

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. Nos. 794/07, 795/07, 38/08, 51/08, 125/08 & 200/08

Dated this the 29th day of March, 2011

CORAM

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER
HON'BLE MR.V. AJAY KUMAR, JUDICIAL MEMBER

O.A. 794/2007

- 1 Mr.A.D Alexander, aged 56, S/o Chandy Devasya, working as Station Manager, Southern Railway, Kottayam, residing at Attupuram house, Muttar P.O, Alappuzha.
- 2 Thomas Varghese, aged 57, S/o. P.J Varghese, Chief Yard Master Southern Railway, Ernakulam Marshalling Yard residing at Koovakkattu House, Classy Enclave, Thrikkakkara P.O, Kochi-21.
- 3 E.Balan, aged 63, S/o Kunjuraman, retired Station Master Gr.I, Kayamkulam, residing at Vismaya, K.T Bazar Rayangoth.P.O, Vatakara-2.
- 4 Mr.K Gopalakrishna Pillai, aged 64, S/o Kesava Pillai, retired Station Master Gr.I, Southern Railway, Ochira, residing at Thennala Sree Bhavan, Edakulangara P.O Karunagappilly.
- 5 K Madhavankutty Nair, aged 64, S/o N Kesava Pillai, retired Station Master Gr.I, Southern Railway, Ochira, residing at Thennala Sree Bhavan, Edakulangara.P.O, Karunagappilly.
- 6 P.Prabhakaran Nair, aged 67, S/o P.Parameswaran Nair retired Station Master Gr.I, Southern Railway, Aluva, residing at VIII/437, Rohini, Bank Road, Aluva.
- 7 M.P Prabhakaran Nair, aged 67, S/o P Parameswaran Nair retired Station Master Gr.I, Southern Railway, Puthukkad, residing at Parakkat house, C.T Road, Perumbavoor.

- 8 G.Vikraman Nair, aged 64, S/o T.S Govindan Nair,
retired Station Master Gr.I, Southern Railway, Puthukkad,
residing at Parakkat house, C.T Road, Perumbavoor
- 9 G Gopinatha Panicker, aged 67, S.o Gopala Pillai,
retired Station Master Gr.I, Southern Railway, Cherthala,
residing at Vrindavanam, Muhamma P.O, Alappuzha.
- 10 M.T Moses, aged 63, S/o E Thomas,
retired Station Master Gr.I, Southern Railway, Ettumanoor,
residing at Muthukulan house, N.W Thirunakara Temple, Kottayam 1
- 11 T.M Philipose, aged 65, S/o late T.G Mathew
retired Station Master Gr.I, Southern Railway, Kazhakoottom
residing at Thengumcheri, Kilikolloor, Kollam.
- 12 A.N Viswambaran, aged 69, S/o A.K Naryanan,
retired Station Master Gr.II, Southern Railway,
Chocin Harbour Terminus, residing at
Annamkulangara house, Palluruthi P.O, Kochi - 6

.. Applicants

(By Advocate - Mr. K.A Abraham)

V e r s u s

1. Union of India represented by the Secretary, Ministry of Railways, Rail Bhavan, New Delhi.
2. The General Manager, Southern Railway, Chennai - 3
3. The Chief Personnel Officer, Southern Railway, Chennai-3
4. The Divisional Railway Manager, Southern Railway,
Trivandrum Division, Trivandrum
5. T.S Sathyakeerthi, Station Manager,
Southern Railway, Ernakulam Jn.

Respondents

(By Advocate - Mr.K.M Anthru)

O.A.795/07

- 1 K. Ramanathan S/o K.R. Krishnan
Working as Chief Commercial Clerk Gr. II,
Southern Railway, Palakkad
residing at C-II//220, Sreeramajayam
Koduvayur PO, Palakkad.

- 2 K. Ramakrishnan S/o Chirukandan
Working as Chief Commercial Clerk Gr. II,
Southern Railway, Kanhangad
residing at Ushus, Perole,
Neeleswar-671 314
- 3 S. Kulothjungani S/o D. Subramanian
Working as Chief Commercial Clerk Gr. II,
Southern Railway, Salem Jn,
residing at 93/3, Modern Builders, B'Colony
Alangapuram, Kattur
Salem-636 016
- 4 T.G. Chandramohan S/o T.P. Govinda Rajan
Working as Chief Commercial Clerk Gr. II,
Southern Railway, Salem Jn
residing at 7/4, Elango street Subramania Nagar
Salem-636 005
- 5 T.V. Sureshkumar S/o late M.V. Kunhikannan
Working as Chief Commercial Clerk Gr. II,
Southern Railway, Mangalore
residing at Sarojam near G. LP School
Tata Tower Jn, Payyanur-670 307
- 6 M.K. Aravindakshan S/o Padmanabhan Nair
Working as Chief Commercial Clerk Gr. II,
Southern Railway, Tirur, residing at
Sreesylam, Valiyakunnu, Valanchery,
Malappuram
- 7 M. Vijayakumar
Working as Chief Commercial Clerk Gr. II,
Southern Railway, Kankanady
residing at Padmavilla, Chevayur PO
Calicut-63-673017
- 8 T. Ambujakshan S/o Padmanabhan Nair
Working as Chief Commercial Clerk Gr. II,
Southern Railway, Tirur
residing at Thekkekarahouse
Vyalathur Nhamanghat, Valanchery, Malappuram
- 9 Piyarajan s/o Ismailkhan
Working as Chief Commercial Clerk Gr. II,
Southern Railway, Salem market
residing at 5/2 Lekshmi Nagar, Chinnathiruppathi PO
Salem-8

- 10 N. Balakrishnan S/o M. Nachimuthu
Working as Chief Commercial Clerk Gr. II,
Southern Railway, Salem Market
residing at 5/448 Water Board Colony,
Alagapuram, Salem-16
- 11 K.V. George S/o Vareed
Working as Chief Commercial Clerk Gr. II,
Southern Railway, Shoranur
residing at Koodili house
Palazhi PO, Puthukkad
- 12 O.B.Nabeesa W/o Shahul hameed
Working as Chief Commercial Clerk Gr. II,
Southern Railway, Parappanangadi
residing at Shaji Cottage
Valiyaparambil, Thanur.
- 13 P.T.Joseph S/o Thomas
Working as Chief Commercial Clerk Gr. II,
Southern Railway, Kannur
residing at Puthiyakunnel
Melukadavu, Mattom PO, Pala
- 14 U.Kanakalatha D/o M.C. Narayanan Nair
working as Chief Commercial Clerk Gr. II,
Southern Railway, Kuttipuram
residing at Kousthubham,
Ponnumangalath house, Shoranur.
- 15 M.Parameswaran S/o K.Madhavan
Working as Chief Commercial Clerk Gr. II,
Southern Railway, Palakkad Town
residing at Chengampotta River Street,
Kollengode, Palakkad-678506
- 16 K. Damodaran S/o Sankunni Menon
Retired Chief Parcel Supervisor, S. Railway,
Tirur, residing at
Aiswarya PO, Trikkal
- 17 K.K.Kunjikutty S/o K.K. Raman
retired Commercial Clerk Gr. III,
Southern Railway, Calicut
residing at Mulloly house PO
Atholy, Calicut.

18 K. Raghavan S/o K. Raghavan
Retired Commercial Clerk Gr. II,
Southern Railway, Calicut residing at
Muthuvottu house
Kaithakkad PO, Chenoli, Perambra

19 K.V. Vasudevan S/o P.V. Kanaran
Retd. Commercial Clerk, Southern Railway
Feroke residing at
5/308, Karuna, P.HED Road
Erahnji Palam, Calicut

20 E.M. Selvaraj S/o E.T. Constantine
retired Chief Booking Supervisor,
Southern Railway
Calicut residing at Shalom
Parayancheri, Kuthiravattom, Calicut.

21 V.P. Kumaran S/o V.P. Kanaran
retired Chief Commercial Clerk Gr.I
Southern Railway, Coimbathore Jn
residing at Kallai Vaniyamkandi
Kottayil House, Aliyoor PO
Calicut.

22 Kasiviswanathan S/o Kuppuswamy
Retired Chief Commercial Clerk Gr.III
S. Railway, Salem Jn
Residing at Door No. 52 Kuppusamynaikon
Thottom, Bodinaikan Patti
Salem-5

23 R. Sreenivasan S/o U. Kelappan Nair
retired Chief Commercial Clerk Gr. II,
Southern Railway, Kannur
residing at H.No.1 Megha, Puzhathy housing colony
Kannanur-2

24 P. Sreekumar S/o Parameswaran Pillai
Retd. Chief Commercial Clerk Gr. II
Southern Railway, Coimbatore Jn
residing at Sreyas, Karimthottuva Kunnathur East.

25 M.P. Sreedharan S/o Gopalan
Retired Chief Commercial Clerk Gr.I
S. Railway, Badakaraa
residing at Sadgamaya Podikkundu PO
Pallikkunnu

26 A. Palaniswamy S/o K. Sangappan
retired Chief Commercial Clerk Gr. II
Southern Railway, Erode
residing at No. 178 Avvai Vazhi
Valluvar Nagar, Dharmapur-636705 ..Applicants

By Advocate Mr. K.A. Abraham

Vs

- 1 Union of India represented by the
Secretary, Ministry of Railways
Rail Bhavan, New Delhi.
- 2 The General Manager,
Southern Railway
Chennai
- 3 The Chief Personnel Officer
Southern Railway, Chennai
- 4 The Divisional Railway Manager,
Southern Railway, Palakkad Division
Palakkad
- 5 The Divisional Railway Manager
Southern Railway
Salem Division, Salem
- 6 Mohanan M.N.
Chief Parcel Supervisor
Southern Railway, Shoranur. ..Respondents

By Advocate Mr. K.A. Anthru for R 1-5

O A No. 38 of 2008

- 1 V.K Divakaran,
Chief Commercial Clerk Gr.I, Booking Office,
Southern Railway Thrissur
- 2 K.Chandran,
Chief Commercial Clerk Gr.I,
Goods Office, Southern Railway, Aluva
- 3 N.Jyothi Swaroop,
Chief Commercial Clerk Gr.I, Goods Office,
Southern Railway, Angamali

- 4 S.Madhusoodhanan Nair,
Chief Booking Supervisor,
Southern Railway, Alleppey.
- 5 I.Mohankumar,
Chief Commercial Clerk Gr.I Parcel Office,
Southern Railway, Kalamassery.
- 6 P.V Sathya Chandran,
Chief Commercial Clerk Gr.I,
Southern Railway, Ernakulam Junction.
- 7 T.V Poulose,
Chief Commercial Clerk Gr.I,
Southern Railway, Ernakulam Junction.
- 8 Raju, M.M Deputy Station Manager, (Commercial),
Southern Railway, Ernakulam Junction.
- 9 M.P Ramachandran,
Chief Booking Supervisor,
Southern Railway, Ernakulam Junction.
- 10 Gracy Jacob,
Chief Commercial Clerk Gr.I,
Southern Railway, Trivandrum.
- 11 T.Prasannan Nair,
Chief Commercial Clerk Gr.I,
Booking Office, Trivandrum Central Railway Station.
- 12 N.Krishna Moorthi,
Chief Commercial Clerk Gr.I,
Booking Office, Southern Railway,
Trivandrum Division Nagarcovil.
- 13 V.T Joseph,
Chief Parcel Supervisor, S.Railway, Kottayam.
- 14 P.D Thankachan, Chief Booking Supervisor,
Southern Railway, Kayankulam.
- 15 C.M Mathew, Chief Booking Supervisor, Southern Railway,
Quilon
- 16 K.Mohanankrishnan,
Chief Booking Supervisor, Southern Railway, Trichur.

