

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

OA 550/05 & 562/05

.....TUESDAY THIS THE 14<sup>th</sup> DAY OF FEBRUARY, 2005

CORAM

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN  
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

OA 550/05:

- 1 S.Vijayakumaran Nair,  
Junior Clerk (adhoc)  
Personnel Branch of Southern Railway  
Divisional Office, Trivandrum residing  
at Jyoti Bhavan, Shanti Nagar,  
Sreekaryam, Trivandrum.14.
- 2 P.G.Haridas, S/o P.V.Gopalan Nair  
Junior Clerk, Personnel Branch of  
Southern Railway Divisional Office  
Trivandrum residing at No.789-E  
Railway Quarters, Poojapura  
Trivandrum. ....Applicants

(By Advocate Mr.TCG Swamy)

V.

- 1 Union of India, represented by the General Manager,  
Southern Railway, Headquarter Office,  
Park Town PO, Chennai.
- 2 The Divisional Railway Manager,  
Southern Railway, Trivandrum Division,  
Trivandrum.14.
- 3 The Senior Divisional Personnel Officer,  
Southern Railway, Divisional Office,  
Trivandrum.
- 4 The Senior Divisional Electrical Engineer,  
Southern Railway Divisional Office,  
Trivandrum.14.

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5 The Divisional Electrical Engineer,  
Traction Distribution, Southern Railway  
Divisional Office, Trivandrum.

6 Senior Section Engineer/Permanent Way  
Southern Railway, Chalakudy Railway Station,  
Chalakudy.

7 C.K. Manoharan, Technician Grade III,  
Office of the Senior Section Engineer,  
Traction Distribution, Chalakudy Railway  
Station, Chalakudy.

8 The Chief Personnel Officer,  
Southern Railway, Headquarters Office  
Park Town PO, Chennai.3. ....Respondents

(By Advocate Mrs. Sumathi Dandapani for R.1to6&8)  
Mr.P.Ramakrishnan for R.7

OA 562/05:

1 G.Raju Babu, Senior Clerk (Adhoc)  
Personnel Branch, Southern Railway  
Divisional Office, Trivandrum  
residing at Reju Nivas, Kallanthazham PO Quilon.

2 S.Binu, Senior Clerk (Adhoc)  
Personnel Branch, Southern Railway  
Divisional Office, Trivandrum  
residing at Kuzhiyil Veedu, Ayathil PO  
Quilon.

3 K.S.Anil Kumar, Senior Clerk (adhoc)  
Personnel Branch, Southern Railway  
Divisional Office, Trivandrum  
residing at Ushus, Opp.Coop.Society  
Pirappancode PO  
Trivandrum.

4 Priya Shyjan, Junior Clerk  
Personnel Branch, Southern Railway  
Divisional Office, Trivandrum.  
Residing at No.TC/28/1282(1), Chandra Sree  
Sreekanteswaram  
Trivandrum.23. ....Applicants

(By Advocate Mr.T.C.Govindaswamy)



## V.

- 1 Union of India, represented by the General Manager, Southern Railway, Headquarter Office Park Town PO,Chennai.
- 2 The Divisional Railway Manager, Southern Railway, Trivandrum Division, Trivandrum.14.
- 3 The Senior Divisional Personnel Officer, Southern Railway, Trivandrum Division, Trivandrum.14.
- 4 The Senior Divisional Electrical Engineer, Southern Railway, Trivandrum Division, Trivandrum.14.
- 5 The Divisional Electrical Engineer, Traction Distribution, Southern Railway Trivandrum Division, Trivandrum.14.
- 6 Senior Section Engineer/Permanent Way Southern railway,Chalakudy Railway Station, Chalakudy.
- 7 Shri C.K.Manoharan, Technician Grade III Office of the Senior Section Engineer, Traction Distribution, Chalakudy Railway Station, Chalakudy.
- 8 The Chief Personnel Officer, Southern Railway, Headquarters Office Park Town PO, Chennai.3. ....Respondents

