

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application Nos. 174 and 742 of 2007

Wednesday, this the 8th day of July, 2009

C O R A M :

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

1. OA No. 174/2007:

1. P. Suma Bai,
D/o Sukumaran. N.P,
Senior Sweeper cum Porter,
Payangaadi Railway Station, Kannur Dist.
Residing at Railway Quarters,
Payangaadi, Kannur.
2. NK Jaya Dheran,
S/o K Narayanan Nair,
Senior Sweeper cum Porter,
Valapatanam Railway Station, Kannur Dist.
Residing at Railway Quarters,
Valapatanam, Kannur.
3. C Manoj Kumar,
S/o C Raju,
Senior Sweeper cum Porter,
Kumbala Railway Station, Kasargode,
Residing at near Kumbala Railway Station,
Kumbala, Kasargode District. Applicants.

(By Advocate Mr. Shafik, M Abdulkadir)

-Versus-

1. Union of India,
represented by the General Manager,
Southern Railway, Headquarters Office, Chennai.
2. The senior Divisional Personal Officer,
Palakkad Division, Southern Railway, Palakkad.



3. P Dharmalingam, S/o P Palani,
Sweeper cum Porter, Station Master Office, Sulur Road,
Muthukowndain, Puther, Sulur, Coimbatore Dist.
4. R Bhaskaran, S/o S Ramaswamy,
Sweeper cum Porter, O/O the Traffic Inspector,
Karur Junction, Karur District, residing at 47/A,
Railway Colony Post, Karur Junction.
5. Jayachandra Mohan, S/o John Velayudhan,
Senior Call Boy, Eorde Dist,
O/O the Station Manager, Erode, Railway Junction,
residing at 123/C, Railway Colony Post, Erode.
6. M Prabha Rani, D/o K Maran,
Station Master Office, Erode,
residing at 105 G, Railway Colony, Erode.
7. P Kanadaswamy, S/o M Palaniswamy,
Station Manager, Erigoor, 519, Samimala Road,
Periyathottam, Erode.
8. A Somu, S/o Angappan,
56, Senar Palayam, Valpadi, Erode Dist. PIN 639 056.
9. Gopalaswamy Sastri, Senior Luggage Porter,
JIT 1998, Tirupur, Pro/TO/TOP.
10. N Palani Samy,
S.No./ETK Railway Quarters,
Southern Railway,
Coimbatore Junction, S/o Jethaji Muthu,
Office of Station Master, Coimbatore Division.
11. R Chandran, S/o Ramakrishnan,
Luggage Porter, SMR/6/CBR, residing at
J/TI156, Coimbatore Junction (PRO/TE/TVP)233
Naiker Street Singanallur, Coimbatore-5.
12. S Padmavathy, Mahalekshmi Nagar,
W/o CW Subramaniyan, Cheran Nagar,
Gowdaman Palayam, Coimbatore-29. Respondents.

[By Advocate Mr. Sunil Jose (R1-2) and Mr. P. Santhosh Kumar (R3-12)]



2. OA No. 742/2007 :

1. T.P. Sobhana,
D/o. T.P. Narayanan,
Senior Sweeper Cum Porter,
Kannur South Railway Station,
Kannur District,
Residing at "Premnivas", Devi Road,
Pallikkunnu P.O., Kannur.
2. Saji Chandran,
W/o. Late K. Chandran,
Senior Sweeper Cum Porter,
Kanhagad Railway Station,
Kanhad District,
Residing at Quarters No. 21-B,
Railway Quarters, Kanhagad.
3. A. Usha,
W/o. Madhu,
Senior Sweeper Cum Porter,
Kuttippuram Railway Station,
Kuttippuram,
Residing at Arekathu House,
Perumpilavu P.O., Via. Karikkad,
Trichur District.

... Applicants.

(By Advocate Mr. Shafik M.A.)

- Versus -

1. Union of India, represented by the General Manager,
Southern Railway, Headquarters Office, Chennai.
2. The Chief Personnel Officer, Southern Railways,
Headquarters Office, Chennai
3. The District Railway Manager,
Palghat Division, Palghat
4. The senior Divisional Personal Officer,
Palakkad Division, Southern Railway, Palakkad.

... Respondents.

(By Advocate Mr. Sunil Jose)

The above Original Applications having been heard on 8th June, 2009 this
Tribunal on 8/7/2009 delivered the following :

[Handwritten signature]

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

As the legal issue involved and prayer in the above two O.As are identical, this common order is passed. Reference to documents, however, relates to OA No. 742/07.

