

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**O.A. NO. 402/2006**

**FRIDAY THIS THE 13<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**

J. Chandrasekaran S/o S. Jagannadhan  
Loco Pilot (Goods) Gr. II  
Southern Railway, Erode  
residing at No. 313-A, Mullamparanppu  
N.G. Palayam Post, Erode-638115

..Applicant

By Advocate Mr. M/s T.C. Govindaswamy, D. Heera,  
P.N. Pankajakshan Pillai & Sumy P. Baby

Vs

- 1 Union of India rep. by the General Manager  
Southern Railway, Hqrs Office  
Park Town PO, Chennai-3
- 2 The Chief Personnel Officer  
Southern Railway, Hqrs Officer  
Park Town P.O. Chennai-3
- 3 The Senior Divisional Personnel Officer  
Southern Railway, Palakkad Division  
Palakkad.
- 4 Sri P. Palanisamy  
chief crew Controller, Southern Railway  
Erode Junction  
Erode. ..Respondents

By Advocate Mrs. Sumathi Dandapani, Senior Counsel and Ms P.K.Nandini

**ORDER**

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN**

The challenge in the O.A. is to Annexure A-1 letter issued by the second respondent intimating the qualifying marks obtained in the written test held for the ex-cadre post of Junior Instructor in the Electrical Department of the Southern Railway.

2 The applicant is presently working as a Loco Pilot (Goods) Gr. II in the scale of Rs. 5000-8000 at Erode Junction of Palghat Division of Southern Railway. When he was holding the regular post of Goods Driver presently designated as Loco Pilot (Goods) Grade-II, the respondents issued a notification dated 20.10.2004 calling for volunteers for selection and posting as Instructor at the Zonal Electrical Traction Training Centre, Avady. The total number of vacancies notified was three (UR) and the applicant's name figures at Sl. No. 7, in the list of eligible candidates notified to be in readiness to appear for the written test. The examination was held on 22.2.2006 and only two persons qualified in the written examination, the applicant's name is at Sl. No. 2. The grievance of the applicant is that though he figures in the Annexure A-1 order at Sl. No. 2 it contains the stipulation to the following effect:

"Their service registers in original and annual confidential reports for the period ending 31.3.2002, 31.3.2003, 31.3.2004, 31.3.2005 and 31.3.2006 complete in all respects should be sent to the undersigned through special messenger on or before 15.5.2006 certain for placing the same before the Selection Board."

2 According to the applicant, the respondents should have promoted the applicant in the ordinary course and Confidential Reports for the periods ending 31.3.2005 and 31.3.2006 ought not to be considered by the Selection Board because the selection was initiated in terms of Annexure A-2 dated 20.10.2004. The reports in existence prior to Annexure A-2 only should be considered by the Selection Board. Notwithstanding the above claims, the applicant has also submitted that there was an agitation during the middle of November, 2005 at Erode and thousands of Railway employees from all over Palakkad Division participated and the applicant is an active office bearer of the All India General Cast Employees. Association. Though there have been no instances of train dislocation, the 4<sup>th</sup> respondent was very much annoyed with the applicant on account of his activities in the Association and the applicant understands that the

4<sup>th</sup> respondent made an adverse remark against him in his ACRs for the year ending 31.3.2006 which was communicated to the applicant by Annexure A-6 and he understands that this report also has been sent to the Selection Board. If this report as indicated by Annexure A-6 is considered by the Selection Board, the applicant apprehends that he would be subjected to substantial prejudice and damages.

3 The following reliefs are sought:

(a) call for the records leading to the issue of Annexure A-1 and quash the same to the extent it calls for the annual confidential reports for the period ending 31.3.2005 and 31.3.2006 to be placed before the Selection Board for considering the applicant for promotion to the post of Junior Instructor at Zonal Electrical Traction Training Centre, at Avady.

(b) direct the respondents to consider and promote the applicant as Junior Instructor at Zonal Electrical Traction Training Centre, Avady without considering the annual confidential reports for the period ending 31.3.2005 and 31.3.2006 with all consequential benefits.

© in the alternative restrain the respondents from considering the annual confidential report for the period ending 31.3.2006 for promotion to the post of Junior Instructor at Zonal Electrical Traction Training Centre, Avady and further to grant the applicant consequential benefits thereafter.

(d) Ward costs of and incidental to this application

(e) pass such other orders as are deemed fit and proper in the circumstances of the case.

