

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO.166/2011

Dated this the 23rd day of January, 2012

C O R A M

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

HON'BLE Mrs.K. NOORJEHAN, ADMINISTRATIVE MEMBER

- 1 T.G.Ajithkumar S/o L.Gopalan, Technician Gr.III/
Electrical/TRD, O/o Sr.Section Engineer/Traction
Distribution/Overhead Equipments
Southern Railway, Ernakulam, R/o Thottuvazhathu House
CMC-XIII, Cherthala P.O, Alleppey District.
- 2 P.G.Shanavas, S/o P.S Gopi, Technician Gr.III/
Electrical/TRD, O/o Sr.Section Engineer/Traction
Distribution/Overhead Equipments
Southern Railway, Ernakulam, R/o Puthenveedu
Cherai P.O, Ernakulam District.
- 3 K.Jayaprasad, S/o P.G.Karunakaran Pillai
O/o Sr.Section Engineer/Traction Distribution/
Overhead Equipments, Southern Railway,
Quilon, R/o Mampatta Thekkethil, Kanatharkunnam
Karali Junction P.O, Quilon District - 690543.
- 4 S.V.Sreenath, S/o P.G.Sivarama Pillai
O/o Sr.Section Engineer/Traction Distribution/
Overhead Equipments, Southern Railway,
Quilon, R/o Palappally Puthen Veedu, Vengur P.O
Sasthancotta, Quilon District - 690569.
- 5 A.Pravin Rense, S/o M.Arul Packianathan.
O/o Sr.Section Engineer/Traction Distribution/
Overhead Equipments, Southern Railway,
Kazhakkuttam R/o 1030, Punnai Nagar
Rajakamangalam Road, Nagecoil-629 004
- 6 S. Ajithkumar, S/o R.Surendran Nair
O/o Sr.Section Engineer/Traction Distribution/
Overhead Equipments, Southern Railway,

Kazhakkuttam, R/o Vadakkevilakathu Veedu
Menamkulam, Kazhakkuttam, Trivandrum-695582.

- 7 S.Shiju, S/o Selvaraj
O/o Sr.Section Engineer/Traction Distribution/
Overhead Equipments, Southern Railway,
Kazhakkuttam, R/o T/C No.80/1607, Liji House
Balanagar, Vettucad, Trivandrum-695021.

..Applicants.

By Advocate Mr. TCG Swamy.

Vs

- 1 Union of India represented by the Secretary
to the Govt of India, Ministry of Railways
Rail Bhavan, New Delhi-110001.
- 2 The General Manager, Southern Railway,
Head Quarters, Park Town PO, Chennai-3
- 3 The Senior Divisional Personnel Officer
Southern Railway, Trivandrum Division,
Thiruvananthapuram.
- 4 The Sr.Divisional Electrical Engineer
Traction Distribution, Southern Railway,
Trivandrum Division, Trivandrum.
- 5 Sh.KG Anil Bose, Technician Gr.III/Electrical/
Traction Distribution/Power Supply Installation,
Southern Rly, Chingavanam RS & PO-686001.
- 6 Sh.P.R.Sreerag/Technician Gr.III/Electrical/
Traction Distribution/Overhead Equipments
Southern Railway, Trichur RS & PO - 680001.
- 7 Sh.Lijo Cherian, Technician Gr.III/Electrical/
Traction Distribution/Overhead Equipments
Southern Railway, Trichur RS & PO - 680001.
- 8 Sh.V.Dipu, Technician Gr.III/Electrical/
Traction Distribution/Overhead Equipments
Southern Railway, Ernakulam Junction, Cochin-6820016.
- 9 Sh.K.N.Abhilash, Technician Gr.III/Electrical/
Traction Distribution/Overhead Equipments

Southern Railway, Kottayam RS & PO - 686001.

Respondents.

By Advocate Mr. V.V.Joshy for R 1-4

Advocate Mr. M.P.Varkey for R-5-9

The Application having been heard on 11.1.2012 the Tribunal delivered the following:

