

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA NO. 517 of 2007.

THURSDAY THIS THE 27th DAY OF MARCH, 2008

C O R A M

**HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER
HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER**

- 1 R.Janakiraman S/o K.S. Ramachandran
Loco Pilot Goods Gr.II, Erode Depot
Southern Railway, Palghat Division
residing at 12 Athreya Avenue-II
Thindal, Erode-638 009
- 2 R. Sinna Ayyanar S/o R. Ramachandran
Loco Pilot Goods Gr.II, Erode Depot
Southern Railway, Palghat Division
residing at 403/A Railway Colony
Erode-638 002
- 3 Y. Ramakrishnan S/o R. Yegna Narayanan
Loco Pilot Goods Gr.II, Erode Depot
Southern Railway, Palghat Division
residing at 154, Vivekananda Nagar
Chennimalai Road, Erode-638 001
- 4 C. Sivalingam S/o chellappan
Loco Pilot Goods Gr.II, Erode Depot
Southern Railway, Palghat Division
residing at 400/A Railway Colony
Erode-638 002
- 5 M. Mohamed Ibrahim S/o Mohamed Zakria
Loco Pilot Goods Gr.II, Erode Depot
Southern Railway, Palghat Division
residing at 361/D, Railway Colony
Erode-638 002
- 6 K. Rajendran S/o G. Kannaiyan
Loco Pilot Goods Gr.II, Erode Depot
Southern Railway, Palghat Division
residing at 254/H, Railway Colony
Erode-638 002
- 7 T.S. Balarajan S/o N. Sivasankaran
Loco Pilot Goods Gr.II, Erode Depot
Southern Railway, Palghat Division
residing at 341/B Railway Colony,
Erode-638 001

- 8 S. Oliver Kamalakaran S/o R.D. Selvaraj
Loco Pilot Goods Gr.II, Erode Depot
Southern Railway, Palghat Division
residing at 275, Railway Colony
Erode-638 002
- 9 A Abdul Rasheed S/o A. Abdul Aziz
Loco Pilot Goods Gr.II, Erode Depot
Southern Railway, Palghat Division
residing at 1273, Railway Colony
Erode-638 009
- 10 J. Ramu S/o Jayaramana
Loco Pilot Goods Gr.II, Erode Depot
Southern Railway, Palghat Division
residing at 21 Athreya Avenue-II
Thindal, Erode-638 009
- 11 T. Balasubramanian S/o K. Thirupathy
Loco Pilot Goods Gr.II, Erode Depot
Southern Railway, Palghat Division
residing at A/383, Mottur road,
Jahir Reddy Pattil, Mariamman Koil Street,
Salem-636 002.
- 12 P.M.D. Basha S/o T.J. Peerea Khan
Loco Pilot Goods Gr.II, Erode Depot
Southern Railway, Palghat Division
residing at 271, Railway colony,
Erode-638 002
- 13 V. Subburaj S/o Venkata Narayanan
Loco Pilot Goods Gr.II, Erode Depot
Southern Railway, Palghat Division
residing at 252, Railway Colony,
Erode-638 002
- 14 G. Malowney S/o R. Malowney
Loco Pilot Goods Gr.II, Erode Depot
Southern Railway, Palghat Division
residing at 97/E, Railway Colony
Erode-638 002
- 15 B. Anthony Muthu S/o M. Bagyanathan
Loco Pilot Goods Gr.II, Erode Depot
Southern Railway, Palghat Division
residing at 210/E, railway Colony,
Erode-638 002
- 16 K. Krishnamoorthy S/o Kumarasamy
Loco Pilot Goods Gr.II, Erode Depot
Southern Railway, Palghat Division
residing at 34, Hiranyan Street, Solar Extension
Erode-638 002

Vs.

