

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

Original Application No. 291 of 2006  
w i t h  
Original Application No. 680 of 2006

Wednesday, this the 25<sup>th</sup> day of July, 2007

**C O R A M :**

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

**1. O.A. No. 291 of 2006**

Thresiamma John,  
D/o. Luca Thomas,  
Karakatt House, PRA 18/A,  
Padayani Road, Vattiyoorkavu,  
Trivandrum : 13

... Applicant.

(By Advocate Mr.R.S. Kalkura)

**v e r s u s**

1. Union of India represented by the Secretary, Ministry of Railways, New Delhi.
2. Southern Railway represented by The General Manager, Chennai.
3. Financial Advisor & Chief Accounts Officer (FA&CAO), Southern Railway, Chennai.
4. Senior Divisional Finance Manager, Southern Railway, Thycaud, Trivandrum.
5. L. Juliet, Accounts Clerk, Sr. DFM's Office, Southern Railway, Thycaud, Trivandrum.
6. Ajitha T. Nair, Jr. Accounts Assistant, Sr. DFM's Office, Southern Railway, Thycaud, Trivandrum.
7. Bindu S. Kumar, Jr. Accounts Assistant, Sr. DFM's Office, Southern Railway, Thycaud, Trivandrum. ... Respondents.

(By Advocates Mr. K.M. Anthru (R1-4), Mr. T.C.G. Swamy (R6-7) and Mr. M.P. Varkey for R5.)



2. O.A. No. 680 of 2006

1. L. Juliet, W/o. Lawrence,  
Accounts Clerk, Sr. DFM Office,  
Southern Railway, Trivandrum,  
Resident of Kochu Puthanpurayil,  
Areekkakuzhy, Perinad P.O., Kollam.
2. Binu G.R., S/o. Gopinathaji,  
Accounts Clerk, Sr. DFM Office,  
Southern Railway, Trivandrum,  
Resident of Kavuvilakathu Veedu,  
(GRA/J, 35), Gandhipuram,  
Sreekaryam, Trivandrum : 695 017

... Applicants

(By Advocate Mr. M.P. Varkey)

## v e r s u s

1. Union of India represented by  
Secretary, Ministry of Railways,  
New Delhi.
2. Financial Advisor & Chief Accounts  
Officer, Southern Railway, Chennai.
3. Senior Divisional Finance Manager,  
Southern Railway, Trivandrum.
4. Thresiamma John, Senior Typist,  
Senior DFM's Office,  
Southern Railway, Trivandrum.

... Respondents.

[By Advocates Mr. Mrs. Sumathi Dandapani, Sr. with Ms. P.K. Nandini  
(R1-3) and Mr. R.S. Kalkura (R4)].

O R D E R  
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

As the legal issues in these two cases is one and the same,  
both the O.As are dealt in this common order.

## 2. The facts of the case in OA 291/06 are as under :

(a) The applicant joined the services of the respondent as  
Junior Typist in March, 1998 and while employed at Mysore,

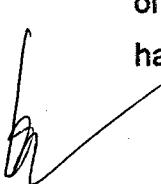


she was promoted as Senior Typist in January, 1991. In 1995, the applicant, on her request, was transferred to Trivandrum as Junior Typist and in 1996 she was promoted as Senior Typist in Trivandrum Division.

(b) While the Typist/Senior Typist come under one cadre, there is another cadre called 'Clerical cadre of the Accounts Department' and provision exists for lateral movement. The Accounts cadre post of Junior Accounts Assistant (JAA) is inter alia tenable by persons who qualify in the Appendix-2A examination conducted by the first respondent. Apart from the person in the Accounts cadre, Senior Typist can also appear in the Junior Accounts Assistant test (Annexure A-1 refers). The said A/1 stipulates "The transfer of Typist and Stenographers to the Clerical cadre of Accounts Department on the basis of this examination will not be subject to any limitation regarding numbers".

(c) After qualifying in the Appendix-2A examination during December, 1997, the applicant requested for change of cadre as Junior Accounts Assistant in the scale of Rs. 4000-6000, which identical to the scale of pay of Senior Typist. Annexure A/2 dated 13.04.99 is in response to the request of the applicant wherein it has been stated that the request of the applicant will be considered as and when clear vacancy arises.

