

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.241/2006

Friday, this the 22nd day of February, 2008.

CORAM :

**HON'BLE SHRI GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE SMT. O.P.SOSAMMA, ADMINISTRATIVE MEMBER**

R.Rangasamy,
Head Clerk/Works,
Office of the Senior Section Engineer,
Southern Railway, Tiruppur
residing at 67/E.V.R.Street,
Kallukkada Medu, Erode-638 001. ... Applicant

By Advocate Mr.T.C.G.Swamy

V/s.

- 1 Union of India represented by
General Manager,
Southern Railway, Headquarters,
Park Town PO, Chennai-3.
- 2 The Chief Personnel Officer
Southern Railway, Headquarters Office,
Park Town, Chennai-3
- 3 The Divisional Railway Manager
Southern Railway,
Palakkad Division, Palakkad.
- 4 Senior Divisional Personnel Officer,
Southern Railway,
Palakkad Division, Palakkad. ... Respondents

By Advocate Mrs.Sumathi Dandapani Sr
with Ms.P.K.Nandini

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The application having been heard on 23.1.2008 the Tribunal delivered the following on 22.2.2008:

(ORDER)

Hon'ble Shri George Paracken, Judicial Member

The applicant in this case is presently working as a Head Clerk (HC for short) in the Works Branch of Southern Railway, Palakkad Division in the scale of pay of Rs.5000-8000 which is the feeder cadre for the post of Office Superintendent (OS for short) in the scale of pay of Rs.5500-9000. The Fourth respondent by Annexure A-1 letter dated 27.11.2002, alerted the HCs falling within the zone of consideration for promotion to be in readiness to appear for a selection to the post of OS Gr.II in scale of Rs.5500-9000. Twelve vacancies (ST-1, UR-11) were notified. The applicant was one among the senior-most HCs falling within the zone of consideration. Before the selection was finalised, the Railway Board issued the Annexure A-2 notification dated 9.10.2003 restructuring the various cadres in the Indian Railways w.e.f. 1.11.2003 and para-4 of the notification reads as under:-

"Existing classification and filling up on the vacancies: The existing classification of the posts covered by these orders as 'selection' and 'non-selection', as the case may be, remains unchanged. Action should be taken to position the employees on the basis of selection/non-selection/suitability/Trade Test, as the case may be. However, the instructions contained in Para 13.2 should be followed in case of placement of Supervisors (erstwhile Mistries) to grade Rs.5,000-8,000."

By the subsequent Annexure A-3 letter of the Railway Board dated 6.1.2004, the aforesaid para-4 of the Annexure A-2 order dated 9.10.2003 was replaced



9.10.2003 was replaced as under:-

"4 Existing classification and filling up on the vacancies: The existing classification of the posts covered by these orders as 'selection' and 'non-selection', as the case may be, remains unchanged. However, for the purpose of implementation of these orders, if an individual Railway servant becomes due for promotion to a post classified as a 'selection' post, the existing selection procedure will stand modified in such a case to the extent that the selection will be based only on scrutiny of service records and confidential reports without holding any written and/or viva-voce test. Naturally under this procedure the categorization as "outstanding" will not figure in the panels. This modified selection procedure has been decided upon by the Ministry of Railways as a one time exception by special dispensation, in view of the numbers involved, with the objective of expediting the implementation of these orders. Similarly for posts classified as 'non-selection' at the time of this restructuring the promotion will be based only on scrutiny of service record and confidential reports. In the case of Artisan staff, the benefit of restructuring under these orders will be extended on passing the requisite Trade Test. However, in case of placement of Supervisors (erstwhile Mistries) to grade Rs.5,000-8,000 the instruction contained in Para 13.2 should be followed.

4.1 Normal vacancies existing on 1.11.2003 except direct recruitment quota and those arising on that date from this cadre restructuring including chain/resultant vacancies should be filled in the following sequence:

- (i)** From panels approved on or before 1.11.2003 and current on that date;
- (ii)** and the balance in the manner indicated in para 4 above

4.2 Such selections which have not been finalised by 1.11.2003 should be canceled/abandoned.

4.3 All vacancies arising from 2.11.2003 will be filled by normal selection procedure.

4.4 All vacancies arising out of the restructuring should be filled up by senior employees who should be given benefit of the promotion w.e.f. 1.11.2003 whereas for the normal vacancies existing on 1.11.2003 junior employees should be posted by

modified selection procedure but they will get promotion and higher pay from the date of taking over the posts as per normal rules. Thus the special benefit of the promotion w.e.f. 1.11.2003 is available only for vacancies arising out of restructuring and for other vacancies, the normal rules of prospective promotion from the date of filling up of vacancy will apply.

