

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 571/ 2005

Wednesday, this the 5th day of March, 2008.

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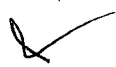
HON'BLE MRS SATHI NAIR, VICE CHAIRMAN

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

1. N.A.Antony,
Enquiry cum Reservation Clerk Gr.I,
Trivandrum Central,
Southern Railway,
Trivandrum.
2. V.K.Sunil,
Enquiry cum Reservation Clerk Gr.I,
Railway Reservation Office,
PRS/Ernakulam South.
3. Ganesh Venkitachalam A.G.
Enquiry cum Reservation Clerk Gr.I,
Railway, PRS, Ernakulam South.
4. Sabu Francis,
Enquiry cum Reservation Clerk Gr.I,
PRS/TRTR.
5. Jose Xavier Panthil,
Enquiry cum Reservation Clerk Gr.I,
PRS/Tiruvalla.Applicants

(By Advocate Mr K.A.Abraham)

v.

1. Union of India represented by
the Secretary,
Railway Board, Rail Bhavan,
New Delhi.
 2. The General Manager,
Southern Railway,
Chennai.
 3. The Chief Personnel Officer,
Southern Railway,
Chennai.
 4. The Divisional Railway Manager,
Thiruvananthapuram Division,
Thiruvananthapuram.
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5. S.Amuthaveni,
Enquiry Cum Reservation Clerk Gr.I,
Computerised Passenger Reservation Office,
Moor Market Complex Building,
Southern Railway,
Park Town, Chennai-600 003.
6. M.J.Ramesh Babu,
Enquiry cum Reservation Clerk Gr.I,
Computerised Passenger Reservation Office,
Southern Railway,
Mangalore Railway Station,
Mangalore, Karnataka.
7. R.Krishnadasan,
Enquiry cum Reservation Clerk Gr.I,
Computerised Passenger Reservation Office,
Southern Railway,
Tirunelveli Railway Station,
Tirunelveli.
8. P.Sekaran,
Enquiry cum Reservation Clerk Gr.I,
Computerised Passenger Reservation Office,
Southern Railway,
Chennai Egmore Railway Station,
Chennai.
9. S.Palani,
Enquiry cum Reservation Clerk Gr.I,
Computerised Passenger Reservation Office,
Southern Railway,
Salem Jn,
Tiruchirappally Jn Railway Station,
Tiruchirappally.
10. M.Veeraperumal,
Enquiry cum Reservation Clerk Gr.I,
Computerised Passenger Reservation Office,
Southern Railway,
Naduni Jn Railway Station,
Madurai.
11. S.Rajmohan,
Enquiry cum Reservation Clerk Gr.I,
Working as Console Operator on deputation
at CRIS Moor Market Complex Building,
Southern Railway,
Park Town, Chennai-600 003.
12. S.Santhoshkumar,
Enquiry cum Reservation Clerk Gr.I,
Computerised Passenger Reservation Office,
Southern Railway,

Trivandrum Central Railway Station,
Trivandrum.

13. A.Sivaprasad,
Enquiry cum Reservation Clerk Gr.I,
Computerised Passenger Reservation Office,
Southern Railway,
Trivandrum Central Railway Station,
Trivandrum.
14. M.Hemalatha,
Enquiry cum Reservation Clerk Gr.I,
Computerised Passenger Reservation Office,
Southern Railway,
Coimbatore Jn Railway Station,
Coimbatore.
15. M.Anbu,
Enquiry cum Reservation Clerk Gr.I,
Computerised Passenger Reservation Office,
Southern Railway,
Salem Jn Railway Station,
Salem.
16. T.Ganesan,
Enquiry cum Reservation Clerk Gr.I,
Computerised Passenger Reservation Office,
Southern Railway,
Tuticorin Railway Station,
Tuticorin, Tamil Nadu.
17. W.Sudarsan,
Enquiry cum Reservation Clerk Gr.I,
Computerised Passenger Reservation Office,
Southern Railway,
Tirunelveli Railway Station,
Tirunelveli.
18. Vinodkumar Minnuthan,
Enquiry cum Reservation Clerk Gr.I,
Computerised Passenger Reservation Office,
Southern Railway,
Cannanore Railway Station,
Cannanore.
19. V.Anandan,
Enquiry cum Reservation Clerk Gr.I,
Computerised Passenger Reservation Office,
Southern Railway, Mambalam Railway Station,
Chennai.
20. N.Chidambaram Sankar,
Enquiry cum Reservation Clerk Gr.I,
Computerised Passenger Reservation Office,
Southern Railway,
Katpady Railway Station,



