

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00778/2017

Tuesday, this the 9th day of April, 2019

CORAM:

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

1. Sujith Kumar K.S.,
Aged 34 years, S/o. Sasidharan N.V.,
Pointsman I, Irumpanam,
Trivandrum Division, Southern Railway,
Residing at Kalarickal House, Changampuzha Nagar, Unichira.
2. Siby K.M.,
Aged 26 years, S/o. Madhuraiveeran,
Pointsman I, Irumpanam,
Trivandrum Division, Southern Railway,
Residing at Railway Quarters No. 11-H, Irumpanam.
3. Mousmi S. Krishnan,
Aged 37 years, W/o. T.K. Vinod,
Gate Keeper, Varkala Railway Station,
Trivandrum Division, Southern Railway,
Residing at Ambadi, Near ITI,
Chandanathop P.O., Kollam.
4. V. Sreeja Kumari,
Aged 33 years, W/o. Anil Kumar,
Gate Keeper, Sasthamkotta Railway Station,
Trivandrum Division, Southern Railway,
Residing at M.S. Nivas, Koickal Bhagom,
Peruvelikkara, Kollam.
5. K.D. Indhu,
Aged 37 years, W/o. Baby P.L.,
Pointsman, Kilimanoor Railway Station,
Trivandrum Division, Southern Railway,
Residing at Panikulam (H), Puliyanam P.O,
Angamaly.
6. Shobhana N.B.,
Aged 39 years, W/o. N. Babudheran Pillai,
Gate Keeper, Mayyanad Railway Station,
Trivandrum Division, Southern Railway,
Residing at Gayana Bhavan,
Meenambalam, Puthenkulam P.O.

7. Reshmi M. Nair,
Aged 33 years, W/o. Biju M. Nair,
Pointsman, Kottayam Railway Station,
Trivandrum Division, Southern Railway,
Residing at Chithra House, Kudameloor P.O.,
Kottayam.
8. Anslin P.A.,
Aged 36 years, W/o. Joseph George,
Pointsman, Irinjalakuda Railway Station,
Trivandrum Division, Southern Railway,
Residing at Kattan House, Mothirakkanny P.O.,
Thrissur.
9. Vijeesh Kumar V.,
Aged 29 years, S/o. Vijayakumar,
Pointsman, Irumbanam Railway Station,
Trivandrum Division, Southern Railway,
Residing at Vijesh Bhavan, Karikayam P.O.,
Chittar, Pathanamthitta District.
10. Sathy N.K.,
Aged 38 years, D/o. Kochumon N.S.,
Gate Keeper, Pudukkad Railway Station,
Trivandrum Division, Southern Railway,
Residing at Naduvil House, P.O. Chittusseri,
Trichur.
11. N.K. Sajitha,
Aged 37 years, D/o. N.K. Kunjappan,
Gate Keeper, Mararikulam Railway Station,
Trivandrum Division, Southern Railway,
Residing at Marathara House, Arattuvazhi,
Njarakkal P.O., Ernakulam.
12. V.K. Sunitha,
Aged 42 years, D/o. V.V. Krishnankutty,
Gate Keeper, Irinjalakuda Railway Station,
Trivandrum Division, Southern Railway,
Residing at Thoroppady House, Meloor P.O.,
Chalakkudi.
13. Viji C.,
Aged 32 years, D/o. Chellappan,
Gate Keeper/KPY, Trivandrum Division,
Southern Railway,
Residing at Valuthunbil House,
Valiyapadam, Vilanthara P.O.,
Kollam Distirct.