- 1 Union of India represented by
the Secretary to Government of India
Ministry of Railways (Railway Board)
Rail Bhavan, New Delhi.
- 2 The General Manager, Southern Railway
Headquarters Officer Park Town PO
Chennai-3
- 3 The Chief Personnel Officer
Headquarters Office,
Park Town PO
Chkennai-3
- 4 The Senior Divisional Personnel Officer,
Southern Railway, Palghat Division
Palghat
- 5 Shri B. Natarajan
Loco Pilot Goods Gr.I
Office of the Chief Crew Controller
Southern Railway, Erode.
- 6 V.K. Ayyappan
Loco Pilot Goods Gr.I
Office of the Chief Crew Controller
Southern Railway, Erode.
- 7 A. Rajamoorthy,
Loco Pilot Goods Gr.I
Office of the Chief Crew Controller
Southern Railway, Erode.
- 8 Shri K. Planeerselvam
Loco Pilot Goods Gr.I
Office of the Chief Crew Controller
Southern Railway, Erode.
- 9 Shri K. Ramanathan,
Loco Pilot Goods Gr.I
Office of the Chief Crew Controller
Southern Railway, Erode
- 10 Shriri N.T. Ramesh Babu
Loco Pilot Goods Gr. I
Office of the Chief Crew Controller
Southern Railway, Mangalore.
- 11 Shri C.K. Viljayan
Loco Pilot Goods Gr.I
Office of the Chief Crew Controller
Southern Railway, Erode.
- 12 Shkri T. Paramasivam
Loco Pilot Goods Gr.I

Office of the Chief Crew Controller
Southern Railway, Erode.

- 13 Shri M. Arunachalam,
Loco Pilot Goods Gr.I
Office of the Chief Crew Controller
Southern Railway, Erode.
- 14 Shri R. Gopalakrishnan
Loco Pilot Goods Gr.I
Office of the Chief Crew Controller
Southern Railway, Erode.
- 15 Shri M. Rajendran
Loco Pilot Goods Gr.I
Office of the Chief Crew Controller
Southern Railway, Erode.

By Advocate Mr. Thomas Mathew Nellimoottil
By Advocate Mr. Martin G. Thotan for R 5 to 8, 11 & 15

ORDER

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

There are 16 applicants in this OA. All of them are working as Loco Pilots Grade II (earlier designation Goods Driver) in the pay scale of Rs.5000-8000 at Erode Junction of Palghat Division of Southern Railway. They are aggrieved by the promotion of respondents No.5 to 15 who are juniors to the applicants, to post of Loco Pilots Grade I (Senior Goods Driver) in the pay scale of Rs.5500-9000 by orders dated 5.7.2007 and 12.7.2007 (A1 and A2). It is the contention of the applicants that the said promotions have been given by extending the benefit of reservation and that such an action is untenable since it has been categorically held by the Tribunal that the rule regarding reservation cannot be applied to fill up posts that arise out of a restructuring exercise. It is also contended on behalf of the applicants that the post of Senior Goods Driver is a non-functional post that does not involve higher duties and

responsibilities and hence it is not a promotion post and for that reason also reservation cannot be applied. Such promotions also do not provide for pay fixation benefits under FR 22 (I)(a)(1). They are therefore not promotions in the strict sense of the terms, but only fitment in the higher grade. The applicants have sought the following specific relief:

- (i) Call for the records leading to the issue of Annexure A1 and A2 and quash the same to the extent they promote/fit the respondents 5 to 15 as Loco Pilot (Goods) Gr.I in scale Rs. 5500-9000 by applying the rule of reservation and in preference to the applicants.
- (ii) Declare that the applicants are entitled to be considered and promoted/fitted as Loco Pilot (Goods) in scale Rs. 5500-9000 in preference to the respondents 5 to 15
- (iii) Direct the official respondents to consider and promote/fit the applicants as Loco Pilot (Goods) Gr. I in scale Rs. 5500-9000, in preference to respondents 5 to 15 with all consequential benefits from the date from which the respondents 5 to 15 have been granted the benefit of promotion /fitment as Loco Pilot (Goods) Gr. I in scale Rs. 5500-9000.
- (iv) Award costs of and incidental to this application
- (v) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case.

