

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 1048/97

Date of Decision: 30th September 98

S.R.Tayade & Ors.

.. Applicant

Shri D.V.Gangal

.. Advocate for
Applicant

-versus-

Union of India & Ors.

.. Respondent(s)

Shri V.S.Masurkar

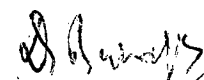
.. Advocate for
Respondent(s)

CORAM:

The Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman

The Hon'ble Shri D.S.Baweja, Member (A)

- (1) To be referred to the Reporter or not ? ✓
- (2) Whether it needs to be circulated to other Benches of the Tribunal ? +


(D.S.BAWEJA)
MEMBER (A)


(R.G.VAIDYANATHA)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO.1048/97

Presented
~~20th~~ this the 30th day of *September* 1998.

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri D.S.Baweja, Member (A)

1. Suresh Ramchandra Tayade
2. Afzal Khan Hussain Khan Tadv
3. Parasnath Shivnarayan Mishra
4. Bernidict Orlando Fernandez
5. Robert Anthony

By Advocate Shri D.V.Gangal

... Applicants

V/S.

1. The Union of India through
The General Manager,
Central Railway, C.S.T., Mumbai.
2. The Divisional Railway Manager,
Central Railway, Bhusawal.
3. The Selection Committee through
its Chairman, C/o. The Divisional
Railway Manager, Central Railway,
Bhusawal.
4. The Competent Authority through
the Divisional Personnel Officer,
Central Railway, Bhusawal.
5. The Chief Vigilance Officer,
Office of the General Manager,
Central Railway, Mumbai CST.
6. Shri Prabhakaranjan,
Divisional Commercial Manager,
Central Railway, Bhusawal.
7. Shri P.V.Vaidya,
Divisional Personnel Officer,
Central Railway, Bhusawal.
8. Shri S.K.Tyagi,
Divisional Operating Manager,
Central Railway, Bhusawal.
9. Shri Meena,
Divisional Engineer,
Central Railway, Bhusawal.

By Advocate Shri V.S.Masurkar
C.G.S.C.

... Respondents

O R D E R

(Per: Shri D.S.Baweja, Member (A))

This application has been jointly filed by five applicants who are working as Khalasi in Group 'D' under Divisional Railway Manager at Bhusawal challenging the selection to Group 'C' post of Ticket Checker against 33.1/3% quota.

2. The brief facts leading to the challenge of selection are as follows :- A Notification was issued on 9.6.1997 for selection to 78 posts of Ticket ~~Collector~~ in Group 'C' against 33.1/3% quota. The eligibility was 3 years' service in Group 'D'. The applicants applied against the same. The applicants qualified in ^{the} written test. The written test was followed by an oral test. The panel was declared on 27.11.1997 placing 30 candidates on the panel. However, the applicants were not selected in the final panel after the oral test. Feeling aggrieved by their non-selection, the present OA. has been filed on 2.12.1997 seeking the following reliefs :- (a) to call for the records of the selection and quash the panel notified on 28.11.1997. (b) to declare that the applicants are entitled to be included in the panel dated 28.11.1997. (c) to direct Respondent No. 5 to investigate the fraud in conducting selection process leading ^{to} declaration of panel dated 28.11.1997.

3. The applicants have challenged the impugned selection on four fronts as under :-
(a) The selection was required to be done only on the basis of written test and holding of the viva-voce test is illegal in terms of provisions in Para 189 of Indian Railway Establishment Manual as per which the viva-voce test could be held ^{only} after obtaining General Manager's specific approval and in the present case no such approval was taken. The Notification had been issued by the Assistant Personnel Officer laying down oral test in addition to written test and this Notification is not issued by the competent authority. In view of this, the applicants are entitled to be declared successful based on the written test and deserve to be included in the panel. (b) Even if there is a sanction of the General Manager for holding the oral test, the holding of interview is illegal and unnecessarily for the post of Ticket Collector as the said post is in the lowest rank of the cadre. (c) The interview process had been given undue weightage and the ratio of marks of written test to interview is unreasonably high, which had led to illegal failure of the applicants. (d) The selection is tainted with malafides and mal-practices. The applicants deserve to be placed on the panel on the basis of written test but they were not placed in the panel as they failed to yield to ^{a few} illegal consideration. The applicants have brought out instances to support this contention.