(By Advocate Mrs. Sumathi Dandapani for R.1to6&8)

Both these applications having been heard together on 18.1.2006, the Tribunal on 14.2.2006 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

Both the O.As are identical and they are disposed of by this common order by the consent of the parties. The Applicants in both



the O.As are aggrieved by Office Order No.40/05/PG dated 18.7.05 to the extent that the third respondent, namely, the Senior Divisional Personnel Officer, Southern Railway, Divisional Office, Trivandrum has absorbed the 7<sup>th</sup> respondent Shri C.K.Manoharan, Technician Grade III (SNP) in the scale of Rs. 3050-4590 under the SSC/TRD/CKI as Office Clerk in the scale of Rs. 3050-4590 in the cadre of the Personnel Branch and posted him to SEE/P.Way/O/CKI with immediate effect. The applicants in both the O.As have sought the same reliefs as follows:

- " (i) Call for the records leading to the issue of Annexure.A1 and quash the same to the extent it relates to the 7<sup>th</sup> respondent.
- (ii) Declare that the 7<sup>th</sup> respondent is not liable to be absorbed in the Personnel Branch of Southern Railway, Trivandrum Division in so far as there are vacancies in the allied categories and Ministerial category, in the electrical department of the Southern Railway, Trivandrum Division where the 7<sup>th</sup> respondent is working and direct the Respondents accordingly.
- (iii) Award costs of and incidental to this application
- (iv) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

2 The brief facts of the case are that all the applicants are working in Personnel Branch in the Southern Railway, Trivandrum Division as Junior Clerks and Senior Clerks. The Applicant No.1 in OA 550/05 is working as Junior Clerk from 30.4.93 in the scale of pay of Rs. 3050-4590 and has since been promoted on ad hoc basis as Senior Clerk with effect from 25.10.05. The second applicant is working as Junior Clerk from 29.1.03 and he has also been granted



the benefits of ACP Scheme in the year 2003. Similarly the first applicant in OA 562/05 became a Junior Clerk from 30.4.93 and he has been promoted as Senior Clerk on ad hoc basis from 24.6.04. The second Applicant joined as Junior Clerk on 12.6.93 in the Personnel Breach and since been promoted as Senior Clerk on ad hoc basis from October, 2004. The third applicant has been working as Junior Clerk from 1.4.93 in Chennai Division and was transferred to the Trivandrum Division with effect from 9.11.93. He has also been promoted as Senior Clerk in the scale of pay of Rs. 4500-7000 on ad hoc basis with effect from 28.1.05. The 4<sup>th</sup> applicant has been working as Junior Clerk in the Railway Board from 20.8.89. She was transferred to the Southern Railway, Trivandrum Division on 16.12.93 in the same capacity and later absorbed on regular basis in the Trivandrum Division with effect from 1.11.96. She has also been granted the first financial upgradation under the ACP Scheme with effect from 21.2.01.

3 The 7<sup>th</sup> respondent has joined Railway Service as a Group D employee and later on promoted as Technician-III in the scale of Rs. 950-1500 (Rs.3050-4590) in the Traction Distribution Division of the Electrical Department of the Southern Railway, Trivandrum Division. While working in the said capacity as Technician-III/TRD, he was medically de-categorized on 16.12.2002 and fitted against a supernumerary post in the scale of Rs. 3050-4590. Thereafter, he was absorbed in the cadre of the Personnel Branch as Office Clerk



