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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00719/2015

Wednesday, this the 6th day of February, 2019

CORAM:

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ...ADMINISTRATIVE MEMBER
HON'BLE MR.ASHISH KALIA, ...JUDICIAL MEMBER**

Smt.Nayana Dev. A.,
W/o Shaji,
Junior Clerk (S&T), TVC,
Southern Railway,
Trivandrum.
Residing at 'NAYANA', Nalanda Nagar-185,
Ayathil P.O.Kollam-691 021.

...Applicant

(By Advocate Ms.Shameena Salahudheen)

V e r s u s

1. The Union of India,
Represented by the General Manager,
Southern Railway,
Chennai – 600 003
2. The Divisional Railway Manager,
Southern Railway,
Trivandrum Division,
Trivandrum – 14.
3. The Divisional Personnel Officer,
Divisional Office,
Southern Railway,
Trivandrum Division,
Trivandrum – 14.
4. Sri Saji George Thomas,
Junior Clerk,
Office of the Sr.Engineer/Signals,
Southern Railway,

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Kottayam – 686 631.

5. Sri Shibu Raj,
Junior Clerk,
Chief Medical Office,
Southern Railway,
Thiruvananthapuram-14.

6. Sri. M.Karthikeyan,
Junior Clerk,
Office of the Sr.DSTE,
Southern Railway,
Thiruvananthapuram-695 014.

...Respondents

(By Learned Counsel Smt.K.Girija for Respondents-1to3)

This application having been heard on 1st February, 2019, the Tribunal on 6th February, 2019 delivered the following :

ORDER

HON'BLE Mr.E.K.BHARAT BHUSHAN, ...ADMINISTRATIVE MEMBER

OA No.719/2015 is filed by Smt.Nayana Dev, Junior Clerk (S&T) Trivandrum Division, Southern Railway. The reliefs sought in the OA are as follows:

- I) To declare that the Applicant is entitled to be appointed as Senior Clerk in the S&T Department with effect from 16.11.2011 and grant all consequential benefits attached to the said post with interest.
- II) To quash Annexure A1 to extend it places and applicant as Junior to the 4th respondent.
- III) To declare that the Applicant is Senior in the cadre of Clerks in the Scale 5200-20200 1900 GP and entitled for promotion in the next arising vacancy.
- IV) Direct the respondents not to place respondents 4 to 6 above the applicant in the Seniority list.
- V) Such other reliefs as may be prayed for and this Tribunal may deem fit to grant.

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VI) Grant the cost of this Original Application.

2. The applicant is the daughter of one, Sri Vasudevan who had passed away while in service as Station Master under the Respondent organisation. The applicant's mother Smt.G.Ambili was first appointed on compassionate ground as Commercial Clerk under the Compassionate Appointment Scheme. However, she breathed her last on 13.02.2008. In consequence the respondents agreed to give an appointment on compassionate grounds to the applicant. The applicant was a graduate and she was called for suitability test for appointment to Group C category and was found successful in the test. A copy of the communication dated 07.07.2009 to this effect is produced and marked as Annexure A2. The 3rd respondent thereupon issued another communication, Annexure A3, proposing to appoint her as Assistant Station Master, subject to her passing the psychological test. However, as she could not clear the said test, she could not be appointed to the post of ASM. Since she had already qualified for other posts in Group C category, she made a representation to be appointed as Senior Clerk. But the same was rejected by the 1st respondent stating that there was no vacancy of Senior Clerk under Trivandrum Division and she could be considered for appointment as ECRC as and when a vacancy arose (Annexure A4).

3. Being seized of the contents of Annexure A4, the then Divisional Railway Manager issued a communication dated 15.03.2011 addressed to the 1st

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respondent suggesting that the applicant could be appointed as Senior Clerk in the Division against direct recruitment quota in view of the fact that she had lost both her parents and there had been no resolution in her case even after three years (Annexure A5). Ignoring the said communication the applicant was appointed as Junior Clerk in the Pay Band of Rs.5200-20200 with Grade Pay of 1900 against Direct Recruitment quota, by down grading the higher grade vacancy of Senior Clerk. The appointment order dated 16.11.2011 is produced and marked as Annexure A6. Being faced with extremely penurious conditions, the applicant was compelled to accept the same. She made a representation to the respondents, a copy of which is produced as Annexure A7, requesting that she may be considered for appointment as Senior Clerk.

