

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 189/2005

THURSDAY THIS THE 7th DAY OF DECEMBER, 2006

C O R A M

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

- 1 K: Gireesh Kumar S/o Shri P.Kunhikrishnan
Technician Grade-II, Electrical Loco Shed
Southern Railway, Erode
Permanent Address: Virippil House
East Devagiri Medical College Post
Calicut.
- 2 T.K. Binumon S/o Shri T.K.Kunjukunju
Technician Grade-II
Electrical Loco Shed, Erode
Permanent Address:
Thenkulathil House
Kaipathur Post
Ernakulam District.
- 3 V. Gireesh Vijayan S/o Shri Vijayan
Technician Grade-II
Electrical Loco Shed, Erode
Permanent Address:
Valiyathu Veettil
Kanjaveli Post
Quilon District.
- 4 K. Raman S/o Shri Kandasamy
Techical Grade-II
Resident of No. 39, Srinivasa Street
Kallukadamedu
Erode.

Applicants

By Advocate Mr. TCG Swamy

Vs.

- 1 Union of India represented by
the Secretary to the Government of India
Ministry of Railways, Rail Bhavan
New Delhi.
- 2 General Manager, Southern Railway
Headquarters Office,
Park Town Post
Chennai-3
- 3 The Divisional Railway Manager
Southern Railway, Palghat Division
Palghat Kerala
- 4 Senior Divisional Personnel Officer
Southern Railway, Palghat Division
Palghat, Kerala.
- 5 Shri K. Dayanandan
Technical Grade-II, Electrical Loco Shed,
Southern Railway,
Erode (Tamil Nadu).
- 6 Shri T.B. Rajesh
Technical Grade-II, Electrical Loco Shed,
Southern Railway,
Erode (Tamil Nadu).
- 7 A. Muthu
Technical Grade-II, Electrical Loco Shed,
Southern Railway,
Erode (Tamil Nadu).
- 8 Shri M.K. Muthu
Technical Grade-II, Electrical Loco Shed,
Southern Railway,
Erode (Tamil Nadu).
- 9 Shri I;G.Murugesan
Technical Grade-II, Electrical Loco Shed,
Southern Railway,
Erode (Tamil Nadu).
- 10 Shri C.Muniyasamy
Technical Grade-II, Electrical Loco Shed,
Southern Railway,
Erode (Tamil Nadu).

11 Shri S. Narasimhan
Technical Grade-II, Electrical Loco Shed,
Southern Railway,
Erode (Tamil Nadu).

12 Shri V. Ayyapillai
Technical Grade-II, Electrical Loco Shed,
Southern Railway,
Erode (Tamil Nadu).

Respondents

By Advocate Smt. Sumathi Dandapani for R 1-4
By Advocate Mr. C.S. Manilal for R -11

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicants in this OA are presently working as Technicians Grade II at the Electrical Loco shed, Southern Railway Erode and have approached this Tribunal aggrieved by the order at Annexure A-8 promoting respondents No.5 to 12 to the posts of Technician Grade-I. They were initially appointed as Technician Grade III on 28.12.99 and promoted to Grade-II by Annexure A-I order dated 5.11.2002. The applicants are at serial numbers 15,20,23 and 22 respectively in the above order and 5th and 6th respondents are at serial numbers 19 and 27 respectively. Respondents 6 to 12 are junior to all the applicants and the 5th respondent is junior to the first applicant. While so, the Railway Board by order No 177/2003 dated 9.10.2003 upgraded/restructured various categories of posts including the category of Technicians also and as a result of the above order, several posts in the applicant's cadre stood upgraded to higher pay scales. In order to make fitment to these higher pay

scales, the 4th respondent published a list of persons as at Annexure A3 who were assessed and found suitable by a committee constituted. The last person found suitable in that list in the general category is one Antony De cruz and the respondents 5 to 12 belonging to SC/ST community are figuring in the list. It is understood that the respondents have applied reservation while implementing the restructuring and respondents 5 to 12 have been considered under the reservation category. The Hon Supreme Court has in the case of All India Non SC/ST Employees Association Vs V.K. Agarwal and ors. reported in 2001 10 SCC 165 held that reservation in cadre restructuring/upgradation is violative of Article 16 of the Constitution of India. Therefore the applicants submitted a representation on 9.10.2004 but there was no response. The Department of Personnel also vide circular no 36012/8/2003 dated 25th October 2004 clarified that principles of reservation need not be applied to upgrading of posts. However the respondents have gone ahead and issued the promotion orders by Annexure A-8 and A-11 which is arbitrary and illegal.

2 The respondents have filed a reply statement taking the initial plea that the OA has become infructuous as all the applicants have been promoted as per office order dated 3.6.2005. It is further submitted that reservation has to be applied for each and every grade in a cadre and it was indicated in para 14 of the restructuring order that reservation for SC/ST will continue to apply wherever

applicable. The Hon Supreme Court in the case of R.K.Sabharwal has observed that cadre means sanctioned posts, and the roster has to be maintained for all the posts in th cadre and if there is any increase or decrease in the cadre strength, the roster shall be expanded/contracted correspondingly. According to the grade-wise revised distribution of posts on account of the restructuring as shown in the table below the posts in the grade of Sr. Technician in the scale of Rs 5000-8000 has increased to 27 from 17 and in Technician grade have increased from 117 to 137.

| category | existing % | sanctioned strength as on 1.11.03 | revised % | revised sanc- tioned strength |
|----------------|------------|--------------------------------------|-----------|----------------------------------|
| Sr.Technician | 05 | 017 | 08 | 027 |
| Technician-I | 35 | 117 | 41 | 137 |
| Technician-II | 30 | 100 | 26 | 087 |
| Technician-III | 30 | 099 | 25 | 082 |
| Total | 100 | 333 | 100 | 333 |

Hence according to the respondents, the promotions were in consonance with th e instructions in Annexure A-2 and the same are fully legal and valid. It is further submitted that the DOPT instructions based on the Apex Court's orders in V.K. Sirohia's case would be applicable to the applicants therein only and they run contrary to the principles laid down in R.K.sabharwal's case and this has been taken up with the Law Ministry and the Principal Bench has also referred the matter to a larger bench in view of contradicting judgements of different Tribunals.

3 The private respondents have not filed any reply nor has any rejoinder been filed on behalf of the applicants.

4 We heard Sri T.C.G. Swamy for the applicants and Smt Sumathi Dandapani for the respondents. During the hearing it was mentioned that the matter is covered by the common judgement of this Tribunal in OA 601/2004 and batch cases by a Bench in which one of us was a member.

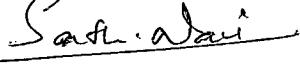
5 Indeed the same matter was considered by the bench in the above cases wherein Para 14 of the order of the Railway Board No.PC-III/2003-CRC/6 dated 9.10.2003 prescribing reservation to the restructured posts was under challenge. We took note of the Full Bench decision of this Tribunal which had already considered the question in great detail as to whether upgradation in a cadre as a result of restructuring and adjustment of staff in the upgraded cadre can be termed as a promotion attracting the principle of reservation in favour of SC/ST in the Full Bench reference in OA 933/04-P.S.Rajput and two others vs Union of India and others and OA778/04-Mohammed Niyazuddin and ten others vs Union of India and Others. The case of Sri R.K.sabharwal was also considered in the above context and the unequivocal finding of the Full Bench was that "the upgradation of the cadre as result of the restructuring and adjustment of existing staff will not be termed as promotion attracting the principles of reservation in favour of SC/ST candidates.' Accordingly the respondents were already restrained from applying

reservation in the restructured posts. The question arising for our consideration here is the same. Following the same ratio, we allow this OA and quash the Annexure A-8 and Annexure A-11 orders in respect of the promotion granted to respondents 5 to 12 and direct the respondents to consider the applicants for promotion in accordance with the Rules if they are otherwise eligible without applying the principle of reservation. No order as to costs.

Dated 7.12.2006.



DR. K.B.S. RAJAN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

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