2. In these OAs the applicants herein have challenged the Memorandum dated 25.01.07 (Annexure-A/1) whereby the respondents have selected and empanelled for promotion to the post of Ticket Collector in the scale of pay of Rs.3050-4590 against 33 1/3% promotional quota a good number of Group-D employees. The applicants were also general candidates who had participated in the test conducted and secured the requisite qualifying marks. The grievances of the applicants are three folds as under:-

- (a) The test which was normally conducted for a duration of a period three hours was reduced to a duration of one hour without prior notice; Again the practice of allowing the candidates to take with them the question papers has been stopped and question published has been retained though it does not a composite question and answer sheet.
- (b) No integrated seniority list has been prepared on the basis of which alone promotion of qualifying candidates should have been branded,
- (c) Though the Hon'ble High Court on an earlier occasion upheld the decision of this Tribunal in regard to preparation of seniority

strictly on the basis of date of entry without any co-relation with the scale of pay, the same does not appear to have followed while granting promotion.

3. The applicants have, therefore, prayed for the following reliefs:

- (a) to quash and set aside Annexure-A/3 notification whereby the applicants were invited for participation in the test;
- (b) call for the records leading to the issue of Annexure-A/1 and quash the same to the extent it is operated without publishing the integrated seniority list and the marks obtained in the written examination and inducts more than the required percentage of reserved class employees;
- (c) to declare the applicants are entitled for promotion as Ticket Clerks on the basis of the examination conducted as per Annexure-A/3;
- (d) to direct the respondents to publish the integrated seniority list and also to publish the marks obtained by the candidates.

4. Respondents have contested the OAs. According to them the applicants who belong to unreserved community have not secured the requisite qualifying marks to rank within the total number of vacancies, and hence, they cannot claim any promotion nor can challenge the promotion of others who have been promoted on the basis of the marks/rank obtained by them. It has also been submitted that at no point of time publication of integrated seniority list was ever made. There



was no Rule or Order that insisted for publication of marks obtained by the candidates in the selection. According to respondents, out of 213 candidates 60 candidates including 17 reserved category candidates secured more than 50% of marks in the written test and on record of service and were empanelled. Employees who secured 50 and above are selected against unreserved vacancies upto 60th rank based on the seniority and in so far as the reserved vacancies are concerned the qualifying marks were fixed at 40. According to Board's letter dated 14.8.2002 the SC/ST candidates appointed by promotion on their own merit owing to reservation or relaxation of qualification will not be adjusted against the reserved point of reservation. They would be adjusted against unreserved point. (Annexure-R/1 and R/2 refer).

5. In their additional reply also the respondents have stated that the applicants have not qualified in the written examination and therefore not considered for inclusion in the panel for selection to the post of Ticket Collector in the 33 1/3% quota. According to the respondents the marks obtained by the applicants in OA No. 174/07 are as under:

Applicant No.1 - 42%

Applicant No.2 - 48%

Applicant No.3 - 42%

6. The applicants have filed their rejoinder. It has been stated that as per notification no marks were specified. Any selection should be on the basis of the marks obtained in the examination. Since seniority and service record also form a part of the criteria for selection an integrated seniority list of qualifying candidates should also be published prior to selection. Such a publication is a mandatory especially when there is no viva-voce, and whose service records are

not satisfactory should have been eliminated from the list even prior to written examination. A perusal of the select list would show that staff involved with criminal cases, habitual unauthorized absentees, those involved in fraud cases and drunkards, who are consistently being punished all figured in the select list. Staff who are very juniors, who entered in the Operating Department from Engineering Department and Medical Department on transfer forgoing their seniority are seen selected ignoring the seniority of the applicants. The applicants in their rejoinder have also stated that the names of some individual who were indulged in gross indiscipline etc. were also included in the list. It has also been stated in the rejoinder that the conduct of the examination itself was not proper. The respondents have issued a letter dated 16.2.2006 stating that none of the candidates had qualified in the examination. Annexure-A/6 refers.

7. In the reply to rejoinder the respondents have stated that in so far as the cases of disciplinary proceedings are concerned, the rules provide for all the eligible candidates who participated in the written examination and there is no bar for candidates under cloud to take part in the written examination. It is only after causing the written examination the selection committee goes through the service records of the successful candidates and those who are undergoing major penalty and/or in respect of whom major proceedings are initiated or have been contemplated are excluded form the panel. As regards naming of some individuals it has been sated that the same are baseless and not supported by any document.

