

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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|------------------------------------------|--------------------------------------------|
| Date of Reserving Judgment<br>07.02.2017 | Date of pronouncing Judgment<br>27.02.2017 |
|------------------------------------------|--------------------------------------------|

CORAM

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN  
and  
THE HONOURABLE MR. JUSTICE V. PARTHIBAN

Writ Petition Nos.4425 to 4427 of 2012  
and  
M.P.Nos.1 to 1 of 2012 (3 Nos.)

W.P.No.4425 of 2012

1 SENIOR DIVISIONAL PERSONNEL OFFICER  
DIVISIONAL OFFICE, SOUTHERN RAILWAY,  
PERSONNEL BRANCH, TIRUCHIRAPALLI.  
2 DIVISIONAL PERSONNEL OFFICER  
DIVISIONAL OFFICE, SOUTHERN RAILWAY,  
PERSONNEL BRANCH, TIRUCHIRAPALLI.  
REPRESENTING THE UNION OF INDIA PETITIONERS

Vs

1 G.VIJAYARAGHAVALU  
2 THE CENTRAL ADMINISTRATIVE TRIBUNAL  
REP. BY ITS REGISTRAR  
MADRAS BENCH, CHENNAI-104.  
3 R.SELVARAJ  
4 D.SRINIVASAN  
5 M.MARKANDAN  
6 A.ARUMUGHAM  
7 J.MUTHAIYA  
8 R.GANESAN  
9 R.AYYADURAI  
10 T.PANDURANGA

RESPONDENTS

(Respondents 3 to 10 are given up,  
since no relief sought against them)

Writ Petition No.4425 of 2012 has been filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records relating to the order dated 31.05.2011 made in O.A.No.1186 of 2009 on the file of the Central Administrative Tribunal, Madras Bench, the 2<sup>nd</sup> respondent herein and quash the same as illegal.

W.P.No.4426 of 2012

- 1 SENIOR DIVISIONAL PERSONNEL OFFICER, DIVISIONAL OFFICE,  
SOUTHERN RAILWAY, PERSONNEL BRANCH TIRUCHIRAPALLI.
- 2 DIVISIONAL PERSONNEL OFFICER, DIVISIONAL OFFICE,  
SOUTHERN RAILWAY, PERSONNEL BRANCH, TIRUCHIRAPALLI.  
REPRESENTING UNION OF INDIA PETITIONERS

Vs

- 1 T.M.AROCKIYARAJ
- 2 THE CENTRAL ADMINISTRATIVE TRIBUNAL  
REP. BY ITS REGISTRAR  
MADRAS BENCH, CHENNAI-104.
- 3 A.ARUMUGHAM
- 4 R.AYYADURAI
- 5 T.PANDURANGAN RESPONDENTS

(Respondents 3 to 5 are given up, since  
no relief sought against them)

Writ Petition No.4426 of 2012 has been filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records relating to the order dated 31.05.2011 passed in O.A.No.1187 of 2009 on the file of the Central Administrative Tribunal, Madras Bench and quash the same as illegal.

W.P.No.4427 of 2012

- 1 SENIOR DIVISIONAL PERSONNEL OFFICER  
SOUTHERN RAILWAY, TIRUCHIRAPALLI.

2 DIVISIONAL PERSONNEL OFFICER  
SOUTHERN RAILWAY, TIRUCHIRAPALLI.  
REPRESENTING UNION OF INDIA

PETITIONERS

Vs

1 K.RAMACHANDRAN

2 THE CENTRAL ADMINISTRATIVE TRIBUNAL  
REP. BY ITS REGISTRAR,  
MADRAS BENCH, CHENNAI-104.

3 M.MARKANDAN

4 A.ARUMUGHAM

5 J.MUTHAIYA

6 R.GANESAN

7 R.AYYADURAI

8 S.K.KRISHNAMOORTHY

9 D.SRINIVASAN

10 M.DURAI

11 R.SELVARAJ

12 S.SOUNDARARAJAN

13 T.PANDURANGAN

RESPONDENTS

(Respondents 3 to 13 are given up,  
since no relief sought against them)

Writ Petition No.4427 of 2012 has been filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari Calling for the records relating to the order dated 31.05.2011 passed in O.A.No.1185 of 2009 on the file of the Central Administrative Tribunal, Madras Bench, and quash the same as illegal.

