

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 213 of 1999

Friday, this the 27th day of July, 2001

CORAM

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER
HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

1. N.T. Joseph,
S/o N.J. Thommey,
Chief Commercial Inspector,
Southern Railway, Divisional Railway
Manager's Office, Trivandrum-14
Residing at Nangachiveetil House,
II/323, New Road, Narakal - 682 505Applicant

[By Advocate Mr. V.R. Ramachandran Nair]

Versus

1. Union of India, represented by the
Secretary, Ministry of Railways,
Rail Bhavan, New Delhi.
2. The Chairman,
Railway Board, New Delhi.
3. The General Manager,
Southern Railway, Madras
4. The Chief Personnel Officer,
Southern Railway, Madras
5. The Chief Commercial Manager,
Southern Railway, Madras-3
6. C.M. Visweswaran,
Assistant Commercial Manager,
C/o Chief Commercial Manager,
Southern Railway, Madras
7. S.S. Jaganathan,
Assistant Commercial Manager,
C/o Chief Commercial Manager,
Southern Railway, Madras
8. M. Jayaraj,
Assistant Commercial Manager,
C/o Chief Commercial Manager,
Southern Railway, Madras
9. M. Ramachandran,
Assistant Commercial Manager,
C/o Chief Commercial Manager,
Southern Railway, Madras

10. D. Lakshamanan,
Assistant Commercial Manager,
C/o Chief Commercial Manager,
Southern Railway, Madras
11. Govindappa Raj,
Assistant Commercial Manager,
C/o Chief Commercial Manager,
Southern Railway, Madras

....Respondents

[By Advocate Mr. James Kurian (R1 to R5)]
[By Advocate Mr. V.B. Unniraj (R6 to R11)]

The application having been heard on 27-7-2001, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

The applicant seeks the following reliefs:-

- i. To call for the records leading upto Annexure A6, A7 and the order promoting the 11th respondent and quash the same.
- ii. To declare that the respondents 6 to 11 are ineligible to be continued as Assistant Commercial Managers pursuant to Annexure A6 and Annexure A7.
- iii. To direct the respondents 1 to 5 to revert the respondents 6 to 11 from the post of Assistant Commercial Managers.
- iv. To direct the respondents 1 to 5 to proceed with fresh selection proceedings to fill up the post of Assistant Commercial Managers against the vacancies covered by Annexure A1 notification.
- v. To issue such other orders or directions as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case."

2. The applicant is working as Chief Commercial Inspector in Trivandrum Division of Southern Railway. He took part in the limited departmental competitive examination on 4-10-1997 for selection to the Group B service post of Assistant Commercial Manager. Eligibility for participating in the limited departmental competitive examination is 5 years regular service in the grade of Rs.1400-2300 in the Commercial Department. Questions for the examination were not only devoid of theoretical content but were suggestive. Respondents 6 and

7 were not at all eligible for selection. In spite of having brought to the notice of authorities by A3 representation, the authorities have ignored the same.

3. Official respondents resist the OA contending that the eligibility for participating in the selection to Group B is five years regular service in the grade of Rs.1400-2300 in the Commercial department is false. The notification does not stipulate five years of service in the relevant grade in the Commercial department as stated by the applicant. The selection was conducted as per existing rules. Training period should also be counted towards eligibility for appearing in the departmental examination. 6th respondent had the required length of service in the relevant grade to be eligible. As far as the 7th respondent is concerned, a similar issue was raised before the Chennai Bench of this Tribunal in OA No. 836/96. In the light of the finding in the said OA, confirmed by the High Court of Madras, the stand of the applicant that the selection of 7th respondent is not in order is untenable.

4. Respondents 6 to 11 have filed a reply statement denying all the averments made against their selection.

5. A8 is the copy of the order in OA No. 836/96 and connected OAs passed by the Madras Bench of this Tribunal. Those OAs were filed against the selection for promotion of Group C staff to Group B posts through the limited departmental competitive examination in the Commercial department initiated by the notification dated 31-5-1995. The 6th respondent herein is the 6th respondent in OA No. 836/96. In A8 order it is stated that name of the 6th respondent herein was dropped at the stage of finalisation of the proceedings. The Madras Bench after considering various aspects dismissed all the OAs.