vide the impugned order dated 18.7.05. The applicants' claim is that the absorption of the Respondent No.,7 in the Personnel Branch has affected their chances of promotion as Senior Clerk where the applicants have been working as Junior Clerks on regular basis for the last several years. The applicants have submitted that the posting of the 7<sup>th</sup> respondent in the Personnel Branch is arbitrary, discriminatory, contrary to the provisions contained in paras 1306 and 1304 of the IREM (Vol.I) and, therefore, violative of the constitutional guarantees enshrined in Articles 14 and 16 of the Constitution of India. Their submission is that grant of alternate employment to a person who is medically de-categorised is with the sole intention of ensuring that such a person who is incapacitated to perform his duties of the post to which he is appointed is not put to unnecessary hardships. The applicants have submitted that under Chapter 13 of the IREM, rights of persons who are already working in different categories are equally protected so as to avoid any inconvenience or hardships to such persons. It is for this reason that para 1306 of IREM envisages that the immediate superior officer of the same department to identify an alternative employment as far as possible in allied categories where his background and experience in the earlier post could be utilized. Only if an alternative employment cannot be provided in the same or allied categories of posts in the same department, such an authority has the power to find out alternative employment in other categories of posts in the



branch/unit, that too in the same Department. In the instant case the 4<sup>th</sup> and 5<sup>th</sup> respondents have not chosen to find out a suitable post for the 7<sup>th</sup> respondent in the category of post or allied categories in same branch/unit to which he belongs ie., the Electrical Department. In fact there are many vacancies in the allied categories and even in the ministerial category against which the 7th respondent should have been absorbed in Electrical Department. The submission of the applicants are that when the statute prescribes exercise of power in certain manner, it is the duty of the authority to exercise the power in the same manner as provided for under the statute and in the instant case they have not exercised their power in the manner envisaged in para 1304 and 1306 of the Indian Railway Establishment Manual Vol.I and for this reason also the impugned Annexure A1 order is liable to be set aside. As stated earlier, the apprehension of the applicants is that the absorption of the 7<sup>th</sup> respondent will adversely affect their promotional prospects. The 7<sup>th</sup> respondent was promoted as Technician-III in the scale of Rs. 950-1500 (Rs.3050-4590) prior to March, 1992. They contend that the official respondent would grant seniority to the 7<sup>th</sup> respondent from the said date of promotion to the post of Technician – III in 1992 in the category of Junior Clerk and in that eventuality, immediately after he joins in the Personnel Branch, the 3<sup>rd</sup> applicant will be reverted as Junior Clerk so as to grant promotion to the 7<sup>th</sup> respondent which is against the spirit of the instructions contained in para 1306 of IREM. They have also alleged



that the absorption of the 7<sup>th</sup> respondent in the Personnel Branch was to enable him to get a posting in Chalakudi where he was working earlier and to continue to be posted and attached to the office of Senior Section Engineer, Permanent Way, Chalakudi.

4. The third Respondent Senior Divisional Personnel Officer in his reply on behalf of the official respondents submitted that the 7<sup>th</sup> respondent while working as Technician Grade III/TRD in the scale 3050-4590 was medically decategorised on 16.2.2000. He was found fit in C/1 and C/2 medical classifications and pending alternative appointment, he was fitted against a supernumerary post in scale Rs. 3050-4590 as per the provisions in paragraph 1303 of IREM. As per para 1306 of IREM, with a view to determine the categories in which a disabled Railway servant is suitable for absorption, a Committee was constituted with three officers to find out the suitability of the 7<sup>th</sup> respondent along with other similar employees who were already fitted against the supernumerary posts. The Committee met on 30.11.2000 and found that the 7<sup>th</sup> respondent is suitable for the post of Office Clerk in the scale Rs. 3050-4590. The same was approved by the Divisional Railway Manager, Trivandrum and it was referred to the General Manager/Chief Personnel Officer for approval. The Chief Personnel Officer in turn advised that as a matter of policy the induction as Office Clerk cannot be accepted and it was suggested to explore the possibility of appointing the 7<sup>th</sup> respondent in Commercial/Ticket Checking cadre.



