

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00993/2016

Friday this the 16th day of March, 2018

CORAM

**Hon'ble Mr. U. Sarathchandran, Judicial Member
Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member**

P.V. Vijayakumar,
Asst. Ledger Keeper,
Construction, Feroke,
Calicut, Southern Railway.

..... **Applicant**

(By Advocate – Mr. Siby J. Monippally)

V e r s u s

1. Union of India,
Rep. by Chief Administrative Officer-I,
Construction, Southern Railway,
Chennai.
2. Chief Administrative Officer-II,
Construction, Southern Railway,
Ernakulam.
3. Senior Divisional Personnel Officer,
Southern Railway, Madurai Division,
Madurai.
4. Deputy Chief Engineer,
Construction, Southern Railway,
Cannannore.

..... **Respondents**

(By Advocate – Mr. Asif K.H.)

This Original Application having been heard on 07.03.2018, the Tribunal on
16.3.2018 delivered the following:

ORDER

Per: **Mr. E.K. Bharat Bhushan, Administrative Member**

Original Application No.180/993/2016 is filed by Shri.P.V.Vijayakumar, Assistant Ledger Keeper working under the Southern Railway, Calicut aggrieved by the refusal of the 3rd respondent to grant proforma promotion.

2. The reliefs sought in the Original Application are as under:

“ a) To declare that the applicant is entitled to get up-gradation to track maintainer grade-II (grade pay Rs.2800) with effect from 21.12.2015 with arrears and consequential benefits.

b) To direct the respondents to grant up-gradation to the applicant as track maintainer-II (grade pay Rs.2,400).

c) Grant such further and other reliefs as the nature and circumstances of the case may require. ”

3. Applicant had entered service of the Railways on 2.11.1981 as casual labour, Store Mate. He was granted temporary status on 1.1.1984 and was regularised as Track Maintainer on 9.11.1990 in Madurai Division. Subsequently he was transferred to Construction Department (Engineering) on 24.10.1991 and promoted as Store Issuer (ALK) on 11.12.1996. He contends that he has passed the written examination for Assistant Station Master but was not considered due to loss of SR Book.

4. In accordance with the cadre restructuring ordered as per Railway Board directions in the Track Maintainer Grade, applicant is entitled to get a higher Grade grade pay of Rs.2400/- and Track Maintainer Grade III but was

not considered for unjustifiable reasons. A representation he made in this regard to the respondents is at Annexure A-1. In spite of his Controlling Officer recommending his case as per Annexure A-2, his request was negated. He is pained by the fact that under Madurai Division where his lien is maintained he has been wrongly included even below his juniors. Proforma promotions granted to similarly situated persons have been denied to him. This is the reason why he has approached the Tribunal by filing this Original Application.

5. As grounds, the applicant contends that the refusal to grant proforma promotion to him is against justice, equity and amounts to discrimination. According to the Railway Board circular, he is entitled to get upgradation to Trackmaintainer Grade II with grade pay of Rs.2400/-. He is further aggrieved by the fact that similarly placed persons in Trivandrum and Palghat Divisions have been granted the said benefit.

6. *Per contra* the respondents have filed a reply statement refuting the contentions in the Original Application. It is submitted that the applicant was granted temporary status from 1.1.1984 and was regularised as Temporary Gangman in the scale of Rs.775-1025 w.e.f 7.12.1990. He had been posted to work under the control of Permanent Way Inspector, Pollachi Section of Madurai Division and as per his own request was transferred to work as Survey Lascar in the lower scale of Rs.750-940 and posted to work in the Construction Organisation at Calicut vide Office Order dated 11.10.1991. Afterwards he continued to work at Calicut, never returning to

his parent Madurai Division. At present he is an Assistant Ledger Keeper in the Construction Organisation at Calicut.

As per Railway Board circular No.E(NG)I-2012/PMS/1 dated 13.8.2013 (Annexure R-1) various norms/procedures for promotion in the Unified Cadre of Track Maintainers have been spelt out. This is extracted below:-

S.No.	Designation	Pay Structure	Mode of Promotion
1.	Track Maintainer-IV	PB-1,G.P. Rs.1800	Entry Grade – Direct Recruitment, Compassionate Ground Appointment etc.
2.	Track Maintainer-III	PB-1,G.P Rs.1900	Seniority/Non-Selection
3.	Track Maintainer-II	PB-1, G.P Rs.2400	Seniority-cum-Suitability/Non-Selection
4.	Track Maintainer-1	PB-1,G.P.Rs.2800	Selection, through a Trade Test

