

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00267/2015

Friday, this the 15th day of March, 2019

CORAM:

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

1. Israel A., aged 34 years, S/o. P. Amalraj Pillai,
Peon, Office of Divisional Electrical Engineer,
Rolling Stock, Southern Railway, Palakkad Division,
Palakkad residing at 219 A Railway Quarters, Hemambika Nagar,
Railway Colony, Palakkad.
2. A. Hillary, aged 34 years, S/o. S.Antony, Peon, Commercial Branch,
Office of Sr. Divisional Commercial Manager, Southern Railway,
Palakkad Division, Palakkad. **Applicants**

(By Advocate : Mr. U. Balagangadharan)

V e r s u s

1. The General Manager, Southern Railway, Park Town,
Chennai – 600 003.
2. The Chief Personnel Officer, Southern Railway, Park Town,
Chennai – 600 003.
3. The Sr. Divisional Personnel Officer, Southern Railway,
Palakkad Division, Palakkad - 678 002.
4. The Divisional Railway Manager, Southern Railway,
Palakkad Division, Palakkad – 678 002.
5. Railway Board, represented by Secretary, Rail Bhavan,
New Delhi – 110 011.
6. Smt. P. Sudheera, Clerk, Electrical Branch, Southern Railway,
Palakkad Division, Palakkad – 678 002.
7. Shri P. Radhakrishnan, Clerk, Operating Branch, Southern Railway,
Palakkad Division, Palakkad – 678 002. **Respondents**

**[By Advocates : Mr. Sunil Jacob Jose (R1-5) &
Mr. T.A. Rajan (R6)]**

This application having been heard on 11.03.2019, the Tribunal on 15.03.2019 delivered the following:

ORDER

Hon'ble Mr. Ashish Kalia, Judicial Member –

The applicants have claimed the following relief:

- “i) Call for the records leading to Annexure A15 and set aside the same to the extent it excludes the applicants and includes the respondents 6 & 7.
- ii) Direct the respondent to consider including the applicants in Annexure A15 select list in place of respondent 6 and 7 and assigned them seniority on the basis of the merit in the written and record of service and other consequential benefits.
- iii) Declare that the applicants are entitled to be included in Annexure A15 select list for the post of Office Clerk.
- iv) Grant such other relief that the Hon'ble Court may feel fit in the facts and circumstances of the case.”

2. The brief facts of the case are that the applicants who are working as Peons are aspirants to the post of Office Clerks against promotion quota. Applicants Nos. 1 & 2 were initially recruited as Trackman on 14.8.2007 and 21.5.2008 respectively and because of medically decategorized they were posted as Peons with effect from 8.8.2011 and 26.7.2012 respectively. As per Annexure A11 notification for selection to the post of Office Clerk from the erstwhile Group-D employees against 33 1/3% promotional quota, the applicants submitted their applications and they were called for written examination as per communication dated 30.10.2014. The applicants secured 86% and 65% marks respectively in written test and they have technical and academic qualification with lots of awards to their credit. As per Annexure A11 notification, Annexure A13 Railway Board order and Annexure A14 para 189 of IREM, selection is based on merit alone and

seniority need not be taken into account being a selection post. Merit means marks in the written test and marks in the record of service which included academic and technical qualifications and award/punishments. When results were published applicants were omitted and respondents Nos. 6 & 7 who secured 51 marks were included in the select list ignoring the better merit of the applicants and better assessment of records of service. None of the persons in the select list secured marks equal or above the first applicant. There is absolutely no legal and factual justification in ignoring the applicants especially when the 1st applicant scored maximum marks in the written test among all the participants. Hence, the selection is vitiated and aggrieved the applicants have filed the present Original Application.

