

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH, BANGALORE

TODAY THE TWELFTH MARCH, 1987

Present: Hon'ble Mr Justice K S Puttaswamy Vice Chairman  
Hon'ble Mr L H A Rego Member (A)

APPLICATION NOS. 1845 to 1866/86  
183 and 184/87

1. A. Mohan Krishna Jettappa  
D-16, 2nd Cross, Milk Centre,  
Road, Mysore 8. (Applicant in  
A.No. 1845/86)
2. R. Shivanna,  
872, Ramanuja Road,  
16th Cross,  
Mysore 4. (Applicant in  
A.No. 1846/86)
3. H. Lakshminarayana,  
son of H. Hanumaiyah (Applicant in  
A.No. 1847/86)
4. Shri G. Nagaraja,  
S/o C. Govindaswamy Naidu (Applicant in  
A.No. 1848/86)
5. A. Vijayendra  
son of Adinarayana (Applicant in  
A.No. 1849/86)
6. Sri D. Soma Sunder,  
S/o M. Devadas (Applicant in  
A.No. 1850/86)
7. Sri Radhakrishna,  
son of A. Govindhan (Applicant in  
A.No. 1851/86)
8. Sri Lingaraju  
son of Siddaiah (Applicant in  
A.No. 1852/86)
9. Sri P. Vasu, son of  
K. Pappaiah (Applicant in  
A.No. 1853/86)
10. Sri Ananda Kumar Xavier  
son of W. Xavier (Applicant in  
A.No. 1854/86)
11. D. Panduranga, son of  
Devoji (Applicant in  
A.No. 1855/86)
12. Sri M. Swamy  
son of Madaiah (Applicant in  
A.No. 1856/86)
13. Sri K. Nagaraju,  
son of K. Kempegouda (Applicant in  
A.No. 1857/86)
14. Sri C. Madhu, son  
of C. Chikkanna (Applicant in  
A.No. 1858/86)
15. Sri S. Venkatesh  
son of V. Sreenivasa Naidu (Applicant in  
A.No. 1859/86)

16. Sri Chandrashekhar  
son of S.Ninganna (Applicant in A.No. 1860/86)

17. Sri Ningappa, son of Gangaiah (Applicant in A.No. 1861/86)

18. Sri H.T.Nagaraja,  
son of Late Thottanna H.S. (Applicant in A.No. 1862/86)

19. Sri K.K.Phaniraj  
son of K.Bheema Rao (Applicant in A.No. 1863/86)

20. Sri D.Lakshmana  
son of H.Dasappa (Applicant in A.No. 1864/86)

21. Sri M.Javarappa  
son of Jotgada (Applicant in A.No. 1865/86)

22. D.Shankara Narayana  
s/o of Doddarangegowda (Applicant in A.No. 1866/86)

23. Sri H.Sathyanarayana,  
No. CH 35, 11th Cross,  
2nd Main, Jayanagar,  
Mysore (Applicant in A.No. 183/87)

24. Sri M.Sadashiva,  
No. 41, Railway quarters,  
Loco Colony, Yadhavagiri,  
Mysore 570 020. (Applicant in A.No. 184/87)

( Shri A.V. Albal ... Advocate )

Vs

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

2. The Southern Railway  
Reptd. by the General Manager,  
Central Station area,  
Madras 1.

3. The Works Manager,  
Southern Railway Workshop  
Mysore 570 008. & others ..... Respondents  
(Shri A.N. Venugopal ... Advocate)

These applications coming on for hearing today,  
Vice-Chairman made the following:-

O R D E R

These are transferred applications and are received from the High Court of Karnataka under Section 29 of the Administrative Tribunals Act of 1985(Act).

2. As on 4.11.1982, there were 322 temporary posts

of khalasis in the Southern Railway Mechanical Workshop Mysore South.

