

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCHOriginal Application Nos. 520/2005 & 20/2006Friday this the 10th day of August, 2007CORAM**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN****HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**O.A.520/05:

V.Vikaraman Nair
S/o Velayudhan Pillai
Commercial Clerk, Southern Railway,
Trivandrum Central,
resident of "Sandhya Lekshmi",
TC 64/1894,
ThiruvallamPO
Thiruvananthapuram.

...Applicant

(By Advocate Mr.M.P.Varkey)

V.

- 1 Union of India, represented by the General Manager, Southern Railway, Chennai.3.
- 2 Senior Divisional Personnel Officer, Southern Railway, Trivandrum-695014.

....Respondents

(By Advocate Mr.Sunil Jose)

O.A.20/06:

S.M.Ashraf, S/o M.S.Hameed,
working as Commercial Clerk,
Southern Railway, Quilon,
residing at Railway Quarters,
Quilon.

...Applicant

(By Advocate Mr. M.P.Varkey)

V.

- 1 Union of India, represented by
General Manager,
Southern Railway, Chennai.3.
- 2 Senior Divisional Personnel Officer,
Southern Railway, Trivandrum.14.
- 3 N.Hariharan, Commercial Clerk,
Southern Railway, NTES,
Trivandrum.14.
- 4 P.Jayabalaji,
Commercial Clerk,
Southern Railway, Quilon.Respondents

(By Advocate Mr.Thomas Mathew Nellimootil)

These applications having been jointly heard on 31.7.2007, the Tribunal on 10.8.2007 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

Both the applicants in these O.As are aggrieved by the common order issued by the respondents vide letter No.V/P.608/II/Gds.Gd/Vol.6 dated 27.5.2005 by which a selection panel has been published for the post of Goods Guard in scale Rs. 4500-7000 against the 60% promotional quota. The applicant in OA 520/2005, after an amendment carried out in the OA, has also challenged the Annexure.R.1 Railway Board letter No.99E(SCT) 1/25/13 dated 20.6.2003, by which it was clarified that "in selection posts, SC/ST candidates who are selected by applying the general standard and whose names in the select list/panel appear within the number of unreserved vacancies are to be treated as selected on their own merit."

OA 520/2005:

2 The applicant is an officiating adhoc Enquiry -cum-Reservation Clerk in the scale of Rs. 4500-7000. He was appointed during 1979 as a Group 'D' employee and became a Commercial Clerk (Group C) during 1993. Vide Annexure.A1 letter dated 3.2.2005, volunteers have been called for, for filling up 30 posts of Goods Guards (23 UR, 5 SC and 2 ST) in the scale Rs. 4500-7000 against the 60% promotional quota, out of which 15 posts were earmarked for Senior Assistant Guards/Assistant Guards, 8 for Senior Train Clerk/Train Clerks, 5 for Shunting Jamadar/Pointsman and 2 for Travelling Ticket Examiners/Ticket Collectors and Senior Commercial Clerks/Commercial Clerks. In para 3 of the said letter, it was stated as under:

"In case adequate number of employees from the specified categories are not qualifying, the shortfall will be made good from among the excess staff qualified from other categories on the basis of integrated seniority. The left over shortfall of the promotional quota will be made good by LDCE. The overall shortfall, if any, shall be made good by direct recruitment. There will be only one panel formed from the different categories having the respective percentage."

3 The applicant volunteered for the said selection. The 2nd respondent alerted him also for written examination vide Annexure.A2 letter dated 28.3.2005. His name was at Sl.No.1 in the said alert letter. The written examination was held on 23.4.2005 and 47 employees of different categories have qualified as mentioned in

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the Annexure.A3 letter dated 16.5.2005 and the applicant's name was at Sl.No.9. As per the Annexure.A5 medical certificate, the applicant was cleared in the medical examination also. However, his name was not included in the Annexure.A6 final list dated 27.5.2005. All the 15 posts earmarked for Senior Assistant Guards/Assistant Guards and 5 posts earmarked for Shunting Jamaders/Pointmen were filled in full. Out of 2 posts earmarked for Travelling Ticket Examiners/Ticket Collectors as Senior Commercial Clerks/Commercial Clerks, one was filled up by a Commercial Clerk, Mr. G.Ravi who is senior to the applicant and other by a Ticket Collector K.Omanakuttan (ST) who was the juniormost in the A6 panel. But against the 8 posts earmarked for Senior Train Clerk/Train Clerks, only 4 had been selected. The applicant submitted that since 8 Train Clerks appeared and only 4 of them have been qualified, as promised in A1 letter, the applicant having been qualified in the selection should have been included in the A6 panel. The applicant, therefore, submitted the Annexure.A7 representation dated 30.5.2005 to the 1st respondent, but without any response. He has also submitted that in the meanwhile the 2nd respondent was going to fill up the 4 remaining posts of Goods Guards earmarked for Train Clerks from Train Clerks through a Limited Departmental Competitive Examination (LDCE for short). Hence the applicant has filed the present OA on the ground that since the applicant has qualified in the selection, the 4 shortfall

vacancies should have been filled from among the 17 excess staff qualified from other categories. As the applicant's immediate senior Mr. T.Jeevanand failed in the medical test and the applicant passed in the said test, he became the seniormost person among the qualified excess staff who could have been considered for promotion. According to him, when there are already qualified staff available, the move of the respondents to fill up the posts by LDCE is unjust, malafide, illegal and without jurisdiction and is liable to be interfered with by this Tribunal and the respondents should be estopped from acting against the aforesated promise in Annexure A1 circular. He has also submitted that the Annexure R1 Railway Board letter has been issued without any authority or sanction of law.

