

CENTRAL 250ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. 314/2001

THURSDAY, THIS THE 9th DAY OF JANUARY, 2003.

C O R A M

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

1. P.Ravi Kumar
Station Master-II
Southern Railway
Murukkumpuzha.
2. Benjamin Mathew
Station Master-II
Southern Railway
Trivandrum Central
Thiruvananthapuram.

Applicants

By Advocate Mr. P.K. Madhusoodhanan

Vs.

1. Senior Divisional Personnel Officer
Southern Railway,
Thiruvananthapuram-14.
2. Divisional Railway Manager
Southern Railway
Thiruvananthapuram.
3. Union of India
represented by the General Manager
Southern Railway,
Park Town
Chennai
4. M. Jaffar Khan
Train Superintendent
Southern Railway
Trivandrum Central.
5. H.M. Noorul Ameen
Station Master-II
Southern Railway
Ernakulam Town
6. Vikraman Nair. G.
Station Master-II
Southern Railway
Ernakulam Town
7. P.K. Radhakrishnan
Station Master-II
Southern Railway,
Ernakulam Town

8. M. Jaffar Kutty
Station Master-II
Southern Railway
Kollam.

9. K. Balachandran Nair
Instructor of Training School
Southern Railway,
Kollam.

10. M. Prabhakaran Pillai
Station Master-II
Southern Railway,
Cochin Harbour Terminus.

Respondents

By Advocate Mr. Thomas Mathew Nellimoottil For R 1-3
By Advocate Mr. M.P. Varkey for R-4, 5, 8 & 9
By Advocate Mr. P.G. Parameswaraa Panicker for R 7, 8 & 10

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Applicants two in number, aggrieved by non-inclusion of their names in the panel published by the first respondent under A2 letter No. VP 608/II/SM-1/T1 Vol.3 dated 26.3.2001 for the post of Station Master-1/T1 in scale Rs. 6500-10800, filed this O.A. seeking the following reliefs:

(a) Set aside Annexure A2 dated 26.3.2001.

(b) Issue necessary directions to the Respondents to conduct Selection for promotion to the 9 vacancies of Station Master-I in accordance with law

(c) Issue necessary directions to the respondents prohibiting them from proceeding with Annexure A2 and grant promotion from that Select Panel in Annexure A2.

(d) Costs.

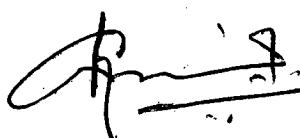
and

(e) grant such other reliefs may deem fit and proper in the facts and circumstances of the case.

2. According to the averments in the O.A., first applicant at the time of filing of this O.A. was working as Station Master-II of Southern Railway and claimed that their next promotion was to the Station Master-I and second applicant was officiating as Station Master-I since 8.5.97. Both the applicants had received Accident Free Service Award



on 9.4.1991 for the exemplary service. The first applicant had also been awarded with safety week Award in March, 2000 in acknowledgment of his meritorious service as Station Master. While so the first respondent proposed to fill 12 vacancies of SM-I in scale Rs. 6500-10,500 and alerted twenty seven employees to be in readiness to appear for selection which consisted of written test, viva voce test and consideration of service records etc. Out of the 12 vacancies 9 were unreserved and 3 were reserved for scheduled Tribe candidates. Applicants were at Sl. NO. 7 and 10 respectively in the alert notice issued as per seniority. Written test was conducted on 25.11.2000 and 12 employees from among the 27 in the alert notice were called for viva voce test to be held on 17.1.2000 by A1 letter dated 4.1.2001. Applicants were included at Sl. NO. 7 and 9 in the said A1. Though viva voce was ordered to be held on 17.1.2001 it was postponed to 22.1.2001 and they claimed that they correctly answered all the questions put to them. The first respondent published A2 Selection panel dated 26.3.2001 of 7 employees stating that the final panel would be published after conducting the viva test of ;one Sri Sudhakara Kaimal. Applicants preferred A3 and A4 representations dated 30.3.2001 and 29.3.2001 before the second respondent as they were not included in the panel. Alleging that the first respondent was taking hasty steps to promote respondents 4 to 10 before finalising the selection panel and before considering A3 and A4 representations by the second respondent, applicant filed this O.A. seeking the above reliefs. According to them inclusion of the Senior Divisional Commercial Manager, Trivandrum in the Selection Board was without authority, arbitrary and against the relevant provisions in the Indian Railway Establishment Manual Vol.1. They alleged that he was included in the



