

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 540 of 2009

Wednesday, this the 10th day of November, 2010

CORAM:

Hon'ble Mr. Justice K. Thankappan, Judicial Member
Hon'ble Ms. K. Noorjehan, Administrative Member

T.J. Lugeena, aged 41 years, W/o. Joseph Kennedy,
 Commercial Clerk, Southern Railway, Ernakulam Junction,
 Residing at : Thenamparambil Martin Puram,
 Ayani Road, Maradu, Ernakulam Dt. **Applicant**

(By Advocate – Mr. T.C. Govindaswamy)

V e r s u s

1. Union of India, represented by the General Manager,
 Southern Railway, Head Quarters Office, Park Town P.O., Chennai-3.
2. The Divisional Personnel Officer, Southern Railway,
 Trivandrum Division, Trivandrum-14.
3. U.K. Jayaprakash, Sr. Commercial Clerk, Southern
 Railway, Ernakulam Junction Railway Station, Ernakulam.
4. Godwin Freddy, Sr. Commercial Clerk, Southern
 Railway, Trichur Railway Station, Trichur.
5. C.D. Aneesh, Sr. Commercial Clerk, Southern Railway,
 Trichur Railway Station, Trichur. **Respondents**

(By Advocate – Mr. Thomas Mathew Nellimoottil)

This application having been heard on 10.11.2010, the Tribunal on the
 same day delivered the following:

O R D E R

By Hon'ble Mr. Justice K. Thankappan, Judicial Member -

Aggrieved by Annexure A-1 order of the Senior Divisional Personnel
 Officer, Trivandrum Division, the applicant filed this Original Application



with the following prayers:-

- “(i) Call for the records leading to the issue of Annexure A1 and quash the same;
- (ii) Declare that the applicant is entitled to be granted the benefit of first level financial up-gradation under the ACP Scheme in the pay band of Rs. 5200-20,200/- with a grade pay of Rs. 2800/- w.e.f. 03.01.2006;
- (iii) Direct the respondents to grant the applicant benefit of first level financial up-gradation in the pay band of Rs. 5200-20200/- in the grade pay of Rs. 2800/- w.e.f. 3.1.2006 and direct further to grant all consequential benefits arising there from;
- (iv) Declare that the applicant is entitled to be placed above the respondents 3, 4 and 5 in the seniority list of Commercial Clerks and direct further to grant the consequential benefits including the benefit of promotion on par with and in preference to the respondents 3 to 5 and direct further to grant all consequential benefits including pay and allowances arising there from;
- (v) Award costs of and incidental to this application.
- (vi) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.”

2. The facts of the case as revealed from the averments in the Original Application are that while the applicant was working as a Group-D employee at Madras Division, she had undergone a training for Commercial Clerk on out of turn basis. The applicant was so appointed as Commercial Clerk with effect from 03.01.1994 by Annexure A-2 order dated 18/20.08.08. Thereafter the applicant was sent for training which is required for a personnel to be appointed as Commercial Clerk as per the provisions of the Recruitment Rules. The applicant also joined as Commercial Clerk and thereafter the applicant filed a representation on 14.02.2009 claiming her first level ACP/MACP in the cadre of Commercial Clerk and the said representation has been considered by the respondents by



passing an order dated 30.06.2009. A copy of which is produced as Annexure A-1.

3. The Original Application has been admitted and notice has been ordered to the respondents. In pursuance to the notice ordered by this Tribunal, a reply statement has been filed on behalf of the respondents 1 & 2. The stand taken in the reply statement is that the applicant was appointed as a Group D employee in the Madras Division on 18.11.1987. In appreciation of her performance in sports, while she was continuing as Group-D employee she was granted promotion on out of turn basis in Group-C post. Further, it is stated that in order to motivate the employees of the Railways in the field of sports so that they may bring laurels to the Department, are granted promotion on out of turn basis. By that way the applicant was given the promotion in the Group-C namely the post of Commercial Clerk. As per the order dated 4.1.1994 the applicant was appointed as a Commercial Clerk on provisional basis subject to certain conditions. Hence, the appointment of the applicant is only a out of turn promotion and as the applicant has got a promotion she is not entitled for any ACP/MACP benefits before completing the required period of getting ACP/MACP. Further it is stated that an out of turn promotion is approved by the Railways as per their master circular on recruitment of sports persons under the sports quota issued by the Government of India, Ministry of Railways, Railway Board on 28.11.1990. A copy of the said master circular is also made available by the counsel appearing for the respondents for our perusal.

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4. We have heard the counsel appearing for the applicant Mr. T.C. Govindaswamy represented by Mr. Mohana Kumar and also Mr. Thomas Mathew Nellimoottil, learned counsel appearing for the respondents. The main grounds now urged by the counsel appearing for the applicant is that while the applicant was working as Group-D employee she was appointed as a Commercial Clerk as a direct recruit as per Annexure R-2 order and thereafter she had completed the training and she was confirmed in the post with effect from the date of her appointment as Commercial Clerk. If so, the appointment of the applicant should be considered as direct recruitment and not as a promotion, as now contended by the respondents in their reply statement. Further the counsel submits that the applicant was sent for training along with the other party respondents who were also appointed as Commercial Clerk on promotion. Accordingly, the contesting respondents were also promoted from the junior posts. Since the applicant has completed the training and her appointment was regularized with effect from the date of her appointment to the post of Commercial Clerk and not from the date of completion of the training. Hence, she should be considered as a direct recruit.