But the 7<sup>th</sup> respondent could not be considered for the post of Commercial Clerk as the said post carries a higher scale of pay. Moreover, he was also not suitable for the post of Ticket Collector, since it requires higher medical classification than C1/ and C2, Hence the 7<sup>th</sup> respondent had to continue as Technician III on a supernumerary post under the Section Engineer (TRD). Since there was a general ban against filling up of the post of Office Clerk, the 7<sup>th</sup> respondent could be absorbed as Office Clerk for a period of about five years. As there was lesser strength in the Personnel Branch, Trivandrum and requirement of more Clerks was there, compared to other Branches, sanction was accorded by the Chief Personnel Officer on 13.7.2005 for alternate appointment of the 7<sup>th</sup> respondent as Office Clerk in the Personnel Branch and absorbed in that capacity vide the impugned order. The respondents have also denied that the 7<sup>th</sup> respondent was appointed because of his close proximity and access with the officers at the Divisional Level as he was the Assistant Divisional Secretary of the Southern Railway Employees Sangh. The Respondents have stated that he was only a Vice Chairman of the Trichur Branch of the Union which is having 14 branches. They have further submitted that alternative appointment in the allied categories should be made "as far as possible" and it is not mandatory that the appointment must be only in the allied categories. Since the 7<sup>th</sup> respondent was found fit only in C/1 and C/2



medical categories and there was no post in the allied categories in the Electrical(TRD) or Electrical Department to be filled up with the said medical categories, he had to be accommodated elsewhere. The vacancy position in the ministerial category of all Departments including the Electrical Department of Southern Railway, Trivandrum Division was as under:

Mechanical	Nil
Operating	1
Commercial	Nil
Engineering	4
Electrical/TRD	Nil
S&T	Nil
Personnel	7

They have also submitted that the 7<sup>th</sup> respondent is entitled to the seniority in the grade on absorption only with reference to the length of service rendered on non-fruitituous basis in the equivalent and corresponding grade before being declared medically unfit in terms of para 1310 of IREM. Therefore, according to the respondents there was no illegality or extraneous consideration or arbitrary motive in absorbing the 7<sup>th</sup> respondent.

5. The 7<sup>th</sup> respondent has also filed his reply through his counsel Shri P.Ramakrishnan. He filed a copy of the Annexure.R.7 order of the Senior Divisional Personnel Officer stating that Shri C.K.Manoharan,Technician Grade III of TRD Organization was found medically unfit in Class E-One but fit in class C-One and C-two and fitted against a supernumerary post of Technician Grade III w.e.f. 16.2.2000. The DDD/TRD was also asked to identify a suitable

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alternative post for him. The 7<sup>th</sup> respondent has also produced the Note dated 4.12.2000 stating that the screening committee met on 30.11.2000 recommended the Respondent No.7 and two others for the post of Office Clerk with the prior approval of the headquarters. The Annexure.R.7(c) letter dated 2.1.2004 says that Headquarters did not agree to absorb him as Office Clerk as a matter of policy. He has submitted that while absorbing him as Office Clerk vide the Annexure.R.7(d) letter dated 18.7.2005 (Annexure.A.1 in the OA), the official respondents have only complied with the requirement of para 1306 of the IREM.

6. When OA 550/95 has come up for admission on 20.7.04, this Tribunal passed an interim direction to the official respondents to keep the Annexure.A1 order in abeyance to the extent it relates to the 7<sup>th</sup> respondent. The respondents, have, however, submitted that the Annexure.A1 order was issued on 18.7.2005 and the 7<sup>th</sup> respondent had already joined in the morning of 20.7.05. The respondents have submitted that though the stay order was passed by this Tribunal only after the 7<sup>th</sup> respondent has taken charge, giving due regard to the order, the 6<sup>th</sup> respondent was advised not to utilize the 7<sup>th</sup> respondent as Office Clerk but to continue him as Technician Grade III only.