Vellore,
Tamil Nadu.

....Respondents

(By Advocate Mr.KM Anthru for R.1 to 4)

(By Advocate Mr TC Govindaswamy for R.12 & 13)

(By Advocate Mr CS Manilal for R. 5, 8,, 9, 10, 11, 16, 17, 19 & 20)

This application having been finally heard on 26.2.2008, the Tribunal on 5.3.2008 delivered the following:

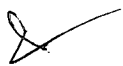
ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The dispute in this case is regarding the seniority position of the General Category candidates and the Reserved Category candidates belonging to Scheduled Caste and Scheduled Tribe community. The main contention of the applicants is that the private respondents belonging to SC/ST category have been given reservation in promotion against the restructured vacancies and it has not been reviewed and revised even after the Apex Court, has struck down the relevant provision contained in the Railway Board's letter dated 27.11.1993.

2. The brief facts are that both the applicants as well as the private respondents were working as Enquiry-cum-Reservation Clerks (ECRC for short) Grade-I, in Trivandrum Division at different stations of the the Southern Railway. The respondents have published their seniority list as on 1.12.1992 (Annexure A-1) wherein the applicants were shown as seniors to the party respondents and their respective positions were as under:

<u>Applicants</u>	<u>Sl.No.s</u>
1. N.A.Antony	48
2. V.K.Sunil	50
3. Ganesh Venkitachalam A.G.	47
4. Sabu Francis	55
5. Jose Xavier Panathil	56



Respondents

6. S.Amuthaveni	128
7. M.J.Ramesh Babu	148
8. R.Krishnadasan	196
9. P.Sekaran	208
10.S.Palani	210
11.M.Veeraperumal	212
12.S.Rajmohan	216
13.S.Santhoshkumar	217
14.A.Sivaprasad	218
15.M.Hemalatha	219
16.M.Anbu	221
17.T.Ganesan	222
18.W.Sudarsan	223
19.Vinodkumar Minnuthan	224
20.V.Anandan	225
21.N.Chidambaram Sankar	228

4. The Railway Board issued the Annexure A-2 order No.PC.III/91/CRC/1 dated 27.1.1993 for restructuring certain Group C and D categories of staff in accordance with the revised percentage which has already been fixed. In para 10 of the said order respondents have stated that *"The existing instructions with regard to reservation of SC/ST will continue to apply while filling additional vacancies in the higher grades arising as a result of restructuring."* Thereafter, the respondents issued Annexure A-3 Office Order No.R.55/93 dated 11.6.1993 and the party respondents were given promotion superseding the applicant with effect from 1.3.1993. This was done in compliance of the aforesaid instructions regarding reservation in the restructured vacancies. After restructuring of various grades including that of ECRC Grade-I, the respondents issued the A-6 seniority list of ECRC Grade-I dated 13.10.2003 in which the positions of the applicants and the party respondents were reversed and it is as under:



<u>Applicants</u>	<u>Sl.No.s</u>
1. N.A.Antony	138
2. V.K.Sunil	139
3. Ganesh Venkitachalam A.G.	136
4. Sabu Francis	151
5. José Xavier Panathil	152
<u>Respondents</u>	
6. S.Amuthaveni	117
7. M.J.Ramesh Babu	118
8. R.Krishnadasan	(Not included)
9. P.Sekaran	119
10.S.Palani	120
11.M.Veeraperumal	121
12.S.Rajmohan	123
13.S.Santhoshkumar	124
14.A.Sivaprasad	125
15.M.Hemalatha	126
16.M.Anbu	127
17.T.Ganesan	128
18.W.Sudarsan	129
19.Vinodkumar Minnuthan	130
20.V.Anandan	131
21.N.Chidambaram Sankar	132

