

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 458 of 2009

Thursday, this the 31st day of March, 2011

CORAM:

**HON'BLE Mr. JUSTICE P.R. RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

1. Sunil K. Jose,
S/o. P.T. Kuriakose,
Loco Pilot (Shunting)/Southern Railway,
Ernakulam Junction RS,
Residing at : Railway Quarter No. 144-C,
Ernakulam Junction, Cochin : 682 016

2. K.O. Johnson,
S/o. K.R. Ouseph,
Loco Pilot (Shunting)/Southern Railway,
Ernakulam Junction RS,
Residing at : Kuruppam Veettil, Enachi,
Vaikkom, Kottayam District.

3. K.K. Prakash,
S/o. Krishnan,
Loco Pilot (Shunting)/Southern Railway,
Ernakulam Junction RS,
Residing at : Mundachirayil House,
Pulikkuttyssery P.O., Kottayam District.

4. G. Suresh Babu,
S/o. Gangadharan,
Loco Pilot (Shunting)/Southern Railway,
Kottayam RS,
Residing at : Karikkuzhy House, Kadavoor,
Perinad P.O., Kollam District. **Applicants.**

(By Advocate Mr. T.C. Govindaswamy)

v e r s u s

1. Union of India represented by
The General Manager,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai – 3



2. The Divisional Railway Manager,
Southern Railway, Trivandrum Division,
Trivandrum – 14
3. The Sr. Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum – 14
4. Shri T.C. Sundaram,
Loco Pilot (Goods)
Southern Railway/Ernakulam Junction RS,
Cochin – 682 016
5. Shri V.S. Rajan,
Loco Pilot (Goods)
Southern Railway/Ernakulam Junction RS,
Cochin – 682 016
6. Shri S. Sunil,
Loco Pilot (Goods)
Southern Railway/Quilon RS PO, Quilon.
7. Shri T. Anil,
Loco Pilot (Goods)
Southern Railway/Quilon RS PO, Quilon.
8. Shri P.T. Saji,
Loco Pilot (Goods)
Southern Railway/Quilon RS PO, Quilon.
9. Shri P.A. Asokan,
Loco Pilot (Goods)
Southern Railway/Quilon RS PO, Quilon.
10. Shri D.B. Raghavan,
Loco Pilot (Shunting),
Southern Railway/Trivandrum Central,
Trivandrum.
11. Shri P. Rajendran,
Loco Pilot (Shunting),
Southern Railway/Trivandrum Central,
Trivandrum.
12. R. Rinoj,
Sr. Assistant Loco Pilot/Southern Railway,
Quilon Junction, Quilon.
13. Shri N. Kumar,
Sr. Assistant Loco Pilot/Southern Railway,
Nagercoil Junction RS, Nagercoil.

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14. Shri Jai Prakash Anand,
Sr. Assistant Loco Pilot/Southern Railway,
Ernakulam Junction RS, Cochin – 682 016 Respondents.

(By Advocates Mr. Thomas Mathew Nellimoottil for respondents 1-3
Mr. M.P. Varkey, for respondents 4-14

This application having been heard on 03.03.2011, this Tribunal on ..31.03.11..... delivered the following :-

ORDER

HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

This O.A has been filed by the applicant for the following reliefs :

- (i) Call for the records leading to the issue of Annexure A-1 and A-2 and quash the same to the extent it includes respondents 4 to 14 and excludes the applicants;
- (ii) Call for the records leading to the issue of A3 and quash the same to the extent it earmarks 9 vacancies for the members of the SC community;
- (iii) Declare that the official respondents are bound to recast A1 panel in the light of the declaration above, duly taking into consideration of A-8 order of this Hon'ble Tribunal in O.A. No. 161/07 and declare further that the applicants are entitled to be included in A-1 panel at the appropriate place;
- (iv) Direct the respondents to recast the A1 panel in the light of the declarations and directions in paragraphs 8(a) to (c) above and direct further to include the names of the applicants at the appropriate place in A-1 panel and to grant them the benefit of promotion as Loco Pilot (Goods) from the date from which those who are included in A-1 panel were granted the benefit of promotion as Loco Pilot (Goods);
- (v) Direct the respondents to pay the arrears of pay and allowances in the light of the declarations and directions in 8(a) to (d) and direct further to pay interest @ 8% per annum thereon from the date from which the arrears fell due upto the date of full and final settlement of the same;
- (vi) Award costs of and incidental to this application;
- (vii) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.



