

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

FRIDAY, THE 21ST DAY OF AUGUST 2015/30TH SRAVANA, 1937

OP (CAT) .No. 3363 of 2011 (Z)

AGAINST THE ORDER IN OA 508/2010 of CENTRAL ADMINISTRATIVE
TRIBUNAL,ERNAKULAM BENCH DATED 15-09-2011

PETITIONERS/PETITIONERS:

1. V.VIKRAMAN NAIR, AGED 53, S/O. S.VELAYUDHAN PILLAI,
WORKING AS GOODS GUARD, (ADHOC)
OFFICE OF THE STATION MANAGER, SOUTHERN, RAILWAY
QUILON, RESIDING AT TC 64/1894, SANDHALASHMI
PARASURAMA TEMPLE ROAD, THIRUVALLOM, P
2. M.G.SIVADAS, AGED 51 YEARS, S/O.
M.K.GOPALAN, WORKING AS SENIOR GATE KEEPER GOODS
GUARD ADHOC, SOUTHERN RAILWAY, ERNAKULAM SOUTH
RESIDING AT MANAPPAT HOUSE, GENESAGIRI P.O., SHORNUR.

BY ADVS.SRI.K.A.ABRAHAM
SRI.BIJU MARTIN
SRI.B.UNNIKRISHNA KAIMAL
SRI.S.P.ARAVINDAKSHAN PILLAY
SMT.N.SANTHA
SRI.K.A.BALAN
SRI.SAJU JOHN
SRI.V.VARGHESE
SRI.PETER JOSE CHRISTO
SRI.S.A.ANAND
SMT.L.ANNAPOORNA

RESPONDENTS:

1. UNION OF INDIA, REPRESENTED BY
SECRETARY, RAILWAY BOARD, RAIL BHAVAN
NEW DELHI-110 001.
2. THE GENERAL MANAGER,
HEADQUARTERS OFFICE, SOUTHERN RAILWAY
CHENNAI-600 003.
3. CHIEF PERSONNEL OFFICER,
HEADQUARTERS OFFICE, PERSONNEL BRANCH
CHENNAI-600 003.

4. SENIOR DIVISIONAL PERSONNEL OFFICER,
SOUTHERN RAILWAY, THIRUVANANTHAPURAM-695 001.

* 5. NANDAKUMAR,
KODATHUR, COMMERCIAL CLERK, SOUTHERN RAILWAY
THRISSUR, C/O PRINCIPAL, ZONAL RAILWAY TRAINING
INSTITUTE, TIRUCHIRAPPALLY, PIN-627 009.

6. T.P.UNNIKRISHNAN,
POINTSMAN/1, (ADHOC TRAIN CLERK), SOUTH SOUTHERN
RAILWAY, ERNAKULAM, C/O. PRINCIPAL
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7. P.RAMADAS,
POINTSMAN/1, SOUTHERN RAILWAY, KOCHI
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*8. M.ABUBACKER,
POINTSMAN I, SOUTHERN RAILWAY, ALAPPUZHA
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9. HARINARAYANA MEENA,
TICKET EXAMINER, SOUTHERN RAILWAY, ERNAKULAM NORTH
KOCHI-682 009.

*10. S.MEENAKSHI SUNDARAM,
COMMERCIAL CLERK, SOUTHERN RAILWAY, EDAVA-695 311.

11. C.O.SEEJAN,
SR.TRAIN CLERK, ERNAKULAM MARSHALLING YARD
SOUTHERN RAILWAY, ERNAKULAM-682 016.

12. A.MURUGESAN,
TICKET EXAMINER, SOUTHERN RAILWAY, TRIVANDRUM
CENTRAL, TRIVANDRUM, C/O.PRINCIPAL
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13. P.FRANCIS,
POINTSMAN, OFFICE OF THE TRAFFIC INSPECTOR
SOUTHERN RAILWAY, TRIVANDRUM, C/O. PRINCIPAL
ZONAL RAILWAY TRAINING INSTITUTE
TIRUCHIRAPPALLY-627 009.

14. V.CHELLADURAI,
COMMERCIAL CLERK, SOUTHERN RAILWAY, CHOUVARA-683 571.

15. T.GIRIDHARAN,
POINTSMAN/1, SOUTHERN RAILWAY, IRIMPANAM
KOCHI, C/O. PRINCIPAL, ZONAL RAILWAY TRAINING
INSTITUTE, TIRUCHIRAPPALLY-627 009.