3. Notices were issued to the respondents and they entered appearance through Shri Sunil Jacob Jose appearing for respondents Nos. 1-5 and Shri T.A. Rajan, learned counsel appearing for respondent No. 6. Respondents Nos. 1-5 have filed a detailed reply statement contending that applicant No. 1 was initially engaged as Substitute Trackman in scale Rs. 2,610-3,540/- under Section Engineer/Permanent Way/Kannur on 14.8.2007. Having found suitable by the screening committee, he was absorbed in the regular post of Trackman w.e.f. 12.12.2007. While so, he was medically decategorized since he was found medically unfit in medical classification B1, B2 and C1 and fit in C2 medical classification and therefore was accommodated in a supernumerary post w.e.f. 1.12.2008. Afterwards he was transferred to work as Attendant/Officer's Rest House/Kannur w.e.f. 9.4.2009. Subsequently, he was given alternative appointment as Peon, in

which he joined on 9.8.2012. The 2nd applicant was initially engaged as Substitute Trackman in scale Rs. 2,610-3,540/- under Section Engineer/Permanent Way/Mangalore on 22.1.2008. Afterwards he was screened and absorbed as Trackman w.e.f. 21.5.2008. While so, he was medically decategorized and was found medically unfit in medical classification B1 and B2 and fit in C1 and below in a job not involving heavy manual labour and therefore, kept under supernumerary post w.e.f. 13.11.2009. Subsequently he was given alternative appointment as Peon and he joined in the said post on 27.7.2012.

4. Respondents Nos. 1-5 further contend that a notification at Annexure A11 dated 29.9.2014 was issued proposing to conduct a selection for the post of Office Clerk in pay band Rs. 5,200-20,200 plus GP Rs. 1,900/- from Group D employees against 33 1/3% promotional quota. The total vacancies assessed was 18 and out of which 9 were earmarked for UR, 6 for SC and 3 for ST. The 2nd paragraph of the notification contained the procedure to be adopted for the said selection wherein it was mentioned that the final panel will be drawn up in the order of merit based on aggregate marks secured in the written examination and record of service in terms of Railway Board's letter No. E(NG) 2008/PM7/4SLP, dated 19.6.2009 (RBE No. 113/2009). Such a mention made in Annexure A11 notification was by an inadvertent error since Railway Board have issued instructions vide letter dated 6.2.2014 prescribing that for promotion from erstwhile Group-D to Group-C against 33 1/3% quota, the criteria to be adopted will be seniority as per paragraph 189 of IREM. Accordingly, Annexure R2 corrigendum dated

10.10.2014 was issued to Annexure A11 notification wherein it was laid down that the final panel will be drawn up in the order of seniority. The applicants belonged to unreserved category and though qualified in the selection, were not considered for empanelment since they were not having sufficient seniority. Respondents pray for dismissing the OA.

5. The 6th respondent had also filed a reply statement contending that respondents Nos. 1-5 have followed the prescribed procedure as per paragraph 189 of Indian Railway Establishment Manual and applicants are much junior to this respondent who are seeking appointment to the post of Office Clerk. The exam was conducted to see the suitability of Group-D employees for the purpose of giving them promotion to Group-C post. This is not a direct recruitment and is a promotional post and for which the principle that would govern will be “seniority-cum-fitness” and not “merit-cum-seniority”. The applicants were medically decategorized and were given appointment as Peons w.e.f. 8.8.2011 and 26.7.2012 respectively.

6. Heard Mr. U. Balagangadharan, learned counsel appearing for the applicant, learned standing counsel for respondents Nos. 1-5 and Mr. T.A. Rajan, learned counsel appearing for respondent No. 6. Perused the records.

7. The points raised in the OA is whether the respondents can change the criteria of selection process for the post of Office Clerk from Group-D and whether the post of Office Clerk is a promotional post and selection to which by seniority cum eligibility in LDCE, is in accordance with rules or not.

8. Learned counsel for the applicants submitted that as per the notification the post of Office Clerk is a selection post and seniority could not be the guided factor as the applicants are from different streams. So the applicants should have been considered by the respondents for the said post. He has also relied upon the judgment of the Hon'ble Kerala High Court in the matter of *Vikraman Nair V. & Anr. v. Union of India & Ors.* - 2015 KHC 786 wherein the Hon'ble High Court held that when persons belonging to different streams are brought into a common pool, seniority cannot be basis for selection as there is no common seniority list and it is in the said circumstances that the merit has been ordered to be taken as the basis for selection. Based on the said analogy this Tribunal had passed an order in OA No. 224/2014 and connected cases on 21.8.2015 upholding the criteria of selection in the order of merit.