(d) According to the applicant, notwithstanding the above assurance by the respondents, the 6<sup>th</sup> respondent was granted the change of category in 1998 and 7<sup>th</sup> respondent in 2001, but the applicant was overlooked. According to the applicant, 6<sup>th</sup> and 7<sup>th</sup> respondents were not qualified and yet they were granted the change of category. Applicant's request for change of category was never rejected but assurance over assurance had been held out by the respondents.



3. With effect from 7.3.03, the pay scale of Junior Accounts Assistant underwent an upward revision whereby the then existing pay scale of Rs. 4000-6000 was revised to Rs. 4500-7000 (Annexure A/3 refers). Such a revision of pay scale to the comparable post of Senior Typist has, however, not been granted. By virtue of applicant's case not having been duly considered for stitching over from Typist Cadre to Clerical cadre of Accounts Department, the applicant was not granted the revised pay scale of Rs. 4500-7000. her request for change of category was pursued by the applicant vide representations dated 05.01.2001, 17.03.2003, 09.05.2003, 25.03.2004 and 25.10.2005.

4. The applicant learnt from reliable source that a vacancy to the post of JAA was to arise on 1.1.2006. Yet the respondent have not considered the case of of the applicant. Hence this application, seeking, inter alia, the following main reliefs:

(i) Issue a direction to the respondents 1 to 4 to allow the change of category of the applicant from Senior Typist to JAA forthwith in the next arising vacancy;

(ii) Declare that the applicant is eligible to all service benefits with retrospective effect from 1998 onwards when a vacancy fell vacant while the applicant was eligible and her claim was sabotaged by appointing the 6<sup>th</sup> respondent who was ineligible.

5. The applicants have impleaded the private respondents as well in this case. Accordingly, separate reply statements have been filed by the official respondents, private respondent No.5 and the private



respondents No.6 and 7. Their submissions are as under:

**5.1 *Reply of official respondents:***

(a) The applicant joined Southern Railway at her own request duly accepting bottom most seniority to all temporary/ permanent/ officiating Junior Typist in scale Rs. 950-1500 and was posted to Mysore Division. Subsequently, she was promoted to officiate as Senior Typist on 11.4.1991 in scale Rs. 1200-2040 and retained in Mysore Division. She was transferred to the office of the Financial Adviser and Chief Accounts Officer (FA&CAO, for short) Chennai at her request as Junior Typist in scale Rs. 950-1500 on bottom most seniority. Thereafter, she was transferred at her request to the Office of the Divisional Finance Manager (DFM, for short) Trivandrum as Junior Typist in scale Rs. 950-1500 and joined Trivandrum office on 13.03.95. She was promoted as Senior Typist in scale Rs. 1200-2040 as per order dated 25.3.1997 issued by Senior Divisional Accounts Officer, Tiruchirappally.

(b) Consequent to the implementation of the recommendations of the Vth Pay Commission, the scale of pay of Rs. 1200-2040 was replaced by the scale of pay of Rs. 4000-6000. Accordingly, the applicant was in the scale of pay of Rs. 4000-6000 from 25.03.1997. the applicant passed Appendix-2 examination in December, 1997.

(c) The posts of Junior Accounts Assistant in scale Rs. 1200-2040 (revised scale Rs. 4500-7000) is filled by Direct Recruitment and promotion of existing Accounts Clerks in scale Rs. 950-1500. 80% of the vacancies of JAAs are filled up by recruiting Graduates from open market and 20% by promotion. Typist cadre is entirely different from clerical cadre. Typists can aspire for promotion in the clerical cadre only after change of category. The procedure for change of category had been laid down in

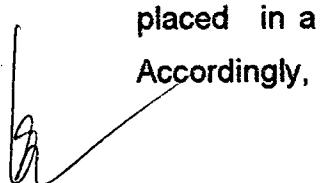


Annexure A/1 Railway Board's letter dated 15.6.1963. However, Annexure A/1 was withdrawn as per Railway Board's letter dated 2.11.2004 (Annexure R/1), because with effect from 1.1.1996 the pay scale of JAAs was revised to Rs. 4500-7000, as is evident from Annexure A/3 whereas the the pay scale of the Senior Typist remained as Rs. 4000-6000. In para 3 of Annexure R/1, it is stated as follows :

