

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

FRIDAY, THE 7TH DAY OF AUGUST 2015/16TH SRAVANA, 1937

WP(C) .No. 36585 of 2009 (S)

(AGAINST THE ORDER/JUDGMENT IN OA 561/2008 of CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH DATED 31-07-2009)

PETITIONERS:

1. UNION OF INDIA
REPRESENTED BY THE GENERAL MANAGER, SOUTHERN RAILWAY
HEADQUARTERS OFFICE, PARK TOWN PO, CHENNAI 600 003.

2. CHIEF PERSONNEL OFFICER
SOUTHERN RAILWAY, HEADQUARTERS OFFICE, PARK TOWN PO
CHENNAI 600 003.

3. SENIOR DIVISIONAL PERSONNEL OFFICER
SOUTHERN RAILWAY, PALAKKAD DIVISION, PALGHAT.

4. THE SECRETARY
SOUTHERN RAILWAY SPORTS AUTHORITY, SOUTHERN RAILWAY
HEADQUARTERS OFFICE, PARK TOWN PO, CHENNAI 600 003.

BY ADVS.SMT.SUMATHY DANDAPANI (SR.)
SRI.N.B.SUNIL NATH, SC, RAILWAYS

RESPONDENT (S) :

SMT.BEENA AUGUSTINE
W/O.SUNNY SEBASTIAN, AGED 35 YEARS
SENIOR COMMERCIAL CLERK, SOUTHERN RAILWAY
SHORNUR RAILWAY STATION & PO RESIDING AT
CHOOLIPADAM, ALATHUR TALUK, PUTHUKKOD PANCHAYATH
PALGHAT DISTRICT.

BY ADV. SRI.T.C.GOVINDA SWAMY
BY ADV. SRI.G.SHYAM RAJ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
07-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS

EXT.P1	:	TRUE COPY OF THE O.A.No1.561/2008 ALONG WITH ANNEXURES A1 TO A14 FILED BY THE RESPONDENT BEFORE THE CAT, ERNAKULA.
EXT.P2	:	TRUE COPY OF THE REPLY STATEMENT ALONG WITH ANNEXURES R1 TO R7 FILED BY THE PETITIONERS HEREIN BEFORE THE CAT, ERNAKULAM IN O.A. 561/2008
EXT.P3	:	TRUE COPY OF REJOINDER FILED BY THE RESPONDENT HEREIN IN O.A.No. 561/2008 ON THE FILE OF THE CAST, ERNAKULAM.
EXT.P4	:	TRUE COPY OF THE ORDER DT,. 31.07.2009 IN O.A. NO.561/2008 ON THE FILE OF THE CAT, ERNAKULAM.

/TRUE COPY/

P.S. TO JUDGE.

**P.R. RAMACHANDRA MENON
&
SUNIL THOMAS, JJ.**

.....
W.P.(C)No.36585 OF 2009
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Dated this the 7th August, 2015

J U D G M E N T

P.R. Ramachandra Menon, J:

Whether 'training' is a pre-condition for appointment to the post of Commercial Clerk/Sr.Commercial Clerk in the Railways particularly under the Sports Quota, is the subject matter of challenge in this writ petition. The challenge is raised by the Railways against the verdict passed by the Tribunal in O.A.No.561 of 2008, whereby the relief sought for was granted in terms of the similar verdict passed by the Tribunal in O.A. 663 of 2003, in favour of a person, who was appointed along with the respondent herein, i.e. the applicant in O.A.561 of 2008, holding that the stand taken by the Railways was not correct or sustainable.

2. The petitioners/Railways seek to distinguish the

factual position with reference to the instance of the applicant in O.A. 663 of 2003, pointing out that the said applicant had cleared the 'training' immediately on nominating him for the training; whereas in the instant case, the respondent herein, who was the applicant in O.A. 563 of 2008 had not attended the training, when she was nominated and came out successful only much later. It was in the said circumstance, that the date of entry had to be changed as per the relevant proceedings and hence the contention that the benefit given by the Tribunal to the applicant in O.A. 663 of 2003 is not liable to be extended to the respondent herein.

3. The sequence of events reveals that the respondent herein was appointed as per Annexure A1 appointment order w.e.f. 29.05.1991 against the post of commercial clerk. The terms of appointment, as disclosed from Annexure A1 are in the following terms:

- "1. She should undergo prescribed training as and when directed .*
- 2. She should serve in the Railways for a minimum period*

of five years

3. The continuance of her service will be based on annual review of her performance in Inter-Railway and International championships and also efficiency in official duties.

4. In all matters not specifically covered above, her appointment will be subject to the rules and conditions as provided in the relevant codes and manuals as applicable to Railway employees in general.”

