade II, Senior Cabin Man and other Yard Staff. Vide Para 124 (I) (i) of Indian Railways Establishment Manual, filling up of posts of Guards shall be made as under :-

" 60% by general selection from amongst serving employee with a minimum of three years service working in grade (s) Rs.3050-4590 / 3200-4900 / 4000-6000 in the aforesaid feeder grades and the Zonal Railways may lay down individual quotas for each of the categories of staff. "

(b) Vide Annexure A-1, individual quota prescribed for Assistant Guards / Senior Assistant Guards is 30% and the quota prescribed for Ticket Collector / Senior Ticket Collector is 15%. The combined categories of Cabin Master, Shunting Master Grade II, Senior Cabin Man and Yard



Staff are given only 10% and the categories of Ticket Collector / Senior Ticket Collector and Commercial Clerk / Senior Commercial Clerk are together given 5 %.

(c) Pursuant to Annexure A-1 examination was conducted and as against 15 vacancies earmarked for Assistant Guards / Senior Assistant Guards, 14 Assistant Guards had appeared for the written test. All the Assistant Guards including the applicants was under the hope that they would be promoted as Goods Guard against the existing vacancies under the quota earmarked for them. But vide Annexure A-2 order dated 22.03.2007, respondents 4 to 32 have been recommended for being placed in the panel for promotion as Goods Guard. Annexure A-2 is ex-facie illegal for the sole reason that promotion has been given to respondents 4 to 26 in excess of the quota prescribed for their respective categories and that enough number of Assistant Guards / Senior Assistant Guards are not promoted to fill up the vacancies set apart for their quota. As against 15 earmarked for Assistant Guards / Senior Assistant Guards only 6 persons who are respondents 27 to 32 herein have been selected. Whereas for 7 vacancies of Train Clerk / Senior Train Clerks, 8 persons have been promoted; against 5 vacancies set apart for the categories of Cabin Master, Shunting Master Grade II, Senior Cabin Man, 12 persons are promoted. In the category of Ticket Collector / Senior Ticket Collector, and Senior Commercial Clerk, 3 persons are promoted whereas only 2 vacancies are set apart for that category.

(d) Letter dated 18.05.2007 is issued by the Assistant Personnel Officer/Traffic on behalf of the Chief Personnel Officer as clarification vide

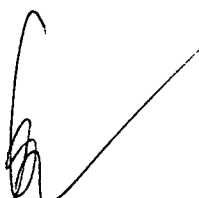


Annexure A-3. In Annexure A-3 an example of the pattern to be followed while framing the panel of Goods Guard under 60% promotional quota is given. If the respondents are to follow that pattern, the same will defeat the very purpose of percentage fixed for each feeder category under the statutory rules.

2. The respondents have contested the OA and their version is as follows:

(a) When the selection to fill up promotional quota vacancies is made from different feeder categories of serving employees, the final panel should be drawn in the order of integrated seniority from amongst those who secure 60% marks in the professional ability and 60 % marks in the aggregate, vide Paras 320 and 219 (j) of the Indian Railway Establishment Manual - Volume I (1989 edition). Hence the seniority position in the integrated seniority is an important criteria for empanelment.

(b) While filling up the promotional quota vacancies, the reservation rules prescribed for the post based roster to be maintained for the departmental promotional quota as a whole, should also be followed. In view of the percentage prescribed for each feeder categories for promotion as Goods Guards, the prescribed percentage should also be kept in view while selecting the candidates from integrated seniority for placement against unreserved vacancies. For the 29 vacancies, breakup are SC-7, ST-3 and UR-19. In response to Annexure A-1 notification, 225 employees have volunteered and 217 found eligible are as follows :-



Sl. No.