3. In Employment Notice No. E/1/82 dated 4th November, 1982(Annexure A) the Works Manager, Southern Railway, Mysore South (WM) invited applications to the said 322 posts of khalasis on or before 10th December, 1982, in response to which, the 24 applicants, respondents 4 to 315, and 7,000 or even more sent their applications before the appointed date. In conformity with the Recruitment Rules a Screening Committee appointed by the WM scrutinised the applications and called 1,288 persons for interview which included the applicants, respondents 4 to 315 and several others with whom we are not now concerned. From 23.10.83 to 6.11.83 a Selection Committee constituted by the Chief Workshop Engineer, Madras (CWE) interviewed the applicants, respondents 4 to 315 and others and selected respondents 4 to 315 and one more person and the WM by his Notification No. E/69/KR/Vol. VII dated 24.12.83(Annexure F) approved and published the same. The applicants who were not selected have challenged the same on a large number of grounds which will be noticed and dealt by us in this order. In the absence of an order of stay granted by the High Court, the WM had issued appointment orders to the selected persons.

4. In justification of the selections made and the non-selection of the applicants, respondents 1 to 3 have filed their reply. Respondents 4 to 315 have remained absent and are unrepresented.

5. Shri A.V.Albal, learned advocate has appeared for the applicants. Shri A.N.Venugopal learned advocate has appeared for respondents 1 to 3.

6. At the hearing, Shri Venugopal has produced the record connected with the selections.

7. Shri Albal contends, that the reservations made to various categories in excess of 50% to "merit pool" or "general category", was in particular violative of the provisions of Articles 14 and 16 of the Constitution, impermissible and illegal. In support of his contention, Shri Albal strongly relies on the rulings of the Supreme Court in AIR 1962 SC 36 = 1962(2) SCR 586 (GENERAL MANAGER SOUTHERN RAILWAY VS. RANGACHARI), AIR 1980 SC 820 ( DR JAGDISH SARAN VS UNION OF INDIA), AIR 1980 SC 1420 (PRADEEP JAIN VS MISS REITA & ORS), and the rulings of the High Courts of Bombay, Punjab and Haryana and Andhra Pradesh in AIR 1984 Bombay 434 (SHIVAJI VS. THE CHAIRMAN, MAHARASHTRA PUBLIC SERVICE COMMISSION & ORS), AIR 1984 Punjab & Haryana 278 (AJAY KUMAR MITTAL VS. HARYANA AGRICULTURAL UNIVERSITY & ORS), and AIR 1984 Andhra Pradesh 238 (ANDHRA PRADESH GOVERNMENT TECHNICAL EDUCATION TEACHERS' ASSOCIATION VS. GOVERNMENT OF ANDHRA PRADESH).

8. Shri Venugopal in refuting the contention of Shri Albal, contends (1) that in the absence of a challenge by the applicant to the orders made by the Railway Board, providing for reservation to various categories, the reservations made by the WM, either total or categorywise in conformity with the said orders, cannot be challenged (2) that with due regard to the nature of duties to be performed by the holders of the posts in question, the total reservations to various categories could even exceed 50% and (3) that the actual reservations attained in the selections, do not violate the provisions of the Constitution. In support of his contention, Shri Venugopal

strongly relies on the rulings of the Supreme Court in AIR 1976 SC 491 (STATE OF KERALA VS. THOMAS) and AIR 1981 SC L&S 50 (AKHIL BHARATIYA SOSHITHA KARAMCHARI SANGHA VS. UNION OF INDIA).

