

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 160 of 2006

Wednesday...., this the 14th day of March, 2007

CORAM :

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

1. A. Sundararaj,
S/o. Arul Swamy,
Peon (Works Branch),
Office of Divisional Railway Manager,
Southern Railway, Palghat,
Residing at No. 15/268 R.C. Compound,
Palayapet, Palghat - 01
2. P. Sukumaran,
S/o. Sethumadhavan Nair,
Lascar, General Branch,
Divisional Railway Manager's Office,
Southern Railway, Palghat,
Residing at Railway Quarters No. 475/C,
Hemambika Nagar, Railway Colony,
Palghat - 9
3. P. Sudheera,
W/o. Narayanan, Senior Record Sorter,
Personnel Branch, Office of the Divisional
Personnel Officer, Southern Railway, Palghat,
Residing at Narayana Sadanam,
Sri Durga nagar, Kallekulangara, P.O. Palghat.
4. C.P. Pushpa,
W/o. Dayanandan, Peon/Signal,
Office of the Divisional Railway Manager,
Southern Railway, Palghat,
Residing at 'Deepam', Surya Nagar,
Akathethara, Palghat.

... Applicants.

(By Advocate Mr. T.C. Govindaswamy)

v e r s u s

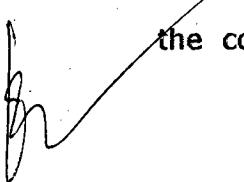
1. Union of India represented by
The General Manager, Southern Railway,
Headquarters Office, Park Town Post,
Chennai - 03
2. The Divisional Railway manager,
Southern Railway, Palghat Division,
Palghat.
3. The Senior Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat.
4. Syed Khader, Office Clerk,
Office of the Chief Workshop Manager,
Signal & Telecommunication, Southern Railway,
Poddannur, Coimbatore District.
5. E. Satheesh Babu, Office Clerk,
Office of the Senior Divisional Mechanical Engineer,
Southern Railway, Palghat.
6. A.U. Johny, Office Clerk,
Office of the Southern Railway Divisional
Signal & Telecommunication Engineer,
Southern Railway, Palghat. ... Respondents.

(By Advocate Mr. Thomas Mathew Nellimoottil for R1 to R3 and
Mr. P. Santhosh Kumar / Mr. Luiz Godwin D'Couth for R4 to R6)

(The application having been heard on 15.02.07, this Tribunal
on 14.3.07 delivered the following)

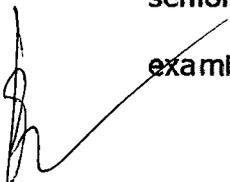
ORDER
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The applicants, who are employed in Group D posts in the Palghat
Division of Southern Railways and who are aspirants to the higher post of Group
C under the 16-2/3% quota have filed the OA alleging certain irregularities in
the conducting of the examination and have prayed for a direction to the



respondents to consider the applicants for promotion under the afore said quota and promote them, if qualified, with consequential benefits.

2. In the Railways, in respect of Group C posts, there are two channels of filling up of the posts – (a) Direct Recruitment 66-2/3% and (b) promotion 33 - 1/3 %, the details whereof have been specified in the Indian Railway Establishment Manual (IREM, for short) under various paragraphs, of which, para 174 is relevant here. Promotion is from among regular Group D employees, based on their seniority and subject to their qualifying in the selection examination. While selection through direct recruitment is made by a procedure prescribed and through Railway Recruitment Board, in so far as promotion is concerned, the same is as per the procedure laid down in para 189 of the I.R.E.M. Earlier, under the promotion quota, the selection consisted of written test, viva voce and service records, vide order dated 04-03-1985 (Annexure R-5). Later on, the element of viva voce had been removed, vide Railway Board order dated 07-08-2003 (Annexure R-1). By an order dated 10-10-2000 (Annexure R-6), the Railway Board had decided, in consultation with the JCM to reduce the ratio of Direct Recruitment to 50% and corresponding increase (16-2/3%) in promotion quota. However, the enhanced 16-2/3% in promotion quota was decided to be filled up by way of competitive examination and purely based on merit from among the eligible Group D employees. Thus, under the promotion quota there are two channels – (a) promotion based on seniority-cum-suitability and (b) on the basis of Departmental competitive examination.



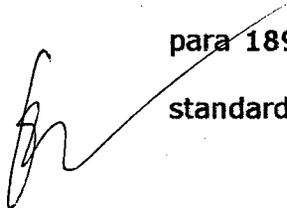
3. On 10-12-2004 (Annexure A-2), the respondents had notified certain vacancies to be filled in under the promotion quota, both on seniority cum suitability basis and also on merit basis. The number of vacancies earmarked to be filled up by merit basis was 13, of which 11 were to be from the unreserved quota. Eligibility conditions etc., have been specified in the said communication. On the basis of the same when the applicants have applied they were found eligible to appear in the competitive test, vide order dated 17-05-2005 (Annexure A-3). The examination, which was originally scheduled on 03.09.2005, was held on 24-09-2005, but later on, that too was cancelled vide Annexure A-5 and thus the exam was again held on 22-10-2005. Applicants had participated in both the exams. When through the impugned order, promotion under the 16-2/3% quota was given to three individuals, and the applicants were not figuring in therein, this OA has been filed by the applicants, challenging the selection. Grounds of challenge included that while Annexure A-2 contemplated holding of viva voce, the same was not conducted; no panel had been published, despite the same having been prepared, as is suggested in para II of Annexure A-1; though there were 11 vacancies notified for UR under this quota, only three were promoted; while the panel has to be approved at the level of Divisional Railway Manager, the same has not been duly disclosed in the Annexure A-1 order.