"3. It may be noted that consequent upon enhancement of pay scales of Junior Accounts Assistant (JAA) from Rs. 4000-6000 with effect from 1.1.1996, there is no scope for Senior Typists and Stenographers who continue to be in lower pay scale of Rs. 4000-6000, being allowed the benefit of service rendered by them as Senior Typist/Stenographers on posting/promotion as JAA after passing Appendix-2 examination and towards counting three years as JAA prescribed for promotion as Accounts Assistant."

(d) The applicant was eligible to opt for change of category from December, 1997 (the date of passing Appendix-2 examination) to 7.3.2003 (the date of issue of Annexure A/3 enhancing pay of JAAs). Since the pay of JAAs was revised with effect from 1.1.1996, the period of eligibility became further restricted. During the year 1999 when the applicant's representation for change of category was received by Annexure A/2, she was advised that her request will be considered as and when vacancy arose. The above advice was given to the applicant prior to the issue of Annexure A/3 revising the pay of JAAs. A vacancy of JAA has arisen on 1.5.2006, but falls under direct quota. Respondents 1 to 3 have not permitted change of category in this Railway from Typist to JAA as alleged by the applicant.

(e) The whole issue was referred to Railway Board and the Board has clarified that Appendix-2A qualified staff shall be placed in a panel vide letter dated 26.6.2006 (Annexure R/2). Accordingly, FA&CAO, Chennai, vide letter dated 4.8.06



(Annexure R/3) has directed to place the applicant in a panel and the applicant's name will be considered first, before considering the name of 5<sup>th</sup> respondent viz. L. Juilet, since the 5<sup>th</sup> respondent has passed Appendix-2A examination in 2003. The respondent Nos. 6 and 7 were promoted against unqualified quota. Pursuant to Annexure R/3, a letter dated 14.8.2006 (Annexure R/4) was issued by the Senior Divisional Finance Manager, Trivandrum, advising the applicant that her name would be considered first for promotion for the post of Junior Accounts Assistant among the Appendix-2A qualified persons against promotional quota.

#### **5.2 *Reply of private respondent No. 5 :***

(a) The claim of the applicant is not founded on any rule or order. Annexure A/1 was applicable to transfer of Typists as Accounts Clerks and not applicable to transfer of Senior Typists as JAA. If change of category granted to respondents 6 and 7 was irregular as alleged, it does not make the applicant also eligible for the same over the head of the 5<sup>th</sup> respondent. Change of category is difficult since the applicant is in scale Rs. 4000-6000 and the post sought for (JAA) is now in scale of Rs. 4500-7000. Change of category is not a right, but only a discretionary benefit, even if there is a provision for change of category.

#### **5.3 *Reply of private respondents No. 6 and 7 :***

(a) Typist is a separate cadre different from that of clerical cadre. The applicant has to change her category so as to come over to the cadre of Accounts Clerk. Only after becoming a Clerk, she can aspire to get promoted as Junior Accounts Assistant in terms of the Recruitment Rules. In other words, she being a Senior Typist can aspire to be appointed as Junior

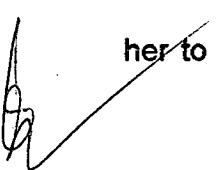


Accounts Assistant only after the category change as Clerk. There is no provision under the rules to fill up the vacancies of Junior Accounts Assistants by transfer.

(b) Respondent No. 6 was appointed as Peon in the Accounts Department on 9.12.85 and promoted as Accounts Clerk on 20.1.1986. She was confirmed in that post on 8.5.91 and was promoted as Junior Accounts Assistant on 22.12.1998. Respondent No. 7 was appointed as Peon on 25.4.86 and was promoted as Accounts Clerk on 21.10.86. She was confirmed in that post on 8.5.91 and was promoted as Junior Accounts Assistant on 1.7.2001. As per para 171 (3) of the Indian Railway Establishment Manual Vol. I, Accounts Clerks are eligible for promotion as Junior Accounts Assistants as against 20% quota of vacancies. Respondents No. 6 & 7 were promoted against the 20% quota, that too against the 25% promotion quota to non-qualified Accounts Clerks, who have more than 5 years of service.

