

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 257/2005

WEDNESDAY THIS THE 10th DAY OF JANUARY, 2007

C O R A M

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER

- 1 S. Mohanan S/o Sukumaran
Helper Grade-I, Southern Railway
Thiruvananthapuram-14
- 2 S. Gopan S/o Sreedharan
Helper Grade-I, Southern Railway
Thiruvananthapuram-14
- 3 K.G. Gopi S/o A. Govindan
Helper Grade-I, Southern Railway
Thiruvananthapuram-14
- 4 V. Premanandan S/o A. Govindan
Helper Grade-I, Southern Railway
Thiruvananthapuram-14
- 5 V. Gnanasihamony S/o V. Visuvasam
Helper Grade-I, Southern Railway
Thiruvananthapuram-14
- 6 C. Satheeshkumar S/o K. Chamarpillai
Helper Grade-I, Southern Railway
Thiruvananthapuram-14
- 7 C. Babu S/o Chellakan Nadar
Helper Grade-I, Southern Railway
Thiruvananthapuram-14
- 8 C. Mohandas S/o Sri Chinnayan
Helper Grade-I, Southern Railway
Thiruvananthapuram-14

9 C. Ayyappan S/o Chinnaiyan
Helper Grade-I, Southern Railway
Thiruvananthapuram-14

10 K. Gireesan S/o V. Krishna Pillai
Helper Grade-I, Southern Railway
Thiruvananthapuram-14

11 S. Sivadasan Achary
Helper Grade-I, Southern Railway
Thiruvananthapuram-14

Applicants

By Advocate Mr. P. K. Madhusoodhanan

Vs.

1 Senior Divisional Personnel Officer
Divisional Office, Southern Railway
Thiruvananthapuram-14

2 Union of India
rep. through its General Manager,
Southern Railway, Park Town
Chennai-3

3 Jolly James
Apprentice Technician III
Train Lighting
Southern Railway
Thiruvananthapuram.

Respondents

By Advocate Mr. K.M. Anthru for R 1-2
Advocate Mr. P. Ramakrishnan for R-3

O R D E R

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

Applicants are all working as Helper Grade-I in the scale of pay of Rs. 2650-4000 in the Electrical Engineering Department of the Trivandrum Division of Southern Railway. They were initially engaged as Casual Labourers, granted temporary status and empanelled and regularised as Khalasis and granted ex-cadre post

of Khalasi Helper w.e.f. various dates and later re-designated as Helper Grade-I. The applicants seek the following reliefs:

- (a) Issue necessary directions to the 1st respondent to ascertain the exact vacant posts of technician Grade-III Train Lighting & Power in the Electrical department of the Trivandrum Division of the Southern Railway and fill up the said vacant posts as per the quota envisaged in para 159 of the Indian Railway Establishment Manual, Vol. I as amended and in accordance with law, simultaneously, without showing any discrimination among the Direct Recruitment quota, Rankers quota and promotees quota and grant seniority in the cadre of Technicians Grade-III (Train Lighting & Power) in accordance with law, from the date of occurrence of the vacant posts.
- (b) Issue necessary directions to the 1st respondent to consider the applicants for promotion to the posts of Technician grade-III/Train Lighting/Power, in accordance with law, as per their turn in the quota of posts set apart for promotees and appoint them to the said posts from the date of occurrence of vacancies/posts of Technicians Grade-III Train Lighting/Power if they are found eligible and suitable;
- © Issue necessary directions to the 1st respondent not to appoint Direct Recruiters and 25% Rankers quota employees without ascertaining the quota of vacant posts set apart for three quotas envisaged in para 159 of IREM and without filling up the 50% promotees quota posts vacant at present
- (d) Declare that the compassionate appointment made in Annexure A-3 is illegal and opposed to law
- (e) Costs of these proceedings; and
- (f) grant such other reliefs as this Hon'ble Tribunal deems fit and proper.

2 It is seen from the prayers that the applicants are generally aggrieved by non granting of a single promotion in their career even after years of continuous uninterrupted service. The Application is not against any particular order.