9. That as on 4.11.1982 there were 322 posts of khalasis and the WM decided to undertake recruitment to all these posts, is not in dispute. In respect of these posts, the WM made reservations to different categories as hereunder:-

	<u>No. of posts</u>	
(1) Scheduled Castes	45	
(2) Scheduled Tribes	16	The total percentage of reservation in respect of Sl.nos.
(3) Ex-servicemen	64	(1) to (5) works out to 79.
(4) Trade Apprentices	81	
(5) Physically Handicapped	48	
(6) Others	68	
	<u>Total: 322</u>	

As against the above reservation made, the reservation actually attained in various categories, in the course of the selection, was as under:

	<u>No. of posts</u>	
(1) Scheduled Castes	52	The total percentage attained in respect of Sl.nos (1) to (5) works out to 65.18.
(2) Scheduled Tribes	18	
(3) Ex-servicemen	6	
(4) Trade Apprentices	80	
(5) Physically Handicapped	48	
(6) Others	109	
	<u>Total: 313</u>	

While the notification provided for reservation to the extent of 79% to various categories, the actual reservation attained in the selection works out to 65.18%. With this backdrop, we shall deal with the questions touching on reservation examining first the preliminary objection urged by Shri Venugopal.

10. As regards the orders made by Government or the Railway Board, providing for reservations to members of Scheduled Castes (SCs) and Scheduled Tribes (STs) and the action taken by the WM in compliance thereof, Shri Albal in our opinion, rightly did not challenge the same. We therefore accept the reservation in regard to SCs and STs

as correct and examine the reservations to other categories.

11. But in Orders or Circular Numbers E NG. 1180/RCI/62. dt. 28/8/80, E(NG)ii-73C L/41 dt 23.8.73, E(NG) 1-74 CFP/5, dt 10-12-75, E(NG) III/79/RR1/11 dt. 15.12.80, the Railway Board had inter alia, directed reservations for ex-servicemen, trade apprentices and physically handicapped persons and in his employment notice, the WM had only implemented them.

12. Admittedly, the applicants have not challenged the orders or circulars made by the Railway Board providing for reservations to ex-servicemen, trade apprentices and physically handicapped persons. When the applicants have not challenged them, this Tribunal cannot examine their validity at all. We cannot then take exception to the reservations made to these three categories by the WM also. We are therefore of the view that the preliminary objection of Shri Venugopal is well-founded. But notwithstanding this infirmity, we propose to examine on merits the contentions urged by Shri Albal.

13. In Rangachari's case later followed in other cases, the Supreme Court ruled, that reservations should not exceed 50%.

14. In N.M.Thomas's case, a larger bench of 7 learned judges had occasion to examine the validity of the provisions made by the State of Kerala, granting extension of time to members of SCs and STs to pass the departmental examinations and other related questions. In examining them, Fazal Ali.J, while concurring with the opinion of the majority with which aspect we are not concerned, however expressed thus in regard to the extent of reservation:

"This means that the reservation should be within the permissible limits and should not be a cloak to fill all the posts belonging to a particular class of citizens and thus violate Art. 16(1) of the

Constitution indirectly. At the same time Clause (4) of Art. 16 does not fix any limit on the power of the Government to make reservation. Since Clause(4) is a part of Art. 16 of the Constitution it is manifest that the State cannot be allowed to indulge in excessive reservation so as to defeat the policy contained in Art. 16(1). As to what would be a suitable reservation within permissible limits will depend upon the facts and circumstances of each case and no hard and fast rule can be laid down, nor can this matter be reduced to a mathematical formula so as to be adhered to in all cases. Decided cases of this Court have no doubt laid down that the percentage of reservation should not exceed 50 per cent. As I read the authorities, this is, however, a rule of caution and does not exhaust all categories. Suppose for instance a State has a large number of backward classes of citizens which constitute 80 per cent of the population and the Government, in order to give them proper representation, reserves 80 per cent of the jobs for them, can it be said that the percentage of reservation is bad and violates the permissible limits of Clause(4) of Art. 16? The answer must necessarily be in the negative. The dominant object of this provision is to take steps to make inadequate representation adequate."