14. Molly E.R.,
Aged 41 years, D/o. Salim V.R.,
Pointsman/VARD, Trivandrum Division,
Southern Railway,
Residing at Vellamvelithara, T.V. Puram,
Vaikom, Kottayam.
15. Deepakumari R.,
Aged 38 years, W/o. Sethunath P.M.,
Pointsman/CNGR, Trivandrum Division,
Southern Railway,
Residing at Elanthoor Veedu, Panayamcherry, Anchal P.O.
16. Sindhu R.,
Aged 43 years, W/o. Udayakumar K.,
Gate Keeper/KYJ, Trivandrum Division,
Southern Railway,
Residing at Railway Quarters No. 25-A, Kayamkulam.
17. Ajitharani A.,
Aged 39 years, D/o. Asokan,
Gate Keeper/VAK,
Trivandrum Division, Southern Railway,
Residing at Rani Nivas, Prakkulam P.O.,
Kollam.
18. Radhika S.,
Aged 34 years, D/o. Ramachandran Pillai,
Gate Keeper/VAK,
Trivandrum Division, Southern Railway,
Residing at Gopa Nivas, Madhuraka Nagar, 52,
Uliyakovil, Kollam.
19. V.R. Sandhya,
Aged 39 years, D/o. Late V.A. Rajendran,
Gate Keeper, Kumbalam Railway Station,
Trivandrum Division, Southern Railway,
Residing at Puthenpurackal House, Kumbalam P.O.
Ernakulam.
20. Jisha R.,
Aged 40 years, W/o. Balu,
Gate Keeper, Mararikulam,
Trivandrum Division, Southern Railway,
Residing at Vadakkeveli, Kalavur P.O.,
Alappuzha.
21. Umadevi K.R.,
Aged 34 years, W/o. Vinodkumar V.,
Gate Keeper, Mararikulam,
Trivandrum Division, Southern Railway,

Residing at Thekkekchira, S.N. Puram P.O.,
Cherthala.

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Applicants

(By Advocate : M/s. Varkey & Martin)

V e r s u s

1. Union of India represented by
General Manager, Southern Railway,
Chennai - 3.
2. Additional Divisional Railway Manger,
Southern Railway, Trivandrum - 695 014.
3. Senior Divisional Personnel Officer,
Southern Railway, Trivandrum - 695 014.
4. Saritha V. Nair,
Aged 34 years, W/o. Hari S.,
Sweeper Cum Porter, Thuravoor,
Cherthala Railway Station,
Residing at Malikayil,
Kayippuram, Muhamma P.O.,
Alappuzha - 688 525.
5. Rethi Devi S.S.,
Aged 38 years, W/o. Sreekumar,
Traffic Porter, SMR Office,
Thiruvananthapuram,
Residing at Nandanam, Irumpil
Neyyattinkara P.O., Pin - 695 121.

(R4 & R5 impleaded vide order dated 24.02.2017 in MA 1025/17)

6. Sarath C.S.,
Aged 33 years, S/o. Christudas T.,
Traffic Porter-KCVL, KCVL Station,
Southern Railway,
Residing at Sarath Bhavan, Mullankallu,
Arayanadu P.O. Thiruvananthapuram - 695 542.
7. Arun A.S.,
Aged 32 years, S/o. S. Surendran Nair,
Traffic Porter-T1/TVC,
Residing at Souparnika, Karingal Kandla P.O.,
Thiruvananthapuram - 695 512.
8. Aswathy R.,
Aged 32 years, D/o. Shajimon,
S.C.P., S.M.R Office/Kollam, Southern Railway,
Residing at Kutteelazhikathu Thekkathil,

Muthuvilakkadu West P.O. Sasthamkottah,
Kollam.

9. V.S. Sreeja,
Aged 39 years, D/o. K. Sasidharan Nair,
Traffic Porter/TVC,
Residing at Sreesailam, Panode
Arasuparambu, Nedumangad P.O.,
Thiruvananthapuram - 695 541.
10. Deepthy V.S.,
Aged 39 years, D/o. Sasidharan Nair .K
SCP/TP/NEM,
Residing at Nellivilakath V.S. Bhavan
Kollakonam, Payyattuvila P.O., Pin - 695 501.
11. Binu Kumar M.S.,
Aged 43 years, S/o. V. Manoharan Pillai. C
Traffic Porter-T1/O/TVC,
Residing at 41/121, Rohini Padnav Lane
Manacadu P.O., Thiruvananthapuram - 695 009.
12. Rajeev B.E.,
Aged 29 years, S/o. Baburajan B.,
Traffic Porter - TVC, SMR Office/TVC,
Residing at Abhayam, Malayam P.O.,
Thiruvananthapuram - 695 571.
13. Manju R.,
Aged 38 years, D/o. R. Sunil Kumar,
SCP/Murukkumpuzha,
Residing at Kalabham, Perumkoor
Konchira P.O., Vembayam,
Thiruvananthapuram - 695 615.
14. Dhanya P.K.,
Aged 33 years, D/o. Krishnankutty Nair,
Traffic Porter - Thiruvalla / Railway Station,
Residing at Pazhankalayil
Permbaikad P.O., Kottayam.
15. Abhilash R.,
Aged 35 years, S/o. A.K.Remanan,
SCP/TI/O/QLN,
Residing at Karthikalayam, Arinallur P.O.,
Kollam - 690 538.
16. Rajesh Kumar K.,
Aged 32 years, S/o. C. Krishnan Kutty Nair,
SCP/Murukkumpuazha SS office,
Southern Railway, Panayamuttom P.O.,

