

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00229/2019

Wednesday, this the 3rd day of February, 2021

C O R A M :

**HON'BLE Mr.P.MADHAVAN, JUDICIAL MEMBER
HON'BLE Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER**

Smt. Subha Gopinath, aged 39 years, W/o. Suresh Babu,
Track Maintainer-III, O/o Sr. Section Engineer,
Southern Railway, Ernakulam Jn., Trivandrum Division,
residing at Muthangassery House, Iringole PO,
Perumbavoor, Ernakulam District – 682 016. ... **Applicant**

(By Advocate Mrs. Shameena Salahudheen)

v e r s u s

1. Union of India, represented by the General Manager,
Southern Railway, Park Town, Chennai – 600003.
2. The Chief Personnel Officer, Southern Railway,
Chennai – 600003.
3. The Senior Divisional Personnel Officer, Southern Railway,
Trivandrum Division-14.
4. Sr. DEN (Co-ordination), Southern Railway, Trivandrum Division,
Trivandrum-14.
5. Sneha P.A., Track Mainatiner – III, O/o. Sr. Section Engineer,
Permanent Way, Southern Railway, Chalakudy-680307.
6. Rajeev Madanan M., Track Maintainer-IV, O/o. Sr. Section
Engineer, Permanent Way, Southern Railway, Nagercoil Junction,
Nagercoil-629001.
7. C.V. Soumesh, Track Maintainer-IV, O/o. Sr. Section Engineer,
Permanent Way, Southern Railway, Kollam – 691 001.
8. Remya Raj, Track Maintainer-III, O/o. Sr. Section Engineer,
Permanent Way, Southern Railway, Kottayam – 686 001.
9. B. Sutharson, Junior Engineer (USFD), O/o. Senior Section
Engineer, Southern Railway, Alwaye-683101.
10. Dhanya A.S., Track Maintainer-III, O/o. Sr. Section Engineer,

Permanent Way, Southern Railway,
Alway-683101.

... Respondents

[By Advocates Mr. Asif K.H. (R1-4), M/s. Varkey & Martin (R5-8 and 10 and Mr. Premchand R. Nair (R9)]

This application having been heard on 27th January, 2021, the Tribunal on 03.02.2021 delivered the following:

ORDER

Per : Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER

The applicant filed this OA in March, 2019 seeking relief as follows:

“I) To call for the records leading to Annexure A-1 and set aside the same to the extent of non inclusion of the applicant and the inclusion of the ineligible candidates who scored lesser marks than the applicant.

II) Direct the respondents 1 to 3 to re-evaluate the answer script of the applicant and award marks.

III) Declare that the applicant is entitled to be included in the select list for the post of Junior Engineer.

IV) Such other reliefs as may be prayed for and this Tribunal may deem fit to grant.

V) Grant the cost of this Original Application.”

2. The applicant is working as Track Maintainer-III at Ernakulam Junction Railway Station. She is aggrieved by non-inclusion of her name in the select list published by the 3rd respondent (Senior Divisional Personnel Officer, Southern Railway, Trivandrum) for filling up the vacancies to the posts of Junior Engineer/P.Way in the 20% LDCE quota in the pay matrix Level-6, PB-II Rs. 9,300-34,800/- plus Rs. 4,200/- Grade Pay. She claims that she secured more marks than respondents Nos. 9 and 10 namely B. Sutharson and Dhanya A.S. She attacks the select list published by the 3rd respondent dated 9.1.2019 at Annexure A1 to the extent of her non-inclusion and inclusion of ineligible candidates.

3. An interim order was passed on 5.4.2019 by this Tribunal after the OA was filed allowing the applicant to be provisionally deputed for training as sought for.

