

**ENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

ORIGINAL APPLICATION NO. 456 of 2013

Thursday this the 11th day of August, 2016

CORAM

Hon'ble Mr. Justice N.K.Balakrishnan, Judicial Member
Hon'ble Mrs. P. Gopinath, Administrative Member

1. P. Sudheera, aged 48 years
 W/o A. Narayanan, Senior Record Sorter,
 Office of Senior Divisional Commercial Manager,
 Southern Railway, Palakkad-2 residing at Narayana
 Sadanam, Sree Durga Nagar,
 Kallekulangara PO, Palakkad 9.
2. C.P. Pushpa, aged 48 years
 W/o Dayanandan, Jamedar Peon,
 Office of the Senior Divisional Telecommunications
 Engineer, Southern Railway, Palakkad-2 residing
 at Deepam, Surya Nagar, Akathethara, Palakkad-8
- 3 K.P.Janardhanan S/o P.T.Damodaran Nair, aged 55 years
 Jamedar Peon, Office of Senior Divisional Commercial
 Manager, Southern Railway, Palakkad-2
 residing at Radha Nivas, Kurunthala Parambu,
 Vengeri PO, Kozhikode.10.

....Applicants

(By Advocate Mr. T.A., Rajan)

Versus

1. Union of India, represented by General Manager
 Southern Railway, Park Town PO, Chennai.3.
- 2 The Senior Divisional Personnel Officer,
 Southern Railway, Palakkad-2.

...Respondents

(By Advocate Mr. Varghese represented Advocate Mr.Thomas Mathew
 Nellimootil)

This application having been finally heard on 05.08.2016, the Tribunal on 11.08.2016 delivered the following:

ORDER

Per: Justice N.K. Balakrishnan, Judicial Member

The three applicants in this case seek a declaration that they are eligible and entitled to get grace marks in the selection to the post of Office Clerks against 16 2/3 percent quota as per para 219 (d) of Indian Railway Establishment Manual (IREM) and Annexure A3 PB circular and that they are also entitled to get the benefit of Annexure A4 order and A5 judgment. They also seek a direction to be given to the respondents to consider them for promotion to the post of Office Clerks based on the grace marks to be awarded to them.

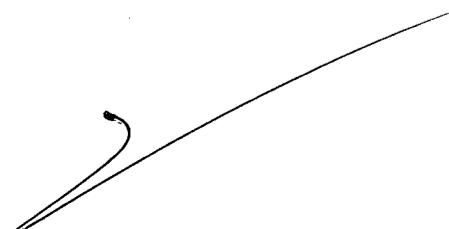
2. Gist of the case stated by the applicants is as under:

The applicants are working as Senior Record Sorter, Jamadar Peon respectively. By Annexure A1 notification the 2nd respondent initiated proceedings for filling up 13 posts of Office Clerks against 16 2/3 percent quota. Only three persons were declared to have passed in the selection. It was stated that if the required number of candidates did not come out successful in the selection then the candidates are to be given grace marks and the panel is to be revised to the extent of vacancies notified. The respondents did not do so. In the selection conducted for filling up the posts of Office Clerks against 33 1/3 percent quota, respondents gave grace marks and the panel was revised. The denial of the

same benefit to the applicants is arbitrary, the applicants contend.

3. The respondents resisted the application contending as follows:

The applicants are challenging the selection conducted for the post of Office Clerks against 16 2/3 % quota conducted in 2006 and finalized in the year 2007. Hence the application is barred by limitation. The representations alleged to have been submitted by the 2nd applicant and other applicants were not received by the respondents. Even if any such representation was given it is clear that those representations were given about four years after the finalization of selection in 2007 and nearly two years after the pronouncement of Annexure A4 order of this Tribunal in O.A 225/2008. Almost similar is the case with respect to the representations stated to have been given by the Union. Belated representations and reply will not give a fresh cause of action to the applicants. Since the selection process was finalized in the year 2007, the applicants cannot now by filing an application in 2013 request for unsettling the settled position. The applicants had participated in the selection and failed to obtain the requisite marks and so they cannot thereafter turn around and contend that the selection process is bad. Further, it is also of-mention that the selection proceedings were initiated in 2006 before the bifurcation of Palakkad Division. The total vacancies were assessed by taking into account the erstwhile Palakkad Division. Due to formation of Salem Division w.e.f. 1.11.2007 bifurcating the Palakkad Division, the applicants cannot rely on