Thiruvananthapuram - 695 561.

17. Sumesh S.,
Aged 32 years, S/o. J. Soman
SCP/SMR/O/TVC,
Residing at Sivasakthi Bhavan,
Ayanathukonam Punalal P.O., Pin - 695 575.
18. Rethesh N.R.,
Aged 36 years, S/o. N.P. Ramanan,
SCP/ALLP, TI/Office,
Residing at Nivarthil, Thirunellur P.O.,
Cherthala, Alappuzha.
19. Jayesh C.C.,
Aged 35 years, S/o. T.Chandran,
SCP/TI/O/ALLP (under control of Traffic Inspector),
Residing at Chandra Bhavanam, Beach Ward,
Alappuzha.
20. Rajesh R.,
Aged 37 years, S/o. Rajan V.,
Traffic Porter, SS/O/Harippad,
Residing at Edayilaveettil Thekkathil
Kanatharkunnam, Kairali P.O., Kollam.
21. Varun G. Nair,
Aged 33 years, S/o. N. Gopinathan Nair,
Traffic Porter-Kochuveli Railway Station,
Residing at Madhu Bhavan
Kusavakal Mukkole P.O., Thiruvananthapuram - 695 043.
22. Jayesh P.V.,
Aged 36 years, S/o. Venugopala Pnicker,
SCP/TI/O/ALLP, (under control of Traffic Inspector),
Southern Railway, Alappuzha,
Residing at Poklassery Modom, Kanichukulangara P.O.,
Cherthala.

(R6 to R22 impleaded vide order dated
31.10.2017 in MA 1065/17)

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Respondents

**[By Advocates - Mrs. Girija K. Gopal (R1-R3)
Mrs. Shameena Salahudheen (R4-11, 13, 14, 16, 18-22)
Mr. T.C. Govindaswamy (R12 & 15)]**

This application having been heard on 2.4.2019, the Tribunal on
09.04.2019 delivered the following:

ORDER

Hon'ble Mr. Ashish Kalia, Judicial Member –

Applicants are presently working as Pointsman/Gatekeepers in level 2 of Pay Matrix (PB-1 Rs.5200-20200 + GP -1900) in the operating department of Trivandrum Division of Southern Railway. They are aggrieved by the denial of opportunity for appearing in the selection-examination for promotion as Ticket Examiner in Level 3 of pay matrix (PB-1) Rs. 5,200-20,200/- + GP Rs. 2000/- against the 33 1/3% departmental promotion quota whereas lower categories of staff in Level 1 of Pay Matrix (P.B.1 Rs.5,200-20,200/- + GP Rs. 1,800/-) belonging to the operating and commercial department are given such opportunity. The applicants state that the level-1 staff will supersede level-2 staff (applicants) and enter level-3 if the proposed selection is held as per the impugned notification.

