

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No. 180 / 2009

Tuesday, this the 30th day of March, 2010.

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HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE Ms. K NOORJEHAN, ADMINISTRATIVE MEMBER

1. V.G.Krishnankutty,
Chief Commercial Clerk Gr.III,
Southern Railway, Quilon.
 2. N.K.Suraj,
Chief Commercial Clerk Gr.III,
Southern Railway, Quilon.
-Applicants

(By Advocate Mr TC Govindaswamy)

v.

1. Union of India represented by
the General Manager, Southern Railway,
Headquarters Office, Park Town.P.O,
Chennai-3.
 2. The Divisional Railway Manager,
Southern Railway, Trivandrum Division,
Trivandrum-14.
 3. The Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum-14.
-Respondents

(By Advocate Mr Thomas Mathew Nellimoottil)

This application having been finally heard on 12.3.2010, the Tribunal on 30.3.2010 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

This is the 2nd round of litigation by the applicants seeking promotion to the post of Chief Commercial Clerk Grade-II.

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2. Both the applicants are presently working as Chief Commercial Clerk Gr.III in the scale Rs.5000-8000. The cadre of Commercial Clerks consisted of Junior Commercial Clerk in scale Rs.3200-4900, Senior Commercial Clerk in scale Rs.4000-6000, Chief Commercial Clerk Gr.III in scale Rs.5000-8000, Chief Commercial Clerk Gr.II in scale Rs.5500-9000 and Chief Commercial Clerk Gr.I in scale Rs.6500-10500. As per Annexure A-1 letter of the Railway Board No.PC/111/2003/CRC/6 dated 9.10.2003, the re-distribution of Commercial Clerks was as under:

<i>Category</i>	<i>Grade(Rs.)</i>	<i>Existing %age</i>	<i>Revised %age</i>
Commercial Clerks Including Weigh Bridge Clerks	6500-10,500	8	12
	5500-9,000	12	18
	5000-8000	25	25
	4000-6000	35	28
	3200-4900	20	17

As regards promotion from the post of Chief Commercial Clerk Gr.III to that of Chief Commercial Clerk Gr.II was concerned, it was by process of selection to the extent of 75% of the vacancies and by direct recruitment to the extent of 15% vacancies and by Limited Departmental Competitive Examination for the remaining 10% of vacancies. Accordingly, the respondents, vide Annexure A-2 notification dated 12.1.2007, have initiated the process of selection for filling up 9 unreserved vacancies in the category of Chief Commercial Clerk Gr.II in the scale Rs.5500-9000. The names of the applicants were at Sl.No.22 and 23 in the seniority list of the Chief Commercial Clerk Gr.III. They were also alerted to be in readiness to appear for the selection. In the written tests held on 12.1.2008 and 8.5.2008, both the applicants have secured 70% and 80% marks respectively as against the minimum requirement of 60% marks, as shown in Annexure letter dated 13/16.6.2008. According to them, the respondents ought to have immediately finalized the selection and promoted them as Chief

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Commercial Clerk Gr.II against the available vacancies. As there was delay in the matter, they made identical Annexure A-4 and A-5 representations dated 15.7.2008 and 6.8.2008 respectively. Since there was no response, they filed O.A.No.64/2009 before this Tribunal but it was disposed of by Annexure A-7 order dated 30.1.2009 directing the respondents to consider their representations and to give a detailed and reasoned reply within one month. The impugned Annexure A-8 letter dated 6.3.2009 has been issued by the respondents in purported implementation of the aforesaid directions of this Tribunal. According to the respondents, the applicants were not promoted to the grade of Chief Commercial Clerk Gr.II because the 6th Pay Commission's recommendation for the merger of Chief Commercial Clerk Gr.III in scale Rs.5000-8000 and Chief Commercial Clerk Gr.II in scale Rs.5500-9000 into the revised Pay Band-2 in scale Rs.9300-34800 with Grade Pay of Rs.4200/- with effect from 1.1.2006 has since been accepted by the Railways. Accordingly, the applicants' pay has also been refixed retrospectively with effect from 1.1.2006. Further, the Railway Board, vide their Annexure A-9 No.RBE 127/2008 dated 23.9.2008, has advised the Railways not to make any promotions within the merged grades until further orders. The said letter of the Railway Board reads as follows:

"RB/Estt.No.127

GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)

No.E(NG)I-2008/PM1/15

dt.23.09.2008

The General managers(P)
All Indian Railways &
Production Units
(As per standards list)

Sub: Implementation of recommendations of 6th CPC merger of grades
– promotion within the same grade pay

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As a result of acceptance of recommendations of 6th CPC in many cases two existing grades have been merged in to one grade pay or posts have been upgraded & merged with higher grade thereby affecting the existing channel of promotion of the staff. Accordingly the matter of promotion of non-gazetted staff within such merged or upgraded & merged within same grade pay posts has been considered and it has been decided that promotions within the merged grades (i.e. from the lower grade to next higher grade of 5th CPC scales) or within upgraded & merged in higher grade pay, should not be made herein after till further orders.

2. However, this will not apply to the cases of promotion of running categories viz, Loco Pilots and Guards as well as horizontal promotions, wherein the existing channel of promotion will continue till further orders.

Please acknowledge receipt.

(D.V.Rao)
Joint Director Estt.(N)
Railway Board."

