

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 11 OF 2011

Wednesday, this the 22nd day of February, 2012

CORAM:

**HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

C.Johnson
Presently working as Peon
Railway Recruitment Board, Trivandrum
Residing at Kasavan Velai, Kamaraj Street
Marthandom, Kanyakumari District

... Applicant

(By Advocate Mr.Martin G Thottan)

versus

1. Union of India represented by the
General Manager
Southern Railway, Headquarters Office
Chennai – 3

2. The Senior Divisional Personnel Officer
Southern Railway,
Trivandrum Division
Trivandrum

... Respondent

(By Advocate Mr. K.M.Anthru)

The application having been heard on 22.02.2012, the Tribunal on the same day delivered the following:

ORDER

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER

The applicant, at the time of filing this OA was working as a Peon at Railway Recruitment Board, Trivandrum on deputation basis. He is aggrieved by the action of the respondents in refusing to consider him for promotion to the posts of Commercial Clerks/Ticket Examiner despite his entitlement and eligibility at the time of issuance of the notification. The applicant was initially engaged in Railways as salary commission bearer and was regularly appointed as Cleaner in Loco



workshop, Chennai with effect from 26.10.2002. His initial appointment is as a Catering Staff in Commercial department and seniority is maintained at Headquarters level. From 2003 onwards applicant was transferred to Trivandrum Division and posted to Catering Inspection Office. From 2004 onwards with the formation of IRCTC the applicant was treated as on deemed deputation. In 2005 an option was called for from those who were in Catering Department either to be absorbed in newly formed IRCTC or to continue in parent Railways. Applicant opted for continuation in Railways and ever since he was attached to the Commercial Department of Trivandrum Division of Southern Railway. While so, notification was issued by the 2nd respondent for filling up the posts of Commercial Clerks against 33 1/3% quota and to the posts of Ticket Examiner against 16 2/3% quota. Annexure A-1 and A-2 are the relevant notifications issued in this behalf. The applicant is a Group D staff of the Commercial Department of Trivandrum Division and being eligible applied for the same. Annexure A3 and A-4 are the applications duly submitted by him. The applicant has passed Plus two and having more than 3 years of Group 'D' service and by virtue of having worked more than 3 years in the Trivandrum Division, he is deemed to have his lien in the Trivandrum Division for the purpose of considering for promotion to the post of Commercial Clerks / Ticket Examiner. In the meanwhile applicant who was rendered surplus and was redeployed as Peon at Headquarters in Operating Department by an order dated 08.12.2009. A copy of which is produced as Annexure A-5. He came to know that he will not be considered for promotion to the posts to which the selection was initiated by Annexure A 1 and A2 and his name was not included in the alert list. He has submitted representations to various authorities requesting them to consider this application for the

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selection pursuant to Annexure A 1 and A2. Annexure A-6 is the copy of the representation submitted to the Divisional Railway Manager. Subsequently, the representation was rejected by Annexure A-6 dated 28.12.2010 issued on behalf of 2nd respondent and produced as Annexure A-7. In Annexure A-7, it is stated that selection to the post of Commercial Clerk/Ticket Examiner was initiated by giving notification with clear indication that Group 'D' staff of Traffic and Commercial Departments of Trivandrum Division are only eligible to participate. Since he was working as Peon at Hqrs, Madras, he will be considered in the Madras Division and on that score the representation was rejected. According to the applicant, during the relevant time when Annexures A - 1 and A - 2 were issued, he was working in the Commercial Department of Trivandrum Division, the fact ought to have been taken into consideration in deciding his eligibility for being considered pursuant to Annexure A-1 and A-2 notification. According to him, he continued to be in the Trivandrum Division even on the last date of submission of application as per notification. He was rendered surplus and was redeployed as Peon in the Operating Department at Hqrs only later on 08.12.2009 much after the relevant date for the appointment as per Annexures A-1 and A-2. Written examination was conducted on 08.01.2011 and 22.01.2011 and the applicant was enabled to participate in the examination by virtue of an interim order passed by this Tribunal. The applicant in the above circumstances prays leave of this Tribunal to call for the records leading to the issuance of Annexure A-7 and quash the same and for a declaration that he is entitled to be considered for selection in pursuance to Annexures A-1 and A-2 notification on the basis of his eligibility as on the last date of submission of the application and for other consequential reliefs.



2. The main ground urged in support of his contention is that non consideration of the applicant to the post of Commercial Clerks/Ticket Examiner pursuant to Annexure A-1 and A-2 notifications is arbitrary and hence violative of Articles 14 and 16 of the Constitution of India. Annexure A-7 order suffers from vice of non application of mind and is to be set aside. It is his case that his eligibility is to be considered as on the issuance of the notification and the date of submission of the application and not on the facts that subsequently came into existence.

3. In the reply statement filed by the respondents, it is contended that Annexure A-1 and A-2 notifications have different posts and notification as per different procedure has to be followed. The pay scales are also different and even the eligibility criteria for the said selections are also different. According to them, it is not possible to club the issue relating to the eligibility to apply under Annexure A-1 and A-2 under one single application. It is further contended that as per Annexure A-1 and A-2 the staff in the category in which the applicant was working at the material time are not invited for the selections. According to them, notification calls for applications from the employees working in Operating, Traffic and Commercial Department. As per Annexure A-3 and A-4 he was working as a Cleaner in the Catering Department of Trivandrum Division. Though he was working in the Catering Department of Trivandrum Division in 2009, he had already appeared for selection in Madras Division in 2006 as admitted by him, indicating that he is having lien at Madras. The employees of Headquarters seniority unit in the said categories are allowed to compete in the selection conducted by Madras Division. Thereafter, he was absorbed as Peon in the HQrs Office, Madras in

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December, 2009 as per Annexure A-5. Seniority at Madras Hqrs is different. Annexure A-1 and A-2 do not call for applications from the Catering Department, Trivandrum Division and from the seniority unit of Hqrs Office, Madras. Hence, he is not eligible to apply to Annexures A-1 and A-2 notifications. According to them, the applicant does not have any locus standi to appear for selection against Annexures A-1 and A-2, as the Catering Department of Trivandrum Division is not called for to respond. Only the employees in the Hqrs seniority are allowed to compete for the selection in Madras Division. It is, however, admitted that applications are invited from Group D staff of Traffic and Commercial Departments of Trivandrum Division in the scale of Rs.2750-4400/-, Pay Band 5200-20200/- plus Grade Pay Rs.1800/- and below having lien in Trivandrum Division and the applicant does not have lien at Trivandrum, his case was not considered.

4. The point that arises for consideration is whether the applicant at the relevant time is a Group D staff of the Catering Department Trivandrum, is eligible to respond to Annexures A-1 and A-2 notification? The contention of the applicant is that during the relevant time as on the last date of submission of the application, he was holding a Group D post in Catering Department at Trivandrum. His redeployment as Peon in the Operating Department at HQrs was done much later, only after the last date of submission of application. It is no longer in dispute that Group D employees in Trivandrum Division are eligible to apply against Annexures A-1 and A-2 even going by the reply statement. If the applicant had been working at the time of issuance of Annexures A-1 and A-2 and continued to be so as on the last date of application employed as Group D at Trivandrum Division certainly he will be entitled to apply as per Annexures



A-1 and A-2 notification.

5. During the course of hearing, we entertained a doubt as to whether his transfer to Trivandrum was on deputation basis or on permanent basis. The applicant contended that he was working at Madras Division and he was transferred to Trivandrum Division, but the transfer order was not placed on record. The question whether the deputation to IRCTC was at a time when he was working in Trivandrum Division on permanent basis was required to be considered. In the rejoinder filed by the applicant, several instances are shown where similarly situated persons have been permitted to appear for the examination. This was not denied by submitting any additional reply. Hence, by our order dated 09.01.2012, we adjourned the case so as to enable the respondents to come up with an additional reply. They deny the correctness made in the rejoinder, but till today, no additional reply is filed. However, the counsel for respondents made available a copy of transfer order No.45/03. This order is under caption " Inter Divisional Mutual transfer – Sri C.Johnson, Cleaner, Canteen, Loco Works, Perambur with Shri C.Chidambaram, Server, VRR/MAS." It reads as follows:-