3 The next channel of promotion available to the applicant as per Para 159 of Indian Railway Establishment Manual Vol. I is to the post of Skilled Artizan Grade-III in the scale of pay of Rs. 3050-4500/- The method of filling up the 'posts' of Skilled Artizans Grade-III now Technicians Grade-III as amended by Railway Board's letter dated 23.7.2002 is laid down as follows:

- (i) 25% by selection from Course completed Act Apprentices, ITI passed candidates and Matriculates from the open market. (commonly known as DR quota).
- (ii) 25% from serving semi skilled and unskilled staff with educational qualification as laid down in Apprentices Act and (known as Rankers quota)
- (iii) 50% by promotion of staff in the lower grade as per the prescribed procedure (known as promotees quota)

4 Therefore, the posts are to be filled up in the ratio of 25:25:50 between Direct Recruits quota, Rankers quota from among serving employees and promotees quota. The applicants herein would fall under promotees quota and are aspiring for promotion under the 50% promotion quota. Their complaint is that the first respondent has resorted to direct recruitment from open market and appointment of apprentices on promotion through Rankers quota and appointment on compassionate grounds more often thus denying the applicants and similarly placed employees the benefit arising out for promotion. Therefore, the applicants have submitted a representation dated 11.8.1993 to the first respondent. The respondents then by letter dated 13.10.1998 alerted 29 serving employees to appear for 25%

quota selection examination. As the representations submitted by the applicants had been of no avail the applicants 1, 2 & 4 herein and 8 others were constrained to approach this Tribunal by filing O.A. 1570/1998 and the Tribunal directed the second respondent to ascertain the number of vacancies available for the 50% promotion quota and pass necessary orders within four months. In purported compliance of Annexure A-1 order dated 10.7.2001, the respondents have issued Annexure A-2 arriving at a decision that as on the date of filing of the O.A. there were five vacancies of Technician Grade-III 50% of the vacancies are liable to be filled up by 50% promotion quota. This letter also shows that there is excess of posts under the promotion quota and shortfall in other categories. At the same time the respondents have resorted to fill up 25% direct recruitment quota without filling the promotion quota and such submission by the respondents are contradictory. It is further submitted by the applicants that the respondents are also filling up the posts by giving compassionate appointment thus defeating the chances of the applicants for promotion.

5 The respondents have filed reply statement. At the outset they have pointed out that though the applicants contest the facts as stated in Annexure A-2 letter, there is no challenge as such in the O.A. to Annexure A-2 which has been issued in compliance of the order of the Tribunal directing the respondents to ascertain the number of vacancies in each quota and to pass necessary orders.

The respondents admit that the applicants are working as Helpers Grade-I and the service particulars furnished by them but point out that they have not made out any complaint of violation of seniority by the respondents and promotions are to be allowed as per seniority to the extent of number of vacancies and in the quota meant for them. No employee can claim promotion as a matter of right. They have denied the allegation that they are filling up only rankers quota and direct recruitment quota and the promotee quota is not being filled up. They have also enclosed Annexure R-1 order dated 2.12.2005 issued for filling up 11 vacancies in the Grade-III Technician posts in the Train Lighting Wing and 7 vacancies in Power Wing against the promotees quota. By this order the 2nd, 4th, 9th and 11th applicants in this O.A have been promoted as Technician Grade-III. According to the respondents other applicants are not qualified as seniors to be considered for promotion and they will be promoted only according to their turn. Regarding the compassionate appointment they have pointed out that these are made against direct recruitment vacancies and in the event of delay in compassionate appointment in a Group-C post for administrative reasons, the candidates concerned could be notionally appointed in Group-D posts and on the availability of a Group-C post they are appointed against Group-C post and that the third respondent is one such candidate and there is nothing irregular in this. They have further averred that the contentions raised in the original application are not at all maintainable and maybe dismissed.