By virtue of the terms stipulated in Annexure A1, the only condition was that the respondent should undergo the prescribed training "as and when directed". The appointment of the respondent was subsequently confirmed as per Annexure A2 order, wherein the respondent has been placed at Sl.No.134. Similarly situated person by name John Mathew, was placed above the petitioner at Sl.No.131, who was appointed on 10.01.1991. Both appointments were under the Sports Quota. Subsequently, Annexure A3 provisional seniority list was published by the Railways as on 30.11.1993, wherein Mr. John Mathew and the respondent herein were shown at Sl.Nos. 66

and 69 showing the date of entry as 10.01.1991 and 29.05.1991 respectively. In the year 1995, Annexure A4 order was issued granting promotion to both John Mathew and the respondent as Sr. Commercial Clerks and they have been placed at Sl.Nos 17 and 19 respectively. Here also, the date of entry in the service has been correctly shown. The said order was passed on 27.05.1995. There is no dispute with regard to the factual position that Annexure A1 and A4 orders have not been challenged, varied or modified in any manner and the said proceedings stand intact even as on this date.

4. Despite the promotion ordered in the case of the respondent and in the case of John Mathew, proper fixation of pay was not effected by the Railways. On enquiry, the reasoning as let known to the respondent was that the Commercial Clerks had to undergo 'training'. It is contended by the respondent that 'training' was never a condition precedent for appointment under the 'Sports Quota'. It was clearly mentioned in Annexure A1 appointment order that, such 'training' was to be undergone,

as and when required. But, in the case of the respondent herein, it is conceded that she could not undergo training held during the period 06.01.1997 - 31.03.1997 and on some of the subsequent occasions as well. The fact remains that she ultimately completed the training successfully during the period from 23.03.1998 to 19.05.1998. Annexure A9 is the provisional seniority list published by the Railways, wherein Mr. John Mathew has been placed at Sl.No.53, while the respondent has been placed at Sl.No.55 in respect of the post of Commercial Clerks. Despite the proceedings issued earlier, the Railways issued yet another order/proceedings as Annexure-A12 dated 19.03.2002, seeking to deviate from the earlier proceedings, without any regard to Annexure A4 issued in the year 1995. It appears that such a proceeding was issued based on the change sought to be effected as per Annexure A9, wherein the relevant dates including the initial entry in service has been shown as 10.01.1991/04.09.1997 in the case of Mr. John Mathew, while the relevant dates in respect of the respondent have been shown

as 29.05.1991/02.06.1998. [the bracketed date presumably is with reference to the date of completion of the training.]

5. As mentioned already, the period of probation, for two years, was satisfactorily completed and the same was declared , as evident from Annexure A2 dated 29.09.1993 and the placement of John Mathew and the respondent has been shown at Sl.No.131 and 134 respectively. There was no dispute with regard to the entries, either in Annexure A3 seniority list or Annexure A4 promotion order as well, which have not been varied so far. . Since eligible benefits were not extended to the respondent and John Mathew, representations were filed before the authorities concerned for causing to effect proper fixation . Finally, since nothing had turned out in positive, Mr. John Mathew approached the Tribunal by filing O.A. 663 of 2003 against the change as to the initial date of appointment shown as '04.09.1997' in the place of '10.01.1991'. The stand taken by the Railways before the Tribunal was that the training was a mandatory requirement, which plea was repelled by the Tribunal,

as observed in paragraphs 4,5 and 6 of Annexure A-13 verdict dated 09.09.2005. The Tribunal arrived at a specific finding that, nowhere was it mentioned that training was a 'pre-condition' for appointment to the post of Commercial Clerk or for promotion; particularly in the case of 'Sports quota' and no such indication was ever there in the appointment order. It was accordingly, that the O.A. filed by John Mathew was allowed as per Annexure A-13 order dated 09.09.2005 directing the concerned respondent to implement the same within the time as specified therein.

6. Admittedly, Annexure A13 has been implemented by the Railways and benefits have been extended to John Mathew. Since the claim mooted by the respondent herein was not acted upon, she was also compelled to approach the Tribunal by filing O.A.561 of 2008. Similar pleadings were raised by the Railways in the said case as well; also attempting to distinguish the factual position in O.A.No.663 of 2003, contending that in the case of Mr. John Mathew, he had successfully completed the 'training' at

the first instance, when he was nominated in the year 1997; whereas in the case of the applicant in O.A. 561 of 2008, she did not attend the training on different occasions and finally came out successful only in the year 1998. It was contended that the course pursued by the Railways was quite in order and was not liable to be intercepted under any circumstance.

7. The reliefs sought for by the respondent herein in the said O.A. have been extracted in paragraph 2 of Ext.P4, which are reproduced below for convenience of reference.

“(a) Declare that the action of the respondents in altering unilaterally the applicant's initial date of appointment as 2.6.98 as against 29.5.91 is arbitrary, discriminatory, contrary to law and unconstitutional.