In all the later cases, notably in Akhil Bharatiya Soshita Karmachari Sangha's case, the Supreme Court had really veered round to this principle. From this, it is clear, that the principle that in no case reservations to members of SCs and STs, and other classes of persons can exceed 50% and that at least 50% of the posts should be earmarked for the merit pool or the open category as enunciated in Rangachari's case, no longer holds the field. We cannot therefore accept the very first broad proposition urged by Shri Albal.

15. Shri Albal next contends, that reservations to various categories cannot in any event exceed 70% as ruled by the Supreme Court in Pradeep Jain's case.

16. In Pradeep Jain's case, the court was examining the reservations for undergraduate and post-graduate levels in medical colleges on the ground of "domicile". In examining these questions and reservations to super-speciality courses of medicine, Bhagwati J (as his Lordship then was)

expressed thus:-

"But in our opinion such reservation should in no event exceed the outer limit of 70% of the total number of open seats after taking into account other kinds of reservation validly made."

These observations cannot be divorced from their context. Nevertheless, these observations, in our humble view, do not lay down that in all cases, irrespective of the nature of the posts, reservations cannot exceed 70% as urged by Shri Albal. What should be the extent of reservation depends on the facts and circumstances of each case. We find it difficult to hold, that these observations lay down an absolute determinate limit, for reservations, to any or all the categories as urged by Shri Albal.

17. In Shivaji's, Narasimha Rau's and Ajay Kumar Mittal's cases, the High Courts of Bombay, Andhra Pradesh and Punjab and Haryana have respectively ruled, that reservations cannot exceed 50%. But with all respect to the learned judges who decided these cases, we are of the view, that their ruling runs counter to the principle enunciated by Fazal Ali J in Thomas's case, re-iterated in Akhil Bharatiya Soshita Karmachari Sangha and Jagdish Saran's cases which is not really dissented, even in Pradeep Jain's case. We, therefore, with respect, regret out inability to subscribe to the views expressed in all these cases.

18. On the foregoing discussion we hold, that the contentions of Shri Albal that reservations cannot exceed 50% and in any event 70%, have no merit. We therefore reject both of them.

19. We have earlier noticed that the actual total

reservation attained had not exceeded 65.18% as against the aggregate of 79% specified in the employment notice issued by the WM.

20. Whenever there is a challenge to reservations, the Tribunal would examine the same with reference to what actually has been achieved and not with what was earlier proposed or contemplated in the employment notice itself. Otherwise the conclusion would be illusory, and not accord with the fact-situation. On any principle, such cannot be the position. When we so examine, as that should be, we cannot but hold, that even if Shri Albal is right on the construction he has placed on the relevant portion in Pradeep Jain's case, then also, the total reservation actually attained, does no violence to that principle. On this view also, we must reject the contention of Shri Albal.

21. Shri Albal next contends that the reservations for ex-servicemen, trade apprentices and physically handicapped persons, were not guaranteed under the Constitution and therefore impermissible.

22. Shri Venugopal contends that reservations for ex-servicemen, trade apprentices and physically handicapped persons were covered by Art. 14 of the Constitution.

23. Reservations to posts are made on extraordinary consideration. We cannot be oblivious of the fact that ex-servicemen fall into a special category of their own, in this respect, by virtue of the yeoman service rendered by them through rare grit and valour in the defence of their motherland, in extremely hazardous conditions, with no little peril to their lives. Besides the intense strain and rigour of their duty, in rugged terrain and under inhospitable conditions, necessitate their retirement much earlier than in the case of a civil servant. It is therefore

but proper, that they are adequately compensated for the meritorious service rendered by them in the field, in such circumstances. Such a gesture is accorded to ex-servicemen the world over, and our country therefore, cannot be an exception to the same. If that is so, then reservations for ex-servicemen who belong to a well-defined class of their own, would be a case of valid classification and the same does not offend Arts. 14 and 16 or any other provision of the Constitution at all. We cannot therefore take exception to their reservation.

