

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00187/2015

Tuesday, this the 25th day of September, 2018

CORAM:

**Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member**

G.R.Binu, aged 37 years,
S/o Gopinathaj, Accounts Clerk,
S.Railway, Trivandrum,
Residing at Kavuvilakathu House,
GRA J35, Gadhipuram, Sreekaryam,
Trivandrum 695014.

..... **Applicant**

(By Advocate – Mr. M.P.Varkey & Mr. Martin G. Thottan)

V e r s u s

1. Union of India rep. by
General Manager,
Southern Railway, Chennai 600003.
2. The Financial Advisor and Chief Accounts Officer,
Southern Railway, Chennai 600 003.
3. The Senior Divisional Finance Manager,
Southern Railway, Trivandrum 695014. **Respondents**

(By Advocate – Mr.Sunil Jacob Jose)

This Original Application having been heard and reserved for orders on 18.9.2018, the Tribunal on 25.09.2018 delivered the following:

O R D E R

Per: Ashish Kalia, Judicial Member:

The applicant is aggrieved by his non promotion as Junior Accounts Assistant in PB Rs.5200-20200 + GP 2800 in terms of Annexure A2 and A3

orders, with effect from 19.6.2014.

2. The applicant is the only candidate eligible for the above promotion vide Annexure A1 letter. There is a clear vacancy in the direct recruitment quota, since serial No.1 at Annexure A5 has not joined the post even after the expiry of the time limit to join. Annexure A4 representation remains undisposed. Hence this O.A.

Applicant seeks the following reliefs:

- (i) Declare that the applicant is eligible to be promoted as Junior accounts Assistant in PB1 Rs. 5200-20200+GP 2800 with effect from 19.6.2014, with all attendants benefits and direct the respondents accordingly.
- (ii) Award costs of and incidental to this application.
- (iii) Grant such other reliefs, which this Tribunal may deem fit and proper in the circumstances of the case.

2. The facts in brief are that the applicant was appointed as Accounts Clerk in Southern Railway in scale of Rs. 3050-4590 (No. PB Rs. 5200-20200 + GP 2400) on 5.8.1999. He had passed the Appendix II IREM examination in 2003, which is the qualifying test for promotion as Junior accounts Assistant in scale of Rs. 4500-7000 (now PB Rs. 5200-20200 + GP 2800). It is submitted by the applicant that even though he was promoted as Junior Accounts Assistant in 2008 on account of his transfer to Chennai Division and back to Trivandrum Division on request, the applicant was reverted as Accounts Clerk in 2013. There was a query from the office of 2nd respondent for furnishing a list of Appendix II qualified Accounts Clerks. Accordingly, the 3rd respondent furnished the name of the applicant, who is the only person so qualified, under Annexure A.1 letter. Remark No.2 in

Annexue A.1 is incorrect since serial No.1 in A5 list has not joined so far and his vacancy is available. As per Annexure A2 it has been decided as a one time measure to fill up one third (33 1/3 %) of the direct recruitment posts of Junior Accounts Assistants from Appendix II IREM qualified Accounts Staff or the number of posts equal to the number of Appendix II IREM qualified Accounts Staff available and eligible for promotion as on date, whichever is lower. Being qualified and eligible as per the conditions at A2 and vacancy being available, the applicant legitimately expected to be promoted as Junior Accounts Assistant soon. Vide Annexure A.3 D.O letter dated 25.7.2014 respondents notified the procedure to be followed in implementing A2 order in which it was stated as “the vacancies in direct recruitment quota prevailing after induction of the recent RRB (DR) candidates should nly to be considered.” The cadre strength of Junior Accounts Assistants is 9 in Trivandrum Division, of which 7 (80%) is direct recruitment quota and 2 (20%) is promotion quota. As on 19.6.2014, the cut off date in A2 Railway Board Order, there were only 4 incumbents with 3 vacancies in direct recruitment quota and 2 incumbents with no vacancy in the promotion quota. But the applicant was not promoted as JAA. Hence, the applicant has mae Annexure A.4 representation dated 1.8.2014 complaining of his non-promotion. Still, the applicant was not promoted. It is submitted by the applicant that the applicant sought for the details of direct recruitment candidates referred to in A3 letter under the Right to Information Act 2005. The information was furnished under Annexure A5 letter. Applicant has submitted that there is a clear vacancy in the direct recruitment quota of JAAs in Trivandrum Division. It is submitted on behalf of the applicant that

