

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO.92 OF 2006

Monday, this the 14^{th} day of September, 2009.

CORAM:

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

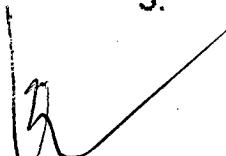
1. K.M.Divakaran
Points Man Grade II
Southern Railway, Ernakulam Junction
Residing at Kodappadak House
Karukutty P.O.
Ernakulam District
2. M.G.Manikandasudan
Points Man Grade II
Southern Railway, Guruvayoor
Residing at Purakaly House, Kallettunkara P.O
Trichur
3. A.R.Unnikrishnan
Points Man Grade II
Southern Railway, Ernakulam Junction
Residing at Alukkal House, Viyyoor P.O
Trichur District

... **Applicants**

(By Advocate Mr.T.C.Govindaswamy)

versus

1. Union of India represented by General Manager
Southern Railway, Headquarters Office
Park Town Post, Chennai – 03
2. The Chief Personnel Officer
Southern Railway, Headquarters Office
Park Town Post, Chennai – 03
3. The Senior Divisional Personnel Officer
Southern Railway, Trivandrum Division
Trivandrum
4. The Divisional Railway Manager
Southern Railway, Trivandrum Division
Trivandrum - 14
5. K.P.Mani
Assistant Cook
Southern Railway, Trivandrum Central
Trivandrum



6. K.Raman
Assistant Cook
Southern Railway, Trivandrum Central
Trivandrum

7. M.Gafoor
Assistant Cook
Southern Railway, Trivandrum Central
Trivandrum

8. A.R.Ramanarayanan
Assistant Cook
Southern Railway, Trivandrum Central
Trivandrum ... Respondents

By Advocate Mrs.Sumathi Dandapani, Senior with Ms.P.K.Nandini (R1-4)
Advocate Mr Martin G Thottan (R 7&8)

The application having been heard on 26.08.2009, the Tribunal
on 14.09.2009 delivered the following:

ORDER

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

The applicants, working as Points man Grade II in the Trivandrum Division, are eligible to be considered for promotion as Ticket Collector / Train Clerks against 1/3rd promotion quota. The 3rd respondent issued notification dated 27.11.2002 inviting applications from eligible candidates for filling up 15 vacancies in the cadre of Ticket Collector / Train Clerks. Annexure A-1 refers. This was later on modified by Annexure A-2 notification dated 03.07.2003 enhancing the number of vacancies to 23. Vide Annexure A-3 memorandum dated 05.03.2004, a list of candidates qualified in the written examination was published, as per which the applicants were held to have qualified. However, in the Annexure A-4 panel dated 09.11.2005 the names of the applicants did not figure in and the names of private respondents who are only Assistant Cooks and (as per applicants) not covered by the rules for promotion against the 1/3rd quota were found. It is the case of the applicants that while the non eligible

candidates have figured in the panel, the names of the applicants who had qualified in the written examination did not figure in. Accordingly Annexure A-5 representation dated 20.12.2005 was submitted by them. As there was no response, this OA has been filed.

2. During the pendency of this OA, yet another OA No.875/05 together with OA 146/06 was considered and in implementation of the order in those OAs, Annexure A-6 seniority list was published. In the said seniority list the applicants figure in Sl.Nos. 30, 28 and 24 respectively with the dates of their entry in the grade of Group 'D' as 09.02.1988, 01.12.1987 and 02.10.19987 respectively. Compared to them, the private respondents were all juniors.

3. In accordance with the decision by this Tribunal in OA 1761/98 seniority is to be fixed on the basis of date of entry in the Group 'D' cadre irrespective of the pay scale attached to the posts. This order of the Tribunal was upheld by the Hon'ble High Court in O.P.No.14500/2003 decided on 27.11.2007. As such, the applicants have preferred Annexures A-7, A-8 and A-9 representations as well. There is no response to the said representations.

