

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA No.427/2004

Thursday this the 16th day of November, 2006

CORAM:

**HON'BLE SHRI N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE SHRI GEORGE PARACKEN, JUDICIAL MEMBER**

P.D.John
Station Superintendent,
Southern Railway,
Trivandrum Central

... Applicant

By Advocate Shri M.P.Varkey

V/s.

1. Union of India represented by General Manager, Southern Railway, Chennai – 600 003.
2. The Chief Personnel Officer, Southern Railway, Chennai – 600 003.
3. Senior Divisional Personnel Officer, Southern Railway, Trivandrum-695 014. ... Respondents

By Advocate Ms.Deepa Pal for Mr.P.Haridas

This application having been finally heard on 1/11/2006, this Tribunal delivered the following on 16..11..2006:

ORDER

Hon'ble Shri George Paracken, Judicial Member

The applicant is a Station Superintendent in the Trivandrum Central Station under the Southern Railway. He is eligible to be considered for promotion to Group 'B' Service against the 70% promotion

quota for the post of AGM/ATM/AOM. In the integrated seniority list of eligible staff coming within the zone of consideration, issued by the Southern Railway vide Annexure A-1 letter dated 16/21-5-2002, the applicant's name is shown at serial no.1 at the Divisional Level. His position in the Southern Railway level is at 7. By the aforesaid Annexure A-1 letter, the Southern Railway has informed all the divisions under them that they were going to conduct the selection for the promotion to Group 'B' in Operating Department shortly. The syllabus of the Written Test was also enclosed with it. The Southern Railway had directed the Divisional Heads to inform the eligible employees to be in readiness to appear for the test at short notice. The grievance of the applicant is that he was not informed of the Annexure A-1 letter and thereby he was denied the opportunity to appear for the test which was held on 22/2/2003 and 8/3/2003. As soon as he came to know about it, he made a representation on 10/3/2003 followed by another representation on 11/9/2003. Since it was not due to his fault that he could not appear in the examination for selection, the applicant requested the respondents to promote him also and treat him at par with his juniors who have been selected to the Group 'B' service, as, according to him, there was no other way to undo the injustice meted out to him.

2 The respondents filed their reply stating that pursuant to Annexure A-1 notification, 24 employees from different divisions of the Southern Railway attended the written examination and six of them passed qualifying themselves for the Viva Voce Test. Finally four employees were placed in the panel published on 8/4/2004. They have denied the contention of the applicant that he was not notified the date of written examination as all the Divisions were notified about the dates of written

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examination as well as the supplementary examination vide the Annexure R-2 notification dated 21/1/2003 according to which the written examination for the selection of Group 'C' Service to Group 'B' Service was fixed to be held on 20/2/2003 (main) and 8/3/2003 (Supplementary) at 10.00 Hrs in Headquarters Office, Operating Department, Chennai. The list of eligible candidates with the roll numbers allotted to them who may appear for the selection for the post of AOM 70% was enclosed with the said notification with a direction to the Divisional Heads etc., to relieve them in time to attend the above examination without fail and to issue them a certificate of identification. It was also specified in the said notification that in order to ensure that all eligible employees working under the control of the Divisional Office, etc., are actually notified, the department should obtain their clear acknowledgment and endorse a copy of the same to the Southern Railway Headquarters. The applicant's name appeared at serial No.5 of the list of eligible candidates.

3 The contention of the applicant was that the aforesaid Annexure R-2 has never been notified to him nor any acknowledgment was obtained from him in token of having him noted the contents of the said notification. However, the rival contention of the respondents was that the applicant should have been vigilant and should have looked out for the schedule of the examination which was expected from every diligent employee. On a specific query from this Tribunal as to whether respondents have complied with the annexure R-2 notification that "all the eligible employees are notified about the dates of the written examination etc., and obtained clear acknowledgment which was to be endorsed to the Headquarters of the Southern Railway and to file an affidavit to that effect", the respondents

filed an affidavit on 25/10/2006 and admitted very clearly that the Trivandrum Division has not intimated the date of the written examination to the individual employees in their Division as required by the Headquarters letter dated 21/1/2003 (Ann R-2).

4 In our considered opinion, the contention of the respondents is totally untenable and unacceptable. The failure of the Trivandrum Division to comply with the direction as contained in the Annexure.R.2 notification dated 1.1.2003 issued to them by the General Manager, Southern Railway is the root cause for the entire problem. Instead of admitting their fault at the outset itself, the respondents have been defending the erring officers by justifying their inaction and attributing the responsibility on the applicant. It is only after the directions of this Tribunal the respondents admitted their fault and failure through the fresh affidavit filed by them. In the above circumstances, we find that there is merit in the contention of the applicant that he has been denied the valuable right to participate in the written examination and the supplementary examination held on 22/2/2003 and 8/3/2003 respectively to select Group 'C' service to Group 'B' service. When no fault can be attributed to the applicant for his inability to appear in the said examination in view of the affidavit filed by the respondents themselves, the entire responsibility for not informing him the date of examination and to comply with the instructions in the R-2 letter of the Headquarters would completely rest with the Divisional Office, Trivandrum. Therefore, it is necessary that the loss suffered by the applicant because of denial of opportunity to him for writing the examination has to be compensated. It is understood from the respondents' reply that pursuant to the written examination and the supplementary examination already held,

four employees have already been selected and appointed vide letter No. P (G)532/II/AOM(70%) dated 8/4/2003. Since the selection was based on the marks obtained in the written examination, it would not be appropriate for this Tribunal to accede to the request of the applicant to direct the respondents to promote him to the Group 'B' service straightaway and assign him the seniority above his juniors who have been appointed on the basis of the aforesaid examination. The applicant has to qualify the prescribed examination for such promotion, for which an opportunity has to be provided to him. In this situation, the only two options available with this Tribunal are (i) to direct the respondents to hold a supplementary examination exclusively for the applicant within three months from the date of receipt of this order or (ii) since there were 12 unreserved posts, to direct the respondents to hold the next departmental examination before 31.3.2007 to fill up the balance 8 posts remained unfilled which were notified vide Annexure A-1 notification dated 16/5/2002 and against which only four have been admittedly selected and the additional posts, if any, occurred up to 31/12/2006, so that the applicant may also participate. If he qualifies in the examination thus to be held, he shall be appointed to the Group 'B' service and he shall be granted the notional seniority immediately above his junior who was appointed on the basis of the test held on 8/3/2003 and if no juniors have been selected, he shall be assigned the seniority below the 4 persons appointed vide the aforesaid letter dated 8.4.2003. The respondents shall take a decision on either of the two options given to them above and intimate the same to the applicant within two months from the date of receipt of this order. In the above circumstances, we award a cost of Rs. 2000/- (Rupees two thousand only)

to the applicant which shall be paid to him by the respondents within the aforesaid period. The respondents may recover the said amount from the pay of the officials who failed in their duty to comply with the instructions of the Headquarters office of the Southern Railway as contained in their Annexure.R2 letter dated 21.1.2003.

Dated this the 16th day of November,2006


GEORGE PARACKEN
JUDICIAL MEMBER


N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

abp