

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A NO. 240/2004

TUESDAY, THIS THE 17th DAY OF OCTOBER, 2006

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICDIAL MEMBER**

- 1 S. Siva Prasad S/o Sivaraman
Technician Grade-III
Diesel Loco Shed, Southern Railway
Ernakulam Junction
Permanent Address:
Ananda Bhavana, Venad Nagar
Kollam-4
- 2 V.S. Unnikrishnan S/o Sankunni Nair
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Trichur
- 3 K. Raghu S/o Kuttappan
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Adimaly, Idukki
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5 K. Chandran S/o Koran
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Shornur PO

6 M.R. Gopalan S/o M.K. Raman
Technician Grade-III
Diesel Loco Shed, Southern Railway
Ernakulam Junction
Permanent Address:
Nithulalayam, Mandad PO
Wayanad District.

Applicants

By Advocate Mr. TC Govindaswamy

Vs.

1 Union of India represented by the
General Manager, Southern Railway
Headquarters Office, Park Town PO
Chennai-3

2 The Additional Divisional Railway Manager
Southern Railway, Trivandrum Division
Trivandrum-14

3 The Senior Divisional Personnel Officer
Southern Railway, Trivandrum Division
Trivandrum-14

Respondents

By Advocate Mrs. Sumathi Dandapani

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicants in this O.A. are aggrieved by the inaction of the respondents in considering them against the 50% promotional quota for promotion to the post of Diesel/Electrical Assistants of Southern Railway, Trivandrum Division. The applicants 1 to 4 and 6 are working as Technician Grade-III in the Diesel Loco Shed, Southern

Railway Emakulam Junction and the 5th applicant is a Technician Grade-II working in the same place.

2 The applicants have submitted that the method of filling up the vacancies in the category of Diesel/Electrical Assistants is contained in the Railway Board order No. RBE No. 62/97 dated 25.4.1997 at Annexure A-1 according to which the entire vacancies are to be filled from amongst volunteers of Diesel/Electric Loco Fitters subject to certain conditions specified therein. Annexure A-1 order was modified by RBE NO. 196/98 dated 2.9.1998 (Annexure A-2) in terms of which 50% of the vacancies are to be filled up from amongst volunteers of Diesel/Electrical Loco Shed Fitters and Group-D staff as provided for earlier and the balance 50% of the vacancies plus shortfall if any against (i)above by direct recruitment through Railway Recruitment Boards. The respondents did not take any steps for filling up the vacancies against the 50% promotion quota for a long time and by Annexure A-4 notification 67 vacancies were notified for the first time in the year 2001. This notification was cancelled due to non-availability of adequate number of volunteers and a fresh notification was issued dated 10.4.2002 (Annexure R-1). Among those who participated in the examination, only one was selected as the written test was extremely tough to be answered by candidates having Matriculation or ITI qualification. The applicants submitted representations when they came to know that the process for direct recruitment had been initiated, but their

representations were rejected by Annexure A-6 by the respondents informing them that the promotional quota vacancies were filled up by inter-divisional transfer. The applicants assail this action of the respondents as ultra vires of the statutory rules viz. Rule 123 of the Indian Railway Establishment Code Vol. 1. The applicants have further alleged that the respondents are bound to conduct year-wise selections which practice they are not following to the detriment of the candidates like the applicants.

3 The following reliefs have been sought:

- (a) Call for the records leading to the issue of Annexure A-6 and quash the same
- (b) Declare that the action of the respondents in filling up of 50% promotional quota vacancies in the categories of Diesel Assistant/Electrical Assistants of Southern Railway, Trivandrum Division by inter Divisional transfer is arbitrary, discriminatory, contrary to law and unconstitutional.
- © Direct the respondents to consider the applicants for promotion against the 50% promotional quota vacancies in the categories of Diesel Assistants/Electrical Assistants of Trivandrum Division and to prepare a year-wise panel for the vacancies that arose for the years upto and inclusive of 2003, and direct the respondents to grant the consequential benefits thereof.
- (d) Award costs of and incidental to this Application.
- (e) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case.