6. Applicant has filed rejoinder to the counter statement and the official respondents in the wake of rejoinder filed additional reply statement.

7. The facts of the case in OA No. 680/2006: The applicant No.1 herein is respondent No. 5 in OA No. 291/06. Applicants have challenged Annexure A/5 and A/6 orders. Annexure A/5 dated 04.08.06 is the order whereby subsequent to filing of O.A. No. 291/06, respondents have placed the applicant in the said O.A. in the Appendix-2 passed panel of Accounts Clerk/ Seniority of Accounts Clerk in the scale of pay Rs. 3050-4590 of Trivandrum Division so as to enable her to seek further promotion/absorption as Junior Accounts Assistant in



her turn in the promotional quota vacancy. The applicant has also challenged Annexure A/4 order dated 26.06.06 which contains clarification given by the Railway Board on the subject matter.

8. According to the applicant in this O.A, transfer from one cadre to another is possible within 5 years of entry and absorption within 10 years of entry. The kind of change of category asked for in OA 291/06, according to the applicants in this OA, is not envisaged in the policy/rule. Further, according to the applicants, while change of cadre should be within 5 years and absorption should be within 10 years. The applicants in this OA have sought for the following main reliefs :

(i) Quash Annexures A/4, A/5 and A/6 in toto and quash Railway Board's letter dated 25.07.69 to the extent it assigns eligibility and panel seniority to typists who have passed Appendix-2 examination, but have not been transferred as Accounts Clerk within the first 5/10 years of their service.

(ii) Declare that the 4<sup>th</sup> respondent who is still a Senior Typist in Scale Rs. 4000-6000 is not entitled to be placed either in the seniority list of Accounts Clerk in the scale of Rs. 3050-4590 of TVC Division or in the Appendix-2 examination passed panel of Accounts Clerks in the said scale in TVC Division and direct the respondents accordingly.

9. The 4<sup>th</sup> respondent as well as official respondents have filed their respective version. The same are as under :

9.1 *Reply filed by the 4<sup>th</sup> respondent:*



(a) Necessary arrangements and clarifications have been issued by the Railway Board for their letter dated 15.06.1963 and vide their clarifications dated 26.06.2006, Typists/ Stenographers working in scale Rs. 3050-4590 and 4000-6000 are eligible to appear in Appendix-2 (IREM) examination and seek absorption as Junior Accounts Assistant in Accounts Department. Therefore, the contention that 'change of category' as prayed for in OA No. 291 of 2006 was not envisaged in Annexure A1 is false and baseless. There is no rule in IREM or IREC which categorically states that Typist should be transferred as Accounts Clerk is a precondition to be promoted as JAA. Hence this claim also is false and vicious in nature.

(b) There is no emphatic condition or rule i.e., 'Typist should opt for transfer as Accounts Clerk, only during the first five years of their service' either in the 1963 letter or in the IREM para. The word 'only' has deliberately incorporated so as to mislead this Tribunal and as such it is highly objectionable. The applicants have passed the Appendix-2 examination only in 2003.

#### 9.2 Reply filed by the respondent Nos. 1 to 3 :

(a) Seniority of Typist cadre for promotions beyond Senior Typist is controlled centrally by the 2<sup>nd</sup> respondent for Southern Railway as a whole. Due to administrative reasons and for the seniority purpose the Typist cadre upto Senior Typist level is divided into two, viz. FA & CAO-I and FA&CAO-II. The seniority unit, FA&CAO-II is controlled by Senior Divisional Finance Manager, Tiruchirapalli. Trivandrum Division comes under the seniority unit of FA&CAO-II.

(b) The 4<sup>th</sup> respondent, Smt. Thressiamma John, Senior

Typist, has applied for change of category subsequent to her qualifying Appendix-2 examination held during 1997 in terms of Board's letter dated 31.5.1963 (Annexure A/1). Annexure A1 do not contemplate any period for change of category of Typist in Accounts Department.