4. The background of the case is that the 3rd respondent had issued a notification proposing to conduct selection for filling up six vacancies (vide Annexure A2) for the post of Junior Engineer/P.Way against the 20% LDCE quota in Engineering Department of Trivandrum Division, which were broken up as per the categories as follows:

“SC-1, ST-Nil, UR-05”

Those eligible were Track Maintainers of all grades and also Civil Engineering staff who had completed 3 years of regular service in the Railways excluding training period, if any. The selection consisted of a written test in terms of Railway Board's letter dated 07/08/2003. It was required that candidates should obtain a minimum of 60% of marks in the written test. The panel would be formed in the order of merit based on aggregate marks of professional ability and records of service and there would be no classification of outstanding as per Railway Board's letter dated 9.6.2009 (RBE No. 113/09). The applicant, having satisfied the eligibility criteria, submitted an application and attended the written examination. Further to the same, Respondent No 3 vide Annexure A3 (issued on 6/12/2018) published a list of employees who had passed the written test conducted on 30.6.2018. The applicant's name figured at serial No. 11. Thereafter, all who were included in Annexure A3 were sent for medical fitness test and after the same, the Annexure A1 final select list was prepared

on 09/01/2019 were the applicant's name does not appear. After publishing Annexure A1, the 3rd respondent published the results (marks) obtained by the employees vide a letter dated 10.1.2019 addressed to the Senior DEN at Trivandrum (produced at Annexure A4). It is seen in this letter that the applicant at serial No. 11 secured 69 marks out of 100. She did not qualify in the select list which consisted only of six names (Annexure A1).

5. The Applicant submits that she was confident about her performance in the examination and she made an application under the Right to Information Act vide Annexure A5 dated 11.1.2019 asking, inter alia, for a copy of her answer scripts. The authorities responded vide Annexure A6 dated 31.1.2019 with a copy of the answer book of the applicant. The applicant has separately produced a copy of the question booklet at Annexure A7. Her main submission is that after going through the answer book it was clear that answers provided to the objective questions shown in the question book at Section A (I) consisting a total of 38 marks, where she had got a total of 29 correct answers, have not been awarded any marks. In the section A (I) all the questions (38 in numbers) were of the objective type with four options. Correct answers were to be awarded one mark each making a total of 38 in the section A (I). The answer book shows that she had got 29 of these answers correct, but no marks were given, even though, as per the grading, she should have got 29 marks here. The answers in the other sections namely Section A (II), Section B, Section C and Section D have been awarded marks in the answer book and total as a whole to 50 marks. Thus, the applicant claims she should have got at least 50+29 [marks not awarded for correct answers in Section A(I)] totalling 79 marks;

instead of which, the answer book front page shows total marks awarded as 69, which is also unclear as to how it was arrived at. The applicant also claims that there are some other discrepancies in the marking in the sections other than Section A (I) but keeping that aside her marks should total to 79 after the evaluation.

6. The Applicant submits that if she was awarded her rightly due 79 marks it would be clear from a perusal of Annexure A4 that she has got more marks than the respondent Nos. 9 & 10, who are among the selected candidates at Annexure A1 impugned order. She also submits that Annexure A1 impugned order is also coloured by the fact that though the vacancies are for 5 UR plus 1 SC, the candidates selected are 2 UR and 4 SC.

7. Per contra, respondents Nos. 1-4 (the official respondents) have replied stating that the applicant had submitted a representation vide Annexure A8 before respondent No. 3 pointing out the discrepancies in awarding marks and requesting for a re-evaluation to include her in the panel. The applicant claims that the 3rd respondent has not acted on the same and the selected candidates have been sent for training. The respondents submit that Annexure A8 representation dated 7.3.2019 does not consist of the endorsement of forwarding the representation by the immediate superior, nor is there an acknowledgement of receipt /dispatch section of the office of respondent No. 3. The applicant has submitted the said representation directly to respondent No. 3 without getting it forwarded by her immediate supervisor which is against the official procedure. The respondents submit that the said representation has been forwarded by them to the officer

concerned who had valued the paper. Without waiting for an outcome on the representation dated 7.3.2019, the OA had been filed. The applicant has been deputed for training (vide letter dated 16.4.2019) as per the interim order dated 5.4.2019 of this Tribunal along with the selected candidates. It is submitted that on the date of filing of the OA no selected candidates were deputed for training unlike what has been mentioned in the application. The respondents also submit that respondent No. 3 had published the result based on the marks given by the officer concerned who had valued the script. In this regard, it is submitted that respondent No. 3 has no authority to order for revaluation of answer scripts and that no provision exists in the Railway Manual to re-evaluate the answer scripts upon receiving any complaint. Further, the Respondents have explained that the appointment of 4 SC candidates against the vacancies occurred because the selected SC candidates at serial Nos. 1, 2, 4 and 6 secured 81, 80, 79 and 76 marks respectively, whereas the unreserved candidate at serial No. 5 secured only 74 marks. As such, since there is no legal provision which restricts appointing SC candidates against general quota when selection is on merit, the applicant should not have any qualm regarding the selection and Annexure A1 panel list cannot be said to be illegal or non-est.