17. G. Francis,
Chief Booking Supervisor, Southern Railway,
Trivandrum Central.
18. Melvile Paul Fereiro,
Chief Commercial Clerk-Southern Railway,
Ernakulam Town.
19. P.P Abdul Rahiman, Chief Commercial Clerk Gr.II,
Parcel Office,
Southern Railway, Thrissur.
20. T.P Sankaranarayana Pillai, Chief Commercial Clerk Gr.II,
Booking Office, Southern Railway,
Angamali For Kaladi.
21. P.A Surendranath, Chief Commercial Clerk Gr.II,
Southern Railway, Ernakulam Town.
22. Sasidharan P.M, Chief Commercial Clerk Grade II,
Southern Railway, Ernakulam Marshalling Yard.
23. A.Boomi, Booking Supervisor Gr.II,
Booking Office, Southern Railway,
Ernakulam Town.
24. R. Carmal Rajkumar Booking Supervisor Gr.II,
Southern Railway,
Kanyakumari.
25. Subbiah, Chief Commercial Clerk Gr.II
Booking Office, Nagarcoil Jn
Southern Railway
26. B.Athinarayanan, Chief Commercial Clerk Gr.II,
Parcel Office, Southern Railway,
Nagarcoil Junction.
27. Victor Manoharan, Chief Commercial Clerk Gr.II,
Station Master Office, Kulitturai,
Southern Railway.
28. T.K Sasidharan Kartha, S/o K.Kesavan Kartha,
Chief Commercial Clerk Gr. II
Southern Railway, Parcel Office, Ernakulam
29. Thomas Jacob, Chief Commercial Clerk Gr.III
Parcel Office, Southern Railway, Thrissur.

30. K. Thankappan Pillai, Chief Commercial Clerk Gr. II
Booking Office, Southern Railway Trivandrum.
31. B. Janardhanan Pillai Chief Commercial Clerk Gr. II
Booking Office, Southern Railway, Quilon.
32. B Narayanan, Chief Commercial Clerk Gr. II
S.Railway, Quilon
33. A.C Jayachandran Chief Parcel Supervisor Gr. II
Nagarcoil, S.Railway.
34. Mary Mercy, Chief Goods Clerk, Grade III
Southern Railway, Aluva
35. M.S Audrey B.Fernandez, Chief Commercial Clerk, Grade III
Southern Railway, Irimpanam Yard.
36. M.C Stainslavos, Chief Commercial Clerk, Grade III
Southern Railway, Ermakulam Town
37. K.V. Leela, Chief Commercial Clerk
Southern Railway, Grade III
Ermakulam Jn.
38. Sheelakumari. S. Chief Commercial Clerk
Southern Railway, Grade III
Ermakulam Jn.
39. M.Sethumadhavan, Chief Commercial Clerk Gr. III
Goods Office, Southern Railway, Ollur.
40. G.Raveendranath, Chief Commercial Clerk, Grade III
Booking Office, Southern Railway, Alleppey
41. N. Savithri Devi, Chief Commercial Clerk III
Southern Railway, Alwaye.
42. G. Jayapal, Chief Commercial Clerk Gr. III
Parcel Office, Southern Railway, Quilon
43. George Olickel, Chief Commercial Clerk Gr. III
Booking Office, Southern Railway, Trivandrum Central
44. K.J Baby, S/o K.J Joseph, Chief Commercial Clerk, Gr.III
Southern Railway, Cochin Harbour T.S

45. Abraham Daniel, Chief Commercial Clerk Gr. III
Booking Office, Southern Railway, Thrissur
46. Vijayan N Warrier, Senior Commercial Clerk Gr. III
Booking Office, Southern Railway, Thrissur
47. K.C Mathew, Chief Commercial Clerk Gr. III
Southern Railway, Irinjalakuda
48. P.K Syamala Kumari, Senior Commercial Clerk
Booking Office, Southern Railway, Trivandrum Central
49. S. Chorimuthu, Senior Commercial Clerk
Southern Railway, Trivandrum Central
50. N. Vijayan, Chief Commercial Clerk Gr. III
Parcel Office, Southern Railway, Trivandrum Central.
51. Jayakumar.K, Chief Commercial Clerk Gr. III
Booking Office, Southern Railway Trivandrum Central.
52. K Vijayan Senior Commercial Clerk
Trivandrum Central Railway station.
53. T Usharani, Chief Commercial Clerk, Grade II
Booking Office, Southern Railway
Quilon Railway station.
54. K. I George, Senior Commercial Clerk
Booking Office, Southern Railway, Angamaly.
55. Rajendran T, Senior Commercial Clerk
Southern Railway, Booking Office, Alleppey.
56. P.L Xavier, Senior Commercial Clerk
Southern Railway, Cherthala
57. B. Radhakrishnan, Sr. Booking Clerk
S.Railway, Angamaly
58. N. Krishnankutty, Chief Commercial Clerk Gr. III
Southern Railway, Trichur
59. P. J Raphael, Chief Commercial Clerk Gr. III
S. Railway, Kalamassery
60. K.A Joseph, Senior Commercial Clerk
Parcel Office, Southern Railway, Alwaye

61. Vijayachandran T.G, Senior Commercial Clerk
Southern Railway, Alleppey, Trivandrum Division.
62. Najumunisa A, Senior Commercial Clerk,
Southern Railway, Alleppey, Trivandrum Division
63. M Vijayakrishnan, Senior Commercial Clerk
Senior Divisional Commercial Manager Office
Southern Railway, Trivandrum
64. K.O Aley, Senior Commercial Clerk
Southern Railway, Shertallai.
65. P.S James, aged 43 years, S/o P.J Skaria
Senior Commercial Clerk, Booking Office
Southern Railway, Alwaye
66. P. Damodarankutty, Senior Commercial Clerk
Southern Railway, Thrissur.
67. Mrs. Soly Jayakumar, Senior Commercial Clerk
Booking Office, Southern Railway, Irinjalakuda.
68. K.A Antony, Senior Commercial Clerk
Booking Office, Southern Railway, Trichur.
69. Aysha C.S, Commercial Clerk, Parcel Office
Southern Railway, Trivandrum
70. Saraswathy Amma.D, Senior Commercial Clerk
Booking Office, Southern Railway, Trivandrum Central
71. P. Girija, Senior Commercial Clerk
Booking Office, Southern Railway
Trivandrum
72. Lekha.L, Senior Commercial Clerk
Booking Office, Southern Railway
Trivandrum Central
73. Remadevi. S, Chief Commercial Clerk, Gr.III
Booking Office, Southern Railway, Varkala.
74. K.B Rajeev Kumar, Senior Commercial Clerk
Booking Office, Trivandrum Central.
75. Kala M Nair, Senior Commercial Clerk,
Booking Office, Trivandrum Central Railway Station.

76. Prasannakumari Amma P.C, Senior Commercial Clerk
Neyyatinkara SM/Office, Southern Railway
Balaramapuram R.S
77. K.P Gopinathan Nair, Chief Goods Clerk Gr. III
S. Railway, Kottayam Goods
78. M Anila Devi, Chief Goods Clerk Gr. III
S.Railway, Quilon
79. A Cleatus, S/o C.K Andrews
Retired Chief Commercial Clerk Gr. III
Southern Railway, Ernakulam Jn.
Chullickal House, Pollathai-SL Puram, Alleppey.
80. K.K Sankaran, S/o Kammarakandu
Retired Senior Commercial Clerk
Booking Office, Southern Railway
Thrissur residing at TC 38/470
Kammal House, Viswadeepthy, Poothole, Trichur.
81. K.K Antony, S/o Kuriakose
Retired Chief Parcel Supervisor
S. Railway, Trichur
Residing at Kochucherikal House
Iyyanthol, Trichur.
82. C.K Damodra Pisharady, S/o K.K Pisharady
Retired Chief Parcel Supervisor
S.Railway, Ernakulam Jn,
Residing at North Pisharam P.O,
Parakkadavu, (via) Kurumassery.
83. P. Gopinathan, S/o. Padmanabhan,
Retired Chief Commercial Clerk Gr. III
S. Railway, Quilon, residing at Kanjiramvila house,
Poovathe East, Kuladada, Kottarakkara.
84. K.Ramachandran Unnithan, S/o. Gopalan Unnithan
Retired Chief Commercial Clerk Grade I
S. Railway, Chengannur residing at Mauittathu Thekkethil,
Pannivizha, Adoor P.O
85. T.V Vidhyadharan, S/o .T.K Velu
Retired Chief Commercial Clerk Grade I
S. Railway, Trichur, residing at Thottathil House
Harinagar, Pumkunnam

86. N.T Antony, S/o. T.K Velu
Retired Chief Commercial Clerk Grade I
S. Railway, Aluva residing at Thattilnaplan House
South Thorau, P.O Puthukkad
87. P.C John, Retired Chief Commercial Clerk Grade I
S. Railway Aluva residing at Peedikayil Kalakkattu,
Ashokapuram, Aluva
88. Paulose C.Varghese, S/o. K.J Varghese
Retired Chief Commercial Clerk Grade III
S. Railway Irimparam resding at
Chakkalakkal House, Thiruvaniyoor Puthencruz.
89. C Gopalakrishna Pillai, S/o Late N Chellappan Pillai
Retired Chief Commercial Clerk Grade III
S. Railway, Kayamkulam residing at "Nandanam"
Mangalathu Kizhakkethil, Vettuveni, Harippad P.O
90. P. N Sudhakaran, S/o M Narayanan
Retired Chief Booking Supervisor Grade I
Trivandrum residing at Thekkevilaveedu
Kunnummel, Kilimanoor P.O, Trivandrum.
91. L. Somaseselan
S/o P.N Laxmana Nadar
Retired Chief Booking Supervisor Grade I
Trivandrum residing at TC 20/831/1
Dreams Sastrinagar South, Karamana Trivandrum.
92. K.C Kuriakose, S/o Cherian
Retired Chief Booking Supervisor Grade I
Aluva, Residing at kallayiparambath
Nellikkyil, Kothamangalam.
93. R.Sadasivan Nair S/o Raghavan Pillai
Retired Chief Booking Supervisor Grade II
Trivandrum Central residing at "Sivaparvathy"
TC 23/161 Kurup Valiyasala Trivandrum
94. G. Sudhakara Panicker S/o K Gangadharan
Retired Sr. Commercial Clerk, S.Railway
Trivandrum Central, residing at NMC XXX/90
A Ganga - Mekkari - Neyyattinkara P.O

95. Seetha Bai K D/o R Vasupillai
Retired Chief Commercial Clerk
S. Railway, Trivandrum residing at Sanjeevani
Durganagar, Poomalliyoor Konam
Peroorkada P.O, Trivandrum

96. K. Krishnan Nair
S/o Kesava Pillai, retired Chief Commercial Clerk Gr. II
S. Railway, Chirayinkil residing at Devika TC 18/857
East Pattom, Trivandrum

97. V.P Narayanan Kuttu S/o Madhavan Menon
Residing at Valiyaveetil Parammel P.O
Kondazhy, Thrissur District retired
Chief Commercial Clerk Gr. II, Mulamkunnathukavu

98. K.A Joseph, S/o Antony, Sr. Commercial Clerk
Southern Railway, Irinjalakuda
Residing at Kalappura House, Vallachira, Thrissur.

(By Advocate Mr. M.R Hariraj)

V e r s u s

1. Union of India represented by the Secretary
Ministry of Railways, Railway Bhavan, New Delhi
2. The General Manager
Southern Railway, Chennai
3. The Chief Personnel Officer,
Southern Railway, Chennai
4. The Divisional Railway Manager
Southern Railway, Trivandrum Division
Trivandrum - 14
5. K.G Sukumaran, Chief Commercial Clerk Gr. I
Southern Railway, Thiruvalla Railway Station. **Respondents**

(By Advocate Mr. K.M Anthru)

O.A.No. 51/08

- 1 S. Anantha Narayanan S/o. K.R. Sankaran
Chief Travelling Ticket Inspector Gde- I
General Section, Southern Railway
Trivandrum Central. Residing at Railway Quarters
Thampanoor, Trivandrum.