(c) The Railway Board vide letter dated 2.11.2004 (Annexure A/3) issued certain revised benefits already available to Typists/Stenos consequent to revision of pay scale. On further specific clarification sought for from Southern Railway on modalities of considering change of category in future and on assigning of seniority in such cases, Railway Board issued instructions vide letter dated 26.6.2006 (Annexure A/4) clarifying that the employees who pass Appendix-2A examination are requested to be considered for promotion to JAA with reference to time of passing the Appendix-2 (IREM) examination duly forming a panel of Appendix-2 examination passed candidate.

(d) The 4<sup>th</sup> respondent has passed Appendix-2 examination held during December, 1997, which is within the 10 year period from the date of her appointment in North Frontier Railway as Junior Typist on 24.03.1988.

10. Applicants have filed rejoinder to the counter statement filed by the respective respondents reiterating the stand taken in the O.A.

11. Counsel for the applicant argued that the applicant had applied in 1999 itself for change of cadre and she was assured that her request would be considered as and when clear vacancy arises. As such, the respondent cannot try to contend that the applicant's request is for change in the cadre after the revision of pay scale of JAA has occurred. It was incumbent upon

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the respondents to have considered the change in cadre at the time when vacancy arose in 2003 whereas promotion was afforded to some one else. This is illegal. As regards the contention of the private respondents the counsel argued that the purpose of allowing typists of clerical cadre to appear for the Appendix II exam is only with a view to giving them the opportunity of change of cadre and once they have applied for the same, there is no question of denying the same. Though the applicant had requested for change in the cadre as JAA in some of the correspondence, earlier her request was change in the cadre and it was the respondents who have, vide Annexure A-3 stated that such a change in the cadre would be considered at the time when vacancy arose. It was keeping in view the same that the applicant had stated in her later communication that her cadre be changed as JAA as by then she could be accommodated as vacancy did arise. Request for change of category as JAA does not become fatal in considering change in category in any grade in the ladder, promotion to be granted as and when vacancy arose.

12. Counsel for the sixth and seventh respondents contended that promotion of the said respondents was against the 20% promotion quota by non qualified Accounts Clerks with 5 years service or more, as per IREM 171(3), while the applicant cannot be considered for promotion under this category.

13. Counsel for private respondent No. 5 has contended that there is a time stipulation of five years of entry in the service that request for change of cadre should be made and in this case the same has far exceeded as the

*b*

applicant joined the clerical cadre in 80s. Counsel for the fifth respondent, who happens to be the counsel for the applicant in OA No. 680 of 2006 assailed the order dated 26-06-2006 of the Railway Board as well as order dated 04-08-2006 of the Office of FA & CAO Chennai, passed and 14-08-2006 in pursuance of the Railway Board's order cited above. His assailing the order is also on the ground that after the OA had been admitted, all the pending representations of the applicant in the administrative arena get abated and as such, orders of the Railway Board and the FA & CAO are non-est in law, as the same are violative of Sec 19(4) of the A.T. Act.

14. Counsel for the applicant in his capacity as counsel for the private respondent in OA 680/06 reiterated his contention as stated above.

15. Arguments were heard and documents perused. The relevant Rules on the subject and relevant portion of Appendix-2 of IREM are as under:-

**"Rule 171(3) of IREM : Accounts Clerks are eligible for promotion as Junior Accounts Assistants in scale Rs. 1200-2040 against 20% quota of vacancies as Under:-**

- (i) 75% of the vacancies of promotion quota by qualified Appendix-2 passed Accounts Clerks; and
- (ii) 25% of the vacancies of promotion quota by non-qualified Accounts Clerks with five years service or more who have displayed conspicuous ability, on seniority – cum -suitability basis, written test forming part of seniority-cum-suitability test."

**"Appendix-2 : 4(a) .....**

- (b) No railway servant, who has less than six months service in a Railway Accounts Office or he has not a reasonable chance of passing the examination will be allowed to appear in the examination prescribed in this Appendix.

In exceptional circumstances, the condition regarding six months minimum service may be waived by the General Manager.

