

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 175 / 2006

Wednesday, this the 16th day of July, 2008.

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HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE DR K.S.SUGATHAN, ADMINISTRATIVE MEMBER

1. M.P.Vinod,
Junior Engineer Grade II,
Electric Loco Shed,
Southern Railway, Erode.
2. Raghunathan P.S.
Junior Engineer Grade II,
Electric Loco Shed,
Southern Railway, Erode.
3. Sumesh K.M,
Junior Engineer Grade II,
Electric Loco Shed,
Southern Railway, Erode.Applicants

(By Advocate Mr PV Mohanan)

v.

1. Union of India represented by the
Secretary,
Railway Board,
Rail Bhavan, New Delhi.
2. Chief Electrical Engineer,
Southern Railway,
Park Town, Chennai.
3. Divisional Railway Manager,
Southern Railway,
Palakkad.
4. K.Pounraj,
Junior Engineer Grade I,
Electric Loco Shed,
Southern Railway, Erode.
5. N.Kesavamoorthy,
Junior Engineer Grade I,
Electric Loco Shed,

Southern Railway, Erode

....Respondents

(By Advocate Mr Sunil Jose for R.1 to 3)

This application having been finally heard on 12.6.2008, the Tribunal on 16.7.2008 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The Applicants are aggrieved by the Annexure A-2 office order dated 4.1.2005 by which the private respondents 4&5 have been promoted as Junior Engineer (JE for short) Gr.I. They are also aggrieved by Annexure A-3 office order dated 9.6.2005 by which respondents 4 & 5 were allowed to continue as JE Gr.I on ad hoc basis though their promotion on regular basis made vide the Annexure A-2 order dated 4.1.2005 was revised.

2. Applicants are Diploma holders in Electrical Engineering. They belong to General category and were appointed as JE Gr.II from the direct recruitment quota (DRQ for short) in the year 1999. Party respondents are also similarly placed, except for the fact that they belong to SC/ST category. Applicants 1 to 3 have been assigned the seniority positions at 12, 13 and 14 and the respondents 4&5 have been assigned seniority positions at 15 and 16 in the Annexure A-1 seniority list of JEs Gr.II Electrical Branch in the scale of Rs.5000-8000. Both the applicants as well as the private respondents were eligible to be promoted to the post of JE Gr.I in the scale Rs.5500-9000 on the basis of their seniority-cum-suitability.

3. The Railway Board vide letter No.PC/III/2003/CRC/6 dated 9.10.2003 issued orders for restructuring of Group 'C' and 'D' cadres with revised percentages of posts and mode of implementation. As per Clause 14 of the said order:



"The existing instructions with regard to reservation of SC/ST wherever applicable will continue to apply."

4. As a consequence of the restructuring of the cadre of Junior Engineer Gr.I in the scale of pay of Rs.5000-9000 of Electrical TRS Unit, the sanctioned strength of the JE Gr.I was revised upwards from 64 to 69. The Unit-wise existing sanctioned strength as on 31.10.2003 and the revised sanctioned strength with effect from 1.11.2003 are as under:

<u>"Units</u>	<u>Existing as on 31.10.2003</u>			<u>Revised as on 1.11.2003</u>		
	P	Ty	Total	P	Ty	Total
HQRS	2	0	2	1	0	1
RS/AVD	14	5	19	13	7	20
RS/TBM	12	3	15	13	3	16
ELS/AJJ	0	16	16	8	12	20
ESL/ED	0	12	12	0	12	12
	28	36	64	35	34	69"


5. Thereafter, the Chief Personnel Officer, Southern Railway vide Annexure R-1 letter dated 29.12.2004 promoted 32 JE Gr.II of TRS Unit as J.E. Gr.I including the respondents 4 & 5 after providing reservation to SC/ST as per rules. Out of them, including the private respondents, 7 were posted to the ELS/ED Unit as against the sanctioned strength of 12. Thereafter, the Divisional Personnel Officer, Palghat Division issued a separate Annexure A-2 order dated 4.1.2005 posting all the above 7 persons to ELS/ED Unit. However, due to some errors in interpolation of seniority of JE Gr.II of various Divisions in order to assess their eligibility to the post of JE Gr.I, the names of nine seniors, who were eligible for promotion as JE Gr.I were left out and instead five juniors including the respondents 4 & 5 were considered for promotion. On representation from the affected employees the said mistake was found out and the names of three JE Gr.II who were erroneously promoted as JE Gr.I vide Office Order dated

29.12.2004 (viz, 2 unreserved employees posted from Avadi to Arakkonam and one reserved employee posted from Tambaram to Erode) who yet to join the promoted posts, were deleted vide Annexure A-3 order of the Chief Personnel Officer dated 9.6.2005 duly issuing them notice and nine seniors, who were eligible for promotion as JE Gr.I but left out erroneously were promoted as JE Gr.I, adjusting them against the unfilled vacancies and the vacancies against which the employees promoted earlier did not join. Further, while deleting the names of two unreserved and one reserved employees who were ineligible for promotion as JE Gr.I, the promotions of two other employees viz, Shri K Pounraj (SC) and Shri Kesavamoorthy (ST) who had already found to be wrongly promoted to the post of JE Gr.I, ELS/ED, were allowed to be continued on ad hoc basis in view of the availability of vacancies in the cadre of Jr Gr.I against SC point and higher grade vacancy in the categories of Section Engineers/Senior Section Engineers, against ST Point and in view of the acute shortage of manpower in ELS/ED.

