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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

ORIGINAL APPLICATION NO. 180/00033 of 2017

Tuesday, this the 19th day of November, 2019

CORAM

**Hon'ble Mr. E.K.Bharat Bhushan, Administrative Member
Hon'ble Mr.Ashish Kalia, Judicial Member**

Mahesh M.,
Aged 33 years,
S/o S.Mohanan,
Working as Point Man-1,
SS/O/MTNC, and residing at
20B Railway Quarters,
Willington Island road,
Kochi – 682 029.

....Applicant

(By Advocate Mr. Aginov Mathappan)

Versus

1. The Divisional Railway Manager,
Railway Divisional Office,
Thiruvananthapuram,
Divisional Southern Railway,
Thycadu,
Thiruvananthapuram-695 014.
2. The Sr. Divisional Personnel Officer,
Railway Divisional Office,
Thiruvananthapuram,
Division Southern Railway,
Thycadu,
Thiruvananthapuram – 695 014.

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3. The Union of India,
represented by the Secretary
Department of Railway,
New Delhi – 110 011.

..... Respondents

(By Advocate, Shri Sunil Jacob Jose for Respondents)

This application having been heard on 15th November, 2019, the
Tribunal on 19th November, 2019 delivered the following :

ORDER

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

OA No.33/2017 is filed by Shri Mahesh, Points Man-1, Southern
Railway, aggrieved by non-consideration for selection for promotion to the
post of Ticket Examiner. The reliefs sought in the OA are as follows:

i) To declare that the applicant is entitled for being considered for
promotion to the post of Ticket Examiner and to direct the respondent to
the post of Ticket Examiner and to direct the respondent to consider the
applicant for promotion to the post of Ticket Examiner in accordance with
his merit in the Departmental Promotion examination.

and

ii) Grant such other and further reliefs as this Hon'ble Tribunal may find
just and proper.

2. The applicant is working as Points Man-1 in the pay of Rs.5200-20200
with Grade Pay of Rs.1900. The applicant was appointed on compassionate
ground in October, 2010 as Traffic Porter/Sweeper cum Porter, a Group D
post, in the pay band Rs.5200-Rs.20200 + Grade Pay Rs.1800. The
respondents called for Departmental examination for Group D staff in 2013

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for selection for promotion to Group C post of Ticket Examiner. But the examination scheduled was not conducted and thus the applicant was denied the opportunity to appear in the examination and also was not intimated the reason for cancelling the examination. In the meanwhile the applicant got promotion from Group D to Group C on seniority basis. On 11.02.2015, a notification was issued for selection to the post of Ticket Examiner to the 33 1/3% as well as 16 2/3% departmental promotion quota. 33 1/3% promotion quota is for employees who have put in 3 years of service. 16 2/3% is for employees who have put in 2 years of service with Grade Pay Rs.1800/- Since the applicant was promoted as Points man in the Grade Pay of Rs.1900/-, he has been denied permission to write the examination notified. Thereafter, the applicant approached this Tribunal in OA NO.245/2015 seeking a direction to consider his application to appear for the examination for promotion to the post in Group C. The Tribunal granted interim order on 10.4.2015 permitting him to write the exam held on 18.06.2016 (Annexure A1). The OA was disposed of on 15.07.2016 with liberty to the applicants therein to approach the appropriate forum, if any grievance persists relating to the matter (Annexure A2).

3. The applicant submits that though he appeared in the departmental examination pursuant to Annexure A1 interim order, the results were not published by the Department. Therefore, he obtained the information that

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he secured 55 marks in the examination through the RTI route (Annexure A3). He further submits that 11 employees had been selected for 30 vacancies to the post of Ticket Examiner in the pay matrix level 3 and the first panel training had commenced on 01.11.2016. There are still 19 vacancies to be filled and though the applicant passed in the examination securing 55 marks, was not considered in the panel published.

4. Owing to 7th Pay Commission revising the Grade Pay of Ticket Examiner from Rs.1900 to Rs.2000, the applicant has become eligible for the post he claims. As grounds, the applicant reiterates the contentions raised in the OA and submits that owing to the delay on the part of the department, the applicant had to accept the seniority promotion to a post with a lower grade pay. The action of respondents in refusing to grant promotion is unjust, illegal, discriminatory and violative of Articles 14 and 16 of the Constitution of India.

