CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NOs. 399/2007 & 456/2008

this the 27th day of May, 2009.

C O R A M

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

O.A.399/07

S. Manoharan S/o S. Sivasankaran
Electrical Khalasi Helper
Office of the Section Engineer
Power Supply Installation
Southern Railway, Salem
residing at No. 226-G, West Railway Colony
Old Suramangalam, Salem-5 .. Applicant

By Advocate M/s T.C. Govindaswamy, D. Heera, P.N. Pankajakshan Pillai, P.V. Abdul Samad, K.C. Sarala and R. R. Rejitha

Vs.

1 Union of India represented by
the Secretary to the Govt. Of India
Ministry of Railways, Rail Bhavan,
New Delhi.

2 The Additional Divisional Railway Manager
Southern Railway, Palghat Division
Palghat.

3 The Senior Divisional Personnel Officer
Southern Railway, Palghat Division
Palghat.

4 M. Seeba, Helper Grade-I
Office of the Section Engineer
Power Supply Installation
Southern Railway, Shornur. .. Respondents.

By Advocate Mr. Thomas Mathew Nellimoottil

O.A. 456/2008

R. Kannadasan S/o A. Raman
Helper Gr. I /AC Coach Attendant-1
Southern Railway, Mangalore
Permanent Address: Adichira House
Karippode Post, Palghat District. .. Applicant

By Advocate M/s T.C. Govindaswamy, D. Heera, P.N. Pankajakshan Pillai, P.V. Abdul Samad, K.C. Sarala and R. R. Rejitha

Vs.

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New Delhi.

2 The Additional Divisional Railway Manager
Southern Railway, Palghat Division
Palghat.

3 The Senior Divisional Personnel Officer
Southern Railway, Palghat Division
Palghat.

4 Shri D. Jayakumar, AC Coach Attendant
Southern Railway, Mangalore/Erode

5 Shri S. Thivikraman,AC Coach Attendant
Southern Railway, Mangalore

6 Shri V.K. Kishored Kumar,AC Coach Attendant
Southern Railway, Mangalore

7 Shr E. Sadasivan,AC Coach Attendant
Southern Railway, Mangalore

8 Shri K. Rajendra Prasad Sharma
AC Coach Attendant
Southern Railway, Mangalore

9 Shri K. Paneerselvan,
AC Coach Attendant
Southern Railway, Erode

10 The Divisional Personnel Officer, .. Respondents
Southern Railway, Erode

By Advocate Mr. Thomas Mathew Nellimoottil for R 1-3 & 10

These Applications having been heard on 28.4.2009 the Tribunal delivered the following

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

As common question of law is involved in these two OAs they were heard together and are being disposed of by this order.

2 The applicants are aggrieved by the panel prepared by the respondents for promotion to the post of Technician Grade-III/PSI excluding them despite securing high ranks in the examination.

O.A. 399/07

3 The applicant is presently working as Electrical Khalasi Helper in the Power Supply Installation Unit of Palghat Division, Southern Railway. He, a matriculate ITI Welder and an Act Apprentice (Welder), initially appointed as substitute on 26.11.1998, was regularly absorbed as Khalasi and promoted as Khalasi Helper on 9.3.2005. Applicant appeared in the examination conducted for recruitment of Technicians under the 25% quota notified as per Annexure A-1 dated 16.11.2006 and secured the highest mark. However, his name is not included in the panel (Annexure A-4). The 4th respondent was selected and directed to undergo training. The applicant challenges his non-inclusion and selection of the 4th respondent on the grounds that the selection is through limited departmental examination and would consist of written test only and that the applicant who had secured the highest marks ought to have been selected, the inclusion of the 4th respondent is opposed to the notification and Para 159 (ii) of the Indian Railway Establishment Manual. Hence he filed this O.A.for quashing para 2(iii) of Annexure A-6 and for a declaration that the panel is to be prepared based on the marks obtained in the limited departmental competitive examination.