9. In order to ascertain the point raised by the applicants in the Original Application let us discuss the rule and legal position in this regard:

**“INDIAN RAILWAY ESTABLISHMENT MANUAL VOLUME – I
(1989 – EDITION)**

189. **Promotion to higher grades in Group 'C':-** Railway servants in Group 'D' categories for whom no regular avenue of promotion exists 33 1/3% of the posts in the lowest grade of Commercial Clerks, Ticket Collectors, Trains Clerks, Office Clerks, Stores Clerks, etc. should be earmarked for promotion. The quota for promotion of Group 'D' staff in the Accounts Deptts. to Group 'C' post of Accounts Clerks will be 25%. Promotion to Group 'C' will be subject to the following conditions: -

- (i) All promotions should be made on the basis of selection. There should be written tests to assess the educational attainments of candidates. Group 'C' categories referred to above should be suitably linked with specified categories in the lower grades on broad affinity of work to form groups for promotion but it should be ensured that the prospects are made equal in the different groups. The test should be correlated to the standards of proficiency that can reasonably be expected from railway servants who are generally non-matriculates. The aim of the examiners should be to assess the general suitability of

the Group 'D' railway servants offering themselves for promotion to Group 'C' posts from the point of view of their knowledge of English and their general standard of intelligence. The factors of selection and their relative weight will be as indicated below:-

Factors/Headings Maximum Marks

(a)	Written Test	85
(b)	Record of Service	15
	Total	100

Note: 1.
 2.
 3.
 4. All those who qualify on the basis of written test and Record of Service, the qualifying percentage of marks being prescribed by the General Manager, should be included in the panel in the order of their seniority for promotion against the yearly vacancies available for them in Group 'C' categories.
”

On 10.10.2014 a corrigendum was issued wherein the portion of paragraph 2 of Annexure A11 was corrected as:

“The final panel will be drawn up in the order of seniority and based on aggregate marks secured in the written examination and record of service in terms of PBC No. 14/2014.”

A combined reading of the corrigendum with paragraph 189 of IREM it is clear that all promotions should be by way of selection test so conducted to adjudge the standard of proficiency of persons who are generally a non-matriculate. It is further stated that qualifying cut of percentage for suitability in test is to be prescribed by the General Manager in the order of seniority. So it is clear that seniority cum fitness is the criteria for promotion to the post of Group-C from the post of Group-D which is the general principle of the promotion post. Only in the selection post the criteria of merit of the candidate is taken into account which is not the case here.

10. However, the Indian Railway Establishment Manual Volume-I lays down the criteria for promotion from Group-D to C. It provides for an

examination in order to see the proficiency that can be reasonably exceptional from an employee in order of seniority. So the question does not arise to ignore seniority. It is only seniority-cum-fitness the criteria which is followed by the respondents. The examination is conducted for the purpose of adjudging the suitability of the candidate to perform the duty of higher post. Once basic Rule 189 prescribes the condition, that cannot be changed i.e. seniority cum fitness. The General Managers have been given the power to fix the minimum qualifying percentage and in the present case it is fixed as 50%. Higher percentage of marks cannot take away seniority-cum-fitness rule for the promotional post. The Hon'ble High Court in *Vikraman Nair V.*'s case (supra) held as under:

“20. This Court finds that the mistake committed by the respondent Railways in having issued Annexure A2 notification, contrary to the law declared by the apex court and in proceeding with the selection based on Annexure A2 notification is to be declared as not at all correct or sustainable. It is ordered accordingly. Since the consequences resulted cannot be corrected, without effecting necessary changes with regard to the field of examination confining it to Professional ability and record of service, with proper distribution of marks, the selection cannot be held as justified. In the said circumstances, Annexure A2 notification, the selection and appointment effected and the verdict passed by the Tribunal are set aside. The respondents are directed to issue a proper notification in terms of the changed norms, pursuant to Annexure A7 prescribing the maximum and qualifying marks, syllabus concerned and distribution of marks, giving clear idea as to the eligibility of the candidates to participate in the selection and prove their worth. Necessary relaxation shall be given with regard to maximum age, in respect of the persons who had responded to Annexure A2 selection notified in the year 2008, as the present turn of evens cannot be taken to their disadvantage in respect of the age factor. The proceedings as above shall be finalized at the earliest at any rate within four months from the the date of receipt of a copy of this judgment.”

