

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.52/2004

FRIDAY, THIS THE 9th..... DECEMBER 2005

C O R A M:

**HON'BLE SMT.SATHI NAIR, VICE CHAIRMAN
HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER**

S.Mohanan, Traffic Porter,
Ernakulam Junction, Southern Railway,
Ernakulam Junction.
R/o 'Sree', Thevara, Ernakulam.

Applicant.

(By Advocate Mr.B.Krishnamani)

Vs.

- 1 Union of India represented The General Manager
Southern Railway, Chennai.
- 2 The General Manager, Southern Railway, Chennai.
- 3 The Divisional Railway Manager, Southern
Railway, Thiruvananthapuram.
- 4 The Senior Divisional Personnel Officer,
Southern Railway, Thiruvananthapuram.
- 5 K.Omanakuttan, V/T 935, Sweeper cum Porter,
Southern Railway, Chingavanam.
- 6 V.Sahadevan, V/T 378, Parcel Porter,
Southern Railway, Kottayam.
- 7 Sara Nahida Beegum, V/T 1232, Sweeper cum
Porter, Southern Railway, Mayyanad.
- 8 Suhas P.R, V/T 1251, Traffic Porter,
Southern Railway, Guruvayoor.
- 9 S.Packiam, V/T 1244, Traffic Porter
Southern Railway, Quilon.
- 10 S.Santhosh, V/T 1291, Traffic Porter,

Irumpanam/U/o Traffic Porter
Southern Railway, Kottayam.

- 11 S.Lethika, V/T 1108, Traffic Porter
Cochin Terminals Yard, Kochi.
- 12 G.Padmanabhan Nair, V/T 771, Goods Shed
Porter, Super Numarary Post
Southern Railway, Quilon.
- 13 N.Suletha, V/T/1071, Retairing Room Attender
Southern Railway, Thiruvananthapuram Central.
- 14 S.Thanupillai, V/T 1205, Waterman,
Southern Railway, Thiruvananthapuram Central.
- 15 P.John Varghese, J/T 2591, Sealer,
Southern Railway, Kalamassery.

Respondents

(By Advocate Mr.P.Haridas (R1-4).

O R D E R

HON'BLE SMT.SATHI NAIR, VICECHAIRMAN

The applicant is working in the Booking Office of Ernakulam South Junction. He was found to be unfit as a Traffic Porter on medical grounds. While so, the Southern Railway invited applications for Ticket Collector (Annx.A1 & 2). The applicant submitted his application and he was called for a written test alongwith other candidates. An interview was conducted on 19.11.2003 and medical examination subsequently in which the applicant participated and passed. The gievance of the applicant is that he was not included in the selected panel at Annx.A5. Though he is a Scheduled Caste candidate one V.Shadevan and K.Omanakuttan were selected against the SC quota. They were called for viva voce test on the basis of 'best among failed scheme'. The same is clearly illegal and unjust.

2 The respondent in the reply statement clarified that the applicant's

case has to be considered against the notification at Annx.A1 against 16 2/3% quota and that the medical classification indicated as B-1 in Annx.A1 is an inadvertent error and the required medical classification is B-

2. The applicant failed to secure the requisite qualifying marks both in professional ability and in aggregate and the selection of V.Sahadevan and K.Omanakuttan was in order as they have secured the requisite qualifying marks both in professional ability consisting of written test and viva voce and in the aggregate. They further submitted that the best among failed shown in Annx.A4 is with reference to the written test only and the applicant had passed the written test but failed to secure the qualifying marks in the aggregate which is reckoned after taking into account his marks in written test, viva voce and service records. Therefore, there is no illegality in the matter.

3 We have heard the learned counsel and perused the material on record.

4 The selection is to the post of Ticket Collector against 16 2/3% of the LDCE quota as evidenced by Annx.A1 and confirmed by the respondents. It has been stipulated that there would be written test and those qualified in the written test be called for viva voce and that the panel will be formed strictly on the basis of merit. There are no stipulation regarding marks allotted for the written test or viva voce. We have called for the Selection Record and they have been produced before us. It is seen that the Selection Committee relied on Railway Board's letter dated 10.10.2000. This only spells out that the existing Group-D promotion quota covered under para 189 of the IREM has been increased to 50% and that the selection against

the enhanced quota would be in accordance with the procedure prescribed. Therefore, we have to refer to the provisions of para 189 of IREM. The post of Ticket Collector is a Group-C post and paras 180-189 deal with the promotion to higher grade including Group-D and Group-C. Para 189 specifically deals with the promotions to the lowest grade of Commercial Clerk, Ticket Collector, etc. Sub-para (a)(i) and sub-para (4) of para 189 of the IREM are reproduced below:

189.(a)(i) All promotion should be made on the basis of selection. There should be written tests to assess the educational attainments of candidates followed by interview where considered necessary.

