

Date of final order in the cause title
corrected as "20-1-2004" instead of
' 20.1.2003 '.

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No.397/2001

Tuesday this the 20th January 2003

C O R A M:

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR.T.N.T.NAYAR, ADMINISTRATIVE MEMBER

P.T.Sasidharan, Assistant Guard,
Southern Railway, Shoranur.

Applicant

(By Advocate Mr.P.Santhoshkumar)

Vs.

1. Union of India represented by the General Manager
Southern Railway, Chennai - 3.
2. The Chief Personnel Officer, Southern Railway,
Chennai.
3. The Divisional Railway Manager, Southern Railway,
Palakkad Division, Palakkad.
4. The Senior Divisional Personnel Officer
Southern Railway, Palakkad Division, Palakkad.

Respondents.

(By Advocate Mr.Rajeswari Krishnan)

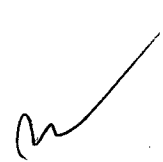
The application having been heard on 20.1.2004 and on
the same day the Tribunal ordered the following:

O R D E R

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

The applicant who commenced service as Relieving Porter on 20.6.1973 was promoted as Liverman in 1981 and as Pointsman in 1985. On the basis of selection held pursuant to Annx.A1 notification, the applicant was appointed as Assistant Guard w.e.f. 24.9.1996. The applicant was served with Annx.A6 notice dated 24.7.97 informing him that since he did not secure 60% marks in the written test he would not be called for viva voce. Although the applicant made representation, Annx.A7 order dated 18.9.97 issued deleting his name from the panel and ordering his reversion. The applicant filed O.A. No.1222/97 challenging Annx.A7 order. This O.A. alongwith a batch of other cases challenging the selection process on the basis of vigilance

report was ultimately decided by order dated 23.9.99 by this Bench of the Tribunal directing the General Manager to appoint a high level committee to go into the alleged irregularities and if the General Manager be satisfied that irregularities had been committed in the process of selection, to cancel the selection giving notice to the affected parties. Thereafter, revaluation of the answer papers were made and Annx.A9 notice was issued to the applicant stating that he has not secured the 60% marks in written test in the revaluation, he would not be eligible to be called for viva voce and would be reverted from the post. The applicant submitted Annx.A10 representation wherein he was stated that he should be called for viva voce by reckoning the seniority marks due to him. After considering the representation submitted by the applicant, the respondents issued Annx.A11 order informing the applicant that in terms of the letter dated 28.3.2001 of the Railway Board, the seniority marks is not to be reckoned for calling a candidate for viva voce therefore, the applicant having not obtained the requisite marks in the written test he would not be called for viva voce and he was reverted from the post. The applicant filed this application seeking to set aside Annx.A11 order, for a declaration that the reversion of the applicant as per order dated 28.3.2001 from the post of Assistant Guard to the earlier post as illegal and for a direction to the respondents to continue the applicant on the post of Assistant Guard. It is alleged in the application that the respondents have gone wrong in not considering the eligibility of the applicant to be called for viva voce after adding the marks for notional seniority alongwith the marks for written test. It is also the case of the applicant that in terms of paragraph 219(g) of the Indian Railway Establishment Manual, (IREM for short), for selection in



the same line of promotion the seniority mark is to be added for determining the eligibility for being called for viva voce alongwith marks obtained in the written test.

2. The respondents' case is that according to the instructions contained in the Railway Board's letter dated 28.1.1988 (Annx.R1-C), when appointment is made to the "General posts" by selection, notional seniority mark is not to be added alongwith the written test for being called for viva voce and that the applicant who obtained only 53 marks out of 100 in the written test was not entitled to call for viva voce. According to the respondents the relevant clauses apply in this case are 219(h) & (i) of IREM which prescribe that when a selection is made to "General posts" notional seniority mark is not to be reckoned for determining the eligibility.

3. The applicant has filed rejoinder in which he specifically contended that the post of Assistant Guard being in the direct line of promotion from the categories of Cabinman, Leverman, Pointsman and Gateman. As far as the applicant is concerned the post is not a "General post" and he should have been considered for viva voce taking into account of his marks for seniority. In support of his contention the applicant has produced Annx.A12, the Avenue Chart.