4.5 In cases where percentages have been reduced in the lower grade and no new post becomes available as a result of restructuring, the existing vacancies on 1.11.2003 should be filled by normal selection procedure.

4.6 Employees who retire/resign in between the period from 1.11.2003 i.e. the date of effect of this restructuring to the date of actual implementation of these orders will be eligible for fixation benefits and arrears under these orders w.e.f. 1.11.2003. "

Again the Railway Board by Annexure A-4 letter dated 23/26-7-2004 issued further clarification was to the extend that the vacancies arising out of re-structuring would include the chain/resultant vacancies and the benefit of such vacancies should also be given from 1.11.2003, if the same would arise purely due to the restructuring. From a combined reading of the Annexures A-2, A-3 and A-4 letters, it is seen that the vacancies in existence and arising as a result of restructuring as on 1.11.2003 must be filled up based on the modified selection procedure. However, promotions against chain/resultant vacancies in addition to the re-structured vacancies would be given effect w.e.f. 1.11.2003 whereas promotions against vacancies in existence as on 1/11/2003 would be given effect from the date of shouldering the higher respondents.

2 Consequent upon the Annexure A-2 restructuring of Group 'C' and 'D' cadres, one vacancy in the category of OS Grade II in the

scale of pay of Rs.5500-9000 has arisen in the Works Branch of Southern Railway, Palakkad and two more vacancies have arisen as chain/resultant vacancies. Thus, according to the applicant, in addition to the 12 vacancies already notified by the Annexure A-1 notification dated 27.12.2002 there were , three more vacancies as on . 1.11.2003 and all those vacancies were be filled up by applying the modified selection procedure as contained in Annexure A4 letter dated 23/26-7-2004.

3 However, the respondents in implementation of the modified selection procedure due to restructuring of Group 'C' and 'D' cadres, vide Annexure A-5 letter dated 25.5.2005, recommended only nine employees and placed them in the Annexure A 5 panel for the post of OS Grade II in the scale of pay of Rs.5500-9000 on the recommendation of the duly Constituted Committee for that purpose. Thereafter, vide Annexure A-6 Office Order dated 3.6.2005, they were promoted as OS Gr.II. It was also stated in the said Annexure A-6 letter, that Smt.Seetha Konishankondy was not considered for promotion as OS Gr.II as she had not been placed in the panel for promotion for the above post by the committee and the first three persons who have been promoted as OS Gr.II have been fitted against the additional post on restructuring and the next six employees were promoted against the existing vacancies of OS Gr.II and their promotion will take effect only from the date of shouldering the higher responsibilities.

4 The contention of the applicant was that since 14 vacancies of OS II were available as on 1.11.2003, the Respondents ought to have

considered him also for promotion against one such vacancy by applying the modified selection procedure. He has therefore, made the Annexure A-7 representation dated 11.7.2005 to promote him against the one post kept vacant against the total vacancies of 10 posts as he was the next senior most employee in the line of promotion. Since he received no response from the Respondents, he made further representations on 24.8.2005, 15.11.2005, 4.1.2006 and 24.2.2006 (Annexures A-8, A-10, A-12 and A-13). Finally, the respondents vide Annexure A-9 letter dated nil, without giving any reason as to why he has not been considered for promotion earlier alongwith the nine persons on 3.6.2005 (Annexure A6), informed him that he will be considered for promotion as OS Gr.II in the next selection as per existing rules. Not satisfied by the aforesaid reply, the applicant has filed the present OA seeking a declaration that he is entitled to be considered for promotion as OS Gr.II in the scale of pay of Rs.5500-9000 against vacancy which was in existence as on 1.11.2003 which was not filled up in terms of Annexure A6 letter dated 3.6.2005 and to direct the respondents to grant him the benefit of promotion w.e.f. the date on which employees at serial nos.4 to 9 in Annexure A6 were given the benefit of promotion as OS Gr.II.