4 The respondents filed reply statement opposing the O.A. They prima facie opposed the OA. on delay and latches. They stated that the selection and empanellment was done based on the extant orders of Railway Board issued in 1998 and 2003 and that the applicant has not challenged the said orders at the appropriate time. They submitted that the applicant was regularly absorbed as Khalasi on 26.7.2000 and was promoted as Khalasi Helper/Helper Grade-I only w.e.f. 9.3.2005. They

submitted that the post of Technician Grade-III are filled (i) 25% by direct recruitment (ii) 25% rankers quota from among serving employees with prescribed qualification and experience and (iii) 50% by promotion from feeder category. The procedure for filling up the post of Technician against 25% rankers' quota are contained in Railway Board letter dated 2.2.1998 (Annexure R-2). The selection consisted for written test and viva voce, but later the viva voce was dispensed with instead, 15 marks allotted to viva voce is to be allotted to Record of Service and all other conditions remained unchanged (Annexure R-3). The list of qualified hands was prepared according to seniority maintained in the grade of Helper Grade-I. They further submitted that there were only three vacancies out of which two are for UR and one for SC, the seniormost two UR employees and the lone SC employee who have qualified in the selection with 60% marks and above were empanelled for promotion in consonance with the orders of Railway Board at Annexure R-2 and R-3. Since the seniority position of the applicant is No. 8 amongst UR candidates who have qualified in the selection, his name did not find a place in the panel.

O.A. 456/08

5 The applicant is presently working as Khalasi Helper Gr. I/AC Coach Attendant-1 at Mangalore Railway Station of Southern Railway, Palghat Division. He joined the Department as an Electrical Khalasi on 8.3.1993 and was later promoted as AC Coach Attendant-II w.e.f. 1.11.2003 and further promoted as Helper Gr.I/AC Coach Attendant-I w.e.f. 30.4.2007. He also participated in the competitive examination conducted as per Annexure A-2 notification and secured 72% marks According to him he stood 4th in the written test. There was no viva voce. He is challenging the inclusion of seniority in the limited departmental competitive examination. His challenge is more or less on the similar grounds as the

applicant in the O.A. 399/07. He further submitted that if the length of service is to be considered, then the length of service in Group-D should be taken into account. He further stated that the respondents have not published the seniority list of eligible candidates and that the 8th respondent would not have been eligible at all had the selection been conducted in time for the years 2005 and 2006.

6 The respondents have filed similar reply statement as in the case of O.A. 399/2007.

7 We have heard learned counsel for the parties and perused the records produced before us.

8 The learned counsel for the applicants argued that 25% of vacancies in the Technician Grade-III are required to be filled up from serving Khalasis and Khlalasi Helper with three years experience having the educational qualification as laid down in Apprentice Act through a limited departmental competitive examination in the order of marks obtained in the written examination and viva voce. The counsel contended that the selection is competitive and not qualifying in nature and that the competitive nature of the selection would be defeated if panel is drawn up on the basis of seniority from amongst those who qualify. The grant of weightage for the seniority is illegal and opposed to the very object of Paragraph 159(ii) of the Indian Railway Establishment Manual. The learned counsel also relied on the following judgements in support of his argument:

1 Sant Ram Sharma V. State of Rajasthan and Ors. (AIR 1967 1910

2 Uday Pratap Singh and Ors Vs. State of Bihar and Ors (1995 SCC (L&S) 85)

3	Exx. Capt. K. Balasubramanian and Ors. Vs. State of Tamil Nadu and another)(1991 SCC (L&S) 792)
4	U.P. Jalnigam and Ors. Vs. Narinder Kumar Agarwal (1996 SCC (L&S) 822)
5	Union of India V Madras Telephones SC & ST Social Welfare Association (2000 SCC (L&S) 835)
6	2009 (1) SCC (L&S) 575

9 At the outset, the learned counsel for the respondents raised objection of delay and la ches on the part of the applicants in filing the Applications and argued that the Applications are liable to be dismissed on that ground alone. The learned counsel further argued that the procedure for filling up the post of Technicians against 25% Rankers' quota is contained in Railway Board letter dated 2.2.1998 (Annexure R-2 in O.A. 399/07) and that "viva voce" was dispensed with, allotting the marks for "Records of Service", that all other conditions remain unchanged. Therefore, for employees who obtained the minimum mark of 60% in the written examination would be granted marks out of maximum of 15 for their records of service, and a merit list in the order of total marks obtained in the written examination and "Record of Service" together would be drawn up and that inclusion of a candidate in the panel is restricted to the vacancies notified. Therefore, there is no illegality in the list and undue advantage has not been given to seniority.

10 The main contention of the applicants is that the merit list in the limited departmental competitive examination have to be prepared solely on the basis of the marks obtained in the written examination. This position as contained in RB circular 28/1992 has changed with issuance of the Railway Board letter No.E(NG)I-96/PM 7/56 dated 2.2.1998 (R.B.E. No.