4. In the Additional reply statement the respondents have reiterated their contention that while making selection to General post the seniority marks need not be added to the marks obtained in the written test. The respondent contend that the post of Assistant Guard is a General post because various categories are considered for selection and therefore is not a cadre post in the applicant's cadre. Hence para 219(g) of IREM



is not applicable. However the authenticity of the Avenue Chart produced by the applicant have not specifically disputed by the respondents.

5. We have carefully considered the contentions raised by the parties as also the relevant facts, circumstances and materials emerging from the submissions made by the learned counsel on either side. The pivotal point in this case, whether the post of Assistant Guard fall in the direct line of promotion from the grade of Cabin man, Lever man, Pointsman and Gateman to which the applicant belongs or as far as the applicant is concerned, it is a general post. If the post of Assistant Guard fall in the direct line of promotion for Pointsman as far as the applicant is concerned the post of Assistant Guard is not a General post. If the post of Assistant Guard is a General post then the stipulation contained in sub-paragraphs (h) & (i) of 219 IREM would apply; if not what would be sub-paragraph (g) of 219 IREM.

6. The applicant has categorically stated that the post of Assistant Guard fall in the direct line of promotion. To establish this claim he has produced Annx.A12, the Avenue Chart for Assistant Guards. It is evident from Annx.A12 that the categories of Cabinman, Leverman, Pointsman and Gateman in the scale of Rs.800-1150 get promoted to Grade-I or Grade-A as the case may be in the scale of Rs.950-1500 and then as Assistant Guard. The Avenue Chart is issued by the CPO, Madras's letter dated 22.10.91. Therefore, it appears that the post of Assistant Guard fall directly in the line of promotion of Cabinman, Leverman, Pointsman and Gateman to which category the applicant belong. The reliance placed on Railway Board's letter



to contend that seniority marks are not to be added for determining eligibility of the applicant does not appear to be well placed because what is stated in Annx.R1(C) is as follows:


"3. The matter has been carefully considered by the Board and it has been decided that the notional marks for seniority should not be added for purpose of deciding eligibility for being called for viva voce test in respect of the following categories of posts.

I) Excadre posts where the employee retains his lien on the parent cadre and seeks advancement therein.

II) General posts like Welfare Inspectors and Law Assistant etc. where employees of different departments and categories are considered but after induction, they can seek advancement only in the new cadre."


Therefore, we find that in the case of the applicant, the relevant clause in 219 IREM is 219(g) according to which for being eligible to be called for viva voce alongwith the marks in the written test and notional seniority marks is also required to be added. Under these circumstances, the respondents is to be directed to add the notional seniority marks of the applicant to the marks obtained in the written examination if on such additions his marks is 60% or above, call for the applicant for viva voce and thereafter determine the question of his placement in the panel. We make it clear that the stipulation contained in sub-paragraph (h) & (i) of 219 IREM does not apply in the case of the applicant for selection to the grade of Assistant Guard as this post as far as the applicant is concerned is not a General post but is in the direct line of promotion.

7. In the light of what is stated above, we dispose of the application directing the respondents to consider the applicant's eligibility to be called for viva voce after adding the seniority marks to the marks obtained in the written examination and if on addition he qualifies to be called for viva voce to hold viva voce for him and thereafter consider his

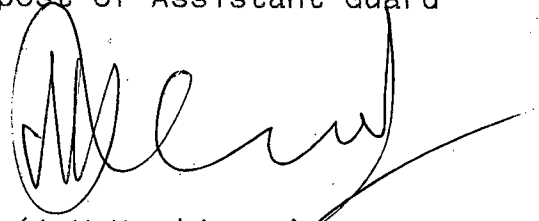


6.

placement in the panel on the basis of the result. Till such time the said exercise is completed and results announced the applicant shall not be reverted from the post of Assistant Guard presently occupied by him. No costs.



(T.N.T.Nayar)
Administrative Member



(A.V.Haridasan)
Vice Chairman.

kkj