8. The applicants have filed additional rejoinder to the aforesaid reply.

9. The private respondents were represented by the counsel but no separate reply had been filed on their behalf.

8

10. Counsel for the applicants argued and his challenge is based on the following points:

- [a] Before preparing the select panel irregularities have been committed inasmuch as there is no marks in the question paper portion and notification also did not specifically indicate any qualifying marks.
- [b] Integrated seniority is absolutely essential as any promotion can be made from out of the qualified candidates strictly on the basis of such integrated seniority list. Non-publication of such integrated seniority disable the applicants to appear in their correct position.
- [c] The applicants have faired very well and qualified, whereas the reply statement stated that they have not qualified.
- [d] The Tribunal in its order dated 21.6.2001 in OA No.1761/98 dealt with the Rule position relating to preparation of seniority list on the basis of pay scale of various feeder categories instead of the date of joining in respect of the respective feeder categories and ultimately quashed the panel of Ticket Collector prepared on the basis of the seniority according to the scale of pay and directed that the applicants therein should be placed in proper seniority position and promotion effected accordingly. This has been challenged by the respondents before the Hon'ble High Court in OP No.14500/2003 which has been dismissed on 27th November, 2007. The decision of the high Court in this regard is

 as under:

" Going by Rule 180 of the Manual, we find that the seniority should be reckoned with reference to the length of service. A reasonable construction, which should be placed on the Rule, is that it should be the length of service in Group D cadre. The petitioners, on the other hand, would submit that persons with higher scale of pay in Group D cadre should be treated as seniors to those in the lower scale of pay, notwithstanding the length of service. The said contention is not supported by any of the above said Rules. Further, if it is accepted, it will work out serious prejudice to the persons in the lower scale of pay with longer service and persons with a few months service will steal a march over them, provided the seniors are not drawing a higher scale of pay, though in Group-D cadre. Further, as rightly pointed out by the learned counsel for the first respondent, all the promotions in the 33.33% quota reserved will be cornered by particular stream and others will be denied promotion. Therefore, we find nothing illegal with Exhibit P1 order of the Central Administrative Tribunal. We agree with the reasons and conclusions of the Tribunal.

In the result, the original petition fails and it is dismissed."

If the selection in the instant case is based on an integrated seniority list prepared on the basis of scales of pay, the same runs diagonally opposite to the decision of the Hon'ble High Court and as such the panel should be quashed.

11. In reply to the above, counsel for the applicants has submitted that there has been excessive number of SC candidates in the Panel keeping as many as 70 unreserved candidates, this is due to an erroneous procedure followed by the respondents in preparing the panel of candidates of all general vacancies first, wherein many SC candidates were accommodated at the cost of other qualified general candidates.

12. Counsel for the respondents submitted that preparation of panel and

82

promotion are strictly in accordance with the procedure laid down. He has also made available the relevant records relating to preparation of select list and issue of orders.

13. Arguments were heard and documents perused. The Records submitted have also been perused with reference to the following:

- [a] The criteria adopted for selection and marks obtained as qualifying marks;
- [b] The basis of preparation of integrated seniority list;
- [c] The order in which the vacancies for general and reserved candidates have been filled up; and
- [d] The marks obtained by the applicant.

14. Perusal of the record in respect of the above revealed as under:

In all, there were 78 vacancies of which 60 were general candidates, 12 SC candidates and 6 ST candidates. Applicants in OA 174/2007 have all got less than 50% in the written examination (42%, 48% and 42% respectively) The applicants in 742/2007 have secured respectively 56% 49.5% and 52%. Thus, only two who have secured 50% and more, could be considered for promotion, provided these were within the sixty numbers in the seniority list for unreserved category. Their seniority position are as under:

- (a) Applicant No.3 is 92,
- (b) Applicant No.2 is 93, and
- (c) Applicant No.1 is 105.



15. Seniority of the general candidates who have been empanelled viz, Jyoti Das is 84. There are as many as 17 SC candidates as per seniority list, who secured 50% and above consequent to which they have been accommodated against the general vacancies. After accommodating such SC candidates, other SC and ST candidates who have secured 40% and above, but below 50% were empanelled and out of 18, 16 were available. The remaining two have been filled up by empanelling the best amongst the candidates.

16. The following questions are to be answered now:

[a] Whether the seniority list prepared is in accordance with the decision of the High Court in OP No. 14500/2003 referred to above. Only if the seniority list prepared is in conformity with the above decision then the panel can be held as rightly prepared from the seniority point of view.

