

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.342/05

Wednesday this the 20th day of July 2005

C O R A M :

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

Omana K.M.,
W/o.T.K.Subramanyam,
Office Superintendent Grade I, Personnel Branch,
O/o. Senior Divisional Personnel Officer,
Southern Railway, Palakkad.
Residing at Swathy, Girinagar, Palakkad.

...Applicant

(By Advocate Mr.C.S.Manilal)

Versus

1. The Divisional Railway Manager,
Southern Railway, Palakkad.
 2. The Chief Personnel Officer,
Southern Railway, Head Quarters, Chennai.
 3. The Senior Divisional Personnel Officer,
Southern Railway, Palakkad.
 4. Union of India represented by the General Manager,
Southern Railway, Chennai.
- ...Respondents


(By Advocate Mrs.Sumathi Dandapani)

This application having been heard on 20th July 2005 the Tribunal on the same day delivered the following :-

ORDER

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

The applicant claims to be a Schedule Caste employee and as per Rule of Reservation 15% and 7.5% of the total post are to be earmarked for Scheduled Caste and Scheduled Tribe respectively. As such communal break up of vacancies to the post of Assistant Personnel Officer



is to be arrived on the basis of net short fall of vacancies of cadre and roster of vacancy based since the post is a gazetted post. Therefore by applying the above the Scheduled Caste and Scheduled Tribe candidates already promoted in the cadre of Assistant Personnel Officer based on merit/seniority have to be excluded while assessing the remaining posts to be filled up by selection. Aggrieved by the said non compliance of the rules the applicant has filed this OA seeking the following reliefs :-

1. Set aside Annexure A-1 and Annexure A-2.
2. Issue appropriate direction to assess properly the percentage/post earmarked to Scheduled Castes and Scheduled Tribes employees by following the principles of reservation based on order Annexure A-3 and exclude the Scheduled Castes and Scheduled Tribes Assistant Personnel Officers now in that cadre, who are promoted/selected based on merit to the general vacancy while fixing the reservation to the said post and thereafter conduct fresh selection.
2. The applicant further contended that as per the notification 8 vacancies have been declared out of which 6 is for UR, 1 for SC and 1 for ST. Now his grievance is that out of the declared vacancies for SC/ST as per rota quota the number of vacancies that has been assessed and notified is absolutely incorrect. While assessing vacancies for SC/ST some of the candidates from the earlier selection who have already been selected on merit were included. Such selection cannot be counted for SC quota which has to be filled up by those SC candidates who is less meritorious and requires reservation benefits.
3. The respondents have filed a reply statement contending that though the applicant come under the feeder cadre she has not appeared for the examination and therefore she has no locus standi to challenge and seek



any relief. The application is filed in the form of a public interest litigation. The applicant is not going to be benefited by setting aside Annexure A-3 since she has not chosen to appear for the written test she cannot be considered eligible for considering to the post of Assistant Personnel Officer. It is also submitted that the persons name included in the previous selection are SC/ST employees and they had already been promoted towards SC point. In respect of Smt.Shanthi Raja Bhqj and Smt.Chandrika Jayasankar the statement of the applicant that they have been selected on merit is incorrect. It is assailed in the reply statement that these persons had gained promotion towards SC reservation and not on their merit.

4. When the matter came up for hearing Shri.C.S.Manilal appeared for the applicant and Smt.Sumathi Dandapani appeared for the respondents. Learned counsel for the applicant argued that the concept of equality in Article 14 embraces equality of opportunity in all respects. Therefore the officer belonging to Scheduled Castes and Scheduled Tribes can contest in the general quota and can be selected, if meritorious and such selectees cannot be pulled to the scheduled caste quota subsequently which has to be filled up by those scheduled caste candidates who are less meritorious under the reservation benefits. It is the general principle of law that the scheduled caste meritorious candidate shall not be considered or accommodated in the scheduled caste quota and therefore the assignment of one post to schedule caste as contained in Annexure A-1 is illegal in the light of Annexure A-3 order and Annexure A-4 judgment of the Central Administrative Tribunal Madras. Learned counsel for the



respondents, on the other hand, persuasively argued that the applicant has no locus standi since she has not appeared in the written test and the respondents are confining to the rota quota rules based on the decisions of the Madras Bench of the Tribunal and also submitted that a stay for the said orders obtained from the Hon'ble High Court of Madras and the matter is pending before the Hon'ble High Court of Madras.