8. The respondents 5 to 8 and 10 have filed a reply statement submitting that the contention of the applicant that she had scored 79 marks instead of 69 marks is not sufficient because, even if that is accepted, that would not be enough for the applicant to be included in the final select panel. Inclusion in the final panel has to be on the basis of marks secured in the written examination and also marks awarded for professional ability and records of

service. According to them, apart from the written examination, about 30% of the total marks are adjudged on the basis of professional ability and record of service. So the contention made by her that she should be in the panel ahead of the private respondents if the answer sheet is properly valued is not correct. Further, the 10th respondent (Dhanya A.S.) belongs to SC community and she is included in the panel against the quota reserved for SC. The applicant who belongs to general category cannot compare herself with the 10th respondent. For this reason alone she cannot claim for inclusion ahead of the 10th respondent. In addition they submit that the applicant should be put to strict proof regarding the averment that she had scored 79 marks instead of 69. Merely claiming discrepancy is not sufficient. The applicant herself cannot value her answer sheet and claim that she is entitled to have a particular mark.

9. A rejoinder was filed on 7th January, 2021 by the applicant pointing out that the official respondents in their reply statement have not made any statement regarding the non-awarding of marks for the evaluated answers. Thus, it has to be taken as an admitted fact. Though they submit that there is no provision for re-evaluation, it is submitted that even if re-evaluation is not done, just a re-tabulation of marks will bring to light the discrepancies that have occurred. It is evident from Annexure A6 answer scripts that she has not been awarded marks for the evaluated answers. The candidates who scored high marks in a competitive examination cannot be denied selection to the post only because of a mistake committed by the evaluator. This is blatantly illegal, arbitrary and against the norms of selection. The whole evaluation has been done without application of mind, as even otherwise, the

total awarded marks when added in Annexure A6 answer sheet comes to 50 and it is recorded as 69 in the answer booklet. The Authorities are bound to be extremely vigilant while evaluating the answer sheets in the selection process, especially when they claim that there is no provision for re-evaluation. These mistakes affect the career prospects of many candidates. It was only when the applicant obtained a copy of the answer sheet that the fact of non-awarding of marks came to light. Moreover, the applicant is having an excellent service record and is also an award winner and, in such circumstances, the respondents are bound to correct the mistakes that have crept in in the evaluation process. In this case, the 9th respondent who is the lowest scorer has to be eliminated from the select list and the applicant has to be included as otherwise the same would lead to miscarriage of justice. The applicant has also included Annexure A9 in the rejoinder, showing that she has successfully completed her course of training for which she was deputed after the interim order of this Tribunal. A copy of the order dated 16.8.2020 issued by the Principal Chief Engineer recommending that the 3rd respondent issue necessary orders to absorb the employees to JE/P.Way is produced. As such, the applicant is entitled to be included in the select list for posting as Junior Engineer.

10. In addition to the rejoinder the applicant has also filed MA No. 180/19/2021 that this Tribunal may direct the 3rd respondent to issue a posting order on her successful completion of training as per Annexure A9, at least provisionally, pending disposal of the OA.

11. We have carefully gone through all the records and have also heard the submissions by the learned counsel for the applicant Smt. Shameena Salahudheen, learned counsel for the respondents Nos. 1-4 Shri Asif K.H. and learned counsel for respondents Nos. 5-8 and 10 Shri Martin G. Thottan.

