

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**O.A. NO. 135/2005**

**WEDNESDAY THIS THE 8th DAY OF AUGUST, 2007**

**C O R A M**

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN  
HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER**

- 1 Promodh P. Shenoi S/o L.P. Pandureng  
Assistant Yard Master, Southern Railway,  
Erode, residing at 418-D, Railway Colony  
Erode-2
- 2 Biju Gopal S/o Gopalan  
Assistant Yard Master, Southern Railway,  
Erode, residing at 418-D, Railway Colony  
Erode-2
- 3 M. Sunil Kumar, Assistant Yard Master,  
Southern Railway,  
Erode, residing at 418-D, Railway Colony  
Erode-2
- 4 C. Bijunarayanan S/o C. Narayanan  
Assistant Yard Master, Southern Railway,  
Erode, residing at 418-D, Railway Colony  
Erode-2

..Applicants

By Advocate M/s T.C. Govindaswamy, D. Heera  
& P.N. Pankajakshan Pillai

Vs

- 1 Union of India represented by the General Manager  
Southern Railway, Headquarters Office  
Park Town PO  
Chennai-3.
- 2 The Chief Personnel Officer  
Southern Railway, Headquarters Office  
Park Town, PO  
Chennai-3

3 The Additional Divisional Railway Manager,  
Southern Railway, Palghat.

4 The Senior Divisional Personnel Officer  
Southern Railway, Palghat Division  
Palghat.

..Respondents

By Advocates Smt. Sumathi Dandapani (Senior)  
& Ms P.K.Nandini

### ORDER

HON'BLE MRS SATHI NAIR, VICE CHAIRMAN

The applicants in this OA who are Assistants Yard Masters in the scale of Rs 5000-8000 are seeking promotions to the scale of Rs 5500-9000 in the vacancies said to have existed before restructuring of their cadres with that of Station Masters with effect from 1.11.2003. The applicants are working in the Palghat Division of Southern Railway, the applicants 1 to 3 came from the cadre of Assistant Station Masters and the 4th applicant from the cadre of Trains Clerks.

2 The facts as submitted are:-The cadre of Yardmasters is an independent divisional cadre and the promotion from the post of Assistant Yardmaster is to the post of Yardmaster in the scale of Rs. 5500-9000 and thereafter as Chief Yardmasters in scale of Rs 6500-10500 and Rs 7450-11500. The total cadre strength of Yardmasters is 24 and the posts in the scale of 5500-9000 is 14. prior to 31.10.2003. The Railway board issued Annexure A1 order implementing a merger of cadres of Station masters, Assistant Station Masters, Yardmasters and Traffic Inspectors. with effect from 1.11.2003. and thereby they have lost their opportunity for promotion to the posts of Yardmasters. The applicants further submit that in case

the applicants had been promoted to the vacancies that existed prior to the merger they would have been merged along with the posts of Station Masters in the scale of 5500-9000, on the contrary now, the posts would be filled up by promotion of Station Masters who are working in the scale of Rs 5000-8000. This total inaction of the respondents in filling up the vacancies is thus discriminatory and they had not given any response to their representations in Annexures A-2 to A-4. Aggrieved, they had approached the Tribunal in OA782/2004 which was disposed off with a direction to consider and give an appropriate reply to the applicants. The respondents have now given a reply in Annexure A-6 which is not at all satisfactory and hence this OA has been filed seeking the following reliefs:-

(a) call for the records leading to the issue of Annexure A6 and quash the same

(b) Declare that the vacancies in the cadre of Yard masters in scale of Rs 5500-9000 which existed in the Palghat division of southern Railway prior to 31.10 2003 are to be filled only by considering those Assistant yardmasters in the feeder cadre in scale of Rs 5000-8000 and that too in accordance with the rules which were in force as on that date;

(c) Direct the respondents to consider the applicants for promotion accordingly and to grant them the consequential benefits of promotion as Yard masters in the scale of rs 5500-9000 with effect from the date of occurrence of vacancies or at least with effect from 31.10.2003 with consequential placement in the merged cadre with effect from 1.11.2003

(d) award costs of and incidental to this application

(e) Pass such other orders or directions as deemed just, fit and necessary with facts and circumstances of the case.

3 The respondents have submitted that the OA is hit by res judicata and estoppel as the applicants had filed the earlier OA

782/2004 for the same benefits and having agreed to the disposal of their representation they cannot be seeking the same benefits again. The applicants 1 to 3 had been selected as Assistant yard master in scale of Rs. 5000-8000 from the category of Assistant Station Master and Train Clerks and they have completed the residency period of 2 years required for promotion according to the dates noted below.

<u>Name</u>	<u>Date of absorption</u>	<u>Date of completion of two years</u>
Pramod P Shenoi	28.9.2000	27.9.2002
Biju Gopal	09.8.2000	08.8.2002
Sunil Kumar M.	14.8.2000	13.8.2002
Biju Narayanan	03.2.2001	02.2.2003

4 Though five vacancies existed as on 31.10.2003 two vacancies are reserved for SC/ST employees and so only three UR employees could be considered for promotion and hence all the applicants could not have been considered for promotion as claimed. Further as per the restructuring orders issued by the Railway board dated 9.10.2003, the categories of station masters and yardmasters are to be merged by integrating the seniority of the employees in the respective grades with reference to the length of non-fortuitous service in the relevant grade. By a comparison of the first applicant Sri Shenoi with his immediate senior in the erstwhile cadre of ASM, the respondents have averred that the Yardmasters are placed in an advantageous position compared to station masters after the merger also as the first


applicant's seniority in the merged cadre is S.No.196 when his erstwhile Senior is placed at S.No.229. It is further urged that the merger was effected with the objective of introducing multi-skilling to improve efficiency of management and the unfilled vacancies have been merged with the cadre of Station Masters and it had been decided that the revised percentages due to cadre restructuring are to be introduced with effect from 11.11.2003. They have also submitted that promotion cannot be claimed as a matter of right.