2. The applicants are Loco Pilots (Shunting) in the Trivandrum Division of Southern Railway, who qualified in the written examination for the post of Loco Pilot (Goods) Grade-II in the scale of pay of RS. 5000-8000 (pre-revised) held pursuant to the notification dated 09.07.2008 for 26 vacancies. The vacancies were bifurcated as 9 for SC, 5 for ST, 12 for UR. The applicants have secured more than 60% marks in the examination. In the list of persons empanelled for selection vide memorandum No. V/P.608/VI/LP(G)/II/Vol.III dated 30.10.2008, the respondents No. 4 to 8 have been adjusted against general category vacancies inspite of being SC candidates. But for induction of the above respondents, the applicants should have been included in the selection list. Aggrieved, applicants submitted representations dated 04.12.2008 to the 2nd respondent. Thereafter, the applicants have filed this O.A.

3. The applicants submit that the inclusion of respondents 4 to 14 in positions shown in Annexure A-1 memorandum is arbitrary, discriminatory and contrary to law. No vacancies belonging to SC category had arisen in the category of Loco Pilot (Goods) Grade-II, therefore, the Annexure A-3 to the extent it indicates 9 vacancies for SC category, is arbitrary and contrary to law. With effect from 01.01.2006, the cadre of Loco Pilot (Goods) Grade-II and Loco Pilot (Goods) Grade-I stood merged and, therefore, any vacancies arising on account of promotion of persons from the cadre of Loco Pilot (Goods) Grade-II to Loco Pilot (Goods) Grade-I are to be anulled and any such promotions withdrawn, wherever necessary. Therefore, the Annexure A-3 indicating the existence of 9 SC vacancies is discriminatory

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and arbitrary. The fitment of persons belonging to the SC category against general category vacancies as indicated in RBE No. 103/03 dated 20.06.2003 has already been struck down by this Tribunal in O.A. No. 161/2007. By virtue of their seniority and qualifying marks in the examination, the applicants are entitled to be included in Annexure A-1 panel, with all consequential benefits.

4. The respondents opposed the O.A. In their reply, they submitted that having taken part in the selection, the applicants are hit by estoppel in filing this O.A. The prayer in paragraph 8(b) fails in as much as Annexure A-3 had already been cancelled by the official respondents as per Annexure A-4 dated 24.07.2008. Annexure A-8 order relied upon by the applicant has been taken in appeal before Hon'ble High Court of Kerala. The 1st, 3rd and 4th applicants have figured in Annexure R-1 select list published subsequent to Annexure A-4 selection. The 2nd applicant had expressed his unwillingness to appear for the written test relating to Annexure R-1 select list, as per his application dated 11.06.2009. The respondents 4 to 8 have been placed in Annexure A-1 panel as they were senior enough for such placement and are not liable to be adjusted against the quota meant for the reserved category of employees.

5. In the reply statement filed by the respondents 4 to 14, it was submitted that the SC/ST employees in Annexure A/1 panel, A-2 office order and A-3 and A-4 notifications are entitled to have their seniority revised with effect from 17.06.1995 or from the date of their first promotion in Trivandrum Division, with consequential seniority as per 77th and 85th

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amendments of the Constitution and as per the decision of the Apex Court in *R.K. Sabharwal & Others vs. State of Punjab and Others*, 1995 SCC (L&S) 548, and the post based roster issued accordingly. Therefore, RBE No. 103/03 dated 20.06.2003 or its quashing by Annexure A/8 order do not have any legal consequence in the matter.

6. We have heard Mr. T.C. Govindaswamy, the learned counsel for the applicant and Mr. Thomas Mathew Nellimoottil, the learned counsel for the official respondents.

