

**CENTRAL ADMINISTRATIVE TRIBUNAL,**  
**ERNAKULAM BENCH**

**Original Application No. 388 of 2009**

**Monday, this the 22<sup>nd</sup> day of March, 2010**

**CORAM:**

**Hon'ble Mr. Justice K. Thankappan, Judicial Member**  
**Hon'ble Mr. K. George Joseph, Administrative Member**

P.T. Sasidharan, aged 59 years, S/o. Ayyappan,  
 goods Guard, Southern Railway, Shoranur,  
 Residing at Devi Nivas, Convent Road,  
 Shoranur.

.....

**Applicant**

**(By Advocate – Mr. T.A. Rajan)**

**V e r s u s**

1. Union of India, represented by the General Manager,  
 Southern Railway, Chennai.
2. The Senior Divisional Personnel Officer,  
 Southern Railway, Palakkad.

.....

**Respondents**

**(By Advocate – Mr. Thomas Mathew Nellimoottil)**

This application having been heard on 22.3.2010, the Tribunal on the same day delivered the following:

**ORDER**

**By Hon'ble Mr. Justice K. Thankappan, Judicial Member -**

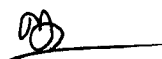
Challenging Annexure A-14 letter, the applicant has filed this Original Application. The applicant also prays that he may be exempted from having any viva voce test for promotion to the post of Goods Guard.

2. The case of the applicant is having a chequered history. The applicant approached this Tribunal by filing different Original Applications with

  
 \_\_\_\_\_

effect from 1997 starting with OA No. 1222 of 1997. Subsequently the applicant filed OA No. 397 of 2001 which culminated in Annexure A-6 order. It has also come out in evidence that the order passed by this Tribunal in OA No. 397 of 2001 was taken up before the Hon'ble High Court of Kerala in WP No. 21166 of 2004.

3. Originally the applicant was appointed as Pointsman during 1985 and subsequently he wanted to be promoted as Assistant Guard for which he had applied and as per the rule which existed at that time the applicant has to secure 60% of marks in the written examination and also has to undergo a viva voce. But according to the applicant though he secured 60% marks the department was of the view that there occurred some irregularities and his case was rejected for promotion, which he has challenged in OA No. 1222 of 1997. The said Original Application has been disposed of by this Tribunal directing General Manager to have an inquiry in the matter and after the inquiry, the applicant was again served with a notice stating that the applicant has not secured 60% of marks for the written examination for promotion to the post of Assistant Guard, against which a representation has been filed and the same was rejected by the department and hence the applicant has filed OA No. 397 of 2001. The said Original application has been considered by this Tribunal and this Tribunal held that the applicant has to be called for viva voce after adding the seniority marks also for his promotion. While considering that Original Application this Tribunal directed that the applicant may undergo the viva voce which the department wanted to conduct and subsequently the order passed by this Tribunal has



been challenged before the Hon'ble High Court of Kerala in Writ Petition No. 21166 of 2004. The Hon'ble High Court confirmed the order passed by this Tribunal and hence the department now wanted to conduct the viva voce test. Therefore, the present notice has been issued for viva voce test. Under the above background, the present Original Application has been filed.

4. The Original Application has been admitted by this Tribunal and notice has been ordered and a reply statement is also filed for and on behalf of the respondents. The stand taken in the reply statement is that since this Tribunal has already ordered in OA No. 397 of 2001 to have the viva voce test, they are proceeding with that and there is no irregularity in proceeding with the intended viva voce as per Annexure A-14.

5. After the receipt of the copy of the reply statement a rejoinder also has been filed for and on behalf of the applicant further reiterating all the grounds taken in the Original Application and further producing Annexures A-15 and A-16 orders of the Railway Board. It is stated in the rejoinder that the Hon'ble High Court of Kerala while disposing of WP No. 21166 of 2004 though confirmed the order passed by this Tribunal in OA 397 of 2001 observed that "the applicant has been continuing in the post of Assistant Guard since 1996. Now he has been sent for training for promotion to the next higher post of Goods Guard". Further it was clarified that "the above decision of the CAT will not operate as a precedent as far as the writ petitioners are concerned". The applicant in his rejoinder has taken a stand



that as per Annexure A-11 order issued by the Railway Board, the system of viva voce test has been abolished.

6. We have heard the counsel appearing for the applicant Mr. T.A. Rajan and counsel appearing for the respondents Mr. Thomas Mathew Nellimoottil and we have perused all the documents produced before this Tribunal. The fact remains that the applicant was working as Pointsman from 1996 onwards and he has appeared for the examination and only because of the reason that he had not obtained 60% marks for written examination he has not been promoted and therefore, he has not appeared for the viva voce also. However, these questions have been considered by this Tribunal while disposing of OA No. 397 of 2001. The counsel for the applicant now submits that this Tribunal may consider the case of the applicant that he has to retire within one week from today namely on 31<sup>st</sup> March, 2010 and he has already undergone the training for the post of Goods Guard and taking into consideration all these aspects including the point that his juniors have been promoted and some of them have already retired from service, at this stage or at this distance of time, whether the Annexure A-14 shall be implemented or not. This is the question we have to consider in the light of the facts now revealed. It is admitted fact that from 1989 onwards the applicant was appointed and working as Pointsman till 1996 and thereafter he was appointed and working as Assistant Guard, the feeder category of the post of Goods Guard and once the applicant has already undergone training for Goods Guard and he has completed the training successfully, if so, it is not necessary for the Department to have



the viva voce test only for compliance of the order of this Tribunal. At this stage we have seen that as per Annexure A-6 order, the Railways themselves have now considered the question of not having the viva voce test for any employment and the fact that the applicant has to retire within one week from today, there is no case for the respondents that the applicant is not having sufficient experience or the residency period in the post of Assistant Guard and that apart, facing of viva voce may not be a must for promotion to the post of Goods Guard. In this context we have to see the circumstances under which the posts have been now filled up by the Department. Originally, the Department was promoting Pointsman to Assistant Guard and at present the post of Assistant Guard is also abolished and there is no post of Assistant Guard exists now. Hence, the question of conducting viva voce test for the applicant alone for promotion to the post of Assistant Guard can be avoided and does not arise at all. If so the question remains is that whether the applicant is entitled for consideration for the post of Goods Guard with this background and the experience and also qualification which he has. Especially, it is seen that the applicant has already passed the test which has been stopped only because of some allegations of malpractices and some irregularities occurred in the Department and that by itself cannot be taken as a reason to avoid the applicant from getting his promotion.

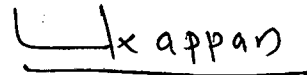
7. In the above circumstances, we see that Original Application can be allowed by setting aside Annexure A-14 notice and also by directing the respondents to consider the case of the applicant for promotion to the post



of Goods Guard at the earliest taking into consideration the fact that the applicant has to retire on 31<sup>st</sup> March, 2010. The respondents are further directed to pass appropriate orders in this matter within 45 days from the date of receipt of a copy of this order giving the benefit to the applicant for promotion on the post of Goods Guard with effect from the date of issuance of Annexure A-16 the promotion of the applicant by regularizing date in favour of the applicant. There shall be no order as to costs.



**(K. GEORGE JOSEPH)**  
**ADMINISTRATIVE MEMBER**



**(JUSTICE K. THANKAPPAN)**  
**JUDICIAL MEMBER**

**"SA"**