Selection Board in the middle of the selection process and the same was bad in law as there was no provision either in the Manual or any Railway Boards letters authorizing such an Act even when the legally constituted selection Board's members were available. They relied on para 219(b) of the IREM Vol.I 1989 Edition. It was also submitted that the Senior DCM was interested in the 9th respondent and for his inclusion the 5th and 8th respondents who were juniors to the 9th respondent were included in Annexure A2 by eliminating the applicants without any reason inspite of better performance in professional ability, good personality outstanding confidential records/service records, etc. It was also alleged that the second respondent had been officiating as SM-1 and when he had been denied officiating allowance he approached the Assistant Labour Commissioner, Trivandrum and the same was one of the reasons for not empaneling him. They claimed that they had performed well in the viva voce and secured 60% marks in the professional ability. Their service records were outstanding there were no adverse entries and no disciplinary proceedings were pending or contemplated against them, no punishments were imposed against them. They claimed that they were the seniormost Station Masters in the Trivandrum division and were eligible to be considered and promoted to the grade of Station Master-I. According to them even though they were called for viva voce on the basis of notional seniority marks such persons were selected in the previous selections and they were alone discriminated against by not granting promotion to them.

3. Respondents filed reply statement resisting the claim of the applicant. According to them no irregularity had been conducted and the selection board was constituted as per para

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217 to 219 of IREM. They also contended that the O.A.. was bad for misjoinder of parties. Even though allegations had been made against the Senior Divisional Commercial Manager, the said officer had not been impleaded in the party array. According to them since there were specific instructions from Southern Railway HQ not to include Sri C. Balachandran, Senior Divisional Operations Manager, Trivandrum in Selection Board, another Officer of the same status in the Traffic Department Sri C. Vikraman Nair, Senior Divisional Commercial Manager, Trivandrum was nominated by the Divisional Railway Manager, Trivandrum in the Selection Boards for the post of Station Master Grade-I. The same was not arbitrary and was as per the relevant provisions of the IREM. The inclusion of Senior Divisional Commercial Manager who was also an officer in Traffic Department as he belonged to the Indian Railway Traffic Services and his inclusion was not in the Selection Board was as per the relevant provisions of IREM ordered by the competent authority and was not arbitrary. The inclusion of the Commercial Manager had been done initially itself when the selection process had been initiated along with other Members in the Selection Boards and there was no inclusion in the middle of the selection process as alleged by the applicants. The applicants had not scored 60% marks in the professional ability. They were called for the viva voce test by adding notional marks for seniority and that itself disproved their statement. It was further submitted that mere exemplary service record and accident free service award did not entitle a person being empanelled in a selection. One had to score the minimum qualifying marks in the professional ability and in aggregate for being entitled to be included in the panel. Though selection process was initiated to fill up 9 vacancies only 7

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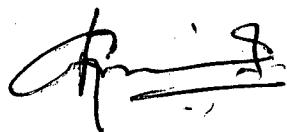
employees had been found suitable for selection and hence their names had been advised as per A2. The O.A. was devoid of any merits and was liable to be dismissed.

4. In the additional reply statement filed it was submitted that the Senior Divisional Commercial Manager, Trivandrum Division belonged to the Transportation (Traffic) and Commercial Department of the Railways. Officers belonging to the Transportation (Traffic) Commercial Department are interchangeable between the Operating and Commercial Branches of the Department. Sri Vikraman Nair had earlier worked in the Operating Branch as Senior Divisional Operations Manager Trivandrum Division before he was posted as Senior Divisional Commercial Manager. He was earlier working as Senior Divisional Operations Manager/Madurai Division also. Relying on R-1 extract of the statement of Gazetted Establishment as on 1.1.2001 relevant to the Transportation (Traffic) and Commercial Department it was submitted that the list contained the names of the officers working as Commercial Managers, Operation Managers, Safety Officers, etc. among others of the Transportation (Traffic) and Commercial Department. Further it was submitted that the applicants having participated in the selection without any demur, they were estopped from challenging the selection.

5. Applicants filed rejoinder reiterating the points made in the O.A.

6. Respondents 1 to 3 filed additional reply statement.

7. Respondents 4, 5, 8 & 9 and respondents 7 & 10 filed separate reply statements.

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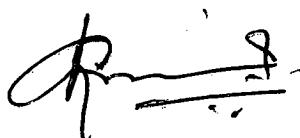
8. Applicants filed rejoinder to the reply statement filed by the respondents 4, 5, 8 & 9.