Categories

1.	Assistant Guards/Senior Assistant Guards	16
2.	Train Clerk/Senior Train Clerks	14
3.	Cabin Master, Shunting Master Grade II Senior Cabinman, Pointsman A etc.	164
4.	Ticket Collector/Senior Ticket Collector & Commercial Clerk/Senior Commercial Clerk	23
		<u>217</u>

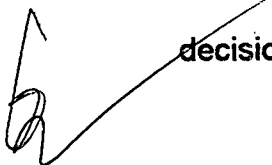
(c) That the 217 employees were alerted, only 190 employees attended the written examination and out of the surplus, only 118 employees have got qualifying marks in the written examination. Goods Guard is a safety category post. The panel formed was as per Annexure R-4 instructions by amalgamating all the qualified personnel belonging to different categories restricted to the percentage assigned to each group. It was based on the seniority in the grade and the person in the higher grade being senior to the one in the lower grade. It was further stipulated that in case of adequate number of employees from the specified categories are not qualifying, the shortage will be made good from among the excess staff qualified from other categories on the basis of Integrated Seniority and that there will be only one panel formed from the different categories having irrespective percentage. Thus the empanelment has to be made as per the percentage indicated for each category according to the inter se seniority position of the employees not exceeding the number earmarked for each category.

(d) Accordingly, from the integrated seniority of the above 118 employees, 19 employees were selected for placement in the panel against the 19 unreserved vacancies. The placement was restricted

to 5 in the category of Cabin Master / Shunting Mater, to 2 in the category of Ticket Collector/ Commercial Clerk and to 7 in the category of Train Clerk as per the percentage prescribed for each category according to the seniority position in the Integrated Seniority. In the category of Assistant Guards / Senior Assistant Guards, only 5 employees were senior enough to find placement against unreserved vacancies.

(e) As the unreserved vacancies were limited to 19, the remaining 10 vacancies were to be filled up by 7 Scheduled Caste employees and 3 Scheduled Tribe employees. Even though 13 employees in the category of the Assistant Guards / Senior Assistant Guards have got qualifying marks, only 5 senior most in the category of the Senior Assistant Guards / Assistant Guards have been selected for placement in the panel against the unreserved vacancies. Thus, Annexure A/2 has been issued duly following the Railway Rules and there is nothing illegal as alleged by the applicants.

3. In the rejoinder, the applicants have reiterated the contentions as in the OA and further submitted that Annexure A/4 is clear to the extent that the instructions relating to the reservation rule as per the post based roster is to be maintained on the departmental promotion quota as a whole. Under the guise of following reservation, the respondents cannot promote excess number of candidates from any category than that is fixed as per the quota set apart for each of the category. Instructions would show that 30% quota for Assistant Guards / Senior Assistant Guards was a conscious decision. Moreover, the cadre of Assistant Guards / Senior Assistant Guards



is in a frozen state and no promotions or appointments have been made to the post of Assistant Guards ever since 1996. The applicants have sought for a declaration to the effect that the respondents are bound to follow the quota rule and that the panel formed not in consonance with the rule is to be quashed. When there are 15 vacancies against the 30% quota earmarked for the category of the Assistant Guards / Senior Assistant Guards and when 13 of them have passed the qualifying examination also, the respondents ought to have accommodated them in Annexure A/2 panel against the vacancies earmarked for their category.

4. Respondents have filed reply to the rejoinder stating that there is no requirement of separate key roster or separate roster for the individual category having the prescribed percentage of vacancies. Hence the contention of the applicants that post based roster on reservation should be followed within the specified quota fixed for each category is not correct. Assuming without conceding such contention, out of 29 vacancies, the reservation for the category of Assistant Guard would be SC: 3.5 and ST: 1.5; Total = 5. Even though 13 employees in the category of Assistant / Senior Assistant Guards have got qualifying marks, only 5 senior most in that category have been selected for placement panel against unreserved vacancies. Out of remaining 8 Assistant Guards, there is one SC employee available. The remaining 4 vacancies cannot be filled up with unreserved community employees like the applicants. As per the revised procedure contained in Annexure R/5 letter dated 12.10.1995, it is to be ensured that panels are not published with short of empanelled hands as far as possible and the shortage from one or more feeder category should be pooled together and filled by the senior most personnel in the order of



the integrated seniority.

