

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 582 of 2011

Wednesday, this the 25th day of January, 2012

CORAM:

**HON'BLE Mr. JUSTICE P.R. RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

K. Anil Kumar,
S/o. C. Unnikrishnan,
Jamedar Peon, Accounts Department,
Southern Railway, Palghat Division,
Residing at "Sangeetha",
Vadakkehthara, Kunisseri,
Palghat.

.... **Applicant.**

(By Advocate Mr. T.C.Govindaswamy)

v e r s u s

1. The Union of India represented by
The General Manager,
Southern Railway,
Headquarters Office, Park Town P.O.,
Chennai – 3
2. The Chief Personnel Officer,
Southern Railway,
Headquarters Office, Park Town P.O.,
Chennai – 3
3. The Financial Advisor & Chief Accounts Officer,
Southern Railway,
Headquarters Office, Park Town P.O.,
Chennai – 3
4. The Senior Divisional Finance Manager,
Southern Railway, Palghat Division,
Palghat : 678 002
5. Sri Shahul Hameed,
Senior Record Sorter,
Office of the Senior Divisional Finance Manager.
Southern Railway, Palghat Division,
Palghat : 678 002



6. Sri Salim Javed,
Senior Divisional Finance Manager,
Southern Railway, Divisional Office,
Palghat Division, Palghat : 678 002 ... Respondents.

(By Advocate Mr. Thomas Mathew Nellimoottil for R1-4 and
Mr. S.M. Prasanth for R-5)

This application having been heard on 12.01.2012, the Tribunal on 25-01-12, delivered the following:

ORDER

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

This O.A has been filed against the selection and appointment of respondent No. 5 to the post of Accounts Clerk against Limited Departmental Competitive Examination (LDCE) quota. 66 ^{2/3} % of posts in the cadre of Accounts Clerk in the Accounts Department, Palghat Division, Southern Railway is to be filled through Railway Recruitment Board, 25% by promotion from Group-D staff and 8 ^{1/3} % through LDCE from among Group-D staff with 3 years of regular service and Matriculation pass. 3 posts of Accounts Clerk were in excess and declared as supernumerary posts. A vacancy in LDCE quota was shown to have arisen. The selection of 5th respondent was made on 17.02.2011 on the basis of the written examination and he was appointed as Accounts Clerk.

2. The applicant contended that an artificial vacancy was created to accommodate the 5th respondent. The percentage of LDCE quota is to be applied against vacancy and not against total cadre strength. Already 3 persons are in excess of the sanctioned strength of the cadre of Accounts Clerk.

3. The 5th respondent in his reply statement submitted that the applicant was not qualified to compete with him in the selection process. He is not an aggrieved person in relation to the issues raised in the O.A. The O.A is maintainable at the instance of the applicant only when he is directly aggrieved.

4. The official respondents in their reply statement submitted that the applicant has filed the present O.A. six months after the selected hand is appointed on the post. The applicant never represented against the selection. Hence he has not exhausted the departmental remedies which is mandatory under Section 20 of the Administrative Tribunals Act, 1985. The applicant is a non Matriculate and, therefore, not eligible to compete in the selection for the post in question. He being not entitled to be considered for LDCE quota cannot challenge the promotion under the said quota. The applicant was not having any grievance right from the notification issued in November, 2010 till the selection in February, 2011. The 5th respondent was medically decategorised and was absorbed as Senior Record Sorter in the Accounts Department on 17.07.1996. Out of the 5 eligible candidates who appeared in the competitive competition for the post of Accounts Clerk, he was declared selected and promoted with effect from 21.02.2011. There are 9 posts of Accounts Clerk and 8 ^{1/3} % of the same works out to one, which was never filled up. The assessment of vacancy was done on the basis of post based roster as per the Railway Board letter No. 95-E(SCT)/1/49/5(1) dated 21.08.1997.

5. We have heard Mr. T.C. Govindaswamy, learned counsel for the applicant, Mr. Thomas Mathew Nellimootttil. Learned counsel for the official



respondents 1 to 4 and Mr. S.M. Prasanth, learned counsel for the respondent No. 5 and perused the records.

6. The applicant being non Matriculate is not eligible to be considered for selection as Accounts Clerk against LDCE quota. Therefore, he cannot have a grievance over LDCE quota getting filled up. There is no prejudice caused to him due to selection of the 5th respondent against the lone vacancy of Accounts Clerk in the LDCE quota as per post based roster. When the applicant, a totally ineligible person for competing in the selection process in question, challenges the selection and appointment of the 5th respondent on the ground that an artificial vacancy was created when there were 3 excess employees in the cadre, it is in the nature of public litigation.

7. In **Duryodhan Sahu (Dr.) vs. Jitendra Kumar Mishra**, 1998 7 SCCC 273, the Apex Court held as under :

"18. ... If public interest litigations at the instance of strangers are allowed to be entertained by the [Administrative] Tribunal, the very object of speedy disposal of service matters would get defeated."

8. Again, in **B. Sreenivasa Reddy vs. Karnataka Urban Water Supply and Drainage Board Employees' Assn.**, (2006) 11 SCC 731 , the Apex Court held that in service matters only the non-appointees can assail the legalities of the appointment procedure.

9. In view of the settled legal position, the instant O.A. is not maintainable as the applicant has no locus standi. The O.A. is not maintainable also for the reason that the applicant has not exhausted the departmental remedy



available to him before approaching this Tribunal.

10. In the light of the Recruitment Rules, we are of the view that the respondents are right in assessing that there is one post out of the 9 posts of Accounts Clerk falling in the LCDE quota of 8 $\frac{1}{3}$ % and that it is vacant as per roster of posts although there are excess employees in position in other categories for various reasons.

11. In the light of the above, the O.A. is dismissed with no order as to costs.

(Dated, this the 25th January, 2012)



K.GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE PR RAMAN
JUDICIAL MEMBER

CVR.