5. The next point the learned counsel for the applicant raised is that she want the revision of her seniority with that of the promotees to the post of Commercial Clerk along with them she had undergone the training. For this the applicant also relies on the reason that her appointment should be treated with effect from 3.1.1994 and not from the date of completion of the training.

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6. To the above arguments the counsel appearing for the respondents relying on the reply statement, contended that as the promotion given to the applicant is out of turn on the basis of the Master Circular for out of turn promotion for sports personnel, the appointment of the applicant cannot be considered as direct recruitment and if so, the applicant is not entitled for ACP/MACP benefits before covering the required period for that purpose. The counsel also relies on Annexure R-1 which was produced along with the reply statement, wherein it is provided that the out of turn promotion order is given to any sports personnel with the approval of the General Manager. The applicant was also appointed on promotion as a Commercial Clerk with the approval of the General Manager as is evidenced from Annexure R-2 order. In such circumstances, the counsel submits that she is not entitled for the ACP/MACP. With regard to the revision of seniority, the counsel for the respondents submits that there is no material produced before this Tribunal to take a view in favour of the applicant. In such circumstances, this Tribunal may not answer any question regarding the seniority aspect.

7. On considering the submissions of the counsel appearing for the parties, the question to be considered is that whether the applicant is entitled for the relief which she has claimed in the Original Application or not. It is an admitted case before us that the applicant was appointed as Group-D employee on 18.11.1987 and thereafter her name was considered for promotion to a Group-C post on the basis of her outstanding performance in sports field. Accordingly, her name was suggested by the Department for



appointment and as per Annexure R-2 order she was appointed as Commercial Clerk provisionally. However, the relevant portion of Annexure R-2 order reads as follows:-

"GM has approved for the out of turn promotion of Kum. Lugeena, T.J. Peon in FA&CAO/CN/MAS on Rs. 940 in scale Rs. 750-940 (women basket ball player) as Comml. Clerk TVC Division.

She has been deputed for the initial training course for Comml. Clerks commenced at ZTC/TPJ from 3.1.94. Her promotion as Comml. Clerk is provisional and subject to her passing the Medical examination in Class C-1. She will be absorbed as Comml. Clerk only on successful completion of the training also.

The above promotion is also subject to the condition that there are no prima facie cases pending against her as a result of fact finding enquiry or otherwise and she has not been placed under suspension or no departmental proceedings have been initiated against her or there is no proposal to initiate proceedings at an early date or she is not undergoing any penalty.

This issues as ordered by the competent authority."

8. A reading of the above would show that the appointment of the applicant as Commercial Clerk is on the basis of her outstanding performance in sports and on the basis of the Master Circular which provides power to the Railways to appoint the sports personnel and to give out of turn promotion to such personnel. In the Master Circular it is stated that inter-divisional or inter-workshop adjustments in the recruitment to Group-D for appointment to the post of Group-C, the General Manager can permit such appointments. If so, the appointment now given to the applicant is only on the basis of the permission given by the General Manager and she was posted at Trivandrum Division even though she was working in the Madras Division. Hence, we cannot have a conclusion that only because of the posting of the applicant at Trivandrum Division her appointment could



be considered as a direct recruitment. Even though it is the case of the applicant that she was appointed as Commercial Clerk and sent for training and on completion of the training her appointment was approved with effect from the date of her appointment as evidenced from Annexure R-2, we are not in a position to accept that her appointment should be treated in the direct recruitment quota. It is also to bear in mind that the applicant while working as Group-D was given a promotion as Commercial Clerk in sports quota. The Master Circular provides the Ministry of Railways or Railway Board can give out of turn promotions to candidates who are having outstanding performance records in sports by the General Manager, on the following criteria:-

"GROUP 'C'

Sports persons who:

- (a) represented the country in International meets;
- (b) represented Railways in the National meets on three occasions and acquitted themselves creditably;
- (c) the sports persons should have been put in three years' service in the existing Grade, where relaxation of this limit is required, the case is to be referred to the Railway Board;
- (d) No sports person should ordinarily be given more than one out of turn promotion in the course of his/her career; and
- (e) as far as possible, the out of turn promotion should be to a Grade where there is a direct recruitment quota and his promotion should be counted against this direct recruitment quota. The General Manager will, however, have discretion to relax this provision in special cases."

9. The above provision quoted from the Master Circular would show that the appointment now given to the applicant is only on the basis of promotion out of turn and not as a direct recruitment. If so, the applicant is

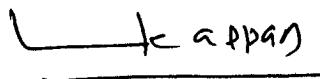


not entitled for any ACP/MACP benefits before covering the required period for that purpose.

10. The other question regarding the revision of seniority, we have seen that though notices were ordered to the party respondents nobody turned up and not only that the applicant has also not produced any material before us to show that she should be treated as senior to the party respondents. We have perused the official address of the party respondents, wherein it is specifically stated that they are working as Senior Commercial Clerks whereas the applicant is only a Commercial Clerk. No seniority list in the feeder category has been produced and there is no other averments to show that the applicant is senior to any of the party respondents and on this mere statement, we are not in a position to take any decision in favour of the applicant. Hence, the question is left without answering as there is no material before us at this stage.

11. Hence, in view of the aforesaid, we see that the application is without any merits and it stands dismissed with no order as to costs.


(K. NOORJEHAN)
ADMINISTRATIVE MEMBER


(JUSTICE K. THANKAPPAN)
JUDICIAL MEMBER

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