the notified vacancies in the year 2006. After formation of Salem Division, selection proceedings are done separately in Salem and Palakkad Division. There are no vacancies in the Electrical Cadre in Palakkad Division. The existing staff were accommodated by creating special supernumerary post only. The action so taken by the respondents was accepted by this Tribunal in OA 868/2010. For filling up the Group C posts of Office Clerks in the erstwhile scale Rs.3050-4590 from Group 'D' employees, against promotion quota of 16 2/3 percent, notification dated 31.10.2006 (Annexure A1) was issued. The applicants volunteered for the said selection. The vacancies earmarked for this selection were 13 (UR 11 and SC 2). The eligibility condition for participating in the selection is that the volunteers should have minimum 2 years of regular service on 31.10.2006 and should also posses qualification of matriculation pass. The selection consists of written test only. Accordingly the written test was held on 16.12.2006. Candidates must secure a minimum of 50 marks in the professional ability and 50 marks in the aggregate for being placed in the panel. Regarding SC/ST candidates to be considered for vacancies they should secure 40 marks in professional and 40 marks in aggregate for being placed in the panel. No SC/ST volunteers were available. Vacancies earmarked for SC were thus kept unfilled. Total marks allotted to professional ability/written test is 85 and balance 15 marks are set apart for record of service. The applicants failed to obtain the minimum qualifying marks in the written test. Hence they were

not considered for empanelment. The employees belonging to UR category obtained the qualifying marks and hence they were empanelled. Another selection for filling up of posts of Office Clerks under 33 1/3 % quota was simultaneously conducted in which two candidates were selected and hence some of the employees approached this Tribunal filing OA 225/2008 challenging their non-selection and non-grant of moderation of marks. That OA was allowed by this Tribunal as per Annexure A4 directing to review the results of all the candidates who appeared under 33 1/3% quota as per the notification therein and to adopt the procedure of moderation. The direction given in OA 225/2008 to provide moderation to the candidates who appeared in the selection to the post of Office Clerks against 33 1/3% quota cannot be made applicable to the applicants in this case. The applicants herein had appeared in the selection process for the post of Office Clerks towards 16 2/3 open quota which was open to employees with matriculation qualification. There is no case for the applicant that the question papers set for the selection against 16 2/3 quota were of a higher standard. The question of granting moderation is within the absolute domain of the selection committee. In the selection for the post of Office Clerks against 16 2/3 percent quota, the committee did not make any recommendation for grant of moderation of marks. After the selection process three employees belonging to UR quota obtained the qualifying marks and they were empanelled and promoted as Office Clerks. The

applicants failed to clear the selection by scoring the minimum qualifying marks and hence they were not considered for empanelment. The applicants accepted the outcome of the selection without any demur. After six/seven years of the finalization of the selection, the applicants cannot raise any objections now to unsettle a settled matter. The OA is hopelessly barred by limitation. Hence respondents prayed for dismissal of the OA.

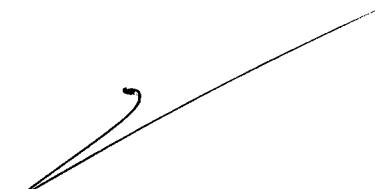
4. Rejoinder has been filed refuting the allegations made in the reply statement.

5. An additional reply statement has been filed by the respondents refuting the claim made by the applicants in this case.

6. The point for consideration is whether the applicants are entitled to get grace marks in the selection to the post of Office Clerks against 16 2/3 percent quota as per Para 219(d) of IREM and Annexure A3 circular issued by the PB and whether the applicants are entitled to get the benefit of Annexure A4 order?