4 The respondents in their reply stated that the applicant has not pointed out any procedure lapse in the selection made by the respondents. The applicant has not impleaded the other employees selected as per the A6 panel. They have also stated that out of the 30 vacancies notified, 5 were to be filled up by SC communities, 2 by ST communities and balance 23 from unreserved category. Since the applicant has not challenged the Annexure A1 call notice, he cannot now pray that the filling up of 4 shortfall vacancies by LDCE/Direct recruitment is unjust, illegal and bad in law. The applicant has no case that the posts to be filled up from his category has not been filled up. Special communal reservation is to be applied for as a whole and not category wise among the eligible

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streams. After taking part in the selection procedure, he cannot now say that the selection was not correct. The medical examination conducted does not entitle the applicant to be included in the select panel. In the A6 panel, even though 3 SC employees and 2 ST employees (Serial Nos,3,11,16,25 & 26) are included, 1 SC and 1ST employees(SI.Nos.3& 16) have been selected on their own merit and not on the basis of reservation. There is no shortage in respect of UR employees. Sufficient SC/ST candidates have not been qualified in the selection and those vacancies could not be filled up with unreserved employees. Annexure.A1 does not provide for filling up the shortfall in reservation from among the unreserved,even though it was mentioned that shortfall in the specified categories can be filled up from among the excess staff qualified from other categories on the basis of integrated seniority. Suitability and seniority alone are not the criteria for inclusion in the select list but the respondents also have to ensure the availability of staff in the particular stream of category, SC/ST special reservation etc.

5 The applicant has filed a rejoinder reiterating his claim in the OA. The respondents have also filed two additional replies in this O.A.

OA 20/2006:

6 The applicant in this OA is a Commercial Clerk in the scale of Rs. 3200-4900. He was initially appointed in the Railways as a substitute Casual Labour and later on became a Commercial Clerk

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during 1996. The only difference in this OA from that of OA 520/05 is that while the applicant in this OA belongs to the category of Sr.TNC/TNC, the applicant in OA 520/05 belongs to the category of TTE/SrTC/TC/Sr.CC/CC as indicated in Annexure.A1 letter dated 3.2.2005. Applicant in this OA also has raised similar contentions. He has submitted that since out of the 8 Train Clerks appeared, only 4 of them have been qualified, as mentioned in A1 letter by the respondents themselves, the applicant having been qualified in the selection could have been included in the A6 panel. The applicant herein has also made the appeal dated 30.5.2005 to the 1st respondent, but without any response. He has also submitted that the respondents are going to fill up the 4 remaining posts of Goods Guard earmarked for Train Clerks from the failed Train Clerks due to interference of a Trade Union, by conducting a Limited Departmental Competitive Examination. Hence the applicant has filed the present OA on similar grounds as those in OA 520/05. Additionally, he has stated that his seniors Shri N.Hariharan and Shri P.Janabalaji at Serial Nos.10 and 11 respectively in the Annexure.A3 have declined to join the post of Goods Guard. His appeal has not been disposed of.

7 The reply of respondents is also on similar lines to the reply in OA 520/05. Their further submission was that sufficient number of SC/ST candidates have not qualified in the selection and those vacancies can not be filled up with qualified unreserved

candidates. Annexure.A1 also does not provide for filling up the shortfall in reserved vacancies from among the unreserved, even though it was mentioned that shortfall in the specified categories can be filled up from among the excess staff qualified from other categories on the basis of integrated seniority.

8 The applicant has filed a rejoinder reiterating his claim in the OA. The respondents have also filed an additional reply in this O.A.

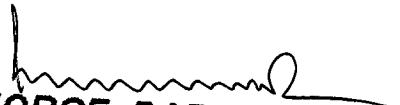
9 The applicants' counsel has relied upon the judgment of the Apex Court in R.K. Sabharwal and others Vs. State of Punjab and others, 1995 SCC (L&S) 548, Ajit Singh Januna and others V. State of Punjab and others, 1996 SCC (L&S) 540 and M.Nagaraj and others Vs. Union of India and others, 2007 SCC (L&S) 1013.

10 We have heard Shri M.P.Varkey,counsel for the applicants in both the O.As, Shri Sunil Jose for respondents in OA 520/05 and Shri Thomas Mathew Nellimootil for respondents in OA 20/06. We have also carefully gone through the pleadings. We do not find any merit in the arguments of the applicants. The applicants' contention that the respondents should be estopped from acting in breach of the promise in para 4 of the impugned Annexure.A1 letter dated 3.2.2005 is absolutely misplaced. The short fall is clearly in the category of SC/ST. The applicant belong to UR category. Undisputedly, the respondents are following the post-based roster for the purpose of reservation. The posts reserved for SC/ST

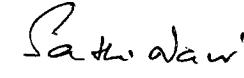
OAs 520/05 & 20/06

candidates cannot be filled up from among the UR candidates. There is also no provision for carrying forward of the unfilled vacancies in the post-based roster. Therefore, the claim of the applicants to promote them as Goods Guards against the unfilled vacancies of SC/ST is absolutely untenable. These O.As are, therefore, dismissed. No orders as to costs.

Dated this the 10th day of August, 2007.


GEORGE PARACKEN
JUDICIAL MEMBER

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SATHI NAIR
VICE CHAIRMAN