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6. The matter was taken up before the High Court of Madras. R-6(a) is the copy of the order passed by the High Court of Madras in Writ Petition Nos. 17126/97, 17128/97 and 2097/98. Those writ petitions were dismissed by the High Court holding that no case has been built up for interfering in the orders of the Tribunal in OA Nos. 836/96, 927/96 and 1106/96.

7. The learned counsel appearing for the applicant vehemently argued that the official respondents have committed a mistake in having allowed incumbents working other than in the Commercial department to take part in the examination. For this purpose, reliance is placed by him on A1. A1 is dated 12-6-1997. It deals with the promotion of Group C staff to Group B service through limited departmental competitive examination - 30% quota - Commercial Department. It says that railway employees working in the grade, the minimum of which is Rs.1400/- and above in the revised scale (IV Pay Commission) and have put in a minimum of 5 years regular service in that grade (or) higher grade as on 6-9-1996, and only such categories of staff as are otherwise eligible to be considered for promotion to Grade C service in the commercial department under the extant rules will be eligible to appear in the selection. This does not say that in the commercial department for promotion through limited departmental competitive examination to Group B shall be confined only to those who are working in the commercial department.

8. According to the applicant, questions for the examination were unprecedently suggestive. To what extent questions should be suggestive or objective, it is for that expert body to consider and decide. It is not for this Tribunal to sit in appeal against the same.

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9. The learned counsel appearing for the applicant submitted that respondents 6 and 7 are not eligible and qualified to take part in the examination. As far as the question of eligibility is concerned with regard to one A. Sridhar, the Madras Bench of this Tribunal had occasion to consider in A8 order, who was identically placed like the 7th respondent. There it has been held that the said Sridhar satisfied the eligibility conditions. In the light of that finding, the stand of the applicant that the 7th respondent is not eligible to appear for the limited departmental competitive examination for Group B post cannot be accepted.

10. As far as the 6th respondent is concerned, official respondents say that the period of training is also allowed to be counted as service for the purpose of appearing for the said examination. The learned counsel for the applicant submitted that if the training period is also counted for the purpose of the minimum required length of service of five years, the 6th respondent satisfies the eligibility conditions.

11. Thus the ineligibility attributed to respondents 6 and 7 by the applicant falls to the ground.

12. In respect of the same selection, one A.V. Mohan approached the Bangalore Bench of this Tribunal by filing OA No. 324/99. In that OA, the 6th respondent herein is the 3rd respondent. The Bangalore Bench after considering the matter dismissed that OA.

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13. The learned counsel for the official respondents submitted that facts are identical in OA No. 324/99 and in this OA. The learned counsel appearing for the applicant also submitted that facts are identical.

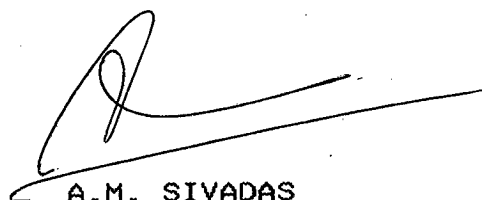
14. For the reasons stated, we do not find any merit in this Original Application.

15. Accordingly, the Original Application is dismissed. No costs.

Friday, this the 27th day of July, 2001



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.M. SIVADAS
JUDICIAL MEMBER

ak.

List of Annexure referred to in this order:

1. A1 True copy of the letter No. P(G)532/II/LDCE (Commercial) Vol.V dated 12-6-1997 issued by the 4th respondent seeking to fill up the 6 vacancies.
2. A3 True copy of the representation dated 5-8-1997 submitted by the Southern Railway Commercial Inspectors' Association to the 4th respondent regarding the selection of staff from Group C to Group B service.
3. A6 True copy of the Memorandum No. P(G)532/II/LDCE Commercial Vol.V dated 13-2-1998 issued by the 3rd respondent regarding the selection for promotion of respondents 6 to 11.
4. A7 True copy of the order No. HFB(O)131/98 dated 19-2-1998 issued by the 3rd respondent appointing the respondents 6 to 10 as Assistant Commercial Managers.
5. A8 True copy of the final judgement in OA No. 836/96 dated 28-8-1997 of the Hon'ble Central Administrative Tribunal, Madras Bench.
6. R-6(a) True copy of the judgement in W.P.No. 17126/99 W.P.No.17128/97 and W.P.No.2097/98 before the Division Bench of the Hon'ble High Court of Madras.