4. Respondents have contested the O.A. They have stated that while calling for volunteers, erroneously, viva voce was indicated as a part of selection, but

the error was rectified through Annexure R-2 communication; that while initially communicating the date of examination, name of one candidate was inadvertently omitted consequent to which the test was to be cancelled and re-held; that the marks allocated for written exam was 85 and 15 is for record of service; further for being placed in the panel, a candidate must have secured 50% in the written test and the selection has been made strictly in accordance with the procedure.

5. Applicants had filed rejoinder in which he had alleged that the Annexure R-2 is fabricated and that cancelling the examination for the sake of a single individual, on the alleged ground that communication was not received by that one does not appeal to logic.

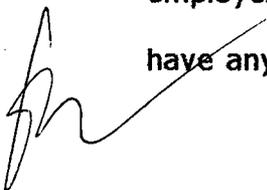
6. During the course of arguments, counsel for the applicant had taken us through various Annexures and chronological sequence whereby initially there was written test cum viva voce, which was later on modified as only written test (omitting viva voce), the changes effected in the percentage of direct recruit and promotion quota, the intermediate division in the promotion quota etc., And while so narrating, it has also been stated that it was only in respect of promotion under the 33-1/3 % quota that 50% of marks had been prescribed by the General Manager under the authority as contained in para 189 of the IREM, whereas, the General Manager has no power to prescribe any such mark, since para 189 of the IREM does not apply to the 16-2/3% quota. Referring to the standard required for promotion under the promotion quota and promotion by



competitive examination quota, the counsel argued that while for promotion under seniority quota, the level was of non matriculation standard, that for 16-2/3 % quota, the same is matriculation standard and hence, there cannot be the same prescription for both the streams. And, it has further been contended that the prescription of marks to prepare the merit list under the 16-2/3% quota should be as per the marks prescribed under the Direct Recruitment quota, which is 40% for unreserved; 30% for S.C and OBC and 25% for S.T., as contained in Order dated 29-10-2003 (Annexure MA-1). Again, it has been contended that when the earmarked vacancies under unreserved quota were 11, promotion of only 3 also is not appropriate.

7. Per contra, counsel for the respondents has stated that reference to para 189 does appear in the relevant para relating to the 16-2/3% quota, i.e. in para 174 of the IREM vide ACS No. 154 (Annexure A-7) and as such, there is no bar in prescribing the same percentage as minimum marks to be secured.

8. Arguments were heard and documents perused. In so far as cancelling the initial examination and holding the re-examination, we do not find any foul play. When an eligible candidate did not receive communication, to ensure that equality clause is not disrupted, the respondents have cancelled the earlier examination and re-held the same in which the applicants had participated. In so far as non filling up of 11 vacancies, it is settled law that it is for the employer to decide as to how many posts could be filled up and none would have any vested right to compel the employer to fill up the vacancies. In this

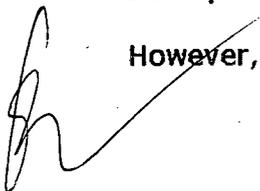


regard, the decision of the Apex Court in the case of **Union of India v. Kali Dass Batish, (2006) 1 SCC 779**, is the law: -

"16. In Punjab SEB v. Malkiat Singh (2005) 9 SCC 22) this Court reiterated the observations of the Constitution Bench of this Court in Shankarsan Dash v. Union of India (1991) 3 SCC 47 as under:

7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in State of Haryana v. Subash Chander Marwaha (1974) 3 SCC 220, Neelima Shangla v. State of Haryana (1986) 4 SCC 268 or Jatinder Kumar v. State of Punjab (1985) 1 SCC 122 (emphasis supplied) "

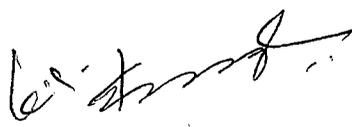
9. In so far as prescription of 50% as the minimum marks is concerned, while the respondents contend that the same is as prescribed by the General Manager the applicant contends that the same should be 40%. The contention of the respondents seems to be based on the fact that in respect of promotion, the R.R.B. has no role to play and since for other mode of promotion, 50% has been prescribed by the G.M., the same should be adopted in this case as well. However, the counsel for applicant contended that when there is a specific

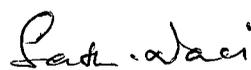


provision in Para 189 in respect of authority vested with the G.M., such a prescription of authority conspicuously missing in respect of the 16-2/3 %, the G.M. cannot take that authority by himself. Leaving this question open, when the marks secured by the candidates including the applicants were perused from the records produced by the respondents, it revealed that all the applicants had secured less than 50% of whom only applicants No. 1 and 2 had secured more than 40%. The respondents had chosen not to consider the marks of record of service in respect of those who could not secure the minimum in the written exam. Even if we assume that 40% is the minimum marks only two of the applicants, and even if maximum marks are allotted to these two for the record of service then also, the two applicants are much lower in the rank than the three who have been selected. Thus, even if the contention of the applicant that minimum marks should be 40% (or even if no minimum marks be prescribed), the applicants' merit is found to be far below in the list.

10. In view of the above, the O.A. falls and is, therefore, dismissed. No costs.

(Dated, the 14th March, 2007)


DR. K B S RAJAN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

CVR.