"The Inter-Divisional Mutual transfer – Sri. C. Johnson, Cleaner, Canteen, Loco works, Perambur in scale Rs. 2550-3200 with Shri C. Chidambaram, Server, VRR/MAS in scale Rs. 2610-3540 is agreed to subject to the following conditions:

1. He is free from DAR/Vig/SPE Cases. There are no prima facie cases against him as a result of fact finding enquiry or otherwise and he has not been placed under suspension or no departmental/Vig/SPE proceedings have been initiated against him of that he is not undergoing any penalty.

2. He is not eligible for any transfer privileges as the transfer is ordered on mutual basis at his own request.



3. His seniority will be fixed as per terms and conditions of para 310 of IREM/Vol.I.

4. His request for re-transfer to the parent cadre/department will not be accepted under any circumstances.

5. He should vacate the railway quarters if any in occupation immediately.

Sri C. Johnson, Cleaner, Canteen/LW/PER in scale Rs. 2550-3200 may be relieved immediately with instructions to report to BD/TVC as Cleaner in scale Rs. 2550-3200."

6. From the above letter, it can be seen that the applicant came to Trivandrum on mutual transfer on permanent basis and that too as a Group D employee. His deputation in the IRCTC cannot take away his vested right of being considered for the post as advertised for in Annexure A-1 and A-2 and his permanent lien is in Trivandrum Division in Catering Department. It has been held by the Hon'ble High Court in **2006 (1) KLT 724** that the question as to whether the employee is entitled to respond for selection at the time of issuance of the notification. In para 5 it has been held as under:

"5 But, at the same time, the case of the petitioners in W.P.(C) No. 37118 of 2004 stands on a different footing. In their case, notification was issued as per Ext. P2 dated 27.11.2002. The last date of submission of application was 31.12.2002. It is admitted by all that as on the publication of Ext. P2 and as on the submission of application pursuant to Ext. P2 by the petitioners and as on the last date fixed, prescribed both petitioners were only Pointsman Grade 'D' in the scale of Rs. 2650-4000. It is true that the selection process did not get finalised as there were some more vacancies set apart against 33 1/3% reserved for Group 'D' staff. Consequently, a revised notification was issued containing stipulation that those who responded pursuant to Ext. P2 need not make further application. It is while the application submitted by the petitioners were being considered, they were given grade promotion granting them scale of Rs. 3050-4590. Even then, they still keep their identity as Group 'D'. Going by Ext. P6 referred to earlier, there is no embargo for those

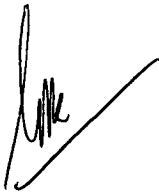
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included in Group 'D' in the scale of Rs. 2650-4000 for being considered for promotion against 33 1/3% even if they have regular channel of promotion. Merely because during the selection process petitioners were assigned higher scale, which does not dis entitle them from being considered for promotion pursuant to Ext. P2 and P3 notifications. Therefore, in their case, as both of them were Group 'D' at the relevant time they shall have eligibility for promotion. The contention of the selected candidates and the Railways that they will lose their chance for being considered even if they get higher scale during the process of selection, cannot be countenanced. Even in spite of the higher scale they continue to be in Group 'D'".

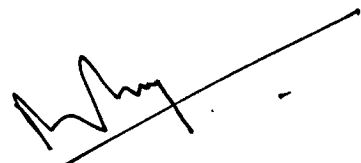
7. Thus at the relevant point of time, the applicant has lien at Trivandrum as a Group 'D' employee and his representation has been wrongly rejected. As such, we quash Annexure A-7 since the applicant had already been permitted to appear for the examination and based on the result further action shall be taken by the respondents as per Annexures A-1 and A-2. This shall be done as early as possible, at any rate, within a period of two months from the date of receipt of a copy of this order.

8. OA is **allowed** as above. No costs.

Dated, the 22nd February, 2012.



K GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R. RAMAN
JUDICIAL MEMBER