

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

ORIGINAL APPLICATION NO. 161 OF 2007

FRIDAY, THIS THE *1ST* DAY OF *MAY*, 2009

C O R A M :

***HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE MS. K. NOORJEHAN, ADMINISTRATIVE MEMBER***

1. J. Rajmohan,
S/o. E. James,
Senior Diesel Assistant,
Southern Railway, Erode,
Residing at 378/A, Railway Colony,
ERODE
2. R. Ramakrishnan,
S/o. S. Raman,
Senior Diesel Assistant,
Southern Railway, Erode,
Residing at Railway Colony, Erode.
3. P. Subramanian,
S/o. A. Palaniappan,
Senior Diesel Assistant,
Southern Railway, Erode,
Residing at 157, Amman Illom,
Annai Gandhi Street,
Shastri Nagar, Erode.
4. S. Sekharan,
S/o. K. Sounderarajan,
Senior Diesel Assistant,
Southern Railway, Erode,
Residing at Railway Colony, Erode.
5. A. Francis Xaviour,
S/o. Anthony Swamy,
Senior Diesel Assistant,
Southern Railway, Erode,
Residing at Railway Colony, Erode.
6. K. Mumurthy,
S/o. V. Kumara Swamy,
Senior Diesel Assistant,

**Southern Railway, Erode,
Residing at 5/116, Suramangalam,
Salem – 5**

7. **S. Ganesan,
S/o. K. Sundaresan,
Senior Diesel Assistant,
Southern Railway, Erode,
Residing at No. 97-F,
Railway Colony, Erode.**
8. **S. Bhaskaran,
S/o. Sengodan,
Senior Diesel Assistant,
Southern Railway, Erode,
Residing at No. 335-A,
Railway Colony, Erode.**
9. **R. Rajendran,
S/o. M. Rangarajan,
Senior Diesel Assistant,
Southern Railway, Erode,
No. 32/1, Bharatipalayam,
I, Netaji Nagar, Erode.**
10. **P. Subramanian,
S/o. R. Palaniappan,
Senior Diesel Assistant,
Southern Railway, Erode,
Residing at No. 18-K, MKG Layout,
G.N. Mills Post, Coimbatore.**
11. **M. Viswanathan,
S/o. S. Muthuswamy,
Diesel Assistant, Southern Railway, Erode,
Residing at No. 139-D, Railway Colony,
Erode.** **Applicants.**

(By Advocate Mr. T.C. Govindaswamy)

v e r s u s

1. **Union of India represented by
The Secretary to the Government of India,
Ministry of Railways, Rail Bhavan,
New Delhi.**

2. The Divisional Railway Manager,
Southern Railway, Palghat Division,
Palghat.

3. The Senior Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat. ... Respondents.

(By Advocate Ms. P.K. Nandini)

The Original Application having been heard on 27.03.09, this Tribunal on ..J. 29.. delivered the following :

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

This case poses a very interesting question. While filling up the vacancies both under the general category and reserved category, for the post of Goods Drivers (Loco Pilots – Goods), whether the vacancies should be filled up in the order of vacancies that arose in the aforesaid category or the vacancies under general category should first be filled up and the reserved category later.

2. Brief Facts:

(a) Vide Annexure A-1, certain guidelines were given as to how to have the vacancies filled up. The said guidelines read as under:-

“R.B.E. No. 103/2003

Subject: Reservation in promotion – Treatment of SC/ST candidates promoted on their own merit.

Reference: Railway Board's letter No. 99-E(SCT)I/25/13 dated 7.8.2002 (Bahri's 128/2002, p. 147)

[No. 99-E(SCT)I/25/13 dated 20.6.2003]

Some of the Zonal Railways have raised doubts regarding Para (i) of the above quoted letter and sought a categorical

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clarification as to how the SC/ST candidates appointed by promotion on their own merit and not owing to reservation or relaxation of qualifications is to be adjusted in the post based roster.

In this context, it is clarified that in selection posts, SC/ST candidates who are selected by applying the general standard and whose names in the select list/panel appear within the number of unreserved vacancies are to be treated as selected on their own merit. For example, suppose there are a total of 10 vacancies for which a panel/select list is to be prepared. Out of them, six vacancies are unreserved and four are reserved for SCs/STs. First six candidates in the select list/panel who have been selected by applying the general standard will be adjusted against unreserved vacancies irrespective of the fact whether they or some of them belong to SC or ST category. SC/ST candidates selected for remaining four reserved vacancies, whether selected on general standard or by giving relaxations/concessions as per existing instructions on the subject, shall be adjusted against reserved vacancies. Similarly, in case of non-selection promotions, SC/ST candidates who are senior enough to be within the number of unreserved vacancies and are included in the panel/selection list without getting any relaxation/concession will be treated as own merit candidates.