4 The respondents have filed reply statement denying the averments of the applicant on the ground that the applicants have not proved their eligibility for being considered for the relevant selection. They have pointed out that the 5th applicant is already

aged 45 years as per his own statement and is clearly over aged as the upper age limit for even SC/ST candidates is 40 years. It is further submitted that the selection procedure initiated as per Annexure A-4 has been cancelled by Annexure R-1 notification dated 10.4.2002 and it was challenged in O.A. 319/2002 filed by the 5th applicant herein and the O.A. had been closed as infructuous on 1.7.2004 by this Tribunal and the applicants have misled this Tribunal by not disclosing this fact. In the selection conducted in pursuance of the letter dated 10.4.2002, only one out of 14 who took part came out successful and got selected against the notified 67 vacancies. As no more service employees could be selected the vacancies remaining unfilled were filled up by accommodating inter-divisional requests for transfers. Such transfers are permissible as provided for in para 2(ii) of Annexure A-2. For filling up vacancies that might have arisen from 2001 to 2003 the respondents contend that the applicants have to volunteer if and when notifications are issued.

5 A rejoinder has been filed contending that if the Railways had conducted the selection every year after the issue of Annexure A-1 dated 25.4.1997, even the 5th applicant would have been eligible to be considered for selection and the eligibility of the employee has to be considered as at the relevant time when the posts fell vacant. It is denied that O.A. 319/2002 had covered the issue involved in the present O.A. Further, the relevant rules of inter-divisional transfer

contained in Annexure A-7 have not been followed and the respondents have misconstrued Annexure A-2 for filling up the promotional quota vacancies by transfer.

6 We have heard the learned counsel Shri TC Govindaswamy for the applicants and Smt. Sumathi Dandapani appearing for the respondents.

7 The questions that arise for consideration are whether the respondents have conducted the selection in accordance with Annexure A-2 order of the Railway Board, and whether the applicants were considered for the selection as notified or deprived of their opportunity for selection and whether they were qualified for the same at the relevant time.

8 As regards the first point, it is evident from the statement of the respondents that after Annexure A-2 orders modifying the selection procedure was issued on 2.9.1998, the first selection was notified only by Annexure A-4 dated 4.12.2001 which notification was however subsequently replaced by Annexure R-1 letter dated 10.4.2002. The vacancies declared to be filled up by Annexure A-4 notification was 67, and the same number of vacancies were notified in Annexure R-1 dated 10.4.2002. But only 14 took examination and only one qualified. The number of vacancies which arose as on 1.1.2003 and on 1.1.1004 was two and nine respectively. The

vacancies which were diverted for the period from 1.1.2002 to 3.12.2002 for filling by inter-divisional transfer was 73. This figure includes vacancies which arose after Annexure R-1 notification upto 31.12.2002. Since only one employee qualified in the selection, the balance posts and some subsequent vacancies of the year 2002 were filled up by inter-divisional transfers which is permissible against the direct recruitment vacancies is the contention of the respondents. One of the contentions of the applicants is that such inter-divisional transfer was against the statutory rules. The method of selection prescribed in Annexure A-4 provides that any short fall which arises in the filling up of the 50% of the vacancies in the promotional quota, is permitted to be filled up by direct recruitment. Hence strictly in accordance with the Recruitment Rules, the respondents should have notified the shortfall of 73 vacancies, for direct recruitment. However, Para 123 of Indian Railway Establishment Code Vol. I permits transfers on inter-divisional basis in the grades having an element of direct recruitment provided the employees seeking transfer possess the qualification prescribed for direct recruitment. These two provisions are independent of each other and the power to permit inter-divisional transfer in accordance with Para 123 (a) of the IREC is exercisable in all grades where the method of recruitment contains an element of direct recruitment. Since the category of Diesel Assistant is also one such grade, inter-divisional transfers are permissible in the Direct Recruitment quota. Hence the respondents cannot be faulted on this count as the

transfer was resorted to only after exhausting the provision of conducting the examination and since one person alone qualified, the short fall vacancies got converted to Direct Recruitment quota and the respondents resorted to accommodating the request of employees seeking inter-divisional transfer in those posts. Though technically they were not at fault, we are compelled to observe that this provision for accommodating the request transfers is meant to be used sparingly in genuine cases and such large scale transfers enmasse to fill up the vacancies giving a go by to the provisions for direct recruitment should have been avoided by the respondents whatever be the compulsions. It is however seen that all the applicants except perhaps the 2nd applicant had appeared for the test and not qualified.