16. C.P.AJAYAKUMAR,
POINTSMAN 1, SOUTHERN RAILWAY, ERNAKULAM SOUTH
STATION, ERNAKULAM, PRINCIPAL
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17. BASUDEV SORAN,
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18. AJEESH T.THOMAS,
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20. CHANDRAKUMAR K.S.,
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21. K.V.ISAAC,
SR.GATE KEEPER, SOUTHERN RAILWAY, ANGAMALY FOR
KALADY, ANGAMALY, PRINCIPAL
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TICKET EXAMINER, SOUTHERN RAILWAY, TRIVANDRUM
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24. T.A.UNNIKRISHNAN,
POINTSMAN 1, ERNAKULAM MARSHALLING YARD
SOUTHERN RAILWAY, ERNAKULAM, PRINCIPAL
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25. K.K.MOHANAN,
POINTSMAN 1, ERNAKULAM SOUTH RAILWAY STATION
ERNAKULAM, PRINCIPAL, ZONAL RAILWAY TRAINING
INSTITUTE, TIRUCHIRAPPALLY-627 009.

26. A.S.AJAYAN,
POINTSMAN 1, ERNAKULAM SOUTH RAILWAY STATION
ERNAKULAM, PRINCIPAL, ZONAL RAILWAY TRAINING
INSTITUTE, TIRUCHIRAPPALLY-627 009.

27. R.MADHAVAN PILLAI,
ASST.GUARD, SOUTHERN RAILWAY, QUILON.

28. O.P.MOHAMED KOYA,
TRAIN CLERK, ERNAKULAM MARSHALLING YARD
SOUTHERN RAILWAY, ERNAKULAM-682 016.

29. N.HARIHARAN, AGED 34, S/O. N.NADARAJAN,
WORKING AS GOODS GUARD(ADHOC), SOUTHERN RAILWAY
KOLLAM, RESIDING AT MAVILAZHIKATH MELETHIL, NJETTAYIL
PUNUKONNUR, PERUMPUZHA P.O., KOLLAM-691 504.

30. A.PERIYASAMY, AGED 58 YEARS, S/O.
K.ARUMUGHAN, WORKING AS GOODS GUARD, SOUTHERN RAILWAY
ERNAKULAM JN., RESIDING AT 131J, RAILWAY QUARTERS
ERNAKULAM JN., ERNAKULAM-682 016.

31. A.PREMARAJAN KANI, AGED 46, S/O.
APPUKUTTAN, WORKING AS GOODS GUARD(ADHOC)
OFFICE OF THE STATION MASTER, VARKALA, RESIDING
AT KOCHUMAMKUZHI VEEDU, PACHA PALLUVALLY P.O., PALOD
NEDUMANGAD, TRIVANDRUM-695 001.

32. S.PRABHAKARAN, AGED 54 YEARS, S/O.
V.SREEDHARAN KURUP, WORKING AS GOODS GUARD(ADHOC)
OFFICE OF THE STATION MASTER, SOUTHERN RAILWAY, KOLLAM
RESIDING AT RAILWAY QUARTERS NO.183/B, NEAR QAC ROAD
KOLLAM-691 504.

33. ELWIN DHAS E., AGED 28 YEARS, S/O.EDWIN
JAYADAS, WORKING AS GOODS GUARD(ADHOC)
OFFICE OF THE STATION MASTER, SOUTHERN RAILWAY
NAGERCOIL, RESIDING AT ELUMKATTUVOLI, ELVOLAI P.O.
ELUVOCALE, NAGERCOIL DIST.-627 009.

34. S.SUKUMARAN NAIR, AGED 51, S/O.
S.K.KUTTAN NAIR, WORKING AS POINTSMAN 1
STATION MANAGER'S OFFICE, SOUTHERN RAILWAY, TRIVANDRUM
RESIDING AT 'GEETHA BHAVAN', PLAVILA, THIRUMALA P.O.
THIRUVANANTHAPURAM-695001.