4. The applicants through the amendment application while reiterating the allegation of malafides as brought out in the original application have stated that the selection committee had went to the extent of selecting a candidate named ^{Shri} Arvind Yashwant who is physically handicapped and not fit for the post.

The applicants have also made the Members of the Selection Committee by name as Respondents No. 6 to 9.

5. The official respondents have filed a written statement opposing the application. The respondents have also filed supplementary rejoinder to the rejoinder filed by the applicants for the written statement. The respondents submit that the oral test has been laid down in the Notification issued for the selection in terms of the Railway Board's letter dated 29.11.1962 and the Chief Personnel Officer's letter dated 29.5/6.79. The minimum qualifying marks for oral test have been laid down. The applicants though ^{have} passed in the written test, but ^{have} failed to secure the minimum qualifying marks in the oral test and therefore did not find place in the panel. The respondents further contend that the selection process had been conducted as per the instructions laid down by the Railway Board and all allegations of malafides and illegality are baseless and are denied. The respondents contend that the applicants ^{made} have these wild allegations only to give colour to their case before the Tribunal. The respondents have also brought out that the applicants have approached the Tribunal without exhausting the departmental remedies and therefore the present application is pre-mature and the same deserves to be dismissed on this ground alone.

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6. The Respondents No. 6 to 9 who have been made party by name through the amendment application as indicated earlier have also filed separate counter affidavits. The contents in all the affidavits are more or less the same. All the respondents No. 6 to 9 have stated that neither they have acted malafidely nor they had accepted favour from any person. They have contended that the allegations against them are false and mischievous and the applicants should be called upon to prove the same before the Tribunal. They have also prayed ~~that the~~ allegations made in the original application should be expunged and the OA. should be dismissed with costs.

7. The applicants have filed rejoinder reply to the written statement of the official respondents reiterating the grounds taken in the original application. The applicants have maintained that the oral test had been conducted without obtaining prior approval of the General Manager as provided as per the rules and therefore the General Manager had refused to accord the approval subsequently to cure the illegality. The applicants, however, have not filed any rejoinder reply to the affidavits of Respondents No. 6 to 9.

8. As indicated earlier, the respondents have also filed supplementary written ~~cloud~~ reply to the rejoinder of the applicants. Respondents have submitted that General Manager's specific approval is not necessary for each and every selection and the



standing instructions already exist which have been approved by the General Manager. The respondents have also averred that the selections for the post of Ticket Collector from Group 'D' staff are being conducted prescribing oral test in addition to written test ^{from the inception} and the same procedure ^{present} had been followed for the ~~the~~ selection. The respondents have further contended that for the post of Ticket Collector, the oral test in addition to written test is imperative as such staff is coming in ~~in~~ contact with public and therefore capability for the same has to be adjudged through the oral test.

9. The counsel for the applicants has relied upon the following judgements in support of various grounds advanced for challenging the impugned selection:-
(a) B.S.Vadera vs. Union of India, AIR 1969 SC 118,
(b) The Purtabpur Company Ltd. vs. Cane Commissioner of Bihar & Ors., AIR 1970 SC 1896. (c) Indian Airlines Corporation vs. Capt. K.C.Shukla & Ors., (1993) 23 ATC 407.
(d) Ashok & Anr. vs. State of Karnataka & Ors., (1992) 19 ATC 68. (e) The Marathwada University vs. Seshrao Balwant Rao Chavan, AIR 1989 SC 1582.

10. The counsel for the respondents has relied upon the following judgements :- (a) Madan Lal & Ors. vs. The State of Jammu & Kashmir & Ors., JT 1995 (2) S.C. 291. (b) M.H.Devendrappa vs. The Karnataka State Small Industries Development Corporation, 1998 (2) SLJ 50.

