

LIBRARY

CENTRAL ADMINISTRATIVE TRIBUNAL
 KOLKATA BENCH
 KOLKATA

O. A. No.350/371/2018

Date of order: 15.03.2018

M.A. No.350/204/2018

Coram : Hon'ble Mrs. Manjula Das, Judicial Member

1. Somnath Mondal,
 son of Gopal Chandra Mondal,
 aged about 41 years,
 residing at F/63,Sreena
 Complex,Jalkal,
 Mahestala,Kolkata-700.141,
 West Bengal;
2. Rakesh Kumar Mishra,
 son of Sheo Prasad Mishra,
 aged about 39 years, residing
 at Flat No.B1; Gourab Lily,
 F4/113/A, New Sreema
 Project, Maheshtala,
 Kolkata-7000141,
 West Bengal;
3. Biman Chakraborty,
 son of Shambhunath
 Chakraborty,aged about 39
 years, residing at E4/144,
 Sreema Complex, Jolkol,
 Maheshtala,Kolkata-000141,
 West Bengal

.....APPLICANTS

-V E R S U S -

- 1.Union of India,
 through the General
 Manager, South Eastern
 Railway, Garden Reach
 Road, Kolkata700 043;
2. Chief Personnel
 Officer,
 South Eastern Railway,
 Garden Reach Road,
 Kolkata-700043;



3.The Divisional Railway
Manager(Personnel),
South Eastern Railway,
Kharagpur, 721301;

4.The Sr. Divisional
Railway Manager, South
Eastern Railway, Garden
Reach Road,Kharagpur-
721301

....RESPONDENTS

For the applicant : Mr. A. Chakraborty, counsel
Ms. P. Mondal

For the respondents : None

O R D E R

Ms. Manjula Das, Judicial Member

The applicants have filed this O. A. under Section 19 of Administrative Tribunals Act seeking the following reliefs :

"(a) Office orders dated 19.07.2017 issued by Divisional Railway Manager(P) cannot be sustained in the eye of law and the same may be quashed;

(b) The Notification no.SER/P-KGP/EC-212 ITE-ECCA/Selec/DPQ(33-1/396)/17 dated 20.4.2017 issued by Sr. Divisional Personnel Officer cannot be sustained in the eye of law since the pointsman level 1 and Level II were not permitted to appear in the selection;

(c) Leave may be granted to file this application jointly under rule 4(5)(a) of the CAT Procedure Rule, 1987."

2. The applicants have also filed an M.A.No.350/204/2018 under Section 4(5)(a) of C.A.T.(Procedure) Rules, 1987 seeking permission to file the O.A. jointly.

3. We have heard Mr. A. Chakraborty leading Ms. P. Mondal, id. counsel for the applicants on both the M:A. and O.A.. None appears for the respondents.



4. So far as the M.A.No.350/204/2018 is concerned, ld. counsel for the applicants submitted that the applicants have common cause of action and common interest in the matter, therefore, they should be allowed to file the O.A.No.350/371/2018 jointly.

Ld. counsel for the respondents has no objection to the prayer of ld. counsel for the applicants.

On perusal of the pleadings and materials placed before me, I am also convinced that the applicants have common cause of action and common interest in this matter. Accordingly the M.A.No.350/204/2018 for joint petition is allowed.

5. The sum and substance of the O.A. as narrated by the ld. counsel for the applicants are that the applicants were initially appointed in Group 'D' post in the Grade Pay of Rs.1800/- and at present they are working as Points man -A in the Grade Pay of Rs.1900/- . It is further stated by the Ld. Counsel for the applicants that the applicants have got the benefit of Grade Pay of Rs.1900/- with effect from March,2017.

Ld. Counsel for the applicants submitted that a Notification No.SEP/P-KGP/EC/212/1/TE & ECCA/Selec/DPC(33-1/3%)16 dated 27.01.2016, (Annexure A/1) was issued for filling up of the posts of TE-ECCA in level 3 of 7th CPC(Erstwhile PB-I-GP-1900, 6th CPC). In the said notification the Pointsman Group 'C' was not considered for promotion to the post of TE-ECCA. A clarification was sought from Chakradharpur Division, South Eastern Railway as to whether Pointsman could be considered against 33.1/3% promotional quota of commercial and operating Department to the post of Train Examiner Commercial Clerk in Level IV and Trains Clerk in Level II. The case was examined by the Chief



Personnel Officer in consultation with Principal COM/GRC and a decision was taken on 5.2.2018 which is annexed as Annexure A/2 to this O.A. whereby the staff of Operating Department and Commercial Department in level 1 and level 2 including Pointsman were permitted to appear for said selection against 33.1/3% promotional quota.

It is further submitted by the Id. counsel for the applicant that another notification was issued in respect of selection of promotion to the post of TE/ECCA against 33.1/3% quota of Commercial Department vide Office Order dated 20.04.2017 (Annexure A-3) inviting applications from Group 'D' Staff (Station/Yard) of Commercial and operating Department and all Group 'D' staff of the Commercial Department who have rendered minimum three(3) years of regular service and one(1) years regular service for SC/ST on the date of notification which was issued in cancellation of the earlier Notification dated 27.01.2016.

It is an admitted fact that on 27.01.2016 the applicants were working in the posts of Pointsman (Group 'D' Post) in the Operating Department. It is submitted by the Id. counsel for the applicants that the applicants being Pointsmen (Group 'D' category) were eligible to apply for consideration of their candidature for the aforesaid selection for 33.1/3% quota, but since the earlier notification dated 27.01.2016 was cancelled by the respondent authorities subsequently, the applicants were debarred from appearing in the said examination.