7. The issue for consideration in this O.A. is whether the applicants are entitled to be included in Annexure A-1 panel at appropriate places displacing the respondents 4 to 8 from the general category vacancies. In O.A. No. 161/07, the issue whether the vacancies in general category and reserved category should be filled up in the order of vacancies that arose in the aforesaid category or not was considered by this Tribunal. In its order dated 01.05.2009, the Tribunal directed the respondents to fill up the vacancies in the same order as they occurred and prepare a revised panel. The relevant part of the said order is reproduced as under:

"13. According to the applicant, if the present procedure of filling up of the vacancies under the general quota is filled up first, then, the six general vacancies (serial 1,2,4,7,8,9) would be filled by 3 General candidates (1,3 and 6) and 3 SCs (2,4 and 5). This would leave no SC candidate for promotion to the unfilled SC vacancies at serial vacancies (3,5 and 6). Vacancy reserved for ST would however, be filled up by S.T. candidate. The three unfilled SC vacancy would have to be carried forward to the next year. In that event, only 7 posts would have been filled up. Three general category candidates may have to wait for their promotion against any future vacancies. Instead, if the respondents fill up the vacancies in the order of their occurrence, the first and second vacancies, i.e. general would be filled up by a general candidate and an S.C. candidate. The third one (SC vacancy) would be filled up



by another S.C. Candidate (Sl. No. 4). The fourth vacancy being general, would be filled up by the second general candidate (Sl. No.3). Fifth vacancy would be filled up by S.C. Candidate (Sl. No. 5). The sixth vacancy (SC) will have to be carried forward due to non-availability of SC candidate. The seventh, eighth and ninth vacancies would be filled up by three general candidates (Sl.Nos. 7,8 & 9), while the tenth one would be filled up by S.T. candidate. This would result in five general candidates being accommodated against six vacancies under general category, the sixth vacancy being consumed by an S.C. Candidate. Two out of three vacancies meant for S.C. would be filled, leaving only one under S.C. category to be carried forward. This method, if adopted, cannot be heartburn for any group. This method, as pointed out by counsel for the applicants would not violate any decision of the Apex Court or the Constitution. There would not be any reversion by following the above method, as any reversion that might take place would be only from out of the SC candidates who could easily be accommodated against the vacancies available under their own quota, which have not been carried forward. Thus, justice would be rendered to all.

14. In view of the above, the O.A. succeeds. It is declared that Annexure A-1 order is liable to be quashed and set aside and we do so. Respondents are directed to review the promotion made and fill up the vacancies in the same order as they occurred and prepare a revised panel. Those who may have to be reverted, be not reverted but adjusted against the carry forward vacancies. Their seniority, however, may undergo some changes, which may be effected after due notice to them. General candidates to be promoted on the basis of the above method of filling up would be placed in the seniority in the order of their promotion. Their promotion shall be notional from the date the promotion to others have been granted and actual from the date they assume duties of higher responsibilities. This drill be conducted within three months of the communication of this order.”

8. The Hon'ble Supreme Court in the case of **R.K. Sabharwal & Others vs. State of Punjab and Others**, 1995 SCC (L&S) 548, held that once all the roster points in the cadre are availed and the quota prescribed is achieved then subsequent vacancies have to be filled up from the category to which the post belongs in the roster although in case of non-availability of reserved candidate that reserved point can be carried forward. The relevant portions from the aforesaid case are extracted as under :