5. By filing additional rejoinder, the applicants have submitted that the instructions in Annexure R/5 can, at the best, be followed only in the event of non-availability of adequate number of qualified persons in the feeder categories to the extent of percentage prescribed for each category. In the present case, when 15 vacancies are notified for Senior Assistant Guards / Assistant Guards and when adequate number of qualified persons in such feeder category are available, respondents are not justified in pooling the vacancies together.

6. Respondents have filed additional reply to the additional rejoinder and the applicants again filed 11nd additional rejoinder to the additional reply.

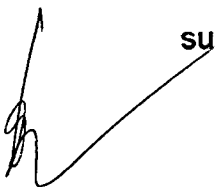
7. In the reply to the amended O.A., the respondents have stated that :

(a) the purpose and object behind the prescription of individual percentage is to avoid arising a situation where one feeder category occupies the entire vacancies of the promotional quota. In the instant case, if the percentage for individual feeder categories was not prescribed, the first 19 persons in the integrated seniority list (all Cabin Masters except one Senior Commercial Clerk) would have occupied the 19 posts against unreserved vacancies. Only to avoid such an eventuality and to make a balanced distribution to each feeder category to the extent possible, the rules of percentage for each feeder category was prescribed.

(b) The term 'qualified persons' in the context of selection process means those who are qualified to be included in the panel by applying the Integrated Seniority Rules, Reservation Rules and Percentage Rules, and not those who merely passed in the written examination.

(c) As per Rule 124 of Indian Railway Establishment Code, the General Managers are empowered to frame rules of general nature in respect of Group 'C' and 'D' employees provided the same do not contravene the instructions of the Railway Board and Codal provisions. The Chief Personnel Officer (General Manager, Personnel) is fully empowered to issue the circulars on behalf of the General Manager. Hence Annexure A/3 has been issued by the competent authority only. The instructions communicated by letter dated 26.10.99 of Chief Personnel Officer, Southern Railway, Madras, has got full legal force which is admitted by the applicants. The Chief Personnel Officer who is General Manager (Personnel), is the authority who had issued Annexure R/4 letter dated 26.10.99 which according to the applicants, is fully legal and their claim is also based on that letter.

8. Counsel for the applicant submitted that when a specific ratio has been laid for various feeder categories, as for example 30% for Assistant Guards/Senior Assistant Guards, the same should be religiously followed and it is only when there be shortage of candidates eligible/suitable in that category, should the Respondents deviate from the said ratio. The counsel further submitted the question of integrated seniority does not apply at the stage of



selection though it may be applied when the final panel is made.

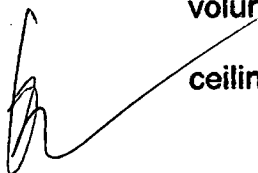
9. Counsel for the respondents submitted that the General Manager has powers to frame necessary norms in respect of such aspects and the clarification furnished in May, 2007 vide Annexure R-6 is well within, and invoking such powers vested with him and is also within the provisions of the rules on the subject. Further, it is obligatory on the part of the respondents to ensure that provisions for Reservation are also followed strictly.

10. Arguments were heard and documents, including the official records perused. From the records it is observed that after the examination was conducted, the marks were tabulated in the order of the integrated seniority and those who have come in merit as per such a tabulation, have been selected and while doing so, first the general vacancies had been filled up which included some SC candidates but these candidates were not included as one coming under reserved category and such, separately for SC/ST candidates selection has been made from out of the remaining meritorious candidates.

