

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NO. 490 OF 2007

FRIDAY, this, the 20th day of June, 2008.

CORAM :

HON'BLE Dr.K.B.S RAJAN, JUDICIAL MEMBER

HON'BLE Dr.K.S.SUGATHAN, ADMINISTRATIVE MEMBER

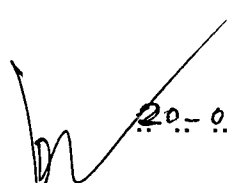
P.R.Gangadharan
Senior Technician/Air-conditioning /Southern Railway
Office of the Senior Section Engineer
Carriage & Wagon/Coimbatore Jundtion
Residing at : Puthenpura House
Kinavallur Post, Parli
Palakkad District : Applicant

(By Advocate Mr.TCG Swamy)

v.

1. Union of India represented by the
General Manager
Southern Railway
Headquarters Office, Part Town P.O
Chennai – 3
2. The Senior Divisional Personnel Officer
Southern Railways, Palghat Division
Palghat
3. The Additional Divisional Railway Manager
Southern Railways, Palghat Division
Palghat
4. The Chairman, Railway Board
Rail Bhawan, New Delhi
5. Shri C.Bhaskaran
Senior Technician
Power (Electrical Department)
Southern Railway,
Calicut Railway Station
Calicut : Respondents

(By Advocate Ms.P.K.Nandini (R1-4))

 The application having been heard on 09.06.2008, the Tribunal on
20.06.08 delivered the following :

ORDER**HON'BLE Dr.K.B.S RAJAN, JUDICIAL MEMBER**

The applicant is at present working as Senior Technician (AC) at Coimbatore in Electrical Department of Palghat Division, Southern Railway.. The cadre pf Electrical Khalasis (also called Helpers) is common for Train Lighting and Power Wings. Electrical Khalasis are promoted to the Group 'C' cadres of Technicians and thereafter as Junior Engineers.

2. The Air-conditioning Wing right from Group 'D' level is an independent wing. AC Khalasis from the Group 'D' cadre progress further as Technicians (AC) and Junior Engineers (AC). Separate posts are sanctioned to the cadre of Junior Engineer Gr.II (Air-conditioning). 25% of the vacancies in the cadre of Junior Engineer Gr.II (AC) are filled up by promotion and accordingly for filling up the post of Junior Engineer Gr.II (AC) against the 25% quota, separate selections were being conducted. Annexure A-2 letter dated 15.12.1999 and Annexure A-3 letter dated 26.02.2001 refer. Like-wise similar selections were conducted for promotion to the post of Junior Engineer Gr.II / Electrical / General Services in respect of those who were working as Technicians (Train Lighting and Technicians (Power).

3. According to the applicant there were 4 vacancies in the cadre of Junior Engineer Gr.II (AC) in the scale of Rs.5000-8000 vide Annexure A-4 letter dated 01.12.2006. In the alert list the name of the applicant figures at Sl.No.9. As per the said Annexure A-4 apart from the applicant of those

who were working on the Train Lighting side and Power side were also included in the alert list. The applicant came to know that vacancies in the Air-conditioning side were also included in the selection in question in contrast to the earlier procedure of conducting such selection separately for the post of Junior Engineer Gr.II (AC). He therefore submitted a representation dated 30.05.2007 requesting that proper selection be conducted for promotion to the cadre of Junior Engineer Gr.II (AC), vide Annexure A-5. This was followed by Annexures A-6 and A-7 representations as well.

4. Respondents have published the result of the examination by communication dated 23.05.2007 in which the applicant's name did not figure. Only those who were in the Power side and Train Lighting side including Respondent No.5 were declared to be qualified. On the basis of the result the respondents have published a panel dated 10.07.2007 vide Annexure A-8. According to the applicant, even if he were to have qualified, he would still not have found a place in the panel because in the combined seniority list, he was placed below the last person selected

5. According to the applicant, respondents ought to have conducted a separate examination for the post of Junior Engineer (AC) and never before had the respondents conducted a common selection for the vacancies in the AC side nor have they ever published a common seniority list of those who were working in the AC, Power side and Train Lighting side. Thus the grievance of the applicant is that notwithstanding the fact that he is the senior most among the Senior technicians (AC) in Palghat Division he stands denied of an opportunity for being considered for

promotion as Junior Engineer Gr.II (AC) and hence this O.A.