4. The applicants have challenged Annexure A-4 panel inter-alia on the grounds that Assistant Cooks do not form part of feeder cadre for promotion as against the 1/3rd quota. Inclusion of private respondents in Annexure A-4 and the consequential exclusion of the applicants are therefore arbitrary, discriminatory and unconstitutional.



5. Respondents have contested the OA. According to them, vide Annexure R-1 (2) dated 30.01.1969 read with Annexure R-1 (3) dated 07.05.1991 all open line Class IV staff of the Traffic Commissioner and Catering Branches will be considered, under the promotion quota. As such, it is not correct to contend that Assistant Cooks are not eligible to be considered for promotion.

6. Counsel for applicants submitted that according to Para 126 and 127 of the IREM, promotion is to be effected by a process of selection from amongst Group 'D' staff as specified by the Zonal Railway Administration. However, the Zonal Railway Administration has not specified Assistant Cooks as an eligible category against the promotion quota. Reliance has been placed on a few decided cases that the respondents cannot alter the eligibility conditions etc. once this had been properly prescribed in the notification. Counsel for applicant also highlighted that even if such Assistant Cooks could be permitted under any specific rules or instructions, when it comes to the question of promotion, the same shall be based on seniority and the manner in which seniority shall be decided is provided for in the judgment of the Hon'ble High Court in W.P No.14500/2003 decided on 27.11.2007. If the same is followed, it could be the applicants who could have been promoted.

7. Counsel for respondents submitted that Annexure R-1 (2) and R-1 (3) are specific to include all the Group 'D' employees of the Catering Department who are eligible to be considered under the promotion quota.

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8. Arguments were heard and documents perused. By virtue of Annexure R-1 (2) and R-1 (3), it is clear that there is no exemption among the Group 'D' employees with regard to promotion to the cadre of Ticket Collectors/Train Clerks. True, in the notification issued vide Annexure A-1 and A-2 the cadres of staff in the Catering Department that are eligible to apply has been specified as Servers, Head Server/ Head Waiters of Catering Department. The contention of the counsel for applicants was that the exclusion of Assistant Cooks is based on the fact that such Assistant Cooks have got promotional avenues as Cooks / Head Cooks etc. It has been stated by the Senior Counsel for the respondents that promotion of Assistant Cooks as Ticket Collectors / Train Clerks has been in existence as a matter of practice for a substantial period which would go to show that Annexure R-1 (2) and R-1 (3) have been kept in tact though Annexure A-1 and A-2 did not contain Assistant Cooks as an eligible category. We agree with the submissions made by the Senior counsel for the respondents.

9. While inclusion of Assistant Cooks by the respondents as a category for promotion as Ticket Collector / Train Clerks does not suffer from any legal infirmity, another aspect to be seen is whether their promotion was based on proper seniority. According to the decision by the Hon'ble High Court in W.P No.14500/2003 seniority shall be based on length of service and not on the scale of pay. If so, it is to be seen whether the applicants are actually senior to the private respondents. Though the counsel for applicants substantiates the same, the same is to be properly verified with the records held by the respondents organisation.

[Signature]

If the respondents noticed that seniority prepared was in accordance with the law laid down by the Hon'ble High Court, the applicants may be suitably informed accordingly. Instead, if the seniority list has been prepared in violation of the judgment of the Hon'ble High Court in W.P.No.14500/03, the same is to be duly rectified and if the applicants who already stand qualified, are found to be senior enough to be accommodated against the 23 notified vacancies, they should be accordingly considered for promotion from the date their juniors had been so promoted. In view of the limited number of vacancies, if any other person who stands junior to the applicants and who has to be reverted, the same may be carried out in accordance with law and after giving an opportunity of being heard. If provision exists for creation of supernumerary post whereby such reversion could be avoided, the same be also considered as by now such persons facing reversion would have served in the promotional quota for a substantial period.

10. OA is allowed to the above extent. This order may be complied with, within a period of four months from the date of communication of this order. No costs.

Dated, the 14th September, 2009.


K GEORGE JOSEPH
ADMINISTRATIVE MEMBER


Dr.K.B.S.RAJAN
JUDICIAL MEMBER

vs