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

Applicants are working as regular Technician Gr.III in the Traction Distribution Unit of Electrical Department of the Southern Railway. It is submitted that vacancies in the cadre of Technician Gr.III are to be filled in terms of paragraph 159 of the Indian Rly.Establishment Manual Vol.I (Annx.A3) by which 25% vacancies are to be filled from course completed 'Act Apprentices, ITI candidates and Matriculates; serving employees having the requisite qualification, another 25% vacancies are to be filled from serving semi-skilled and unskilled employees with the requisite qualification and the remaining 50% vacancies are to be filled from lower cadre as prescribed. The Annx.A3 was amended by Annx.A4 by RBE No.17 of 2000 dated 28.1.2000. By this amendment one of the qualifications prescribed as only Matriculation for direct recruitment against 25% quota is deleted. Thereafter by another RBE No.113/2000 dated 19.6.2000, it was notified that Matriculates can be considered for appointment on compassionate grounds provided they successfully complete a training of 3 years. The applicants are in the feeder cadre for 50% promotion quota. By letter dated 23.4.08, the applicants were alerted for trade test for Technician Gr.III/Traction Distribution. The applicants took the Trade test conducted on different dates by respondent No.4 in April/May 2008. The 3rd respondent published result on 22.8.08. The applicants were promoted by order dated 23.9.08. It is submitted that the private respondents (R5-9) are persons appointed on compassionate ground as Group-D in the year 2003

ty

and 2004. They were selected for Group-C posts with relaxation in educational qualification and sent for 3 year Technician Gr.III training course of the Electrical Department/Traction Distribution. They underwent the prescribed aptitude test in June 2008 on completion of the training. Their results were published earlier to that of the applicants. However, they were also appointed alongwith the applicants by the same Annx.A8 order dated 23.9.08 with a remark to the effect that 'the undermentioned App.Tech/TRD are regularised as Tech.III/TRD w.e.f 17.7.08.

The applicants are promoted against 50% quota and they were under the bonafide belief that they would be ranked senior to the respondents R-5 to 9 as provided under para 302 of the Indian Railway Establishment Manual Vol.I. It is alleged that the result of the applicants was deliberately delayed to advance seniority to the private respondents herein. It is also given to understand that another alert notice would be issued to consider a large number of persons in the seniority for promotion to Technician Gr.II to which R.5 to 7 would also be included. The applicants submitted representations to respondent No.3 requesting for revision of seniority and to place the applicants above respondent Nos.5-9 which was rejected by Annx.A1 dated 25.11.2010. By another letter dated 25.11.2010 issued by the 3rd respondent directing R-5 to 7 to be ready to appear for trade test for promotion to Technician Gr.II. The applicants sought seniority list of Technician Gr.III, Gr.II and Gr.I under RTI Act. They were informed that the same is not available for supply. It is alleged that since the provisional seniority of the Technician Gr.III ;has not been finalised any promotion made to Technician Gr.II will be prejudicial to the applicants which is in violation of para 302 of the Indian Railway Establishment Manual Vol.I, arbitrary and discriminatory. Therefore this O.A.

2 The official respondents Railways and private respondents R-5 to 9 have filed separate replies opposing the O.A. The official respondents in their reply contended that the OA is hit by delay and laches. They further

submitted that the applicants have not impleaded proper parties in the OA. It is submitted that R5-9 were appointed on compassionate grounds as Group-D employees. They were again considered for Group-C posts in 2005 and were sent for training as Technician Grade-III in TRD Unit. After completion of 3 years' training, Aptitude Test was conducted for the respondent employees. The result of the Test of R5-9 was advised by Sr.Divisional Electrical Engineer/TRD and received on 17.7.2008, whereas the result of the trade test for the applicants was released on 13.8.2008. The time lag as alleged by the applicants is negligible. The allegation of the applicants that the remark written in pen is denied and clarified. It is further submitted that the promotional posting order of both the applicants and R5-9 are ordered together in the same order but the results of the trade test was received on 13.8.08 i.e about a month after the aptitude test results of R5-9. The representations submitted by the applicants were duly considered and disposed of by Annx.A1. They further submitted that in order to fill up 46 vacancies of Technician Gr.II in TRD Unit, alert notice was issued to the eligible employees including R5-7. It is submitted that TRD Unit in Trivandrum Division was formed in the year 2000 and seniority list was published for the first time on 7.1.2011. The Trade Test for Technician Gr.II was over and promotion orders were issued on 5.5.2011.

3 In the reply filed by R-5-9, it is submitted that they were recruited as Skilled Artisans Gr.III in the pay scale Rs.3050-4590 (Group-C) against 25% open market quota in the year 2005 and were under going 'in service training' till 2008 whereas the applicants were Group-D employees until they were promoted as Skilled Artisans Gr.III against 50% promotional quota in the year 2008 after passing the trade test. In the case of the answering respondents there was no trade test but only aptitude test and were regularised before the applicants joined as Technician Gr.III. Thus the answering respondents belonged to 2005 batch and the applicants belonged to 2008 batch. Therefore, there is no question of regulating the seniority of