6. Respondents have contested the O.A. According to them, in Palghat Division there is no separate sanction for the post of Junior Engineer Gr.II (AC) and as such there is no separate seniority list of Junior Engineer Gr.II (AC). In all there were 15 posts of Junior Engineer Gr.II including AC Wing in the Electrical Department of Palghat Division. Upto 30.06.1996 appointments postings and promotions in AC cadre were commonly dealt with by Trivandrum Division both for Trivandrum and Palghat Divisions. Earlier one employee was posted by Trivandrum Division to Palghat Division as Junior Engineer Gr.II (AC) and he was working in all capacity though there was no sanctioned post of Junior Engineer Gr.II (AC) in Palghat. When he vacated post, a separate selection was conducted by Palghat Division vide Annexure A-2 letter dated 15.12.1999 to fill up the post under the impression that the post was sanctioned for AC Wing separately. The fact that there is no separate sanction for the post as Junior Engineer Gr.II (AC) was realized only later and the common selection was adopted to fill up the vacancies that arose subsequently. The system followed in Palghat Division is that the Junior Engineer Gr.II has to look after the duties of Train Lighting or Power or AC as the case may be depending upon the Wing to which the incumbent is posted.


7. According to the respondents, assessment of vacancies of Junior Engineer Gr.II (AC) against 25% promotional quota as mentioned in Annexure A-4 letter dated 01.12.2006 was made according to which, out of a total sanction of 15, 25% thereof worked out 4 and since no one was positioned, these four vacancies alongwith one anticipated vacancy were to

be got filled up. Out of these five vacancies, one was ear-marked for ST category. As there was no separate sanctioned post of Junior Engineer, Gr.II (AC) in Palghat Division only common selection was permissible and accordingly the same was conducted. In fact earlier also in the year 2005 such common selection was conducted. Annexure R-2 refers. In that selection one of the selected candidates belonged to AC Wing.

8. The respondents contend that the applicant was aware of the fact that there is a common selection test for all the three Wings as per Annexure A-4 and at the time of publication of Annexure A-4, he was not having any complaint over such selection. He had participated in the selection and it was only after the results were declared on 23.05.2007, that the applicant had preferred his first representation against such selection on 30.05.2007.

9. The applicant has filed his rejoinder denying various contentions of the respondents and reiterating his contentions in the O.A. He has further stated that the AC cadre in Palghat Division was constituted by a Division of the existing cadre which was originally controlled by the Trivandrum Division and the respondents should produce before this Tribunal, the order by which AC cadre was bifurcated / de-centralised. It has also been contented that the applicant had represented even before the results were actually circulated.

10. In the additional reply statement, respondents inter-alia stated as under :-



" The submission in para 5 of the reply statement that "every division can adopt a suitable system depending upon the requirement in their division" was stated under the circumstance that there is no instruction in this regard

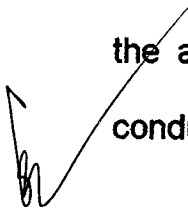
issued by Rly. Board in the form of a rule and also under the circumstance that no post of JE/II has been sanctioned in PGT division for AC cadre. In the absence of any post of JE/II sanctioned separately for AC cadre by the Electrical department for their technical and operating reasons, the Personnel Officer of the division is having the only option of conducting a combined common selection for JE/II. The order relating to bifurcation of AC cadre between PGT and TVC divisions, if any issued is not available as no records in that regard could be traced at this distant date. However, in file No.J/P.535/III/AC/Vol.VI pertaining to this period, there are various correspondences pointing out that the AC cadre has been bifurcated with effect from 01.7.1996, the sanctioned strength of AC cadre of the division is 103 and that wherever sanctioned posts of the division in AC cadre after bifurcation has been referred, it relates only about availability of artisan/non-artisan posts. i.e., MC/AC(now Sr.Technician), ACM-Gr.I, ACM-Gr.II, ACM-Gr.III, ACC-A/ACCKH and ACK and not about existence of JE/II/AC. In this connection, it may be seen from note No.J/E.150/I/3/AC dated 23-10-1996 to DPO/PGT stating that AC is a very small cadre having a strength of 103 posts. A reference to the book of sanction as on 01-4-1996 (before bifurcation) will clearly show which are all the 103 sanctioned posts available in AC cadre and that there is no post of JE/II/AC in it. Following are the 103 posts in AC cadre referred in Sr.DEE's note and that available in the book of sanction:-

MC/AC (now Sr.Techn) 1 post, ACM/I -8 posts, ACM/II-8 posts, ACM/III-8 posts, ACC-IC-25 posts, ACCA-in grade Rs.2650-4000-17 posts, ACCA-in grade Rs.2610-3540-17 posts, AC Khalasi Helper-15 posts and AC Khalasi-4 posts. It is evident from this that there is no post of JE/II/AC in the 103 posts referred in AC cadre."