11. We have heard Shri D.V.Gangal, learned counsel for the applicants and Shri V.S.Masurkar, learned counsel for the respondents. We have ~~given~~ careful thought to the arguments advanced during the hearing and the material on record has been also carefully considered.

12. From the averments made by the applicants in the original application as well as in the rejoinder, the central issue on which the entire challenge of the impugned selection hinges is that the oral test in addition to written test had been conducted illegally as no sanction of General Manager was obtained for the same as required as per the extant rules. The merits of the case, therefore, depends upon whether the contention of the applicants is sustainable based on the material brought on record by the respondents. In addition to this, the applicants have raised several other grounds challenging the impugned selection. The respondents have also raised several issues pleading that the present application is not maintainable due to various infirmities. Before going to the central issue, these issues will be first taken up.

13. During the hearing, the learned counsel at the outset opposed the maintainability of the application on the plea that the same suffers due to non-joinder of the necessary parties. The counsel for the respondents submitted that the panel has been since declared and operated and therefore the candidates who have been placed on the panel are necessary parties as no adverse order ~~could~~ be passed against them without hearing their defence. The respondents have further stated that the applicants have alleged in Para 4.5 that five candidates have passed the written test and oral interview as a result of payment of extraneous considerations to the Members of the Selection Committee as they had not at all written the answers in the Answer-Books and that the answers given by them are totally wrong

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and the answers are not in the handwriting of these candidates. The respondents have further stated that in Para 4.6 the applicants have alleged that the Selection Committee had selected one candidate, ^{Shri} viz. Arvind Yashwant who is physically handicapped. It is the plea of the respondents that these candidates who have been named in the original application alleging that they have been placed on the panel by extraneous considerations and were not fit to be selected are necessary parties as no adverse orders could be passed against them without hearing their version. After giving careful consideration to the facts brought out by the respondents, we are inclined to ~~subscribe to~~ the submissions of the respondents. The counsel for the applicants during hearing repelled the plea of non-joining of the necessary parties stating that the applicants are only praying for inclusion of their names in the panel and no specific prayer has been made for deletion of any name. We are not impressed by this submission of the applicants. The averments made in the OA, are very specific and the applicants are challenging the selection of the six candidates ^{praying for} detailed above and also ~~quashing~~ of the entire panel. In our opinion, the six candidates specifically named in the original application are necessary party. Those who are placed on the panel are also necessary party ^a and if all candidates are not made party ~~at least~~ ^{have been} ~~at least~~ ^{could} made party on a representative basis. However, this has not been done and therefore the present OA. with this infirmity is not maintainable as no adverse order could be passed against the parties who are necessary ~~but~~ but not impleaded in the original application. In this connection, we will rely upon the judgement of the Hon'ble Supreme Court in the

case of Probodh Verma vs. State of U.P. In this case, the Hon'ble Supreme Court has held that the persons to be vitally affected were necessary party and the High Court ^{should have} had not proceeded with the writ petition without insisting upon such persons or some of them in representative capacity being made respondents. The same view has been taken by the Hon'ble Supreme Court in the case of Rajesh Kumar Saili vs. State of Punjab & Ors., 1991 SCC (L&S) 556. In this case, though the Hon'ble Supreme Court held that the allocation of marks for the interview were excessive but due to non-impleading of the parties who had been selected, the panel was not quashed. Keeping in view the above observations, we are constrained to come to the conclusion that the present OA. is not maintainable on account of non-joinder of the necessary parties.