"5. We see considerable force in the second contention raised by the learned counsel for the petitioners. The reservations provided under the impugned Government instructions are to be operated in accordance with the roster to be maintained in each Department. The roster is implemented in the form of running account from year to year. The purpose of "running account" is to make sure that the Scheduled Castes/Schedule Tribes and Backward Classes get their percentage of reserved posts. The concept of "running account" in the impugned instructions has to be so interpreted that it does not result in excessive reservation. "16% of the posts....." are reserved for members of the Scheduled Caste and Backward Classes. In a lot of 100 posts those falling at serial numbers 1,7, 15, 22,30, 37, 44, 51, 58, 65, 72, 80, 87 and 91 have been reserved and earmarked in the roster for the Scheduled Castes. Roster points 26 and 76 are reserved for the members of Backward Classes. It is thus obvious that when recruitment to a cadre starts then 14 posts earmarked in the roster are to be filled from amongst the members of the Scheduled Caste. To illustrate, first post in a cadre must go to the Scheduled Caste and thereafter the said class is entitled to 7th, 15th, 22nd and onwards upto 91st post. When the total number of posts in a cadre are filled by the operation of the roster then the result envisaged by the impugned instructions is achieved. In other words, in a cadre of 100 posts when the posts earmarked in the roster for the Scheduled Castes and the Backward Classes are filled the percentage of reservation provided for the reserved categories is achieved. We see no justification to operate the roster thereafter. The "running account" is to operate only till the quota provided under the impugned instructions is reached and not thereafter. Once the prescribed percentage of posts is filled the numerical test of adequacy is satisfied and thereafter the roster does not survive. The percentage of reservation is the desired representation of the Backward Classes in the State services and is consistent with the demographic estimate based on the proportion worked out in relation to their populations. The numerical quota of posts is not a shifting boundary but represents a figure with due application of mind. Therefore, the only way to assure equality of opportunity to the Backward Classes and the general category is to permit the roster to operate till the time the respective appointees/ promotees occupy the posts meant for them in the roster. The operation of the roster and the running account" must come to an end thereafter. The vacancies arising in the cadre, after the initial posts are filled, will pose no difficulty. As and when there is a vacancy whether permanent or temporary in a particular post the same has to be filled from amongst the category to which the post belonged in the roster. For example the Scheduled Caste persons holding the posts at Roster - points 1, 7, 15 retire then these slots are to be filled from amongst the persons belonging to the Scheduled Castes.

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Similarly, if the persons holding the post at points 8 to 14 or 23 to 29 retire then these slots are to be filled from among the general category. By following this procedure there shall neither be short-fall nor excess in the percentage of reservation.

6. xxxxxx xxxxxx xxxxxx

7. When all the roster-points in a cadre are filled the required percentage of reservation is achieved. Once the total cadre has full representation of the Scheduled Casts/Tribes and Backward Classes in accordance with the reservation policy then the vacancies arising thereafter in the cadre are to be filled from amongst the category of persons to whom the respective vacancies belong. Jeevan Reddy, J. speaking for the majority in *Indra Sawhney vs. Union of India* (AIR 1993 SC 477) observed as under:-

"Take a unit/ service/ cadre comprising 1000 posts. The reservation in favour of scheduled Tribes Scheduled Castes and other Backward Classes is 50% which means that out of the 1000 posts 500 must be held by the members of these classes i.e. 270 by Other Backward Classes, 150 by Scheduled Casts and 80 by Scheduled Tribes. At a given point of time, let us say the number of members of OBC in the unit/ service/category is only 50, a shortfall of 220. Similarly the number of members of scheduled Castes and Scheduled Tribes is only 20 and 5 respectively, shortfall of 130 and 75. If the entire service/cadre is taken as a unit and the backlog is sought to be made up, then the open competition channel has to be choked altogether for a number of years until the number of members of all backward classes reaches 500 i.e., till the quota meant for each of them is filled up. This may take quite a number of years because the number of vacancies arising each year are not many. Meanwhile, the members of open competition category would become age barred and ineligible. Equality of opportunity in their case would become a mere mirage. It must be remembered that the equality of opportunity guaranteed by clause (1) is to each individual citizen of the country while clause (4) contemplates special provision being made in favour of socially disadvantaged classes. Both must be balanced against each other. Neither should be allowed to eclipse the other. For the above reason, we hold that for the purpose of applying the rule of 50% a year should be taken as the unit and not the entire strength of the cadre, service or the unit as the case may be".