3. The applicants have challenged the aforesaid letter of the respondents on the ground that the order of the Railway Board dated 23.9.2008 has only a prospective effect and therefore, it cannot affect the process of selection already initiated and finalised well before its publication. Therefore, the decision of the respondents in not promoting the applicants as Chief Commercial Clerk Gr.II is arbitrary, discriminatory, contrary to law and hence unconstitutional. The other contention of the learned counsel for the applicants is that even after the acceptance of the recommendation of the 6th Pay Commission and its implementation in this regard and the merger of grades, the cadre structure and the designation of the various posts have not undergone any change. Still only those who are presently working as Chief Commercial Clerk Gr.II in the pre-revised scale Rs.5500-9000 are entitled to be considered for promotion as Chief Commercial Clerk Gr.I in the pre-revised scale of Rs.6500-10,500. Learned counsel has also submitted that the applicant has been discriminated in so far as the persons who have already been promoted after 1.1.2006 in scale Rs.5500-9000 as they continue to enjoy the higher status and designation as were vested in them on account of such promotion and applicants being similarly placed have

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been denied such promotion and fixation of pay.

4. The respondents in the reply have submitted that it is clear from the Annexure A-9 letter dated 23.9.2008 that no promotions can be made to the merged grades until further orders. The Railway Board has issued further guidelines in the matter vide Annexure R-1 letter dated 24.4.2009 according to which where two or more existing scales of pay have been merged into a single grade pay, the selection and promotion from the existing lower scale to the existing higher scales should not be made and the selection already in progress should be stayed and that panels already existing should also not be operated. They have further submitted that in the absence of Railway Board's specific directions, no promotion order could be issued as the posts of Chief Commercial Clerk Gr.III and Grade-II have been merged into one and the applicants have already been given Grade Pay as applicable to the next higher grade post with effect from 1.1.2006. They have further submitted that while implementing the 6th Pay Commission recommendations in terms of Railway Board's letter dated 11.9.2009 (RBE No.108/2008), as per Note 1 under para 14, the posts in existing scales of Rs.5000-8000 and Rs.5500-9000 have been placed in identical Grade Pay Rs.4200/- in PB-2 they will stand merged with functions. It has also been advised therein that rationalisation of functions as also revised designations, AVC, Recruitment Rules, classification as selection/non-selection etc as decided by the Railway Board will be decided through separate orders. They have denied the contention of the applicants that those who are working as Chief Commercial Clerk Gr.II presently are even now entitled to be considered for promotion as Chief Commercial Clerk Gr.I.

5. The applicants have filed rejoinder and submitted that the selection was



for vacancies which were mainly in existence prior upto 1.1.2006 and in any case for the vacancies which have existed before the notification of Annexure A-2 notification dated 12.1.2007 and the Annexure A-1 orders of percentage distribution has not undergone any change so far. Annexure R-1 cannot take away the vested right which is only an administrative instruction which does not have any force of law. Annexure R-1 is also not statutory and the same is not in exercise of the powers under Rule 123 of the Railway Establishment Code Vol.I.

6. The respondents have filed an additional reply reiterating their position and stated that the selection for the 3 existing vacancies was initiated as per the Annexure A-2 dated 12.1.2007 and accordingly to Annexure A-8, the selection proceedings were approved by the Divisional Railway manager on 5.9.2008. As the selection has been completed within 10 months, there was no delay in the process as alleged by the applicants. They have also specifically denied that the vacancies notified in Annexure A-2 were available before 1.1.2006. Only 3 vacancies were existing at the time of issuing the Annexure A-2 notification and remaining 6 vacancies were anticipated. According to them, even assuming that the 3 vacancies were to be filled up before the Annexure A-2 selection, the applicant's turn for the said selection would not have come, considering their seniority position.

7. We have heard Shri T.R.Mohanakumar, counsel for the applicants and Shri Thomas Mathew Nellimottil, counsel for respondents. The question is whether there were any discrimination in the matter of promotion among the Chief Commercial Clerks Gr.III in the scale of Rs.5000-8000 (pre-revised) as Chief Commercial Clerks Gr.II in the scale of Rs.5500-9000 during the period from 1.1.2006 to 11.9.2009 i.e. the date on which the Railway Board has issued

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orders accepting the recommendations of the 6th Pay Commission for the merger of the aforesaid grades retrospectively with effect from 1.1.2006 into the revised Pay Band-2 of Rs.9300-34800 with Grade Pay of Rs.4200/- or 23.9.2008 i.e. the date on which the Railway Board has issued instructions not to make any promotions within the merged grades until further orders. During the intervening period, the respondents have promoted several Chief Commercial Clerks Gr.III to the higher post of Chief Commercial Clerks Gr.II and fixed their pay accordingly. The applicants also have passed the required ~~test~~ for promotion to the Chief Commercial Clerks Gr.III on 12.1.2008 and 8.5.2008 respectively. If they were given the promotions in their turn their pay also would have been fixed in the pre-revised scale of Rs.5500-9000 and thereafter in the Pay Band-2 in the scale of Rs.9300-34800 with Grade Pay of Rs.4200/-. Thus the applicants have been treated differently from those Chief Commercial Clerks Gr.III who have been promoted as Chief Commercial Clerks Gr.III earlier than them ~~but~~ after 1.1.2006. We, therefore, allow this O.A and direct the respondents to treat the applicant at par with the post of Chief Commercial Clerk Gr.II who got promotion as Chief Commercial Clerk Gr.II after 1.1.2006 and promote them accordingly provided their turn for such promotion has come before 23.9.2008. Thereafter their pay may be refixed in the pay Band in the scale of Rs.9300-34800 with Grade Pay of Rs.4200/- retrospectively with effect from 1.1.2006. The applicants shall also be paid the arrears of pay and allowances arising out of such pay fixation/refixation.

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8. The respondents shall carry out the aforesaid directions within a period of three months from the date of receipt of copy of this order. There shall be no order as to costs.


K NOORJEHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER

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