2 K. Navaneetha Krishnan S/o. S. Krishnan
Chief Travelling Ticket Inspector
Southern Railway Quilon
Residing at No. IX 852, Dwaraka
Manakarathoppu, Pappanancode
Trivandrum - 18

3 V Balasubramanian S/o Veliaswamy,
Chief Travelling Ticket Inspector,
Southern Railway Quilon
Residing at Marimandiram
Hospital Juction, Kundara

4 Bose K. Varghese S/o. K.V Varghese
Chief Travelling Ticket Inspector Gr. I
General Section, Southern Railway, Kottayam.
Residing at Kavikakudiyl, LTG 345
Gandhi Nagar, Kochi - 20

5 G. Ramachandran Nair S/o. N. Gangadhara Kurup
Travelling Ticket Inspector
Southern Railway, Kottayam
Residing at Sivasakthi
TC 3/1324-I, Laxmi Nagar
E/59, Pattom, Trivandrum

6 S. Jayakumar S/o. K. Sadanandan
Chief Travelling Ticket Inspector Gr. II
Southern Railway, Trivandrum Central
Residing at TC 20/4060 Narayaneeyam
Behind Sreedevi Hall
Karamana, Trivandrum.

7 K.S. Sukumaran S/o K.S. Sreedharan
Travelling Ticket Inspector
Southern Railway, Ernakulam
Residing at Kandathil House
Parampuzha (P.O), Kottayam

8 Mathew Jacob S/o A.F. Jacob
Head Ticket Collector
Southern Railway, Chengannur
Residing at Kizhakketharayil
Prayar, Pandalam (P.O.)
Kallissery Chengannur - 689 124

9 R.S. Mani S/o. P. Ramaswamy
Travelling Ticket Inspector
Southern Railway, Trivandrum
Residing at T.C. 23/686
Vyasa - 149, Valiya Chalai Street
Trivandrum - 695 036

10 P.V. Varghese
S/o Chacko Varghese
Travelling Ticket Inspector
Southern Railway, Ernakulam Junction
Residing at Pazhanji Vadakkethil,
Cherianad (P.O), Chengannur
Alappuzha District - 689 511

11 S. Premanad S/o. Parameswaran Pillai
Chief Travelling Ticket Inspector
Southern Railway, Trivandrum
Residing at Anjaneyam, Koyikkallare,
Kannanmoola, Medical College (P.O.)
Trivandrum.

12 R. Devarajan S/o. N. Raghavan Pillai
Travelling Ticket Inspector
Southern Railway, Ernakulam
Residing at Padinjattil, Kariyam
Sreekarayam (P.O), Trivandrum

13 C.M. Venukumaran Nair
S/o. K. Chandrasekhara Kurup
Travelling Ticket Inspector
Southern Railway Trivandrum
Residing at 32, Venus, CGS Nagar
Pappanankode (P.O), Trivandrum

14 S.B Anto John S/o. J.L.G Lean,
Chief Travelling Ticket Inspector
Southern Railway Trivandrum
Residing at Liji Cottage, Vettukadu
Kulamuttom (P.O), Varkala, Trivandrum

15 M.S. Hussan Kunju S/o. K.K. Mohammed Kunju
Chief Travelling Ticket Inspector
Southern Railway Quilon
Residing at Darul Falah (Koppara)
Elippakulam (P.O.), Kayamkulam

16 T.M. Balakrishna Pillai S/o K. Madhavan Pillai
Chief Travelling Ticket Inspector
Southern Railway Quilon
Residing at Kripasadanam
Cheriyela, Alummoodu (P.O), Quilon

17 K.R. Shibu S/o. Raghavan. K.N
Travelling Ticket Inspector
Chief Travelling Ticket Inspector Office
Southern Railway, Ernakulam
Residing at Kalladiyil House
Nadakkavu (P.O), Ernakulam District

18 M.V. Rajendran S/o. Late M.V. Velyudhan
Head Ticket Collector
Southern Railway, Thrissur
Residing at Manakulam Parambil House
(P.O) Puzhakkal, Thrissur District

19 Martin John Poothullil
Traveling Ticket Inspector
Southern Railway, Thrissur
Residing at Poothullil House
Mathai Manjooran Road
Ernakulam, Cochin - 14

20 Jayachandran Nair. P S/o. K. Prabhakaran Pillai
Travelling Ticket Inspector
Southern Railway, Trivandrum Central
Residing at Lakshmi Sadanam
Edava (P.O), Trivandrum District.

21 Louis Chareleston Carvalho S /o. R.R Carvalho,
Travelling Ticket Inspector
Southern Railway Trivandrum
Residing at Beena Dale Jhawahar Jn.
Pattathanam, Quilon

22 Laji-J-Issac S/o. P.I Issac,
Travelling Ticket Inspector
Southern Railway, Trivandrum
Residing at Palakkaseril
Vadakkekara, Veroor (P.O)
Chenganacherry, Kottayam

23 S.R. Suresh S/o. V. Sathyapalan
Travelling Ticket Inspector
Southern Railway, Trivandrum
Residing at Radha Mandiram
Maithanam, Varkala (P.O)
Trivandrum.

24 Joseph Baker Fenn S/o. J.B. Fenn
Travelling Ticket Examiner
Ernakulam. Residing at
L 44, Changampuzha Nagar
South Kalamassery, Cochin - 33

25 K.G. Unnikrishnan, S/o. K.S. Gopalan
Travelling Ticket Inspector
Southern Railway, Trivandrum
Residing at Karikkanthara House
Pottor (P.O), Via M.G. Kavu, Trichur.

26 K.M. Geevarghese S/o. (Late) Shri Mathai
Chief Travelling Ticket Inspector
Southern Railway, Ernakulam
Residing at 56/2823, Biyas
Karshaka Road, Kochi - 16

27 P.A. Mathai S/o. (Late) Itty Avirah Joseph
Chief Travelling Ticket Inspector
Southern Railway, Kottayam
Residing at Mandutharayil House
Kidangoor South (P.O), Kottayam

28 Y. Samuel S/o. M.M. John
Retired Chief Travelling Ticket Inspector
Southern Railway, Kollam
Residing at Malayil Thekkethil
Mallimel (P.O), Mavelikkara

29 T.K. Vasu S/o. V.K. Gopalan,
Chief Travelling Ticket Inspector
Southern Railway, Trivandrum
Sleeper Depot, Residing at
Kulangarathodiyil House
Manassery (P.O), Mukkum, Calicut

..... **Applicants**

(By Advocate Mr. K.A. Abraham)

Vs

- 1 Union of India
Represented by the Secretary
Ministry of Railways, Rail Bhavan
New Delhi.
- 2 The General Manager
Southern Railway, Chennai.
- 3 The Chief Personnel Officer
Southern Railway, Chennai
- 4 The Divisional Railway Manager
Southern Railway, Trivandrum Division
Trivandrum.
- 5 P.K. Sudhakaran
Chief Travelling Ticket Inspector
Southern Railway, Ernakulam Junction. Respondents

(By Advocate Mr. Thomas Mathew Nellimoottil R1-4)
(By Advocate Mr. C.S. Manilal R-5)

O.A. 125/2008

1. Mr.K.V Mohammedkutty, aged 62, S/o V.Alavi,
Retired Chief Health Inspector, Southern
Railway, Palakkad, residing at Minnath,
Kuttiikkad Road, Ponnam P.O - 679577
2. Mr.S Narayanan, aged 60, S/o late
Shri.Subramanian retired Chief Health Inspector
South Western Railway Bangalore,
residing at No.301, Vinayak Sai residency
172/6/1, 9th A Main Mauthi Lay out,
Bangalore - 29

..... Applicants

(By Advocate Mr. K.A Abraham)

V e r s u s

1. Union of India represented by the Secretary
Ministry of Railways, Rail Bhavan, New Delhi.
2. The General Manager, Southern Railway, Chennai - 3
3. The Chief Personnel Officer, Southern Railway,
Chennai-3

..... Respondents

(By Advocate Mr. K.M Anthru)

O.A. 200/2008

1. Jose Xavier, S/o M.T Xavier,
Retired Office Superintendent Gr.I,
Senior Section Engineer's Office,
Southern Railway, Ernakulam Marshalling Yard,
residing at Maliakkal House, UC College, P.O.,
Aluva, Pin 683 102

2. Indira Sivasankara Pillai,
W/o Sivasankara Pillai,
Retired Chief Office Superintendent
Senior Divisional Mechanical Engineer's Office
Southern Railway, Trivandrum residing at
Induragam, T.C No. 6/2117,
Mannarthala Road, Vattiyoorkavu
Thiruvananthapuram

... **Applicants**

(By Advocate - Mr. K.A Abraham)

V e r s u s

1. Union of India represented by the Secretary, Ministry of Railways, Rail Bhavan, New Delhi.
2. The General Manager, Southern Railway, Chennai - 3
3. The Chief Personnel Officer, Southern Railway, Chennai-3
4. The Senior Divisional Personnel Officer,
Southern Railway, Trivandrum

..... **Respondents**

(By Advocate Mr. K.M Anthru)

These Applications having been heard on 20.12.2011....the Tribunal delivered the following

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

As facts in these Applications are identical and the legal issues raised are the same, they were heard together and are being disposed of by this common order. The facts in each case are briefly given below. However, O.A. 795/2007 is taken as the leading case for convenience.

O. A. 795/2007

2 The applicants, serving and retired Commercial Clerks in different grades of Palakkad Division, Southern Railway, are challenging the promotions granted to SC/ST category of employees before 10.2.1995 in excess of their quota.

3 The applicants belong to General category, applicants 1 to 10 are Chief Commercial Clerks Gr. II, applicants 11 to 15 are Grade-III and applicants 16 to 26 are Commercial Clerks, who retired from different grades. As per the orders of the Railway Board for promotion purpose, 15% is reserved for SC and $7\frac{1}{2}\%$ for ST. To ensure adequate representation of SC/ST in service, special representation rosters are maintained. The principle of reservation operates on cadre strength. However, the Railway wrongly and illegally applied reservation in promotion on arising vacancies instead of on posts and granted consequential seniority to such promotees from 1972 onwards. The illegal application of reservation was challenged by the general category employees in J.C. Mallick Vs. UOT [1978(10)SLR 844] before the Allahabad High Court which held that percentage of reservation is on posts and not on vacancies. The judgment of the Allahabad High Court was challenged by the Railway before the Apex Court. The Apex Court by interim order dated 24.2.1984 and 24.9.1984 directed that the promotions which may be made thereafter, will be subject to the outcome of the appeal and it was clarified that promotions made after 24.2.1984 would be in accordance with the judgment of the High Court. Finally, the appeal was dismissed on 26.7.1995. The Railway erroneously granted reservation to SC/ST candidates during upgradation of posts on cadre restructuring made as on 1.1.1984 and 1.3.1993. The order granting reservation on cadre restructuring made as on 1.1.1984 was set aside by the Supreme Court in UOI and Others Vs. Asok

Kumar Srivasthava SLP NO. 11001/1987. The Supreme Court in All India Non SC/ST Employees Association Vs. Agarwal and Others (2001(10)SCC 165) categorically laid down that the principles of reservation will not be applicable in case of upgradation of posts on cadre restructuring. The review filed by the Railway was also dismissed. However, the applicants allege that the reservation granted to SC/ST was not reviewed in the Southern Railway. The extension of reservation to SC/ST candidates on promotion was set aside by this Tribunal by its order in O.A. 601/2004 and connected cases which was upheld by the High Court of Kerala in WP NO. 8822/2006 (A-6) Aggrieved by the excess promotions and consequential seniority given to those SC/ST before 10.2.1995 a batch of OAs No. 289/2000 and connected cases were filed by the general category candidates including the applicants to revise and refix the seniority and promotions as per the law laid down by the Supreme Court in Ajith Singh II and A-7 order of this Tribunal. These OAs were disposed of by order dated 1.5.2007 directing the Railways to:

- (i) identify the various cadres and then clearly determine their strength as on 10.2.1995
- (ii) determine the excess promotions if any made i.e. The promotions in excess of 15% and 71/2% quota prescribed for SCs and STs made in each such cadre before 10.2.1995
- (iii) shall not revert any such excess promotees who got promotions upto 10.2.1995 but their names shall not be included in the seniority list of the promotional cadre till such time they got normal promotion against any future vacancy left behind by the scheduled castes or Scheduled Tribe employees as the case may be.
- (iv) shall restore the seniority of the general category employees in these places occupied by the excess SC/ST promotees and they shall be promoted notionaly without any arrears of pay and allowances on the promotional posts
- (v) shall revert those excess promotees who have been promoted to higher grade even after 10.2.1995 and their names also shall be removed from the seniority list till they are promoted in their normal turn.
- (vi) shall grant retiral benefits to the general category employees who have already retired computing their retiral benefits as if they were promoted to the post and drawn the salary and emoluments of those posts from the notional dates.