5. We have given due consideration to the arguments advanced by the learned counsel on either side. Vide order dated 4.1.2005 the 2nd respondent proposed to conduct selection for filling up 8 posts of Assistant Personnel Officer out of which 6 is for UR, 1 for SC and 1 for ST. This is assailed by the applicant. His contention is that there should have been more vacancies if correct application of the Reservation roster is made. The counsel for the applicant has brought to our notice Annexure A-3 instructions dated 30.9.1994 which is reproduced as below :-

**Copy of CPO/MAS letter No.P(S)171/1/P/Repn/Policy/
Vol.III dated 30.9.94.**

**Sub : Court judgments/orders – promotion of SC/ST
employees against reserved vacancies.**

**Ref : Railway Board's letter No.89/E(SCT)/49/5 (pt) I
dated 29.7.93.**

As per instructions contained in Railway Board's letter dated 16.6.92 Reservation to SC/ST should be provided as per the reserved points falling on the Roster Register as per the number of vacancies filled and the backlog, if any, subject to the Reservation not exceeding 50% of the number to be selected/empanelled.

In terms of Board's letter No.82 E (SCT) 39/2 dt.29.4.1982 (page 409 of Brochure) earliest carry forward shortfall should be utilised first at the time of filling up vacancies by selection/non-selection process.

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Further Railway Board in their letter No.89/E/(SCT) 1/49/5 (pt.) I dated 29.7.1993 have directed that SC/ST candidates promoted on their own merit and seniority should be excluded while compiling the available reserved candidates the prescribed representation viz. 15% and 7.1/2 %. Therefore such SC/ST candidates should be identified and excluded for the purpose of counting the available SC/ST personnels while computing the reserved quota.

In order to enable that these instructions of Railway Board are implemented without difficulty, while drawing up panel against SC/ST employees it is required to indicate clearly as to whether they are empanelled against SC or ST point along with the reservation point apart from the shortfall point, if any.

This would enable easy compilation for the cadre officers to exclude those SC/ST who have been empanelled on their own merit and seniority while computing the available SC/ST candidates and decide the reservation to be made if any for the selection/suitability test.


6. Further the counsel brought to our notice a decision of the Madras Bench of this Tribunal in O.A 493/01 & O.A 731/01. The findings of the Tribunal is as follows :-

For this purpose we had occasion to peruse the proceedings of the selection committee. It is seen that the senior most person selected for the post in rank No.1 in the list had scored a total marks of 129.5 out of 200 and the last general candidate in the list viz. D.W.Samuel had scored a total mark of 128.7 out of 200. The select list consisted of a person who had obtained marks between 147-5 (Mr.Devaraj) and 123-8 (G Subramanian). Mr.Shanthiraj Bhoge obtained 130.2 marks and Chandrika Jaishankar had scored 127.9 marks. Therefore, it has to be construed that these two persons though belonged to the Scheduled Caste community would come within the merit quota of the total number of candidates selected for the post. This would mean that the official respondents are required to select two more candidates for filling up the roster point meant for SC category candidates. Therefore the two candidates viz., Mr.Shanthiraj Bhoge and Smt.Chandrika Jaishankar who had come under the merit quota against the unreserved category will have to be treated as candidates on merit.



7. According to the counsel for the applicant the above findings have become final. But the counsel for the respondents has produced Annexure R2(2) wherein the matter has been stayed by the Hon'ble High Court of Madras. However in the rejoinder filed by the applicant it is submitted that the stay is against the selection of the SC candidates who have been directed to be considered on merit quota and resultantly the merited persons selected on unreserved quota will have to be reverted on the strength of the Tribunal's order. This reversion order in fact had been stayed. Counsel for the respondents submitted that since the matter is pending before the Hon'ble High Court they have to abide by it.

8. In the light of what is stated above we are of the view that prima facie the applicant who has not been appeared in the examination may not have a legal right to challenge the selection and seek relief to set aside the impugned order. However one of the contentions of the applicant was that had the correct assessment of vacancies been notified at the appropriate time in Annexure A-1 notification, the chances of the SC candidates would have been doubled and there would have been better chances and opportunities for selection. Since the applicant found no meaning in appearing in the examination as there was no vacancies she did not opt for examination. This contention has certain force. However in this case since a larger issue is involved a limited direction is given to the respondents to abide by the decisions of the Tribunal, the judgment of the Hon'ble High Court, and the provisions enshrined in Article 16(4) and 335 of the Constitution of India and if found necessary the rota quota rules can be rescheduled and appropriate further action may be initiated. Since



selection process has already been started we are not giving any direction to stall the same but we make it clear that if the respondents found that there is a vacancy in the SC/ST category as per fresh assessment as discussed above they shall make special notification for that vacancy earmarked for SC/ST candidates for selection. With the above observations the O.A is closed. In the circumstances, no order as to costs.

(Dated the 20th day of July 2005)



N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



K.V. SACHIDANANDAN
JUDICIAL MEMBER

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