9. Heard the learned counsel for the parties.

10. The learned counsel for the applicant took us through the factual aspects as contained in the O.A. and submitted that the inclusion of the Senior Divisional Commercial Manager was against the provisions contained in the IREM and as the selection had been conducted by the wrongly constituted Departmental Promotion Committee against the statutory provisions, the applicants were entitled for the reliefs sought for in the O.A. The learned counsel for the official respondents reiterated the points made in the reply statement. The learned counsel for the respondents 4, 5, 8 & 9 submitted that the applicants had not shown as to how they were prejudiced by the Senior Divisional Commercial Manager being nominated to the Selection Board. Having participated in the selection they were estopped from challenging the same.

11. We have given careful consideration to the submissions made by the learned counsel for the parties and the rival pleadings and have also perused the documents brought on record.

12. The main issue to be decided in this O.A. is whether constitution of the Selection Board is in accordance with the provisions contained in the Indian Railway Establishment Manual. Both the applicants as well as the respondents rely on the provisions of the IREM Vol.1. Paragraphs 217 to 219. The question that comes up for consideration is whether the nomination of the Senior Divisional Commercial Manager is in

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accordance with the provisions contained in the IREM. Paras 217, 218 and 219 (a) & (b) of the IREM reads as follows.

217. Selection Boards

(a) Selection Boards shall be constituted for the purpose of making recommendations to the competent authority in respect of the Railway servant considered by it as suitable for filling a selection post.

(b) Selection Boards may be constituted under the orders of the General Manager or Head of the department or other competent authority, not lower than a Divisional Railway Manager.

218. Constitution of Selection Boards

(a) Selection Boards shall consist of not less than three Officers, one of whom should be a Personnel Officer and one of the Members should be from a Department other than that for which selection is held

(b) When a Selection Board consist of only Officers, none of the members be directly subordinate to any other.

(c) For selection post in the scale of Rs. 1600-2660 and above, the Selection Boards will consist of Officers of Junior administrative rank, for all other selection posts the Selection Board will consist of Officers not lower in rank than senior scale. In either case the Selection Board may include a Personnel Officer in the next lower rank, shall nevertheless, be a equal member of the Selection Board.

E(NG)I-83 PM I-214 dt. 8.12.76

(d) Every effort should be made to include a SC/ST Officers on the Selection Boards whether of the same Department, if available or the other Department/Railway/Production Units or a non-Railway Department.

81/E(SCT)/15/32 dt. 8.11.81.

(e) If for any reason the competent authority is unable to comply with the provisions of this paragraph, it should make a report of the facts to the General Manager.

219. Procedure to be adopted by Selection Board

(a) When a Selection post is to be filled, an authority empowered to constitute a Selection Board shall direct to the Board to assemble and make recommendations. It shall also nominate the Officer who shall act as the Chairman of the Board. The responsibility for selection will be of all members.

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(b) An officer of the concerned Department who is also a member of the Selection Board must be authorised to set the question paper for written test. Where possible, another Officer who is also a member of the Selection Board should be nominated to evaluate the answer books, if such a test is held as a part of the Selection or determining the professional ability. The test should be confidential system with roll numbers.

E(NG)I/84 PM 1-6/1 dt. 30.3.85 & E(NG)I/85/PM 1/13
(RRC) dt. 5.9.1985

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13. We find from para 218 above - Constitution of the Selection Board (i) There shall be a a minimum of three officers in the Selection Board, (ii) There shall be one Personnel Officer and (iii) One of the members should be from a Department other than that for which the selection is held. From these provisons we are of the view that there is no mandate that the Selection Board should consist of a Departmental Officer. It is now well laid down that a rule should be read as such. If the Rule Maker wanted that the Selection Board should consist of a Departmental Officer as a Member he would have clearly stated so. When it is not stated specifically so, it cannot be presumed that it is necessary. Para 219(b) which had been relied on by the applicant in support of his plea that the Selection Board should consist of an officer of the department, in our view, the said para only mandates that the setting up of question papers and the evaluation of the answer books should be done by the members of the Selection Board only. The words "an officer of the concerned Department" used in this para is to be understood as an officer who has knowledge of the concerned department's working.