4 However, the Railways rejected the claim of the general candidates for reviewing the seniority and promotions pursuant to the order of this Tribunal, stating that there are no excess promotions of SC/ST candidates as on 10.2.1995 (A-9). The applicants have filed this O.A challenging A-9 order alleging that the respondent Railways the A-9 order is illegal, perverse and not issued as per the law laid down by the Supreme Court and that the seniority lists issued are not in compliance with the directions in A-8 order of this Tribunal, the contention of the respondent railways that there are no excess occupation of SC/ST employees in the cadre of Commercial Clerks as on 10.2.1995 or after 10.2.1995 are false, untrue and the promotions effected from 1.4.1984 onwards are all promotions made provisionally and the seniority lists are also issued provisionally. Therefore, the applicants contend that the Railway is legally bound to review and revise the seniority and promotions from 1.4.1984 onwards and determine the excess promotions made and also the consequential seniority granted to the SC/ST, they are liable to review the promotions made before 10.2.1995, the Railway Board has not issued any order providing 50% reservation to SC/ST, they are entitled to only 15 / 7 1/2 % reservation respectively to the SC/ST and that a series of seniority lists are issued in total violation of the directions of the Tribunal in Para 22 of Annexure A-8 common judgment, that the Apex Court has laid down that the reservation to SC/ST operates on posts i.e. Cadre strength and the roster point promotees on accelerated promotions are not entitled to carry consequential seniority till 17.6.1995. The promotions made in excess of the quota till 10.2.1995 are excess promotions and they are not entitled to seniority in the promoted grades. And that the general category candidates are entitled to notional promotions to the higher grades from the dates on which their junior SC/ST candidates are promoted. The 77th and 85th amendment will not protect the excess promotions given to SC/ST candidates who were promoted against arising vacancies in excess of the quota. All promotions made after 1.1.1984 and the seniority issued thereafter are only

provisional which are not yet finalised. The Railways are bound to follow the decisions of the Apex Court. They mainly sought the following reliefs:

- (i) to issue a direction to the respondent Railway to produce the records leading to Annexure A-9 order relating to the seniority and promotions of all the categories of the employees-general and reserved category for perusal
- (ii) to quash and set aside Annexure A-9 order and similar orders issued to the applicants
- (iii) to set aside Annexure A-15(a), A-15(b), A-15(c) and A-15(d) seniority lists and Annexure A-16(a), (b) \oplus and (d) seniority lists and to issue a direction to review and readjust the seniority in all the grades of Commercial Clerks in Palakkad Division.
- (iv) to issue a direction to determine the excess promotions of the SC/ST made before 10.2.1995 and remove the names of the excess promotees from the seniority list of promotional cadre and restore the seniority and promotion of the general category employees
- (v) to issue a direction to revert those excess promotees who have been promoted to the higher grades after 10.2.1995 removing them from seniority lists in the promoted grades
- (vi) to issue a direction to grant retiral benefits to the general category employees who have already retired computing their retiral benefits as if they were promoted to the post and drawn salary and the emoluments of those posts from the notional dates
- (vii) to issue a direction to finalise all the provisional seniority lists in all the grades of Commercial Clerks from 1984 onwards and regularise the promotions by promoting the general category employees in the vacancy left by excess promotees and also regularise the seniority of the general category employees against the consequential seniority granted to the SC/ST employees before 17.6.1995.

5 The respondents 1 to 4 filed reply statement opposing the O.A. They *prima facie* contended that the O.A is belated. They submitted that the applicants are seeking direction in more than one cause of action without specifically stating the reliefs.

5.1 They stated that the applicants belonging to different grades have joined together in a single application. The applicants 16 to 26 are retired employees whereas 1 to 15 are presently working in different grades of Commercial Clerk and hence borne on different seniority lists. The applicants have joined together in a single application only with the motive that no factual

details need be placed before this Hon'ble Tribunal for a proper adjudication on the issue. The O.A is therefore bad for misjoinder. In the strict sense the O.A has been filed as of a Public Interest Litigation Petition which is not provided under the Administrative Tribunal Act. The Hon'ble Supreme Court in the case of Income Tax Officer, Mangalore Vs. Damodhar (AIR 1969 SC 408) has held that in the absence of specific particulars in support of the allegations, it is not open to the Court to go into the question. In Mannath Bhanjan Municipality Vs. S.C. Mills (AIR 1977 SC 1055) the Apex Court held that by merely stating that the procedure prescribed is not followed it is too vague a plea to justify interference in the exercise of jurisdiction by the High Court. Hence the present O.A. is only to be dismissed on the above score alone.

5.2 They further stated that there is no basis for justification for the claim of the applicants in view of the judgement of the Hon'ble Supreme Court in M.Nagaraj's case upholding the 85th Constitutional Amendment which negated the principles laid down by the Hon'ble Apex Court in Ajith Singh and other cases. Hence the O.A is liable to be dismissed in limine. Annexure A-7 order dated 06.09.1994 of this Tribunal has merged with judgements of RK Sabharwal and Ajith Singh II etc. which has only prospective effect from 10.02.1995. The said position has been reversed by the 85th Constitutional amendment and subsequent upholding of the same by the Apex Court in Nagaraj's case. Therefore the principles laid down in Ajith Singh II, the review of seniority was possible only in respect of excess promotees and that too after 10.02.1995. The claim of the applicants to review seniority in comparison with junior SC/ST employees is not covered by any Rule or Order. Physical representation of more number of employees belonging to reserved community cannot be termed as excess operation. The persons belonging to the reserved community employees were promoted to various grades based on the seniority rules/panel rules having statutory force. The seniority accrued

due to panel position/merit is not disturbed by the judgement of the Apex Court.

6 The respondents stated that they have complied with the direction in the order of the Tribunal in O.A. 289/2000 and that there is no direction in the order for revision of seniority. The SC/ST employees were promoted based on the seniority rules. They also relied on the judgment of the sister Bench of this Tribunal in O.A. 1130/04 holding that no review of seniority is permissible after the judgment in Nagaraja's case. They further contended that the revision of seniority after a lapse of 14 years is not tenable. The promotion of Commercial Clerks was ordered based on seniority list published from time to time. They stated that the promotions were granted to reserved community employees on the basis of rule of reservation was made based on the statutory rules enacted by the Parliament as also orders issued by the Railway Board. None of the statutory rules have either been challenged or set aside till this point of time. Based on the 85th Amendment of the Constitution, the Railways cancelled the amendment to Para 319 of IREM issued on 28.2.1997. Accordingly the reserved community employees promoted on reservation quota is entitled for consequential seniority also from 17.6.1995. Hence, the revision of seniority done was cancelled and original seniority restored. The Board has further issued letter dated 13.1.2005 to the effect that promotions/seniority granted during the period from 11.2.95 to 16.6.95 shall be personal to incumbents. They submitted that the roster point promotees were entitled for consequential seniority also on promotion from the beginning by operation of the statutory rules which had been upheld by the Apex Court in Karamchand's case as also in Akhila Bharatiya Soschit Karmachari Sangh's case. The rule of seniority of roster point promotees was modified after Virpal Singh's case which was communicated by the Railway Board by letter dated 28.2.1997 in which it was clearly stated that the seniority determined prior to 10.2.1995 will not be disturbed. None of the

statutory instructions have been challenged by the applicant. Hence, they are bound by the rules in force at the material time. As regards reservation in cadre restructuring, it has been decided by the Apex Court on 29.7.2008 upholding the rule position that reservation is permissible in cadre restructuring. They submitted that the seniority lists were revised based on the direction of the Tribunal as per rules then in force.

7 Applicants filed rejoinder reiterating that the the application of reservation in 1983-84 and 1993 cadre restructuring was held to be illegal by the Apex Court and consequently the Railway Board issued A-5 order for reviewing and revising the orders granting reservation to SC/ST candidates. But in Southern Railway, the review was not conducted. The Tribunal in its order in O.A. 289/2000 and connected cases directed the respondents to revise the seniority lists and promotions and to issue consequential orders. But they have not done so. They submitted that they have not claimed any relief based on 2003 restructuring.

8 The respondents filed reply to the rejoinder denying any erroneous application of rules in the special representation roster. They stated that the applicants have not furnished the relevant details to decide whether they would have become eligible for promotion, if the reservation was not applied in cadre restructuring. They reiterated that there is a delay of 24 years in seeking the reliefs. The applicants at Serial No. 20 retired on 30.11.1993 and at Sl. No. 19 on 30.6.1995. They were not sufficiently senior to enter the next higher grade on 10.2.1995.

9 The applicants filed additional rejoinder.



10 The respondents filed additional reply statement to the additional rejoinder. They submitted that the Tribunal has considered identical issue in K.Kunjiraman Nambiar & Ors Vs. Union of India & Ors in O.A. 574/2007 and by order dated 24.7.2009 the Tribunal dismissed the O.A following the decision of the Madras Bench of the Tribunal.

O.A. 794/07

11 The Applicants are retired Station Masters in different grades, of Trivandrum Division of Southern Railway, belonging to general category. They are aggrieved by the action of respondents Railway in promoting the SC/ST candidates before 10.2.1995, in excess of the reservation quota in violation of the principles laid down by the Apex Court in Ajith Singh II and the order of the Tribunal in O.A. 522/90 and connected cases. The general category employees filed O.A. 289/2000 and other connected cases for revision of seniority and promotions which was disposed of directing the respondents to consider the case of the applicants to determine the excess promotions given to the SC/ST before 10.2.1995 and consequential seniority granted to them. But without complying with any of the directions, they have issued Annexure A-9 order stating that there is no excess promotions as on 10.2.1995. The applicants have produced the seniority lists at Annexure A-12 and A-18 and also the comparative statement of the ranks in the above seniority lists assigned to the SC/ST candidates produced as Annexure A-20, which would amply testify that the SC/ST are promoted in excess of the quota before and after 10.2.1995 applying 40 point roster on vacancies. It is also not under dispute that reservation principles were applied in cadre restructuring schemes 1984, 1993 and 2003 and granted consequential seniority in promotion made before 17.6.1995. The refixation of the seniority and promotions of the general category candidates issued in compliance with the orders of the Tribunal/High Court directing the respondents to revise and refix the seniority and promotions as per the principles laid down in paras 89 of Ajith

Singh II would reveal the excess promotions. But the grievance of the applicants is that without complying with any of the directions and the principles laid down by the Tribunal Annexure A-9 order is issued which is assailed in this O.A.

12 The respondents filed reply statement opposing the Application. At the out set, they stated that the OA is not maintainable in law, facts and circumstances of the case. They stated that in view of the judgment of the Apex Court in M. Nagaraj's case upholding the 85th Constitutional Amendment the principles laid down in Ajith Singh and other cases were no more in force.

O.A. 38/2008

13 The applicants are Commercial Clerks in the Trivandrum Division of the Southern Railway. They challenge Annexure A-9 series order issued in violation of the directions of the Tribunal in O.A. 289/2000 and connected cases. They are aggrieved by the promotion granted to SC/ST in excess of the quota made before 10.2.1995 and consequential seniority granted to them. They are raising identical issues as in the case of the applicants in O.A. 795/07.