74

the two batches except on the basis of date of appointment to the grade. It is stated that in the Annx.A2, seniority list, the answering respondents are shown above the applicants because of their date of entry in to the present grade is earlier than the applicants'. In the case of the applicants their date of entry in the present grade is Sept./Oct. 2008 and they are ranked below the answering respondents. The party respondents were neither called for nor subjected to any trade test after three years training. They further submitted that the party respondents are in the pay scale Rs.3050-4590 right from March/April 2005 whereas the applicants are in the pay scale Rs.3050-4590 from Sept/Oct 2008. To support their contention they have produced Annx.R-6(2). It is, therefore, contended that the party respondents entered the pay scale Rs.3050-4590 of the post of Skilled Artisan Gr.III three years earlier to the applicants hence they are senior to the applicants as per the I Part of Para 302 of IREM Vol.I and the other Parts of the Para 302 are not applicable in this case because answering respondents and the applicants belong to 2005 and 2008 respectively. They denied the applicability of para 303 of IREM in this case as the applicants were not sent to any Training School for the Training. They have quoted para 306 of IREM Vol.I in their favour.

4 The applicants filed rejoinder reiterating the facts stated in the OA and further stated that the appointment of R5-9 as Group-D employees and they cannot claim any right out of that appointment and to be considered again against 25% open market quota on compassionate grounds. It is further submitted that R5-9 are not to be considered for appointment by direct recruitment as they do not possess the requisite qualification. After completion of their recruitment process they were appointed as Apprentice Technicians Gr.III, which means as trainees. As per Railway Rules 103(iv) of Sec.B-1 of IREM means a person undergoing training with a view for employment in Railway Service and draws pay, leave salary, subsistence allowance or stipend during such time, but is not employed in or against a

substantive vacancy in the cadre of a branch of department. It is alleged that during the entire period of training of the answering respondents neither TR-I or TR-II certificate of competency was granted and thus they were not competent to discharge even the duties of a Khalasi Helper.

5 The learned counsel for the applicants has filed argument note to establish that the party respondents do not belong to the Electrical Department, even though a few of them are senior to the applicants in Group-D cadre. They were not in the feeder category and were working in other departments. In the case of the applicants, they belonged to the feeder cadre. They were initially appointed as Helpers Grade II in the Electrical (TRD) Wing in the scale Rs.2550-3200 and further promoted to the Semi-skilled Helper Gr.I in the scale Rs.2650-4000. To give force to his arguments he has indicated the date of appointment of the applicants and party respondents in Group-D posts.

6 On the contrary the learned counsel for the party respondents R5-9 filed the argument notes stating that the contentions of the applicant have no nexus to the question of determining the seniority of the applicants and the party respondents as it is governed by para 302 of IREM Vol.I.. He added that the party respondents joined the same working posts on 23.9.2008 itself i.e on the date of issuance of Annx.A8 order, which was earlier to the date of joining of the applicants.

7 We have heard the learned counsel appearing on both sides and carefully gone through the documents and arguments notes produced before us.

8 The undisputed facts are that the applicants commenced their services in the Group-D cadre as helpers Grade-II in the Electrical (TRD) Wing in the scale of pay of Rs. 2550-3200 during the period from November 2003 to November 2004. They were further promoted to the Semi-skilled position of Helper Grade I in the scale of Rs. 2650-4000 and, it is while holding that post, the applicants were further promoted to

ty

Technical Grade -III in the TRD Wing under 50% promotion quota by Annexure A-8 order. As far as the party respondents are concerned, they were initially appointed on compassionate ground in the Group-D cadre during the period from April 2003 to February 2004. By Annexure R-6(1) order dated 21.03.2005, they were appointed as Apprentice Technician-III (TRD) in the scale of Rs. 3050-4590 and posted to the stations noted against each for training. The applicants put forward a plea to place the promotees and direct recruits in alternative position, quoting para 302 of the Indian Railway Establishment Manual, (IREM) Vol. I which is extracted below:-

"302. Seniority in initial recruitment grades-

Unless specifically stated otherwise, the seniority among the incumbents of a post in a grade is governed by the date of appointment to the grade. The grant of pay higher than the initial pay should not, as a rule, confer on a railway servant seniority above those who are already appointed against regular posts. In categories of posts partially filled by direct recruitment and partially by promotion, the criterion for determination of seniority should be the date of regular promotion after due process in the case of promotee and the date of joining the working post after due process in the case of direct recruit, subject to maintenance of inter-se seniority of promotees and direct recruits among themselves. When the dates of entry into a grade of promoted railway servants and direct recruits are the same they should be put in alternate positions, the promotees being senior to the direct recruits, maintaining inter-se seniority of each group".

