

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 23RD DAY OF SEPTEMBER 2015/1ST ASWINA, 1937

OP (CAT).No. 3775 of 2013 (Z)

AGAINST THE ORDER IN OA 977/2011 of CENTRAL ADMINISTRATIVE
TRIBUNAL,ERNAKULAM BENCH DATED 04.09.2013

PETITIONER:

P.K.PREETHY, AGED 35 YEARS,
W/O.NARAYANANKUTTY
SR.TRACK WOMAN/OFFICE OF THE SENIOR SECTION ENGINEER
PERMANENT WAY/SOUTHERN RAILWAY, THRISSUR
RESIDING AT HOUSE NO.35, SANTHA NAGAR, AYYANTHOLE P.O.
THRISSUR - 680 003.

BY ADVS.SRI.T.C.GOVINDA SWAMY
SMT.KALA T.G.
SMT.T.N.SREEKALA

RESPONDENTS:

1. DIVISIONAL RAILWAY MANAGER, SOUTHERN RAILWAY
TRIVANDRUM - 695 014.

2. DIVISIONAL PERSONNEL OFFICER,
RAILWAY DIVISIONAL OFFICE
THIRUVANANTHAPURAM - 695 014.

3. M.S.SYAM MOHAN,
TC 1054, ATTUKAL, MANAKKAD
THIRUVANANTHAPURAM - 695 009.

R1 & R2 BY ADV. SRI.C.S.DIAS,SC, RAILWAYS
R3 BY ADV. SRI.SAJU.S.A

THIS OP (CAT) HAVING BEEN FINALLY HEARD ON 16-09-2015, THE
COURT ON 23.09.2015 DELIVERED THE FOLLOWING:

OP (CAT).No. 3775 of 2013 (Z)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: TRUE COPY OF THE ORDER IN O.A 977/2011 DATED 04/09/2013
RENDERED BY THE HON'BLE CAT, ERNAKULAM BENCH.

EXT.P2: TRUE COPY OF THE O.A NO.977/2011 DATED 17TH AUGUST, 2011
PRESENTED BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE
TRIBUNAL, ERNAKULAM BENCH

EXT.P3: TRUE COPY OF THE REPLY STATEMENT DATED 31ST JANUARY
2012 FILED BY THE OFFICIAL RESPONDENTS IN OA NO.977/2011 FILED BY
THE RESPONDENTS.

EXT.P4: TRUE COPY OF THE REJOINDER FILED BY THE APPLICANT
DATED 23RD SEPTEMBER, 2012 IN OA NO.977/2011.

EXT.P5: TRUE COPY OF THE REPLY STATEMENT DATED 1ST JANUARY
2012 FILED BY THE 3RD RESPONDENT.

EXT.P6: TRUE COPY OF THE MISCELLANEOUS APPLICATION FILED BY
THE APPLICANT DATED 25/7/2013.

EXT.P7: TRUE COPY OF THE RAILWAY BOARD ORDER BEARING NO.E(NG)
I-2008/PM 7/4 SLP DATED 19/6/2009.

RESPONDENTS' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

smv

**K. SURENDRA MOHAN
&
SHAJI P. CHALY, JJ.**

O.P.(CAT). No.3775 of 2013

Dated this the 23rd day of September, 2015

JUDGMENT

Shaji P. Chaly, J.

This Original Petition is filed by the petitioner against the order of the Central Administrative Tribunal, Ernakulam Bench in O.A No.977 of 2011 dated 4.9.2013, by which order the learned Tribunal has dismissed the application filed by the petitioner challenging Annexure A9 order dated 22.7.2011 bearing No.V/P.535/1/Office Clerk, promoting respondent No.3 from Group D to Group C as Office Clerk, allegedly overlooking the seniority of the petitioner.

2. Brief facts required for the disposal of the case are as follows:

3. Petitioner was working as a Track Woman with the respondents 1 and 2 and in response to call letter dated 16.05.2007 inviting candidates to appear for a written test for promotion from Group 'D' to Group 'C', petitioner applied for the same and scored highest marks in the test conducted by

respondent No.2. Annexure – A1 call letter proposed to conduct a selection for promotion from Group 'D' to Group 'C' as Office Clerk in the scale of Rs.3020-4590 against 33-1/3% quota earmarked for promotion from Group 'D' to Group 'C' in Engineering Department. The selection was on the basis of written test and Record of Service of 85% marks and 15% marks respectively. The applicants who were willing to appear for the selection on the above conditions were directed to submit their applications in the prescribed proforma through the respective supervisory officials. The petitioner herein secured highest marks in the written test and was expecting to be the top most rank holder for promotion and posting, but respondent No.2 finalised the select list on the basis of seniority.