7. We have heard the counsels for the parties. We have also perused the documents available on record. The main argument of the Applicants in these O.As is that the 7<sup>th</sup> respondent has been



absorbed as Office Clerk in the cadre of Personnel Branch contrary to the provisions contained in paras 1304 and 1306 of the Indian Railway Establishment Manual (Vol.I). But the official respondents claimed that the appointment of the 7<sup>th</sup> Respondent was in accordance with paras 1303 and 1306 of IREM. In order to appreciate the above contradictory arguments, the scheme of absorption of disabled/medically de-categorized staff in alternative engagement as given in Chapter-XIII of the IREM (Vol.I) is to be understood. Paras 1301, 1302, 1303, 1304, 1305 and 1306 contained in the said Chapter are extracted below:

"1301: A railway servant who fails in a vision test or otherwise becomes physically incapable of performing the duties of the post which he occupies should not be discharged forthwith but every endeavor should be made to find alternative employment for him as expeditiously as possible. Such employment must be of suitable nature and on reasonable emoluments having regard to the emoluments previously drawn by the railway servant.

1302: *Classification of railway servants declared medically unfit* – Railway servants declared medically unfit for further services are divisible into two groups:-

- (i) Those completely incapacitated for further service in any post on the railway, ie., those who cannot be declared fit even in the "C medical category.
- (ii) Those incapacitated for further service in the post they are holding but declared fit in a lower medical category and eligible for retention in service in posts corresponding to this lower medical category.

1303: *Railway servant totally incapacitated for further service*:- A railway servant in group(i) above cannot be retained in service and is not, therefore, eligible for alternative employment. If he is on duty, he shall be invalidated from service from the date of relief of his duty, which should be arranged without delay on receipt of the report of medical authority. If, however, he is granted leave, he shall be invalidated from service on the

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expiry of such leave, but if he is already on leave, he shall be invalidated from service on the expiry of that leave or extension of leave,. The leave or extension of leave that may be granted to him after the report of the medical authority has been received, will be so limited that the amount of leave, as debited against the leave account, together with any period of duty beyond the date of the medical Authority's report does not exceed 6 months.

1304: *Railway servants incapacitated for service in posts held by them:* (a) Permanent Railway servants – A permanent railway servant in group (ii) of para 1302 above must also cease to perform the duties of the post, he was holding from the date he is declared medically unfit. Here again, no officer has the authority to permit him to perform his duties in that post beyond that date. He should be granted leave as admissible to him, under the leave Rules by which he is governed, from that date he is incapacitated subject to the proviso that where the railway servant has not got six months leave to his credit, his leave shall be made up to six months by the grant of extra ordinary leave. If an alternative employment cannot be found for such a person within the period of leave so granted his service should be extended by grant of extra ordinary leave, subject to the condition that the total amount of extra ordinary leave to be granted to the railway servant does not exceed six months. It should be possible within the period of leave thus extended to find either a permanent or a temporary post for his absorption. If the railway servant is absorbed against a temporary post in a permanent cadre a supernumerary post may also be created and his lien counted against that post. It should however, be noted that,

- (i) the actual creation of supernumerary post will follow the acceptance of offer of alternative post;
- (ii) the supernumerary post should be abolished as soon as a permanent post is found for the railway servant concerned.

Note:- The purpose of granting extra ordinary leave envisaged in this para is that in case the railway administration is able to find suitable alternative employment for a medically incapacitated employee, there should be no break in his service. Since the period of such extra ordinary leave counts for the purpose of special Contribution to PF, in the case of a railway servant governed by the State railway Provident Fund



Rules but not in the case of pensionable railway servant the letter employee may not like to avail of the extra ordinary leave but may instead prefer to quit service on pension, immediately on the expiry of his period of leave with allowances. In such case extra ordinary leave need not be granted to a railway servant, if he so desires.

2 In the matter of absorption of a medically incapacitated staff in alternative post, Railway administrations, should take care to ensure that the interests of staff in service are not adversely affected as far as possible. The alternative appointment should be offered only in posts which the staff can adequately fill.

(b) Temporary Railway servant: A temporary railway servant in group (i) of Para 1302 above who becomes medically unfit for the post held by him on account of circumstances arising out of and in the course of his employment, the benefit admissible to permanent railway servants as at (a) above should be given.