4. According to the applicants, they made Annexure A-7 representation dated 10.11.2003 against the said seniority list dated 13.10.2003 (representation made by one of the applicants, Shri V.K.Sunil) but the respondents have not taken any action in the matter to reverse the reservation already given to the SC/ST employees vide the aforesaid Annexure A-3 dated 11.6.1993.

5. The question whether reservation can be applied against the restructured vacancies, when there were no additional posts are created was considered by the Apex Court in its judgment dated 31.1.2001 in the Contempt Petition ©

No.304 of 1999 in CA No.1481 of 1996 – All India Non SC/ST Employees Association (Railway) v. V.K.Aggarwal and others which reads as under:

"It appears that all the decisions so far that if as a result of reclassification or readjustment, there are no additional posts which are created and it is a case of upgradation; then the principle of reservation will not be applicable. It is on this basis that this Court on 19.11.1998 had held that reservation for SC and ST is not applicable in the upgradation of existing posts and Civil Appeal No.1481 of 1996 and the connected matters were decided against the Union of India. The effect of this is that where the total number of posts remained unaltered, though in different scales of pay, as a result of regrouping and the effect of which may be that some of the employees who were in the scale of pay of Rs.550-700 will go into the higher scales, it would be a case of upgradation of posts and not a case of additional vacancy or post being created to which the reservation principle would apply. It is only if in addition to the total number of existing posts some additional posts are created that in respect of those additional posts the reservation will apply, but with regard to those additional posts the dispute does not arise in the present case. The present case is restricted to all existing employees who were redistributed into different scales of pay as a result of upgradation.

The Union of India shall rework the seniority in the light of the clarification made today and report back within 6 weeks from today."

Earlier, the High Court of Punjab & Haryana also vide judgment in CWP 10217-CAT/2002 dated 22.7.2002 had considered the issue arising out of the order of this Tribunal (Chandigarh Bench) and held that no reservation would apply in vacancies arising out of restructuring if there are no increase in the number of vacancies. The Railway Administration took up the matter Supreme Court in Special Leave to Appeal (Civil) No.11588/2003 along with 3 other similar SLPs Nos.7590/2004, 21469/2004 and 3993/2005 before the Hon'ble ^{Supreme Court} and all those SLPs were dismissed vide order dated 13.5.2005 (Annexure A-9). The Review Application filed by the Railways against the aforesaid Order dated 13.5.2005 in SLP (Civil) No.7590/2004 was also dismissed vide Annexure A-10 order in Review Petition No.C.326/2006 dated 28.8.2006. Thereafter the Railway Board have reconsidered the matter and issued Annexure A-11 letter dated 21.12.2006 addressed to the General Manger (P), Northern Railway to review all

the promotions given to categories of employees on the basis of SC/ST reservation in terms of the railway Board's letter dated 22.1.1994.

6. The applicants have submitted that though they are challenging the order of promotion of the applicants dated 11.6.1993 and the seniority list of ECRC Grade-I dated 13.5.2005, in the present O.A, it is not barred by limitation in view of the judgment of the Apex Court in **M.R.Gupta v. Union of India and others** [1995(5) SCC 628]. Their contention is that the non fixation of the pay was illegal and it is a continuing wrong giving rise to a recurring cause of action every month. They have also submitted that the Railway Board which is a party in the Supreme Court cases is the 1st respondent in the present O.A. And its Annexure A-11 order has been implemented only partially to a section of the employees in some of the zonal Railways but the same is denied to similarly situated employees in Southern Railway which is highly arbitrary and hostile discrimination striking at the fundamental rights of the employees enshrined under Article 14 and 16(1) of the Constitution of India as the Supreme Court orders that reservation is not applicable as provided in Clause 10 of the Railway Board letter dated 27.1.2003 is equally applicable to all the Railways in the country as well as the Railway Administration and its employees under Article 141 of the Constitution of India. When the court declares the law, the Government or any other authority is bound to implement the same uniformly to all the employees concerned. To say that only persons who approached the court should be given the benefit of the declaration of the law is really discriminatory and arbitrary as held in **Somakuttan Nair v. State of Kerala** [(1997 (1) KLT 601)]. They have also relied upon the judgment of the Supreme Court in **Inderpal Yadav v. Union of India** [1985 (2) SCC 648] in which it was held as under:

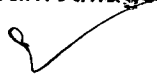
"Therefore, those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are

otherwise similarly situated, they are entitled to similar treatment, if not by any one else at the hand. Of this Court."

Therefore, the applicants contended that they also should have been given the same reliefs and benefits that have been given to similarly situated persons like the applicants in the present O.A.

7. According to the learned counsel for the respondents 1 to 4, **M.R.Gupta's** case (supra) does not apply in the present case. On the contrary, they relied upon the judgment of the Apex Court in **S.K.Biswas v. Union of India** [1997 2 SLJ 388] and submitted that the applicants are indirectly challenging the para 10 of Railway Board's letter dated 27.1.1993 and the Annexure A-3 Office Order dated 11.6.1993 and both are time barred.


8. Shri TC Govinda Swamy, learned counsel appearing for the party respondents vehemently opposed the O.A both on limitation as well as on merits. He has submitted that the entire O.A has been constructed by the applicants by suppressing facts and making statements which are factually incorrect. They have stated that the applicants are challenging the Annexure A-3 order dated 11.6.1993 and the only representation against the same was made by one of the applicants by Annexure A-7 dated 10.11.2003. They have also submitted that the reliefs prayed for by the applicants is to set aside Annexure A-3 order giving accelerated promotions to the party respondents and to assign seniority to the applicants over the party respondents and if the Annexure A-3 order goes, then those respondents would no longer be in ECRC Grade-I and in that event there will not be any question of inter se placements as between the original applicants and these respondents. He has, therefore contended that the applicants' prayer challenging the Annexure A-6 is only a camouflage to cover up the long delay in challenging Annexure A-3. His other



contentions were that the party respondents were not promoted against the upgraded vacancies or against the resultant vacancies, but only against vacancies which were in existence as on 28.2.1993. He has also submitted that Annexure A-2 instructions issued by the respondents have the status of a rule framed by the Railway Board in exercise of its delegated power under Rule 123 of the Railway Establishment Code Vol.I and Para 10 of the letter is still in force and it has not been declared a nullity by any court of competent jurisdiction and the decision of the Apex Court referred to by the applicants has no application in the facts of this case.


9. We have heard Shri K.A.Abraham counsel for the applicant, Shri K.M.Anthru, counsel for respondents 1 to 4, Shri TC Govindaswamy counsel for R.12 & 13. Shri C.S.Manilal, counsel for R.5,8,9,10,11, 16, 17, 19 & 20) was not present. We have also perused the entire pleadings and the judgments relied upon by the parties.

10. The issue regarding reservation of SC/ST candidates in promotion against the vacancies which have arisen as a result of restructuring of the cadres when the cadre strength remains the same has already been settled by the Apex Court in the case of **All India Non SC/ST Employees Association (Railway) v. V.K.Aggarwal and others** (supra). Thereafter a number of orders have been passed by this Tribunal setting aside the orders of the respondents wherever reservation has been granted in case of promotions against vacancies arisen as a result of restructuring of the cadres. Those issues have recently been considered in extenso in this Tribunal's order dated 21.11.2005 in O.A.601/2004 and connected cases. In the said case we have considered the judgment of the Apex Court in **All India Non SC/ST Employees Association (Railway) v. V.K.Aggarwal and others** (supra), the orders of the Hyderabad Bench of this