4. The petitioner contended that the matter of seniority was an addition which was never brought to the notice of the candidates and therefore, according to the petitioner selection was illegal and unconstitutional. Therefore, rank No.12 was given the promotion and petitioner who was rank No.9 was sidelined and Annexure A2 order was issued. Even though representation was made against the action of respondents, it

was replied that, as per Rules, all those qualified in the written test, a qualifying percentage of marks should be arranged in the order of seniority for promotion. It was further stated that even though petitioner has secured highest mark in the written test, she was not senior enough to be considered for promotion against 33-1/3% quota reserved for promotion from Group 'D' to Group 'C' quota and further that one Sri.S.C. Mohanan, Senior Track Man was senior most among the employees who have passed in the written test has been placed in the panel.

5. Anyhow, same was not pursued by the petitioner thereafter, petitioner in response to Annexure A5 call letter dated 16.10.2010 seeking applications for promotion from Group 'D' to Group 'C' applied for the test. Petitioner has secured 61% marks in the written test as against the requirement of 50%. Even though the petitioner was senior, 3rd respondent herein was promoted and given posting instead of the applicant as per Annexure A9 order dated 22.7.2011. It was thus aggrieved, petitioner has preferred the Original Application before the CAT.

6. Learned Tribunal after analyzing the fact situation accepted the contention of respondents and held that the

examination conducted on 27.10.2007 and 26.02.2011 were in accordance with different set of rules. It was further held that in the former selection process, all those who qualified in the written and oral tests by securing the qualifying percentage of marks or more were arranged in the order of seniority and the senior most was selected against the only vacancy in the UR category. But in the latter case, the selection was on the basis of merit alone and respondent No.3 who was most meritorious candidate was selected for appointment against the only vacancy in the UR category. Thereupon, the Tribunal has dismissed the application of the petitioner and it is thus aggrieved, petitioner has preferred this Original Petition before this Court.

7. Heard the learned counsel for the petitioner, Sri.T.C. Govindaswamy, the learned counsel for respondents 1 and 2, Sri. C.S. Dias and the learned counsel for the 3rd respondent, Sri. S.A. Saju. Perused the documents and the records.

8. Learned counsel for the petitioner has contended that the rule that is applicable to the selection of personnel from Group 'D' to Group 'C' is contained in paragraph 189 of the

Indian Railway Establishment Manual Volume 1 and not 219(j) of the said Manual. Therefore, he contended that the Tribunal which considered the case of the petitioner applying paragraph 219(j) patently went wrong. Learned counsel further contended that paragraph 219(j) applies to the general post i.e. those outside the normal channel of promotion for which candidates are called from different categories whether in the same department or from different departments. Learned counsel on the other hand contended that, paragraph 189 of the Manual specifically deals with promotion to higher grades in Group 'C'. Therefore, the Railway servants in Group 'D' categories for whom no regular avenue of promotion exists, 33-1/3% of the posts in the lowest grade of Commercial Clerks, Ticket Collectors, Train Clerks, Office Clerks, Stores Clerks, etc. are earmarked and therefore, the petitioner who was in Group 'D' was entitled to be promoted applying paragraph 189 of the Manual by which the seniority and merit is the consideration. Learned counsel for the petitioner has also invited our attention to a clarification letter issued by the Ministry of Railways, Government of India dated 05.05.2015 by which the selection

procedure for promotion to selection post was clarified and ordered that the same shall be done in the order of seniority among those securing qualifying marks.

9. On the other hand, learned counsel for respondents 1 and 2 contended that the provision that is applicable in the case of a Track Man is paragraph 219(j) of the Manual and therefore, the merit of the candidate is to be looked into for the purpose of selection. Learned counsel further contended that on a reading of paragraph 219(g), the selection should be made primarily on the basis of over all merit and on the basis of guidelines of Selection Board as provided thereunder. Therefore, learned counsel contended that the Administrative Tribunal has passed the order by applying the procedure contained under paragraph 219 of the Manual and the order passed by the Tribunal was in accordance with law.