2. The applicants were appointed as Sweeper-cum-Porter in pay band Rs. 5,200-20,200/- + GP Rs. 1,800/- (now level-1). They did not get any chance to appear for the selection to the post of Ticket Collector, Commercial Clerks, Ticket Examiner etc. in level-3. While so the notification proposing to conduct a selection for promotion of Group D Staff of Operating and Commercial Department to Group 'C' against 33 1/3% departmental promotion quota in the category of Ticket Examiner in level-3 was published by Annexure A2. The eligibility to apply for the selection was confined to staff at level-1 who are otherwise qualified. However, the supervisory officials of the applicants were directed not to forward applications and hence their applications in response to Annexure A2 Notification were not entertained by the Station Master concerned. Applicants represented against the same but respondents have not

considered the same. The applicants understand that written examination will be conducted within a short notice. Hence they have come before this Tribunal to claim reliefs as under:

- “a) Call for the records leading to the issue of Annexure A2 and quash the same to the extant it denies consideration to the applicants for the reason that they were in Level 2 pay matrix.
- b) Declare that the applicants are eligible to be considered for selection to the Post of Ticket Examiner for which the selection process was initiated by Annexure A2 and direct the respondents accordingly.
- c) Grant such other relief, which this Tribunal may deem fit and proper in the circumstances of the case”.

3. Respondents resisted the O.A. contending that the eligibility for applying as per Annexure A2 Notification is Group D employees of Operating & Commercial Departments for whom no other regular avenue of promotion exists. As per paragraph 127 of Indian Railway Establishment Manual (IREM) [Annexure R1] the posts of Ticket Collectors in the pay scale of Rs.3,050-4,590/- are to be filled by (i) 50% by direct recruitment through Railway Recruitment Board (ii) 33 1/3% by promotion by a process of selection from eligible Group D categories of staff as specified by the Zonal Railways as per procedure prescribed in para 189 and (iii) 16 2/3% by promotion entirely on merit of Matriculate Group D employees from eligible categories, as specified by the Zonal Railways for (ii) above, with a minimum of 2 years regular service in the concerned seniority unit on the basis of a competitive examination consisting of written Test and Record of Service of 85 and 15 marks respectively.

4. As per para 189 of IREM, promotion to higher grades in Group C through 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 for Railway servants in Group D categories for whom no regular avenue of promotion exists. The note to paragraph 189 stipulates that employees in lower Group-C scale of Rs. 825-1200 (RPS)/2750-4400(RSRP) and Rs. 950-1400 (RPS) 3050-4590 (RSRP) for whom no regular avenue of promotions exists will also be eligible to appear in the selection held for promotion of Group-D employees to Group-C against the prescribed quota. The applicants were appointed as Sweeper-cum-Porter and during the year 2013-2014 they have already been promoted as Pointsman-A/Gatekeeper in the pay scale of Rs. 5,200-20,200/- + GP Rs. 1,900/-. Further the applicants have chances for promotion as Shunting Master Grade-II (GP Rs. 2,800/-) in 100% promotional quota and further as Shunting Master Grade-I (GP Rs. 4,200/-) which is also in 100% promotional quota. Thus, the applicants who have other avenues of promotion in the normal channel are not eligible for the benefit of even note to paragraph 189 of IREM. Although due to abolition of Group D categories and upgradation of such categories to Group C, the Railway Board has clarified that those erstwhile Group D categories in GP Rs. 1800 who has been upgraded as Group C will continue to be eligible for Group C; but applicants are not eligible from that count also because they are persons already promoted to Group C in the normal channel and are not holding posts upgraded as Group C on abolition of erstwhile Group D. Respondents pray for rejecting the O.A.

5. On 14.11.2017 this matter was heard along with OA No. 180/704/2017 and on 12.12.2017 this Tribunal dismissed the Original Applications. Aggrieved the applicants filed OP (CAT) No. 357 of 2017 before the Hon'ble High Court of Kerala, wherein the Hon'ble High Court after hearing the matter disposed of the OP on 3.12.2018. The relevant portion of the judgment is extracted below:

“3.A careful scanning of Ext. P4 order passed by the Tribunal which is a common order in OA Nos. 704 of 2017 and 778 of 2017 would thus make it clear that there is absolute absence of any consideration of the contentions raised by the petitioners in OA No. 778 of 2017 on merits. In such circumstances, we are of the view that since this court is not supposed to act as the court of first instance and it is only proper to remit the matter to the Tribunal for proper consideration of the rival contentions on merits and to pass appropriate orders in OA No. 778 of 2017.

4.