It is submitted by the Id. counsel for the applicants that the vacancies arose in 2016 for promotion to the post of TE/ECCA were included in the notification dated 20.04.2017(Annexure A/3). The applicants made representation before



the Divisional Authority praying for allowing them to appear in the selection test for promotion to the post of TE/ECCA.

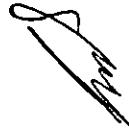
Ld. counsel for the applicant has drawn my attention to the internal communication dated 19.07.2017(Annexure A/4) sent by the Assistant Personnel Officer-II(for Divisional Railway Manager(P), S.E. Railway, Kharagpur) to the Senior Divisional Operation Manager, S.E. Railway, Kharagpur wherein it has been mentioned that the case of the applicants was referred to the Head Quarter of ADRM/Kharagpur. The views of the head quarter were as follows:

"Since Zonal Railways have competency to frame rules etc. in respect of Railway Servants in Group 'C' and 'D' under their control this Railway has prepared on AVC in this regard under E.S. No.78/98. This is being followed in all our Divisions since 1998.

As such from the above views of Hd. Quarter it is clear that division has processed the above selections strictly in accordance with the guidelines contained in Estt. Srl. No.78/98 and under any circumstances Pointsman-A in level-2 of 7th CPC Pay Matrix(GP Rs.1900) are not eligible to apply for promotion to the post Jr. Comml. Clerk and TE/ECCA."

It is submitted by the ld. counsel for the applicant that the Office Order dated 20.04.2017 cannot be sustained in view of the office order dated 05.02.2018 issued by the Principal Chief Personnel Officer, South Eastern Railway which provides that for TE 162/3 33-1/3% - TE is the entry grade in Level (3), hence Staff of Operating Department and Commercial Department in Level (1) and Level(2) including Pointsmen may be permitted to appear.

Ld. Counsel for the applicants submitted that from the Notification dated 12.04.2016 and 20.04.2016 it is evident that Pointsman of A Level 1 and Level 2 were not allowed to appear in the selection test for promotion to the post of TE-ECC in the Grade Pay of Rs.1900/-. It is further submitted that the office Orders dated 20.04.2017 cannot be acted upon since Pointsman level 1 were not



considered for promotion to the post of Commercial Clerk and Ticket Examiner. The authorities of Chakradharpur Division, South Eastern Railway by letter dated 09.11.2017 adduced to the Chief Personnel Officer sought clarification to the effect that whether the Pointsman can be permitted to appear in the selection test for promotion to Group 'C' against 33.1/3% promotion quota of Commercial and Operating Department and to the post of TE and Commercial Clerk. It was clarified by the Principal Chief Personnel Officer that Pointsman both Level I and Level II may be permitted to appear in the selection test. Therefore, taking into account the office order dated 05.02.2018 it can be said that the Kharagpur Division of South Eastern Railway issued defective notification and on that ground the notification dated 20.04.2017(Annexure A/3) should be quashed.

According to the Id. counsel for the applicant, the notification dated 27.01.2016 was issued by the respondent authorities inviting applications from erstwhile Group-D Staff (station 1 year) of Commercial Department and all Group D of Commercial Department in level of 7th CPC and although the applicants were drawing Grade Pay of Rs.1800/-, they were not permitted to apply. It is further submitted that the notification was not also issued as per rules; therefore, the said notification was subsequently cancelled and new notification was issued on 20.04.2017 when the applicants were promoted as Pointsman Grade A. According to the Id. counsel for the applicants, when the said notification dated 27.1.2016 was cancelled and modified notification was issued, the applicants ought to have been allowed to apply for promotion to the post of Commercial Clerk and as per rules the applicants were eligible for promotion to the post of Ticket Examiner and ECCA as on the date of notification dated 27.01.2016. It is submitted by the Id. counsel that the vacancies arose in 2016 and those vacancies were included in the



notification of 2017. It is also submitted by the ld. counsel for the applicants that the applicants made representation on 11.01.2017 before the General Manager, South Eastern Railway, Garden Reach, Kolkata praying for providing them chance to appear in the selection test for promotion to the post of Junior CC and TE - ECCA (Annexure A/5).

ld. Counsel for the applicant submitted that the respondents did not consider the prayer of the applicants despite several requests and they have not received any reply to the representation dated 11.01.2017 (Annexure A/5) from the respondent authorities.

Finding no other alternative the applicants have approached this Tribunal seeking the aforesaid reliefs.

6. ld. Counsel Mr. A . Chakraborty submitted that the applicants would be satisfied for the present if a direction is issued to the respondent No.1, i.e. General Manager, South Eastern Railway, 11, Garden Reach, Kolkata to consider and dispose of the representation of the applicants dated 11.01.2017 (Annexure A/5) by passing a reasoned and speaking order as per rules and regulations governing the field.

7. Though no notice has been issued to the respondents, I am of the view that it would not be prejudicial to either of the parties if a direction is issued to the respondent authorities to consider and dispose of the representation of the applicants dated 11.01.2017 (Annexure A/5) as per rules within a specific time frame.

8. Accordingly the Respondent No.1 i.e. the . General Manager, South Eastern Railway, 11, Garden Reach, Kolkata is directed to consider the representation of



the applicants dated 11.01.2017 (Annexure A/5) as per rules and regulations in force and pass a reasoned and speaking order within a period of one month from the date of receipt of this order. The respondents are further directed not to give any effect to the impugned order dated 20.04.2017(Annexure A/3) till disposal of the representation of the applicants, if selection has not been finalised in the meantime.

9. It is made clear that we have not gone into the merits of the matter. All the points raised in the representation are kept open for consideration by the respondents authorities as per rules and regulations governing the field.

10. The O. A. is disposed of accordingly. No order as to cost.

(Manjula Das)
Judicial Member

sb