

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.571/2008

CORAM:

Wednesday this 7th day of October, 2009

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

HON'BLE MR.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

1. B.Radhakrishnan Pillai, S/o.N.Bhaskaran Pillai, aged 48 years, Passenger Guard(Adhoc), O/o. Station Manager, Southern Railway, Palakkad Junction, residing at Greeshmam, Meleppuram, Palakkad-2.
2. R.Krishnanakumar, S/o. C.J.Rajappan Nair, aged 40 years, Passenger Guard(Adhoc), O/o Station Manager, Southern Railway, Palakkad Junction, residing at Sindooram, Near Cherungottukavu, NSS Engineering College P.O., Palakkad-8.
3. S.Afsar Ahamed, S/o. A.G.Syed Ahmed, aged 44 years, Passenger Guard(Adhoc), O/o Station Manager, Southern Railway, Palakkad Junction, residing at "Suhaag", Surya Nagar, Kakkanni, Dhoni P.O., Palakkad-8.
4. M.Murali, S/o. Late Madhavan Nair, aged 51 years, Passenger Guard(Adhoc), O/o Station Manager, Southern Railway, Palakkad Junction, residing at 'Prasannam', NSS Engineering College P.O., Palakkad-8.
5. K.Chandran, S/o.N.Kesavan Nair, aged 55 years, Passenger Guard(Adhoc), O/o Station Manager's Office, Southern Railway, Palakkad Junction., residing at Chandralayam, C.Madhavan Road, Pallithazham, North Paravoor, Ernakulam.
6. N.Ganesan, S/o. Late P.Nambinaidu, aged 52 years, Passenger Guard(Adhoc), O/o Station Manager's Office, Southern Railway, Palakkad Junction, residing at Lakshmi Nilayam, Kakkanni, Dhoni P.O., Palaghat-678 016.
7. R.Prasad, S/o. Late C.P. Ramakrishna Menon, aged 43 years, Passenger Guard(Adhoc), O/o Station Manager's Office, Southern Railway, Palakkad Junction., residing at 'Greeshmam', Pathiri Nagar, Dhoni P.O., Palakkad-8.

... Applicants

(By Advocate Mr. M.R.Hariraj)

vs.

1. Union of India, represented by Secretary, Ministry of Railways, New Delhi.
2. General Manager, Southern Railway, Madras.

3. Chief Personnel Officer, Southern Railway, Madras.
4. Senior Divisional Personnel Officer, Palghat Division, Southern Railway, Palghat.
5. Railway Board represented by its Secretary, Rail Bhawan, New Delhi.

.... Respondents

(By Advocate Mr. Thomas Mathew Nellimoottil)

The application having been finally heard on 29.09.2009, the Tribunal delivered the following:-

ORDER

(Hon'ble Mr. K. George Joseph, AM)

In this O.A., the applicants challenge the Annexure A5 order by which the adhoc promotions given to them as Passenger Guards was discontinued.

2. The brief facts of the case are the following:-

3. The post of Passenger Guard is classified in the 'safety category'. Promotion to this cadre is done on the basis of selection from the combined Divisional seniority list of Senior Goods Guards and Goods Guards. Efforts of the Railway Administration to fill up vacancies in the cadre of Passenger Guards were blocked by litigation. As the Salem Division was being created carving out certain areas from the Palghat Division, there was a proposal for pre-closure of the cadre of Passenger Guards. Existence of large number of vacancies in Passenger Guards was affecting the running of trains adversely. Under these circumstances 64 vacancies in the then Palghat Division were filled up on adhoc basis for 3 months, as approved by the Southern Railway Headquarters Office vide Annexure A6 order dated 28.3.08. The adhoc promotions were discontinued on 24.9.2008 on the expiry of 3 months. Hence this O.A.

4. The applicants contend that they should have been promoted as Passenger Guards on regular basis. The order reverting them from Passenger Guards on adhoc promotions to Senior Goods Guards and Goods Guards is arbitrary, illegal, unjust and discriminatory. The applicants are qualified and eligible for promotion to Passenger Guards on regular basis. The 4th respondent is indifferent to make regular promotions. Pendency of litigation, wherein appointment of certain Goods Guards is under challenge is merely an ostensible reason for keeping the regular selection in abeyance.

5. The respondents contested the O.A. The adhoc promotions were given to the applicants only for a limited period of 3 months. Following the bifurcation of Salem

