

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.596/04

Tuesday this the 10th day of August 2004

C O R A M :

**HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR. H.P.DAS, ADMINISTRATIVE MEMBER**

S.Vasantha Kumari,
W/o.late Devadasan,
Clerk, Divisional Office,
Personnel Branch, Southern Railway,
Trivandrum.

Applicant

(By Advocate Mr.Varghese Prem)

Versus

1. Union of India represented by
the General Manager,
Southern Railway, Madras.
2. Senior Divisional Personnel Officer,
Divisional Office, Personnel Branch,
Southern Railway, Trivandrum.
3. Ruby Janet John,
W/o.late Santhosh Varghese,
Senior Clerk, Personnel Branch,
Southern Railway, Trivandrum.

Respondents

(By Advocate Mr.P.Haridas)

This application having been heard on 10th August 2004 the Tribunal on the same day delivered the following :

O R D E R

HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN

The applicant on the death of her husband was considered for appointment on compassionate grounds and was by order dated 30.1.1989 appointed as Junior Clerk. She has now completed about fifteen years of service. She found that by Annexure A-1 order dated 5.3.2004 the 3rd respondent whose husband died in harness was appointed on compassionate grounds as a Senior Clerk in the direct recruitment quota. Alleging that the applicant who had all the qualifications for appointment to the post of Senior Clerk had been appointed only as a Junior Clerk while the 3rd respondent who had no better qualification has been appointed as

Senior Clerk, the applicant has filed this application for a direction to the respondents to consider the claim of the applicant to the post of Senior Clerk with retrospective effect from the date of her appointment as done in the case of the 3rd respondent as per Annexure A-1, to appoint the applicant as Senior Clerk with effect from the date of appointment of the 3rd respondent as per Annexure A-1 by considering the applicant as senior and give all consequential benefits declaring that the applicant is senior to the 3rd respondent and give due promotion to the applicant over the 3rd respondent quashing Annexure A-1 to the extent that it overlooks the claim of the applicant who is senior to the 3rd respondent.


2. Shri.P.Haridas, Advocate took notice on behalf of the respondents and opposed the admission of this application on the ground that the applicant does not have a valid cause of action to challenge Annexure A-1 or to claim appointment as Senior Clerk with effect from the date of her initial appointment or the date of appointment of the 3rd respondent.

3. We have heard the learned counsel of the applicant as also the learned counsel for the respondents. Shri.Varghese Prem, learned counsel of the applicant argued that the applicant who had requisite qualifications for appointment to the post of Senior Clerk should have been appointed as Senior Clerk as in the case of the 3rd respondent and non-consideration of the applicant for appointment as Senior Clerk atleast with effect from the date of appointment of the 3rd respondent as Senior Clerk is violative of Articles 14 and 16 of the Constitution and to buttress this argument the learned counsel invited our attention to the

2

decision of the Apex Court in Surya Kant Kadam Vs. State of Karnataka reported in 2002 (9) SCC 445. Learned counsel for the respondents, on the other hand, argued that the appointment on compassionate grounds are granted on the basis of the scheme taking into account the indigent status of the family, the availability of the vacancy in the quota for appointment on compassionate grounds at the time and, therefore, no comparison can be made between the appointment of the applicant made in 1989 and the appointment of the 3rd respondent made in 2004.

4. Giving the facts and circumstances of the case and the submissions made by the learned counsel on either side our anxious consideration we find that the applicant does not have any legitimate grievance which calls for admission of this application and further deliberation. The case of the applicant that the applicant has been discriminated in a hostile manner and not giving her appointment as Senior Clerk would violate Articles 14 & 16 of the Constitution has no substance at all. The applicant who was appointed fifteen years back on compassionate grounds in a Group C post of Clerk available at that time for appointment on compassionate grounds cannot seriously contend that if any appointment after that is made on a higher post on compassionate grounds that would violate Articles 14 & 16 of the Constitution. In 1989, the applicant was appointed as a Clerk in the available vacancy on compassionate grounds. Fifteen years after when the case of the 3rd respondent was considered a post of Senior Clerk was available in the direct recruitment quota for appointment on compassionate grounds, fortunately for the 3rd respondent. The question of violation of equality provision of Articles 14 & 16 does not arise because the appointment of the



applicant and that of the 3rd respondent were made with a gap of fifteen years and on different vacancy position. None of the rights of the applicant has been infringed. The applicant's chance for promotion has not been abridged. The applicant could not have aspired appointment now to the post of Senior Clerk on which 3rd respondent has been appointed because that post is not a promotion post but in the direct recruitment quota. It is therefore evident that the applicant has no legitimate grievance at all calling for redressal.

5. In the light of what is stated above we reject this application under Section 19(3) of the Administrative Tribunals Act, 1985.

(Dated the 10th day of August 2004)

H. P. DAS

H.P.DAS
ADMINISTRATIVE MEMBER

asp



A.V.HARIDASAN
VICE CHAIRMAN