If a temporary employee has become medically fit for the post held by him, on account of circumstances which did not arise out of and in the course of the employment, the benefit of Rule 304 RI (of Fifth Edition 1985), will not be admissible. While, therefore, it is strictly not obligatory to find alternative employment for such an employee, every effort should nevertheless be made to find alternative employment. The employee concerned should be granted such leave as is due to him plus extra ordinary leave not exceeding three months; the total not exceeding six months. If no alternative unemployment can be found in this period, the employee should be discharged from service.

**1305: Alternative employment must be found in the case of permanent and temporary railway servants.**

Medically declassified staff may, as far as possible, be absorbed in such alternative posts which should broadly be in allied categories and where their background and experience in earlier posts could be utilized. There should be no difficulty in providing such alternative employment and no reversion of any officiating railway servant for the purpose of absorbing the disabled railway servant should be necessary for this purpose. Attempts should be made to absorb the disabled railway servant not only within the District/Division or Department but in another

**District/Division or Department.**

**1306: Steps to be taken for finding alternative employment:-**

- i) With a view to determine the categories in which a medially incapacitated railway servant is suitable for absorption, a committee should examine him. The committee may consist of two or three officers posted at the headquarters of the officer under whom the medically incapacitated railway servant was working, the railway servant's immediate officer being one of the members of the committee. After the committee has examined the railway servant and determined his suitability for certain categories of posts, the officer under whom the railway servant was working will proceed to take further action to find suitable alternative unemployed for him.
- ii) The officer concerned will prepare a list of vacancies within his jurisdiction in the categories for which the medically incapacitated railway servant has been found suitable and a post with emoluments as near as possible to his earlier emoluments will be offered to him.
- iii) It will be the responsibility primarily of the officer under whom the railway servant is directly serving to find suitable alternative employment for him. This will be done first by trying to find alternative employment in the officer's own district, sub district, sub-division, office, workshop & c., a register vide sub-paragraph(7) below will be maintained for this purpose.
- iv) If there is no immediate prospect of employment in his own district, sub-district, sub-division , office & c., the name of the Railway servant with particulars as given in sub-paragraph(7) below, will be circulated to all other offices or establishments where suitable employment is likely to be found.
- v) The names of railway servants likely to be suitable for clerical appointment should be intimated to the Divisional Office as well as to Headquarters Office.
- vi) Nothing in the previous sub-paragraphs debars a railway servant from applying for a particular post for which he is likely to be deemed suitable and which is known to be vacant under any officer. Such an application must be addressed through the immediate officer of the railway servant concerned and smut contain full particulars of his service and smut be forwarded to the officer to whom addressed or tot he authority competent to make the appointment. The

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result of the application smut be communicated to the railway servant.

vii) A register containing the names of all railway servants eligible for appointment to alternative posts will be maintained by Headquarters, Divisional and District Offices and Offices of Assistant Officers in independent charge. These registers will contain not only the names of the staff of the particular Division & c., but also the names notified to the officer concerned by other offices. This will not, however, absolve officers under whom the railway servant was last working from continuing their efforts to find employment. The particulars required to be maintained in registers and notified to other officers in accordance with the instructions above are as follows:-

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(viii) A medically incapacitated railway servant who is permanent will be appointed substantively to the alternative post subject to his suitability. His further chances of promotion thereafter will be in accordance with the normal channels of promotion, and he will not be entitled to consideration for out of turn promotions merely because of his absorption in the post as a consequence of medical incapacitation.