and Palghat Divisions on 1.11.07, the cadre of Passenger Guards was closed on 31.5.08. Reservation rules apply to promotion to Passenger Guards. The Railway Administration was not able to conduct regular selection to fill up the 64 vacancies of Passenger Guards on account of pending Court cases. As per the Indian Railway Establishment Manual, adhoc promotion should be avoided as far as possible and in exigencies it should be resorted to only for a short duration of 3 to 4 months. The vacancies falling in Palghat and Salem Divisions are to be filled by the respective Divisions. After the closure of the cadre, the latest vacancy position at Palghat Division is only 29. Out of the 64 employees who were promoted on adhoc basis most of the reserved category employees went to the Salem Division. Thus there is a short fall of reserved category employees in the Palghat Division. The adhoc promotion granted to the applicants is to be discontinued as they cannot be promoted against reserved vacancies being 'UR' employees. As the approval for adhoc promotion was only for 3 months, as per the provision in Para 216 of the Indian Railway Establishment Manual it became necessary to discontinue the adhoc arrangement. Therefore the Annexure A5 order is not illegal, unjust or discriminatory. As there is a large number of Goods Guards senior to the applicants, all the applicants will not get promotion. Applicants at No.3,4, 6 and 7 will be working as Senior Goods Guards, the pay of which is equivalent to the pay of the Passenger Guards. Approval for grant of adhoc promotion as Passenger Guard for further 3 months upto 31.12.08 has already been given. Under the circumstances the O.A. should be dismissed.


6. Arguments were heard and documents perused. As the cadre of Passenger Guards comes under classification "Safety Category", essential for the smooth operation of the trains, the Palghat Divisional office of Southern Railway had proposed filling up of 64 vacancies on adhoc basis which was approved by the Headquarters, Southern Railway as under:-

"Approval is hereby communicated for filling up of 64 posts of Passenger Guard in Scale Rs.5000-8000 on adhoc basis upto 30.06.08 by which date the selection process should be completed."

It is quite clear from the above approval that approval for adhoc promotion was linked to completion of selection process for regular appointment. The Passenger Guards being a safety category cadre, even if litigation is pending, it would have been possible for the Palghat Divisional Office to make efforts to fill up the posts on regular basis subject to the outcome of litigation. There is nothing on record to show that efforts were made to continue the adhoc promotion beyond 3 months. In the

impugned Annexure A5 order it is stated "No further approval has been signified by the Headquarters to continue the adhoc promotion beyond three months". It would appear that the Palghat Divisional office was eager to discontinue the adhoc promotion without making sincere efforts to fill up the vacancies in the cadre of Passenger Guards on regular basis and also without making any alternative arrangement for smooth operation of trains. On the bifurcation of Salem and Palghat Divisions, it so happened that most of the employees belonging to the reserved category were in the Salem Division, resulting in short fall of reserved category in the Palghat Division. This imbalance could have been avoided had the Palghat Division taken timely steps to allocate employees in a rational manner, rather than allowing the employees to opt for one or other Division as per their choice only.

7. Reservation rules apply to all the Railway Divisions. The excess or short fall in reservation has to be dealt with in a uniform manner. It is the duty of the Southern Railway Headquarters to ensure that the principles of uniformity, fairness and equity are ensured in implementing the reservation policy within its jurisdiction. On the one hand if excess 'UR' employees are reverted to make room for the reserved category in Palghat Division, and on the other hand if excess reserved category employees are not reverted in the Salem Division to make room for 'UR' employees, then there is discrimination. Each Division cannot be allowed to implement the national policy of reservation in a discriminatory manner. Promotion may not be a matter of right to an employee. But every employee has legitimate expectation for promotion which needs to be respected within the limitations of the rules. Promotions can motivate employees to perform better. But if the promotions are given in an arbitrary manner, it is inviting avoidable heartburn, jealousy and demotivation amongst the employees. Therefore it is all the more necessary to handle promotion matters with sensitivity, justice and fairness.



8. As suggested earlier it would have been possible to bifurcate the staff maintaining the balance between reserved category and unreserved category between the Palghat and Salem Divisions. It is also possible to treat the excess in reserved and unreserved categories in the Salem and Palghat Divisions as temporary excess and as and when any vacancy arises it goes to that category having short fall and over a period of shortest possible time, the excess in either category can be wiped out. It is seen that 64 employees were promoted on adhoc basis as Passenger Guards, fully complying with the reservation policy. The problem of adhoc promotion became complex owing to the spin-off issues following the creation of Salem Division carving out certain areas and staff from the Palghat Division. To manage these issues smoothly is the function of the Southern Railway Headquarters.

9. While hasty decision is taken for reversion of Passenger Guards promoted on adhoc basis in Palghat Division, it appears that adhoc promotions continued elsewhere. Requirement of Passenger Guards for the smooth running of the trains is the same in all Divisions. Applying different yardsticks in different Divisions would invite the charge of hostile discrimination. It is for the Southern Railway Headquarters to practice uniformity in such matters in all Divisions within its jurisdiction.

10. In the light of the above discussion, we are of the considered view that adhoc promotions to the post of Passenger Guards should continue till the vacancies in the cadre of Passenger Guards are filled up on regular basis.

11. Accordingly the O.A. is allowed partly. Annexure A5 order is quashed and set aside. The respondents are directed to continue the adhoc promotion granted to 23 employees out of the 64 now working as Passenger Guards in the Palghat Division, till regular promotion is made to the vacancies in the cadre of Passenger Guards at the earliest in accordance with the rules dealing with the excess in the 'UR' category in Palghat Division on the same footing as the excess in reserved category is dealt with in Salem Division. No order as to costs.


(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER


(DR. K. B. S. RAJAN)
JUDICIAL MEMBER

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