

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 375 of 2010

Monday, this the 14th day of March, 2011

CORAM:

HON'BLE Mr. JUSTICE P.R. RAMAN, JUDICIAL MEMBER

HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

1. N.V. Nikhil, S/o. N. Vasu,
Senior Commercial Clerk,
Southern Railway, Alwaye,
Residing at "PRANAVA",
House No. 31/1018-B,
Rail Nagar, Vyttila, Kochi-19.
2. Roy Issac, S/o. Issac K.A.,
Senior Commercial Clerk,
Southern Railway,
Ernakulam North R.S. & P.O,
Residing at Kochuparambil House,
N.A.D P.O., Alwaye.
3. Deepa Divakaran,
W/o. Balasubramanian,
Senior Commercial Clerk,
Southern Railway,
Ernakulam North R.S. & P.O,
Residing at Railway Quarter No. 39-A,
Ernakulam North, Ernakulam. Applicants.

(By Advocate Mr. T.C. Govindaswamy)

v e r s u s

1. Union of India represented by
The General Manager,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai – 3
2. The Additional Divisional Railway Manager,
Southern Railway, Trivandrum Division,
Trivandrum – 14
3. The Senior Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum – 14 Respondents.

(By Advocate Mr. P. Haridas)



This application having been heard on 17.02.2011, the Tribunal on 14-03-11 delivered the following:

ORDER

HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

The applicants have filed this O.A. for the following reliefs:

(i) Call for the records leading to issue of Annexure A-5 and quash the same to the extent it relates in para I: "The senior most 18 will be placed in a separate block and the remaining 25% post of the total cadre are filled up by promotees and direct recruits/LDCE quota. The percentage distributions as of CCC.II & III are detailed below :

Revised Distribution:	Promotion Quota	- 75% : 184
	Direct Recruitment Quota	-15% : 19
	LDCE Quota	- 10% : 13

		TOTAL : 216
		===

(ii) Direct the respondents to re-assess the vacancies applying the ration of 75:15:10 on the total number of vacancies as on 31.08.2009 in the combined cadre strength of Chief Commercial Clerk Gr. II and III and direct further to include the names of the applicant in Annexure A-1 with all consequential benefits of promotion emanating therefrom;

(iii) Direct the respondents to grant the applicants benefits of promotion as Commercial Apprentices/Chief Commercial Clerks in the PB of Rs. 9300-34800 with a GP of Rs. 4200/- with effect from the date of promotion of those who are included in Annexure A-1 with all consequential benefits of arrears of pay and allowances arising therefrom;

(iv) Award costs of and incidental to this application.


(v) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

2. The applicants are Senior Commercial Clerks in the pay band of Rs. 5200-20200 with GP of RS. 2800 in Trivandrum Division of Southern Railway, who responded to the notification dated 12.06.2008 for selecting



Commercial Apprentices against 10% quota through a Limited Departmental Competitive Examination (LDCE) for filling up of 1 UR and 1 ST vacancies of Chief Commercial Clerks in the scale of pay of Rs. 5500-9000. The result of the examination was published on 15.10.2008. The DPC met on 03.03.2010 and two candidates other than the applicants were placed on the panel for the post of Commercial Apprentice vide Annexure A-1 order dated 08.03.2010. Aggrieved, the applicants have filed this O.A.

3. The applicants contend that Annexure A-1 order in so far as it empanels only two persons, inspite of one time exemption promotion to all vacancies as existed on 31.08.2009 is arbitrary and discriminatory. Annexure A-4 was issued in the wake of merger of grades prescribing revised classification and mode of filling up of non-gazetted posts. The respondents, without assigning the number of vacancies, divided the total number of posts on merger of grades of Rs. 5500-9000 and Rs. 5000-8000, into three different constant figures by applying the percentage against posts and not against vacancies. There is no provision under rules or otherwise to support the action of the respondents. Therefore, the percentage distribution of CCC - II and III in Annexure A-5 is without authority of law, arbitrary and discriminatory. Therefore, the respondents are bound to reassess the vacancies in the combined strength of the 216 posts referred to in Annexure A-5 and make promotion out of the qualified candidates on that basis. The applicants are entitled to be included in Annexure A-1 panel by reassessment of vacancies and be granted the benefit of promotion.



4. The respondents countered the arguments of the applicants as under. Only two vacancies were notified. Therefore, there can be selection of only two candidates. The applicants have not impugned Annexure A-2 notification for two vacancies. The applicants cannot now contend that the calculation of the two vacancies is not correct as they are estopped from saying the same. Annexure A-2 notification is against vacancies as on 12.06.2008 and not as on 31.08.2009 to which Annexure A-4 dated 03.08.2009 applies. The instructions in the letter of 03.09.2007 were implemented on 08.02.2010 as per Annexure A-5. Annexure A-2 letter of selection proceedings is dated 12.06.2008 taking the cut off date of 12.06.2008. The result of the written test in the said selection was published on 15.10.2008 at which date Annexure A-4 was not available. Rules do not permit to change the notified vacancies once the selection process has started. There is no percentage difference in the pre-revised and revised mode of filling up of the vacancies. Both are kept as 10% for LDCE quota. Therefore, status quo is maintained. The application of percentage-wise distribution can be against sanctioned posts and not against vacancies. Even if vacancies arise after the empanelment of the eligible candidates, the applicants cannot claim the said vacancies as similarly placed persons are also to be granted equal opportunity to compete in the LDCE by a fresh notification. The applicants' eligibility for consideration is for the vacancies notified in Annexure A-2. They cannot be considered against the vacancies that might arise on reassessment of the number of vacancies. The applicants never tried to exhaust any remedy available through administrative



channels. For the facts and reasons above, the O.A should be dismissed.