14. The respondents in the written reply and also emphatically argued during the oral submissions have stated /that the applicants have taken a calculated risk of appearing in the selection and having failed in the selection cannot turn around and challenge the process of the selection on the plea that it had been conducted illegally. The respondents submit that the applicants are stopped from challenging the selection. The applicants in the rejoinder reply have not controverted this statement of the respondents. ^{For} considering merit in the contention of the respondents, it would be necessary to ^{highlight} the salient facts regarding the process of selection. It is noted that the applications were called from the eligible staff as per the Notification dated 9.6.1997. Out of 116 eligible staff, 111

appeared in the written test held on 23.8.1997. The result of the written test was declared on 17.11.1997. The oral test was held on 26.11.1997 and the panel was declared on 28.11.1997. From these dates, it would be seen that the applicants had ample opportunity to represent against the laying down of oral test in addition to written test after the Notification was issued and subsequently, after the written test result was declared. From the averments made in the OA., we find that no representation at any time was made by the applicants with regard to oral test. No representation has also been brought on record. It is only after the applicants find^{ing} their names not being in the select list, that they have come out with various grounds to challenge the impugned selection. In fact, even after the final panel was notified, no representation seems to have been made by the applicants with regard to the oral test. Therefore, the respondents have taken a plea that the applicants have rushed to the Tribunal without exhausting the departmental remedies by way of representation. Keeping this fact-situation in focus, we are inclined to accept the contention of the respondents. The candidates who had appeared in the selection without any protest and on being unsuccessful cannot challenge the selection on the plea that the selection process is illegal. In this connection, we refer to the judgement in the case of Madan Lal & Ors. vs. The State of J & K & Ors. which has been relied upon by the respondents. The Hon'ble Supreme Court in Para 9 of this judgement has observed as under:-

"..... It is now well settled that if a candidate takes a calculated chance and appears at the interview then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or Selection Committee was not properly constituted. In the case of Om Prakash Shukla v. Akhilesh Kumar Shukla & Ors., (AIR 1986 SC 1043), it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination, he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner."

The same view has been expressed by the Hon'ble Supreme Court in the subsequent judgement in the case of University of Cochin vs. N.S.Kanjoonjamma & Ors., 1997 (2) S.C.SLJ 157. It is held by their Lords that candidates who remained unsuccessful in the selection process cannot challenge the correctness of the procedure. Keeping in view what is held by and the facts of the case, the Hon'ble Supreme Court we hold the view that the applicants are estopped from raising the issue of the selection being illegal on account of conducting of oral test and therefore the relief prayed for by the applicants is not sustainable.

15. The applicants in the original application have made several averments in support of their contention that even if there is a sanction of the General Manager for holding of the interview, which, of course, the applicants challenge that there is none ^{this} and will be discussed subsequently, the holding of interview is unnecessary and illegal for the post of Ticket Collector

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being in the lowest rung of the Group 'C' Cadre and it is neither a managerial or an administrative post. The applicants in support of this argument have cited the judgement in the case of Indian Airlines Corporation (Supra). The applicants have also contended that the alleged rules for conducting the oral test in addition to written test had not been circulated and the applicants were not aware of the same. It is also further submission of the applicants that the oral test process had been given undue importance and the ratio of the marks of the written test to the oral test is unreasonably high and which has led to the illegal failure of the applicants. The applicants have sought support of the Hon'ble Supreme Court's judgement in the case of Ashok & Anr. vs. State of Karnataka & Ors. Though the applicants have made several submissions in the OA. questioning the very need for holding the oral test for the category of the post under reference, but during the oral submissions, the counsel of applicants did not dwell on these contentions. In fact, no submission was made on these points. Since these grounds have been taken in the original application, we have carefully considered the same. The contention of the applicants that the oral test is not necessary for the selection to the post of Ticket Checker is not tenable. At the one hand, the applicants contend that the oral test could be taken only if considered necessary by the General Manager as per the rules, while on the other hand, they are questioning the very need for holding the interview. Whether the oral test is necessary or not is a policy matter to be decided by the competent authority and in the present case, we find that the rules provide for conducting of the oral test if considered

