

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 141 of 1999

Tuesday, this the 19th day of June, 2001

CORAM

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER
HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

1. M. Jyothinarayanan,
Telephone Operator,
Railway Telephone Exchange,
Pothannur, Palakkad Division,
Kerala.Applicant

[By Advocate Mr. K. Balakrishnan (rep.)]

Versus

1. Union of India, represented by
Secretary, Railway Board,
New Delhi.

2. General Manager,
Southern Railway, Chennai.

3. Chief Personnel Officer,
Southern Railway,
Personnel Branch, Chennai.

4. R. Mahendran,
Head Telephone Operator,
Southern Railway, Erode
C/o Senior Divisional Personnel Officer,
Southern Railway, Palakkad.Respondents

[By Advocate Mrs Sumathi Dandapani (R1 to R3)]

The application having been heard on 19-6-2001, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

The applicant seeks to quash A1 and A3 to the extent
those select and appoint the 4th respondent as Chief Telephone
Operator and to direct respondents 1 to 3 to promote him in the
place of the 4th respondent as Chief Telephone Operator.

2. The applicant joined as Telephone Operator in Southern
Railway. He was promoted as Senior Telephone Operator. He was

again promoted as Head Telephone Operator. The next promotional post is Chief Telephone Operator, which is a selection post. Promotion to the said post is made on the basis of a written test and viva voce. The written test was held in November, 1998 He came out successful. He was called for an interview. He is serial No.6 in A1, the list showing Head Telephone Operators who have qualified based on the marks in the written test. The 4th respondent was not qualified to be called for the interview by the normal standard. Relaxed standard was adopted in his case on the ground that he is a member of the Scheduled Caste. In A3, the select list, name of the 4th respondent has been included. It is wrong. If the 4th respondent is excluded, the applicant will get that post.

3. Official respondents resist the OA contending that the Railway Board's letter No. E(SCT) 68 CM 15/10 dated 13-7-70 had envisaged that a concession of 10% marks is to be extended to SC/ST employees appearing in the selection in respect of posts classified as non-safety categories. Concession was further given to reserved community employees if less number of candidates are available on relaxed standard the reserved community candidates ^{who} secured 20% of marks may also be considered for viva voce and also for empanelment. This has been reiterated in Railway Board's letters dated 30-7-1971, 16-4-1974 and 3-8-1984. The 4th respondent was selected and empanelled against the vacancy reserved for Scheduled Caste candidate for the post of Chief Telephone Operator on relaxed standard as admissible under extant order of the Railway Board.

4. One of the grounds raised by the applicant is that the 4th respondent is not entitled to any relaxation for the

purpose of promotion and on that ground alone the selection of the 4th respondent to be held bad.

5. It is the undisputed fact that the 4th respondent was selected and empanelled against the vacancy reserved for a Scheduled Caste candidate for the post of Chief Telephone Operator on relaxed standard.

6. Official respondents say that as per the extant orders of the Railway Board it is permissible. MA.I is the copy of Railway Board's letter No. 97-E(SCT)1/25/24 dated 30-6-1999. There it is clearly stated that:

"The concession in qualifying marks is granted to fill up the reserved vacancies only. This has already been clarified vide item 2 of Board's letter No.E(SCT) 68 OM/10/dated 23.10.1969. It is, however, further clarified that by applying the general standard for qualifying in a selection and empanelment, the Selection committee should first draw a list of candidates who can be empanelled. This list should be checked up to see whether this contains the required number of candidates belonging to SC and ST as per the 40-point roster. In case of deficiency, the same should be made good by including the other reserved candidates who pass by applying relaxed standards."

7. Again it is stated in MA.I that:

"The above instructions have been further reiterated vide para 4 to posts classified as selection posts, those SC/ST candidates who qualify in promotional tests with general standards should be empanelled first and only the deficiency in the reserved quotas should be made good by such candidates as have qualified with relaxed norms i.e. excluding marks of seniority in the 'aggregate'. (The above instructions still hold good)."

8. So, it is only when there is deficiency the question of making good by applying relaxed standard apply. There is no case for the official respondents that it was in such a situation the 4th respondent was selected and empanelled for the post of Chief Telephone Operator.

9. The law on this aspect has been laid down by the Apex Court that though relaxation in the case of SC/ST is permissible in the matter of recruitment, the same cannot be extended in the matter of promotion. So, the procedure adopted by the official respondents in selecting and empanelling the 4th respondent for promotion as Chief Telephone Operator is against the settled position of law. That being the position, A1 and A3 to the extent those appoint the 4th respondent as Chief Telephone Operator are liable to be quashed.

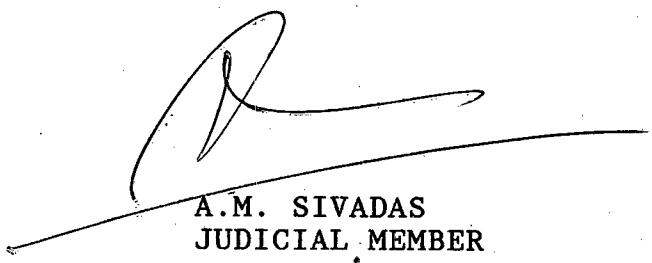
10. Accordingly, A1 and A3 to the extent those relate to the selection and appointment of the 4th respondent as Chief Telephone Operator are quashed. Respondents 1 to 3 are directed to consider the applicant for promotion as Chief Telephone Operator.

11. The Original Application is disposed of as above. No costs.

Tuesday, this the 19th day of June, 2001



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.M. SIVADAS
JUDICIAL MEMBER

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List of Annexure referred to in this order:

1. A1 True copy of the Order No. DRM/P/MAS MDU TVC PGT SBC dated 7-12-98 issued by the 3rd respondent.
2. A3 True copy of the Order No. DRM/P/MAS,MDU,TVC, PGT,SBC dated 11-1-1999 issued by the 3rd respondent.
3. MA.I True copy of the Circular No. J/P 171/P/Vol.IV dated 7-9-1999 issued by the Executive Director, Railway Board.