(c) Temporary Railway servants may be permitted to sit for the examination, but it should be clearly understood that the passing of this examination will not give them a claim for absorption in the permanent cadre. "

16. Provision does exist for change of cadre. Even after introduction of the revised pay scale of Rs 4,500 - 7,000 for J.A.A. no amendment had been carried out removing this facility to the Appendix II qualified clerical grade employees. The official respondents' clear admission is that the applicant did apply for change in the cadre and the same was as early as in 1999. The respondents ought to have considered the same and placed the applicant in the seniority list of Appendix II qualified persons, for which there is 80% promotion quota. If the private respondents have not been promoted against this 80% quota, there shall be no quarrel in so far as their promotion is concerned but certain changes may have to be made in the seniority list in the event of the applicant succeeding. In so far as applicants in OA 680/06, they are, however, appendix II qualified candidates and in the event of the applicant in OA No. 291/05 coming out victorious, their position even for promotion may undergo certain changes. The question is whether the applicant has crystallized any of her rights to have the reliefs granted to her.

17. Counsel for the respondents submits that by virtue of Annexure R-1 order of the Railway Board, the extent of the benefit available on change



over of cadre would be restricted as stated therein. Again, by virtue of Annexure R-2 to 4, the applicant has been given certain benefits of cadre change and her seniority in Appendix II exam qualified panel of ACs is subject to the outcome of pending case in the Apex Court. These orders have been passed in view of the revision of pay scale of J.A.As to Rs. 4,500 - 7,000. Thus, provision existing as of today too, even after revision of pay scale of JAA, the applicant is certainly entitled to be considered for change of cadre. Any constriction imposed by Annexure R-1 order should have only prospective effect and not retrospective effect. The entitlement of the applicant for cadre change is well before the issue of the aforesaid Annexure R-1 and R-2 orders. This is a clear case of respondents having completely forgotten about the assurance they have given vide Annexure A-3. Their fault cannot and should not adversely affect the applicant. It has been held in the case of *Nirmal Chandra Bhattacharjee v. Union of India, 1991 Supp (2) SCC 363* wherein the Apex Court has held, "The mistake or delay on the part of the department should not be permitted to recoil on the appellants." Again, even according to the respondents, the applicant having applied for cadre change, there cannot be any fault on the part of the applicant. The Apex Court has held in the case of *Bhoop v. Matadin Bhardwaj, (1991) 2 SCC 128*, has held, "The learned Single Judge in the High Court rightly held that a party cannot be made to suffer for no fault of her own."

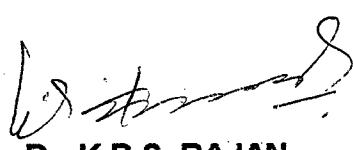
18. In view of the above, OA No. 291/06 succeeds. It is declared that the applicant is entitled to have the cadre changed from 1997 when she had qualified in the Appendix II Examination and she would have her seniority in the feeder grade to JAA counted from that date. However, she would be

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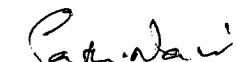
entitled to be promoted to the grade of J.A.A. in the next available 80% promotion quota for Appendix II passed. At that time, her promotion would be deemed to have been effected from the day her junior got promoted in the 80% quota and pay shall be fixed taking into account notional increments from the date the junior was promoted. In the grade of JAA her seniority in the combined seniority of JAAs from the two streams shall be fixed in accordance with the relevant rules. Save that the seniority of the applicant in the grade of JAA shall be subject to outcome of the pending case in the Apex Court as spelt out in order dated 04-08-2006, none of the other restrictions relating to the date of induction in the cadre of Accountants or pay scale shall be applied to the case of the applicant. In other words, the cadre change shall be effected keeping the clock back to 1997-98 when the applicant qualified in Appendix II Exam and made application for change of cadre. This drill shall be performed within a period of six months from the date of communication of this order.

19. In so far as OA 680/06 is concerned, with the above directions, the impugned orders sink into oblivion. Thus the said OA is rendered infructuous. No costs.

(Dated, the 25<sup>th</sup> July, 2007)



Dr. K B S RAJAN  
JUDICIAL MEMBER



SATHI NAIR  
VICE CHAIRMAN