For Petitioners in all W.Ps. : Mr.M.Vellaisamy

For Respondent-1 in all W.Ps.: M/s.Y.Kavitha  
for  
M/s.PVS Giridhar&Sai Asso.

## COMMON ORDER

(Order of the Court was delivered by V.PARTHIBAN, J.)

All the three petitions arise under the common order passed by the Central Administrative Tribunal, Madras Bench in O.A.Nos.1185 to 1187 of 2009 dated 31.05.2011 allowing the Applications filed by the employees.

2. For the sake of clarity, the parties are described as applicant and respondents, as arrayed before the Tribunal.

3. The applicants have approached the Tribunal seeking the following reliefs:-

- " (i) To call for the records and to set aside the (I) Order No.T/P 535/I/EA/SEQ & DRQ/Vol.III, dated 16.07.2009, passed by the Second Respondent, (II) Order No. T/P 535/I/EA/SEQ/DRQ/Vol.II, dated 03.12.2008, passed by the Second Respondent, (III) Order No. T/P 535/I/EA/SEQ & DRQ/Vol.II, dated 21.07.2008, passed by the Second Respondent, (IV) Order No. T/P 535/I/EA/SEQ & DRQ/Vol.II, dated 25.06.2008, passed by the Second Respondent and quash the same;
- (ii) To direct the Respondents to appoint the applicants to the post of Artisan Grade III w.e.f. 25.10.2002, with all other consequential benefits, including arrears of pay and allowances in the said post;
- (iii) To award costs."

4. The main grievance of the applicants was that they were not appointed to the post of Artisan Grade-III with effect from 25.10.2002 by considering them as outstanding, in terms of the provisions of the Indian Railway Establishment Manual and on par with the appointment of similarly placed persons viz., one Sri.Selvaraj and another. According to the applicants, they have secured more than 80% in the selection for appointment to Artisan Grade-III, which has been re-designated as Technician Grade-III in the scale of pay of Rs.3050 - 4590 under 25% Serving Employees Quota (SEQ). Persons, who secured more than 80% in their selection must rank superior to all others for appointment, regardless of their seniority in the feeder cadre. However, while considering other similarly placed employees, their names were left out for the reasons unknown to them.

5. It appears that there are several litigations on the subject selection, where each party has been aggrieved by one direction or other issued by the Tribunal in different Original Applications. However, it appears that finally the learned Tribunal by its order dated 29.08.2003 in O.A.No.1144 of 2002

(filed by Sri.R.Selvaraj) has held that the panel was prepared in violation of para-159 and para - 204.8 of the Indian Railways Establishment Manual and thus, the Original Application was allowed by setting aside the impugned orders therein. The said order came to be confirmed in other Original Application in O.A.No.883 of 2012 filed by one S.Soundararajan. On the basis of the direction issued in the Original Applications, the said R.Selvaraj and S.Soundararajan were promoted to the post of Skilled Artisans Grade-III. The appeals filed by the respondents herein on R.Selvaraj and S.Soundararajan were stated to be pending disposal of the Special Leave Petition before the Hon'ble Supreme Court, as the orders passed by the Tribunal in the afore stated Original Applications filed by R.Selvaraj and S.Soundararajan were confirmed by the Hon'ble High Court. The claim of the applicants in Original Applications was sought to be resisted by the respondents that the promotion of other two employees was made only subject to the outcome of the pending Special Leave Petition before the Hon'ble Supreme Court of India and no finality had been reached in the matter. Moreover, even otherwise, the present applicants were not entitled to the relief as they were not similarly placed like R.Selvaraj and S.Soundararajan. However, the learned Tribunal disbelieved the contention put forth by the respondents and allowed the Original Applications on the basis of its reasoning as found in paragraphs 17 and 18 of the impugned orders, which is extracted below:-