10. Learned counsel for the 3rd respondent also adopted the contention raised by the learned counsel for respondents 1 and 2 and contended that the order passed by the Tribunal is correctly applying the law applicable to the promotion from Group 'D' to Group 'C' and therefore, Annexure A9 order does not warrant

any interference.

11. Having considered the rival submissions, we have gone through the rules/procedures contained under the Manual. Paragraph 126 of the Manual deals with appointment of Train Clerks to which 33-1/3% was earmarked for promotion by a process of selection from eligible Group 'D' categories of staff as specified by the Zonal Railways as per procedure prescribed in paragraph 189. Paragraph 127 deals with appointment of Ticket Collectors under which 33-1/3 % was earmarked for promotion by selection from eligible Group 'D' categories of staff as specified as per procedure prescribed in paragraph 189 and paragraph 174 deals with appointment of Office Clerks under which 33-1/3% was earmarked for promotion by selection from eligible Group D categories of staff as specified in paragraph 189 of the Manual. For effectively considering the application of paragraphs 189 and 219(j), they are extracted hereunder:

“189. Promotion to higher grades in Group 'C':-
Railway servants in Group 'D' categories for whom no regular avenue of promotion exists 33-1/3% of the posts in the lowest grade of Commercial Clerks, Ticket Collectors, Trains

Clerks, Office Clerks, Store Clerks, etc. should be earmarked for promotion. The quota for promotion of Group 'D' staff in the Accounts Deptts. to Group 'C' post of Accounts Clerks will be 25%. Promotion to Group 'C' will be subject to the following conditions:

(i) All promotion should be made on the basis of selection. There should be written tests to assess the educational attainments of candidates. Group 'C' categories referred to above should be suitably linked with specified categories in the lower grades on broad affinity of work to from groups for promotion but it should be ensured that the prospects are made equal in the different groups. The test should be correlated to the standards of proficiency that can reasonably be expected from railway servants who are generally non-matriculates. The aim of the examiners should be to assess the general suitability of the Group 'D' railway servants offering themselves for promotion to Group 'C' posts from the

point of view of their knowledge of English and their general standard of intelligence. The factors of selection and their relative weight will be as indicated below:

<u>Factors/Headings</u>	<u>Maximum Marks</u>
(a) Written Test	85
(b)Record of Service	15
Total	100

Note:-(1) Written test should consist of one paper of 3 hours duration divided into two parts – Part 'A' to test the working knowledge of the Railway servant of the English language and Part B his general standard of intelligence and proficiency through question in Arithmetic, General Knowledge mainly pertaining to Railway matters and matters immediately pertaining to the work he has been acquainted with during his Railway service. In drawing up the questions it must be ensured that they are not set as such a standard as to make it impracticable for a Group 'D' railway servant of average intelligence and normal standards of efficiency to qualify in the test.

(2) Assessment under the heading Record of

Service will be based on entries in the Service Book/personal file regarding academic/technical qualifications, awards/punishment, etc.

(3) Selection should not be restricted to three times the number of posts to be filled but kept open to all eligible candidates who would like to be considered for such selections.

(4) All those who qualify on the basis of written test and Record of Service, the qualifying percentage of marks being prescribed by the General Manager, should be included in the panel in the order of their seniority for promotion against the yearly vacancies available for them in Group 'C' categories.

(ii) Group 'D' railway servants to be eligible for promotion to Group 'C' posts should have put in minimum 3 years of continuous service. This does not apply to Scheduled Castes and Scheduled Tribes Candidates.

(iii) For promotion to Group 'C' posts in the Ministerial cadre, Group 'D' staff will be required to possess a typing speed of 30 w.p.m. in English

or 25 w.p.m. in Hindi. Promotion may, however, be allowed on provisional basis and the concerned staff given two year's time from the date of promotion, to qualify the prescribed typewriting test; and if they fail to qualify the typewriting test within the said period, they will be liable to be reverted.

(iv) **Training**

(a) The standard of training imparted to the Group 'D' railway servants selected for Group 'C' posts should be the same as for direct recruits for the same Group 'C' categories and in the case of failures in the first attempt such employees may be given second-chance to qualify.