14 The respondents have filed similar reply statement opposing the O.A., as has been filed in the case of O.A. 795/07.

O.A. 51/2008

15 The applicants are retired Chief Travelling Ticket Staff of various Grades in the Trivandrum Division of the Southern Railway. According to them the principle of reservation operates on cadre strength and the Railway wrongly and illegally applied reservation rules in promotion to SC/ST on arising

vacancies instead of posts and also granted consequential seniority to roster point in excess from 1972 onwards. The applicants are challenging the alleged illegal application of reservation by the respondents as in the other cases supra.

16 The respondents have opposed the O.A and filed reply statement similar to the reply statement filed in O.A. 795/07 etc.

O.A. 125/2008

17 The applicants are retired Chief Health Inspectors of Southern Railway belonging to general category. They have filed this Application to direct the respondents to review and readjust the seniority in all the grades of Health Inspectors as per the principles laid down by the Apex Court in Ajith Singh-II and also in the order of the Tribunal in O.A. 552/90 removing the excess promotee SC/ST candidates promoted in excess of the reservation quota before 10.2.1995 and to restore the seniority of the general category employees occupied by the excess promotees and to promote the general category employees notionally in those places with all attendant benefits and other incidental reliefs. They have raised identical contentions in this O.A as in the other OAs.

18 The respondents have filed reply statement opposing the Application as in the case of identical Applications above.

O.A. No. 200/2008

19 The applicants are retired Office Superintendents Grade-I of Trivandrum Division of Southern Railway. This Application is filed to direct the

respondents to review and readjust the seniority in all the grades from the level of Chief Office Superintendent Gr.I to the lower level of Senior Clerks as per the principles laid down by the Supreme court in Ajith Singh-II and also in the order of this Tribunal in O.A. 552/90. and connected cases and to restore the seniority of the applicants to the places occupied by the excess promotees before 10.2.1995 and to promote them notionally in those places with all attendant benefits and other incidental reliefs. They have also raised similar contentions as in O.A.795/07 and other similar cases.

20 The respondents filed reply statements as in the case of other OAs resisting the claim of the applicants.

21 As directed by the Tribunal, a High Level Committee approved by the General Manager was constituted (R-10). According to the Committee, the excess/short representation of SC/ST employees as on 10.2.1995 in each case is as follows:

O.A.794/2007

22 The Committee held several meetings from 27.04.2009 to examine the special representation rosters and tabulate the shortfall/excess of SC/ST points filled up till 10.02.1995. For the different grades the position as found by the committee is reproduced below:

(i) Station Master Gr.I/TVC in scale Rs.6500-10500 (Rs.2000-3200) was as under:

The post of Station Master Gr.I & TVC is a selection post. Selection consists of both Written and Vive voce. Since it is a safety category, no relaxation is available to SC/ST employees in qualifying marks. They have to compete along with unreserved employees and get 60% marks in the written and 60% in the aggregate as applicable to unreserved employees.

Cadre position as on 01.03.1993 was as under: (Folio 66)

	<u>SC</u>	<u>ST</u>	<u>Requirement</u>
Sanction	52	09	04
Actuals	50	07	01
Actual vacancies	02	02	03

40 Point Roster Shortfall **SC** **ST**
(a) Existing Point No.5 **02** **03**

Since, the cadre shortfall as well as roster shortfall was same, only 2 SC employees were promoted keeping 3 vacancies unfilled for ST, as no ST employee was available in the feeder category.

During the year 1995-96, the sanctioned strength and actual position was as under:

	<u>SC</u>	<u>ST</u>	<u>Requirement (F.65)</u>
Sanction	49	07	04
Actuals	49	09	01

Actual vacancies	0	+2	-3

(ii) Station Master Gr.II/TVC in scale Rs.5500-9000 (Rs.1600-2660) :

Cadre position as on 01.01.1993:

	<u>SC(15%)</u>	<u>ST(7 1/2 %)</u>	<u>Requirement</u>
Sanction	84	13	06
Actuals	74	07	--
Actual vacancies	10	06	06

40 Point Roster Position: SC ST as on 01.03.1993

(a) Existing Shortfall 07 08

Cadre position as on 10.02.1995:

SC(15) ST (7 1/2%) Requirement

Sanction	85	13	06
Actuals	74	08	--
<hr/>			
Actual vacancies	11	05	06

During 1994-95 Roster shortfall was SC-8 & ST-6 and 1995-96 Roster shortfall was SC- 11 & ST - 8 (F.45).

It can be seen from the above that there was a shortfall among SC/ST during 1995-96 also.

The post of SM/II/TI in scale Rs. 1600-2660 is a non-selection post, and the same is being filled based on the seniority-cum-suitability.

(iii) Sanction Master/III in scale Rs.5000-8000 (Rs. 1400-2300):

Cadre position as on 01.01.1993:

SC(15%) ST (7 1/2%) (Folio.3) Requirement

Sanction	154	23	11
Actuals	141	00	00
<hr/>			
Actual vacancies	13	23	11

40 Point Roster Shortfall SC ST

(a) Existing Point No.1 09 04

The 40 point reservation roster pertaining to the year 1995 was perused. As per certification of PI/Reservation of Headquarters as on 7.12.1995, the SC/ST shortfall was as under: (Folio. 1)



Cadre position as on 07.12.1995:

	<u>SC(15%)</u>	<u>ST (7 +%)</u>	<u>Requirement</u>
Sanction	159	24	12
Actuals	149	04	--
Actual vacancies	10	20	12
40 Point Roster Shortfall		SC	ST
(a) Existing Point NO.22		04	03

The seniority list of Station Master/III in scale Rs.1400-2300 was perused. The details of employees are available from 1983 onwards.

As per seniority register pertaining to SM/III in scale Rs.1400-2300 no SC/ST employee was available upto 1985.

During 1986 only 2 SC employee available and no ST employee available in that category, similarly the availability was as under:

1987- 4 SC and no ST
1988- 2 SC and no ST
1989-90 2 SC and 1 ST
1991 - 1 SC and no ST

Roster shortfall as certified by the Reservation Inspector vide Folio No. 3 during the years:

90-91 SC-4 ST-2
91-92 SC-2 ST-1
89-90 - SC-2 and ST-1
1991 - SC-1 and ST --

Roster shortfall as certified by the Reservation Inspector vide (F.No.3) during the years:

90-91 SC-4 ST-2
91-92 SC-2 ST-1
92-93 SC-2 ST-1
93-94 SC-1 ST-0

SC-9 ST-4

During 1995-96 Roster shortfall was SC-4 and ST-3.

It can be seen from the above records furnished by the Division, that there was only shortfall and no excess promotion were given to SC/ST upto 10.02.1995.

O.A. 795/2007

23 The high level committee had sittings from 19.03.2009 to 19.05.2009 and the position, as found by the committee is examined in detail, later on as this O.A. is taken as the lead case.

O.A. 38/2008

24 The Committee had several sittings between 19.3.2009 and 19.05.2009 to peruse the reservation rosters, seniority list etc. to prepare the report on reservation granted and tabulated the position as on 01.03.1993 and 10.02.1995. The report is reproduced below:-

(i) I-Chief Commercial Clerk/TVC as under: (Folio:24)

Date	Category	Sanction	Require- ment		Actuals		Shortfall/ Excess		Remarks
			SC 15%	ST 1/2 %	SC 15%	ST 1/2 %	SC 15%	ST 1/2 %	
01/03/93									
	CCC 2000-3200	38	6	3	14	6	+8	+3	Excess ST by virtue of seniority
	CCC-II 1600-2660	57	9	4	1	-	-8	-4	
	CCC-III 1400-2300	119	18	9	12	5	-6	-4	
	Sr.CC 1200- 2040	167	25	13	8	1	-17	-12	

(ii) II-CCC/TVC as under: (Folio:23)

Date	Category	Sanction	Requirement		Actuals		Status		Remarks
			SC 15%	ST ½ %	SC 15%	ST ½ %	SC 15%	ST ½ %	
10/02/95									
	CTI-I 2000-3200		38	6	3	13	5	+7	+2 Excess SC and ST by virtue of seniority
	CCC-II 1600-2660		57	9	4	9	4	-	-
	CCC-III 1400-2300		119	18	9	17	8	-1	-1
	Sr.CC 1200- 2040		167	25	12	14	3	-11	-9

The cadre position of Sr. Commercial Clerk in scale Rs. 1200-2040 as on 01.03.1993 is as under: (F:21)

	<u>SC</u>	<u>ST</u>
Sanction	167	25
Actuals	119	08
Requirement for		
SC/ST	16	8
-----	-----	-----
Shortfall	-8	-7

The copy of the reservation register for the above grade also gives information that there was shortfall of 4 SC and 6b ST during the year 1993-94 as certified by the Inspector:

During the year 1994-95, the sanction, actual position was as under:

	<u>SC</u>	<u>ST</u>
sanction	167	25
Actuals	--	14
Shortfall	--	11
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Similarly during the year 1995-96 the shortfall was SC-07, ST-06.

Chief Commercial Clerk/III in scale Rs.1400-2300. The cadre position was as on 01.03.1993 as under (F:20).

	<u>SC</u>	<u>ST</u>
Sanction	119	18 09
Actuals	132	12 05
Shortfall	06	04

40 Point Roster Shortfall	<u>SC</u>	<u>ST</u>
(a) Existing	04	03
(b) Points accrued	03	01
Total shortfall	07	04

Chief Commercial Clerk/Gr.II in scale Rs. 1600-2660: (F: 19) the cadre position as on 1.3.1993:

	<u>SC(15%)</u>	<u>ST(7 1/2%)</u>	<u>Requirement</u>
Sanction	57	09	04
Actuals	39	01	-
Shortfall	5	3	

40 Point Roster Shortfall	<u>SC</u>	<u>ST</u>
(a) Existing	05	03
(b) Point accrued	05	02
Total Shortfall	10	05
reservation was to be made for	08	04

Chief Commercial Clerk/Gr.I in scale Rs. 2000-3200: (F: 18) the cadre position as on 1.3.1993:

	<u>SC</u>	<u>ST</u>
Sanction	38	06
Actuals	22	14
Excess	8	3 (By virtue of consequential seniority)

40 Point Roster Shortfall	<u>SC</u>	<u>ST</u>
(a) Existing	-	-
(b) Point accrued	03	01
Total Shortfall	03	01

O.A.51/2008

25 The Committee had six sittings between 19.3.2009 and 02.07.2009 to peruse the reservation roster, seniority list etc. to prepare the report on reservation granted and tabulated the position as on 01.03.1993 and 10.02.1995, which is reproduced below:-

I-Ticket Checking Staff/TVC as under: (Folio:76)

Date	Category	Sanction	Requirement		Actuals		Status		Remarks
			SC 15%	ST 7 ½ %	SC 15%	ST 7 ½ %	SC 15%	ST 7 ½ %	
01/03/93									
	CTI-I 2000- 3200	27	4	2	4	5	-	+3	Excess ST by virtue of seniority
	CTTI-II 1600-2660	40	6	3	6	2	-	-1	
	TTI/C DR 1400-2300	84	13	6	10	3	-3	-3	
	TTE 1200- 2040	117							

II-Ticket Checking Staff/TVC as under: (Folio:75)

Date	Category	Sanction	Requirement		Actuals		Status		Remarks
			SC 15%	ST 7 ½ %	SC 15%	ST 7 ½ %	SC 15%	ST 7 ½ %	
10/02/95									
	CTI-I 2000-3200	27	4	2	5	2	+1	-	Excess SC by virtue of seniority
	CTTI-II 1600-2660	40+2							Excess SC/ ST by virtue of seniority
	Hd TE/TTI 1400-2300	89	13	7	13	7	-	-	
	Sr.TE/TTE 1200-2040	123	18	9	12	4	-6	-5	
	TE 950- 1500	66							

The cadre position of CTTI/I in scale Rs. 2000-3200 as on 01.03.1993 is as under: (F:74)

	<u>SC</u>	<u>ST</u>	<u>Requirement</u>
Sanction	27	04	02
Actuals	14	04	05
Vacancies	13	-	-

40 Point Roster Shortfall SC ST

(a) Existing	-	-
(b) Point accrued	02	-
Total Shortfall	02	-

It was indicated that there were 2 SC employees who were promoted by virtue of their seniority.