5 The respondents have filed a reply and submitted that in view of the restructuring orders issued by respondents, the Annexure A-1 alert notice was canceled vide Annexure R-1 notice dated 20.4.2004. As far as the vacancy position was concerned, the number of work charged posts of OS Gr.II in Works Branch was 21 up to 30.9.2003. However,



from 1.10.2003, the number was reduced to 11 as was made clear in the Annexures R-2 and R-3 letters dated 29.10.2003 and 16.9.2004 respectively. Accordingly, the total vacancies of OS Gr.II/Works Branch required to be filled by modified selection procedure as indicated in Annexures A2 and A3 letters was assessed as ten and as per the extant orders, the field of eligibility was fixed in the ratio 1:1. The Selection Board considered the Service Registers and Confidential Reports of the senior-most ten employees and recommended nine employees for promotion as OS Gr.II and their panel was published by Annexure A-5 letter. According to them, in terms of the modified selection procedure, the Selection Board was required to scrutinize the claims of eligible staff only on one is to one proportion in the order of seniority and since the applicant did not come within the said field of eligibility, i.e. within the ten senior-most employees, he was not considered for promotion.

6 In the rejoinder, the applicant refuted the contention of the respondents that he did not come within the zone of consideration. He has submitted that in terms of para 4 of Annexure A-2, read with para 3 (4) Annexure A-3, para 3(4) of the post continues to be a selection post, and the zone of consideration for a selection post is 1:3 in contradistinction to a non-selection post which is 1:1. According to him, the Annexure A 3 only prescribes modified selection procedure and the same do not truncate the zone of consideration. Even in the case of non selection post, when a person is found unfit, the next person in the seniority list has to be considered for promotion. In this regard he has



annexed a copy of Annexure A15 letter of the Railway Board dated 26.7.1999, by which the para 215 of the Indian Railway Establishment Manual Vol.I was amended. The amended provision of sub-para-e of the said para and the Notes 1 and 2 there under are as under:-

“(e) Eligible staff upto three times the number of staff to be empaneled will be called for the selection. The staff employed in the immediate lower grade on fortuitous basis will not be eligible for consideration.”

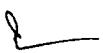
“Notes : 1 Persons who have expressed their unwillingness should not be reckoned for determining the zone of consideration and additional persons in lien thereof may be called for the selection.

2 If a candidate without giving unwillingness, does not appear in the selection, he has to be taken in the reckoning and therefore has to be called for supplementary selection. If he gives his unwillingness on a subsequent date after the selection has commenced, additional persons will not be called to compensate for him.”

7 We have heard Advocate Mr.T.C.G.Swamy Counsel for Applicant and Advocate Mrs Sumathi Dandapani Sr Counsel for Respondents. The contentions of the applicant in a nut shell in this OA are that there were already eleven unreserved vacancies out of the twelve vacancies as on 1.11.2003 as notified by Annexure A 1 notification dated 27.12.2002. Further, as a result of the restructuring, one restructured vacancy and two chain/resultant vacancies arose in the grade of OS Gr.II. Thus, there were fourteen vacancies as on 1.11.2003 and as against them, the respondents have promoted only nine persons by virtue of Annexure A6 letter dated 3.6.2005. In other words, as against eleven vacancies which were in existence as on 1.11.2003, for general category only five vacancies were filled up by applying the modified selection



procedure. The applicant has also submitted that he was the next in seniority after Shri K.P.Sukumaran, who was shown at sr.no.8 in the Annexure A 6 list of promotees dated 3.6.2005 and since his immediate senior Smt.Seetha Konishankondy was not considered eligible for promotion, he should have been considered for promotion in her place. In this regard he has referred to Annexure A-14 letter dated 5.10.2005 by which respondents have proposed to conduct fresh selection to the post of OS Gr.II in accordance with the recruitment rules. In the list of HCs attached with the said letter who are to be called for selection as OS Gr.II, Smt.Seetha Konishankondy was shown at serial no.1 and the applicant was shown at serial no.2, therefore his contention that he was entitled to be considered for promotion against the vacancy of OS Gr.II which was in existence as on 1.11.2003 by applying the modified selection procedure. As is seen from the above submissions of the applicants and the respondents, the controversy revolves around the issue of Annexure A5 list of employees who have been recommended and placed in the panel for the post of OS Gr.II. It is the respondents own admission that there were ten vacancies of OS Gr.II which was to be filled in terms of the modified selection procedure as indicated in Annexures A 2 and A-3 but the zone of consideration adopted by them was in the proportion of 1:1. The respondents have, therefore, considered only ten senior most employees against the aforesaid vacancies and one of them, namely, Smt.Seetha Konishankondy was found unsuitable for promotion. As regards, the preparation of the zone of consideration whether it is 1:1 or