Vacancies in the post of Goods Guard are filled up by three channels –

- (a) 60% by general promotion;
- (b) 15% plus short fall if any, against (a) above by LDCE; and
- (c) 25% plus shortfall, if any against (b) by direct recruitment

(Order dated 5-9-1998 vide Annexure R-1 refers). While so filling up the vacancies, the aspect of reservation should also be kept in view. (Para 8 of the reply on behalf of Respondents No. 1 to 3 refers) Again, in so far as 60% by general promotion is concerned, the same is by holding selection from out of volunteers with three years service in the following posts and to the extent of the ceiling mentioned against each:-



- | | |
|--|-----|
| (a) Asst. Goods Guards/Sr. Asst. Goods Guards: | 30% |
| (b) Train Clerk & Sr. Train Clerk | 15% |
| (c) Switchman/Shunting Master/Shunting
Jamedar, Pointsman, Leverman, Cabinman,
Gate Keeper(Yard staff) | 10% |
| (d) Ticket Collector, Sr. Ticket Collector, Comml. Clerk
and Sr. Comml. Clerk | 5% |

(Order dated 26-10-1999 at Annexure R-4 refers)

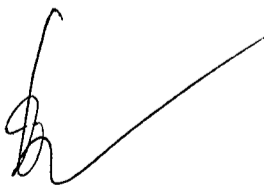
11. Provision exists to meet certain contingencies such as shortfall in any of the above categories. These are provided in Annexure R-5 and the same reads as under:-

"A number of references have been received from Divisions that vacancies of ASMs, AYMs, Goods Guards and such other categories remain unfilled due to want of adequate number of qualified persons in some feeder categories to the extent the percentages prescribed for each category. It is clarified as indicated below so as to ensure that panels are not published with short of empanelled hands as far as possible.

While forming the panel, if there is shortage in one or more feeder categories, the left over vacancies should be pooled together. All those who are otherwise qualified by obtaining the prescribed qualifying marks in the selection but could not be placed in the panel within the percentage prescribed for their respective categories not being senior enough should be listed out. Their names are to be arranged in the order of seniority ensuring that persons in the higher grade rank, senior to those in the lower grade.

Corresponding to the total number of left out vacancies pooled, the senior most personnels in the order of the integrated seniority list of the left out qualified personnels as above should be identified for inclusion in the panel. This is subject to the reservation points required to be filled up i.e. it requires to identify the SCs/STs also if any from the combined list of left out qualified personnels of all categories.

The panels should be published by arranging all the names strictly in the order of seniority, the persons in the higher grade being senior irrespective whether one is to be empanelled within the percentage assigned to each category or otherwise. The panel should clearly indicate those who were empanelled against SC/ST reserved points as required for any such panel."



12. When volunteers are called and written examination is held, strictly speaking, the same should be separate for each category. For convenience sake, a single exam may be held. The following drill be performed in preparation of panel for promotion to the post of Goods Guards:-

Stage 1: Tabulation of names of those who have secured the minimum qualifying marks in the order of their integrated seniority (In this case, prepare mark list of 118 qualified candidates in the order of their integrated seniority list).

Stage 2: Carve out from the above, a list of qualified candidates category wise in the order of their inter-se seniority for each category to the extent of the requisite number in each category. (e.g upto 15 in the category of Sr. Asst. Goods Driver/Asst. Goods Driver; 7 in the category of Sr. Trains Clerk and Trains Clerk; 5 from the category of f CMR etc., and 2 from the category of Sr.CC/Sr.TC/CC/TC *Rearrange the list on the basis of their inter-se integrated seniority.* This is the first list.

Stage 3: After segregating this first list, from the tabulation the remaining ~~mark~~ list would form the **Second list**.

Stage 4: From the first list, ascertain (a) shortfall if any in each category so that the same could be made good from other categories and also (b) representation of SC/ST. If adequate number of SC/ST candidates are available, and the percentage for each category is also met with, without any left out vacancies, then this first list itself would become the final list.

