



**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application Nos. 833/05, 861/05 & 2/2006

Thursday, this the 31st day of August, 2006

C O R A M:

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

1. O.A. No. 833/05

G. Karunakaran,
S/o. P. Gopalan,
Box Boy,
Chief Travelling Ticket Inspector (Sleeper) Office,
Southern Railway, Trivandrum,
S.C. Bhavan, Edayadi,
Bhoothakulam P.O., Kollam.

... Applicant.

(By Advocate Mr. P.V. Mohanan)

versus

1. Senior Divisional Personnel Officer,
Divisional Office, Personnel Branch,
Southern Railway, Thycadu,
Trivandrum : 1
2. Chief Personnel Officer,
Southern Railway, Chennai.
3. K. Soman,
Pointsman II, Southern Railway,
Cheppad.
4. D. Thankachan,
Gate Keeper II
Southern Railway,
Mayyanad.
5. C.F. George Carvalho,
Gate Keeper II
Southern Railway,
Mayyanad

6. G. Vishwanathan Pillai,
Gate Keeper II,
Karunagapally,
Southern Railway.

7. T.P. Unnikrishnan,
Pointsman II,
Southern Railway,
Guruvayoor.

... Respondents.

(By Advocate Mrs. Sumathi Dandapani dor R/1 & R/2 and
Mr. Martin G. Thottan for Mr. R/7.)

2. O.A. No. 861/2005

K. Radhamani,
D/o. Kesavan Pillai,
Senior Parcel Porter,
Office of the Station Manager (Parcel Porter),
Southern Railway, Trivandrum Division,
Residing at Arannya, Kuttikadu Lane,
Near Railway Station, Chirayinkil P.O.,
Trivandrum District.

... Applicant.

(By Advocate Mr. P.V. Mohanan)

v e r s u s

1. Senior Divisional Personnel Officer,
Divisional Office, Personnel Branch,
Southern Railway, Thycadu,
Trivandrum : 1

2. Chief Personnel Officer,
Southern Railway, Chennai.

3. A. Joy, Pointsman Grade II,
Southern Railway, Irumpanam.

4. P.V. Preman, Pointsman Grade II,
Southern Railway, Guruvayoor.

5. K.P. Mani, Assistant Cook,
Southern Railway, Trivandrum.

6. K.V. Raman, Assistant Cook,
Southern Railway, Trivandrum.
 7. M. Gafoor, Assistant Cook,
Southern Railway, Trivandrum.
 8. A.R. Rama Narayanan, Assistant Cook,
Southern Railway, Trivandrum.
 9. M.P. Sudersanan, Pointsman II,
Ernakulam, Southern Railway.
 10. K. Ravindran Nair, Gate Keeper,
Kayamkulam Junction, Southern Railway.
 11. T.D. Antony, Gate Keeper,
Southern Railway, Mayyanad.
 12. D. Thankachan, Gate Keeper II,
Southern Railway, Mayyanad.
 13. C.F. George Carvalho, Gate Keeper II,
Southern Railway, Mayyanad.
 14. G. Vishwanathan Pillai,
Gate Keeper II,
Karunagapally,
Southern Railway.
 15. T.P. Unnikrishnan,
Pointsman II,
Southern Railway,
Guruvayoor.
- ... Respondents.

(By Advocate Mrs. Sumathi Dandapani for R/1 & R/2 and
Mr. Martin G. Thottan for R/4, R/7-9, R/11 and R/15)

