

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO.504 OF 2008

Monday, this the 14th day of September, 2009.

CORAM:

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

R.T.Busharamani
Senior Sweeper-Cum-Porter (Sr.ScP)
Southern railway
Varkala Railway Station

... **Applicant**

(By Advocate Mr.P.K.Madhusoodhanan)

versus

1. Divisional Personnel Officer
Divisional Office, Personnel Branch
Southern Railway, Trivandrum – 14
2. The Chief Personnel Officer
Southern Railway, Headquarters
Park Town, Chennai – 3
3. Union of India through the General Manager
Southern Railway, Park Town, Chennai – 3
4. K.P.Mani
Assistant Cook
Southern Railway,
Trivandrum
5. M.Gafoor
Assistant Cook
Southern Railway,
Trivandrum
6. A.R.Ramanarayanan
Assistant Cook
Southern Railway,
Trivandrum

... **Respondents**

(By Advocate Ms.P.K.Nandini (R1-3)
Advocate Mr. Martin G Thottan (R5 & 6)

The application having been heard on 26.08.2009, the Tribunal
on 14.09.2009 delivered the following:

[Signature]

ORDER

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

The issue involved in this case is identical to that in OA 92/06 in which the Tribunal has held as under:-

" Arguments were heard and documents perused. By virtue of Annexure R-1 (2) and R-1 (3), it is clear that there is no exemption among the Group 'D' employees with regard to promotion to the cadre of Ticket Collectors/Train Clerks. True, in the notification issued vide Annexure A-1 and A-2 the cadres of staff in the Catering Department that are eligible to apply has been specified as Servers, Head Server/ Head Waiters of Catering Department. The contention of the counsel for applicants was that the exclusion of Assistant Cooks is based on the fact that such Assistant Cooks have got promotional avenues as Cooks / Head Cooks etc. It has been stated by the Senior Counsel for the respondents that promotion of Assistant Cooks as Ticket Collectors / Train Clerks has been in existence as a matter of practice for a substantial period which would go to show that Annexure R-1 (2) and R-1 (3) have been kept in tact though Annexure A-1 and A-2 did not contain Assistant Cooks as an eligible category. We agree with the submissions made by the Senior counsel for the respondents.

While inclusion of Assistant Cooks by the respondents as a category for promotion as Ticket Collector / Train Clerks does not suffer from any legal infirmity, another aspect to be seen is whether their promotion was based on proper seniority. According to the decision by the Hon'ble High Court in W.P No.14500/2003 seniority shall be based on length of service and not on the scale of pay. If so, it is to be seen whether the applicants are actually senior to the private respondents. Though the counsel for applicants substantiates the same, the same is to be properly verified with the records held by the respondents organisation. If the respondents noticed that seniority prepared was in accordance with the law laid down by the Hon'ble High Court, the applicants may be suitably informed accordingly. Instead, if the seniority list has been prepared in violation of the judgment of the Hon'ble High Court in W.P.No.14500/03, the same is to be duly rectified and if the applicants who already stand qualified, are



found to be senior enough to be accommodated against the 23 notified vacancies, they should be accordingly considered for promotion from the date their juniors had been so promoted. In view of the limited number of vacancies, if any other person who stands junior to the applicants and who has to be reverted, the same may be carried out in accordance with law and after giving an opportunity of being heard. If provision exists for creation of supernumerary post whereby such reversion could be avoided, the same be also considered as by now such persons facing reversion would have served in the promotional quota for a substantial period.

OA is allowed to the above extent. This order may be complied with, within a period of four months from the date of communication of this order. No costs."

2. As in the above case, this OA is also allowed to the above extent as stated above. Time calendered for implementation of this order is four months from the date of communication of a copy of this order. No costs.

Dated, the 14th September, 2009.



K GEORGE JOSEPH
ADMINISTRATIVE MEMBER



Dr.K.B.S.RAJAN
JUDICIAL MEMBER

VS