"17. The above order having been issued only in June 2009, the same would take only prospective effect. However, We are concerned with the vacancies that arose for the year 2000 as the trade test took place only in that year. As such, the above order may not be of that assistance. The rule/regulation that held the fort for the relevant year alone would hold good. From that point of view, it would be seen that the matter is the same as has been considered by this Bench in O.A.No.1144/2002 and thereafter, in O.A.No.883 of 2002 (which followed the other judgment in O.A.1144 of 2002) and held that there shall be merit based selection, including the provisions of Rule 204.8 of IREM. The two judgments attained finality and the applicants therein have been the beneficiaries. The applicants, who have secured more than 80% in the very same examination, cannot be discriminated. We adopt this for more than one reason. Consistency is one of them, for consistency in interpretation of law alone can lead to public confidence in our

judicial system vide Sub-Inspector Rooplal v. Lt. Governor, (2000) 1 SCC 644. The second aspect is that the decision indeed does not go against any provisions of the Railways, and it is the merit basis that had been held to be appropriate vide order dated 19.06.2009 referred to above. As such, the two orders could be stated to have confirmed the principle that in respect of selection of Technician Grade III, merit would count in respect of those, who have secured above 80%. This does not act in contravention of the above extracted order dated 19.06.2009 inasmuch as seniority is pushed to the back bench, when the marks secured is more than 80% and different modes of recruitment are available. The only difference between 204.8 of the IREM and the above order of 19.06.2009 is that whereas seniority shall guide the selection in respect of those, who have not secured 80% under the old practice, under the new order, it shall be thoroughly ignored.

18. In view of the above, the three OAs are allowed to the extent that cases of those, who have secured more than 80% in the relevant examination should en-mass be held superior to others, who have secured less than 80%, but above 60%."

6. The learned Tribunal finally declared that the applicants would be entitled to be considered for promotion to the higher posts based on their merit, without reference to seniority. The conclusion of the Tribunal was clearly on the basis of the undisputed fact that the applicants have secured more than 80% in the second selection and therefore, they should be held superior to others and regardless of the seniority, they ought to have been promoted ahead of others, who have secured less than 80%, but above 60%. In that view of the matter, the learned Tribunal allowed the Original Applications. As against the orders, the present Writ Petitions have been filed.

7. The learned counsel Sri.M.Vellaisamy, appearing for the petitioners herein, who are the respondents in the Original Applications, reinforced his submissions which were put forth before the Tribunal. However, he was unable to demonstrate as to how the case of the present employees, the applicants before the Tribunal, was different from the case of R.Selvaraj and S.Soundararajan. During the course of argument, it was also brought to our knowledge that the SLP.Nos.17372 and 17373 of

2009 pending before the Hon'ble Supreme Court of India had been dismissed by the Hon'ble Supreme Court, vide order dated 03.12.2012. Consequently, the above said Special Leave Petitions have only confirmed the order passed by the Tribunal in O.A.No.1144 of 2002 and O.A.No.883 of 2002 filed by R.Selvaraj and S.Soundararajan respectively. That being the case, in the absence of any distinguishing factors regarding the claim of the present applicants, as that of R.Selvaraj and S.Soundararajan, any contra view would be perse discriminatory and violative of Articles 14 and 16 of the Constitution of India. The learned counsel, Ms.Kavitha, appearing for the first respondents in the above Writ Petitions/applicants in the Original Applications would contend that the Tribunal has passed the order after consideration of all the issues and the same does not require interference of this Court.

8. We gave our anxious consideration to all the issues raised in the Writ Petition. Perused the pleadings and materials on record. We do not find any infirmity in the order passed by the learned Tribunal and the conclusion reached therein was well supported by the facts and also Rule position and from the materials, We are not able to see how the case of the present applicants / private respondents herein would be different in order to adopt a different approach to their claim. We do not see any scope for interference in the order passed by the Tribunal and therefore, all the Writ Petitions fail and stand dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-  
Asst.Registrar

/true copy/

Sub Asst. Registrar

mra  
To

The Registrar  
Central Administrative Tribunal,  
Madras Bench,  
Chennai - 600 104.

+3ccs to M/s.Giridhar,Advocate sr.12817 to 12819

Pre-delivery Common Order in  
Writ Petition Nos.4425 to 4427 of 2012

lrs(co)  
ss(8/3/2017)