23/08) prescribing the procedure for filling up the posts of skilled artisan against 25% quota. The relevant portion is extracted below:

> "In terms of Para 159 Indian Railway Establishment Manual Vol. I, 1989, the vacancies in the artisan category of Skilled grade since re-designated as Technician (Trade) in scale Rs. 950-1500(RPS)/3050-4590(RSRP) are required to be filled as under:
>
> X X X X X X X
>
> ii) 25% from serving Khalasis and Khalasi Helpers (formerly known as unskilled and semi skilled respectively) with educational qualification as laid down in Apprentices Act.
>
> X x X x x x x
>
> (i) Khalasis /Khalasi Helpers possessing the qualification prescribed in the Apprentices Act with a minimum of three years regular service will be eligible to appear in the selection. However, Scheduled Caste and Scheduled Tribes candidates possessing the requisite qualifications will be eligible for being considered against the vacancies reserved for them as per extant instructions if they have completed a minimum of one year's regular service
>
> (ii) All the eligible volunteering employees may be subjected to a written test followed by a viva voce, Distribution of marks between written test and viva voce may be 85 and 15 respectively. Those securing 60% marks in the written test may be eligible to be called for viva voce. Those securing 60% and above in the aggregate will qualify for being included in the panel.
>
> *III) The panel may be drawn upon the basis of seniority from amongst those who qualify, the total number to be empanelled not exceeding the number of vacancies assessed to be filled against the prescribed quota. There will be no classification of outstanding.
>
> X x x x x x x

11 The procedure for filling up the posts of skilled artisan against 25%

quota which was modified by Board's letter No. E(NG)1-96/PM7/56 dated 23rd September, 2003 (RBE No. 166/2003) is quoted below:

> "Reference this Ministry's letter of even number dated 2nd February, 1998 as amplified vide letter dated 9th December 1999 laying down the detailed procedure for filling up the25% quota posts in the category of Technician (Trade) in scale Rs. 3050-4590 from amongst serving Helpers Gr. I and Helpers Gr.II with educational qualifications as laid down in Apprentice Act. The procedure inter alia envisages that the selection will consist of written test for 85 marks viva voce for 15 marks.
>
> 2 As the Railways are aware,instructions for elimination of viva voce in selections for promotion to posts classified as Selection in Group-C categories except the categories of Law Asst. Physiotherapist, Telephone Operators and Teachers have been issued vide this Ministry's letter No.E(NG)-20000/PM/1/41 dated 7th August, 2003. It has been mentioned in para 1 above that the procedure for filling up 25% quota for promotion as Technician (Trade) Gr. III as mentioned in para 1 above should also modified to the extant that 15 marks hitherto allotted to viva voce should be allotted to Records of Service, assessment under which should be based on entries in the Service Book/Personal file regarding academic/technical qualifications awards/punishments
>
> 3 All other conditions remain unchanged.
>
> 4 The revised procedure will apply to selections notified on or after issue of this letter."

From the above it is clear that the Railway Board has modified the procedure for filling up the posts of Technician Grade-III against 25% quota by dispensing with "viva voce" and substituting with "Records of Service" which would carry 15 marks.

12 Now let us examine the judgments relied on by the learned counsel for the applicants in support of his argument.

The case in Uday Pratap Singh and Others Vs. State of Bihar and Others etc. relates to determination of seniority comprising Junior and Senior branches. Statutory rules providing for reckoning seniority from the

date of substantive appointment- Respondents directly recruited to Senior Branch and the appellants recruited to Junior Branch. Subsequently pursuant to a Government decision the two grades were merged retrospectively. The Apex Court upheld the decision of the High Court that seniority of the appellants was to be reckoned from the date of their appointment to the merged cadre. In the cases on hand, an argument is advanced by the learned counsel for the applicants that the feeder cadre to the post of Technician Grade consisted of different scales of Group-D, therefore the promotion based on seniority would result in total exclusion of those who are working in lower scales. The case relied on by theapplicant also would not help them as in the case of the applicants the panel is prepared based on the total marks obtained in the written examination and record of service together and not solely on the basis of seniority and that in the preparation of panel only order of seniority is maintained.

In the U.P. Jal Nigam and Others Vs. Narinder Kumar Agarwal it was a case of promotion to the post of Assistant Engineer in the UP Jal Niagam direct from among graduate Engineers and promotion, the Apex Court held that since there was nothing to show that the selected candidates did not posses superior merit and ability than the respondent, selection could not be said to be illegal.