5. The respondents have filed their reply statement admitting the facts on record and denying the averments made by the applicant. They submit that the OA has to be dismissed on the ground of non-joinder of necessary parties. The respondents aver that the promotion is not a condition of service and is a potential possibility, which cannot be claimed as a matter of right. They call to their assistance the judgment of **Hon'ble Supreme Court in UOI vs S.C.Dutta, 1991 (AIR) SC 363** that the reduction in chances

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of promotion is a changing policy and not a change in condition of service. They submit that conducting of examination for a particular selection is within the domain of the administration and dependent on exigencies of service of the administration. Initiation of application procedures for conducting examination does not act as a promissory estoppel and give any right to demand selection and appointment.

6. It is submitted that the selection was intended for the Group D employees with Grade Pay of Rs.1800 to the post of Ticket Examiner, a Group C post with Grade Pay of Rs.1900/-. The applicant at the relevant point of time was working as Pointsman-I, a Group C post with Grade Pay of 1900/- and hence was not eligible to be called for selection. He was allowed to appear for the examination on the intervention of this Tribunal in OA No.245/2015. The revision of Grade Pay of Ticket Examiner to Rs.2000/- by 7th Pay Commission cuts no ice, since Pointsman-I and Ticket Examiner are Group C posts and the selection for Ticket Examiner was called for from eligible Group D cadre with Grade Pay of Rs.1800/-.

8. The respondents submit that this case is squarely covered by the order of this Tribunal in OA No.1001/2016 wherein it was held that:

“..... Since the applicant was admittedly promoted to Group C with a Grade Pay of Rs.1900/- and since the eligibility criteria makes it abundantly clear that the said examination or test was intended to employees drawing a Grade Pay of Rs.1800/- only, so long as Annexure A3 notification dated 11.02.2015 remains valid/unchallenged, the applicant

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cannot contend that he should be held eligible for promotion against 33 1/3% promotion quota as Ticket Examiner. Though the post may be different, the applicant was already granted promotion to Group C with Grade Pay Rs.1900/-. That is exactly the pay applicable to the Ticket Examiner for which Annexure A3 dated 11.02.2015 was issued.

24. For the reasons already stated, we have no hesitation to hold that the claim made by the applicant in this case is clearly barred by the principle of constructive res judicata and also on other grounds delineated earlier. In the result this Original Application is dismissed. No costs."

9. Heard Shri Aginov Mathappan, learned Counsel for the applicant and Shri Rajesh on behalf of Shri Sunil Jacob Jose, learned Counsel for the respondents. All pleadings and documents were examined. Admittedly, the examination for selection to the post of Ticket Examiner, Group C was intended from the employees belonging to Group D post with Grade Pay of Rs.1800/- only. Therefore, the applicant is not eligible for promotion to post of Ticket Examiner, as the post held by him namely Points Man-1 is a Group C post. Also this OA is squarely covered by OA No.1001/2016 and for the above reasons, the OA is dismissed. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures in O.A. No.180/00033/2017

- 1.** Annexure A1 - True copy of the interim order of the Hon'ble Tribunal in OA No.180/000245/2015 dated 10.04.2015.
 - 2.** Annexure A2 - True copy of order of the Hon'ble Tribunal in OA No.180/000245/2015 dated 15.07.2016.
 - 3.** Annexure A3 - True copy of reply given under the Right to Information Act dated 05.12.2016.
 - 4.** Annexure A4 - True copy of the vacancy list issued by Southern Railway dated 11.02.2015.
 - 5.** Annexure A5 - True copy of the selection and promotion panel list issued by Southern Railway dated 01.09.2016.
 - 6.** Annexure A6 - True copy of the list of relieving employee dated 25.10.2016.
 - 7.** Annexure A7 - True copy of the consideration letter given by the applicant to the Sr.Divisional Personnel Officer on 19/12/2016.
 - 8.** Annexure A8 - True copy of the order of this Hon'ble Tribunal dated 09.04.2019 in Original Application No.180/00778/2017.
 - 9.** Annexure A9 - True copy of the Selection list for Training of Pro.TE vide Memorandum No.V/P.531/III/TE/Vol.XII dated 27.09.2019 passed by the Assistant Personnel Officer on behalf of the Divisional Personnel Officer, Southern Railway, Personnel Branch, Thiruvananthapuram.
 - 10.** Annexure A10 - True copy of the Letter No.V/P.531/III/TE/Vol.XII(Pt.1) dated 01.10.2019 issued by the Assistant Personnel Officer on behalf of the Divisional Personnel Officer, Southern Railway, Personnel Branch, Thiruvananthapuram, re-scheduling the Training of Pro.TE.
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