5.Since the fate of the petitioners was made subject to the outcome of the Original Petitions as per the said order dated 4.1.2018 it is proper and just to make it clear that the entitlement of the petitioners herein to respond to Annexure A2 notification in Ext. P1 and the impact of their actual participation would be subject to the outcome of the decision, now to be taken in the Original Application. Since this Original Application is of the year 2017 it is only befitting for the Tribunal to pass appropriate orders on such reconsideration as expeditiously as possible. It is also made clear this order is confined to OA No. 778 of 2017.”

6. The basic contentions raised by the applicants in the present OA is whether allowing staff in level-1 to appear for selection for promotion to the level-3 (Ticket Examiner etc.) posts and denying the same to applicants at level-2 (Pointsman/Gate Keeper) would be unjust and improper or not; whether Annexure A-2 notification is at error especially when after implementation of the VIth CPC there is no Group-D category in Railways; and that after getting promotion from level-1 to level-2 and becoming senior the applicants are better placed than the level-1 employees.

7. Heard Mr. Martin G. Thottan, learned counsel appearing for the applicants, Mrs. Girija K. Gopal, learned counsel appearing for respondents

Nos. 1-3, Mrs. Shameena Salahudheen, learned counsel appearing for respondents Nos. 4-11, 13, 14, 16, 18-22 and Mr. T.C. Govindaswamy, learned counsel appearing for respondents Nos. 12 and 15. The matter was hotly contested by the parties and we have perused the facts, circumstances, records and legal position of the matter.

8. Before going into the controversy we may see the rule position of the subject matter. Rule 127 of IREM, Volume-I reads as under:

“(i) Ticket Collectors

127. (1) The posts in the category of Ticket Collectors in the pay scale Rs. 3050-4590 will be filled as under

- (i) 50% by direct recruitment through Railway Recruitment Board;
- (ii) 33-1/3% by promotion by a process of selection from eligible Group 'D' categories of staff as specified by the Zonal Railways as per procedure prescribed in para 189; and
- (iii) 16-2/3% by promotion entirely on merit of Matriculate Group 'D' employees from eligible categories, as specified by the Zonal Railways for (ii) above, with a minimum of 2 years regular service in the concerned seniority unit on the basis of a competitive examination consisting of Written Test and Record of Service of 85 and 15 marks respectively.

(Authority : Ministry of Railway's letter No. E(NG)I-2003/CFP/2 dated 22.9.2003] ”

Rule 189 of IREM, Volume-I reads as under:

“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. Written test should consist of one paper of 3 hours duration divided into two parts - Part 'A' to test the working knowledge of the Railway servant of the English language and Part 'B' his general standard of intelligence and proficiency through questions in Arithmetic, General Knowledge mainly pertaining to Railway matters and matters immediately pertaining to the work he has been acquainted with during his Railway service. In drawing up the questions it must be ensured that they are not set as such a standard as to make it impracticable for a Group 'D' railway servant of average intelligence and normal standards of efficiency to qualify in the test.

(2) Assessment under the heading Record of Service will be based on entries in the Service Book/personal file regarding academic/ technical qualifications, awards/ punishments, etc.

(3) Selections should not be restricted to three times the number of posts to be filled but kept open to all eligible candidates who would like to be considered for such selections.

(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.

(ii) Group 'D' railway servants to be eligible for promotion to Group 'C' posts should have put in a minimum 3 years of continuous service. This does not apply to Scheduled Castes and Scheduled Tribes candidates.

(iii) For promotions to Group 'C' posts in the Ministerial cadre, Group 'D' staff will be required to possess a typing speed of 30 w.p.m. in English or 25 w.p.m. in Hindi. Promotions may, however, be allowed on provisional basis and the concerned staff given two year's time from the date of promotion, to qualify the prescribed typewriting test; and if they fail to qualify the typewriting test within the said period, they will be liable to be reverted.

(iv) Training:

(a) The standard of training imparted to the Group 'D' railway servants selected for Group 'C' posts should be the same as for direct recruits for the same Group 'C' categories and in the case of failures in the first attempt such employees may be given second - chance to qualify.

(b) Group 'D' railway servants when promoted to Group 'C' posts in the Accounts Deptt. shall go through the same training and test and shall be subject to the same conditions of service as are in force for the new recruits. During the period of their training they would get as stipend the pay that they would have normally drawn on promotion to Group 'C'. All allowances like Dearness, Compensatory and House Rent Allowances will be allowed to them at the scales applicable, had the stipend been treated as pay.