3. O.A. No. 2/2006

1. M.B. Sobhakumari,
W/o. Late P.S. Ramani,
Retiring Room Attendant,
Southern Railway, Ernakulam South.

2. P. Balan, S/o. P. Chinnan Nair,
Server, Vegetarian Refreshment Room,
Southern Railway, Ernakulam South.
3. T. Sankunny, S/o. Achuthapanicker,
Server, Trivandrum-Veravel Express Batch No.1,
Southern Railway, Thiruvananthapura -14.
4. N. Chelladurai, S/o. U. Ninan,
Server, Trivandrum-Veravel Express Batch No.VI,
Southern Railway, Thiruvananthapura -14.
5. K.T. Sundaram, S/o. K.T. Mukundan,
Helper-II, Traction Distribution,
Southern Railway, Chalakkudy
6. M.K. Allesu, S/o. M.P. Kochappan,
Helper-II, Traction Distribution,
Southern Railway, Chalakkudy
7. Mathew Joseph, S/o. Dominic Joseph,
Server, Kerala Express Batch No.III,
Southern Railway, Thiruvananthapuram - 14
8. M.R.Sethuraman, S/o. G. Ramakrishnan
Server, Kerala Express Batch No.VIII,
Southern Railway, Thiruvananthapuram - 14.
9. K.Sathyanathan, S/o. Damodaran Nair,
Sever, Parasuram/Venad Express Batch No.III,
Southern Railway, Thiruvananthapuram - 14.
10. K.K. Narayanan, S/o. Narayanan Nambiar,
Sever, Parasuram Express Batch No.III,
Southern Railway, Thiruvananthapuram.
11. P. Gopalan, S/o. Andy
Server, Southern Railway, Base Depot,
Thiruvananthapuram
12. M. Ramakrishnan, S/o. C. Damodaran Nair,
Server, Kerala Express Batch No.II,
Southern Railway, Thiruvananthapuram.

13. P. Venugopalan Nair, S/o. Parameswaran Nair,
Retiring Room Attendant, Southern Railway,
Kottayam Railway Station.
14. K.M. Ramakrishnan, S/o. Venkiteswaran Embranthiri,
Server, Parasuram Express Batch No. III,
Southern Railway, Thiruvananthapuram.

... Applicants.

(By Advocate Mr. P.K. Madhusoodhanan)

versus

1. The Sr. Divisional Personnel Officer,
Southern Railway , Divisional Office,
Thiruvananthapuram
2. Union of India , through the General Manager,
Southern Railway, Park Town PO, Chennai-3.
3. A.P. Asokan, Points Man,
Southern Railway, Cochin Harbour Terminus Yard.
4. P.S. Varadarajan,
Senior Gate keeper (Eng) Southern Railway, Varkala.
5. A. Sasidharan,
Points Man-I, Southern Railway, Trivandrum.
6. M. Mohammed Ismail,
First Class Coach Attendant, Southern Railway, Trivandrum.
7. M.P. Sudarshanan,
Points Man II, Southern Railway, Trivandrum.
8. P.P. Joshva,
Gateman, Southern Railway, Mattancherry Halt.
9. K.P. Satheesan,
Gateman, Southern Railway, Mattancherry Halt.

10. A.G. Bhuvanadasan,
Gatekeeper, Southern Railway, Pudukkad.
11. A. Joy,
Points Man II, Southern Railway, Irumpanam.
12. P.V. Preman,
Points Man II, Southern Railway, Guruvayoor.
13. P.S. Suresh Babu,
Gatekeeper, Southern Railway, Kumbalam.
14. K.P. Mani,
Assistant Cook, Southern Railway, Trivandrum.
15. K.V. Raman,
Assistant Cook, Southern Railway, Trivandrum.
16. M. Gafoor,
Assistant Cook, Southern Railway, Trivandrum.
17. A.R. Ramanarayanan,
Assistant Cook, Southern Railway, Trivandrum.
18. K. Raveendran Nair,
Gatekeeper, Southern Railway, Kayamkulam Junction.
19. T.D. Antony. T.D.,
Gatekeeper, Southern Railway, Kumbalam.
20. D. Thankachan,
Gatekeeper II, Southern Railway, Mayyanad.
21. George F. Carvalho,
Gatekeeper II, Southern Railway, Mayyanad.
22. G. Viswanatha Pillai,
Gatekeeper, Southern Railway, Karunagappally.
23. T.P. Unnikrishnan,
Points Man II, Southern Railway, Guruvayoor.
24. K. Soman,
Points Man II, Southern Railway, Guruvayoor.

25. N.A.Sarojini,
Traffic Porter, Southern Railway, Trichur. ... Respondents.

(By Advocate Mrs. Sumathi Dandapani for R/1 & R/2 and
Mr. Martin G. Thottan for R/3-5, 7, 8, 16, 17, 19, 12 & 23)

ORDER

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

As all the three O.As relate to the same subject matter and the impugned orders also being the same, a common order is passed in respect of these O.As.

2. Brief History of the case in OA 833/05 is as under:-

The applicant in OA No. 833/05 entered the Railway Services as a Box Boy in the Traffic Department in 1980. He is 8th passed and belongs to SC. From 1981 to 1986, he had worked as a Sweeper cum porter and on request he was transferred and posted as Box Boy at the office of Chief Traveling Ticket Inspector in 1987. By order dated 4th June, 2003, the applicant was promoted to the scale of 2650 - 4000 in Traffic Department. However, he was retained for duties as Box Boy. On restructuring, effecting from 01-11-2003, respondents had afforded pay scale of Rs 2650 - 4000 to PM II. The applicant was asked to function as commercial courier against a retirement vacancy from 31.01.2004, vide order dated 19-01-2004. The applicant has unblemished

record of service with certain commendations/awards from higher ups. Respondents Nos. 4 to 7 working as Pointsman II are admittedly juniors to the applicant as could be evidenced from Annexure A-1 list of promotees. R-3 also entered the service as Traffic Porter only after 1980 and was later promoted as PM II. Provision exists for promotion from group D employees to the post of Ticket Collectors to the extent of one-third of the vacancies and the total number of posts now available are 23. The post carries pay scale of Rs 3050- 4590. By order dated 27th November, 2002, It was proposed to conduct selection to fill up the said one-third posts from among suitable group D staff of Operating, Commercial and Catering Department. The selection consisted of written test and viva voce. In so far as viva is concerned, there was no break of the 20 marks allotted for viva. The applicant was the topper in the written test and was called for viva. Others called for interview, inter alia included respondents No. 4 to 7. Even, R-3 was called for interview but on relaxed standard. By order dated 09-11-2005, a select list of 22 personnel was published and while respondents 3 to 7 could figure in, the name of the applicant was missing in the select list. Non inclusion of the applicant when he is senior is illegal. Hence this O.A.

3. Case of the applicant in OA No. 861/05 is as under:-

The applicant, an S.S.L.C. pass, commenced his services as Chart Assistant as a casual labour in 1979 in the scale of Rs. 196-232 and was empanelled and appointed as Group D staff in Traffic and Commercial department in the said scale vide order dated 18.10.1981 and thus, her services from 1979 were regularized. By order dated 03-07-1982, the applicant was also confirmed in the said post. Later on, by order dated 31-07-1985, the applicant

was promoted as Parcel Porter (pay scale 200 - 250). By order dated 27th November, 2002, it was proposed to conduct selection to fill up the said one-third posts from among suitable group D staff of Operating, Commercial and Catering Department. The selection consisted of written test and viva voce. In so far as viva is concerned, there was no break of the 20 marks allotted for viva. After the commencement of selection process, the official respondents had, by order dated 4-6-2003 promoted private respondents 9 to 15 as pointsman Gr. II (2650 - 4000) but the applicant was not considered to that post. Nor was the applicant granted any ACP after completion of 24 years of service. Gender discrimination is writ large on the very face of the acts of the respondents. No questions relating to functional responsibilities were asked and all that was considered was service records and the service records of the applicant are upto the mark, as no adverse remarks were ever communicated. Though the applicant had faired well in the viva also, she was not included in the select list to the post of Ticket Collector, while her juniors were selected. There are certain fundamental legal lacunae in the preparation of panel. Year wise selection was not made, which is mandatory. Without preparing a seniority list of all group D employees, the selection has been made and the same is therefore, illegal. Representation against the non inclusion of the name of the applicant had been made on 10-11-2005. As by order dated 6th December, 2005, private respondents and others selected were to be sent for training, and as the applicant has been omitted in the select list, this OA is filed.

4. Case of the applicants in OA 2/06:

Applicants, 14 in number, are all working in the catering

department in various capacities and are all Group D employees. By notification dated 27-11-2002, followed by circular dated 3.7.2003 it was proposed to fill up 23 vacancies of TC/TNC under the one third promotion quota. Selections were to be made, as stipulated in para 189 of IREM, which inter alia stipulates that all those who qualify in the written test and viva would be arranged in the order of their seniority and promotion would be made accordingly. On their qualifying, and on the basis of the category (general or reserved), the names of the applicants figured in the list of candidates called for viva voce. Name of respondent No. 25 did not figure in, in the said list. The viva lasted for just a few minutes and no questions were asked, but only records were verified and the applicants did not have any adverse remarks. The final list of selection contained the names of juniors while the applicants' names were missing in the select list. Hence, this OA. The list is also vitiated on the ground that the same had not been prepared on the basis of year-wise vacancies.

5 Respondents have contested the O.A. According to them, the applicants have not proved by any documents that they are senior to those who have been selected and appointed as T.Cs. Certain technical objections such as relief(s) not being consequential and non-joinder of necessary parties have been raised by them. According to the respondents, seniority in Group D is arranged in the order of the scales of pay viz., those who are in the higher pay scale are en bloc senior to those in the lower pay scale, irrespective of their joining the respective posts. Thus, after conducting the written test and viva voce, the list of those who have obtained the qualifying

marks has been arranged in the order of their seniority and selection has been made accordingly. In so far as SC/ST candidates are concerned, as per rules, they were to be given certain concession, such as 10% relaxation and also best amongst the failed candidates and after giving such concessions, the list has been arranged, again, on the basis of seniority, i.e. higher pay scale holders being senior to lower pay scale holders and selection made.

6. While the above is the common contention of the respondents, depending upon the narration of facts in each O.A., the respondents have also furnished their reply and briefly the same are as under:-

- (a) Reply in respect of OA No. 833/05: Applicant has not proved that the private respondents were juniors to him. In fact they are seniors to the applicant as on the date of Annexure A/4 order (Date of publication of promotion order) . The fact that the applicant belongs to SC community is admitted. He was promoted as Gatekeeper in the scale of 2650 - 4000 in June, 2003. But the applicant did not assume duties there and he continued to work in the lower grade only. Respondent No. 3 who was also promoted to the grade of 2650 - 4000 in June, 2003, did carry out the order by joining the promoted post on 14-11-2003. The applicant was later promoted under restructuring scheme w.e.f. 01-1-2003 vide Order dated 29-02-2004. Seniority is based on the basis of the date of promotion which the individuals carried out, which in the case of the private respondent happens to be is anterior to the date of promotion of the applicant. As regards the procedure adopted at the time of viva voce, the applicant did not question the same immediately after viva and questioned only when his name did

not figure in. In any event, there is no illegality in the conducting of the viva voce.

- (b) Reply in respect of OA No. 861/05: The applicant was empanelled for appointment in Group D services on 29-06-1982 and thereafter, she was appointed as Platform Porter w.e.f. 01-11-1982. She was not promoted as PM II as she could not qualify in the medical fitness test for the said post and so far as non grant of ACP, the same is not the issue in this case. There was no gender discrimination. Some of the Private Respondents have also submitted their reply almost on the same lines as above.
- (c) Reply in respect of OA No. 2/06. Prayers are not consequential. It is for the applicants to prove that the private respondents are not seniors. As regards non inclusion of the name of the 25th respondent for viva voce, by a separate communication, his name was published after ascertaining that there was a short fall to be filled up from ST Community. The applicants have not questioned the procedure adopted for conducting the viva voce. Year wise panel aspect cannot be agitated as there was no prayer to that extent in the OA. That the selected ones were promoted to the higher grade in Group D during the pendency of selection cannot be a ground for challenge, as before the final panel was prepared, they are in the higher grade and hence, senior. There is no violation of any of the provisions of para 126, 127 and 189 of the IREM as alleged. Private respondents have furnished their version in separate replies.

7. Rejoinder and additional reply have also been filed, by and large adopting the respective stand of the parties.

8. Arguments were heard and documents perused. The counsel for the applicants mainly argued on the following points:-

- (a) The promotional post carries the scale of pay of Rs 3050-4590 and among those who were called for written test, there were persons holding the post of PM 1/CM.1/LM.1/Sr. GM, whose scale of pay also is Rs 3,050 - 4,590. Thus, for the same pay scale the individuals have been called for selection and this is illegal.
- (b) The applicants are senior and those who are in the higher pay scales have joined the Railways only at a later date. In one case (OA 861/05) the applicant was not promoted to the post of Pointsman (Rs 2,650 - 4,000) while those who had joined the post of parcel porter subsequent to her have been promoted to the post of Pointsman extraneous consideration and that too after the commencement of selection process.
- (c) Applicants have secured more marks than many of those who have been selected and thus the selection is arbitrary and against the Rules.
- (d) The viva voce test is a farce, as the same did not last for even a few minutes; nor were questions asked and only the service records were verified. Percentage of marks allotted for viva voce is also violative of the law laid down by the Apex Court in the case Ajay Hasia (1981) 1 SCC 722, Liladhar (1981) 4 SCC 159 etc.
- (e) Selection is accentuated by malafide.
- (f) In so far as SC/ST is concerned, candidates who did not obtain the qualifying marks has been selected to the exclusion of the applicants who have obtained more marks and who are also senior.

9. The counsel for the respondents on the other hand submitted that the selection is strictly in accordance with the Rules and the applicants are NOT

senior to those who have been selected. And, there is absolutely no basis to contend that the selection was accentuated by any acts of malafide – i.e. neither malice in law nor malice in facts. As regards the higher seniority to be given to those who are holding posts of higher pay scale, the respondents have invited our attention to para 3 of order dated 21-11-2001 in OA No. 262/1999 which reads as under:-

"Since the applicant was holding the post of Traffic Porter in the scale of pay of Rs 750 – 940 and the 4th respondent was holding the post of Server in the scale of pay of Rs 775 – 1025 (both pre-revised), the applicant's service cannot be treated as equal to that of the 4th respondent. Since the applicant has never held the grade of Rs 775 – 1025 which is a higher grade, as per the point clarified by the Full Bench, the 4th respondent is senior to the applicant. The impugned orders Annxure A3 and A6 are therefore, perfectly in order."

(The Full Bench in the case reported in 1998(2) SLJ-CAT 201 held, "While applying Paragraph 321 of the Indian Railway Establishment Manual, the inter se seniority is to be determined by taking the length of service in the same or equivalent grade and not the total length of service in Group 'D' post.")

10. In nutshell, the questions to be considered in this case are (a) Whether the inclusion of those whose scale of pay is Rs. 3,050 – 4,590 for selection to the post of Ticket Collector with the same scale of pay is illegal and thus, the same vitiates the entire selection; (b) whether the viva-voce held by the respondents could be legally held valid and (c) what should be the basis for assigning seniority to the group D employees – on the basis of the scale of pay or length of service.

11. First the contention that persons holding the same pay scale of Rs. 3,050 - 4,590 having been included in the feeder grade. Rule 189 of the IREM Vol I (1989) relates to this aspect and the same reads as under:-

*"189. Employees in lower group 'C' scales of Rs 825-1200/950-1400 **for whom no regular avenue of promotion exists** will also be eligible to appear in the selection held for promotion of Group 'D' employees to group 'C' against the prescribed quota." (Emphasis supplied)*

12. The same issue (same order of the Respondents i.e. notification dated 27-11-2002) cropped up in Civil Writ Petition No. 37118/2004 S before the Hon'ble High Court of Kerala and the same was decided by judgment dated 23-09-2005 as under:-

"Notification was issued as per Ext.P2 dated 27.11.2002. It is admitted by all that as on the publication of Ext.P2 and as on the submission of application pursuant to Ext.P2 by the petitioners and as on the last date fixed, prescribed both petitioners were only Pointsman Grade 'D' in the scale of Rs. 2650-4000. It is true that the selection process did not get finalised as there were some more vacancies set apart against 33 1/3 % reserved for Group 'D' staff. Consequently, a revised notification was issued containing stipulation that those who responded pursuant to Ext. P2 need not make further application. It is while the application submitted by the petitioners were being considered, they were given grade promotion granting them scale of Rs. 3050-4590. Even then, they still keep their identity as Group 'D'. Going by Ext. P6 referred to earlier, there is no embargo for those included in Group 'D' in the scale Rs. 2650-4000 for being considered for promotion against 33 1/3 % even if they have regular channel of promotion. Merely because during the selection process petitioners

were assigned higher scale, which does not disentitle them from being considered for promotion pursuant to Ext.P2 and P3 notifications. Therefore, in their case, as both of them were Group 'D' at the relevant time they shall have eligibility for promotion. The contention of the selected candidates and the Railways that they will lose their chance for being considered even if they get higher scale during the process of selection, cannot be countenanced. Even inspite of the higher scale they continue to be in Group 'D'."

13. Thus, inclusion of those whose scale of pay was 3050-4590 but who were holding only group D post at the time the selection process was initiated is not fatal to the selection.

14. Next is about viva voce. Since in the instant case, perusal of the records was considered essential, the counsel for the respondents had been directed to make available the selection records and the same was made available. From the said records it is observed that out of a total marks of 100, 50 were for the written test, 25 for service records and 25 for viva voce. The counsel for the applicant referred to the decision of the Apex Court in the case of *Ajay Hasia (supra)* and *Liladhar (Supra)*. In *Ajay Hasia* the viva was for the purpose of admission in the educational institution and the Apex Court has held in *Liladhar* case that what is applicable to admission in Educational Institution need not be applicable to appointment. In fact the law laid down by the Apex Court in this regard is given in the case of *Kiran Gupta v. State of U.P., (2000) 7 SCC 719* wherein the Apex Court has

held as under:-

"It will be useful to bear in mind that **there is no rule of thumb with regard to allotment of percentage of marks for interview. It depends on several factors and the question of permissible percentage of marks for an interview-test has to be decided on the facts of each case.** However, the decisions of this Court with regard to reasonableness of percentage of marks allotted for interview in cases of admission to educational institutions/schools will not afford a proper guidance in determining the permissible percentage of marks for interview in cases of selection/appointment to the posts in various services. Even in this class, there may be two categories: (i) when the selection is by both a written test and viva voce; and (ii) by viva voce alone. **The courts have frowned upon prescribing higher percentage of marks for interview when selection is on the basis of both oral interview and a written test.** But, where oral interview alone has been the criteria for selection/appointment/promotion to any posts in senior positions the question of higher percentage of marks for interview does not arise. Therefore, we think it an exercise in futility to discuss these cases — **Minor A. Peeriakaruppan v. State of T.N.(1971) 1 SCC 38 and Ajay Hasia v. Khalid Mujib Sehravardi (1981) 1 SCC 722** — relied upon by Mr Goswami, which deal with admission to educational institutions/schools and also cases where prescribed method of recruitment was written test followed by an interview — **Ashok Kumar Yadav v. State of Haryana-(1985) 4 SCC 417 ; D.V. Bakshi v. Union of India (1993) 3 SCC 663 and Krishan Yadav v. State of Haryana.(1994) 4 SCC 165 .**

23. However, it will be apt to refer to the decision of a three-Judge Bench of this Court in **Lila Dhar v. State of Rajasthan (1981) 4 SCC 159** . There, the impugned selection for the posts of District Munsifs under the Rajasthan Judicial Service Rules was made by the Rajasthan Public Service Commission. The ratio of marks allocated for written test and interview was 75:25. Speaking for the Court, Justice O. Chinnappa Reddy pointed out: (SCC Headnote)

"In the case of admission to a college, for instance, where the candidate's personality is yet to develop and it is too early to identify the personal qualities for which greater importance may have to be

attached in later life, greater weight has per force to be given to performance in the written examination. The importance to be attached to the interview-test must be minimal. Therefore, the ratio of the decisions in Peeriakaruppan and Ajay Hasia cases in this regard cannot be applied in case of services to which recruitment has necessarily to be made from persons of mature personality. In such services interview-test may be the only way, subject to basic and essential academic and professional requirements being satisfied".

That case has been consistently followed in various judgments of this Court. (Emphasis supplied).

15. In Liladhar, in fact, the prescription of 25% marks for viva voce was upheld by the Apex Court rejecting the challenge made by the appellant against the said ratio. And, perusal of the mark sheet also reveals that the marks accorded for viva voce ranges between 18 to 22 out of 25 and the same appears rational.

16. Next issue is about the methodology adopted in fixation of seniority. The counsel for the applicant relied upon the decision in OA 262/1999 as extracted in one of the earlier paragraphs. The rule position is as given in Rule 321 of the IREM (Volume 1), 1989 and the same reads as under:-

"321. PERMISSION TO RAILWAY SERVANTS TO PERUSE SENIORITY LIST:

(a) Railway servants may be permitted to see the seniority lists in which their names are placed, or this cannot conveniently be arranged, they may be informed, on request, of their place on the seniority list.

(b) Staff concerned may be allowed to represent about the assignment of their seniority position within a period of one year after the publishing of the seniority list. No cases for revision in seniority lists should be entertained beyond this period."

17. In fact, the selection being based on seniority cum fitness, (fitness being evaluated by holding written test and viva voce, the marks obtained therein together with the marks for service records and prescribing 60% as qualifying marks), weightage is given to seniority. In other words, those group D candidates who secure 60% and above are eligible for promotion, but on the basis of seniority and seniority has been fixed in the order of pay scale and not on the basis of length of service. Thus, the seniority is an integrated seniority of all those who have qualified in the test-cum-viva voce. This method has been upheld in the aforesaid order of the Tribunal. It would be useful to refer to the decision of the Apex Court in the case of **R.K. Sethi v. Oil & Natural Gas Commission, (1997) 10 SCC 616** which inter alia holds as under:-

"Fixation of inter se seniority consequent upon merger of two categories.— Where under R & P Regulations, 1980, two or more categories have been merged, for purposes of promotions to the next higher pay scale, inter se seniority of the employees considered for promotion will be fixed on the basis of length of service put in by the individual in the respective pay scale with those in the higher erstwhile scale, being treated as senior to those in the lower erstwhile scale, en bloc. Existing inter se seniority will not be disturbed."

In this context, it may also be mentioned that till 1-4-1979 the

pay scales of Telex Operators were lower than those of AG-II and it was only with effect from 1-4-1979 that both have been placed on the same scale. The earlier service of the Telex Operators in a lower pay scale could not be equated with the service of regular employees in AG-II cadre in a higher pay scale. The Telex Operators were, therefore, rightly placed below the regular employees in AG-II cadre at the time of merger of the cadre of Telex Operators in the cadre of AG-II. "

(In the above case, there were two different grades, Asst, Grade II and Telex Operator, the former having higher pay scale than the latter. Later on, the two grades were merged together and the above rule, with regard to fixation of seniority, was introduced at the time of merger. Such a fixation of seniority, i.e. those in the higher pay scales being placed as senior to those in the lower pay scale was challenged. The Apex Court in this case thus, held that the services in the lower pay scale cannot be equated with the services of the higher pay scale (for fixation of seniority on the basis of length of service).

18. Though in the above case there was a merger of two grades which formed the feeder grade for the promotional post, and to that extent, the case is distinguishable from the case under consideration, what is to be taken into account is the ratio, i.e. those who are in the higher pay scale becomes en-block senior to those who are in the lower pay scale, notwithstanding the fact that the latter would have been having a longer length of service.

19. And lastly, the question is whether selection of SC/ST with relaxation to the exclusion of those who have obtained higher percentage of marks is valid. In fact, the test being one of qualifying and not competitive, all that is to be seen is whether the individual has obtained the prescribed minimum qualifying marks. Any marks over and above would only overflow and all those who have obtained the bench mark and above would be treated only as qualified and the qualified candidates are arranged on the basis of their seniority, i.e. in the order of the pay scales they are holding, inter-se seniority being on the basis of length of service in that particular pay scale. While so working out qualifying marks, requisite concession of 10% relaxation in respect of SC/ST and Best amongst the failed are also taken into account. Once an individual from a reserved caste qualifies under the relaxed standard, the said reserved candidate, he is treated as qualified and these are arranged on the basis of their seniority. Thus, selection of SC/ST candidates who have come up under the relaxed standard but who are senior as per pay scale cannot be faulted with.

20. Now coming to the individual case (Radhamani, the applicant in OA No. 861/05), her contention is that due to gender justice, she was not promoted as pointsman, while her erstwhile juniors in the lower post were given Rs 3,050-4590 grade which made them senior to the applicant. For this the respondent's reaction was that omission to promote the said

applicant was not due to any gender discrimination but on the solid ground that the applicant was not medically found fit upto that standard, which is the minimum requisite for holding the post of Pointsman.

21. Thus, viewed from any angle, no legal lacunae could be discerned from the impugned orders (A/4 in OA No. 833/05, A/6 in OA No. 861/05 and A/4 in OA No. 2/06) dated 9.11.2005 and all the O.As being devoid of merits, are dismissed.

22. Under the circumstances there shall be no order as to costs.

(Dated, the 31st August, 2006)


K B S RAJAN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

CVR.