4. When the situation continued as above, she was shocked to learn that as per provisional seniority list of Ministerial staff in S&T Department, Annexure A1 issued by the 3rd respondent, the 4th respondent, who is a medically decategorised RPF personnel, had been given an alternate appointment as Junior Clerk and had been placed above her in the seniority list. As per promotion policy the applicant would be eligible for the next arising vacancy of Senior Clerk after three years of service as Junior Clerk. Thus after completing three years by 2014, the applicant had become eligible for consideration for promotion as Senior Clerk but has been thwarted by the introduction of 4th respondent above her in the seniority list. The applicant made a detailed representation dated 03.09.2015, a copy of which is at Annexure A8, but to no

avail.

5. As grounds, the applicant submits that she has been wronged on two counts; firstly, she ought to have been considered for appointment as Senior Clerk. There was a vacancy of Senior Clerk under Direct Recruitment quota as is made out from the communication of the Divisional Railway Manager addressed to the 1st respondent. But that post was arbitrarily down graded to that of Junior Clerk and then granted to the applicant. Secondly after having unsuccessfully represented her case before the authorities, the applicant had been continuing as Junior Clerk under protest. But to her astonishment as she completed her necessary eligibility period for being considered for promotion as Senior Clerk, the 4th respondent who had been given an alternative posting under the Disabilities Act, took his place above her in the seniority list, thus thwarting her rightful claim for promotion. As per the Disabilities Act, persons are required to be given adequate protection but this does not extend to being protected and promoted at the cost of other employees who are already in the cadre.

6. The respondents-1to3 have filed a detailed reply statement. At the outset, it is argued by the respondents that the applicant had not exhausted all remedies available to her. The seniority list (Annexure A1) referred to was only a draft one seeking representations in the event anyone had grievances about the same. Thus Annexure A1 which is dated 17.08.2015 had given time

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of one month to file any representation an employee might have against the same. But the applicant without resorting to this, has rushed to the Tribunal by filing the instant OA on 10.09.2015. Thereby the present OA is premature and is hit by Section 20(1) of the Administrative Tribunal Act, 1985. Secondly the applicant had joined the post of Junior Clerk on 16.11.2011 fully acquiescing in the appointment granted to her. Thus in view of accepting the appointment order, she is estopped from making a prayer against the same, that too after four years. Further the OA is hit by the fact that the applicant is seeking multiple reliefs through the same OA; on one hand she wants to be granted a posting as Senior Clerk from the time she was posted as Junior Clerk. Secondly, she wants to be given a position senior to Respondent-4 in the seniority list. This is not permissible.

7. In so far as the merits of the applicant's contentions are concerned it is stated that maximum leniency and compassion had been shown to the applicant by readily granting her appointment under the compassionate appointment scheme after the original beneficiary under the scheme, her mother had expired. She had failed to qualify for the post of ASM that she had applied for and could be adjusted only in a Group D category as Junior Clerk. The fact that the senior Clerk's post was down graded was because of administrative reasons owing to computerisation and other rationalisation of work. The higher post thus came to be abolished.

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8. In so far as the eligibility of Respondents -4 to 6 being medically decategorised staff, for alternate appointment as Clerks in the Signal and Telecommunications Department is concerned the respondents quotes paragraph 313 of IREM Vol.I:

“The medically decategorised staff absorbed in alternative posts, whether in the same or other cadre, should be allowed seniority in the grade of absorption with reference to the length of service rendered in the equivalent or corresponding grade, irrespective of the rate of pay fixed in the grade of absorption under the extant rules. In the case of staff who are in grade higher than the grade of absorption at the time of medical decategorisation, total service in the equivalent and higher grade is to be taken into account”.

One of these respondents, that is No.4, was allotted a position senior to the applicant, owing to the fact that his original seniority entitled him to such a fixation. Annexure A9 rules referred to by the applicant only mandates that other staff in service are not adversely affected. As can be seen there has been no reversion of either the applicant or anyone else on account of absorbing Respondents-4 to 6.