2. The respondents have contested the OA. It is their contention that the promotions effected by A1 and A2 orders are not on account of restructuring. These are normal promotions to higher grades. As per the post-based reservation principle laid down by the Hon'ble Supreme Court in R.K.Sabharwal vs. State of Punjab (1995 AIR SCW 1371) reservation is applicable for each grade. Cadre restructuring was completed in the year 2003 and the promotion orders in respect of cadre restructuring was issued on 14.6.2004.



They have enclosed a copy of the promotion orders issued on 14.6.2004 consequent to cadre restructuring. In OA93/05 the Tribunal had upheld the decision to place the Senior Goods Drivers above the Goods Drivers in the seniority list. The private respondents are promoted in posts available for reserved categories of SC/ST in the higher grade of Senior Goods Driver. The private respondents have also filed a reply statement making similar averments.

3 We have heard the learned counsel for the applicants Shri TC Govindaswamy, the learned counsel for the official respondents Shri Thomas Mathew Nellimoottil and the learned counsel for the private respondents Shri Martin G Thottan. We have also studied the documents carefully.

4 The issue for consideration in this OA is whether the promotions of the private respondents by orders at A1 and A2 are arbitrary or discriminatory or in violation of any law. The applicants contention is that the higher posts of Senior Goods Drivers arose out of restructuring and therefore in accordance with the decisions of the Tribunal, reservation benefit should not have been given to the private respondents. They have also argued that since the post of Senior Goods Driver is a non-functional grade that does not involve higher duties, it is not a promotion in the strict sense of the term; and therefore reservation benefit should not have been accorded. We have carefully studied the orders at A1 and A2. The conditions stipulated in the promotion order at A1 is reproduced below:

Office Order No. J/PR 24/07

Sub: Filling up the vacancies in the category of Loco Pilot (Goods)Gr.I in scale Rs. 5500-9000-Mech. Deptt.

The under mentioned Loco Pilots (Goods) Gr.II in scale Rs. 5000-8000 are promoted as Loco Pilots(Goods) Grade-I in scale Rs. 5500-9000 and retained at their present station.

<i>SlNo</i>	<i>PfNo</i>	<i>Name (S/sri)</i>	<i>Com Sta.</i>
1	JM-457804339149	CHANDRASEKHARAN J	ED
2	JM-46070-04300385	CHANDRAN TM	PGT
3	JM-4982-07695068	GANESAN A.	ED
4	JM-4616-05505295	SHIBU C.T	SRR
5	JM-4618-05700193	ANDRU T.V.	CLT
6	JM-4619-04216430	VINCENT FERNANDEZ	CLT
7	JM-4620-05613024	SURESHKUMAR R	PGT
8	JM-4623-04301080	SANILKUMAR G	PGT
9	JM-4711-04307069	SEEMON JOSEPH	CLT
10	JM-4626-04305954	RAHIM H	PGT
11	JM-4627-04311139	PRAKASH V.R.	ED
12	JM-4629-05600418	MANOJKUMAR K	CLT
13	JM-4631-04316186	SUNILKUMAR D	PGT
14	JM-5841-07296757	DEVARAJAN S	PGT
15	JM-5842-04303726	SURESH S.S.	PGT
16	JM-2713-05602660	NATARAJAN B	SC ED
17	JM-5632-08085237	AYYAPPAN V.K.	SC ED
18	JM-314-04302497	RAJAMURTHY A.	SC ED
19	JM-3216-5600110	PANNEERSELVAM K	SCED.
20	JM-3251-04308920-	RAMANATHAN K.	CED
21	JM-563608085213-	RAMESHBABU N;T.	SOMAQ*
22	JM-5848-05606196	VIJAYAN C.K.	ST-ED
23	JM 3382-02603743	PARAMASIVAM T.	ST-ED

*due only w.e.f. 1.10.07 on completion of penalty of with holding of increments from 1.7.07 for 3M(NR)

The undermentioned employees are not considered for Loco Pilot (Goods) at present for the reasons noted against each

1	JM2094	Sebastian A	<i>Undergoing penalty of pay reduction for 24 months from 6.5.06</i>
2	JM-3150	Arunachalam M	Increment due on 1.7.07 withheld for 12 months-NR
3	JM-5632	Gopalakrishnan R	-do-

The promotions ordered above are subject to the following conditions.

