

**Central Administrative Tribunal
Ernakulam Bench**

OA/180/00536/2016

Wednesday, this the 23rd day of January, 2019.

CORAM

Hon'ble Mr.E.K.Bharat Bhushan, Administrative Member

John Britto, aged 30 years

S/o J.Raja

Track Maintainer, SSE/Kottayam

Trivandrum Division, Southern Railway.

Residing at Railway Qrs No.128-A

Near Stadium Road, Kollam-691 001.

Applicant

[Advocate: Mr.Martin for M/s Varkey & Martin]

versus

1. Union of India represented by
the General Manager, Southern Railway
Headquarters Office, Chennai-600 003.

2. The Senior Divisional Personnel Officer
Southern Railway, Trivandrum Division
Trivandrum-14.

3. The Additional Divisional Railway Manager
Southern Railway, Trivandrum Division
Trivandrum-14.

Respondents

[Advocate: Ms. Girija K.Gopal]

The OA having been heard on 16th January, 2019, this Tribunal delivered the following order on 23.01.2019:

O R D E R

This OA is filed by Sri John Britto against order at Annexure A4 dated 19.4.2016 to the extent it appoints the applicant in Civil Engineering Department overlooking his request for appointment in Traffic or Commercial Department. The reliefs sought in the OA are as follows:

i) Declare that the applicant is eligible to be considered for appointment to a post in the Traffic Department and to direct the respondents accordingly.

ii) On the basis of the above direction, call for the records leading to the issuance of Annexure A4 and quash the same to the extent it appoints the applicant in Civil Engineering Department overlooking his eligibility to be considered for appointment in Traffic or Commercial Department.

In the alternative

Direct the respondents to consider the applicant after subjecting him to a suitability test, for a post commensurate with his qualification and eligibility.

2. The applicant is a beneficiary of the Compassionate Appointment Scheme under which he was offered a posting due to the medical de-categorization of his father who was a Parcel Porter and who had voluntarily retired. The applicant had to approach this Tribunal for relief in order to gain substitute posting and once the applicant's father's voluntary retirement was accepted with effect from 5.3.2016, the applicant was considered for appointment as SCP/TP in the Traffic Department, the department from which his father had retired. He also obtained 'AYE TWO' medical rating as per Medical Memo, copy of which is at Annexure A3. The applicant is aggrieved by the authorities ignoring his wish to be posted as SCP/TP and for posting him as Track Maintainer under the Civil Engineering Department. The applicant represented to the 3rd respondent for a change of category from Track Maintainer, finding the task entrusted to him in that Division not to his liking. In the meanwhile, he had also passed plus 2 examination and was undergoing degree course conducted by the Madurai Kamaraj University. It may also be mentioned that the applicant had represented the State of Pondicherry in the Santhosh Trophy National Football Tournament (Annexure A6).

3. The applicant, having plus 2 qualification, was eligible to be considered for appointment in the lower Group-C grade after his eligibility and suitability had been evaluated in an examination. The category change had been allowed in respect of one M.T. Saji who was appointed as Trackman on 15.11.2001 and who was appointed as Trainee Commercial Clerk in PB-1 after successfully negotiating the test (Annexure A7). Thus his grievances are two fold. Firstly, he has not been appointed to the Traffic Department where his father had been working before retirement and secondly the respondents had failed to subject him to a suitability test so that he could seek a post commensurate with his qualification.

4. The contentions of the applicant have been disputed in the reply statement filed by the respondents. As per Railway Board's letter No.E(NG)II/95/RC-1/94 dated 4.6.2006 (RBE Mo.78/2006), appointments of ward/spouse under compassionate ground of partially medically de-categorized employees are to be considered only in eligible Group-D category subject to availability of vacancies (Annexure R1). Since vacancies were available in the Engineering Department at the relevant time, the applicant was considered and posted as Trackman in the Engineering Department. He had joined the post of Track Maintainer without any demur. As per Railway Board's order dated 24.11.1992 (Annexure R2), no change of category is subsequently permissible on the same compassionate ground. Thus the applicant's prayer that he should be considered in Traffic or Commercial Department is untenable.

5. Respondents called to their assistance the orders of Hon'ble Supreme Court in *State of Rajasthan vs. Umrao Singh*, 1994 (28) ATC 513, which lays down that "*compassionate ground appointment once given and accepted, the*

right for such appointment cannot be revived. No second consideration for higher post can be entertained". Further, in *State of Bihar vs. Samzus Soha*, 1996 (4) SLR 235; 1996 SCC (L&S) 1048, it has been observed: "*no vested right for a candidate to be appointed on compassionate ground in a particular post of his choice and as such a direction cannot be given by court*".

6. The applicant had a right for a post on compassionate ground when his father voluntarily retired. His right, affirmed by this Tribunal, was duly placed before the authorities who in turn complied with his request. As entry level permitted for compassionate ground posting, he was appointed to Group-D cadre. He appears to have developed a dislike to the Trackman job which he was to execute in Civil Engineering Department and wants to migrate to Traffic or Commercial Department. I do not see that this request is maintainable especially in the light of Annexure R2 orders of the Railway Board. He has no sustainable claim to any such post on the ground that his father had once worked in the Traffic Department. The OA lacks merit and is liable to be dismissed. Accordingly the OA is dismissed.

(E.K.Bharat Bhushan)
Administrative Member

aa.

Annexures filed by the applicant:

Annexure A1: Copy of order dated 27.10.2014 in OA No.688 of 2013 of this Tribunal.

Annexure A2: Copy of the order of this Tribunal in RA no.180/00036/2014 dated 11.12.2014.

Annexure A3: Copy of the medical memo dated 22.2.2016 issued by the 2nd respondent.

Annexure A4: Copy of the office order bearing No.58/2016/WP dated 19.4.2016.

Annexure A5: Copy of the representation dated 29.4.2016 submitted by the applicant to the third respondent.

Annexure A6: Copy of the certificate issued from the All India Football Federation.

Annexure A7: Copy of the office order No.37/2012/CC dated 27.9.2012.

Annexures filed by the respondents:

Annexure R1: Copy of Railway Board's letter No.E(NG)II/95/RC-1/94 dated 4.6.2006 (RBE No.78/2006).

Annexure R2: Copy of Railway Board's letter No..E(NG)II/92/RC-1/117 dated 24.11.1992 (RBE No.199/1992).