CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.469 and 481 of 1994

Thursday this the 24th day of November, 1994

CORAM:

HON'BLE MR P V VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

HON'BLE MR P SURYAPRAKASAM, JUDICIAL MEMBER

O.A-469/94

1. R Nallaswamy,
Corridor Coach Attendant,
Southern Railway, Erode.

2. P Rajendran,
Corridor Coach Attendant,
Southern Railway, Erode.

3. T Rozorioraj,
Corridor Coach Attendant,
Southern Railway, Erode.

4. R Vasu,
Corridor Coach Attendant,
Southern Railway, Coimbattur.

5. S Thulasimani,
Corridor Coach Attendant,
Southern Railway, Erode.

6. R Rajan,
Corridor Coach Attendant,
Southern Railway, Erode. - Applicants

By Advocate Mr R Santhoshkumar

Vs.

1. Union of India represented by
General Manager, Southern Railway,
Madras.

2. The Chief Personnel Officer,
Southern Railway, Madras.

3. The Divisional Railway Manager,
Southern Railway, Palakkad.

4. The Divisional Personnel Officer,
Southern Railway, Palakkad. - Respondents

By Advocate Mr K Karthikeya Panicker

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O.A-481/94

1. KR Easwar Das,
Corridor Coach Attendant,
Southern Railway, Palghat.

2. P Aravindakshan,
Corridor Coach Attendant,
Southern Railway, Palghat.

3. T Kumaran,
Corridor Coach Attendant,
Southern Railway, Palghat.

4. R Rajan,
Corridor Coach Attendant,
Southern Railway, Palghat. - Applicants

By Advocate Mr S Krishnamoorthy

Vs.

1. The Divisional Railway Manager,
Southern Railway, Palghat-2.

2. The Divisional Personnel Officer,
Southern Railway, Palghat-2.

3. The Chief Personnel Officer,
Southern Railway, Madras-3.

4. Union of India represented by
the General Manager,
Southern Railway, Madras-3. - Respondents

By Advocate Mr PA Mohammed

O R D E R

PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

These two cases are based on similar considerations and claim similar reliefs and are therefore disposed of by this common order. For the purposes of the order the facts in O.A.469/94 are being discussed.

2. Applicants are Corridor Coach Attendants. Their grievance is that certain ineligible categories are being

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permitted by the respondents to avail of the reserved quota in Group'D' for promotion to Group 'C' posts meant for persons who have no promotional avenue and thereby their chances of promotion are being affected adversely. They have prayed that inclusion of categories like Pointsman A etc. should be declared illegal and that a fresh test should be conducted in accordance with the rule.

3. It is seen that the Railways have amended para 189 of Chapter I of Indian Railway Establishment Manual Revised Edition 1989 by including employees in lower Group'C' scale of 825-1200/ 950-1400 in the eligible category for selection for promotion of Group'D' employees to Group'C' against the prescribed quota. This has been done by them in the light of a decision rendered by the Supreme Court in Nirmal Chandra Bhattacharjee and others V. Union of India and others(1992)19 ATC 302 where it was held:

> "Due to restructuring in 1983 and consequent increase of pay the appellants were placed in Class'C'. But then designation did not change... The promotional channel also did not change... One of the principles of service is that any rule does not work to prejudice of an employee who was in service prior to that date."

In R2 letter dated 30.4.1992 the Railway Board has stated that the upgradation of certain Group'D' posts to Group'C' should not result in such staff being placed in a disadvantageous position vis-a-vis their counterparts who continue to be in Group'D'. The implementation of the principle laid down by the Supreme Court in Nirmal Chandra Bhattacharjee requires a fact adjudication to decide which are the categories which are

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deprived of the benefit as a result of the restructuring. The Railway Board is competent to make this fact adjudication. The Railway Board has stated that it has accordingly been decided that at least those who are otherwise eligible for consideration for promotion to Group'C' against the quota prescribed for Group'D' employees but for cadre restructuring would continue to be eligible for such consideration irrespective of the fact that they have been placed in Group'C' scale of 825-1200/950-1400/950-1500 as a result of restructuring. However, it is noticed that while amending the rule this decision is not fully carried out in the amendment since the amendment does not include scale of Rs.950-1500.

4. The contention of the applicants is that since the amended rule does not have the scale Rs.950-1500 the inclusion of such categories in the selection process is invalid. Prima facie this argument is well founded since the amended rule R3 does not include the scale 950-1500, though the Railway Board's decision R2 and the C.P.O.'s letter R4 include the scale of 950-1500. Apparently there is a conflict between the rule and the decision and the amended rule does not fully embody the decision taken. It is for the respondent Railway to clarify and reconcile the discrepancy.

5. Till such examination is done by respondent Railways the results of the examination held in pursuance of A3 letter and the list annexed thereto will be held in abeyance, as

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already directed by this Tribunal in its interim order dated 25.3.1994. Learned counsel for applicants submitted that before the respondent Railway take a decision in the matter, they may be permitted to make a representation. Applicants may do so within three weeks of today. If such representation is made, respondent Railways will take the representation also into consideration and come to a final decision in the matter. Thereafter, the result of the examination will be modified, if necessary, in the light of the decision so taken.

6. Applications are allowed to the extent stated above. No costs.

Dated, 24th November, 1994.

P SURYAPRAKASAM
JUDICIAL MEMBER

PV VENKATAKRISHNAN
ADMINISTRATIVE MEMBER

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LIST OF ANNEXURES

Annexure-A3 : Photo copy of the notification No.J/P 531/VIII/Vol. dt. 11.3.94 issued by the 4th respondent.

Annexure R2 : True copy of the letter No.E(NG)1/91/CEP/26 dated 30.4.94 issued by the Railway Board addressed to all General Managers, Indian Railways.

Annexure R3 : True copy of the Railway Boards Letter No.E (NG) 1/91/CFP/26 dated 10.3.93.

Annexure R.4 : True copy of the letter No.P(S)608/II/TNCs dated 21.10.93 issued by the 2nd respondent.