12. We have also examined the answer book produced at Annexure A6 as well as the Question Booklet at Annexure A7. On a preliminary examination of the answer book, the applicant's contention that marks have not been awarded to the answers in Section A serial No. (I) appears to be correct. The marks awarded to the answers in Section A serial No. (II), Section B, Section C and Section D when totalled come to 50. However the answer book at its title page shows total marks awarded as 69 which has not been explained either in the official respondents' reply or anywhere else. The Respondents have not denied the contention that no marks have been awarded for the answers to the questions in Section A (I). There do appear to be a number of answers in this section which have been marked by a right tick mark. Some other answers in the same section have been marked by a cross mark. It is safe to conclude from these markings that some answers were shown to be correct while others have been shown as incorrect in the Section A (I). However, no number marks are awarded in the section unlike the others that follow, leading to a conclusion that, though evaluation was done, no obvious number marks were awarded for this section, while they appear at the side for all the other sections that follow. This has not been commented upon in the reply filed by the official respondents. The respondents seem to have shifted responsibility on the officer concerned who valued the scripts but do not seem to have cared to correct this lacuna, mainly on the ground that such

re-evaluation is not allowed under the Railway Manual. This is a surprising position to take as the Railway Manual might not have any provisions against the correction of mistakes done during evaluation and to ensure correct awarding of marks either! It is quite commonsensical that in case the correct number marks are not awarded during evaluation, this omission will need correction. Also, if a mistake is made, it will need to be set right, as it directly affects the future career of the candidate concerned.

13. We, therefore, are in agreement with the applicant that there has been an element of casualness and arbitrariness and apparent denial of natural justice which the respondents have tried to gloss over. We, therefore, direct the respondents to get the answer sheet re-tabulated after proper re-evaluation so that the correct and proper number marks are awarded to the applicant. This should be done within a period of one month from the date of receipt of a copy of this order. The 3rd Respondent should closely supervise this process. We note (vide Annexure A2) that the final select panel is to be formed in order of merit based on the aggregate marks of professional ability and record of service; the respondents are thus also directed to prepare another panel taking this into consideration in place of the panel at Annexure A1 after the re-evaluation and re-tabulation of the answer sheet of the applicant is done. This should be completed immediately after the re-evaluation/ re-tabulation is done.

14. Meanwhile, as the applicant has successfully completed her training, it is also directed that she may be provisionally posted against a suitable post as Junior Engineer/P.Way in pay matrix Level-6, PB-2 Rs. 9,300-34,800/-

with Grade Pay of Rs. 4,200/-. within a period of one month of this Order. If she appears in the final select panel after the above ordered re-evaluation/ re-tabulation, etc. her posting may be made regular and her position may be fixed as per her due seniority. In other words, in case she appears in the final select list, her posting as a regular Junior Engineer/ P.way will not be in any way detrimental to her and will be as per her due position as compared to the others who may also have qualified and may have been posted regularly earlier. To that extent, the select list at Annexure A1 will need modification.

15. The Original Application is allowed with the above directions. The MA No. 180/19/2021 is accordingly closed. We do not order any costs.

(Dated this the 3rd day of February, 2021)

K.V.EAPEN
ADMINISTRATIVE MEMBER

P.MADHAVAN
JUDICIAL MEMBER

“SA”

List of Annexures in Original Application No.180/00229/2019

- 1. Annexure A1** – True copy of the select list No. V/P. 608/I/JE/P.Way/LDCE/Vol.I dated 9.1.2019.
 - 2. Annexure A2** – True copy of the notification No. V/P.608/I/JE/P.Way/LDCE/Vol.I dated 5.7.2017.
 - 3. Annexure A3** – True copy of the letter No. V/P.608/I/JE/P.Way/LDCE/Vol.I, dated 6.12.2018.
 - 4. Annexure A4** – True copy of the letter No. V/P.608/I/JE/P.Way/LDCE/vol.I dated 10.1.2019.
 - 5. Annexure A5** – True copy of the application dated 11.1.2019 made by the applicant under the RTI Act.
 - 6. Annexure A6** – True copy of the communication issued by the 3rd respondent dated 31.1.2019 along with the Answer Book of the applicant.
 - 7. Annexure A7** - True copy of the question booklet for the selection to the post of Junior Engiener (P.Way).
 - 8. Annexure A8** – True copy of the representation dated 7.3.2019 submitted by the applicant.
 - 9. Annexure A9** – True copy of the order dated 16.8.2020 issued by the Principal Chief Engineer No. OM/JA/Merger of Sr. PWS.
 - 10. Annexure R1** – True copy of the letter No. V/W/349/Trg dated 16.4.2019.
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