4 The facts of the case are admitted in the reply statement by the respondents. Further, they have contended that the O.A. is premature as the selection is yet to be finalised and it has been filed on the apprehension that considering the ACRs for the year ending 31.3.2006 the applicant might not be selected. It is further averred that the selection to the post of Instructor is a general selection as the post is outside the normal channel of promotion and eligible staff of different grades are called for. The marks are awarded under different heads namely (1) Professional ability (a) written test (b) viva voce (2)

Personality, Address- leadership, academic and technical qualifications and (3) Record of Service in the ratio of 50: 30:20. These proceedings have been prescribed by the Railway Board by letter dated 16.11.1998 (Annexure R-1). By Board's letter dated 7.8.2003 (Annexure R-2) the Railway Board dispensed with the Viva voce for which 15 marks were allotted and according to the revised proceedings, the marks for the written test has thus been prescribed as 50. Regarding the consideration of adverse remarks in the ACR for the year 31.3.2006 the respondents have relied on Railway Board's order No. 92/93 dated 10.6.1993 (Annexure R-3) particularly the provision under para 2 thereof. They have also invited our attention to Railway Board's instruction dated 14.11.2005 (Annexure R-4) clarifying that for promotion under restructured vacancies ACRS upto three immediately preceding years are to be perused by the Selection Committee. Regarding the communication of adverse remarks it has been submitted that the appeal submitted by the applicant is under consideration of the competent authority and in accordance with the decision conveyed in letter dated 10.6.1993, para 2(iii), it has been decided to defer the selection till the disposal of the Appeal.

5 In the rejoinder the applicant has contended that the averments of the respondents are misleading and that Annexures R-3 and R-4 are not applicable to the facts of the a case. Since Annexure R-3 presupposes that the DPC is held every year as per the calender notified by the Railway Board and it does not lay down any principle that ACRs for three years preceding the date of DPC meeting should be considered for the purpose of selection. In support he has filed Annexure A-7 and A-8 instructions of the Railway Boards regarding maintenance of calender for ACRs and has contended that ACRs written two years after the commencement of the Selection process due to delay caused by the respondents cannot be taken into consideration. The applicant has also pointed

out that his appeal against the "adverse" remarks in the ACR was disposed off by Annexure A-10 order dated 4.8.2006 by modifying the earlier remarks. Though the tone of the original report has been substantially reduced still full justice has not been done to the applicant because of the consideration based on materials which have been detailed earlier. The applicant by way of M.A. 334/2007 produced additional documents namely his representation dated 24.1.2007 against adverse remarks recorded in the ACR for the period ending 31.3.2006 and the order of the competent authority dated 2.4.2007 expunging the adverse remarks.

6 An additional reply statement stating that the calendar prescribed by the Railway Board is not applicable to the post of Instructor which is an ex-cadre post for which the selections are being held on tenure basis as and when the incumbents complete the tenure period.

7 We have heard Shri T.C. Govindaswamy, the learned counsel for the applicant and Mrs. Sumathi Dandapani, Senior Counsel and Ms P.K. Nandini for the respondents.

8 It is admitted by both sides that though the selection process for filling up the post of Instructors in the Electrical Traction Training Centre at Avady commenced with Annexure A-2 dated 20.10. 2004 by calling for eligible volunteers, the selection process has not been finalised yet. The applicant has qualified in the written test as evidenced from Annexure A-1 and the next course to be completed is the assessment of personality, leadership, academic and technical qualifications and the record of service and award of marks in the ratio of 30:20 respectively. Such an assessment is done based on service records and other documents. Since by Annexure A-1 letter the respondents have called

for ACRs for the years ending 31.3.2002, 31.3.2003, 31.3.2004, 31.3.2005 and 31.3.2006 it has raised an apprehension in the mind of the applicant that the adverse remarks recorded in the ACRs for the year ending 31.3.2006 would stand in the way of his promotion/selection, the applicant has approached this Tribunal by filing this O.A. However, during the pendency of the O.A. certain developments have taken place. The apprehension of the applicant has been alleviated by the Annexure A-10 order produced by him expunging the "adverse remarks" in the ACR. The averment regarding adverse remarks were only incidental to the reliefs sought for by the applicant which was mainly for consideration of his promotion without taking into account the Annual Confidential Report for the periods subsequent to the commencement of the selection process. The respondents have contended in this regard that since the promotion/selection as Instructor can be considered only prospectively and not retrospectively as in the case of restructured vacancies, the DPCs have to take into account of the ACRs immediately preceding three years. In fact this is the only short question to be decided in this case whether the ACRs of the three years preceding the date of the DPC or from the date of notification of selection should be considered.

