

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 615/06

TUESDAY THIS THE 10th DAY OF JULY 2007

C O R A M

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

1. C. Jayaraj, aged 44 years,
S/o Chakrapani. V, Diesel Assistant
Chief Crew Controller, Southern Railway, Erode,
residing at 374-B, Railway Colony,
Manthoppu, Podanur.
2. Viswanathan. M, aged 42 years,
S/o. Muthusamy, S, Diesel Assistant
Chief Crew Controller, Southern Railway, Erode,
residing at 139-D, Railway Colony, Erode - 638002.
3. Srinivasan. G, aged 41 years,
S/o Govindan. T, Diesel Assistant
Chief Crew Controller, Southern Railway, Erode,
Residing at 133-F, Railway Colony, Erode - 638002.
4. Karunakaran. T, aged 45 years,
S/o Thirunavukka Rasu. R, Diesel Assistant
Chief Crew Controller, Southern Railway, Erode,
residing at 60 - C, Railway Colony, Erode - 638002.
5. Balakrishnan K.V, aged 52 years
S/o Kunhi Raman M.V, Diesel Assistant
Crew Controller, Southern Railway, Mangalore,
residjing at 87 - B, Railway Colony, Mangalore - 575001.
6. Murali Madhavan M, aged 49 years
S/o. Unnikrishnan. T, Diesel Assistant
Crew Controller, Southern Railway, Palghat
residing at 18 - A, Old Colony, Near traffic store,
Olavakode, Palghat.
7. Paulraj. S, aged 47 years,
S/o Subbiah. V, Diesel Assistant
Chief Crew Controller, Southern Railway, Erode,
residing at Tamil Nadu housing unit M 105,
Muthampalayam, Erode - 638009.
8. Haridasan A.S, aged 48 years,
S/o Sivaraman A.L, Diesel Assistant
Chief Crew Controller, Southern Railway, Erode,
residing at 65, Murugan illam,
Sastri nagar, Erode - 638002.
9. Narayanan Kutty. C, aged 44 years,
S/o Padmanabhan Nair. N.V, Diesel Assistant
Crew Controller, Southern Railway, Shoranur,

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residing at 'Chakkoth house', Thrangali,
P.O: Mananaur, (via) Kavalaparu, Shoranur.

10. Satheeshkumar.S, aged 34 years,
S/o Selvaraj. G, Diesel Assistant
Chief Crew Controller, Southern Railway, Erode,
residing at 29/20B, Bhanath Bhavan Road,
Mettupalayam - 641 301.
11. Pramod Kumar. A, aged 32 years,
S/o Kesavan. M, Diesel Assistant
Chief Crew Controller, Southern Railway, Erode,
residing at 'Chandrika Sadan', Kulakkad (PO),
Cherpalchery (via), Palakkad - 679 503.
12. Nishar. I, aged 45 years,
S/o Ibrahim, Diesel Assistant
Chief Crew Controller, Southern Railway, Erode,
residing at 377 - B, Railway Colony, Erode - 638 002.
13. Satheesh Babu. T.V, aged 46 years,
S/o Sukumaran. P.K, Diesel Assistant
Chief Crew Controller, Southern Railway, Erode,
residing at 447, Railway Colony, Erode - 638002.
14. Sudheer Kumar P.K, aged 44 years,
S/o Krishnan. P, Diesel Assistant
Crew Controller, Southern Railway, Palghat,
residing at 'Krishna Prabha', Giri nagar,
Near Engineering College, Palghat-8.
15. Jayaprakash. S, aged 46 years,
S/o Raman Kutty Nair. P, Diesel Assistant
Chief Crew Controller, Southern Railway, Erode,
residing at 538-B, Railway Colony, Erode - 638002.
16. Chandran G, aged 49 years,
S/o Gopalan. V, Diesel Assistant
Chief Crew Controller, Southern Railway, Erode,
residing at 59 - A, Railway Colony, Erode - 638002.
17. Bhaskaran. S.I, 48 years,
S/o Sowri Nathan. A.G, Diesel Assistant
Chief Crew Controller, Southern Railway, Erode,
residing at 229/2, Kumaran Nagar,
Sastri Nagar, Erode - 638002.
18. Mohamad Moosa. P.M, aged 48 years
S/o Moideen Kutty, Diesel Assistant
Crew Controller, Southern Railway, Erode,
residing at 'Puzhukal house', Kinalloor, Kambi, Palghat