13 vacancies in scale Rs.2000-3200. The roster register was also certified by the SPO/R/HQrs during 1993.

The posts of CTI/CTTI/Gr.II in scale Rs. 1600-2660 as under:(F.73)

	<u>SC</u>	<u>ST</u>
Sanction	40	06
Actuals	06	02
Shortfall	-	-1

40 Point Roster Shortfall SC ST

(a) Existing	-	-
(b) Point accrued	04	02
Total Shortfall	04	02

Net reservation made for SC/ST at the time of filling up of vacancies.

The posts of TTI/HTC in scale Rs.1400-2300 as under:(F.72)
The cadre position as on 01.03.1993 was as under:

	<u>SC</u>	<u>ST</u>	<u>Requirement</u>
Sanction	84	13	06
Actuals	66	10	03
Vacancies	-	03	03
40 Point Roster Shortfall	<u>SC</u>	<u>ST</u>	
(a) Existing as on 01.03.93	-	01	
(b) Point accrued	03	01	
Total Shortfall	03	02	
Net reservation was to be made	03	02	

It was indicated that 1-ST post was to be kept vacant since no employee was available in the feeder category. The above proposal was certified by the Reservation Inspector.

The copy of the roster register of HTC reveals that there was shortfall as under: (F.61 to 65)

	<u>SC</u>	<u>ST(F.65)</u>
91-92	03	02
92-93	-	01
93-94	-	01
94-95	-	01

Further, in respect of seniority of such of those SC/ST employees promoted on their merit and on normal seniority, they will carry the seniority in view of Railway Board's letter No.95/E(SCT)1/49/5(1) dated 21.08.1997. The applicants who have filed the O.As challenging the Reservation Policy are of the view that more number of SCs/STs were given promotion, in excess of the prescribed quota, conveniently forgot the law laid down by the Hon'ble Supreme Court in Indrasawany and R.K.Sharbarwal's case, wherein the Apex Court have held that SC/STs appointed on their own merit should be excluded before computing the percentage of reservation meant for SC/STs in respect of promotion.

O.A. 125/2008

26 The Committee had five sittings between 19.3.2009 and 19.5.2009 and examined the reservation rosters and other documents. The committee found that there were 16 posts of Health Inspectors in the scale Rs.7450-11500. Out of the 16 posts, 5 posts were occupied by SC community officials. Three were promoted on their merit. No ST official could be promoted as there was none in the feeder category. It is a fact that the applicant was promoted on 2.7.1989 while the party respondents were promoted much earlier to him because of their accelerated promotions and consequential seniority.

O.A. 200/2008

27 The Committee had several sittings between 17.4.2009 and 19.5.2009 to peruse the necessary records. Report is noted below:-

Office Superintendents/TVC as on 10.2.1995 as under(Folio:02)

Date	Sanction	Requirement		Actuals		Status	
		SC 15%	ST 7 $\frac{1}{2}$ %	SC 15%	ST 7 $\frac{1}{2}$ %	SC 15%	ST 7 $\frac{1}{2}$ %
01.01/94							
OS/Gr.I	7	1	1	2	2	+1	+1
Chief Clerk	10	2	1	1	-	-1	-1
Head Clerk	21	3	2	2	2	-1	-
Senior Clerk	29	4	2	2	1	-2	-1

The post of Office Superintendent was decentralised on 28.2.2002. Before it was controlled by Head Quarters, the promotion, transfer etc. was done by the Hqs only.

Sanction	71	
SC		ST
Requirement of		
SC/ST	11	05
Available	24	18
Promoted as per		
own seniority	18	15

The Roster Register reveals that the cadre strength as on 10.5.1998 in the category of Chief Office Superintendent in scale Rs. 7450-11500 was as under:

Sanction	16	SC	ST
Requirement			
	2		1

No. of SC/ST available excluding those were promoted on own merit	2	1
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28 We have heard learned counsel for the parties and have gone through the pleadings and documents produced before us.

29 The learned counsel for the applicants strenuously argued that the application of reservation to SC/ST category came up before the Apex Court in Union of India Vs. J.C. Mallick. The Apex Court issued an interim order directing that any promotion made after 24.2.1984 otherwise than in accordance with the High Court Judgment shall be reviewed and adjusted against future vacancies. The appeal filed by the Railway in J.C.Mallick's case was dismissed on 26.7.1995. Therefore all the promotions directed to be made only on provisional basis in compliance with interim order of the Apex Court dated 24.2.1984 and Rail way Board order dated 26.2.1985 are liable to be reviewed with reference to the cadre strength.

30 The applicants claim is for review and revision of seniority vis-a-vis general category candidates and SC/ST candidates prior to 10.2.1995 revising all the provisional seniority and provisional promotions made from 1984 onwards as laid down by the Apex Court in Ajith Singh II case as also the directions of this Tribunal in order in O.A. 552/90. The issue relates to the period prior to 10.2.1995. This O.A is filed only on 21.12.2007. It is true that a few of the applicants had approached the Tribunal and obtained orders directing the Railways to consider their case and take follow up action. But the

case on hand is filed not by the applicants in the earlier OAs alone. Certain other employees have also joined together to file this O.A. More over, the reliefs are vague, it is of a general nature. As contended by the respondents the promotion of SC/ST employees was done on the basis of the seniority list published from time to time. None of the applicants have raised any grievance against such seniority/promotion at the relevant time.

31 The applicants have not impleaded the persons over whom they are claiming seniority. It is a fact that a news paper notification was made in 2008 without mentioning the names of SC/ST employees whose seniority may get affected. Therefore, the allegations as well as the reliefs sought for, are not specific, clear and unambiguous. There must be proper pleadings and averments in the Application before the question of denial of equal protection or infringement of fundamental rights can be decided. The promotions were granted to SC/ST community employees on the basis of rule of reservation based on the statutory rules. None of the statutory rules had either been challenged or set aside.

32 The findings of the High Level Committee in all these O.As clearly show that there is shortfall in SC/ST in the initial two or three grades, but the percentage of SC/ST community officials occupying the highest two grades is very much above the permitted 22.5%. We need to look into the reasons, contributing to such a state of affairs. From the submission of the respondents, it is observed that, there is non-availability of sufficient number of SC/ST officials in the lower cadres. This leads to comparatively junior officials with less number of years in service being picked up to fill the assigned SC/ST points by out of turn promotion. This due to consequential seniority enables them to jump above the general category officials, in the initial grades of promotion and it does become a quantum leap, by the time they reach the final two grades of promotion. Therefore, the gap between the

SC/ST and general category employees widens at every level of promotion. This situation cannot be changed unless the respondents issue orders to fix a residency period in each grade, to ensure a reasonable interval between two promotions. In O.A.795/2007, O.A.125/2008 etc it is observed that, with a day's gap, promotion to two higher grades is granted to SC/ST employees. Such a state of affairs should have attracted their attention long back, especially in view of the prolonged litigation on this issue. As observed supra, the interval between two financial upgradation under ACP was 12 years which was reduced to 10, for 3 promotions in MACP, as recommended by the 6th CPC. It is seen in O.A.795/2007 that Commercial Clerks, do get their initial two promotion, at intervals of 4 years and the third one after six years. Then onwards, for the fourth and fifth promotion, they rank very much junior to SC/ST officials who got accelerated promotion and consequential seniority. Therefore, while the residency period in initial grades can be 4 years in the first two grades, it has to be progressively more say 7 to 8 years in the higher grades to provide level playing field for all employees. Secondly, the respondents have to tackle the issue of non-availability of SC/ST officials in the feeder category to avoid carrying forward of reserved points, for long creating back log and thereby promoting very junior officials. In fact, non availability of SC/ST officials in the feeder category for three consecutive years result in the points getting lapsed while for direct recruitment supplementary recruitment is done exclusively for SC/ST candidates. Railway Board has to take up the issue with the DOPT to bring about corrections in the percentage of SC/ST reservation statewise, as was done in respect of direct recruitment quota.

33 The report of the high level committee produced in O.A 795/2007, the lead case was gone into, in detail and arguments on both sides heard extensively. The reservation granted on promotion in different grades is as follows:-

Chief Commercial Clerks Grade-III/Head Clerks (Rs. 5000-8000)

<u>as on 01.03.1995 [Folio: 21 to 35]</u>			<u>as on 01.03.1995 [Folio : 36]</u>		
Sanctioned strength	144		Sanctioned strength	144	
Requirement of SC	22		Requirement of SC	22	
Actual SC employees available	26		Actual SC employees available	22	
Requirement of ST	11		Requirement of ST	11	
Actual ST employees available	6		Actual ST employees available	2	
Shortfall/Excess	<u>SC</u>	<u>ST</u>	Shortfall/Excess	<u>SC</u>	<u>ST</u>
	+4	-5		-	-9

It can be seen that there are 4 SC employees in excess and there is a shortage of 5 ST employees. Out of the 26 SC employees 9 were promoted to the grade by virtue of their seniority and the remaining 17 were promoted against SC shortfall.

As per the guidelines on reservation after 3 recruitment years shortfall in ST and SC points can be exchanged. Therefore, in view of shortfall of 5 points in ST in CCC Gr. III as on 01.03.1995, these points could be filled up with SC employees. The total reservation for SC and ST has not exceeded the permissible 22.5%.

Chief Commercial Clerks Grade-II (Rs. 5500 - 9000)

<u>as on 10.02.1995 [F: 28]</u>			<u>as on 01.03.1993 [F: 28]</u>		
Sanctioned Strength	67		Sanctioned Strength	67	
Requirement of SC	10		Requirement of SC	10	
Requirement of ST	5		Requirement of ST	5	
Actual SC employees available	18		Actual SC employees available	17	
Actual ST employees available	5		Actual ST employees available	4	
Shortfall/Excess	<u>SC</u>	<u>ST</u>	Shortfall/Excess	<u>SC</u>	<u>ST</u>
	+8	-		+7	-1

It is seen that there is an excess of 8 SC employees. Out of 18 SC employees 14 were promoted to this grade by virtue of their seniority and 4 were promoted against SC short fall.

Chief Commercial Clerks Grade-I/Commercial Supervisor (Rs. 6500-10500)

<u>as on 10.02.1995 [F: 38]</u>			<u>as on 01.03.1993 [F: 38]</u>		
Sanctioned strength	45		Sanctioned strength	45	
Requirement of SC	7		Requirement of SC	7	
Requirement of ST	3		Requirement of ST	3	
Actual SC employees available	23		Actual SC employees available	26	
Actual ST employees available	13		Actual ST employees available	12	
Shortfall/Excess	<u>SC</u>	<u>ST</u>	Shortfall/Excess	<u>SC</u>	<u>ST</u>
	+16	+10		+19	+9

34 There are elaborate pleadings, both oral and written by both the parties. There is no gainsaying the fact, that now, the highest position viz., Commercial Supervisor/Chief Commercial Clerk Grade-I is mostly occupied by the reserved community employees, due to the accelerated promotions and consequential seniority. The respondents have submitted that there are five grades of Commercial Clerks as shown in para 15. The respondents submitted that there was shortfall in recruitment against SC/ST points in the entry grade of Commercial Clerk and in Chief Commercial Clerks Grade-III, the reservation was within the mandatory limit of 22.5%. Due to the accelerated promotion in the initial two grades and consequential seniority from the fourth and fifth grades viz. Chief Commercial Clerk Grade-II and Grade-I the reserved community employees, occupied the top slots even though the promotion was by a selection process after a written examination where a minimum 60% marks was prescribed and the panel of selected officials is based on seniority. So in the select panel, for promotion in CCC Grade-II and Grade-I the SC and ST employees become seniormost. There were general category employees in the select panel, but due to the cap on posts to be filled up, invariably, only SC/SST employees got further promoted. The respondents produced folios F-11, 12, 13, 20, 21, 21(a), 26, 28, 33 and 34 relating to promotion to CCC II and I to prove this point.