(* RESPONDENTS 5,8,10 AND 23 ARE DELETED FROM THE PARTY ARRAY
AT THE RISK OF THE PETITIONERS AS PER ORDER DATED 21.03.2012
IN I.A. NO. 4078 OF 2012]

R,R1 TO 4 BY ADV. SMT.SUMATHY DANDAPANI (SR.)
R,R1-4 BY ADV. SRI.C.S.DIAS,SC, RAILWAYS
R15 AND 20 BY ADV. SRI.SUNIL JACOB JOSE

THIS OP (CAT) HAVING BEEN FINALLY HEARD ON 30-06-2015, THE
COURT ON 21.08.2015 DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS :

- EXT. P1 : PHOTOCOPY OF THE ORDER OF THE TRIBUNAL DATED
15.09.11 IN O.A. NO. 508/2010
- EXT. P2 : PHOTOCOPY OF THE JUDGMENT DATED 23.05.2011
- EXT. P3 : PHOTOCOPY OF THE 1ST ORDER OF THE CAT DT. 04.11.2010
IN O.A. NO. 508/2010
- EXT. P4 : PHOTOCOPY OF THE O.A. NO. 508/2010 FILED BY THE
PETITIONER.
- EXT. P5 : PHOTOOCOPY OF THE REPLY STATEMENT FILED BY THE
OFFICIAL RESPONDENTS ON 05.08.2010
- EXT. P6 : PHOTOCOPY OF THE REPLY STATEMENT FILED BY THE
PARTY RESPONDENTS ON 14.09.2010
- EXT. P7 : PHOTOCOPY OF THE REPLY STATEMENT FILED by the PARTY
RESPONDENTS ON 21.09.2010
- EXT. P8 : PHOTOCOPY OF THE REJOINDER TO THE REPLY STATEMENTS
ON 30.08.2010
- EXT. P9 : PHOTOCOPY OF THE REJOINDER TO THE ADDITIONAL REPLY
STATEMENTS ON 07.10.2010
- EXT. P10 : PHOTOCOPY OF THE ADDITIONAL STATEMENT FILED BY
THE PETITIONERS ON 08.06.2011

/TRUE COPY/

P.A. TO JUDGE

[CR.]

P.R. RAMACHANDRA MENON

&

BABU MATHEW P. JOSEPH, JJ.

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O.P.(CAT) No. 3363 of 2011

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Dated, this the 21st day of August, 2015

JUDGMENT

Ramachandra Menon, J.

Selection to the post of Goods Guard in the Thiruvananthapuram Division of the Southern Railway in respect of 60% promotional quota is under challenge in this original petition.

2. Petitioners are working as Goods Guards (adhoc) in the Thiruvananthapuram Division of the Southern Railway. Annexure A2 notification was issued by the 4th respondent on 20.08.2008 for selection to fill up 24 vacancies of Goods Guard (UR 18, SC 4 and ST 2) in the scale of pay of Rs.4500 - 7000 from among four different staff categories by calling volunteers. As per the said notification, it was mentioned that, in terms of CPO/MAs letter No. P(S) 529/II/12/Vol.2 dated 26.10.1999, panel formed will be one for the notified vacancies amalgamating all the qualified personnel belonging to different categories (restricted to the extent earmarked to each group), making it clear that it will be as per seniority, based on the length of non-fortuitous service in the grade and treating persons in the higher grade being senior to those in the lower grade. Annexure

A2 notification further mentioned that the selection would consist of written test only, and the syllabus for the written test was also prescribed. Volunteers were required to fulfil the terms prescribed such as: (a) employees should have put in a minimum period of 3 years of regular service as on 01.09.2008; (b) they should pass the medical examination in Class A2 and (c) they should pass the necessary guards training course ZRTI/TPJ.

3. On coming across the said notification, the petitioners applied for the post and participated in the written test, which was conducted on 21.02.2009. As per Annexure A3 dated 03.07.2009, it is evident that petitioners had successfully completed the training course for Goods Guards from 18.05.2009 to 22.08.2009. Thereafter they, along with 18 other persons named in Annexure A4 dated 29.07.2009, who were found as the senior most volunteers in the feeder category and who had successfully completed the training for the post of Goods Guards, were posted as Goods Guards on 'ad hoc' basis for a period of three months, pending finalization of the selection. Among several conditions incorporated therein, it was also mentioned that regular posting against the posts will be made only to the employees who came out

successful in the selection to the post of Goods Guard, for which written tests have been conducted on 28.02.2009 and 04.04.2009 and further that those who did not qualify in the selection to the post of Goods Guard will have no right over the post and will vacate the post immediately and will be repatriated to their parent cadre. While so, the result of the written examination for selection to the post of Goods Guard was declared as per Annexure A5 dated 22.12.2009, wherein the petitioners' names were mentioned at serial Nos. 62 and 68 respectively. Annexure A5 list was again published as per the proceedings dated 13.01.2010, as borne by Annexure A6. But a rider was placed towards the end, that the panel will be prepared based on merit with reference to the marks obtained by the candidates in '**professional ability** and **record of service**' as per Railway Board letter No. 113/2009 circulated vide CPO/MAS PBC No. 121/2009 dated 07.07.2009. In other words, the basis for preparation of panel with reference to '**seniority**' as given in Annexure A2 has undergone a substantial change.