In Union of India Vs. Madras Telelphone SC & ST Social Welfare Association the Apex Court held that separate eligibility lists have to be prepared for each year of recruitment in the feeder category. However, persons already promoted under judgments of CAT/HighCourt were restrianed from being reverted. In the case on hand there is no such plea in the OAs for preparation of separate eligibility list for each year of

recruitment in the feeder category.

In Union of India and ors Vs. V.K.Krishnan andOrs (O.P. 14500 of 2003,) the High Court was considering the challenge against the order of the Trilbunal in O.A.1761/98. The applicant in that O.A. had challenged non-inclusion in the panel prepared by the Railway authorities for promotion to the post of Ticket Collector/Train Clerk against 33.33%quota reserved for Group-D categories. The respondents opposed the OP and submitted that going by the total length of service in the group-D cadre the applicant was superseded as he was in the lower scale of pay than the selected candidates. The judgment of the Tribunal allowing the O.A. was challenged by the respondents Department before the High Court. The High Court upheld the order of theTribunal. In the facts and circumstances, these judgments do not apply to the case of the applicants in these OAs.

13 The counsel for the applicants also brought to our notice the order of the Tribunal in K.S. Krishnan Vs. Union of India and Others (O.A. 1556/97 and 160/98) and the judgment of the High Court of Kerala in O.P No. 14500/2003. The applicants viz. Electrical Khalasi helpers in O.A. 1556/97 and 160/98 claimed that they have qualified in the written examination for Technician Grade-III as also in the viva voce but were not placed in the panel taking an erroneous method of preparing the panel on the basis of merit alone without regard to senioirty. The OA was resisted on the ground that as per instructions contained in Circular No. 28 of 1992 the final panel should be drawn on the basis of merit i.e. on the basis of marks and after identifying the candidates to be inclulded in the panel, their names should be arranged in the order of seniority. Since the applicants in that case did not come within the number of vacancies on the basis of their

performance in the written tests, they could not be placed in the panel. Para 6 of the order is extracted below:

> "... .....Mr. Martin, learned counsel appearing on behalf of the counsel of the applicants drew our attention to Railway Board's circular No. 23 of 1998 wherein it was laiddown that as there was no uniform practice in the various zonal Railways it was decied that henceforth the panel is to be drawn on the basis of seniority of those who qualify. This circular was issued only on 2.2.98 and a reading of the same clearly indicates that the procedure laid down was to be followed thereafter. As the selection in these cases was conducted long before the date of issuance of the circular i.e. 2.2.98, the respondents cannot be faulted for following the instructions contained in P.B. Circular No. 28 of 1992 (R-3)....."

What emerges from the order of CAT supra is the fact that mode of selection based on merit, was changed w.e.f. 2.2.1998 i.e.. from issuance of PB Circular 23/1998, by which due weightage was given to seniority combined with the prescribed minimum of 60% marks in the qualifying examination.

14 Whether a selection should be "competitive" or "qualifying" is to be decided by the competent authority. In this case the competent authority the Railway Board has taken a policy decision to dispense with "viva voce" and introduced "Records of Service" which in their view, shall be more suitable to find out the more skilled and senior officials in the Department. Out of the total marks of 100, 85 marks were allotted to the written examination and 15 marks were allotted to the "Records of Service". These circulars were issued on 2.2. 1998 and 23rd September, 2003 respectively and a reading of the same clearly indicate that the procedure laid down was to be followed thereafter. As the selection in the cases on hand were conducted long after the date of issuance of the circulars, the respondents are bound to follow the instructions contained therein.

15 On the objection raised by the respondents on delay and latches, we do find merit. There is no convincing reason put forward by the applicants for the delay in challenging the orders of the Railway Board. We find that the applicants applied for the departmental competitive examination in response to the notifications dated 5.10.2006 in O.A. 399/07 and A-2 notification dated 16.3.2007 in O.A. 456/08. The orders of the Railway Board were issued on 2.2.1998 and 23.9.2003. The applicants are expected to be aware of the changes in the mode of selection w.e.f. 2.2.1998 and 23.9.2003 and the number of vacancies available, etc. when they participated in the examinations. After publication of the results and their non-selection, these OAs were filed on 18.6.2007 and 4.8.2008. They cannot now turn around and challenge the orders of the Railway Board and plead ignorance of the existence of the orders for delay in challenging the same well in time.

16 In view of what is stated above, we do not find any merit in the OAs. Accordingly, they are dismissed. No costs.

Dated 27th May, 2009.

K. NOORJEHAN
ADMINISTRATIVE MEMBER

GEORGE PARACKEN
JUDICIAL MEMBER

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