14. According to the respondents Senior Divisional Commercial Manager also belongs to the Transportation (Traffic) and Commercial Department of the Railways and the



services of the officers in the Transportation (Traffic) and Commercial Department are interchangeable between the Operating and Commercial Branches of the Department. The very fact that the said officer worked as Senior Divisional Operations Manager, Trivandrum and Madurai Divisions before he was posted as Senior Divisional Commercial Manager, Trivandrum Division indicates that officers of the Operating and Commercial Departments are interchangeable. The applicant's submissions that the Senior Divisional Commercial Manager had no power to issue chargesheet, transfer, disciplinary control etc. on the employees of the Operating Department has no relevance as far as the process of 'selection' is concerned. What is required to be decided by the Selection Board is the suitability or otherwise of those who attend the selection. One of the criteria for the suitability is the "professional ability." When the respondents submit that the officers of the Transportation (Traffic) and Commercial Department could be posted either in the Operating or Commercial side and the said fact had not been disputed by the applicants we have to come to the conclusion that the Transportation (Traffic) and Commercial service officers have professional knowledge of the working of both Operating and Commercial departments. In this view of the matter we do not find any infirmity in the action of the second respondent in nominating the Senior Divisional Commercial Manager as a Member of the Selection Board, when the incumbent of the post of Senior Divisional Divisional Operations Manager could not be made as a member of the Selection Board.

15. Another ground advanced by the applicants against the nomination of the Senior Divisional Commercial Manager as a Member of the Selection Board was that he was personally

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biased against the second applicant. They have attributed malafides against the Senior Divisional Commercial Manager by stating that he was interested in the 9th respondent. At the same time the Senior Divisional Commercial Manager had not been impleaded in the party array. It is now well settled legally that official acts whenever done should be presumed to be done in good faith and public interest unless substantiated otherwise. Further whenever allegations of malafides are made the burden is on the individual concerned to produce sufficient material. Just an averment that the Senior Divisional Commercial Manager was interested in the 9th respondent, this Tribunal cannot accept the same.

16. We also find force in the submission of the party respondents, that applicants had not brought out as to how they are prejudiced by the presence of Senior Divisional Commercial Manager as a Member of the Selection Board. We also find from the reliefs sought for by the applicants that they are seeking that the panel already formed should be cancelled and the selection should be re-conducted. They had not sought any reliefs for themselves. In the absence of any averment to the effect as to how the applicants are prejudiced by the inclusion of the Senior Divisional Commercial Manager in the Selection Board we do not find any reason to set aside the selection especially when we have not found any infirmity in his being a member of the Selection Board.

17. Admittedly the applicants had not qualified in the written test i.e. They had not scored 60% marks. They had been called for viva-voce only by addition of notional seniority marks. This factual position leads us to conclude

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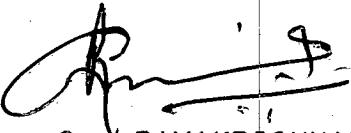
that their professional knowledge is less compared to the respondents who had been called without any addition of notional seniority marks.

18. In view of the foregoing we hold that the applicants are not entitled for the reliefs sought for and accordingly we dismiss this Original Application leaving the parties to bear their respective costs.

Dated the 9th January, 2003.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

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A P P E N D I X

Applicant's Annexures:

1. A-1: True copy of the letter dated 4.1.2001 No.V/P.608/II/SMI/TT/Vol.3.
2. A-2: True copy of the letter No.V/P.608/11/SMI/TI/Vol.3 dated 26.3.2001 of the Senior Divisional Personnel Officer at Thiruvananthapuram.
3. A-3: True copy of the representation submitted by the 1st applicant to the 2nd respondent dated 30.3.2001.
4. A-4: True copy of the representation submitted by the 2nd applicant to the 2nd respondent dated 29.3.2001.
5. A-5: True copy of the letter dated 26.11.1999 of the Labour Enforcement Officer, Trivandrum.
6. A-6: True copy of the letter No.TVC/III/Tfc. dated 30.8.1997 issued by the Station Manager, Trivandrum Central.
7. A-7: True copy of the letter No.TVC/III/TFC/Optg. dated 18.10.99 issued by the Station Manager, Trivandrum Central.
8. A-8: True copy of the letter No.V/T.20/SMs. dated 8.7.98 issued by the Divl. Operating Manager, Trivandrum Central.
9. A-9: True copy of the letter No.V/C.415/Gaz/99 dated 21.6.99 issued from the Divl.Rly. Manager's Office, Commercial Branch, Trivandrum-14.
10. A-10: True copy of the letter No.V/T.20/HOC/TOC.Vol.1 dated 10.2.2000 issued by Sr.DOM/TVC.

Respondents' Annexures:

1. R-1: True photocopy of the extracts of the Statement of Gazetted Establishment as on 1st January, 2001 relevant to the Transportation (Traffic) and Commercial Department.