(4) All those who qualify in written and oral test, the qualifying percentage of marks being prescribed by the General Manager, should be arranged in the order of their seniority for promotion against the yearly vacancies available for them in Group 'C' categories.

5 It is obvious that no stipulation regarding marks ~~are~~^{is} made in this provision. Since all promotions are to be made on the basis of selection, the procedures to be adopted for selection laid down in para 219 of the IREM are to be followed. According to the procedure as laid down in para 219(g) for the guidance of the Selection Board, the factors to be taken into account and the relative weightage are 'Professional ability', maximum marks 50, qualifying marks 30. 'Personality, address, Leadership and academic qualification', maximum marks 20 – qualifying marks nil. 'Record of service', maximum marks 15 – qualifying marks nil. 'Seniority', maximum marks 15 – qualifying marks nil. A candidate should have obtained minimum 30 marks in professional ability and 60% marks in the aggregate for being placed in the panel. The candidates accordingly have to secure 60% marks in the written test for the purpose of being called for viva voce

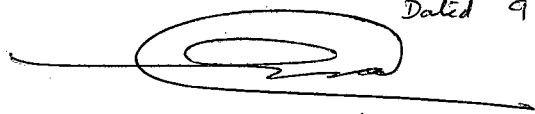
test. It is stated in paragraph 4 of the proceedings of the Selection Committee that this post being a safety post, candidate securing 50% marks and above in the written test were called for viva voce and there is 10% relaxation of marks for SC/ST employees. No authority has been produced before us for this Bench-mark as the rule clearly lays down that the candidate who have secured 60 percent of the written test maximum marks, ^{would} ~~to~~ be eligible for being called for viva voce. Further, we find that 2 SC employees who secured less than 50% marks but more than 20% have been called for viva voce test under 'best among failed scheme' prescribed by the Railway Board. No details of this scheme were also produced before us. The respondents also could not make any submission whether the instructions in para 219 of the IREM had been modified subsequently so as to fix only 50% against the 60% originally provided. In the absence of any clarity in the respondents' reply statement in this regard, we proceed to examine the case with reference to the submissions made and the basis taken by the Selection Committee as seen from the proceedings dated 19.11.03. In the Annx.A1 notification, it is indicated that there are 12 vacancies of which 2 are reserved for SCs. The applicant is a SC candidate. Conceding that the minimum marks for the written test is 50%, the applicant has secured the same and was eligible to be called for viva voce. In the viva voce he has been granted 10 marks and 10 marks for the record of service. He secured 25.63 marks in the professional ability and his total is calculated as 45.63 against a total of 100 marks. Though there is no mention of minimum for the aggregate in the proceedings or in the reply statement, it is presumed to have been taken as 60% as stipulated in the Rules. There is 10% relaxation

of marks for SC/ST employees against vacancies reserved for SC/ST. Even if this relaxation is accorded, the applicant would not come within the ambit of the selection. ~~Therefore,~~ ^{Therefore,} against the two vacancies notified, the applicant had certainly a preferential claim for being called for viva voce. Even if such a provision for calling best among the failed candidates is in existence, it can be invoked only if no candidate emerges successful after the entire process of selection is completed which consists of both written test and viva voce. It cannot be certainly invoked at the intermediate stage after the written examination, when there was already an SC candidate who had secured more than 50% marks in the written test. Only after the suitability of this candidate was adjudged in the aggregate after the viva voce and after allotting the marks on record of service; the remaining post if any could have been considered for filling up by taking up the 'best among failed candidates'. The method of selection adopted by the respondents thus suffers from a lacuna. We could not find any such provisions regarding 'best among the failed scheme' in the general instructions relating to reservation as compiled in Swamy's Hand Book except a reference to relaxation admissible to SC candidate in direct recruitment. In page 17 of Swamy's Handbook 2005, Para 9(iii), it is provided that if SC/ST candidates are not available even under the relaxed standards, shortfall will be adjusted by appointment of the best among the remaining SC/ST candidates with minimum educational qualifications. The wording above also makes it clear that 'best among remaining candidates' have to be considered if candidates were not available even after applying the relaxed standards. However, ~~the~~ ^{he} at end of the selection process, the applicant has secured only a total of

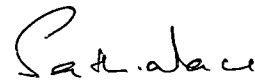
45.63 marks as against the minimum 50% required in the aggregate, after applying the relaxed standards, Whereas, the two best among failed candidates, Sri V.Sahadevan obtained 57.03 marks and Sri K.Omanakuttan 53.13 marks, thus satisfying the relaxed standards. Therefore, in the end result, the selection of the 5th and 6th respondents against the SC quota cannot be faulted though the sequential steps taken were not recorded properly by the respondents in the proceedings. We do not consider it sufficient ground to hold that the selection is vitiated. O.A is accordingly

dismissed.

Dated 9.12.05.



(K.V.Sachidanandan)
Judicial Member



(Sathi Nair)
Vice Chairman

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