the cadre strength of Junior Accounts Assistants in Trivandrum Division is 9 of which 80% of the posts (7) is direct recruitment quota and 20% is promotional quota. Out of the 7 direct recruits at A5, serial No.1 has not yet joined and serial numbers 2 to 7 only had joined. Therefore, it is submitted that there is a clear vacancy in direct recruitment quota as promotion quota of 2 is full. Feeling aggrieved he has approached this Tribunal for redressal of his grievance.

3. Notices were issued. Respondents put up their appearance through learned Central Govt. Standing Counsel and filed detailed reply statement contesting the claim of the applicant.

4. It is submitted on behalf of the respondents that the contention of the applicant is incorrect. In February 2014, only five vacancies were available in the Direct Recruitment quota. However, seven RRB candidates (3 SC, 1UR, 2 OBC & 1 ST) were allotted to TVC division duly taking the 2 shortfall vacancies available for SC candidates in Accounts Assistant category to the Junior Accounts Assistant category to wipe out the shortfall. All the Seven Candidates allotted to TVC Division had reported prior to the issue of Board's letter dated 19.6.2014 and were sent for medical examination of that six have completed the medical examination and one candidate who is under OBC quota is undergoing medical examination. Hence no vacancy under UR was available in the Direct Recruitment Quota for applicant to be accommodate based on Board's letter. It is contended on behalf of the respondents that though the applicant is qualified, he cannot be considered for promotion as there is only one vacancy available under Direct Recruitment quota under OBC category which as stated above has already

been allotted to a RRB Candidate under graduate quota prior to issue of Annexure R.3 Railway Board's letter. A fine reading of Para 2 of Board's letter dated 19.6.2014 "as on date". This implies that Direct Recruitment allotted by RRB/TVC be taken into cognizance before considering for one time exemption. Hence the contention of the Applicant that he should be considered against the vacancy is incorrect as any promotion if ordered would also result in exceeding the sanctioned strength apart from non-adherence to the reservation policy. It is denied by the respondents that the contention of the applicant is incorrect. All the seven Junior Accounts Assistant vacancies in TVC Division were filled prior to the issue of Board's letter dated 19.06.2014. Annexure R.5 is the appointment and the transfer orders issued in this regard. Therefore, as on the crucial date no clear vacancy under Direct Recruitment Quota in UR category was available and the contention of the Applicant that three vacancies are available is totally incorrect & baseless.

5. It is contended by the respondents that there is no clear vacancy available in Direct Recruitment quota. The contention of the applicant that in as much as one of the DR quota candidates has not reported, he should be considered for promotion against the arising vacancy is incorrect. As per Board's letter dated 19.6.2014 for promotion of APP II IREM qualified Accounts Clerk as junior Accounts Assistant in Direct Recruitment quota"..." one third of the direct recruitment posts of Junior Accounts Assistants from Appendix II IREM qualified Accounts Staff or the number of posts equal to the number of Appendix II IREM qualified Accounts staff available and eligible for promotion as on date, whichever is lower." Against for the

calculation of vacancy only one third of the vacancy available as on dated of Board's letter dated 19.06.2014 only to be taken into account and hence the contention of the applicant is not correct. The working sheet as per the Annexure R.6 Procedure Order is placed, it can be seen that no vacancy was available to consider the applicant, the respondents argued. It is argued by the respondents that as there was no vacancy available in Direct Recruitment quota and hence the contention of the applicant seeking for promotion against DR quota is devoid of merit and the O.A. is sought to be dismissed.

