

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. Nos.279/13 & 238/13

Wednesday, this the 19th day of June, 2013

CORAM:

**HON'BLE Dr. K.B.S. RAJAN , JUDICIAL MEMBER
HON'BLE MR.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

O.A No.279/2013

Vijayaraghavan
S/o T.P Appukutty Nair
Ad hoc Goods Guard
Calicut Railway Station
Residing Pillarukandiyil House
PO Karanthur
Kunnamangalam Calicut

- **Applicant**

(By Advocate Mr.U Balagangadharan)

Versus

1. Union of India represented by General Manager
Southern Railway, Park Town
Chennai – 600 003
2. The Senior Divisional Personnel Officer
Palakkad Division
Southern Railway
Palakkad – 678 002
3. The Divisional Railway Manager
Southern Railway
Palakkad Division
Palakkad – 678 002

- **Respondents**

(By Advocate Mr.K.M Anthru)

O.A No.238/2013

1. Santhosh Kumar Barik
S/o Bishnu Charan Barik
Commercial Clerk, Panambur Railway Station
Mangalore
Residing at No.46, Mangalore

2. M.A Mohammad Kutty
S/o.M.S Ali
Sr.Pointsman
Shoranur, Southern Railway
Palakkad
3. N.Kuttan
S/o.Narayanan,Sr.Pointsman
Edakkad Railways Station, Kannur
Residing at NellarachalPost, Pallavayil
Wayanad
4. P.Venugopal
S/o.P.Venkaramani
Pointsman Grade A, Panambur Railways Station
Mangalore

5. Sujith K
S/o Parameswaran
Pointsman Grade A
Mannanur Railway Station
Residing at Karuvankunath
Chudavalathur PO
Shoranur

..... **Applicants**

(By advocate - Mr. U. Balagangadharan)
Versus

1. Union of India represented by General Manager
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2. The Senior Divisional Personnel Officer
Palakkad Division
Southern Railway
Palakkad – 678 002
3. The Divisional Railway Manager
Southern Railway
Palakkad Division
Palakkad – 678 002
4. Mr.Shuaib P
Commercial Clerk
C/o Sr.DPO, Southern Railway
Palakkad – 678 002
5. Ramachandran V
Pointsman
C/o Sr.DPO, Southern Railways
Palakkad – 678 002
6. Pradeep Kumar VP
Commercial Clerk
S/o Sr.DPO, Southern Railway
Palakkad – 678 002

7. Shyam Sasidharan
Commercial Clerk
C/o.Sr. DPO, Southern Railway
Palakkad – 678 002
8. Shiva Naik K
Pointsman
C/o.Sr.DPO, Southern Railway
Palakkad – 678 002
9. Subramanian NK
Sr.Pointsman (Ad hoc Goods Guard)
C/o.Sr.DPO, Southern Railway
Palakkad – 678 002
10. Badrilal Meena
Pointsman
C/o.Sr.DPO, Southern Railway
Palakkad – 678 002
11. Ramesh K.T
Sr.Pointsman
C/o.Sr.DPO, Southern Railway
Palakkad – 678 002
12. Samuel K.J
Pointsman
C/o.Sr.DPO, Southern Railway
Palakkad – 678 002
13. Radhakrishnan M
Pointsman
C/o.Sr.DPO, Southern Railway
Palakkad – 678 002
14. Ramanna M
Train Clerk, Ad hoc Goods Guard
C/o. Sr. DPO
Southern Railway, Palakkad – 678 002
15. Ramachandran K.T
Sr.Ticket Examiner (Ad hoc Goods Guard)
C/o. Sr. DPO, Southern Railway
Palakkad – 678 002
16. Ramesh P
Pointsman
C/o.Sr.DPO, Southern Railway
Palakkad – 678 002
17. Murali M.K
Train Clerk
Ad hoc Goods Guard
C/o.Sr.DPO, Southern Railway