Note: Employees in lower Group 'C' scale of Rs. 825-1200(RPS)/ 2750-4400 (RSRP) and Rs. 950-1400(RPS)/ 3050-4590 (RSRP) for whom no regular avenue of promotion exists will also be eligible to appear in the selection held for promotion of Group 'D' employees to Group 'C' against the prescribed quota.

Authority : Railway Board's letter No.E(NG)I/2003/CFP/2 dated 22.09.2003)"

9. From a bare reading of these rules, the position emerges that 33 1/3% quota is fixed for promotion by process of selection from eligible Group-D (referred to as erstwhile Group-D after VIth CPC w.e.f. 1.1.2006) by zonal railway subject to paragraph 189 of IREM, Volume-I for whom no regular avenue of promotion exists in 33 1/3% of the posts in the lowest grade of Ticket collectors/Examiner, etc. Obviously the post in question of Ticket Collectors/Examiner falls under 33 1/3% quota only and the other two sub clause are not relevant in the present context. Therefore, a plain reading of Rule 127(1) sub clause (ii) shows that Group-D categories alone are eligible for the promotional post of Ticket Collector/Examiner. If we apply this clause alone the applicants and the party respondents are not eligible for the said post because of the condition mentioned in paragraph 189 that Group-D to whom there is no promotional avenues are alone eligible. But the fact remains that applicants who are now working as Gatekeeper and Pointsman earlier were Group-D employees and they have recently been promoted to the said post which is level-II after VIth CPC. Thus, Group-D post has promotional avenues.

10. The rule position is crystal clear that both the categories who were erstwhile Group-D now level-I are having promotional avenue to level-II. However, the fact remains that since sufficient number of persons are not available, under condition 127 (1)(ii) the respondent Railways have enlarged the scope of selection by saying in Annexure A2 dated 22.8.2017 that

employees will be eligible for promotion against 33 1/3% quota on completion of two years continuous service in the relevant grade after successful completion of probation period – employees of the operating and commercial departments of Trivandrum division (open line only) in level-1 of pay matrix (pay band Rs. 5,200-20,200/- + Grade Pay of Rs. 1800) (substantive) having lien in Trivandrum Division are also eligible. The respondents have omitted the class those who are having avenue of promotion. So this clause of Rule 189 becomes redundant by act and omission of Railways which gave the cause of action to level-II employees who were also erstwhile group-D employee before promotion to level-II in pay scale of Rs. 5,200-20,200/- with Grade Pay of Rs. 1,900/-.

11. Applicants are also claiming the eligibility to the said post by saying now that there is no Group-D post available after VIth CPC. All are Group-C employee in Grade Pays of Rs. 1800/- and Rs. 1900/-. In support of their case they cited the judgment of Hon'ble High Court of Kerala in ***Kamala Devi v. Kerala State Financial Enterprises Ltd.*** - 2002 (1) KLT 157. The applicants form one group and there would be discrimination in terms of Articles 14 and 16 of the Constitution of India if they are not allowed to take part in the examination for promotion to the post of Ticket Examiner.

12. The learned counsel for the respondents have cited the judgment of the apex court in ***Nirmal Chandra Bhattacharjee & Ors. v. Union of India & Ors.*** - 1991 KHC 1083 and submitted that as per Rule 127 Group-D employees with Grade Pay of Rs. 1800/- alone are eligible for the 33 1/3% quota. The applicants have already availed a promotion whereas some of the party respondents have

forgiven the promotion in order to get level-II post. They have also attacked the case of the applicants that they have now different channels of promotions such as Shunting Master Grade-II (Grade Pay of Rs. 2,800/-) which is 100% promotional quota and further as Shunting Master Grade-I with Grade Pay of Rs. 4,200/- which is also 100% promotional quota.

13. Mr. T.C. Govindaswamy emphasized RBE No. 2/2013, dated 3.1.2014 (Annexure R3) and submitted that the erstwhile Group-D in Grade Pay of Rs. 1,800/- since has been upgraded as Group-C will continue to be eligible for selection to Group-C post under 33 1/3% quota as per the AVC already provided, if they possess the prescribed educational qualification and residency period etc.