6 In the rejoinder the applicants reiterated their earlier position and demanded that the respondents should put in black and white the information regarding the number of total vacancies of Technician Grade-III in Power Wing and Train Lighting Wing as on 1.1.2005 and how many are filled up under each quota namely the direct recruitment, promotees and rankers quotas.

7 The third respondent has also filed a reply statement stating that the applicants cannot seek any relief against that respondent as none of their rights have been infringed and his appointment is against direct recruitment quota. On account of his educational qualifications and his deceased father's position, he is entitled for appointment in a Group-C post but had accepted the offer of appointment in a Group-D post as the family was in dire need of financial assistance and the respondents have offered a post in Group-C when a suitable vacancy arose. This is permissible as per Railway Board letter No. E(NG)-II-84-RC-1/Policy dated 31.3.1984.

8 We have heard learned counsel Shri P.K. Madhusoodhanan for the applicant, Shri K.A. Anthru for the Railways and Mr. Pratap Abraham for the third respondent. As stated earlier, this application is not against any particular order. The applicants mainly challenge non-implementation of the directions of this Tribunal in O.A. 1570/1998 filed by some of the applicants herein and some others, directing to settle the position regarding the number of vacancies

available for 50% promotion quota. Annexure A-2 is the order issued by the respondents in purported compliance of our orders. The orders show that there are 30 sanctioned posts of Technician Grade-III in the Power Wing and 55 sanctioned posts in the Train Lighting Section. Against this the actual occupancy is 24 and 49 respectively. As on the date of filing of the O.A. 1570/1998 the number of persons actually working in the promotional quota in the Power wing were 21 against the requirement of 15 (50%) and there was an excess of 6. Similarly in the Train Lighting Wing the number of persons actually in position is 29 whereas the number required to be in position was 27, two being excess. After filing of the O.A. selections were held for filling up 15 posts under the 50% promotion quota. On the basis of this position, the respondents have come to the conclusion that 50% promotion quota had more than its share of the vacancies, prior to the filing of the O.A. and even after the filing of the O.A. There does not seem to be any confusion in this regard as alleged by the applicants.

9 It has to be appreciated that the above position will be fluctuating all the time due to the retirements and arising of vacancies. Moreover, the respondents have now again filled up 11 posts in the Train Lighting Unit and 7 posts in the Power Unit by order dated 2.12.2005 by which four of the applicants themselves have been offered higher posts. Therefore there is no basis for the allegation made by the applicants that the respondents are not filling

up the posts under the promotion quota. Since the promotion quota had already been saturated, and shortfalls in other quota had to be made up, recruitments would have been more frequent under those quotas causing such a doubt in the minds of the applicants. One cannot however overlook the fact that the order promoting some of the applicants has been issued after this O.A. was filed. Perhaps the apprehension of the applicants had strong basis at the time of filing of the O.A. Such apprehensions can be avoided if the respondents follow a transparent policy of resorting to recruitment under all the three categories at the same time and if any category is in excess and does not warrant appointment that fact should be made clear by mentioning the details of the vacancies in the order notifying the selection. It is also to be borne in mind that 25:25:50 ratio has to be observed on the total sanctioned strength at any point of time and not as per the vacancies and if this position is always strictly followed, there will be no point of dispute once it is settled as to position of the respective quota for each category further recruitment will be on a one to one basis. The respondents could do well to keep a Register in this regard as the number of posts are not very large in number. Such a Register can be open to inspection.

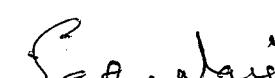
10 In the light of the above observations we do not find any reason to issue a direction to promote the applicants as prayed for and since four applicants have already been promoted and rest of them will have to wait in their turn for the posts set apart for promotees, we

dispose of this OA observing that as stated above, the respondents shall at all time maintain the quota prescribed under the rules among the three categories and make available/known the respective position of the posts set apart for different quotas by maintaining a Register and also in future mention clearly in the notifications for the selection the distribution of the vacancies and the reason why a particular quota is not being filled up at that point of time.

11 The OA is disposed of with the above directions.

Dated 10.1.2007


DR. K.B.S. RAJAN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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