9 Coming to the subsequent years, the respondents have submitted that no vacancies arose for the period from 1.1.2001 to 31.12.2002 and the number of vacancies from 1.1.2003 to 31.12.2004 against the promotional quota has been assessed as 16 and in order to fill up these vacancies Annexure R-2 notification dated 31.3.2005 has been issued. In response to this notification nine applications were received and out of the six applicants in the O.A. only the second applicant submitted application. However, he did not participate in the written test though alerted for the same. It is thus clear that the respondents have not conducted any further selection in the year 2003 and have clubbed the vacancies of 2003

and 2004 and notified them in Annexure R-2 notification. Thus there is substance in the contention of the applicants that the selections are not being conducted on a regular basis. The respondents on the other hand contended that since the vacancies are few and the employees are not qualifying in the examination, the vacancies are being clubbed. With regard to the submission by the respondents that none of the applicants except two applicants applied with reference to the second notification, the learned counsel for the applicant argued that since the selections are not being held on a regular basis, the applicants finding that they are not eligible to apply mainly on account of age limit and also shortage of time for preparation for the examination which is a very tough one.

10 If we consider the age profile of the applicants in the O.A, the fifth applicant as stated by the respondents who was 43 years old according to his own admission at the time of filing of the O.A., could not have attended the written test in the year 2002. The applicants 1,3,4 and 6 had participated in the written test but did not qualify. The applicant NO. 5 though over aged was allowed to attend the test as per the interim direction of this Tribunal in the O.A No. 319/2002 but he also did not qualify and the O.A. has been closed as infructuous and it has been submitted that the applicant NO. 2 was not interested as he had already been promoted. Therefore none of the applicants have a case as far as the selection against Annexure A-2 notification is concerned.

11 So the (only) question is whether the applicants 1, 2, 3, 4 and 6 would have been eligible to appear in the written test for being appointed against the vacancies which had arisen in 2003 and 2004 and which had now been notified vide Annexure R-2 dated 31.3.2005. The respondents have stated that except the 2nd applicant who applied but did not participate, presumably, he having been promoted already, the remaining five applicants did not submit their applications. We notice from Annexure R-2 notification that under the eligibility conditions item (iii) that the age limit has been fixed as 35 years as on the date of notification/circular calling for application which date in this case is 31.3.2005. In fact, we notice from the earlier notification dated 4.12.2001 (A-4) also, though the vacancies pertained to 1997 onwards, the age limit prescribed was as on the date of notification. In this case also the vacancies were as on 1.1.2003 and 1.1.2004 but the eligibility was to be considered as on 31.3.2005 and this is the factor which is going against the interest of the employees, giving rise to the demand that the selections are not being conducted annually. The correct procedure for the respondents is to conduct the test annually even if there is only a single vacancy and if for any reason the vacancies have to be clubbed the eligibility should have been reckoned ^{as} at the relevant year of occurrence of the vacancy. This is also the settled law in considering promotions even without a written examination, by the Departmental Promotion Committees, the eligibility being determined as on 1st January of the relevant year. Had the same procedure

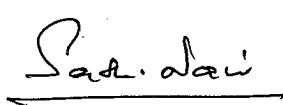
been followed by the respondents, some of the applicants could have participated in the selection.

12 In the result, we do not find any grounds for interfering with the inter-divisional transfers made by the respondents. The only relief that can be granted to the applicants is, as discussed above is, to give them an opportunity for participating in the written test against the 16 vacancies which were notified in Annexure R-2 and for which they could not have applied as they had become over aged as on the date of the test. It was submitted that only 9 applications had been received against 16 vacancies notified. Accordingly, we direct the respondents to conduct a fresh written test for the remaining vacancies of 2003 and 2004 prescribing the eligibility as on 1.1.2003 and 1.1.2004 enabling the applicants 1, 3, 4 and 6 and similarly placed persons to get qualified in the examination. We also direct that in future, the examination shall be conducted on an annual basis. With these directions the O.A. is disposed of. No costs.

Dated 17.10.2006.


GEORGE PARACKEN
JUDICIAL MEMBER

kmm


SATHI NAIR
VICE CHAIRMAN