ONDENTS: -

1. UNION OF INDIA, Represented by
The General Manager, Southern Railways, Chennai.
2. THE CHIEF PERSONNEL OFFICER
Southern Railway, Headquarters, Chennai.
3. THE DIVISIONAL RAILWAY MANAGER,
Palghat Division, Southern Railway, Palghat.
4. THE SENIOR DIVISIONAL PERSONNEL OFFICER
Palghat Division, Southern Railway, Palghat.
5. Sri. Satheesan,
Asst. Loco Pilot, Southern Railway,
O/o the Crew Controller, Erode.
6. Sri. U. Krishnan JM 2547,
Assistant Loco Pilot, Southern Railway,
Calicut Railway station, Calicut.
7. Sri. M. Selvaraj JM 2725,
Asst. Loco Pilot, Southern Railway,
O/o the Crew Controller, Erode.
8. Sri. K.K Baburaj JM 5762,
Asst. Loco Pilot, Southern Railway,
O/o the Crew Controller, Erode.
9. Sri. Baiju K.S, JM 5763,
Asst. Loco Pilot, Southern Railway,
O/o the Crew Controller, Erode.
10. Sri. K.K. Suresh JM 5782,
Asst. Loco Pilot, Southern Railway,
Palghat Railway Station, Palghat.
11. Sri. N. Satheesh Kumar JM 5783,
Asst. Loco Pilot, Southern Railway,
O/o the Crew Controller, Erode.
12. Sri. Sunil K. T JM 5988,
Asst. Loco Pilot, Southern Railway
O/o the Crew Controller, Erode.
13. Sri. Ravikumar Dharma JM 6296
Asst. Loco Pilot, Southern Railway
O/o the Crew Controller, Erode.
14. Sri. A.M. Ashokan JM 5870
Asst. Loco Pilot, Southern Railway,
Palghat.
15. Sri. Vijayakumar JM 5750
Asst. Loco Pilot, Southern Railway
O/o the Crew Controller, Erode.

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16. Sri. Krishna Biswas JM 6071
Asst. Loco Pilot, Southern Railway,
O/o The crew Controller, Erode.
17. Barepetre Nycheswar JM 6098
Asst. Loco Pilot, Southern Railway,
O/o The crew Controller, Erode.
18. Francis Xavier JM 6096
Asst. Loco Pilot, Southern Railway,
O/o The crew Controller, Erode.
19. Ashok Kumar Nandan JM 6094
Asst. Loco Pilot, Southern Railway,
O/o The crew Controller, Erode.
20. Sri. Bhaskaran. L. JM 6113
Asst. Loco Pilot Southern Railway,
O/o the crew Controller, Erode.
21. Sri. Lakaveth Bhim Naik JM 6109
Asst. Loco Pilot, Southern Railway,
O/o the crew Controller, Erode.
22. Rajan Bajpe, JM 6104,
Asst. Loco Pilot, Southern Railway,
O/o the crew Controller, Erode.
23. Sri. Mude Seena Naik JM 6111
Assistant Loco Pilot, Southern Railway,
O/o the crew Controller, Erode.

By Mrs. Sumathi Dandapani Senior Advocate
Ms. P.K. Nandini for R 1-4

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicants are Diesel Assistants/Assistant Loco Pilots working under the respondents. They are aggrieved by the promotion granted to their juniors vide Annexure A-1and A-2 orders ignoring the seniority communicated in the seniority list at Annexure A-3 by applying reservation on the vacancies arising out of cadre restructuring.

2 They have prayed for the following reliefs:

- (i) To call for the records relating to Annexures A-1 to A-6 and to quash Annexure A1 and A2 to the extent it promotes respondents 6 to 23 as Sr. Loco Pilots.
- (ii) To declare that the promotions to the higher cadres of Senior Loco Pilots are to be made on the basis of Annexure A-3 seniority list and the seniority of the applicants are to be restored by withdrawing the seniority granted to respondents 6 to 23 by applying the reservation to SC/ST candidates and to direct the respondents to effect promotion to the cadre of Senior Loco Pilots on the basis of A-3 seniority.
- (iii) To direct the respondents to promote the applicants as Sr. Loco Pilots in preference to respondents 6 to 23 on the basis of their seniority in A-3.
- (iv) To pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.
and
- (v) To award costs of, and incidental to this application.