24. The Apprentices Act of 1961 (Central Act No. 52/1961) (1961 Act) provides for intensive training of apprentices in trades and skills. Trained apprentice khalasis, would certainly be better equipped and qualified for regular appointment and therefore perform their duty more efficiently than those not trained. Reservations for trained apprentices would therefore help achieve the aim and object of the 1961 Act. For this reason trained trade apprentices fall in a category apart and their classification is therefore valid and cannot be taken exception to by us.

25. Shri Albal next contends that the job requirements for the post of khalasis, incapacitate the physically handicapped for appointment to this post on which ground alone there should not have been any reservation to them.

26. Shri Venugopal contends that the physically handicapped persons considered, were not totally unfit for the diverse duties required of a khalasi.

27. The circulars issued by the Railway Board require that even physically handicapped should produce a medical fitness certificate to qualify them for the work they would

need to perform as khalasis. If that is so, then, it would be futile to contend that the physically handicapped are totally unfit to perform the diverse duties of khalasis.

28. All khalasis do not perform one and the same kind of duty. The nature of duties performed by them are manifold and diverse. Every physically handicapped person who suffers from one or other disability does not necessarily become disabled to perform all jobs. The office or section in which a khalasi is posted, will extract such work, that can be efficiently performed by him according to his physical capability. On all these considerations, it is difficult to uphold this contention of Shri Albal.

29. The physically handicapped are an unfortunate section of society which deserves greater sympathy and treatment by the State and society to help them lead a dignified life. It is for this reason, that recently, the world dedicated a whole year for the cause of the handicapped and the disabled to arouse universal consciousness. Without doubt therefore, the physically handicapped belong to a well-defined class of their own and that being so, their case is also one of valid classification, which does not offend Arts. 14 and 16 of the Constitution. For all these reasons, we see no merit in this contention of Shri Albal and we reject the same.

30. Shri Albal contends that the Selection Committee which did not consist of an outside member was not properly constituted.

31. Shri Venugopal refutes the same on the grounds, that the constitution of the Selection Committee was in conformity with the Rules then in force and was therefore valid.

32. The Railway Board Circular No. Eng 111/79RRJ3 dated 10/3/79 then in force, regulating the constitution of a

Selection Committee stipulated thus:

"Keeping various aspects in view, it has been decided that the selection board for Class IV recruitment to the Workshop should consist of an Assistant Mechanical Engineer, Assistant Personnel Officer and a Scheduled Caste/Scheduled Tribe Officer of the same rank."

In conformity with this provision, the CWE and the Chief Personnel Officer, Southern Railway, Madras had nominated Shriyuths P.V. Shanmukham, P.A. Raja Rao and C. Raghavan as members of the Selection Committee. Shri Raghavan, the last of the nominated persons was a member of a Scheduled Caste. The constitution of the Selection Committee was in conformity with the provisions made by the Railway Board in its above circular dated 10.3.79. We see no merit in this contention of Shri Albal and we reject the same.

33. Shri Albal next contends that the selections made were capricious and arbitrary.

34. Shri Venugopal rebuts the same, on the score, that the rules regulating recruitment, provided for a complete and objective assessment of the candidates and that the selections made in conformity with them were legal and fair.

35. The rules called the "Rules for recruitment of Group D Staff" framed by the General Manager, Southern Railway, then in force, inter alia directed the Selection Committee to assess the candidates by awarding marks under different items to enable proper selection. That rule which is material reads thus:-

"(g) The Selection Committee will interview the candidates and give them marks on the basis indicated below-  
Having regard to the requirements of Special Reservation for S.C./S.T. candidates, the Committee will fix the minimum marks to be scored by the candidates for being considered suitable for appointment and draw up list of selected candidates. Casual Labourers and temporary workmen will have a prior claim over others to regular recruitments.

The list of selected candidates should be published with the approval of the competent authority who has constituted the Selection Board.