Palakkad – 678 002

18. Divakaran C.A
Pointsman
C/o.Sr.DPO, Southern Railway
Palakkad – 678 002
19. Gangadharan E
Pointsman
C/o.Sr.DPO, Southern Railway
Palakkad – 678 002
20. Narayanan K
Pointsman
C/o.Sr.DPO, Southern Railway
Palakkad – 678 002
21. Kunhikrishnan KK
Sr.Pointsman
C/o.Sr.DPO, Southern Railway
Palakkad – 678 002
22. James NJ
Pointsman
C/o.Sr.DPO, Southern Railway
Palakkad – 678 002
23. Krishnan K.V
Sr.Pointsman
C/o.Sr.DPO, Southern Railway
Palakkad – 678 002
24. Unnikrishnan V.C
Pointsman
C/o.Sr.DPO, Southern Railway
Palakkad – 678 002 - Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil (R1-3))

The application having been heard on 19.6.2013, the Tribunal on the same day delivered the following:

ORDER

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

1. As the legal issue involved in the two O.As is one and the same, this common order would apply to both the cases. For the purpose of reference, OA No. 238 of 2013 has been taken as the pilot case.

2. There are in all six applicants in the two cases. They are functioning in different capacities in the Palghat Division of the Southern Railways in the scale of pay of Rs 5200 – 20200 with grade pay of Rs 2400/1900 as the case may be. The second respondent issued Annexure A-1 notification dated 02-08-2012 inviting applications from volunteers for being considered for promotion to the post of Goods Guard in the pay scale of Rs 5200 – 20200 with Grade Pay of Rs 2,800/- There are in all 31 vacancies against the 60% promotional quota earmarked for various categories, such as Commercial Clerks, Train Clerks, Points-man, Cabin-man, Shunting Master, Switchmen, Ticket Examiner etc., The notification manifested that there would be a written test and service records would be taken into account. And the minimum experience in any of the above grades would be three years. According to the notification, the panel will be formed in the order of Merit based on the aggregate marks of professional ability and record of service service and APAR's performance report wherever applicable.

3. The applicants are aspirants for the aforesaid post of Goods Guard and thus have applied on time. An alert notice was issued by the Respondents vide Annexure A-2. Written test was held on 15-12-2012 and 22-12-2012 and the applicants have come out successful in the written test securing more than 60% as required under the Rules. Annexure A-3 and A-4 refer. Applicant No. 1 in OA No. 238 of 2012 has in fact secured 95 marks in the written examination. However, the panel prepared vide Annexure A-5 dated 29-01-2013 did not contain any of the names of the applicants and the applicants downloaded the mark sheet from the web site through the computer vide Annexure A-6. The prescription of 100 marks for written examination had been reduced to 50 marks and for record of service for three years at the maximum of 15 marks had been incremented to 30. Further, the record of service was not one written at the appropriate time but called for in one go for all the three

years after getting the result of the written test. Whereas the applicants had worked under many officers in the past three years, report was obtained only from the current superior officer. There is no practice of getting Annual Performance Report in respect of persons upto Group C category with grade pay of Rs 2,400/- . Thus, the grievance of the applicants is reduction of marks in the written examination to the tune of 50 in the place of 100, coupled with the incrementing the marks of record of service and calling for the records of service from one person which has resulted in the applicants being ignored for promotion to the post of Goods Guard. According to the applicants, had the marks been allotted to the written examination as also to the record of service as per the Manual, there would be every scope of the applicants' becoming victorious. Hence, the applicants have, after approaching the authorities for administrative remedies, approached the Tribunal, seeking the following directions:-

1. Call for the records leading to Annexure A-5 and set aside the same as legally unsustainable.
2. Call for the records leading to Annexure A-6 and modify the assessment therein suitably to the extent that it does not double the marks obtained for Record of service.
3. Direct the second respondent to re-assess the Records of service of all participants as per the practice as discernible in Annexure A-7 and re-draw the select panel to the post of Guards.
4. Direct the second respondent to re-draw the select panel by converting the total marks obtained out of 115 (100 for Written test and 15 marks for Record of service) to 80 and mark promotions on the basis of merit thereon.
5. Direct the second respondent to fill up all the posts Guards against 60% quota from among UR candidates only as no quantifiable data has been drawn as per the apex court directions regarding adequacy or inadequacy of representations of Scheduled caste and Schedule Tribe candidates in the cadre of Guard.
6. Declare that the applicants are entitled to be included in the panel for Guard by re-assessing the record of service as envisaged in Annexure A-7."

4. Respondents have filed their reply. Facts are not disputed. They have stated that as there is no APAR in respect of employees with Grade Pay of Rs 2400,

their working reports for the preceding three years from the concerned supervisory officials were called for and based on the same, panel was drawn. However, after publication of the results, four representations from employees and one from the Southern Railway Employees Sangh had been received alleging certain errors in the selection. And, when the proceedings were examined, it was found that the committee has formed the panel adopting the following:-

- (a) Marks obtained by candidates in the written examination out of 100 had been brought down to 50 marks denomination.
- (b) Service records have not been verified nor marks deducted for punishment nor added for wards.
- (c) For record of service, 15 marks awarded for APAR, wherever available and for the performance Report by Supervisory officials for the last three years marks have been doubled to 30.
- (d) The selection has been finalized in 80 marks.

5. The respondents have also stated that the top scorer i.e. 95% could not figure in the list of selected candidates, as he had secured only 65.5% in the aggregate, while that securing 88% in the written examination was selected as his aggregate happened to be more. The doubling of the marks for APAR/record of service has resulted in the above situation. After calling for the report from the selection committee, the matter was referred by the DRM to the CPO, expressing his opinion that the panel would be reviewed and the procedure as per rules would be adopted. As the non selected candidates have approached the Tribunal, no further action had been taken.

6. Counsel for the applicant argued that now that the respondents have candidly conceded, the only course of action is to review the selection panel strictly as per the procedure and proceed further with the appointment as per the revised panel.

7. Counsel for the respondents has, on instructions from a Senior Officer present in the court, gracefully conceded the error committed in preparation of panel.

8. Arguments were heard and documents perused. If the earlier panel has not been prepared in accordance with the stipulated procedure and if the same had adversely affected any of the individuals, the only course left open is to review the panel and rectify the mistake. This is inevitable. In so doing, the deserving candidates would not lose their promotion/appointment while no unintended benefit would percolate to any one who would not have qualified. In fact, since the panel has not been in strict sense operated, mere selection or publication of selection does not give any vested right to any of the selected candidates. In a Constitution Bench of the Apex Court in *Shankarsan Dash vs Union of India* (1991) 3 SCC 47, the Apex Court has held as under:-

“7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post.”

9. Thus the settled legal position is that even a selected candidate has no indefeasible right to be appointed. (See *B. Premanand vs Mohn Koikal* (2011) 4 SCC 266 wherein the decision in *Shankarsan Dash* had been cited.

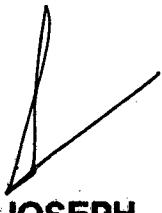
10. In view of the above, there would be no infringement upon the statutory or constitutional rights of any individual in reviewing the selection already made and recast the panel.



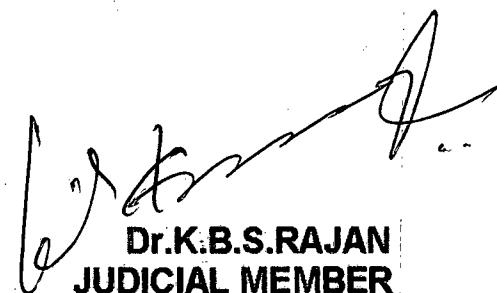
11. Accordingly, the O.As are allowed. The panel prepared vide Annexure A-5 is quashed and set aside. Respondents are directed to prepare a fresh panel strictly in conformity with the procedure adopted and also without varying the ratio of marks for written examination and record of service and operate the same for selection to the post of Goods Guard. Time calendared for the same is three months from the date of communication of this order.

12. No costs.

(Dated this the 19th day of June 2013)



K.GEORGE JOSEPH
ADMINISTRATIVE MEMBER



Dr.K.B.S.RAJAN
JUDICIAL MEMBER

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