3 The applicants joined the service of the Railway on various dates from 1980-1984, came into the cadre of Diesel Assistants/Assistant Loco Pilots in the year 1999 and are continuing as such. As per the order relating to re-structuring published by the Railway Board, reservations were made applicable even when posts were rearranged on restructuring and the said illegal placements were questioned by the general candidates and as per the order of the Allahabad Bench of the Tribunal in the case of V.K. Sirhotia Vs. Union of India, it was decided that the application of reservation on cadre restructuring when the member of posts in the cadre are not changed is incorrect and the Railway order was quashed. The respondents took up the matter before the Hon'ble Supreme Court which upheld the order of the Allahabad Bench as per the judgment

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dated 19.11.1998. The applicants have alleged that thereafter also in a number of proceedings before various courts including the Full Bench of this Tribunal the position has been reiterated and despite a catena of decisions the respondents are still applying reservation in the promotions arising out of the restructuring. As a consequence of the various above decisions, the Government itself issued Annexure A-4 OM directing that the Supreme Court's observations should be adhered to in all cases but the respondent Railway Administration is refusing to abide by these instructions or the law laid down by the Hon'ble Supreme Court.

4 In the reply statement, the respondents have taken the stand that due to restructuring of the cadre, the number of posts in the cadre have increased and when there is an increase in the cadre strength, as per the orders of the Hon'ble Supreme Court's judgment in the case of R.K. Sabharwal Vs. State of Punjab (AIR 1995 SCC 1311) reservation has to be applied. It is further submitted that the Hon'ble Apex Court's order in R.K. Sabharwal's case is the authority for implementing the principles of reservation. Since the implementation of Annexure A-4 OM dated 25.10.2004 of the DOPT has wider implications, a reference was made to the Ministry of Railways by the DOPT seeking additional information but no orders have been issued by the DOPT or the Railway Board. The respondents also state that the issue of applicability of reservation in the cadre as a result of restructuring is pending consideration by the Apex Court in Pushpa Rani's case in which the court has granted

stay in the contempt proceedings.

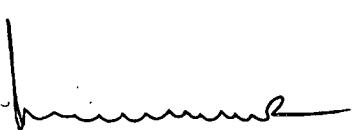
5 The applicant has controverted the averments of the respondents in his rejoinder and submitted that para 14 of Railway Board's order dated 9.10.2003 applying reservation on restructuring and similar clauses in earlier restructuring orders have been struck down by various Courts and Tribunals. The respondents cannot interpret the judgments in their own way. It is also stated that other Divisions of the Railways like the Northern Railway have admittedly implemented the directions in V.K. Sirothia's case.

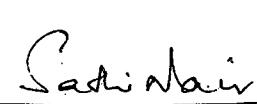
6 When the matter came up for hearing, the learned counsel for the applicants submitted that the issue in this O.A. is the same as was considered by the order of this Tribunal in O.A. 601/2004 and batch of cases and subsequent OAs have been disposed of on similar lines, this OA can also be disposed of accordingly and from the respondents side also it is admitted that the same course of action can be followed in this case. Copy of the order in O.A. 601/2004 and batch of cases is produced as Annexure A-5. The applicants therein belong to various categories in the Railway namely Enquiry-cum-Reservation Clerks, Technicians Grade-I, Commercial Clerks, JEs, etc. and the common order impugned in these OAs is the Railway Board's order dated 9.10.2003 by which instructions have been issued to the General Managers regarding restructuring of Group-C and D cadres and interalia permitting reservation for both SC and ST categories in para 14. This Bench has considered the

issue extensively and relying on the Full Bench order of this Tribunal in O.A. 933/2004 in P.S. Rajput and two Ors. Vs. Union of India and Others, O.A. 778/04 in Mohd. Niyazuddin and 10 Ors. Vs. Union of India and agreeing with the finding of the Full Bench decision that the upgradation of the cadre as a result of the restructuring and adjusting of existing staff cannot be termed as promotion attracting reservation in favour of the SC/ST categories. The Full Bench has taken into account the observations of the Apex Court in the case of R.K.Sbharwal's case also for arriving at this conclusion.

7 Since the issue in this O.A is also the same and the impugned orders in these OAs are consequential to the orders of the Railway Board dealt with in the batch of cases mentioned supra which has already been set aside by the Full Bench and also confirmed by the Hon'ble Supreme Court, we are of the view that this O.A. can be also allowed on similar lines. Consequently, the impugned orders Annexures A-1 and A-2 are set aside. The respondents are directed to reconsider the promotions granted and pass appropriate orders withdrawing the benefit of reservation granted to the private respondents herein. The OA is allowed as above. No costs.

10.7.2007


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN