

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 19 of 2006

Friday..., this the 13th day of April, 2007

CORAM :

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

Navas. A,
Son of Abdul Hassan,
Working as Helper Grade II (Signal),
Office of SE/SIG/SRM, Southern Railway,
Trivandrum Central, Residing at
TC 48/1253, Poonithura P.O.,
Trivandrum : 695 026 ... Applicant.

(By Advocate Mr. M.P. Varkey)

versus

1. Union of India represented by
General Manager, Southern Railway,
Chennai : 600 003
2. The Additional Divisional Railway Manager,
Southern Railway, Trivandrum : 695 014
3. Senior Divisional Personnel Officer,
Southern Railway, Trivandrum : 695 014 ... Respondents.

(By Advocate Mr. K.M. Anthru)

The Original Application having been heard on 4.4.07, this
Tribunal on 13.4.07 delivered the following:

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

Certain decisions of the Apex Court forms complete solution in respect of
a particular situation and in respect of this OA the decision by the Apex Court in

the case of **Pepsu Road Transport Corpn. v. Satinder Kumar, 1995 Supp**

(4) SCC 597, affords full solution. The Apex Court has in that case held as under:-

"6. We understand the predicament into which the order under appeal has put the petitioner-Corporation. The High Court in the course of its order observes:

Though the factual position is admitted by the respondents, yet it has been pleaded by the respondent-Corporation, that no doubt for appointing a person as a clerk, the petitioner does fulfil the qualifications, yet if the post is to be filled by open competition by direct recruitment, the applicant must be either M.A. or second division graduate, with three years service in Government, Semi-Government or Local Body Organisation.

After hearing the learned counsel for the parties, we are satisfied that the plea taken by the respondents is untenable, inasmuch as when employment is to be provided under the policy instructions of the State Government, on compassionate grounds, it is not to be treated as appointment by open competition and direct recruitment. Therefore, the qualifications possessed by direct recruits are not to be taken into consideration. When an employee dies in harness and his widow or the ward is to be helped by providing employment on priority basis, in place of the deceased, the appointment is always on compassionate grounds, even by relaxation of rules, if necessary.

*We find it difficult to approve this reasoning. The appointing authority cannot ignore the fact that while the minimum qualification for eligibility may be Matric, however, generally graduates and even post-graduate degree holders respond and offer themselves for clerical appointments. Courts cannot ignore this fact and direct that possession of minimum qualification alone would be sufficient. Some discretion to the appointing authority as to the choice of the post, taking into account the realities of the employment-market, should be available. Then again it would be erroneous for the courts to compel appointment to particular posts. The fact of the matter is that though this kind of appointment is *sui generis*, and it is reasonable to expect*



that as and when such claims arise a provision should be made for accommodating such claims from out of the posts available for direct recruitment, the Corporation is not unreasonable when it suggests that the qualifications for such appointments should broadly be commensurate with the level of candidates who offer themselves for appointment and not merely the minimum qualification."

2. Now the facts of the case as contained in the synopsis which would more than the requirement provides the facts.

Date	Events
06/07/03	Sudden demise of applicant's father occurred.
14/11/2003	Applicant offered Group 'D' of Sweeper-cum-Porter on compassionate ground, which he declined. The applicant represented for a better post in Group 'C'.
30.01.2004	The applicant was offered Group 'D' post of Helper Grade - II (Signal) which he was forced to accept due to Indigence. Applicant joined the said post on 02.02.2004.
26.06.2004	Applicant subjected to written test for Group 'C' post.
13.09.2004	Applicant passed the above test and A1 order communicated.
20.12.2004	Applicant submitted A2 representation.
10/02/05	Applicant offered post of Apprentice Technician Grade III (Diesel) at Ernakulam.
03/03/05	Applicant appealed against posting him as Apprentice Technician Gr.III by A/3 appeal. Reminder sent on 23.05.2005.
30.06.2005	A/3 was rejected by A/4 order without giving reasons.
05/07/05	Applicant sent A/6 appeal alongwith Railway Board's letter A/5 to the 2 nd respondent.
20.10.2005	A/7 lawyer notice sent to the 3 rd respondent. There has been no response to A/6 or A/7.

3. The Impugned order reads as under:-

"SOUTHERN RAILWAY

Divisional Office,
Personnel Branch,
Trivandrum - 14.

No. V/P.268/IX/Gr.'D'/Vol.II

Dated, 30.06.2005

To:

Shri A. Navas

Helper.II/Sig/SRM/TVC.

Thro' SE/Sig/SRM/TVC

Sub: Request for posting of Tech.III/Tele/Sig. In S&T Dept.

Ref: Your application dt. 23.05.05.

.....

The required qualification for the post of Tech.III/Tele/Sig. Is SSLC passed with ITI Certificate in Electrician/Electrical Fitter/Wireman/TV/Radio Operator Trade or Plus Two passed with Physics and Maths.

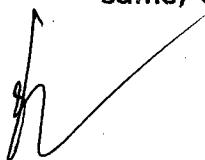
It is seen that you are not having required educational qualification for the post of Tech.III/Tele/Sig. In S&T department. Therefore, you cannot be considered for the post that you have requested.

Sd/-

Sr. DPO/TVC "

4. Respondents in their counter maintained the same stand as they have in their impugned order.

5. Counsel for the applicant submitted that the required qualification is as per the Rules, which is extracted in para 11 of the counter reply and as per the same, even matriculates are eligible for the post of TCM Grade III and the only



requirement is that they should have training for a longer duration. As such, even without the assistance of Annexure A-5 order of the Railway Board, the case of the applicant could be considered.

6. Arguments were heard and documents perused. Necessary appointment on compassionate grounds has already been given. Had the applicant been equipped with the requisite qualification as per the Recruitment Rules the respondents would have certainly considered the case of the applicant for a higher post. But, the applicant is only a Matriculate and for meeting the requirement he has to undergo training for a full 3 years. When others with higher qualifications are available, the respondents need not have to wait for 3 years till the applicant gets equipped with the qualification. The action on the part of the respondents is in accordance with the law laid down by the Apex Court in the case of **PEPSU** (supra). And the applicant having already a step-hold to meet his financial requirements, cannot, as a matter of right claim that he should be afforded higher post. The applicant is fighting for a luxury which is not permissible.

7. Hence, the OA stands dismissed. No costs.

(Dated, the 13th April, 2007)


Dr. K B S RAJAN
JUDICIAL MEMBER

cvr.