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necessary by General
Manager based on the job requirement. The
respondents have submitted that the Ticket
Collectors are required to come in public contact
and their capability for communication with the
public has to be judged through the oral test.
Leaving aside provisions of rules for conducting of
the oral test, we are impressed by the argument
of the respondents that the oral test is necessary
for the post under reference. As regards the marks
the excessive with
for oral test being when compared the written
test, the applicants have made a vague submission.
The applicants have not indicated as to the marks
allotted for the oral test. In the absence of any
details to support their contention, we are unable
to appreciate this contention and go into the merits
of the same. In any case, none of the submissions
of the applicants that conducting of interview for
the post under reference is unwarranted
merit consideration as the applicants have not challenged
the vires of the provisions as per Para 189 of Indian
Railway Establishment Manual on which the entire case
of the applicants has been based alleging that the approval of
General Manager had not been obtained for conducting
the oral test. In view of this, we come to the conclusion
that these submissions of the applicants do not deserve
to be considered on merits and form the basis for
vitiating the impugned selection.

16. The applicants have made allegations against
the Members of the Selection Committee stating that
the Selection Committee had acted on extraneous
considerations and by practicing favouritism in passing

the five candidates mentioned in Para 4.5 and one candidate Shri Arvind Yeashwant in Para 4.6 of the original application. The applicants have also made an allegation that interview committee had failed the applicants in the oral test as the applicants did not comply with the illegal considerations. It is also alleged that it is the talk of the town that for extreneous consideration the candidates selected had paid Rs.40,000/- to Rs.50,000/- to the Members of the Selection Committee. The applicants have made the Members of the Selection Committee as respondents by name through the amendment application. The respondents 6 to 9 who have been impleaded by name have filed separate affidavits as indicated earlier. These respondents have totally denied the allegations of the applicants stating that they have neither acted malafidely against anybody nor had accepted any favour and therefore they have prayed that the allegation against them should be expunged from the original application. Though the applicants have devoted considerable portion of OA. to the allegations of malafides and corruption but the learned counsel for the applicant did not raise ^{the} ~~any~~ issue during the arguments. The learned counsel for the respondents, on the other hand, took up this issue strongly submitting that in case if the applicants do not press for the grounds of malafides and corruption as indicated above, the same should have been deleted through a Misc. application. Since these grounds exist in the OA., he made a submission that the Bench should record suitable ~~findings~~ ^{the official} so that image of ~~respondents~~ ^{respondents}



and the Respondents, No. 6 to 9 is not tarnished by the vague allegations. The counsel for the respondents also placed the complete proceedings of the selection in original before the Bench including the Answer-Sheets of the 5 candidates mentioned in Para 4.5 of the OA. The counsel for the applicants while reacting to the submission of the counsel for the respondents on this aspect, only stated that he still maintains the position with regard to the Answer-Sheets of the 5 candidates who are not able to write and perhaps somebody else have written on their behalf or the answer-sheets had been substituted. He made oral submission that these 5 candidates should be called before the Tribunal for cross-examination by the applicants to establish their allegation. The counsel for the applicants contended that this may be recorded as his oral Misc.Petition. We are unable to accept the contention of the applicants. If the applicants ^{wanted to} prove the allegation with regard to the answer-sheet, such a prayer should have been made earlier if they were serious about the same. Such a prayer at the time of arguments cannot be allowed. On going through the averments made with regard to the allegation of malafides, we find that except for making wild and frivolous allegations just on here say, no supportive material has been brought on record even to have a suspicion of malafides ⁱⁿ the action by the Members of the Committee in failing the applicants on account of extraneous consideration. Judicial challenge cannot be based on such malicious grounds without foundation to support. In fact, we find that in the rejoinder reply the applicants have submitted that OA. deserves to be allowed at the admission stage without going into the question of corruption. If it was so, it was expected of the applicants to file a suitable Misc.application with a prayer to expunge all the averments from the OA. concerning

the allegation of malafides and corruption and to delete the names of Respondents No. 6 to 9 who are impleaded as party by name. Having raised the grounds of malafides in the OA. and making a prayer for quashing of the selection being tainted by extraneous consideration, the applicants cannot take a recourse to keep quiet on the issue and plead that the matter may be decided without taking the issue of corruption into consideration. Keeping these facts in view, we consider it necessary to record strong and emphatic disapproval of the conduct of the applicants in this case with the hope that this will act as a deterrent to the present applicants and other litigants to act more truthfully and with a greater sense of responsibility.