6. The applicants have taken the following grounds for the aforesaid relief:

(A) The applicants are seniors to respondents 4 and 5 in the category of JE.Gr.II and is entitled to be promoted to the grad of J.E. Gr.I in preference to respondents No.4 and 5. Overlooking the seniority of the applicants, respondents 4 and 5 are promoted, thereby Article 16(1) of the Constitution of India.

(B) The post based roster is governed the field if reservation is pressed into service. Respondents No.4 and 5 were promoted against roster point reservation, which as later found irregular. Seniors to respondents No.4 and 5 were left out. This mistake has been rectified later by promoting eligible candidates and declaring the promotion of the respondent as irregular. The posts thus set apart for SC/ST candidates are already promoted and occupied the field and promotion of respondents No.4 and 5 are withdrawn.



Retention of the respondents 4 and 5 in the category of JE Gr.I over and above the roster reservation would amount to excessive reservation and is thus discrimination in reverse, violating the right of the applicants for promotion.

(C) Even on adhoc promotion, the seniority has to be regarded. The substantive post of the JR Gr.I are now held by respondents No.4 and 5 on adhoc basis violating the rights of the applicants to hold the higher substantive posts.

(D) Clause 14 of the restructuring order enabling to fill up the post by roster point reservation has been set aside by this Tribunal and directed to withdraw the order of promotion which as based on reservation roster. Thus promotion to the posts of JE.I must be based on seniority in the approved list and not on reservation points.

7. In the reply statement, the respondents have gave the following explanations to aforesaid grounds:

(i) As regards ground A it is submitted that, the applicants belong to unreserved category and respondents 4 and 5 belong to reserved category. The respondents 4 & 5 were promoted on adhoc measure against the shortfall vacancies of SC and ST and in view of the shortage of supervisory manpower at ELS/ED. The applicants cannot therefore, claim preference over respondents 4 and 5.

(ii) As regards ground B, it is submitted that it is true that while issuing , orders for promotion as JE Gr.I, the employees senior to respondents 4 and 5 were left out, due to oversight, which was purely unintentional. However, this error was rectified later, by promoting the eligible employees and declaring the promotion of the respondents 4 and 5 as on ad hoc measure. The decision too promote on ad hoc measure was taken in view of the acute shortage of supervisory staff in ELS/ED and shortfall in the category of SC in JE Gr.I and in the category of ST in the higher grades and further considering that the respondents 4 and 5 had already taken up the higher responsibilities. Thus the percentage of reservation has been correctly followed and there is no excess reservation, as alleged by



the applicants, in retaining the respondents 4 and 5 who belong to reserved community, on adhoc measure. The right of the applicants for promotion has not been violated at all.

(iii)As regards Ground C, it is humbly submitted that even for ad hoc promotions, rules of reservation have to be followed as per the guidelines .of Railway Board. Further, the promotion of respondents 4 and 5 as JE Gr.I has been treated as on ad hoc measure duly adjusting them against shortfall vacancy in the category of SC in the grade of JE Gr.I and against the shortfall vacancies in the category of ST in the higher grades.

(iv)As regards Group D, it is submitted that the common orders of this Tribunal in O.A.601/2004 and connected cases has not become final as it was taken in appeal before the Hon'ble High Court of Kerala and the Hon'ble High Court was pleased to order stay as is evident from Anenxure R-2. In the circumstances, the reliance placed by the applicants in the said order of this Tribunal is of no held to them.

8. During the course of the arguments the learned counsel for the applicants Shri PV Mohanan has stated that the private respondents who are juniors to the applicants have been promoted against the restructured vacancies of JR Gr.I and no reservation for SC/ST candidates could have been granted to restructured vacancies as held by the Tribunal in O.A.601/2004 and connected cases decided on 21.11.2005 and O.A.155/2006 and connected decided on 6.11.2007.

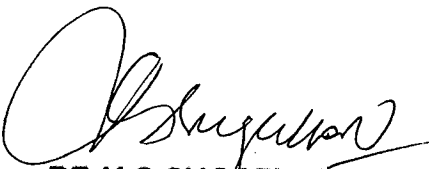
9. We have heard Shri PV Mohanan, counsel for applicant and Shri Sunil Jose, ACGSC for respondents 1 to 3. We have also perused the pleadings of the parties. It is seen that the Annexure A-4 representation dated 20.12.2005 by one of the applicants (Shri Vinod M.P.) is very vague. The earlier representation dated 16.6.2005 stated to have been sent by the said applicant earlier is not on record. None of the facts and reasons mentioned in the O.A have been mentioned in the said representation. There are also no

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representations by the other two applicants. An Original Application is filed before this Tribunal for the redressal of the grievance for which the applicants have made proper representation bringing the full facts of the case. In the representation filed by Shri Vinod (Annexure A-4) he has only requested the respondents to promote him as his juniors have been promoted. There is no mention about the applicability of reservation against the restructured vacancy as raised by the applicant in this O.A. Therefore, it cannot be said that the applicants have availed of the departmental remedies available to them as required under Section 21 of the AT Act, 1985.

10. We, therefore, dismiss the O.A as premature. The applicants may make a detailed individual representations to the respondents giving all the relevant facts and rule position within two months from the date of receipt of this order. The respondents, on receipt of any such representations, shall consider them in accordance with the rules, instructions, order/judgments on the subject within a period of two months thereafter. The applicants will be at liberty to reagitate the matter if they are still ^{un}satisfied by the reply received from the respondents or no proper reply is given by the respondents.

11. There shall be no order as to costs.


DR K.S.SUGATHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER