
(2021) 11 KL CK 0201
In the High Court Of Kerala
Case No : OP (CAT) NO. 28 Of 2021

Leju. R

APPELLANT

Vs

General Manager, South Railway, Park Town, Chennai

RESPONDENT

Date of Decision : 26-11-2021

Acts Referred:

Citation : (2021) 11 KL CK 0201

Hon'ble Judges : Alexander Thomas, J;Viju Abraham, J

Bench : Division Bench

Advocate : Martin G.Thottan, Sumathy Dandapani, B.Rajesh

Final Decision : Dismissed

Judgement

Viju Abraham, J

1. Above original petition is filed by the applicants in O.A. No. 19 of 2020 aggrieved by the order dated 25.03.2021 of the Central Administrative Tribunal, Ernakulam Bench.

2. The contention of the petitioners, in brief, is as follows: The petitioners were initially appointed as Sweeper cum Porter/Traffic Porter and are now presently working as Pointsman A at level 2 in the Operating Department of Trivandrum Division of Southern Railways. While they were working so Annexure A1 notification was issued by the Railways for filling up of 25 vacancies of Goods Guard against 60 % promotional quota. As per Annexure A1 notification, process of selection consists of written test only and those who qualifies in the test will be subjected to scrutiny of record of service by duly constituted selection committee. The petitioners appeared for the written examination conducted on 14.09.2019 and 21.09.2019.

3. Annexure A2 list of qualified candidates was published on 13.12.2019 and in Annexure A2 the petitioners were included as Serial Nos. 4, 49, 59, 70, 92, 95 and 21 respectively. The petitioners contend that even before Annexure A2

eligibility list was published, a list of 25 candidates was published as per Annexure A3 on 05.12.2019 intimating that the persons included in Annexure A3 panel have been selected and placed in the panel for the post of Goods Guard against 60% promotional quota based on merit. All the persons included in Annexure A2 list and Annexure A3 panel were working as Pointsman A. Around 18 out of 25 candidates included in Annexure A3 panel got selected for appointment to the post of Ticket Examiners and were undergoing training by the time Annexure A3 panel was published. Out of the said 18 candidates who were already selected for promotion to Group C post of Ticket Examiners, 8 of them refused to undergo training as provided in Annexure A3 panel, disqualifying themselves for appointment/promotion to the post of Goods Guard. It is the contention of the petitioners that since 8 candidates who were initially included in Annexure A3 panel declined to undergo training and thereby disentitled themselves for appointment to the post of Goods Guard, it is only reasonable and just to include the petitioners in Annexure A3 panel and consider them for promotion/appointment. Even though they made a personal request in this regard before the 3rd respondent, the same was turned down by the 3rd respondent. It is in the said circumstance that the petitioners approached the Central Administrative Tribunal, Ernakulam Bench filing O.A. No. 19 of 2020 seeking for a declaration that the petitioners are eligible to be included in Annexure A3 panel.

4. A detailed reply statement was filed on behalf of the respondents on 21.02.2020 raising contentions on the question of maintainability of the original application as well as on merits. It was contended that unnecessary parties have been impleaded in as much as the Railway Board was impleaded as 4th respondent and that the original application itself is not maintainable as the same was filed on 05.01.2020 whereas the representation highlighting the grievances of the petitioners was submitted only on 03.01.2020. It was also contended that none of the persons selected and included in Annexure A3 panel have been impleaded as respondents in the O.A and therefore the proceedings are bad for nonjoinder of necessary parties. On merits, it was contended that there is no provision to include the candidates after the publication of the selection panel. Going by Master Circular No. 31, a panel once approved should not be normally cancelled and it could be done only if procedural irregularities or other defects are found after the formation of and announcement of the panel and if it is considered necessary to cancel or amend such panel, it can be done only after obtaining the approval of the authority next higher than the one who approved the panel. In the present case, there are no procedural irregularities or defects in the preparation of the panel. It was further contended that the panel is made as per the order of merit and 25 candidates who scored more marks than the petitioners in the written test were included in the panel. It was also contended that Annexure A2 list is not an eligibility list as stated by the applicant but it is only a list showing the marks scored by the candidates who have participated in the written examination. It was further submitted that the

selection for the post of Ticket Examiners was notified on 22.08.2017 and due to the pending decision in O.As and writ petitions filed before the Tribunal as well as the High Court respectively, finalization of the result of the said examination was delayed. The notification for the post of Goods Guard was issued on 12.04.2019 and for both posts, a few employees working as Pointsman in the Operating Department were selected. Candidates who found a place in both lists opted to continue as Ticket Examiners and submitted their unwillingness after the formation of the panel. Since there is no provision to amend the panel it is not feasible to include the petitioners. It was also contended that no one has a vested right to get promotion and therefore the petitioners cannot claim as a matter of right that they should be granted promotion to the post of Goods Guard. While the O.A was pending consideration, the respondents issued Annexure A4 notification dated 01.10.2020 to fill up 47 vacancies of Goods Guard. Even though the petitioners filed M.A. No.623 of 2020 in O.A. No. 19 of 2020 praying for a direction to keep in abeyance Annexure A4 notification till the finalization of the O.A, the Tribunal passed an order dated 20.10.2020 to the effect that any appointments made as per the new notification will be subject to the outcome of the O.A.

5. The Tribunal after considering the rival contentions of the parties, accepted the stand of the respondents that once a panel is approved there cannot be any amendment to the panel and that the next eligible candidates cannot be included in the panel when the candidates included in Annexure A3 panel do not join for duty and holding so, dismissed the original application as per Ext.P6 order dated 23.05.2021. It is challenging the said order dated 23.05.2021 in O.A. No. 19 of 2020 the present original petition is filed.

6. We have heard Shri. Martin G. Thottan, the learned Counsel appearing for the petitioners and also Shri. B. Rajesh, the learned Standing Counsel for the Railways, for the respondents in the O.A.

7. Annexure A3 panel is the select list of 25 employees for the post of Goods Guard against 60% promotional quota. As per the rules and circulars issued by the respondents, there is no provision to include any candidate after the publication of the panel. Further, the Rules does not provide for cancellation of a panel unless some procedural irregularities or other defects are found after the formation and announcement of the panel and if the same is necessary it can be done only after obtaining the approval of the authority next higher than the one who approved the panel. Even the petitioners do not have a case in this original petition that there is any procedural irregularity or defect in the selection made in respect of the candidates included in Annexure A3 panel. The said panel is prepared in the order of merit and 25 candidates who scored more marks than the petitioner in the written test and such candidates alone have found a place in the panel. The petitioners could not bring to the notice of this Court any provision or Rules enabling the respondents to amend the panel to replace the candidates included in Annexure A3 panel with the next eligible ones, when the

candidates included in the panel fail to join. Moreover, it is submitted by the Standing Counsel appearing for the respondents that while the original application was pending consideration, a fresh notification was issued by the respondents as Annexure A4 dated 01.10.2020 and that all the petitioners in response to the said notification have applied for the post of Goods Guard against 60% promotional quota. Since there is no provision for amendment of the panel and to include the next eligible candidates in the panel if the candidates already included in the panel do not join, the petitioners cannot validly seek for a direction to include them in Annexure A3 panel for promotion to the post of Goods Guard. The Tribunal has considered all these aspects in detail while passing Ext.P6 order and found that the petitioners have not made out a case for inclusion in Annexure A3 panel for promotion to the post of Goods Guard.

In the above circumstances, we find no reason to interfere with the order passed by the Central Administrative Tribunal dated 25.03.2021 in O.A. No. 19 of 2020 and the original petition is accordingly dismissed.