	Marks
1. Personality, Physique etc. including literacy.	40
2. Ability to do the job	40*
3. Other Trade qualifications, if any	10
4. Proficiency in Games, Cycling etc.	10
	Total
	<u>100</u>

\*Candidates getting less than 25 marks out of 40 for item 2 above will be disqualified. Such of those candidates who do not get an aggregate of 50 marks out of 100 will be declared as failed.

(h) In assessing the suitability of S.C./S.T. candidates due regard should be paid to the instructions contained in Board's letter No.E.55/CML/3 dated 5th October 1955."

In conformity with these provisions, each member of the Committee had awarded marks under different heads. On an evaluation of the candidates who appeared for interview, selections were made by the Committee. Provision for allotment of itemised marks, excludes arbitrariness. (vide AIR 1971 SC 2303 PERIAKARUPPAN VS. STATE OF TAMILNADU).

The existing guidelines are clear and explicit in regard to assessment under each item. The Committee had made selections with due regard to all of them. When that is so, we cannot examine that assessment, as if we are a court of appeal and come to a different conclusion. We see no merit in this contention of Shri Albal and we therefore reject the same.

36. Shri Albal next contends, that the Selection Committee was bound to publish the marks allotted to the candidates at the end of each day of the Interview and since that had not been done, the selections were illegal. In driving home this point, Shri Albal relies on the provisions made in the Rules for selections by the Karnataka Public Service Commission (KPSC).

37. Shri Venugopal repels that contention, on the premise, that non-publication of marks awarded to the candidates at the end of each day of the Interview which

was not contemplated by the Rules, did not vitiate the selections.

38. The rules framed by the Railway Board regulating selections do not provide for the publication of marks at the end of each day of the Interview, as in the case of interviews held by the KPSC. The provisions if any thereto, regulating their publication by the KPSC or the principle, if any, underlying the same also cannot be insisted upon and complied with, in the absence of a similar provision in the rules for selection. We therefore see no merit in this contention of Shri Albal and we reject the same.

39. Shri Albal contends that the interviews of the applicants, and in particular of the applicant in A.No. 1845/86, was a farce and not real.

40. Shri Venugopal refutes the same stating that the allegations made by the applicants were extremely vague and general.

41. We have carefully read the allegations made by the applicant at paras 'k' and 'l', on which this contention of Shri Albal is founded. We are of the view that the allegations made in these paras, are bereft of particulars, which have also been denied by respondent nos 1 to 3, and are extremely vague and general, and therefore warrant rejection on that ground itself.

42. We find from the markslist, that all the three members of the Selection Committee, have on their own assessment, awarded marks under each item to each of the applicant. We do not find any arbitrariness in their assessment. We therefore, see no merit in this contention of Shri Albal and we reject the same.

43. Shri Albal lastly contends that the cases of some of the applicants, deserve to be considered under provisions called "Appointments on compassionate grounds" and that respondents 1 to 3 should be directed to consider their cases for such appointment.

44. Shri Venugopal contends that this claim, which does not arise from the pleadings, cannot be examined and that this Tribunal cannot give directions as prayed for by Shri Albal.

45. Shri Venugopal is right in his submission that this claim does not strictly arise out of the pleadings or from the challenges made in these cases. We should normally reject the same on this ground. But we consider it proper to observe, that if any of the applicants fall within the purview of "Appointments on Compassionate grounds", they are free to approach the competent authority on that ground. We have no doubt that the authority concerned will examine and decide the same on merits.

46. As all the contentions urged for the applicants fail, these applications are liable to be dismissed. We therefore dismiss these applications. But in the circumstances of the cases, we direct the parties to bear their own costs.

47. We direct the Registrar to communicate copies of our order only to the applicants and respondents 1 to 3 only and not to respondents nos. 4 to 315, who have remained absent and were unrepresented.

sr

*Rs. D. P. Venkateswara*  
VICE CHAIRMAN 12/3/87

MEMBER (A)

12-3-87