There is an excess of 16 SC employees and 10 ST employees. The Committee stated that prior to 1.3.1993 the sanctioned strength of the grade was 32 and the requirement of SC and ST were 5 and 2 respectively. But there were 20 SC and 7 ST employees. 15 SC and 5 ST employees were promoted to these grades by virtue of their seniority in the lower grades.

35 Therefore, the Tribunal perused the various folios submitted by the respondents relating to promotion granted to general category to check whether they were made to wait for unduly long duration to get their promotions. It is seen from folio F-47 furnishing the service particulars of the

applicants that they get their promotion as Chief Commercial Clerk i.e the Fourth grade when they complete 14 years of service. For instance, the first applicant Shri K. Ramanathan who was absorbed as Commercial Clerk on 19.1.1980, was promoted as Sr. Commercial Clerk (non selection) on a scale of pay of Rs. 4000-6000 on 17.10.84 Head Commercial Clerk (non selection) on 7.9.88 on a scale of pay of Rs. 5000-8000 and Chief Commercial Clerk on the scale of pay of Rs. 5500-9000 on 6.7.94. He is yet to be promoted to Chief Commercial Clerk Grade-I/ Commercial Supervisor in the pay scale of Rs. 6500-10,500/- . So the applicants from serial 1 to 7 who were absorbed as Commercial Clerks from 1978 to 1980 were promoted to the 3rd grade of Chief Commercial Clerk by 1994.

36 The seniority list of Commercial Supervisor i.e. Chief Commercial Clerk Grade-I as on 10.2.95 was perused. It is seen that 34 SC/ST employees who were absorbed as Commercial Clerks from the year 1959 to 1982 were promoted to the highest grade of Chief Commercial Clerk Grade-I between 1984 and 1993. They are the seniormost in the seniority list now. In fact, the second seniormost in the list a ST official was promoted against a reserved point and he reached the Chief Commercial Clerk Grade-I in just 7 years. The Assured Career Progression (now MACP) envisages promotion in 10, 20 and 30 years of service. That being the case, when promotion is being granted in much less time, a residency period of at least 4 to 5 years should have been fixed in each grade to make the employee eligible for the next grade promotion. Railways has done it in its technical grade and other departments in administrative cadres also. In the absence of such residency period, because of reservation of posts for SC and ST and their higher seniority in the select panel, they were able, to get the fourth promotion to the grade of Chief Commercial Clerk Grade-I within 7 to 11 years approximately. This Tribunal is compelled to observe that it is a bonanza bestowed on them and which was not the intention of the Government when the objective was to pull up the

reserved communities to the general category standard to compensate for their being socially and economically disadvantaged for centuries. Now the omission, on the part of the respondents to fix residency period in each grade has resulted in promotions for the reserved community at a much faster pace which was not in tune with the guidelines of the Government as the initial ACP introduced in 1999 suggested financial upgradations only on completion of 12/24 years of service when promotion gets delayed. Now the general category employees want to be the beneficiaries of earlier promotion in the place of those SC/ST employees who were promoted over and above the 22.5% the quota for reservation. Chief Commercial Clerk III is the feeder category for further promotion to Chief Commercial Clerk II and Chief Commercial Clerk- I. The provisional seniority lists were being circulated periodically. As shown in para 15, the respondents have established that the reservation did not exceed 22.5% in the cadre of Chief Commercial Clerk III. Unless the applicants are able to pinpoint those employees who got promoted in excess of the $22 \frac{1}{2} \%$ fixed for reservation at the material point of time, it is not possible to give a specific direction to the respondents, since the respondents have demonstrated that the excess percentage in higher grades is only by virtue of their seniority consequent to accelerated promotions.

37 It is a fact that promotion of general category employees is comparatively delayed at the higher grades due to higher seniority position of SC/ST employees due to accelerated promotions and consequential seniority. Therefore, the respondents are directed to extend the minimum service eligibility for the next higher promotion now fixed only for technical cadres to all cadres including administrative and all non technical cadres, to achieve some parity in promotion to all employees. They are further directed to circulate the seniority list under acquittance to all employees once in 3 years as per the guidelines of DOPT/ Railway Board. Now that all SC and ST points can be filled up only by replacement, there does not appear to be any reason for the

respondents to show backlog vacancies in all notifications. In future, to mete out a transparent fair and just treatment to all categories of employees the SC and ST point number in the special representation roster and the year in which the vacancy arose may be made known to all. As directed in a recent case, by this Tribunal, from the Select list the SC/ST employees will be shown against the reserved points, as replacement and UR employees against unreserved points, in the special representation rosters maintained for promotion purpose.

38 The rule of reservation in promotion being applied for over five decades as per the points in the special representation roster on vacancies is no longer applicable in Railways after the decision in R.K.Sabharwal Vs. State of Punjab. The post based roster was introduced vide Railway Board letter No. 95/E(SCT)1/49/5(1) dated 21.8.1997. Consequently, the concept of reservation based on vacancy is replaced with number of posts which form the cadre strength. Only a post vacated by a SC/ST official on promotion or superannuation alone can be replaced by another SC/ST official as the case may be and therefore the prescribed per centage of 22.5 on the cadre strength should never be exceeded. While for direct recruitment in the 100 point roster the percentage for SC and ST communities was revised for each state depending on the availability of such communities, the same was not done for promotion by DOPT. In the State of Kerala, for Direct Recruitment, the reservation is reduced to 10% for SC and 1% for ST in 1997 on introduction of post based rosters as against 15% and 7.5% for SC and ST respectively in promotion, which was left untouched. This point is emphasised in para 5 of the judgment of the Apex Court in R.K.Sabharwal and others. The relevant sentence is extracted below:

"The percentage of reservation is the desired representation of the backward classes in the State Services and is consistent with the demographic estimate based on the proportion worked out in relation to their population."

In Central Services, reservation in promotion is only for SC/ST community and hence the observation is to be made applicable to SC/ST community for promotion in Central Services. This exercise is to be initiated by DOPT, in fact for all Central Government services.

This has resulted in certain imbalance and carrying forward of SC and ST vacancies as backlog due to non availability of eligible employees in the feeder category and the respondents promoting those SC/ST available, who are very much junior to the applicants.

39 The proper way to fill up reservation points in the post based roster is explicitly set out by the Hon'ble Supreme Court in the judgment in R.K. Sabharwal's case. The relevant paragraphs are extracted below:

In R.K. Sabharwal Vs. State of Punjab (1995)2 SCC 745 the Apex Court held as follows:

"5.....The reservations provided under the impugned Government instructions are to be operated in accordance with the roster to be maintained in each Department. The roster is implemented in the form of running account from year to year. The purpose of "running account" is to make sure that the Scheduled Castes/Scheduled Tribes and Backward Classes get their percentage of reserved posts. The concept of "running account" in the impugned instructions has to be so interpreted that it does not result in excessive reservation.In other words, in a cadre of 100 posts when the posts earmarked in the roster for the Scheduled Castes and the Backward Classes are filled the percentage of reservation provided for the reserved categories is achieved. We see no justification to operate the roster thereafter.Once the prescribed percentage of posts is filled the numerical test of adequacy is satisfied and thereafter the roster does not survive. The percentage of reservation is the desired representation of the Backward Classes in the State Services and is consistent with the demographic estimate based on the proportion worked out in relation to their population. The numerical quota of posts is not a shifting boundary but represents a figure with due application of mind. Therefore, the only way to assure equality of opportunity to the Backward Classes and the general category is to permit the roster to operate till the time the respective appointees/promotees occupy the posts meant for them in the roster. The operation of the roster and the

"running account" must come to an end thereafter. The vacancies arising in the cadre, after the initial posts are filled, will pose no difficulty. As and when there is a vacancy whether permanent or temporary in a particular post the same has to be filled from amongst the category to which the post belonged in the roster. For example, the Scheduled Caste persons holding the posts at roster points 1, 7, 15 retire then these slots are to be filled from amongst the persons belonging to the Scheduled Castes. Similarly, if the persons holding the post at points 8 to 14 or 23 to 29 retire then these slots are to be filled from among the general category. By following this procedure there shall neither be shortfall nor excess in the percentage of reservation."

X X X X X X X X

10 We may examine the likely result if the roster is permitted to operate in respect of the vacancies arising after the total posts in a cadre are filled. In a 100-point roster, 14 posts at various roster points are filled from amongst the Scheduled Caste/Scheduled Tribe candidates, 2 posts are filled from amongst the Backward Classes and the remaining 84 posts are filled from amongst the general category. Suppose all the posts in a cadre consisting of 100 posts are filled in accordance with the roster by 31-12-1994. Thereafter in the year 1995, 25 general category persons (out of the 84) retire. Again in the year 1996, 25 more persons belonging to the general category retire. The position which would emerge would be that the Scheduled Castes and Backward Classes would claim 16% share out of the 50 vacancies. If 8 vacancies are given to them then in the cadre of 100 posts the reserve categories would be holding 24 posts thereby increasing the reservation from 16% to 24%. On the contrary, if the roster is permitted to operate till the total posts in a cadre are filled and thereafter the vacancies falling in the cadre are to be filled by the same category of persons whose retirement etc. caused the vacancies then the balance between the reserve category and the general category shall always be maintained. We make it clear that in the event of non-availability of a reserve candidate at the roster point, it would be open to the State Government to carry forward the point in a just and fair manner."

40 In view of the above, the respondents are to operate the 100 point roster till all the posts are filled up and then the next 100 point roster will commence where the available manpower is more than 100. When vacancies arise within the 100 point roster, the contingency of excess representation detailed in para 10 of the R.K.Sabharwal judgment is to be avoided. As explained therein, the general category vacancies will go only to general

category. From the select list drawn up for promotion done on selection based on written exam etc, all the general category candidates should occupy unreserved points except where SC/ST official figure as seniors to the general category officials. SC/ST points should not be notified if the percentage has reached 22.5% in the next grade to which promotions are to be effected.

41 The Principal Bench of the Tribunal in its Full Bench order in O.A. 2211/2008 dated 2.12.2010 filed by All India Equality Forum , New Delhi and two others have dealt with all the judgments of the Apex Court in Indra Sawhney V. Union of India (1992 Suppl(3) SCC 217) R.K. Sabharwal V. State of Punjab (1995)2 SCC 745 Union of India Vs Virpal Singh Chauhan (JT 1995 (7) SC 231), M. Nagaraj V. Union of India (2006 8 SCC 212), Union of India Vs. Pushpa rani (2008 9 SCC 42) on the issue of reservation in promotion elaborately and hence we desist from detailing the legal issues spelt out in the various judgments and their application as pointed out by the learned counsel on both sides. The operative paragraph of the order of the Full Bench is extracted below:

"37. We have applied our mind to the pleadings and the contentions raised by the learned counsel representing the applicants on the issues as mentioned above, but are of the view that once, in brevity, it is the case of the applicants that when no compliance of pre-conditions as spelt out in M. Nagaraj's case has been done, reservation in promotion with accelerated seniority shall have to be worked in the way and manner as per the law settled earlier on the issue. If that be so, we need not have to labour on the issues raised by the applicants, as surely, if the position is already settled, the only relevant discussion and adjudication in this case can be and should be confined to non-observance of the pre-conditions for making accelerated promotions as valid. We have already held above that the railways have not worked out or even applied their mind to the pre-conditions as mentioned above before giving effect to the provisions of Article 16(4A), and for that reason, circular dated 29.2.2008 vide which the seniority of SC/ST railway servants promoted by virtue of rule of reservation/roster has to be regulated in terms of instructions contained in Board's letter dated 8.3.2002 to 13.1.2005, has to be quashed. There is a specific prayer to quash instructions dated 8.3.2002 and 13.1.2005 as well, but there would be no need to do so as the same have been discussed in the

case of railways itself in the matter of *Virpal Singh Cahuhar* (supra), and commented upon. While setting aside instructions dated 29.2.2008, our directions would be to not to give accelerated seniority to Scheduled Caste and Scheduled Tribe category employees till such time pre-conditions on which alone Article (164A) of the Constitution is to operate, are complied with. No directions in this case can be given as regards seniority of the applicants vis-a-vis those who were appointed with them and have stolen a march over them because of reservation and have obtained accelerated seniority. No such specific prayer has been made either. However, it would be open for the parties to this list or any one else to seek determination of their proper seniority for which legal proceedings shall have to be resorted to. It would be difficult to order across the board that all those who have obtained the benefit of reservation and have also been accorded accelerated seniority be put below general category candidates who may have been senior to the reserved category employees and became below in seniority on the promoted posts because of conferment of accelerated seniority to the reserved category employees. Surely, for seeking seniority over and above Scheduled Caste and Scheduled Tribe employees, number of things shall have to be gone into, as for instance, as to when was the promotion made and seniority fixed, and whether the cause of general category employees would be within limitation. There can be number of issues that may arise. We have mentioned only one by way of illustration.