The promotees will draw higher rate of pay from the date they assume higher responsibility.

The promotion of the above employees are on overall consideration that the employees are not undergoing any penalty debarring them from promotion. In case any of the employees are undergoing any penalty at the time of their promotion, it will be deemed that they are carrying out current duties only till such time they become free from punishment.

The promotees shall carry out their promotion within 15 days from the receipt of this order and failure to do this will be treated as refusal of promotion and consequently they will not be eligible to be considered for promotion before the expiry of one year debarment period and they will lose seniority to all their juniors promoted in the meanwhile.

There is a probation period of 12 months in the promoted grade. At the end of the probation period, if the appointing authority considers that the work of the Railway servant during the one year probation period or probation has not been found satisfactory or the same is needed to be watched some more time, he may revert the concerned employee to the post from which the employee was promoted or extend the period of probation as the case may be as stipulated in para 113 of IREM-1.

Their pay will be fixed under Rule 1313 (FR) 22(1) (a)(2) RII in terms of Rly Board's letter No. PLC-III/2003/CRC/6 dt. 6.01.04.

The date of relief/joining may be advised to all concerned.

This has the approval of the Competent Authority.

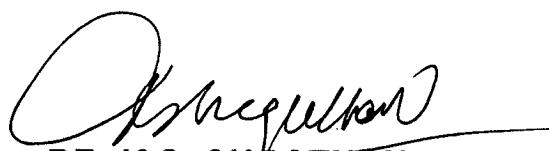
5 A-2 order dated 12.7.2007 is a partial modification of the A1 order. In A2 order one name appearing in A1 is deleted and in his place another name is substituted. All other conditions remain the same. It is nowhere mentioned in the orders at A1 and A2 that these vacancies in the higher grade of Senior Goods Driver arose out of

restructuring. On the other hand copy of the order dated 14.6.2004 produced by the respondents at R1 clearly mentions restructuring. In that view of the matter the argument of the applicants the promotion orders dated 5.7.2007 and 12.7.2007 are consequent to restructuring has no basis and cannot be sustained. In our considered view the respondents have correctly applied the policy of reservation for SC/ST while effecting promotion to the higher grade. As per DOPT OM No. 36012/2/96-Estt (Res) dated 2nd July, 1997, issued after the judgment of the Hon'ble Supreme Court in **R.K. Sabharwal** case, "**cadre for the purpose of a roster shall mean a particular grade and shall comprise the number of posts to be filled by a particular mode of recruitment**" (para 4(c)) The second argument of the applicant is that the post of Senior Goods Driver is a non-functional post and therefore it is not a promotion in the strict sense of the term and as such reservation points are not applicable. In support of this argument they have stated that the pay fixation benefit available to normal promotions under FR 22(I)(a)(1) are not given to these promotions. We have given detailed consideration to this argument. The private respondents were promoted from the post of Goods Driver carrying the pay scale of Rs.5000-8000 to the post of Senior Goods Driver in the pay scale of Rs.5500-9000. Admittedly the post of Senior Goods Drivers does not carry higher duties and responsibilities and therefore such promotions are not given the benefit of pay fixation envisaged under FR 22(I)(a)(1). The non-availability of the benefit of pay fixation is a consequence of the absence of higher duties and responsibilities. It is not because of

there is no promotion involved. The fact of the matter is that the private respondents have been promoted to a higher grade and therefore reservation will apply as per the Government decision cited above. The action of the respondents cannot be therefore deemed as arbitrary or discriminatory or against any laws.

6 For the reasons stated above, the OA is dismissed. No costs.

Dated 27.3.08.



DR. K.S. SUGATHAN
ADMINISTRATIVE MEMBER



DR. K.B.S. RAJAN
JUDICIAL MEMBER

kmn