(b) Group 'D' railway servants when promoted to Group 'C' posts in the Accounts Deptt. shall go through the same training and test and shall be subject to the same conditions of service are in force for the new recruits. During the period of their training they would get as stipend the

pay that they would have normally drawn on promotion to Group 'C'. All allowances like Dearness, Compensatory and House Rent Allowances will be allowed to them at the scales applicable, had the stipend been treated as pay.

Note:- Employees in lower Group 'C' scale of Rs.825-1200 (RPS)/2750-4400(RSRP) and Rs.950-1400(RPS)/3050-4590(RSRP) for whom no regular avenue of promotion exists will also be eligible to appear in the selection held for promotion of Group 'D' employees to Group 'C' against the prescribed quota.

[Authority:- Ministry of Railway's letter No.E(NG)I/91/CFP/26,dated 30.04.1992 and 10.3.1993, E(NG)I/93/CFP/41, dated 07.04.1994 and 28.11.1996; E(NG)I/96/CFP/19, dated 03.02.1997 and 11.12.1997 and E(NG)I/2003/CFP/2, dated 22.09.2003-ACS No.155]

219(j) For general posts, i.e. those outside the normal channel of promotion for which candidates

are called from different categories whether in the same department or from different departments, the selection procedure should be as under:

(i) All eligible staff irrespective of the department in which they may be working who satisfy the prescribed conditions of eligibility and volunteer for the post should be subjected to selection which should consist of a written test and in few cases a viva voce test also as indicated in sub-para (a) of para 215. The various factors of selection and their relative weight will be as indicated below:

[Railway Board's letter Nos.E(NG)I-98/PMI/11, dt.16.11.98, E(NG) I-2000/PMI/41, dt.7.8.03 and 27.8.03-ACS Nos.66, 150 & 152.]

Factors/Heading	Maximum Marks	Qualifying Marks
(1)Professional ability	50	30
(2)Record Service	30	--
Total	80	48

Note:- (i) The assessment under headings (2) above will be governed by the provisions contained in Note:(i) below sub-para (g) above.

(ii) In the case of selection for promotion to the posts of Asstt. Loco Pilots (Diesel/Electric) and

ASMs the distribution of marks amongst various headings in lieu of heading in the table below clause (i) of sub-para (j) shall be as follows.”

12. On an evaluation of these provisions, we find that, they operate in two different fields. So far as paragraph 189 is concerned, the same applies to railway servants in Group 'D' categories for whom no regular promotion exist and therefore, such category of railway servants are provided with 33-1/3% reservation for promotion to Group 'C' categories. On a reading of that provision it shows that the petitioner who was working as Track Woman in Group 'D' was not provided with promotion from Group 'D', under the Manual and therefore, such persons have to be considered for promotion by applying the law provided under paragraph 189 where as 219(j) deals with promotion to general posts outside the normal channel of promotion for which candidates are called from different categories whether in the same department or from different departments. So far as the case of the petitioner was concerned, a specific manner of appointment is provided under paragraph 189 of the Manual and specified quota is earmarked for promotion. So also there is no

specific or regular avenue of promotion existing to Group 'D' servants as provided under paragraph 189 otherwise than the quota earmarked as stated supra. In that view of the matter, according to us, the petitioner comes under the procedure for promotion prescribed in paragraph 189 and is entitled to be promoted as per the provisions of the said procedure. Moreover, paragraph 219(j) speaks of a hybrid nature of promotion for general categories outside the normal channel of promotion for which candidates are called from different categories from various departments in accordance with the procedure prescribed thereunder. But we do not find any reason to interfere with the finding of the Tribunal, that in view of long delay Annexure A2 cannot be quashed.

13. In the aforesaid circumstances, we are of the considered opinion that the petitioner who was an employee in Group 'D' was entitled to be promoted to Group 'C' by applying rule/paragraph 189 of the Manual and therefore, the Tribunal was not correct in holding that merit was the consideration for promotion from Group 'D' to Group 'C'. Resultantly, we set aside the order of the Tribunal and quash Annexure A9 order of Ext.P2

dated 22.7.2011 and direct the competent among respondents 1 and 2 to re-consider the case of the petitioner by applying rule/paragraph 189 of the Indian Railway Establishment Manual Volume 1, within a period of one month from the date of receipt of a copy of this judgment, after providing opportunity of hearing to the parties concerned.

Original Petition is allowed accordingly.

Sd/-
K. SURENDRA MOHAN
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

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