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If not, then the second list comes into operation. From out of the second list, in the order of integrated seniority, pick up the requisite number of SC/ST candidates and in order to ensure that such candidates and the ones selected vide the first list do not exceed total number of vacancies, apart from adjusting the category shortfall, the junior most in the first list to the extent required shall be eliminated.

The above procedure may be explained through an illustration. In this case, there are 29 vacancies of Goods Guards with the break up of 19 Unreserved candidates, 7 SC and 3 ST candidates. Again, 15 are earmarked for Asst. Goods Guards/Sr. Asst. Goods Guards, 7 TNCs, 5 CMRs etc., and 2 TC/CC etc., Suppose, the first list contains six reserved candidates (4 SC candidates and 2 ST candidates) . Thus there would be a short fall of 3 SC and 1 ST candidate. Though the SC/ST candidates in the first list are those who have come up on their own merits, if these have availed of one or more of the concessions including concession in age limit, either at the time of initial recruitment or at any point of time later they cannot be considered as having been accommodated against unreserved vacancies and hence, they are also counted against reserved vacancies only. Again, assume that there is a shortfall of two candidates in one of the categories, say, 30% quota. This would mean that the first contains 27 candidates, (21 unreserved plus 6 reserved). Selection of candidates to make good the shortfall in reservation would be in the order of integrated seniority, irrespective of the category. For meeting the SC/ST reservation, if 4 are added, the total would rise to 27 plus 4 i.e. 31. This would then warrant elimination of 2 from the list and



the said 2 would be the junior most from the first list. (This may result in some minor imbalance in the category wise allocation but the same is inevitable, since the SC/ST Reservation takes precedence to the category-wise allocation). The list of such SC/ST candidates carved out from the Second list would form the Third List.

Stage 5. Dovetail the first list (after elimination of the junior most as described in the preceding para) and third list and arrange the same on the basis of the integrated seniority. This forms the panel.

13. By the above procedure, all the requisite conditions (ratio in respect of each category, percentage of reservation and making good the short fall) would be completely fulfilled. This has not been followed.

14. Now a look at the error that has been committed by the respondents. It is seen from the records (recommendation of the selection committee) that though 15 vacancies are to be filled up from the category of Sr. Asst. Guards/Asst. Guards, 13 employees alone qualified in the segregation of Sr. Asst. Guard and Asst. Guard, amongst whom, only 5 senior most among the segregation and one SC have been selected which resulted in a shortfall of as many as 9 Sr. Asst. Guards/Asst. Guards. In addition, by selecting separately the reserved candidates in disregard of those who have been selected against unreserved vacancies, the SC/ST representation has increased. It has not been indicated that such of the SC/ST candidates who have been selected against unreserved vacancies, are such that they have not availed of any of the concessions available for such reserved candidates at any point of time in their service career (i.e. either at the time of initial recruitment or later on and either in age relaxation,

qualification requirement or number of chances etc.,) It is clear that they have prepared the mark list on the basis of integrated seniority first, and without adopting the above method, (stage 1 to 4) which satisfies provisions of various orders, such as Annexure R-5, which has resulted in (a) imbalance in the percentage in each category and (b) inflated the number of reserved candidates selected. In that process, the applicants became the victims.


22. Thus, the OA is allowed. The select list dated 22nd march, 2007 is quashed and set aside. Respondents are directed to adopt the procedure specified above and prepare a fresh panel and those who are selected shall be given the training (if not already given) and their promotion shall be strictly on the basis of their inter-se integrated seniority. Respondents are directed to pass suitable orders promoting the selected candidates. The entire drill has to be performed within a period of two months from the date of communication of this order. Respondent No. 1 (or for that matter the Railway Board) may consider adopting the above procedure in respect of promotion to various other posts, which have identical aspects of category-wise allocation, adjustment of shortfall in any of the categories and reservation quota as in the case of Goods Driver.

23. No costs.

(Dated, the 22nd October, 2007)



Dr. K B S RAJAN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

cvt.