4. The reason for the above change is stated as attributable to the declaration of law by the Apex Court as per the judgment dated 15.03.1996 in **N. Ramajayaram Vs. General Manager,**

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Southern Railway and Ors. [1996 (1) SC SLJ 536 = (1996) 8 SCC 268], whereby it was held with reference to Rule 219 (g) of the Indian Railway Manual, that no marks could be awarded for seniority; if the candidates in the feeder category were of different units/groups. It is stated that the basis for selection was accordingly amended by the Railway Board, incorporating necessary correction in the Indian Railway Establishment Manual Volume No. I as per ACS (Advanced Correction Slip) No. 209, which stipulates that final panel should be drawn up in the order of merit based on aggregate marks on '**Professional ability**' and '**Record of service**' and further that a candidate must secure minimum of 60 % marks in 'professional ability' and 60 % marks for the aggregate and there will be no classification of the candidate as outstanding as stipulated earlier. By virtue of the above amendment, it is stated that panel/list was finalized as borne by Annexure A1 dated 27.05.2010 naming 24 candidates who are stated as selected on the basis of the so called merit, which does not contain the name of the petitioners, who happened to be left out, ignoring their seniority. This made the petitioners to approach the Central Administrative Tribunal, Ernakulam by filing

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O.A. No. 508 of 2010, raising several grounds, particularly that the norms for selection were changed substantially after issuance of Annexure A2 notification on 20.08.2008 and the test conducted on 28.02.2009.

5. The respondents/Railways sought to justify their stand with reference to the verdict passed by the Apex Court as mentioned above. The Tribunal accepted the version of the Railways and declined interference as per Ext. P3 order dated 04.11.2010. On challenging the said order before this Court, by way of O.P (CAT) Nos. 820 and 874 of 2010, preferred by the petitioners and other aggrieved parties, Ext. P3 order passed by the Tribunal was set aside and the matter was remanded for fresh consideration, for the reasons mentioned therein. Pursuant to the remand, it was considered again and the Tribunal held that the change in the norms effected by the Railways confining the basis for selection strictly to the 'merit' and without regard to 'seniority', was in conformity with the law declared by the Apex Court in **Ramajayaram's case** (cited supra) and the amendment to the relevant norm by the Railways, with reference to Rule 219 (1) (g) of the Indian Railway Establishment Manual. The petitioners are

before this Court, being aggrieved by the said order.

6. No separate counter affidavit has been filed from the part of the respondents. All the party respondents before the Central Administrative Tribunal in the concerned case have been impleaded in the party array and notice has been served to them, except to the respondents 5, 8, 10 and 23. In the case of respondents 5, 8 and 10, it is stated in I.A. No. 4078 of 2012 that they have been promoted as Goods Guards in a separate selection, before making promotions based on Annexure A1 and hence they are not necessary parties. In the case of respondent No. 23, it is stated that he had retired from service on 30.06.2011 and hence no relief is sought for against him. The I.A. was filed to delete the name of respondents 5, 8, 10 and 23 from the party array in the said circumstance, which was allowed as per order dated 21.03.2012 at the risk of the petitioners. Despite completion of service of notice to the other respondents, the party respondents have not chosen to file any counter affidavit. No counter affidavit has been filed from the part of the official respondents as well. It is reasonably presumed that, this is because of the fact that the pleadings were completed before the Tribunal and that the same forms part of the

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record.