7. We have heard the learned counsel on either side and have also gone through the documents/record.

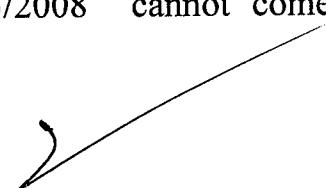
8. In Annexure A4 the applicants therein sought to review the selection procedure and to prepare a fresh panel either by refixing the aggregate marks or by awarding grace marks for Part A questions. In that case the examination was conducted pursuant to the notification dated 25.10.2006 inviting applications for filling up the post from Group D



against 33 1/3% quota. The notification in this case is dated 31.10.2006 but it is for filling up 13 posts of Office Clerks against 16 2/3 percent quota vide Annexure A1. The main thrust of the argument advanced by the learned counsel for the applicants is that the respondents have got every right to grant moderation for selecting the candidates. Rule 219(d) which was issued based on the circular issued by the department reads "*the Selection Board or the authority competent to accept the recommendations of the Selection Board to allow moderation of results by way of awarding grace marks. No grace marks shall be allowed in individual cases.*"

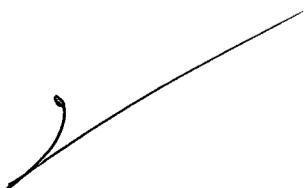
Therefore it is not mandatory that the moderation of results by way of awarding of grace marks is a must. The words are couched in negative sense that it shall not be done without the authority of the selection board or the authority competent to accept the recommendation. Though recommendation for awarding grace marks can be made, the respondents cannot be compelled to exercise their discretion in a particular way so as to suit the convenience of the employees. Selection should be made primarily on the basis of over all merit. For the guidance of selection board, the factors to be taken into account and their relative weight, are shown in the table where it is stated that for professional ability the marks awarded is 50 out of which qualifying marks is 30. Personality, address, leadership etc. for which the marks to be awarded is 20. For record of service the maximum marks is 15 and for seniority the maximum is 15.

9. The learned counsel for the respondents would stoutly oppose the plea raised by the applicants that the benefit of Annexure A4 order should be extended to the applicants as well. It is important to note that the selection impugned therein was in respect of 33 1/3 percent quota. That original application was filed in 2008 itself. The applicants herein were well aware of the position even with regard to Annexure A4, the respondents contend. The present application has been filed only in 2013 after about 7 years of the test/examination conducted in the matter. The applicants having participated in the examination and selection process have now come forward saying that in another case moderation was allowed and so the applicants also should be granted the moderation. First of all, the applicants cannot be oblivious of the fact that this O.A has been filed only after 7 years. If actually the applicants were aggrieved they should have moved this Tribunal within the time prescribed under Section 21 of the Administrative Tribunals Act. It is pointed out by the learned counsel for the respondents that in Annexure R1 the order on the Review Petition in WP(C) 30952 of 2008 dated 20.1.2011 itself it was made clear that the review order or the judgment in the Writ Petition will not operate as a precedent for the establishment in any other case. It was only because a Contempt Petition was filed in OA 225/2008, the respondents decided to implement the directions of this Tribunal in OA 225/2008. In any event the direction issued in OA 225/2008 cannot come to the rescue of the



applicants especially because they have moved this Tribunal after about 7 years. There was no reason why the applicants did not chose to file the OA in 2008 when the other employees filed the OA in 2008 as OA 225/2008, challenging the recruitment effected against 33 1/3 % quota.

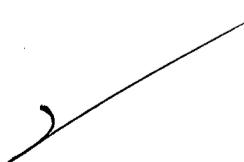
10. The applicants have appeared for selection for the post of Office Clerks against 16 2/3 percent quota which was open only to employees with matriculation qualification. In this case the candidates have no contention that the question papers set for appointment as against 16 2/3 percent quota were of higher standard or that it was not possible for the candidates to answer the questions. It is also pointed out that none of the volunteers/participants in the examination had ever raised any objection or made representation as to the nature of the questions or regarding the standard of question papers or for grant of moderation immediately after the written test or till the original application was filed. Therefore, it is crystal clear that this O.A has been filed in 2013 as an experiment since the candidates/applicants in OA 225/2008 were granted some relief by this Tribunal allowing grant of moderation marks. There the facts are entirely different. It is pointed out that in the other case moderation was ordered to be given taking note of the nature of the test conducted and the standard of questions put by the authorities concerned. Therefore, what has been stated in Annexure A4 order in OA 225/2008 cannot come to the rescue of the applicants to contend that the entire examination should be set at naught.