6. Applicant has filed a rejoinder reiterating the contentions made in the pleadings of the O.A. It is submitted by the applicants that there is no question of reservation for SC or ST in small cadres below a strength of 15, with effect from 10.02.1995, vide Annexure A6 issued by the Railway Board. Therefore earmarking 2 posts in direct recruitment quota for shortfall vacancies of SCs in higher grade is wrong. That is why 7 RRB candidates were allotted to Trivandrum Division as per R2 letter.

7. Respondents have filed Additional Reply statement contesting the claim of the applicant in the rejoinder. They have denied the claim of the applicant in the rejoinder.

8. We have heard the learned counsel appearing on both sides and perused the pleadings and considered the rival submissions.

9. The grievance of the applicant is that he is eligible to be promoted as Junior Accounts Assistant ("JAA" for short), but he has not been considered despite having vacancy for the post of Junior Accounts Officer. He has also been selected and his name was kept in the waiting list. Out of the seven selected, candidate at Sr. No.1 Shri Aneesh T.S., RRB/TVC belongs to ÖBC

category did not join. Thus, according to the applicant there is a clear cut vacancy against which his name could have been considered by the department. It is clear from the selected list for the post of JAA Mr. Aneesh is OBC candidate and vacancy was earmarked for the same.

10. The applicant who belongs to the Unreserved category cannot make a claim against reserved post for JAA. A general candidate cannot be considered against the reserved post vacancy unless or until it is de-reserved and make available for candidates in the UR category. The respondents counsel has laid emphasis that the seven RRB vacancies fall under different categories, 3 for SC, 2 for OBC, 1 for ST and 1 for UR allotted to TVC Division after taking into account to short fall of vacancies available for SC candidates in Account Assistants category to JAA category in order to wipe out the shortfall.

11. He further submitted that all the seven candidates had reported prior to issuance of Board letter dated 19.6.2014 and were sent for medical examination and out of which these candidates have completed the medical examination one candidate from OBC category us under going the medical examination. So there is no vacancy available for Unreserved candidates as claimed by the applicant. Thus, he cannot be considered for the same.

12. There is another aspect of this case . Had there been a vacancy available in the reserved category of direct recruitment candidate whether it could have gone to the applicant being a promotee category candidate? The answer is “No”. These are vacancies which were meant for direct recruits candidates whereas the applicant belongs to promotee category. Only 1/3rd of the vacancy is available in direct recruitment category which has been

diverted as one time measure to accommodate the Accounts Clerks in promotee quota due to stagnation. Meaning thereby if three vacancies of direct recruits are available then only applicant's case could be considered for the post of Junior Accounts Assistant which is not the case here. Thus, in the present Original Application fails to convince this Tribunal and is devoid of merits. It is hereby dismissed. No order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

sj*

List of Annexures of the Applicant in O.A. No. 180/00043/2014

Annexure A-1 - True copy of the letter No. P 563/TVC/Admn dated 24.6.2014.

Annexure A-2 - True copy of the Railway Boards letter No. E(NG) I-2010/PMS/5 dated 19.6.2014.

Annexure A-3 : True copy of DO letter No. P535/GA/MAS/Cadre Policy dated 25.7.2014

Annexure A-4 - True representation dated 1.8.2014 to the 2nd respondent.

Annexure A5: - True copy of the letter No. P676/HQA/Admn/Staff Matters/Vol.I/recruitment 2014 dated 12.5.2014 with covering letter dated 13.01.2015.

Annexure A-6: - True extract of the vide Railway Board's RBE No. 113/97 dated 21.08.1997.

List of Annexures of the Respondents

Annexure R.1: Photocopy of the procedure enumerated in para 171 of IREM.

Annexure R.2: Photocopy of the letter P.676/HQA/Admn/Staff Matters/Vol-1Recruitment-2014 dated 07.05.2014.

Annexure R.3 : Photocopy of the Boards letter dated 19.6.2014.

Annexure R.4. : Photocopy of the Boards letter dated 19.6.2014.

Annexure R5: True copy of the appointment & Transfer Orders.

Annexure R.6: Photocopy of the working sheet as per the procedure order.

Annexure R.7: True copy of the Railway Board Letter No.95.E(SCT)1/49/5/(1) dated 21.08.1997.