9. The applicant has filed rejoinder wherein she has reiterated her earlier contentions. Smt.Shameena Salahudeen, learned Counsel was heard on behalf of the applicant and Smt.K.Girija, learned Standing Counsel for the Railways, on behalf of the respondents. The applicant's case as made out in the OA and in the arguments advanced by the learned Counsel Smt.Sameena Salahudeen, is to the effect that she was entitled for a higher category in 2011 itself when she

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was posted a Junior Clerk. In support of her contention she has produced a copy of communication from the then DRM addressed to Respondent-1 stating that she may be accommodated as Senior Clerk in an existing vacancy. However, the higher authorities who sanctioned her posting as a Junior Clerk were fully within their rights in deciding that there is no reason to fill the post of Senior Clerk and instead it would be appropriate if a position of Junior Clerk is offered to the applicant. The respondents cannot be faulted on this score. There is also substance in the argument raised by the learned Standing Counsel for the Railways that, once having acquiesced in the appointment the applicant cannot, four years later, turn around and challenge the same. The maintainability of the OA has also been questioned in the reply statement submitting that the applicant had not taken advantage of statutory remedies available and had rushed to the Tribunal prematurely. We find some substance in this contention also. Annexure A1 is clearly a draft seniority list dated 17.08.2015 and a period of one month had been granted to the concerned employees to file any objections that they may choose to do. The applicant submits that a representation had been filed by her. A copy of which is at Annexure A8. However, she did not wait for any response to the same and filed the OA well within the 30 days instituted by the respondents.

10. During arguments the learned Counsel for applicant Smt. Shamma Salahudeen submitted that the applicant's challenge now is only about the employee impleaded as Respondent No.4 from being accommodated above

her in the seniority list. We have examined this issue as well. It is seen that the The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, clearly mandates that an alternative appointment is justified and the respondent Railways by the provision in IREM Vol.I already quoted, has accepted the same in the matter of according seniority to such employees who are accommodated in alternate appointment. A perusal of the draft seniority list at Annexure A1/2 shows Respondent No.4 as having joined as a Technician III on 19.03.2007 whereas the applicant had joined the respondent organisation only on 16.11.2011. The former was accommodated as Junior Clerk only on 11.01.2012 but this in no way extinguishes his earlier service. Smt.K.Girija also called to her assistance a judgment of this Tribunal in OA No.776/2012 dated 26.02.2015 in a similar case wherein the Tribunal had ordered as follows:

11. Under Section 10 of the Indian Railway Act, 1890 Members of the Railway Protection Force are deemed to be Railway servants. Therefore, we are of the view that the decision of the respondent Railway to give alternative employment to a medically decategorized Head Constable (Respondent No.11) is perfectly in tune with the aforequoted IREMs read with Section 47 of the PWD Act, 1995.

12. In the light of the above legal provisions, we are of the view that no legal rights of the applicants have been violated in the light of Annexure A-1 decision to give alternative posting to Party Respondent Nos.5 to 11 in the Ticket Checking Cadre of the Southern Railway in the Palakkad Division. Annexure R-3 order of the Railway states that such alternative posts should be given in the same Division/Unit for absorption.

11. On a consideration of all issues, we come to the conclusion that the OA is

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totally devoid of merit and is liable to be dismissed. We accordingly dismiss the same. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures in O.A. No.180/00719/2015

1. **Annexure A1** – True copy of the Provisional Seniority List of Ministerial staff in S&T Department dated 17.8.2015 under letter No.V/P 612/IX/Vol.II.
 2. **Annexure A2** – True copy of the letter No.V/Z.735/Gr.C/2009/2 dated 7.7.2009 issued by the third respondent.
 3. **Annexure A3** – True copy of the letter No.V/P.563/II/RT/ASM/Vol-VII dated 24.09.2010.
 4. **Annexure A4**– True copy of the letter No.V/Z 735/29/2008 dated 24.02.2011 issued by the third respondent.
 5. **Annexure A5** – True copy of the letter of the 2nd respondent dated 15.3.2011, O.O.No.V/Z 735/29/2008.
 6. **Annexure A6** – True copy of the Office Order No.O.O.72/2011/S&T dated 16.11.2011 issued by the Assistant Personnel Officer.
 7. **Annexure A7** – True copy of the representation dated 03.11.2013 submitted by the applicant.
 8. **Annexure A8** – True copy of the representation dated 03.09.2015 submitted by the applicant.
 9. **Annexure A9** – True copy of the Railway Board Order RBE No.112/2003 dated 30.06.2003.
 10. **Annexure A10**- True copy of the RBE No.61/2015 dated 12.06.2015.
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