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By not raising any objection to the selection conducted in 2006/2007 at that time the applicants now seek to unsettle the settled position with regard to the candidates who had already passed the examination and who were appointed consequent thereto. The facts dealt with in OA 225/2008 are entirely different from the facts of this OA and so the applicants herein cannot draw parallel with the applicants in OA 225/2008.

11. As has been stated earlier Rule 219(d) of IREM is not mandatory. It is purely a matter of discretion to be exercised by the selection committee. It falls within the absolute domain of the selection committee. It is for the authorities concerned who conducts the examination to decide whether moderation is to be given or not. The candidates including the applicants had accepted the outcome of the selection without any demur and kept quiet for nearly 6/7 years and only in 2013 the applicants have moved this Tribunal. By that time the position has been settled with regard to the selection, appointment and seniority. That cannot be now unsettled.

12. It is also important to note that when the matter was pending before the Hon'ble High Court, only because the standing counsel for the respondents was stated to have made a submission that the respondents will consider the question of granting moderation to the candidates who had participated in the examination, basing on the concession such an order was passed. The respondents/selection committee itself did not think of granting moderation. Therefore, what have been stated with respect of OA 225/2008



can have no application to the facts of the present case. In other words, Annexure A4 order cannot come to the rescue of the applicants to sustain their claim.

13. The learned counsel for the respondents has placed reliance on the decision of the Hon'ble Supreme Court in *Om Prakash Shukla Vs. Akhilesh Kumar Shukla and others – 1986 (supp) SCC 285* in support of his submission that the candidates who had appeared for the examination without protest cannot later challenge the examination since that would cause serious hardship to the candidates who had appeared and who could become successful in the examination. The decision of the Hon'ble Supreme Court in *Bhoop Singh Vs. Union of India - CDJ 1992 SC 035* also has been relied upon by the learned counsel for the respondents. It was held in that decision:

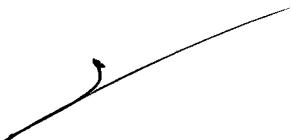
"It is expected of a Government servant who has a legitimate claim to approach the Court for the relief the seeks within a reasonable period, assuming no fixed period of limitation applies. This is necessary to avoid dislocating the administrative set-up after it has been functioning on a certain basis for years. During the interregnum those who have been working gain more experience and acquire rights which cannot be defeated casually by lateral entry of a person at a higher point without the benefit of actual experience during the period of his absence when he chose to remain silent for years before making the claim. Apart from the consequential benefits of reinstatement without actually working, the impact on the administrative set-up and on other employees is a strong reason to decline consideration of a stale claim unless the delay is satisfactorily

explained and is not attributable to the claimant....."

It was found that in that case there was inordinate and unexplained delay or laches which itself was found to be a reason to refuse the relief to the petitioner irrespective of the merit of the claim. It was held that if a person entitled to get relief chooses to remain silent for long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that reliefs. Others would then be justified in acting on that belief which is more so in service matters where vacancies are required to be filled up promptly.

14. The applicants wanted to contend that a representation was given and thereafter this O.A was filed. Mere filing of representation will not save the limitation. The cause of action arose in 2006-07 itself. In the normal course the OA should have been filed within one year from the date of issue of the notification or at least within one year from the date of publication of the result. Admittedly the applicants kept quiet for nearly for more than six years. The representation, if at all, should have been submitted within time and maximum time that can be availed of by the applicants based on that provision is only 6 months. That will not salvage the position.

15. The plea raised by the applicants centers around the non-grant of moderation marks. There is no allegation that the selection committee had any illwill towards the applicants. No malafides is attributed against them.



We could not see any arbitrary exercise of power by the respondents in not granting moderation marks. When the rule does not mandate granting of such moderation marks but only gives liberty to exercise the discretion it cannot be said that the Tribunal should interfere with the discretion of the authority concerned and to direct them to grant moderation that too when the applicants have chosen to approach this Tribunal more than 6 years after the date when the cause of action arose.

16. Since the claim is founded on the premise that non-grant of moderation has affected the prospect of the applicants in getting selected and since that claim is found to be bereft of any merit and as there is no other ground worthy of consideration, we are inclined to hold that this application is devoid of any merit and accordingly this OA is dismissed.

No order as to costs.



(Mrs. P. Gopinath)
Administrative Member

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(N.K. Balakrishnan)
Judicial Member