8. The Applicants belong to para 1302(ii) category. Para 1303 deals with the category of those medically declared unfit and belongs to para 1302(i) and therefore, it is not relevant in these cases. Para 1304 is also not relevant here. Para 1305 says that medically decategorized staff may, as far as possible, be absorbed in such alternative posts which should broadly be in allied categories and where their background and experience in earlier posts could be utilized. It has also been prescribed in this para that attempts should be made to absorb the disabled railway servant not only within the District/Division or Department but in another District/Division or Department. Para 1306 deals with the steps to be

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taken for finding an alternative employment. The function of the committee prescribed in para 1306(i) is limited to examining the medically incapacitated Railway Servant and to determine his suitability for certain jobs. In the present OA the Committee has identified the post of Office Clerk as a suitable job to him and it is the duty of the officer with whom the railway servant was working to find alternative employment for him. Therefore, the Officer concerned has to prepare a list of vacancies within his jurisdiction in the categories for which the medically incapacitated railway servant has been found suitable and a post with emoluments as near as possible to his earlier emoluments should be offered to him. Sub Para (iii) says that it will be the responsibility primarily of the officer under whom the railway servant is directly serving to find suitable alternative employment for him. Sub para (iv) says that if there is no immediate prospect of employment in his own district, sub-district, sub-division, office & c., the name of the Railway servant with particulars as given in sub-paragraph(7) below, will be circulated to all other offices or establishments where suitable employment is likely to be found. From the affidavit of reply filed on behalf of the official respondents, it is seen that the Chief Personnel Officer has turned down the recommendation of the committee to give alternative post of Office Clerk to the Respondent No.7 who was working as a Technician Grade III. Thereafter, it has been stated in the said reply affidavit that chief Personnel Officer communicated sanction for alternative

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appointment of the 7<sup>th</sup> Respondent as Office Clerk. What happened between the initial rejection of the proposal by the Chief Personnel Officer and the subsequent sanction by the same authority has not been explained in the affidavit filed by the Respondents. There is also no mention about any change in the policy before the Chief Personnel Officer granted approval to appoint the Respondent No.7 as Office Clerk. The Reply affidavit is also silent whether the procedure prescribed vide sub-paras (ii) & (v) of Para 1306 of the IREM has been followed by the 'Officer concerned" after the committee has met on 30.11.2000 and determined the suitability of a post for the 7<sup>th</sup> Respondent. The very purpose of the procedure prescribed in Sub-Para (II) to (iv) of Para 1306 is clear. In Para 1305 the words "as far as possible" is significant here. Determination of suitability of certain categories of posts by the committee is subject to what is provided in Rule 1305 that "medically decategorized staff may, as far as possible, be absorbed in such alternative posts which should broadly be in allied categories and where their background and experience in earlier posts could be utilized." Just because a railway servant has been decategorized from his existing medical class to a lower class and the Screening committee recommended a certain type of job to him, it is not necessary that he will be suitable to such employment. Suitability of a person very much depends upon the qualifications prescribed in the Recruitment Rules which govern the post. It is for this reason that requirement contained in

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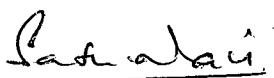
Para 1305 and the detailed procedure indicated in sub-para (ii) to (iv) of Para 1306 has been prescribed.

9. In view of the aforesaid facts and circumstances of the case, we are of the considered view that the impugned order dated 18.7.2005 absorbing the 7<sup>th</sup> Respondent Shri C.K.Manoharan, Technician Grade III (SWP) as Office Clerk in the cadre of Personnel Branch has been issued without following the prescribed procedure mentioned in Paras 1305 and 1306 of the IREM Vol.I. To that extent the order dated 18.7.2005 is quashed and set aside. Since the respondents on the basis of interim order of this Tribunal dated 20.7.05 are not utilizing the services of Respondent No.7 as Office Clerk and continuing him as Technician Grade III, he shall be continued to be fitted against the supernumerary post in the Office of senior Section Engineer (TRD). However, the respondents 1 to 6 & 8 may issue appropriate fresh orders after following the aforesaid prescribed procedure particularly keeping in view the provisions contained in Paras 1305 and 1306 of IREM (Vol.I) No costs.

Dated this the 14<sup>th</sup> day of February, 2006



GEORGE PARACKEN  
JUDICIAL MEMBER



SATHI NAIR  
VICE CHAIRMAN

S.