Tribunal dated 27.12.2004 in O.A.1318/2004 **M.Sureshkumar and others v. Union of India**, the orders of the Chandigarh Bench dated 24.7.2001 in O.A.426/PB/94 – **Pankaj Saxena, CMI, Northern Railway, Bhatinda v. Union of India through General Manager, Northern Railway, Baroda House, New Delhi and others**, the orders of the Calcutta Bench in the case of **Birender Kumar Das v. Union of India and others** – 1994(2) ATJ 506, the orders of the Jabalpur Bench in the case of **Ashok Kumar Shrivastava and another v. Union of India and others**, 1987(4) SCC 385, the Writ Petition filed before the Hon'ble High Court of Punjab & Haryana and in CWP No.10217/CAT/02 – **Union of India and others v. Pankaj Saxena and another** arising out of the orders of Tribunal dated 24.7.2001 (supra), the SLP No.S.11588/2003 filed before the Hon'ble Supreme Court against the aforesaid orders of the High Court of Punjab & Haryana, SLP No.11001/87 arising out of the orders of the Jabalpur Bench in the case of **Ashok Kumar Shrivastava** (supra), Order of the Full Bench of the Tribunal sitting at Allahabad in O.A.933/2004 – **P.S.Rajput and two others v. Union of India and others** and O.A.778/2004 – **Mohd. Niyazuddin and ten others v. Union of India and others**. The issue in all these cases was whether upgradation of a cadre as a result of restructuring and adjustment of existing staff in the upgraded cadre can be termed to be promotion, attracting the principle of reservation in favour of SC/ST.

11. Considering the aforesaid position of law already settled by the Apex Court and followed by the High Courts and this Tribunal in various cases, the respondents are not justified in defending their case on the very same grounds which have already been rejected. Now the only question is whether the limitation would apply in this case. As already stated earlier, in this order, the issue has been lingering from the time when Annexure A-2 order of the Railway Board dated 27.1.1993 regarding restructuring of certain Group 'C' and 'D' cadres



were issued. A number of cases have been filed against the said order as already narrated earlier. Ultimately the Railway Board themselves vide Annexure A-11 order dated 21.12.2006 directed the General (P), Northern Railway, Baroda House, New Delhi and the General Manager(P), North Western Railway, Jaipur, to review the promotions given to the ST/ST employees by giving them the benefit of reservation in pursuance of the Board's letter dated 27.1.1993 (Annexure A-2). As held by the Apex Court in **Inderpal Yadav's** case supra, the aforesaid order of the Railway Board cannot be restricted to only to two Railways and the Southern Railway cannot say that they are exempted from it. The order of such nature has to be made applicable to all the Railways under the Railway Board. Therefore, the Southern Railway and the Palghat Division working under it cannot disown the same and to say that since the applicant is challenging the Annexure A-3 order dated 11.6.1993 and the Annexure A-6 seniority list dated 13.10.2003, the O.A is time barred. The Annexure A-11 order dated 21.12.2006 of the Railway Board is the ultimate result of the prolonged litigation on the disputed issue and it is very well applicable to the applicants in this O.A also. We, therefore, reject the contention of the respondents that this O.A is time barred and hit by the law of limitation. We, therefore, **allow** this O.A. Consequently we set aside Annexure A-3 order dated 11.6.1993 promoting the party respondents to ECRC Gr.I superseding the applicants by applying reservation on restructuring. We further direct the official respondents to review the Annexure A-3 order dated 11.6.1993 in the light of the Annexure A-11 letter of the Railway Board dated 21.12.2006 and cancel the appointments made to the party respondents and to consider the applicants for promotion to the post of ECRC Gr.I. We also set aside Annexure A-6 seniority list dated 13.10.2003 to the extent that the respondents 5 to 20 are given seniority over the applicants in the ECRC Gr.I and direct the respondents to review the same and place the applicants at the appropriate slots. The above direction shall be complied with

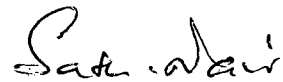


within a period of two months from the date of receipt of this order. There shall be no order as to costs.

Dated, the 5th March, 2008.



GEORGE PARACKEN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

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