7. Heard both the sides in detail.

8. Admittedly, as per Annexure A2, applications were invited from the volunteers for selection to the post of Goods Guard against '60 % promotional quota' from the following four staff categories :

1. Senior Assistant Guards/Assistant Guards in scale Rs.4000 - 6000/Rs.3050 - 4590 (12 posts)
2. Sr. TNC/TNC in scale Rs.4000 - 6000/Rs. 3050-4590 (5 posts)
3. Shg Jamedar/Pointsman/Leverman/Sr.GK in scale Rs.4000-6000/Rs.3050-4590 (5 posts)
4. TTE/SR.TC/TC/Sr.CC/CC in scale Rs.4000 - 6000/Rs.3200-4900/ Rs.3050-4590

The said notification clearly stipulated that the selection would only consist of 'written test'. In the opening paragraph, it has however mentioned that, it will be based on the 'seniority'. How it is to be reckoned is also mentioned therein, which is extracted below :

- a) Employees should have put in a minimum period of 3 years of regular service as on 01.09.2008.
- b) They should pass the medical examination in Class A2.

c) They should pass the necessary guards training course at ZRTI/TPJ.

9. The Board letter bearing No. P(S)529/II/12/Vol.III dated 26.10.1999, referred to as the basis for preparation of the panel, is forming part of the materials on record [having been produced as Annexure A14, as part of Ext. P10]. The said proceedings refer to the individual quota prescribed for the four different categories also saying that the selection will be based on the seniority, as stated in the following terms :

"The panel formed will be one for the notified vacancies amalgamating all the qualified personnel belonging to different categories restricted to the % assigned to each group. It will be based on the seniority based on the length of non fortuitous service in the grade and the person in the higher grade being senior to the one in the lower grade."

However, the Central Administrative Tribunal observed in Ext. P1 order that no prejudice has been caused to the applicants by virtue of the change in norms, refusing to reckon 'seniority' as the basis, and by confining it to the 'merit' involved, in view of the law declared by the Apex Court in **Ramajayaram's case** (cited supra)

10. Sri. S.P. Aravindakshan Pillai, the learned counsel appearing for the petitioners, submitted that, admittedly there was substantial change with regard to the norms for selection (notifying the same as per Annexure A2 dated 20.08.2008). This has resulted in much hardships to the petitioners, whose accrued rights have been adversely affected. It is further stated that, selection was actually finalized and having completed their training as well, they were accordingly posted as Goods Guards on 'ad hoc basis', though regular posting orders were not given. Much reliance is placed on the decision rendered by the Apex Court in **K. Manjusree Vs. State of AP and another [(2008) 3 SCC 512]** to the effect that the Rules of the Game shall not be changed after commencement of the game.

11. Smt. Sumathi Dandapani, the learned senior counsel appearing for the Railways, submits that the change has been brought about only by virtue of the law declared by the Apex Court in the decision reported in **Ramajayaram's case** (cited supra). Admittedly, applications were called for from '**four different sources/streams**' and since different categories of employees were to be considered altogether, seniority could not have been

considered as the deciding factor, as there was no common seniority list, in view of the law declared by the Apex Court. It was accordingly, that necessary amendment was caused to be made as per Annexure A7, by the Railway Board with regard to the Rule 219 of the Railway Establishment Manual and it was based on the said amendment that selection was finalized, ignoring the 'seniority' and considering the candidature strictly in terms of the merit. There is nothing arbitrary or illegal in this regard and there is no plea of malafides as well. Everything has been done by the Railways in a transparent manner and hence the verdict passed by the Tribunal does not require any interference, submits the learned counsel for the Railways.

12. In so far as there is no dispute with regard to the factual position that applications were invited from 'four different streams', having separate seniority in their cadre, final selection could not have been made on the basis of seniority, in the light of the ruling rendered by the Apex Court. Eventhough law was made clear by the Apex Court way back in 1996, the subsequent notification issued by the Railways in the year 2008, by way of Annexure A2, appears have been issued contrary to the said law

and still insisting to go by 'seniority'. Whether the norms of selection could have been changed after commencement of selection process, has necessarily to be considered in the above background. However, there is also a case for the Railways that similar challenge was raised by the aggrieved parties before the Punjab and Haryana High Court and after meticulous analysis of the facts and figures, interference was declined and the writ petition was dismissed. Though the matter was taken up before the Apex Court by filing SLP by the aggrieved parties, no interference was made and the SLP was dismissed.