11. Counsel for applicant argued that AC Wing has got a separate ladder of promotion and separate seniority list, holding a common examination vide Annexure A-4 is thoroughly illegal. Further earlier it was the Trivandrum Division which controlled promotion to the post of Junior Engineer, Gr.II (AC) in respect of vacancies at Trivandrum Division as well as Palghat Division. It is not exactly known as to when the bifurcation took place. As such, in order to ascertain the exact position the respondents should produce the relevant documents in respect of such bifurcation.

12. Counsel for respondents submitted that the AC cadre was a very small cadre consisting of 103 employees in respect of all the posts. It has also been submitted that there is no sanctioned post in Palghat Division of Junior Engineer, Gr.II (AC). The applicant having taken up the examination cannot be allowed to agitate against the procedure adopted after he had found that he was not selected. Records as available were also produced by the counsel for respondents.

13. Arguments were heard and documents perused. From Annexures A-2 and A-3, no doubt, there is a separate examination for Junior Engineer, Gr.II (AC) side. Annexure R-3 also confirms this fact. The syllabus for the said examination is contained in Annexure R-3 letter. Incidentally the very same syllabus is found enclosed to Annexure R-4 letter dated 01.12.2006 (which is the same as Annexure A-4 communication). In other words, the syllabus for holding the examination both for AC as well as for the combined group of Train Lighting / Power / AC is one and the same. From the records, it is found that there is no separate sanctioned post of Junior Engineer, Gr.II (AC) in Palghat Division. Thus, when the applicant was permitted to participate in the selection held as per Annexure A-4 communication, the same was treated as one eligible for promotion to Junior Engineer, Gr.II (AC) irrespective of whether it belongs to AC Wing or otherwise. According to the applicant, this is not the first time that a common examination had taken place, for, in 2005 also such a common examination took place in which one Technician AC was selected. Again the applicant, though reflected in his rejoinder that he represented the conducting of the common examination even prior to circulation of the



results. There is no documentary evidence. Even in the communication dated 30.05.2007 there does not appear to be any reference to his representation prior to the publication of results. Thus it is evident that the applicant took full chance and having failed in the examination, he tried to ventilate his grievance. The Apex Court in the following cases have held as under :-

" Om Prakash Shukla v. Akhilesh Kumar Shukla, 1986 Supp SCC 285,

24. Moreover, this is a case where the petitioner in the writ petition should not have been granted any relief. He had appeared for the examination without protest. He filed the petition only after he had perhaps realized that he would not succeed in the examination. The High Court itself has observed that the setting aside of the results of examinations held in the other districts would cause hardship to the candidates who had appeared there. The same yardstick should have been applied to the candidates in the district of Kanpur also. They were not responsible for the conduct of the examination.

Referring to the above case the Apex Court in the case **K.H. Siraj v. High Court of Kerala, (2006) 6 SCC 395,** held as under:-

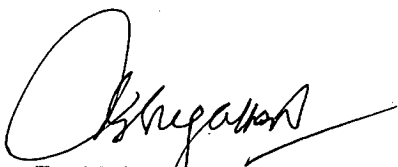
In Om Prakash Shukla v. Akhilesh Kumar Shukla it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner."

14. In view of the above, we are of the considered opinion, that the respondents cannot be faulted for conducting the common examination in respect of Junior Engineer Gr.II in Palghat Division. Rather, it is to be treated as the applicant having been given a chance for promotion to the general cadre of Junior Engineer Gr.II. At the same time we are equally of the considered view that since there is a separate wing for AC, apart from

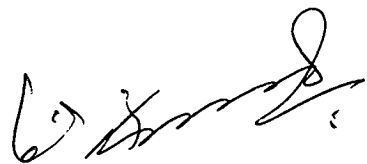
the general chance given to the applicant, if vacancies arise in the Wing in the Trivandrum Division, as hitherto for, he should be permitted to participate in the examination conducted for the same. Otherwise it would amount to the applicant being sent to the general wing without obtaining his option. Respondents should therefore keep in view that when no separate sanctioned post of Junior Engineer Gr.II exists in Palghat Division, Technicians of AC Wing posted in Palghat Division should be considered as belonging to Trivandrum Division as in the past for the limited purpose of participation in the selection under the 25% quota for the post of Junior Engineer Gr.II (AC). Any post of Junior Engineer (AC) at Palghat Division should be treated as a part of Trivandrum Division staff. Henceforth he be not considered for selection of Junior Engineer conducted by Palghat Division. This is subject to the condition that in so far as promotion to the post of Junior Engineer Gr.II (AC) is concerned, the same should be permissible without any interference of inter-divisional transfers.

15. With the above observation, O.A is disposed of. No costs.

Dated, the 20th June, 2008.



Dr.K.S.SUGATHAN
ADMINISTRATIVE MEMBER



Dr.K.B.S.RAJAN
JUDICIAL MEMBER

vs