At present the applicant has already been granted financial upgradation to the Grade Pay of Rs.1900 and Rs.2000 w.e.f 01.09.2008 i.e, from the date of implementation of Modified Assured Career Progression Scheme (MACPS) in as much as he had completed 20 years of service in the grade pay of Rs.1800. The applicant seeks upgradation to grade pay of Rs.2400/Rs.2800 from 21.12.2015. The mode of promotion to the grade pay of Rs.2400/- in terms of the circular dated 13.8.2013 at Annexure R-1 is Seniority-cum-Suitability and hence without ascertaining suitability, the

applicant cannot be promoted to the grade pay of Rs.2400/-. The applicant has to rejoin the Madurai Division for assessing his suitability for promotion to the next higher grade pay of Rs.2400 in the Track Maintainer category. As per letter dated 21.2.2016 given in response to the representation of the applicant dated 15.1.2016 this position has been brought to the notice of the applicant (Annexure R-2). In the said letter it has been mentioned that promotion can be considered only after scrutinising his Service records and Leave Book for Vigilance/SPE/DAR clearance and the applicant in order to be eligible, has to work as Track Maintainer Grade IV for a minimum period of two years.

9. Respondents strongly refuted the contention that the applicant was not granted promotion as Assistant Station Master due to loss of his SR Book. He had been asked to report for duty at Madurai Division in order to assess his suitability for promotion which he has not done. If there is any grievance with regard to his position in the seniority list in Madurai Division, he is at liberty to point out this to the concerned authority. It has to be kept in mind that the applicant had lost few years of seniority due to his request transfer to Pollachi Section and hence he cannot compare his own case with those employees who have been working in the same seniority unit from the date of their appointment.

10. Applicant has filed a rejoinder reiterating most of his contentions in the O.A. He states that he could not join in Madurai Division as his present Controlling Officer at Calicut is not relieving him. Instead, he repeats his

contention that he can be promoted at the present place of work. He goes on to narrate instances of certain employees who have been granted promotion as Track Maintainer at Trivandrum Division. He claims that even in Madurai Division also there are persons belonging to his cadre who have been given the benefit of upgradation.

11. Mr.Siby J Monippally, learned counsel for the applicant and Mr.Asif K.H, learned counsel for the respondents have been heard and all documents/records perused.

12. The applicant is continuing at Calicut since 1991 after having been posted there from Madurai Division at his request. He claims that he may be promoted to the next Grade in the cadre of Track Maintainer with Grade Pay of Rs.2400/- in Calicut Division itself i.e, without returning to the Division where his lien is retained. This is a common problem under the Railways. Persons move from one Division to another on deputation or work arrangement and then somehow continue to remain there. They however do not wish to forfeit their chance of professional advancement that would have been available to them if they had remained in the parent Division. This is a practice which ought to be discouraged.

13. In the instant case, the circular of the Railway Board dated 13.8.2013 at Annexure R-1 spells out that upgradation sought by the applicant is to be considered on the basis of seniority-cum-suitability. Clearly in order to earn the same, the applicant will have to return to Madurai Division where his lien

is retained. As is put forward by the learned counsel for the respondents, this is a standard procedure under the Railways and the applicant should conduct himself accordingly. Having said this, we are somewhat bemused by the letter of the Deputy Chief Engineer, Construction, Cannannore dated 3.3.2016 at Annexure A-2 seeking retention of the employee at Calicut itself. Apart from expressing his inability to relieve him, he also goes on to seek a promotion for the applicant in the same communication which is a classic example of running with the hare and hunting with the hound. It is quite possible that the applicant has prevailed upon the functionary who issued the letter to take such a stand, if we take into consideration the fact that relief from Calicut is not one of the prayers made in the Original Application.

Due to the reasons cited above, we come to the conclusion that the Original Application is devoid of merit and ought to be dismissed. We proceed to do so. No costs.

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

(U.SARATHCHANDRAN)
JUDICIAL MEMBER

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List of Annexures of the Applicant

Annexure A-1	-	A photostat copy of the representation submitted to the 1 st respondent.
Annexure A-2	-	A Photostat copy of the letter dated 03.03.2016 issued by Deputy Chief Engineer, Construction, Cannannore.
Annexure A-3	-	A photostat copy of the seniority list issued by Madurai Division dated 02.11.2015.
Annexure A-4	-	A photostat copy of the letter issued by Madurai

Division dated 13.09.2017.

- Annexure A-5 - A photostat copy of the order dated 06.10.2017 issued by 4th respondent.
- Annexure A-6 - A photostat copy of the order of issued by DRM, Madurai dated 02.08.2011.
- Annexure A-7 - A photostat copy of the order dated 31.10.2017 issued by Divisional Personal Officer, Madurai Division.
- Annexure A-8 - A photostat copy of the order dated 21.12.2015 issued by Divisional Personal Officer, Madurai Division.

List of Annexures of the Respondents

- Annexure R-1 - A photocopy of the circular dated 13.08.2013.
- Annexure R-2 - A photocopy of the letter dated 21.02.2016.
- Annexure R-3 - A photocopy of the letter dated 01.12.2016.
- Annexure R-4 - A photocopy of the promotion order dated 14.12.2015.
