

Tuesday this the 4th November, 1997.

CORAM:

HON'BLE MR. P.V. VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

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

D.A. 247/96

N. Aboobacker,
Chief Controller, Railway
Electrification, Southern Railway,
Divisional Office, Palghat,
(residing at 13-Old Railway Colony,
Olavakkode.)

.. Applicant

(By Advocate Shri M.R. Rajendran Nair)

Vs.

1. The General Manager,
Southern Railway, Madras.

2. The Chief Personnel Officer,
Southern Railway, Madras.

.. Respondents

(By Advocate Mrs. Sumathi Dandapani)

D.A. 284/96

K.M Prabha, TC 21/298, Judge Road,
Karamana, Thiruvananthapuram,
Chief Supervisor(Enquiry &
Reservation), Southern Railway,
Chengannur.

.. Applicant

(By Advocate Shri P.V. Mohanan)

Vs.

1. Union of India represented by
the General Manager, Southern
Railway, Madras -3.

2. The Chief Personnel Officer,
Southern Railway, Madras-3.

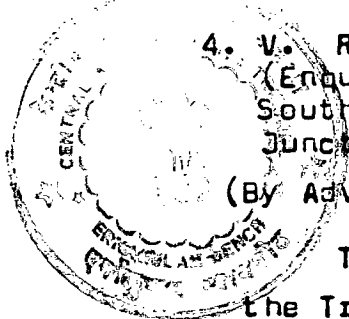
3. D.Gopalaswamy, Chief Supervisor
(Enquiry & Reservation)
Southern Railway, Tiruchirappally
Junction, Tiruchirappally.

4. V. Rajan, Chief Supervisor,
(Enquiry & Reservation)
Southern Railway, Tiruchirappally
Junction, Tiruchirappally.

.. Respondents

(By Advocate Mrs. Sumathi Dandapani(For R.1&2)

The applications having been heard on 4th November, 1997,
the Tribunal on the same day delivered the following:



O R D E R

HON'BLE MR. P.V. VENKATKRISHNAN, ADMINISTRATIVE MEMBER

The issues raised in these two applications being the same, we dispose of them by a common order.

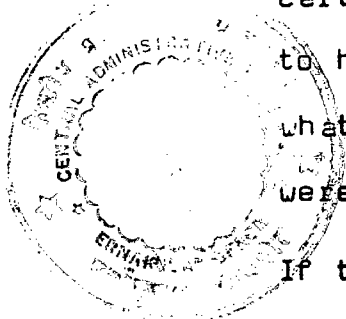
2. Applicants had approached the Tribunal in O.A. 59/91 and connected cases challenging the selection made to fill up the posts of Chief Controller of Railways and Chief Supervisor (Enquiries and Reservation) on the ground that the allocation of 70% of the total marks for viva voce vitiated the selection. The Tribunal directed,

"We hold that the process of selection is arbitrary. However, we do not propose to quash the selections. By now all the applicants have been promoted, and all that needs be done, is to evolve a proper method of selection for now and for future, re-examine the matter and ascertain if the order of selection or seniority needs variation. If it needs, it will be carried out within six months from today. This order/judgement would govern only the selections impugned and no other selection already made and remaining unchallenged."

The respondents examined the method of selection in the light of the decision of the Tribunal and evolved a proper method of selection with a revised procedure replacing the present method of 50 marks allotted for professional ability and introducing a suitable method during selection for which 35% of marks have been allotted. The grievance of the applicant is that the procedure should be applied even to the selection in which they have been selected and that their inter-se-seniority should be revised on the basis of the new scheme for allotment of marks in the selection process. In the case of the applicant in O.A.284/96 there is a prayer that the applicant is entitled to be promoted to one of the posts of Chief Supervisor (Enquiries and Reservation) notified in the year 1991. All the applicants pray that the order Annexure A-1 (in O.A. 247/96) and Annexure A-6 (in O.A. 284/96) dated 3.1.96 passed in consequence of the directions of the orders of

the Tribunal be quashed to the extent that respondents state that on examination it was found impracticable to replace the order of seniority of earlier selected persons merely on the introduction of the revised procedure.

3. Respondents submit that when a person is subjected to a selection process whatever the method adopted it cannot be assumed that he would be empanelled. The claim that a person would have been promoted in the selection of 1991 if it had been subjected to the revised procedure at the material time is hypothetical. The modification of the panel already published could not be made unless it is set aside. The Tribunal in G.A. 59/91 and connected cases had specifically stated that "We do not propose to quash the selections". The revision of the procedure does not imply a simple re-construction of the marks allotted but it calls for a fresh assignment of marks different from what was done earlier. Respondent Railways therefore, submit that unless otherwise the selection already held and the panel formed is set aside there is no scope to subject eligible candidates to a fresh selection on a revised procedure. The seniority of those empanelled in the selection is assigned based on panel position. Those who have been empanelled and subsequently promoted cannot have their seniority altered unless the panel in which they were selected is cancelled. Respondents further submit that it is not possible to apply the revised method retrospectively as the employees have been assigned certain marks and were consequently empanelled and promoted to higher grades now. It would be unpredictable as to in what manner the panel would emerge if all eligible persons were subjected to a fresh selection on a revised procedure. If the selection was held limited only to those already



selected then there might be claims that if the revised procedure had been known others also might have appeared in the selection. For all these reasons respondent Railways found that it was impractical to revise the order of seniority of the selected persons merely on the introduction of the revised procedure.

4. We find that the reasoning advanced by the respondent Railways for not revising the seniority of the applicants by applying the revised procedure of selection in their cases is valid. The nature of the orders of the Tribunal particularly the directions to re-examine the matter and ascertain if the order of selection or seniority needs variation and if it needs, it is to be carried out, clearly indicates that it was left to the respondents to carry out the revision if it was found feasible and practical. The respondent Railways have examined the matter and have concluded that the revised procedure can only be adopted for future selections and that the existing selections cannot be rearranged by applying the revised procedure. We do not find any reason for interfering with the decision of the Respondent Railways. The applications are accordingly dismissed. No costs.

/ Dated the 4th November, 1997.

Sd/-

A.M. SIVADAS
JUDICIAL MEMBER

Sd/-

P.V. VENKATAKRISHNAN
ADMINISTRATIVE MEMBER



CERTIFIED TRUE COPY
Date 10.11.97

Deputy Registrar

85