17. Now we come to the main ground of challenge which was the focus of oral submission of the counsel for the applicants during the hearing. The applicants have contended that the oral test for the impugned selection had been conducted without specific approval of the General Manager as is required as per the provisions of Para 189 of Indian Railway Establishment Manual. It is further contended that the Notification dated 9.6.1997 laying down the oral test for the selection had been issued by the Assistant Personnel Officer^{4th} who was not the competent authority as no delegation of power had been done. The respondents, on the other hand, have submitted that no specific approval of General Manager is required to be taken for each selection and since the selections are being done regularly, standing approval of the General Manager is obtained and the selections are thereafter conducted accordingly. The respondents have stated that the oral test has been laid down in terms of Railway Board letter dated 29.11.1962 and Chief Personnel Officer's letter dated 29.5./6.6.1979.

Before going ~~further~~ into merits of the contentions of the applicants, it would be necessary to refer to the judgements cited by the applicants in support of their contentions and whether the same are relevant to the dispute in the present OA. The first judgement cited by the applicant is in the case of B.S. Vadera vs. Union of India & Ors. This judgement has ^{been pleading} ~~cited~~ that the instructions laid down in the Indian Railway Establishment Manual in Para 189 have been issued under Rule 157 of Railway Establishment Code and therefore the provisions of Para 189 are statutory in nature. In this judgement, the Hon'ble Supreme Court has held that the rules framed by the Railway Board are within the power conferred under Rule 157 of the Railway Establishment Code and in the absence of any Act having ~~been passed by~~ the appropriate legislature, ~~the rules framed by the Railway Board have~~ ^{statutory} ~~effect~~ and if so retrospectively also. The other two judgements, viz. The Purnabpur Company Ltd. vs. Cane Commissioner of Bihar & Ors. and The Marathwada University vs. Seshrao Balwant Rao Chavan have been cited to support the contention that power delegated to General Manager as per the provisions of Para 189 ~~could not be~~ delegated further and exercised by the Assistant Personnel Officer as has been done ~~as per the Notification~~ dated 9.6.1997. Considering the facts of the case and the issue involved, what is held in these judgements ^{because it is} is not very relevant. It is ~~not~~ the case of the respondents that the provisions of Para 189 are not applicable to the selection under reference. ~~It~~ is also not the contention of the respondents that the power under Rule 189 (a) (i) (ii) has been further

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to be delegated and exercised by the Assistant Personnel Officer in violation of the rules. The case of the respondents is that in terms of the provisions of Para 189, the approval of the General Manager for conducting the oral test for selection to the post of Ticket Collector exists and standing Circular to that effect had been issued. In view of this, we are not reviewing these judgements further in detail.

18. The main contention of the applicants is that no specific approval had been taken from the General Manager for holding the oral test and in view of this, the respondents are not able to bring on record the approval of the General Manager who had refused to give any post-facto sanction. The respondents, on the other hand, have contended that sanction of General Manager for every selection ^{for promotion} from Group 'D' to Group 'C' is not necessary and the standing approval exists as per the Circular dated 29.5./6.6.1979 for the selection under reference.

We are not impressed by the contention of the applicants and inclined to endorse the stand of the respondents.