13. As mentioned above, the mistake on the part of the Railways in having issued Annexure A2 notification dated 20.08.2008, being not in conformity with the law declared by the Apex Court in **Ramajayaram's case** (cited supra), stands virtually conceded. It is also admitted from the part of the respondents/department that the amendment in the relevant Rule was brought about only as per Annexure A7; by way of substitution. The relevant clause is 'clause (iii)' appearing below sub paragraph (j) of Paragraph 219 of Indian Railway Establishment Manual, whereby it was stipulated that the final

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panel should be drawn in the order of 'merit', based on the marks obtained, giving due credit to the 'Record of service', also stipulating that 60 % marks shall be obtained for 'professional ability', to be placed in the panel. By virtue of the change thus brought about; the question to be considered is whether the 'written test' conducted by the respondent department pursuant to Annexure A2 notification, prescribing the syllabus and extent of distribution of marks, could be taken as a proper tool/measure to work out the 'merit' in respect of 'Professional ability' and 'Record of Service' under the changed requirements/amendments.

14. So as to analyse the factual position and to answer the above question, it is necessary to extract the 'syllabus' for the written test and 'distribution of marks' as given in Ext. P4 (forming part of Annexure A2), which reads as follows :

"Syllabus for the written test for selection to the post
of Goods Guard:

(paper on general English, General Knowledge & General
Arithmetics to be answered in English)

I General English (50 Marks)

(a) General Essay (Narrative Reporting for about
a page) = 15 Marks

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(b) Use of propositions = 10 Marks

(c) Fill in the blanks with
suitable verbs = 10 Marks

(d) Comprehension answering
question based on given
passage = 15 Marks

II General Knowledge within specific reference to daily
working = 25 marks

a. Testing the knowledge on the various codes
by coaching stock and goods stock used in Indian
Railways like FC, SLR, BOX, Box, BPN.

b. General Knowledge on location of Railways
Workshops, Production Units, Zonal Head quarters,
Railway Recruitment Boards, etc.

c. General Knowledge on running of Super Fast
Trains/Shatabdhi express. Their names, speed,
starting and destination stations on BG & MG.

III General Arithmetic : 25 Marks

Simple Arithmetic, covering averages,
percentages, profit and loss accounts, simple interest
etc. "

15. The field/faculty with regard to which written test was
prescribed, are under three disciplines ; **General English** - 50
marks; **General Knowledge** - 25 marks and **General Arithmetic**

- 25 marks, thus coming to total of 100 marks. The petitioners prepared themselves and participated in the written test in respect of the above three disciplines/syllabus and obtained the qualifying marks as prescribed. When the field of test/scrutiny came to be changed as 'Professional ability' and 'Record of service' alone (based on Annexure A7), how the redistribution of marks is to be effected, turns to be a matter of mystery. In other words, when the written test was conducted, the 'syllabus' did not confine to the prescribed traits of 'Professional ability' and 'Record of service'. So as to assess 'Professional ability' of a person, who is supposed to work as Goods Guard, General Knowledge with reference to the topics/subjects mentioned under the head of 'General Knowledge', carrying total marks of '25' may be relevant. But the remaining part of the written test, with reference to General English - 50 marks (consisting of essay writing, use propositions, fill in the blanks with suitable verbs and comprehension answering question and General Arithmetic - 25 marks (simple arithmetics, covering averages, percentages, profit and loss accounts, simple interest etc.) may, prima facie, be irrelevant. This Court does not intend to express any firm opinion in this regard, as it is for the 'experts' to

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look into such aspects. The subjects 'General English' and 'General Arithmetic' having 50 and 25 marks respectively, take $\frac{3}{4}$ th of the total marks; whereas the subject 'General Knowledge' dealing with the field to assess 'Professional ability' comes to be a minority sector, with just 25 marks out of the total of 100. If this be the position, how the 'Professional ability' of the persons concerned was assessed by the authorities while finalizing the select list, is a matter of concern.

13. Yet another aspect to be noted is that, by virtue of the amendment brought about as per Anenxure A7, only two traits; '**Professional ability**' and '**Record of service**' were to be evaluated. Maximum marks and qualifying marks as stated are given below :

Factors/Heading	Maximum Marks	Qualifying Marks
(1) Professional ability	50	30
(2) Record service	30	..
Total	80	48

As per the given norms, the maximum marks for 'Professional

ability' could have been 50 alone, and by adding the maximum marks of '30' for 'Record of Service', it will come to 80 marks; 60% of which shown as the qualifying marks (48). 60 % of the maximum marks for 'Professional ability' (30) is shown as the separate minimum of qualifying marks. Out of the total of 80, if 30 marks were to be in respect of 'Record of Service', the test could have conducted only for 'Professional ability' carrying 50 marks; unless otherwise prescribed. In the instant case, the test was conducted for a total of 100 marks; that too, the possible relevant field i.e. General Knowledge only carried the maximum of 25 marks. As it stands so, how the marks for 'Professional ability' can be normalized is not known.