38 Present Original Application is disposed of in the manner fully indicated above. In view of the nature of the controversy involved in the case, costs of the litigation are made easy."

42 Identical issue was considered by this Bench in K.Kunjiraman Nambiar & Ors Vs. Union of India & Ors in O.A. 574/2007. The Tribunal following the order of the Madras Bench of the Tribunal in similar cases dismissed the O.A. The Madras Bench of the Tribunal in its order dated 10.1.2007 in O.A 1130/1131, etc. of 2004 and other identical cases relating to various grades of Commercial Clerks, considered the issue and after elaborate discussion on various issues raised by the applicants therein, dismissed the OAs. The relevant portion is extracted below:

"12 The question that arise for our consideration are:

- (i) Whether the rule of reservation is applicable to cadre restructuring?
- (ii) Whether the alleged excess promotions given to SC/ST category are legally sustainable?

(iii) Whether the OAs are maintainable?

13 The above OAs were kept pending awaiting the decision of the Hon'ble Supreme Court relating to the Constitution (85th Amendment) Act, 2001. The Hon'ble Supreme Court in M. Nagaraja Vs. Union of India (2006 (8)SCCC 212) has upheld the constitutional amendments by which Art. 16(4-A) and 16(4-B) have been inserted. However, the case of the applicant is that notwithstanding the Constitution (85th Amendment) Act, 2001, the excess promotion given to SC/ST category candidates has to be declared as illegal and there should be a review and readjustment of all grades as per the law laid down by the Hon'ble Supreme Court in Ajit Singh II (1999(7) SCC 209, M.G. Badappa Navar case (2001 (2) SCC 666) and Satyanarayana's case in CA 5329/1997, so that the applicants can be promoted retrospectively.

14 In so far as the applicability for the rule of reservation in cadre restructuring is concerned, it has been held by the Full Bench of the Central Administrative Tribunal at Allahabad dated 10.8.2005 in O.A. 933/2004 and O.A. 778/2004 as follows:

The upgradation of the cadre as a result of restructuring and adjustment of existing staff will not be termed as promotion attracting the principles of reservation in favour of Scheduled Caste/Scheduled Tribe"

This was reiterated but clarified in O.A. 122/2005 dated 24.10.2005 stating that in cases of creation of additional vacancies or posts consequent on restructuring the rule of reservation is applicable. Following the above, the question No.1 is answered accordingly.

15 On the second question, we find that the relief sought for by the applicants in these OAs are in the nature of general declaration and a direction to review and adjust the seniority in the cadre of Chief Commercial Inspectors and six other feeder categories of the integrated seniority list. The applicants have categorically stated in their rejoinder that the seniority list is not as such challenged by the applicants. As a matter of fact, the seniority lists published in the year 2001 and 2002 and 2004 (A2 in O.A. 365/2005) were not objected to by the applicants by filing any representation. They have attained finality. Therefore, we have to hold the objections raised by the official respondents as well as the private respondents that the reliefs sought for by the applicants being general in nature and in the absence of specific relief, the prayer cannot be considered and granted by this Tribunal. In other words, the declaration that excess promotion given to SC/ST are illegal, cannot be accepted unless it is found, as a matter of fact that there was excess promotion in a particular year/period and that the applicants are aggrieved by the promotions. Necessarily, the applicants should have impleaded those candidates promoted in excess, at a particular point of time and should have raised their objections within a period of limitation and thereafter should have filed the O.A. in preference to those promotees questioning that the promotions so made are beyond the percentage of reservation. The Tribunal is now being asked to have a rowing enquiry in to the administrative functions of the Railways in reference to all promotions

16 Rule 10 of the Central Administrative Tribunal(Procedure) Rules, states that an application shall be passed based on a single cause of action and the application shall set forth concisely under the distinct heads and grounds for such application as per rule 8 of the Rules. Sec. 20 of the Act prohibits entertaining of an application unless the applicant had availed all the remedies available to him under the relevant service rules as to the redressal of grievances. Order 7 Rule 17 CPC states that the reliefs have to be specifically stated.

17 In this case, as we have noted earlier, the applicants have sought for a general relief to revise the seniority of various categories. This is not a public interest litigation. The Hon'ble Supreme Court in Income Tax Officer, Mangalore Vs. Damodar (AIR 1969 SC 408) held that in the absence of specific particulars in support of the allegation, it is not open to the Court to go into the question

18 The Hon'ble Supreme Court in Maunath Bhanjan Municipality vs. S.C.Mills (AIR 1977 (SC) 1055) has held that by merely stating that the procedure prescribed is not followed, it is too vague a plea to justify interference in the exercise of jurisdiction by the High Court.

In the absence of pleadings to excess promotions and seniority, it will not be possible to consider the case of the applicants.

In Ashutosh Gupta Vs. State of Rajasthan (2002(3) SLR 18) the Hon'ble Supreme Court observed as follows:

Where the challenge is made to a statutory provision being discriminatory, allegations in Writ Petition must be specific, clear and unambiguous. There must be proper pleadings and averments in the substantive petition, before the question of denial of equal protection of infringement of fundamental rights can be decided. There is always a presumption in favour of the constitutionality of enactment and the burden is upon him who attacks it to show that there has been clear transgression of the constitutional principles. The presumption of constitutionality stems from the wide power of classification which the Legislature must of necessity possess in making laws operating differently as regards different groups of persons in order to give effect to policies. It must be presumed that the Legislature understands and correctly appreciates the need of its own people that its laws are directed to problems made manifest by experience. The claim of equal protection under Article 14, therefore, is examined with the aforesaid presumption that the state acts are reasonable and justified. If we examine the challenge to the impugned provision from the aforesaid standpoint, we have no hesitation to hold that the appellant have utterly failed to establish any materials from which grievances about the discrimination alleged can be said to have been made (emphasis added)

The Constitutional Bench of the Hon'ble Supreme Court in M. Nagaraj Vs. Union of India (2006(8) SCC 212) has held as follows:

"81 The judgment in M.G. Badappanavar was mainly based on the judgment in Ajit Singh (I) which had taken the view that the departmental circular which gave consequential seniority to the roster point promotee, violated Articles 14 and 16 of the Constitution. In none of the above cases, was the question of the validity of the constitutional amendments involved. Ajit Singh (I)Ajit Singh(II) and M.G. Badappanavar were essentially concerned with the question of "weightage" Whether weightage of earlier accelerated promotion with consequential seniority should be given or not to be given are matters which would fall within the discretion of the appropriate Government, keeping in mind the backwardness, inadequacy and representation in public employment and over efficiency of service..."

87 After the Constitution (Seventy Seventh Amendment) Act, 1995 this Court stepped into balance the conflicting interests. This was in Virpal Singh Chauhan in which it was held that a roster point promotee getting the benefit of accelerated promotion would not get consequential seniority. As such consequential seniority constituted additional benefit and, therefore, his seniority will be governed by the panel position. According to the Government, the decisions in Virpal Singh and Ajit Singh(1) bringing in the concept of "catch up" rule adversely affected the interests of SCs and STs in the matter of seniority on promotion to the next higher grade.

88 In the circumstances, clause (4-A) of Article 16 was once again amended and the benefit of consequential seniority was given in addition to accelerated promotion to the roster point promotees. Suffice to state that the Constitution (Eighty Fifth Amendment) Act, 2001 was an extension of clause (4-A) of Article 16. Therefore, the Constitution (Seventy seventh Amendment) Act, 1995 has to be read with the Constitution (Eighty Fifth Amendment) Act, 2001."

116 Therefore, in our view Articles 16(4-A) and 16(4-B) form a composite part of the scheme envisaged. Therefore, in our view Articles 16(4), 16(4-A) and 16(4-B) are both inspired by observations of the Supreme Court in Indra Sawhney and R.K. Sabharwal. They have nexus with Article 17 and 46 of the Constitution. Therefore, we uphold the classification envisaged by Articles 16(4-A) and 16(4-B). The impugned constitutional amendments therefore do not obliterate equality.

19 in the light of the Constitutional Bench judgment in Nagaraj's case, the question whether the Constitution (85th Amendment) Act, 2001 negates the effect of the OM issued in implementation of the Hon'ble Supreme Court Judgment in Union of India Vs Virpal Singh Chauhan (1995(6) SCC 84), Ajit Singh Tanuja Vs. State of Punjab (1996(2) SCC 715) and as such, the question whether the seniority list has to be reviewed and readjusted in accordance with the Ajith Singh need not be gone into. Suffice to say that the said Constitutional Amendment have been upheld by the Constitutional Bench and the OM dated 30.1.1997 has been withdrawn restoring the promotion with consequential seniority.

"20 For all these reasons the OAs are liable to be dismissed in reference to excess promotions on the ground that the reliefs sought for by the applicants as such is too vague and general and cannot be granted and that the said issue is covered by the Constitution Bench decision in Nagaraj Vs. Union of India (supra)"

43 Before we part with this order, we are compelled to give certain directions to the respondents. We are aware of the Hon'ble Supreme Court's observation on such a practice where a case is dismissed. It is due to the averment made by the applicants that when promotions were ordered, in the erstwhile composite Madras Zone in the higher grades before the decentralisation in 2002, they were not aware of those getting promoted in the zone. This has led to inevitable delay in instituting legal proceedings and impleading those promotees. The respondents are directed to

- (i) reiterate the instructions regarding the operation of post based special representation rosters, to ensure that it is done in consonance with the law laid down in R.K.Sabharwal and others to restrict the intake of SC/ST to 22.5% of the 100 manned posts in the roster and to fill up the SC/ST points only when the incumbents vacate the post due to superannuation or promotion, as outlined in detail supra. While issuing the alert list to conduct the examination for the next higher level promotion post the respondents should carefully scrutinize the special representation rosters of the next grade to which selection is to be conducted to check whether SC/ST representation has reached 22.5%. If so, no further vacancy can be announced for ST/SC Communities.
- (ii) fix a minimum service eligibility to earn the promotion to the next grade in all cadres like the residency period which is prescribed in technical cadres.
- (iii) To address the Department of Personnel, Public Grievances and Pension to reduce the percentage of SC/ST reservation to 10% and 1% respectively for SC and ST as was done for Direct Recruitment. Such reduction would have been done for Direct Recruitment based on the demographic representation in the State of Kerala and as was enjoined in the judgement of R.K. Sabarwal and others.
- (iv) To give wide publicity, through circulars the details of SC/ST points, (Number of point and year) proposed to be filled up on promotion, to enable those aggrieved to take up the matter with the respondents and initiate legal proceedings in time, if warranted.

44 Due to various constraints and reasons, the applicants have not been able to substantiate their contention by producing cogent materials that promotion to reserved category had been made in excess of their quota and, if so, how many posts were available for the general category in each grade which were thus grabbed by reserved candidates. Further, they had ample opportunities to challenge such promotions then and there when the seniority list was published from time to time. That is not done. Hence, we are unable to accept the contention that promotions were effected in excess of the quota.

45. In view of the above, following the orders of the Madras Bench of the Tribunal, the O.As are dismissed. No costs.

Dated 29th March, 2011

V. AJAY KUMAR
JUDICIAL MEMBER

K. NOORJEHAN
ADMINISTRATIVE MEMBER

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