9 Per contra, the party respondents rely on Rule 306 of IREM Vol. I which reads as under:-

" 306. Candidates selected for appointment at an earlier selection shall be senior to those selected later irrespective of the dates of posting except in the case covered by paragraph 305 above"

(Para 305 deals with a case when a selected candidate joins after the prescribed period).

They also quoted para 103 (4) of IREM to show that they have been appointed by Direct Recruitment as defined in para 103 (5) of IREM.

Ty

"(v) Direct recruitment means the recruitment to the Group-C service of any person not already in the service of railways or any person in railway service who may be permitted to apply for appointment subject to possession of requisite qualifications along with outsiders according the procedure laid down for recruitment".

10 They also refuted the ground taken up by the applicants that Act Apprentices and Trainees can be appointed against substantive vacancy only prospectively on completion of training. According to them, they were already in the same grade of Technician-III during training and upon regularization they were not given any higher pay and allowances as was done in the case of applicants, who were promoted from Group - D to Group - C cadre. They claim that they entered in the grade and pay scale of Rs. 3050-4590 in the post of Skilled Artisans Grade III, three years ahead of the applicants and therefore they were ranked senior in the Annexure A-2 seniority list. A perusal of Annexure R-6(1) shows that having been selected for the post of Skilled Artisans in the scale of Rs. 3050-4590 and having accepted such offer the party respondents were appointed as Apprentice Technician-III(TRD) in the scale of pay of Rs. 3050-4590. It was further ordered they should undergo the prescribed training for three years from the date of joining, the new post. Their pay during the training is fixed as Rs.2820 in scale of Rs. 2820-70-2960 from the date of appointment to the said post. Further, Annexure R-6(2) gives the fixation of pay consequent on implementation of revised pay Rules, 2008. Their pay was re-fixed in PB-I in the scale of Rs. 5200-20200 with Grade Pay of Rs. 1900 w.e.f. 01.01.2006. However, scale is shown as proforma in the pre-revised scale of Rs. 3050-4590. The increment is added every year. In respect of the applicants shown in Annexure R-6(2) at Sl. No. 115,116,119, 121, 122, 123 and 124 they are also brought into revised PB-I with Grade Pay of Rs. 1800/-. Their pre-revised scale is shown as Rs. 2550-3200.

11 The issue flagged by the applicants is about revision of seniority vis-a-vis the party respondents. A perusal of Rule 302 and 306 extracted supra



shows that Rule 306 only should govern the field as the party respondents were selected for appointment at an earlier selection and hence they have to be treated as senior to those selected later. There is no doubt that the party respondents have to be treated as direct recruitees as they were appointed under compassionate grounds and hence can be recruited against only 5% vacancies in the permissible 25% quota for Direct Recruitment. During hearing, the counsel for the respondents submitted that it is usual practice of the respondents in the Railway Department to offer an appointment in the Group-D cadre in deserving cases immediately on the demise of the railway employee. Later on, as and when the vacancies arise in Group-C cadre they are given appointment in Group-C cadre like in the case of the party respondents. Hence, after having placed in the Group-C cadre in Technician-III in the pay scale of Rs. 3050-4590 they have to be treated as direct recruitees of the year 2005, who will have to fulfill the attendant condition of completing the three year in-service training to work independently in the working post in which they were initially posted. They were posted in the year 2005 and regularized in the same post in 2008. They completed their three year in-service training in March 2008 and appeared for the aptitude test, the result of which was published on 17.07.2008. As far as the applicants are concerned, they took the trade test in April-May 2008 and result was published in September 2008. The time lag between the conduct of the test and publication of the result was about four months in the case of both the applicants and the party respondents and hence though doubted by the applicants, no deliberate delay in releasing the result with an intention to help the party respondents can be attributed to the official respondents. In fact, it is seen from Annx. R-6(1) that applicants No. 4 and 5 were also offered appointment in Group-C cadre in 2005 along with the party respondents. Since, the promotions from the Helper in Group-D cadre to Technician III in Group-C was taking place faster they wanted to take the route of 50% promotion quota. The

74

applicants have quoted instances of those who are slightly senior to them being promoted in 2007.

12 The respondent, Railway Department has assigned seniority to the party respondents from the date of regularization and from the date of joining the promoted post for the applicants in consonance with the rules on the subject. We, therefore, do not find any infirmity or arbitrariness in the issuance of the Annexure A-8 seniority list. Applicants have failed to make out a case in their favour. The O.A is devoid of merits, and is accordingly dismissed. There is no order as to costs.

Dated 23rd January, 2012


K. NOORJEHAN
ADMINISTRATIVE MEMBER


Dr.K.B.S.RAJAN
JUDICIAL MEMBER

kkj.