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8.	xxxxxx	xxxxxx	xxxxxx
9.	xxxxxx	xxxxxx	xxxxxx

10. We may examine the likely result if the roster is permitted to operate in respect of the vacancies arising after the total posts in a cadre are filled. In a 100 point roster, 14 posts at various roster points are filled from amongst the scheduled Casts/ Scheduled Tribes candidates, 2 posts are filled from amongst the Backward Classes and the remaining 84 posts are filled from amongst the general category. Suppose all the posts in a cadre consisting of 100 posts are filled in accordance with the roster by December 31, 1994. Thereafter in the year 1995, 25 general category persons (out of the 84) retire. Again in the year 1996, 25 more persons belonging to the general category persons (out of the 84) retire. Again in the year 1996, 25 more persons belonging to the general category retire. The position which would emerge would be that the Scheduled Casts and Backward Classes would claim 16% share out of the 50 vacancies. If 8 vacancies are given to them then in the cadre of 100 posts the reserve categories would be holding 24 posts thereby increasing the reservation from 16% to 24%. On the contrary if the roster is permitted to operate till the total posts in a cadre are filled and thereafter the vacancies falling in the cadre are to be filled by the same category of persons whose retirement etc. caused the vacancies then the balance between the reserve category and the general category shall always be maintained. We make it clear that in the event of non-availability of a reserve candidate at the roster-point it would be open to the State Government to carry forward the point in a just and fair manner.

11. We, therefore, find considerable force in the second point raised by the learned counsel for the petitioners. We, however, direct that the interpretation given by us to the working of the roster and our findings on this point shall be operative prospectively."

9. It is seen from Annexure A-1 panel that out of 26 vacancies only 23 vacancies have been filled up leaving 3 vacancies for SC to be carried forward. The respondents have followed RBE No. 103/03 guidelines dated 20.06.2003 issued by the Railway Board as in the case in O.A. No. 161/2007. This Tribunal vide its order dated 01.05.2009 in O.A. No. 161/2007 had quashed the Annexure A/1 order therein and directed the



respondents to fill up the vacancies in the same order as they occurred and prepare a revised panel. The respondents have stated that they have filed a Writ Petition against the order in O.A. No. 161/07 before Hon'ble High Court of Kerala. Filing of the Writ Petition by itself does not upset the order of this Tribunal. In *Roshan Jagdish Lal Duggal and Others vs. The Punjab State Electricity Board, Patiala*, 1984 (2) SLR 731, the Hon'ble High Court of Punjab and Haryana held that "The admission of an appeal against the order of the High Court and the suspension of its operation during the pendency of appeal does not have the effect of rendering it non est till the disposal of the appeal It is thus obvious that the ratio of Sukhdev Raj Sharma's case (supra) shall continue to be a binding precedent irrespective that an appeal therefrom is pending in the Supreme Court and its future operation suspended till its disposal." If the post based roster is followed as enunciated in R.K. Sabharwal's case (supra) then there will be no shortfall or excess in the percentage of reservation and proper balance between the reserved category and the general category will be maintained.

10. In the light of the above, we are of the considered view that the respondents should follow post based reservation strictly and consequently if the applicants are entitled to be included in Annexure A-1 panel, they should be given appropriate places in it. Accordingly, the O.A. is allowed in the following terms.

11. Annexure A-1 and Annexure A-3 are quashed and set aside to the extent they include the respondents 4 to 14 and exclude the applicants.

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The respondents are directed to reassess the vacancies for the reserved categories in the wake of merger of various cadres with effect from 01.01.2006 and revise the Annexure A-1 panel strictly following the post based reservation. If the applicants find place in the revised panel, they may be granted the benefit of promotion as Loco Pilot (Goods) from the date on which those who were granted promotion as Loco Pilot (Goods) as per A1 panel. However, we do not consider it justifiable to pay back wages to the applicants in the facts and circumstances of the case in case they are promoted. Therefore, question of payment of interest does not arise. The carry forward vacancies should be utilised to avert reversion to the extent possible.

12. The above direction should be carried out within a period of 3 months from the date of receipt of a copy of this order. No order as to costs.

Dated, the 31st March 2011)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R. RAMAN
JUDICIAL MEMBER

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