(b) Whether the respondents are correct in accommodating as many as 17 reserved candidates against the general vacancies and thereafter going in for filling up all the reserved vacancies whereby instead of 18, the total SC and ST candidates happened to be 35 (Almost total number of reserved vacancies).

17. Since the records produced did not indicate the manner in which the integrated seniority has been prepared, it is for the department to verify the same and to ensure that the seniority list prepared is strictly on the basis of date of entry in the feeder cadre as held by the Hon'ble High Court in OP No.14500/03 (supra). If the seniority list has been prepared other than the above method especially on the basis of higher pay scale, which has been specifically condemned

by the Hon'ble High Court, the same should necessarily be held to be invalid. This may entail review of the entire panel and publication of the fresh panel purely based on integrated seniority list prepared on the basis of the date of entry in the feeder cadre.

18. As regards filling up the general vacancies by the SC and ST candidates, recently in OA 161/07 (decided on 01.05.2009) this Tribunal has passed the following order:

"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

62

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."

19. The procedure, as contained in the aforesaid order, should be followed in the instant case as well. If so followed, it might result in some of the promoted reserved candidates facing reversion in which event it is for the respondents to



suitably adjust them against any other vacancies available under SC quota or else follow the procedure for reversion. For, in all expectation, the respondents would have administered a word of caution in the promotion order as to the existence of this case.

20. Though the counsel has argued about certain infirmities and deviation from the practice of conducting examination, those objections or challenges which ought to have been registered immediately after the written test was conducted cannot be entertained at this stage, more so, when the applicants have failed in the test. In this regard the decision of the Apex Court *K.H. Siraj v. High Court of Kerala*, (2006) 6 SCC 395, is appropriate to be cited and the same is as under:-

It was so held by this Court in para 9 of *Madan Lal v. State of J&K* (1990) 3 SCC 486 as under:

"9. Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Up to this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In *Om Prakash Shukla v. Akhilesh Kumar Shukla*³² it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner."

21. Notwithstanding the lack of merit of this ground, in view of the other aspects as stated above, review of the panel may be warranted and the applicants who have secured 50% and more may have to be considered for promotion if they fall within the number of vacancies, on the basis of the seniority list prepared as per the date of their joining the feeder cadre. Taking into account all the aspects of the case and also the decision of the Hon'ble High Court in OP No.14500/03 as well as the decision of the Tribunal in OA No.161/07, these OAs are to be disposed of giving a direction to the respondents to review the integrated seniority list and prepare a fresh panel for selection to the post of Ticket Collector (33-1/3 % PRQ) and if the applicants who have secured 50% or more i.e. Applicants Usha.A and Shobana T.P. Figure within the seniority limited to the number of vacancies under the reserved quota, they may be promoted as per the panel. O.A 174/2007 where none of the applicants i.e. Jayadhevan, Suma Bai and Manoj Kumar C has qualified, is dismissed. The case of Saji Chandran in OA 742/2007 is also dismissed.

22. As regards the other two applicants namely, T.P. Sobhana and A. Usha, in OA 742/2007, their case is disposed of in the manner specified in the succeeding paragraph.

The impugned order, viz. Order dated 25.1.07, Annexure-A/1, is quashed and set aside for preparation of a fresh panel as mentioned above.



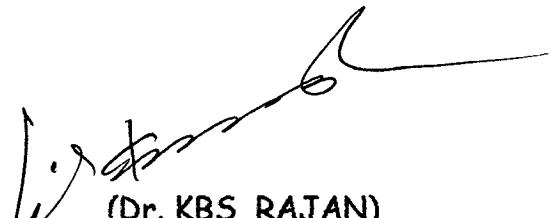
The Respondents are directed to undertake the following steps:

- [i] to prepare an integrated seniority list in accordance with the decision of the High Court in OP No.14500/03;
- [ii] to prepare the statement of vacancies which may reflect the slot for reserved candidates in chronological sequence;
- [iii] to prepare a panel for filling up the general vacancies as well as the SC and ST vacancies as per the statement prepared vide [ii] above. In that even, the first available SC vacancy shall be filled up by an SC candidate as per seniority list irrespective of the fact that he has secured 50% and above.
- [iv] If there be any SC/ST candidates, who have already been promoted on the basis of the earlier panel, to take suitable action as deemed necessary either to accommodate them or to revert them in accordance with law.

23. The above order shall be complied with within a period of six months from the date of communication of this order. No costs.

(Dated, the 8th July, 2009)


(K NOORJEHAN)
ADMINISTRATIVE MEMBER


(Dr. KBS RAJAN)
JUDICIAL MEMBER