14. In the rejoinder filed by the applicant we have discovered that notifications were issued by the respondents in Firozpur Division of Northern Railway against 33 1/3%, Jodhpur Division and Adra Division who have allowed Grade Pay of Rs. 1,900/- level-2 including Pointsman, permitting them to appear in the exam for the post of Ticket Examiner (Annexure A6).

15. In view of the above, we are of the opinion that the applicants as well as the party respondents both are eligible to appear in the examination for selection to the post of Ticket Examiner/Collector subject to written test conducted for the same. The conduct of the respondents by declaring one category of erstwhile Group-D post which is also having promotional avenues to level-I and level-II as eligible for selection to the post of Ticket Examiner is discriminatory vis-a-vis the level-II category employee.

16. The present OA is having merits on its side. Resultantly the OA is allowed by the Tribunal with direction to the respondents to consider the applicants who are in level-II post with GP of Rs. 1,900/- along with those erstwhile Group-D employees of level-I in GP of Rs. 1,800/- for the post of Ticket Examiner. This exercise shall be completed by the respondents within sixty days from the date of receipt of a copy of this order. The parties shall bear their costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

“SA”

Original Application No. 180/00778/2017**APPLICANTS' ANNEXURES**

Annexure A-1 - True copy of the office order No. T.No.23/2017/Tfc. Gr. D dated 21.04.2017 issued by the third respondent.

Annexure A-2 - True copy of the Letter No. V/P 531/III/TE/Vol.XII dated 22.08.2017 issued by the 3rd respondent.

Annexure A-3 - True copy of the notification No. V/P.608/I/JE/ P.way/LDCE/Vol.I dated 05.07.2017 issued on behalf of the respondent No. 3.

Annexure A-4 - True copy of the Railway Board order bearing No. 2013/TT-1/7/6/1 dated 21.01.2013.

Annexure A-5 - True copy of the OM No. AB-14017/612009-Estt(RR) issued by the DoPT dated 30.04.2010.

Annexure A-6 - True copy of the notification bearing No. SER/P- ADA/EC/TE/16.67% Tesel/DPO/18 dated 8.5.2018 issued by the South Eastern Railway, Adra Division.

Annexure A-7 - True copy of the notification bearing No. M/P608/I/Goods/GD/LDCE/Vol.IV dated 16.4.2018 issued by the Madras Division of Southern Railway.

Annexure A-8 - True extract copy of the notification bearing No. M/P 608/I/Optg./SM/15%LDCE/Vol.III dated 17.11.2017 issued by the Madras Division of Southern Railway.

Annexure A-9 - True extract copy of the notification bearing No. SA/P.608/II/SMs/15% LDCE dated 11.12.2017 issued by the Salem Division of Southern Railway.

Annexure A-10 - True copy of the notification bearing No. V/P.608/II/ASMs/LDCE/15% dated 14.12.2017 issued on behalf of the Trivandrum Division of Southern Railway.

Annexure A-11 - True copy of the letter dated 31.12.2018 issued by the 3rd respondent under the Right to Information Act.

RESPONDENTS' ANNEXURES

Annexure R-1 - True extract of para 127 of IREM-I.

Annexure R-2 - True extract of para 189 of IREM-I.

Annexure R-3 - True copy of Railway Board's letter No. E(NG)I-2010/PM1/22 dated 03.01.2014.

Annexure R-4 - True copy of letter No. E.839/2/1/Comml/AVC dated 27.9.2018.

Annexure R12(a) - True copy of Railway Board order bearing RBE No. 17/2014 dated 6.2.2014.

Annexure R12(b) - True copy of Railway Board order bearing RBE No. 43/2015 dated 5.5.2015.

Annexure R12(c) - True copy of seniority list published by the 3rd respondent Divisional Personnel Officer/southern Railway/Trivandrum Division under No. V/P.612/I/TFC Gr. D/Vol.III dated 31.3.2015.

Annexure MA1 - True copy of judgment dated 03 December 2018 in OA(CAT) No. 357/2017 rendered by the Hon'ble High Court of Kerala, Ernakulam.

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