

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No. 256/99

Friday, this the 25th day of May, 2001.

CORAM

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

S. Selva Kumar,
Khalasi Helper/Power,
Southern Railway,
Thiruvananthapuram Central. Applicant

By Advocate Mr P.K. Madhusoodhanan.

vs.

1. Senior Divisional Personnel Officer,
Southern Railway,
Thiruvananthapuram- 14.
2. Divisional Railway Manager,
Southern Railway,
Thiruvananthapuram- 14.
3. Union of India represented by
the General Manager,
Southern Railway,
Park Town, Chennai-3.
4. K.J. Saji, Khalasi,
Southern Railway, Kottayam.
5. C. Kanakaraj,
Khalasi Helper,
Southern Railway,
Thiruvananthapuram Central-(Party in person).
Respondents.

By Advocate Mrs Sumathi Dandapani for Respondents 1-3

The application having been heard on 24.4.2001, the Tribunal delivered the following order on 25.5.2001.

ORDER

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

Applicant seeks to set aside A8 so far as it includes respondents 4 and 5 in the list for promotion to the post of skilled artisans, to declare that excess reservation of 4 posts of skilled artisan for promotion of Scheduled Caste/Scheduled Tribe unskilled and semi-skilled employees to 25% rankers quota of 11 vacancies contained in letter No.V/P 98/VIII/RT dated 5.3.98 is bad in law, to direct the respondents to consider the

applicant for promotion as skilled artisan in accordance with law against anyone of the existing vacancies, and to direct the respondents to consider and dispose of A9 in accordance with law.

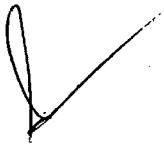
2. Applicant entered service as a Casual Labour Khalasi in the Electrical construction at Thiruvananthapuram on 20.1.81. He was appointed as Substitute Electrical Khalasi on 25.1.84. Temporary status was granted to him from 5.6.84 as per A1. In A1, the applicant is at S1.No.7 and the 5th respondent, whose initial engagement was on 6.3.81, is at S1.No.13. In A2, the applicant is at S1.No.27 while the 5th respondent is at S1.No.38. As per A3, the applicant is at S1.No.28 while the 5th respondent is at S1.No.39. Thus, he was throughout senior to the 5th respondent. The 1st respondent published a provisional seniority list dated 5.2.93 wherein he is at S1.No.128 and the 5th respondent is at S1.No.92. He submitted a representation dated 26.3.93 (A4). A4 has not been considered and disposed of. The provisional seniority list dated 5.2.93 has not been finalized and published. Steps were initiated to fill up 11 vacancies of rankers quota of the Trivandrum Division as per A6. As per A7, the applicant and certain others were directed to attend viva voce to be held on 21.12.98. A8 is the Select List. S1.No.6 in A8, the impugned order, K.J. Saji is very much junior to the applicant and Saji has been included in A8 against the rules. Saji has not passed the written examination and granting him 10% grace marks he has been treated as passed and included in A7 list showing persons who have qualified to appear for viva voce and in A8, the 5th respondent is also very junior to the applicant. Applicant submitted a representation dated 4.1.99 (A9) to consider his grievance, but the same has not been considered. He has passed the written test. He has not been included in A8 Select List.



Granting 10% grace marks to Saji, the 4th respondent, is without any authority or power on the part of the 1st respondent. Respondents' action in including the 5th respondent in A8 treating the 5th respondent as senior to him is illegal. There is excess reservation.

3. The 5th respondent in the reply statement says that seniority assigned to him in A1, A2, and A3 is wrong. His initial date of engagement was 6.2.79 which was wrongly shown in A1, A2 and A3 as 6.3.81. He was granted temporary status as per revised orders with effect from 1.1.83.