three times the number of staff to be empaneled, only eligible employee has to be included in the zone of consideration. Further, in terms of para 215 of the IREM (as amended) eligible staff up to three times the number of staff to be empaneled will have to be called for the selection. Admittedly, one of the persons Smt.Seetha Konishankondy who was considered by the DPC was ineligible person for consideration for promotion to the post of OS Gr.II under the modified selection procedure. Therefore, the respondents ought to have extended the zone of consideration so as to get atleast ten candidates in the list of eligible persons for consideration for empanelment against the said ten vacancies assessed on the basis of the restructuring of the cadres.

8 In our considered opinion, it is the failure on the part of the respondents to identify ten eligible employees for promotion to the post of OS Gr.II on the basis of modified selection procedure. Undisputedly, the applicant was the next eligible person to be considered for empanelment in the Annexure A-5 panel dated 25.5.2005. In the light of the above facts and circumstances of the case, we find merit in the contentions of the applicant. We, therefore, quash and set aside the Annexure A-9 letter dated nil rejecting Annexure A-8 representation of the applicant dated 24.8.2005 for consideration of his name for promotion as OS Gr.II and inclusion of his name in the Annexure A6, Office Order promoting nine of the HCs/Work Charged Branch in the scale of pay of Rs.5000-8000 as OS Gr.II in the scale of pay of Rs.5500-9000 after having selected by the Selection Committee on the basis of the modified selection procedure as



one time exception as per Railway Board letter dated 23/26.7.2004. We also quash and set aside the Annexure A11 letter dated 14.12.2005 wherein it has been stated that the applicant will be considered for selection to be conducted in his turn as per existing rules of selection. Consequently we declare that the applicant is entitled to be considered for promotion as OS Gr.II, Work charged Branch in the scale of Rs.5500-9000 against vacancy which was in existence as on 1.11.2003 and not filled up in terms of Annexure A6 Office Order dated 3.6.2005 by applying modified selection procedure referred to in Annexure A 3 order of the Railway Board dated 6.1.2004. The respondents are therefore, directed to consider the applicant as in the case of the employees who have already been empaneled in the Annexure A 5 letter dated 25.5.2005 and promoted by the Annexure A 6 Office Order dated 3.6.2005 by constituting a Review Selection Committee to consider him for promotion to the post of OS Gr.II in terms of the aforesaid directions. If he is found suitable on the basis of the modified selection procedure referred to in Annexure A 3 letter dated 6.1.2004, he shall be promoted to the post of OS Gr.II from the date the nine HCs of the Workcharged Branch have been promoted as OS Gr.II vide Annexure A 6 letter dated 3.6.2005 with all consequential benefits except arrears of pay as only the first three persons out of the nine persons promoted as OS Gr. II vide Annexure A-6 Office Order dated 3.6.2005 ^{only} had been fitted against the additional post on restructuring and balance six persons had been promoted against the existing vacancies and their promotion was effective only from the



date of shouldering the higher responsibilities. The aforesaid exercise shall be completed within a period of three months from the date of receipt of this order. Since the Applicant has already suffered loss of higher pay from the date the last six persons in the Annexure A 6 order dated 3.6.2005 were promoted as OS Gr.II, in case the Respondents fail to adhere to the aforesaid time limit of three months, the applicant shall be entitled to have the pay scale attached to the post of OS Gr.II from the date of expiry of the said period of three months. The OA is allowed in the aforesaid terms. There shall be no orders as to costs.



O.P. SOSAMMA
ADMINISTRATIVE MEMBER

abp



GEORGE PARACKEN
JUDICIAL MEMBER