5. In the rejoinder, the applicants submitted that the vacancies notified in Annexure A-2 ceased to exist, with the retrospective merger of the pay scales of Rs. 5500-9000 and Rs. 5000-8000 into a common replacement pay band of Rs. 9300-34800 with GP of Rs. 4200/-. The rules for filling up of the vacancies in the scale of pay of RS. 5500-9000 became redundant with effect from 01.01.2006. 10% of the combined vacancies of the merged pay scales should be filled up through LDCE. The respondents did not finalise the process of selection in respect of 75% of the vacancies in the cadre of Chief Commercial Clerk-II in the scale of pay of Rs. 5500-9000, initiated by Annexure A-7 dated 12.11.2007, under the pretext that the grade and scale of Rs. 5500-9000 ceased to exist with retrospective effect from 01.01.2006. As on 30.08.2009, there were six vacancies out of which only two were filled up by Annexure A-1. The cadre strength and the de facto vacancies came to be different upon the retrospective merger of the cadre with effect from 01.01.2006. The failure on the part of the respondents either to conduct a fresh selection for all the vacancies together or to include all the 6 vacancies while finalising the selection process has resulted in substantive injustice and irreparable injury to the applicants.

6. We have heard Mr. T.C. Govindaswamy, learned counsel for the applicant and Mr. P. Haridas, learned counsel for the respondents and perused the material on record.



7. The crux of the issue is whether the applicants are entitled to consideration against additional vacancies that arose on account of the merger of two cadres subsequent to the selection process which started with the notification of Annexure A-2 dated 12.06.2008 for two vacancies.

8. The selection process which started for filling up two vacancies of Commercial Apprentice against 10% LDCE quota on 12.06.2008 was completed on 08.03.2010 with the empanelment of two meritorious candidates. While the selection process was going on, 4 more vacancies arose in the LDCE quota on account of the merger of two pay scales with retrospective from 01.01.2006. Annexure A-4 order dated 03.09.2009 was issued for revised classification and mode of filling up of non-gazetted posts upon the merger of pay scales in the wake of implementation of the recommendation of the VI Central Pay Commission. As per Annexure A-4, a one time exemption promotion to all vacancies as on 31.08.2009 was given as indicated in the enclosed statement thereto. This shows that Annexure A-4 order has only prospective application. It has no application to the vacancies as on 12.06.2008 for which notification was issued on 12.06.2008. The notification dated 12.06.2008 was as per rules and the number of vacancies on that date was only two. The addition of 4 more vacancies was fortuitous, owing to the retrospective merger of two pay scales with effect from 01.01.2006. As A-4 instructions were applicable to vacancies as on 31.08.2009, the respondents went ahead with the completion of the selection process that started on 12.06.2008. The respondents had no



reason to cancel or to modify the notification dated 12.06.2008. The notified vacancies were only two, and only two candidates could be selected against those vacancies. There is nothing illegal or unjust about the whole process. The proposition that 10% of the combined vacancies of the merged pay scales should be filled up through LDCE will apply to the vacancies as on 31.08.2009 and thereafter the vacancies will be only in the merged replacement scale. If the intention of the Government was to combine all the vacancies in both the merged scales between 01.01.2006 to 31.08.2009 then it would have been worded accordingly.

9. The applicants have not challenged the Annexure A-2 notification. Instead, in effect, they would contend for enlargement of the number of vacancies notified in Annexure A-2 notification by adding 4 more vacancies which arose subsequently, and consequent to that, to enlarge the list of empanelment in Annexure A-1. If the stand of the applicants is that the vacancies notified in Annexure A-2 ceased to exist and that the rules for filling up of the vacancies in the scale of Rs. 5500-9000 became redundant with effect from 01.01.2006, then they should have challenged Annexure A-2 notification. They have chosen not to do so. As stated earlier, we do not find anything arbitrary, discriminatory or illegal about the filling up of 2 vacancies as per Annexure A-2 notification notwithstanding the absence of a counter from the respondents to the charge that they did not finalise the process of selection in respect of 75% of the vacancies in the cadre of Chief Commercial Clerk-II in the scale of pay of Rs. 5500-9000 initiated by Annexure A-7 dated 12.11.2007 under the pretext that the grade and scale of Rs. 5500-9000

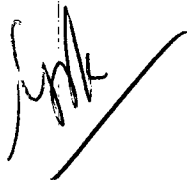


ceased to exist with retrospective effect from 01.01.2006.

10. In our considered view, the division of the total number of posts on merger of grades of Rs. 5500-9000 and Rs. 5000-8000 into three constant figures by applying percentage against post and not against vacancies, is quite valid because there is no percentage difference in the pre-revised and revised mode of filling up of vacancies. The combined strength of 216 for reassessment of vacancies was just not available as on 12.06.2006. The proper course of action to fill up the additional vacancies that arose in 2009 is to issue a fresh notification. The applicants do not have any exclusive right over those vacancies. They are not entitled to consideration against additional vacancies as sought by them.

11. In the light of the above, we do not find any legally sustainable ground to grant any of the reliefs sought by the applicants. Hence the O.A. is dismissed with no order as to costs.

(Dated, the 14th March, 2011)



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

cvr.