Since the selections are being done regularly by the various divisions of the Zonal Railway on regular basis, it cannot be expected that every time the approval of the General Manager is required to be taken for conducting the selection with regard to the need for oral test. The Administration will certainly lay down standing instructions as per the provisions of the rules and approval of the General Manager where necessary. Keeping this in view we will examine whether the approval of General Manager

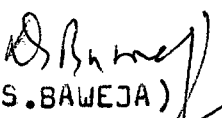
is covered by the standing instructions brought on record by the respondents through the letter dated 29.5./6.6.1979 with the written reply. The learned counsel for the applicants was at pains to argue to bring out ^{his doubts} with regard to validity of this Circular. This was mainly on the plea that the respondents have not brought on record a copy of the Railway Board letter dated 29.11.1962 referred to ^{which is the} basis for issue of standing instructions by the Chief Personnel Officer. The learned counsel for the applicants ^{also} devoted a considerable part of the oral submissions referring to the Indian Railway Establishment Manual 1989 and 1968 editions to establish that the provisions of Para 189 in 1989 edition of Indian Railway Establishment Manual are based on the Circular issued by the Railway Board in 1966 and not in 1962. However, subsequently the counsel for the applicants has himself made available the copy of the Railway Board letter dated 29.11.1962 referred to by the respondents. On going through this letter, we find that Railway Board had initially laid down the instructions with regard to the promotion from Group 'D' to Group 'C' posts as per letter dated 30.6.1959. This letter is referred to in the Circular of 1979 issued by the Chief Personnel Officer. We further note that Circular dated 29.11.1962 is only by way of further modification ^{or} clarification laid down in letter dated 30.6.1959. The basic contents of Para 189 are the same ^{as} detailed in the Circular dated 30.6.1959, wherein it is laid down that interview in addition to written test may be also taken if considered necessary. Therefore, the arguments advanced by the counsel for the applicants during hearing with regard to the Circular of 1979 relied upon by the

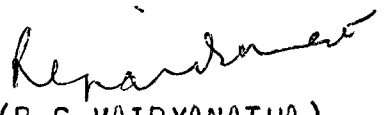
respondents are not teneable. The Circular is based on the instructions laid down by the Railway Board and is in compliance with the provisions in Para 189. From the Circular dated 29.5./6.6.1979 we note ^{that} ~~as~~ per para 7, the percentage of the qualifying marks for the written as well as oral test have been laid down indicating the authority of the General Manager. Therefore, it is to be taken that the provisions of this Circular has the approval of the General Manager. Now, it is to be seen whether these instructions are still valid or not. As indicated earlier, the respondents have made available the original file containing the proceedings of the selection. On going through this file, it is noted that proposal dated 23.5.1997 was put up to the competent authority (Additional Divisional Railway Manager) for approval with regard to the assessment of the vacancies for the post of Ticket Collector and for conducting of the selection. In this noting in Para 5, reference has been made to the Railway Board's letter dated 29.6.1992 and Chief Personnel Officer's letter dated 29.5./6.6.1979 based on which the selection is to be conducted. This clearly shows that the Circular dated 29.5../6.6.1979 was still valid and the selection was approved by the Addl. Divisional Rly. Manager to be conducted as per the provisions of the same. This Circular, as already indicated, had been issued laying down the conducting of the oral test with the approval of the General Manager. Though in the present case Notification had been issued under the signature of Assistant Personnel Officer but the Notification was based on the approval accorded by the Additional Divisional Railway Manager laying down the process of selection in terms of letter dated 29.5./6.6.1979.

These facts bring us to the irresistible conclusion that oral test had been conducted in respect of the selection under challenge with the approval of the General Manager as called for in Para 189 and relied upon by the applicants to support their contention. Thus, there is no illegality in holding the oral test and the impugned selection does not suffer from any infirmity. The contentions raised by the applicants are devoid of merits.

19. In the result of the above, the OA. is without merit and deserves to be dismissed and is accordingly dismissed. The interim order dated 5.12.1997 is vacated.

20. Keeping in view the delebrations in Para 16 above, we consider it appropriate to impose cost of Rs.1000/- on the applicants to be paid Rs.250/- each to the Respondents No. 6 to 9 who have been impleaded by name. This payment shall be made within a period of three months from the date of receipt of this order.


(D.S. BAWEJA)
MEMBER (A)


(R.G. VAIDYANATHA)
VICE CHAIRMAN

mrj.