4. In the reply statement filed by the official respondents, they say that the placement of applicant and 5th respondent in A1, A2 and A3 is not according to their seniority. The 5th respondent who got appointment on 31.3.87 is senior to the applicant who was regularly absorbed as Khalasi on 7.10.87. The total number of sanctioned posts of skilled grade in the Train Lighting Wing of the Electrical Department is 55, out of which 14 are to be filled up by direct recruitment from open market, 27 by promotion of employees from lower grade and 14 by employees of lower grade through departmental selection. Likewise, out of 30 posts of skilled grade in Power Wing of the Electrical Department, 7 are to be filled up by direct recruitment, 15 by promotion and 8 by selection. Against 14 posts earmarked for departmental selection in the Train Lighting side, 10 employees are already working leaving 4 vacancies to be filled up. Among the incumbents, only one employee of Scheduled Caste is available as against the requirement of two. No employee belonging to Scheduled Tribe communities is available against the requirement of one. Hence, out of the 4 vacancies available, 2 vacancies are to be apart for reserved communities, i.e., one



each for Scheduled Caste and Scheduled Tribe leaving only 2 vacancies for others. In the power side earmarked for departmental selection, against 8 posts one employee is available leaving 7 vacancies to be filled up. Here, one post is reserved for Scheduled Caste and one post for Scheduled Tribe. The applicant opted for the post of Skilled Artisan in the Power Wing. The 4th respondent belongs to Scheduled Tribe community and he has been selected against a vacancy reserved for Scheduled Tribe. The applicant has no right to be appointed against a reserved vacancy. There is nothing wrong in granting relaxation of 10% marks to persons belonging to reserved communities. The applicant cannot challenge the selection of the 5th respondent who has been selected as a Skilled Artisan Gr.III in the Train Lighting side. If the applicant was actually aggrieved by the reservations mentioned for Scheduled Caste/Scheduled Tribe employees as shown in A5, he should have immediately made a protest representation as the present averment is belated and not maintainable.

5. In the rejoinder it is stated that there are 8 vacancies in the Power Wing and therefore, the applicant is eligible to be promoted. It is incorrect to say that the applicant has opted for the post of Skilled Artisan in the Power Wing. He has not been opted for any particular wing.

6. The applicant is challenging the inclusion of the 5th respondent in A8, the impugned order, on the ground that he is senior to the 5th respondent. Reliance is placed by the applicant on A1 to A3 for the purpose of claiming that he is senior to the 5th respondent. Official respondents have categorically stated that placement of applicant and the 5th respondent in A1, A2 and A3 is not according to their seniority. A1 to A3 are not seniority lists. A1 is the office



order granting temporary status. A2 is the revised order granting temporary status. A3 is the memorandum showing the names of Project casual labourers who were working under the control XEN/CN/TVC and DY.CEE/CN/MMC/MAS and subsequently posted in the Open Line granting temporary status.

7. The specific case put forward by the official respondents is that the applicant did not apply for the post of Skilled Artisan in the Train Lighting Wing but only in the Power Wing and the 5th respondent opted for Train Lighting Wing. Official respondents produced R1, R2 for the purpose of showing that the applicant opted for Power Wing while the 5th respondent opted for Train Lighting Wing. Since the applicant disputed the correctness of R1 and R2, original was called for. Official respondents made available the original. From the original of R1 and R2 it is clearly seen that the applicant had opted for Power Wing while the 5th respondent opted for Train Lighting Wing. So, the case of the applicant that he has not opted for any particular wing as stated in the rejoinder cannot be accepted in the light of the original of R1 and R2. Since the applicant has opted only for Power Wing, that the 5th respondent opted for Train Lighting Wing, and that the 5th respondent has been selected for the post of Skilled Artisan in the Training Lighting Wing, the applicant cannot lay any claim against the selection and empanelment of the 5th respondent in the Train Lighting Wing. As such the question of their inter se seniority is not necessary to be considered. If both the applicant as well as the 5th respondent had applied for the same wing and if both had come out successful, then only the question of their inter se seniority would assume importance and not otherwise. So, the applicant cannot assail the selection of the 5th respondent on the claim that he is senior

to the 5th respondent for the reason that the applicant has not opted to the particular wing to which the 5th respondent opted and has been selected.