Respondents 1-5 have corrected their mistake in the present case in consonance with law laid down by the Hon'ble High Court to ascertain professional ability and record of service with proper distribution of marks i.e. 50% marks in the written examination and in case of SC/ST further 10%

relaxation and prepared the final panel in the order of merit based on aggregate marks received in the written examination and record of service.

11. In view of the above facts and circumstances, this Tribunal is of the considered opinion that the applicants fails to convince this Tribunal on merit. Hence, the Original Application is liable to be dismissed. We order accordingly. The parties shall bear their own costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

“SA”

Original Application No. 180/00267/2015**APPLICANT'S ANNEXURES**

- Annexure A1** – True copy of the National Trade Certificate issued to 1st applicant.
- Annexure A2** – True copy of the National Apprenticeship Certificate issued to 1st applicant.
- Annexure A3** – True copy of BSc. Degree certificate issued by the Annamalai University to 1st applicant.
- Annexure A4** – True copy of the proficiency certificate dated 4.2.2011 issued to 1st applicant.
- Annexure A5** – True copy of the certificate dated 31.5.2013 issued to 1st applicant by Chief Electrical Engineer, Electrical Department, Southern Railway, Chennai.
- Annexure A6** – True copy of the certificate 23.1.2014 issued to 1st applicant.
- Annexure A7** – True copy of the certificate issued during the Safety Week Competitions dated 17.2.2009 to 1st applicant.
- Annexure A7(a)**– True copy of the certificate issued during the Safety Week Competitions dated 17.2.2009 to 1st applicant.
- Annexure A7(b)**– True copy of the certificate issued during the Safety Week Competitions dated 24.3.2011 to 1st applicant.
- Annexure A7(c)**– True copy of the certificate issued during the Safety Week Competitions dated 20.3.2012 to 1st applicant.
- Annexure A7(d)**– True copy of the certificate issued during the Safety Week Competitions dated 26.3.2013 to 1st applicant.
- Annexure A8** – True copy of the commendation certificate dated 25.2.2015 issued to 1st respondent.
- Annexure A9** – True copy of the National Apprenticeship certificate issued to the 2nd applicant.
- Annexure A10** – True copy of the certificate of merit dated 31.3.2012 issued to the 2nd applicant.
- Annexure A11** – True copy of the notification issued by the 3rd respondent dated 29.9.2014.

Annexure A12 – True copy of the communication dated 23.1.2015 issued by 3rd respondent.

Annexure A13 – True copy of the Railway Board order dated 19.6.2009 along with the advance correction slip No. 209.

Annexure A14 – True copy of relevant page of IREM para 189.

Annexure A15 – True copy of the select list dated 23.1.2015 issued by the 3rd respondent.

RESPONDENTS' ANNEXURES

Annexure R1 – True copy of P.B. Circular No. 14/2014 dt. 14.2.14 issued by Chief Personnel Officer/Madras along with Railway Board letter dt. 6.2.14.

Annexure R2 – True copy of corrigendum dated 10.10.14.

Annexure R3 – True copy of Railway Board letter dated 5.5.15.

Annexure R4 – True copy of letter No. J/P 677/XII/IDT/Peon/Vol.4 dated 8.12.2016.

Annexure R6(a)– True copy of the certificate of awards issued to the 6th respondent by the Railway authorities.

Annexure R6(b)– True copy of the PB circular No. 14/2014 dated 14.12.2014 of the Chief Personnel Officer, Southern Railway, Chennai and the Railway Board's letter No. RBE No. 17/2014 dated 6.2.2014.

Annexure R6(c)– True copy of the corrigendum No. J/P 531/XII/Vol.12 dated 10.10.2014.

Annexure R6(d)– True copy of the letter No. E9NG)I-2011/PM-1/26 dated 5.5.2015.

Annexure R6(e)– True copy of order J/P No. 677/XII/IDT/Peon Vol. 4 dated 5.12.2016 of the 3rd respondent.

Annexure R6(f)– True copy of order J/P No. 677/XII/IDT/Peon Vol. 3 (Pilot) dated 17/23.11.2016 of the 3rd respondent.