5 The applicants have filed a rejoinder to the effect that the existence of the vacancies having been conceded by the respondents, the other averments of the respondents are irrelevant to the issue on hand.

6 We heard Sri TCG Swamy for the applicants who argued that it is a well settled a principle of law that the vacancies existing before the amendment of the Rules should be filled up in accordance with the unamended rules and hence the prayer of the applicants is legitimate the respondents having admitted the fact that that there existed five vacancies at the time of merger. For the respondents, the Learned counsel Smt Sumathi Dandapani submitted that the applicants cannot question the policy decision of the Railways for the merger of the two cadres for which there was adequate justification and she brought to our notice the decision of the Madras bench in OA 644/2004 rejecting the challenge against the policy decision. She also relied on the ratio of the order of the Supreme Court reported in 2005 13 SCC 495.

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7 As seen from the pleadings, the grievance of the applicants in this case has arisen out of the cadre restructuring exercise that has taken place in the organisation merging the categories of Yardmasters and Station Masters and Traffic Inspectors into one unified cadre of Station Master/Assistant Station Master. It has been stated that the exercise has been done in order to induce multi-skilling and to effect optimum utilisation of manpower taking note of the gradual reduction of traffic and other loading/unloading activities in the yards. Prior to the merger, the assistant yard masters could get promotion as yardmasters in the scale of Rs 5500-9000 whereas the posts of Yardmasters having merged with Station masters, the posts will be filled up by promotion from the unified cadres of ASM/YM. The promotions to the cadre of Yardmasters was quicker than as the no. of posts in the feeder cadres to the yardmaster category were few. That is the reason for the applicants' grievance. But it has to be appreciated that with the expansion of the feeder cadre the merger has also resulted in increase in the number of promotional posts available. It is true that on one side some career opportunities have got reduced, but then new avenues have been opened. This is inevitable in any re-organisation or restructuring, the ultimate objective being rationalisation and increased efficiency in management. Such decisions are the policy of the government and are not subject to judicial review as pointed out by the Apex court time and again. In State of AP Vs Sadanandan and in P.U Joshi Vs AG Ahmedabad reported in 2003 2 SCC 632, the Court observed that "the mode of recruitment and the category from which the recruitment to the service should be made, amendment of Rules, classification of posts,



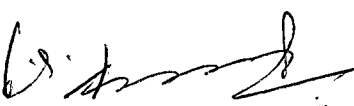
amalgamation, bifurcation of cadres, restructuring, are within the exclusive domain of the executive as they are matters of executive policy and the Tribunals/Courts shall not interfere with the exclusive discretionary jurisdiction of the state." The Madras bench of the Tribunal in OA 644/2004 has also reiterated this view. The applicants have not challenged the restructuring exercise as such and the applicants cannot raise a grievance on that count after accepting the merger as such.

8 The Learned counsel for the applicant argued that even if the merger cannot be questioned, the vacancies remaining unfilled prior to the merger should have been filled first applying the earlier Rules based on the well settled law in Y.V Rangiah's case. It was further argued that there was no apparently conscious decision to keep the posts vacant. The ratio in Y.V Rangiah may not be strictly applicable here as the change in mode of recruitment has been necessitated by the decision for restructuring and not on the basis of amendment to any recruitment rules. The decision to merge the unfilled posts of yardmasters with that of Station master in the unified cadre was a part of the restructuring policy and in itself constitutes the policy decision. Annexure R1 dated 15.7.2004 further confirms that the respondents considered the matter again and decided that no change is warranted in the existing instructions. Hence it cannot be said that there was no conscious decision. As far as Palghat division was concerned, the respondents have also pointed out that there was a shrinking of the cadre of Yardmasters as a result of reduced level of activities. It has also been mentioned that the applicants even after the merger are

maintaining their seniority over their erstwhile cadre of Assistant Station Masters from which they came over to the posts of Assistant Yard Masters and hence they cannot argue that they have been discriminated against. The argument advanced on behalf of the applicants that the vacancies were not filled up for a long time is also not borne out by facts as it can be seen from the table given supra that the applicants fulfilled their eligibility periods for promotion from August 2002 onwards by which time the restructuring exercise would have been under consideration. we are not convinced that there has been any undue delay. It is a well settled principle in service jurisprudence that even when there is a vacancy, the State is not bound to fill up such a vacancy nor is there any corresponding right vested in an eligible employee to demand that such vacancies shall be filled up. The decision in Tamil Nadu Admn Service Association Vs UOI reported in 2000 5 SCC 728 refers.

9 For the above mentioned reasons and in the light of the totality of the restructuring exercise undertaken, we do not consider that any interference by the Tribunal as prayed for by the applicants is warranted. OA is dismissed. No costs.

Dated 8<sup>th</sup> August, 2007

  
**DR. K.B.S. RAJAN**  
**JUDICIAL MEMBER**

  
**SATHI NAIR**  
**VICE CHAIRMAN**

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