9 The instructions regarding consideration of suitability by DPCs and the guidelines being followed have been codified in DOPT OM NO. 22011/5/86-Estt (D) dated 10.4.1989 and subsequent clarifications issued by the Department of Personnel & Training. It is clearly stipulated therein under 'Evaluation of ACRs' in sub clause (iii) that ACRs of preceding five years irrespective of number of years of qualifying service provided in the Recruitment Rules shall be considered. If alternative eligibility conditions with different lengths of qualifying service are permitted, then ACRs with lesser number of years or 5 years whichever is longer will be considered. ACRs of the years immediately preceding the vacancy/panel

years only are to be considered irrespective of the date of DPC. The respondents have relied on the Railway Board's instructions at Annexures R-2 and R-3 their contention is that three years ACRs from the date of DPC only should be considered. These orders are not relevant for deciding this issue as Annexure R-2 Railway Board order No. RBE 137/2003 dated 7.10.2003 prescribed only the reallocation of marks as a result of elimination of the viva voce test and Annexure R-3 on the basis of which the respondents actually deferred the selection of the applicant is only the instructions on the procedure to be followed when adverse remarks in the ACRs are not communicated before a final decision is taken on the selection. Paras 2(i) and (iii) of Annexure R-3 relied on by the respondents are reproduced below:

"2(i) Where the Departmental Promotion Committee find that the adverse remarks in the CRs have not been communicated but the adverse remarks are of sufficient gravity to influence the assessment of the railway servant concerned, then the Committee shall defer consideration of the case of the Railway Servant provided these remarks have been recorded in any of the CRs pertaining to three immediately preceding years prior to the year in which the DPC is held and the Cadre controlling authority concerned to communicate the adverse remarks to the railway servant concerned so that he may have an opportunity to make a representation against the same. Where the un-communicated adverse remarks pertain to a period earlier than the above or where the remarks are not considered of sufficient gravity to influence the assessment of the railway servant concerned, the DPC may proceed with the consideration of the case but may ignore the remarks while making the assessment.

(iii) In case where a decision on the representation of a railway servant against adverse remarks has not been taken or the time allowed for submission of representation is not over, the DPC in their discretion may defer the consideration of the case until a decision is taken on the representation."

The above procedure should be followed while dealing with a situation when the adverse remarks in the ACRs have not been communicated to the applicant but they are considered sufficiently serious to influence the DPC. The adverse remarks in the applicant's case was for the year ending 31.3.2006 and it

had been communicated to the applicant and applicant's appeal was pending with the competent authority.

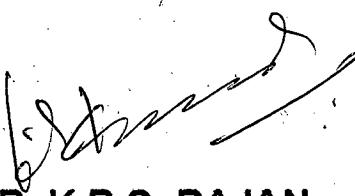
10 Hence, the respondents in keeping with the instruction in sub clause (iii) above rightly deferred consideration of his case. The question to be decided here is slightly different whether the ACR of the year ending 31.3.2006 was to be taken in to account at all and to decide that issue we have to fall back on the general guidelines by the DOPT referred to above which are ~~all~~ applicable to all departments in the Central Government. According to these guidelines, the ACRs of five years preceding the panel or the vacancy year which in this case is 2004, only have to be taken into account. These guidelines are applicable to Departmental Promotion Committees while considering promotions to the posts falling in the normal channel of promotion. The facts here are different in that the impugned selection is not taking place in the normal promotion channel from a feeder cadre but on the basis of calling for volunteers from different grade/cadres and adopting a selection procedure consisting of written test and assessment of personality, qualities of leadership and record of service as laid down in Annexures R-1 and R-2 instructions of the Railway Board. Though in Annexure R1 instructions dated 16.11.1998, it has been laid down that the procedure for filling up the general selection posts "is the same as that laid down for selection posts" in the normal channel of promotion, certain changes in the procedure have been brought about by doing away with seniority and in allocation of marks. The segment "Record of Service" is allotted 20 marks in the total scheme of 100 marks and scrutiny of ACRs would fall under this particular segment only. When the entire record of service of the individual has to be considered the selection committee has to take in to account the latest report pertaining to the year preceding that date when it meets and the guidelines regarding taking the effective date of vacancy etc. would not be applicable in such a context. The

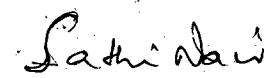
respondents have stated that the vacancy is to be filled up prospectively only and the question of antedating of promotion to the date of vacancy etc. does not arise here. As such there is nothing wrong in the respondents' stipulation in the impugned order calling for the ACRs of the years ending 31.3.2005 and 31.3.2006. In any case the apprehensions of the applicant have also no relevance with the issue of MA-2 orders dated 2.4.07.

11 In the light of the above discussions and the subsequent developments after filing of the O.A., we find that the reliefs prayed for by the applicant in para 8 (a), (c), (d) and (e) do not warrant any consideration. We would therefore only consider the relief (b) which can be allowed to the extent that the respondents are directed to finalise the selection by convening the Selection Committee in accordance with the rules as expeditiously as possible at any rate within two months from the date of receipt of this order.

12 The O.A. is partially allowed. No costs.

Dated 13.7.2007

  
DR. K.B.S. RAJAN  
JUDICIAL MEMBER

  
SATHI NAIR  
VICE CHAIRMAN

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