(b) Direct the respondents to extent the same benefits as in Annexure A13 to the applicant also with all consequential arrears arising there from.

© Direct the respondent to grant all service benefits to the applicant, taking into consideration the date of initial appointment of the applicant to the cadre of Commercial Clerks as 29.5.91.”

The nature of contentions raised by the Railways is dealt with in

paragraph 3, which is also reproduced below:

3. The respondents have not refuted the basic facts stated by the applicant in the O.A. However, they have submitted that the case of the applicant cannot be compared with that of Mr.John Mathew as the circumstances in that case are not identical to that of the applicant . The respondents have submitted that in O.A.No.663 of 2003 the applicant therein passed the training well in the first attempt, whereas in the present case the applicant has not attended for training when she was nominated first from 6.1.1997 to 3.3.1997 as per letter dated 2.1.1997. She was again nominated for the next training course held from 27.6.1997 to 22.8.1997, but was declared as failed. Thereafter, the applicant was once again nominated for a repeat course in the next batch held from 13.10.1997 to 29.11.1997 as per letter dated 26.9.1997. The applicant did not attend the training. However, she was nominated again for the training held from 23.3.1998 to 19.5.1998 and was declared passed in the Pro-Commercial Clerk training vide letter dated 10.6.1998.”

8. After hearing both the sides, the Tribunal held in paragraph 4 of Ext P4 order that the O.A. 663 of 2003 preferred by John Mathew was allowed by the Tribunal, on the ground that there was no pre-condition that the employee

concerned should undergo the prescribed 'training' before he was considered for promotion as Sr. Commercial Clerk. It was also observed that the only condition imposed as per the appointment order was that the applicant had to undergo the prescribed training "as and when directed". The Tribunal noted that there was no such condition for confirmation/regular appointment. The gist of the observations as above, as contained in paragraph '4' of Ext P4 order is extracted below:

“4. We have heard learned counsel for the parties. It is seen that the O.A.No.663 of 2003 (supra) filed by the applicant's colleague Mr. John Mathew was allowed on the ground that there was no pre-condition that the employee concerned should undergo the prescribed training before he was considered for promotion as Senior Commercial Clerk. Moreover, according to the appointment order of the applicant she was to undergo the prescribed training “as and when directed”. There was no such condition even for confirmation/regular appointment. The applicant was appointed with effect from 29.5.1991 as a Commercial Clerk and she was duly confirmed with effect from 29.5.1993. Thereafter, she

was also given the promotion as Senior Commercial Clerk on 27.9.1995. None of these orders have been canceled for the reason that the applicant had not completed the training successfully. In view of the above position, we do not find any difference in the case of the Applicant with that of Mr. John Mathew who was the applicant in O.A.No.663 of 2003 (supra).”

It was on the basis of the above observation, that the claim mooted by the respondent herein was allowed, which in turn is sought to be challenged by the Railways, by filing this writ petition. .

9. After hearing both the sides, at length, this Court finds that the attempt made by the petitioners to draw a distinction between the case of the applicant in O.A.No..663 of 2003 and that of the respondent herein, as raised in O.A. 561 of 2008, is rather flimsy. It might be true that the applicant in O.A. 663 of 2003 could complete the training at the very first instance (in 1997), though the respondent herein could complete the same

successfully only in the year 1998. But the basic question is whether such training was mandatory for being appointed as Commercial Clerk or even for promotion, which position has been answered by the Tribunal in the negative. The stipulation contained in Annexure A1 appointment order that the employee should undergo the prescribed training 'as and when directed' can only mean that, after getting appointment, the employee cannot contend that the training is not necessary under any circumstance. In other words, action against refusal, if any, on the part of the employee to undergo training stands saved by such stipulation. If the employee hesitates or refuses to participate in the training, it can be dealt with by way of appropriate measures. No rule or condition is brought to the notice of this Court that such training should have been completed at the first instance, so as to justify the initial appointment or so as to sustain the promotion. There is no case for the petitioners/Railways that there was any refusal on the part of the respondent to undergo training, contending that the

same was not necessary. Though she could not participate in the 'training' for some or other reason initially, it also remains a fact that the respondent participated in the training subsequently and came out successful in the year 1998.

10. In the above circumstances, this court finds that there is absolutely no distinction or difference between the case mooted by the applicant in O.A. 663 of 2003 and the respondent herein in O.A.No. 561 of 2008 and as such, the reasoning given by the Tribunal so as to sustain the finding given as per Ext.P4 is not assailable under any circumstance. The writ petition is devoid of any merit. Interference is declined and the writ petition stands dismissed.

**P.R. RAMACHANDRA MENON,
JUDGE.**

**SUNIL THOMAS,
JUDGE.**