17. It has to be borne in mind that when Rules stipulate that a person has to be tested in a particular subject, with the given syllabus and giving maximum marks, setting of the question papers and chance to get selected acquires a definite pattern/norm. If the maximum marks are increased, the number of questions/marks for each question may get changed and the chance to get right or go wrong may vary. Instead of conducting the test for assessing 'Professional ability' with the prescribed maximum marks of 50,

setting the qualifying marks as '30' (60%), if the candidates are made to contest a test, also including some other field or subject, specifying higher or lesser extent of marks, the test cannot be considered as correct or proper. It is not enough, to have marks secured by the candidates in the written examination pursuant to A2 out of the total of 100 marks, to be reckoned and normalized to some other figure (with reference to the changed norms) when the maximum marks prescribed for 'Professional ability' is only 50.

18. Respondent Railways have sought to justify their stand in changing the norms after the commencement of selection, stating that such change was necessitated because of the law declared by the Apex Court in **Ramajayaram's case** (cited supra). But the decision rendered by the Apex Court was way back in the year **1996**; whereas Annexure A2 notification was issued inviting the applications much later, in the year 2008. To put it more clear, when the notification issued by the respondents admittedly stands contrary to the law declared by the Apex Court, it was no more open for the respondents to have pursued the exercise based on the errant notification, instead of issuing a fresh and proper notification prescribing different traits/syllabus for the test and

distribution of marks, so as to enable the contestants to prove their mettle, after arranging level playing field. In the said circumstances, the course pursued by the respondent Railways cannot but be deprecated.

19. It is settled law, that norms of selection cannot be changed after commencement of the process of selection, as made clear by the Apex Court in **Manjusree's** case (cited supra). Reliance is sought to be placed on the said decision by the petitioners to contend that the selection should have been finalized in terms of Annexure A2 notification; without giving any credit to the change brought about by virtue of Annexure A7. This Court is not much impressed with the said proposition, for the reason that Annexure A2 notification was issued without any regard to the law declared by the Apex Court in **Ramajayaram's case**. Even the petitioners do admit that they come from different streams of feeder categories, for being considered for selection and appointment as Goods Guards. When persons belonging to different streams are brought into a common pool, 'seniority' cannot be basis for selection, as there is no common seniority list and it is in the said circumstances that the 'merit' has been ordered

to be taken as the basis for selection. This being the position, the observation made by the Tribunal, that selection had to be on the basis of the changed norm does not call for any interference. But the very next moment, it has to be stated that, such selection on the basis changed norm should have been conducted by the respondent Railways only after issuing a proper notification, rectifying the mistakes/defects crept in Annexure A2, for the reasons already stated herein before.

20. This Court finds that the mistake committed by the respondent Railways in having issued Annexure A2 notification, contrary to the law declared by the Apex Court and in proceeding with the selection based on Annexure A2 notification is to be declared as not at all correct or sustainable. It is ordered accordingly. Since the consequences resulted cannot be corrected, without effecting necessary changes with regard to the field of examination confining it to 'Professional ability' and 'Record of service', with proper distribution of marks; the selection cannot be held as justified. In the said circumstances, Annexure A2 notification, the selection and appointment effected and the verdict passed by the Tribunal are set aside. The respondents are directed

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to issue a proper notification in terms of the changed norms, pursuant to Annexure A7, prescribing the maximum and qualifying marks; syllabus concerned and distribution of marks, giving clear idea as to the eligibility of the candidates to participate in the selection and prove their worth. Necessary relaxation shall be given with regard to 'maximum age', in respect of the persons who had responded to Annexure A2 selection notified in the year 2008, as the present turn of events cannot be taken to their disadvantage in respect of the age factor. The proceedings as above shall be finalized, at the earliest, at any rate, within four months from the date of receipt of a copy of this judgment.

The Original Petition stands allowed. No cost.

**P. R. RAMACHANDRA MENON,
JUDGE**

**BABU MATHEW P. JOSEPH,
JUDGE**

kmd