8. As far as the 4th respondent's selection is concerned, the attack is two fold. One is that he has been selected awarding grace marks and the other is that there is excess reservation. We called for the selection file and from the same we find that here it is not a question of awarding grace marks to the 4th respondent, but it is a case of 10%relaxation applicable to the reserved community with regard to the marks.

9. Learned counsel appearing for the applicant drew our attention to the ruling in S.Vinod Kumar and another Vs. Union of India and others [1996 SCC (L&S) 1480] wherein it has been held that:

"We are, therefore, of the opinion that so far as the provision for lower qualifying marks or lesser level of evaluation in the matter of promotion is concerned, it is not permissible under Article 16(4) in view of the command contained in Article 335 of the Constitution. In other words, even if it is assumed for the sake of argument that reservation is permitted by Article 16(4) in the matter of promotions, a provision for lower qualifying marks or lesser level of evaluation is not permissible in the matter of promotions, by virtue of Article 335."

10. Here it is not a case of promotion as such. Here the case is for filling up the vacancies of Skilled Artisans in 25% quota for serving employees. It is a selection. It consists of written test as well as viva voce. This is called the rankers quota. In ground E in this O.A. the applicant has stated that:

"In 'Rankers quota' merit alone would have been considered in consonance with the object sought to be achieved. There is 50% quota set apart for promotion as skilled Artisans in which reservation of SC/ST and others can very well be considered".



So, from the applicant's own pleading it is clear that rankers quota and promotion quota are different.

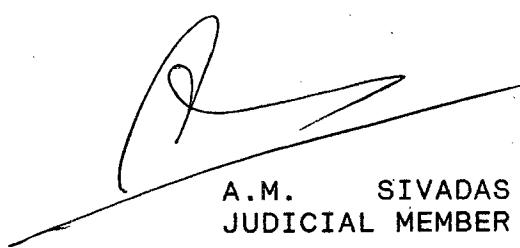
11. AS far as the plea of excess reservation of the applicant is concerned, official respondents say that in the power side against 8 posts, only one employee is available leaving 7 vacancies to be filled up and hence one post for SC is reserved and one post for ST is also reserved. The 4th respondent belongs to ST community. Learned counsel appearing for the official respondents brought to our notice the model roster for promotion for the cadre strength upto 14 posts followed by the department and submitted that as per the same, when the cadre strength is 8, the 4th point is reserved for SC and the 8th point is reserved for ST, that the person in position is one belonging to unreserved community, that since there was no SC candidate the point reserved for SC was carried over and thus the 4th respondent who belongs to ST is selected. The model roster relied on by the learned counsel for the official respondents and the submission of the learned counsel for respondents that there was no SC candidate and as such it was carried forward, the learned counsel appearing for the applicant did not dispute. As per the model roster the submission made by the learned counsel for the official respondents is only to be accepted. That being so, there is no excess reservation.

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

Dated the 25th of May, 2001.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.M. SIVADAS
JUDICIAL MEMBER

P.

List of Annexures referred to in this order.

A-1: True photo copy of Office order No.47/84/EL dated 16.8.84.

A-2: True photo copy of relevant extract of fresh list published by letter dated 10.4.87.

A-3: True photo copy of Memorandum No.V/P.407/VIII/Vol.4 dated 10.11.87 issued by the Assistant Personnel Officer, Thiruvananthapuram.

A-4: True photo copy of representation dated 26.3.93 sent by the applicant to the 1st respondent.

A-5: True photo copy of letter No.V/P.98/VIII/RT dated 5.3.98.

A-6: True photo copy of letter of the Railway Board dated 2.2.98.

A-7: True photo copy of letter dated 4.12.98 sent by the 1st respondent to the applicant and others.

A-9: True photo copy of representation dated 4.1.99 sent by the applicant to the 2nd respondent.

R-1: True copy of the application submitted by the applicant.

R-2: True copy of the application submitted by the 5th respondent.