The clarification issued vide Board's letter No. 97-E(SCT) I/25/24, dated 30.6.1999 (Bahri's 152/1999, p.151), are superseded by Board's letter of even number dated 7.8.2002 (Bahri's 128/2002, p.147). The principle laid down vide Board's letter of even number dated 07.08.2002 (Bahri's 128/2002, p. 147) should be made applicable in all the promotions held after its issue.

This disposes of S.C. Railway's reference No. P(RES) 171/Policy/Vo.X, dated 20.2.2003.”

3. The respondents have vide Annexure A-2 published the procedure for filling up of the reserved vacancies and general category vacancies on the basis of post based roster.

4. The applicants at present working as senior Diesel Assistants in the scale of Rs 4000 – 6000 (pre revised) are eligible to be considered for

promotion to the post of Goods Drivers (Loco Pilots – Goods). As on 1st July 2004, as many as 103 vacancies with a break up of 66 General Category, 15 SC and 22 ST arose. These were notified and eligible candidates alerted to be in readiness to appear for a written examination as part of the selection process, vide Annexure A-3. Some of the vacancies existed prior to restructuring while some were as a result of re-structuring carried out w.e.f. 01-11-2003. Annexure A-4, A-5 and A-6 are select panels for the said post of Goods Driver (Loco pilot – goods). These contain a large number of reserved candidates against the general posts. Respondents have published another alert notice to fill up 80 vacancies of Goods Drivers as on 22nd May 2006 in terms of letter dated 21st August 2006, vide Annexure A-7 and vide Annexure A-8, a panel based on selection conducted on the lines of Annexure A-1 has been published, in which the applicants do not figure in.

5. According to the applicants, the aforesaid procedure has resulted in majority of the vacancies under general category, having been filled up by reserved candidates, and only a few general category vacancies could be filled up by general candidates and such a mass accommodation of reserved category candidates against the general vacancies has resulted in all the posts under Reserved Category remaining unfilled, to be carried forward to the succeeding years. Applicants question the entitlement of those reserved category candidates who have earlier availed of concessions under reservation to be considered for promotion under the general category.



6. The applicants have, therefore, challenged Annexure A-1 as also Annexure A-7 and A-8 and pray for quashing of the same and for a declaration that the selection process for the vacancies under the General, Scheduled Caste and Scheduled Tribes categories are to be finalized, taking into consideration the date of occurrence of the respective vacancies for different categories and by considering persons belonging to these categories in the order of occurrence of vacancies, with the final panel being prepared in the order of seniority.

7. Respondents have contested the O.A. According to them, Annexure A-1 is absolutely legal and does not call for quashing. Again, in so far as entitlement of the reserved candidates (who have at any point of time already enjoyed the concession available to them) being accommodated against the general vacancies, respondents have relied upon the clarification given by the Railways, which reads as under:-

Whether SCs/STs who are occupying the present position in the feeder cadre due to application of reservation rules are eligible to be considered for General Posts if they are coming within the zone of consideration and fulfilling the eligibility conditions?	It is not necessary that, for being considered for general posts, an SC/ST candidate must progress all along as a general candidate. If SC/ST candidates are fulfilling the eligibility conditions and coming within the zone of consideration, they have to be considered for promotion against the general posts too.
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8. Exchange of rejoinder and reply to rejoinder has also been made.

9. Counsel for the applicants submitted that there is no quarrel regarding the SC/ST having availed of the concession to be considered against the general vacancy in view of the above clarification. Nor is there any dispute in respect

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of the total number of vacancies and the break up. However, the only question, which the applicants raise, is that the manner in which the vacancies are being filled up in accordance with Annexure A-1. The prescribed method has resulted a large number of general candidates losing their promotion and unintended benefits accrue to the reserved candidates. The present procedure results in a few reserved vacancies not being filled up which are carried forward for the future and to that extent the posts being vacant, the same hampers efficiency of the organization. Counsel for the applicant therefore, submits that a pragmatic way of filling up of the post would ensure that the general candidates would be getting their dues, the SC/ST candidates would also be considered for promotion against the general category vacancies; all the posts as far as possible would be filled up and the carry forward vacancies would be kept to the minimum. In this regard, counsel for the applicant has given an illustration which will be discussed at a little later.

10. Counsel for the respondents, has also filed written arguments. These are by and large relating to general vacancy being consumed by a general candidate or S.C. and that for this purpose, there is no condition that the said SC being considered for general vacancy should not have availed of any concession in the past.

11. Arguments were heard and documents including the written submission perused. It is worth considering the illustration given by the counsel for the applicant. The same in the following lines:-



No. of vacancies: 10.

Break up: General Vacancies: 6
 Reserved Vacancies (SC) : 2
 Reserved Vacancies (ST) : 2

12. Hypothetically, the order of vacancies (post based) and individuals available could be tabulated as hereunder:

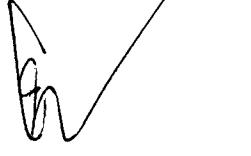
<u>Order of occurring of vacancy</u>	<u>Available candidates</u>
(1)General	(1)General
(2)General	(2)S.C.
(3)Reserved (SC)	(3)General
(4)General	(4)S.C.
(5)Reserved (SC)	(5)S.C.
(6)Reserved (SC)	(6)General
(7)General	(7)General
(8)General	(8)General
(9)General	(9)General
10)Reserved (ST)	10)ST.

13. According to the applicant, if the present procedure of filling up of the vacancies under the general quota is filled up first, then, the six general vacancies (serial 1,2,4,7,8,9) would be filled by 3 General candidates (1,3 and 6) and 3 SCs (2,4 and 5). This would leave no SC candidate for promotion to the unfilled SC vacancies at serial vacancies (3,5 and 6). Vacancy reserved for ST would however, be filled up by S.T. candidate. The three unfilled SC vacancy would have to be carried forward to the next year. In that event, only 7 posts would have been filled up. Three general category candidates may have to wait for their promotion against any future vacancies. Instead, if the respondents fill up the vacancies in the order of their occurrence, the first and second vacancies, i.e. general would be filled up by a general candidate and an S.C.



candidate. The third one (SC vacancy) would be filled up by another S.C. Candidate (Sl. No. 4). The fourth vacancy being general, would be filled up by the second general candidate (Sl. No.3). Fifth vacancy would be filled up by S.C. Candidate (Sl. No. 5). The sixth vacancy (SC) will have to be carried forward due to non-availability of SC candidate. The seventh, eighth and ninth vacancies would be filled up by three general candidates (Sl.Nos. 7,8 & 9), while the tenth one would be filled up by S.T. candidate. This would result in five general candidates being accommodated against six vacancies under general category, the sixth vacancy being consumed by an S.C. Candidate. Two out of three vacancies meant for S.C. would be filled, leaving only one under S.C. category to be carried forward. This method, if adopted, cannot be heartburn for any group. This method, as pointed out by counsel for the applicants would not violate any decision of the Apex Court or the Constitution. There would not be any reversion by following the above method, as any reversion that might take place would be only from out of the SC candidates who could easily be accommodated against the vacancies available under their own quota, which have not been carried forward. Thus, justice would be rendered to all.

14. In view of the above, the O.A. succeeds. It is declared that Annexure A-1 order is liable to be quashed and set aside and we do so. Respondents are directed to review the promotion made and fill up the vacancies in the same order as they occurred and prepare a revised panel. Those who may have to be reverted, be not reverted but adjusted against the carry forward vacancies. Their

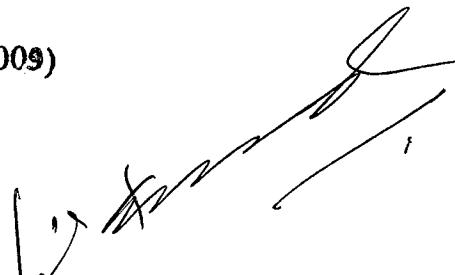


seniority, however, may undergo some changes, which may be effected after due notice to them. General candidates to be promoted on the basis of the above method of filling up would be placed in the seniority in the order of their promotion. Their promotion shall be notional from the date the promotion to others have been granted and actual from the date they assume duties of higher responsibilities. This drill be conducted within three months of the communication of this order.

15. No costs.

(Dated, the 1ST May, 2009)


(K. NOORJEHAN)
ADMINISTRATIVE MEMBER


(Dr. K B S RAJAN)
JUDICIAL MEMBER

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