

(2023) 07 CAT CK 0034

In the Central Administrative Tribunal

Case No : Original Application No. 180, 00788 Of 2016

Arunkumar S.R.

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 17-07-2023

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2023) 07 CAT CK 0034

Hon'ble Judges : Sunil Thomas, Member (J); K.V. Eapen, Member A

Bench : Division Bench

Advocate : T.C. Govindaswamy, Mini R. Menon

Final Decision : Dismissed

Judgement

Sunil Thomas, Member J

1. The applicant was appointed as a Track Maintainer Grade-IV in the Railways on 14.3.2012. While so, he was deputed to work as Driver of an ambulance of the Railway Hospital, Trivandrum by order dated 11.12.2012. After two years of service he was reverted as Track Maintainer. During restructuring in November, 2014 he was promoted as Track Maintainer, Grade-III in PB-1 plus Grade Pay of Rs. 1,900/-. By notification dated 21.12.2015, applications were invited from Group-D employees in PB-1 pay scale with GP of Rs. 1,800/-, for filling up of vacancies of Motor Vehicle Driver in the Railways in Grade-III, in the scale of pay of PB-1 plus GP of Rs. 1,900/-. The applicant also responded to the said notification. Later, apprehending that his application may be rejected since he has already been holding a post of same scale of pay, he submitted a representation to the 1st respondent General Manager, requesting to consider him for the above post. Since, it was not responded, the applicant has approached this Tribunal seeking reliefs. He apprehends that his application for the said post may not be considered. He has challenged Annexure A1 notice of the Southern Railway dated 21.7.2016 inviting on applications for filling up the said posts, on the ground that to the extent, it confined applications only from

Group-D employees in PB-1 in the Grade Pay of Rs. 1,800/-, was arbitrary and discriminatory and not based on relevant considerations. The prayer sought was to quash Annexure A1 to the extent it invited applications only from Group-D employees in the scale of pay scale of Rs. 5,200-20,200/- plus GP of Rs. 1,800/-. He also sought for a declaration that the applicant who was in PB-1 plus GP of Rs. 1,900/- was eligible to be considered and appointed as Motor Vehicle Driver (Technician Grade-III) against the vacancies notified in terms of Annexure A1 and to direct the respondents accordingly.

2. In the reply statement, the respondents contended that the applicant was working as Track Maintainer in Grade-III in Pay Band-I with Grade Pay of Rs. 1,900/-. Since Annexure A4 notification for promotion as Driver with Grade Pay of Rs. 1,900/- has been issued inviting volunteers from the employees who are working in the Grade Pay of Rs. 1,800/-, the applicant had no locus standi to be considered for such appointment. The request made by the applicant was in the nature of depriving the promotional prospects of employees who were already working in the Grade Pay of Rs. 1,800/-. The applicant was not eligible, as he was already working in the Grade Pay of Rs. 1,900/-. Hence, he was not considered for the promotional pay with Grade Pay of Rs. 1,900/- intended for the employees who were working in the Grade pay of Rs. 1,800/-. The respondents relied on the decision in Ramachandra Dayaram Gawande v. Union of India [(1996) 4 SLR (SC) 492] wherein it was held by the Supreme Court that every candidate in the lower grade in substantive capacity has a legitimate expectation for promotion. It was also contended that the selection to the post of Motor Vehicle Driver Grade-III was not from lateral entry or transfer by employees from different or various Departments, on the contrary it was a promotion post calling from eligible volunteers in the lower grade. It was stated that applicant was already working as Track Maintainer Grade-III and selection for the post of Technician Grade-III was from selection of volunteers from Group-D posts in Grade Pay of Rs. 1,800/- which was a lower grade. The notification inviting applications from the employees who were in the Grade Pay of Rs. 1,800/-, was for giving them a chance for promotion and hence, it was not opposed to the equality clauses enshrined in Articles 14 and 16.

3. Applicant is challenging Annexure A1 on the ground of discrimination invoking Article 14 of the Constitution of India. The only premise on which the applicant has set up the challenge was that it discriminated persons who were already in the Grade Pay of Rs. 1,900/-. Notification to the extent of confining it to persons who were in the Grade Pay of Rs. 1,800/- clearly indicated that it was intended for giving avenue of promotion to those Group-D employees in the scale with Grade Pay of Rs. 1,800/-. Absolutely no ground for discrimination is made out except that the applicant himself is an aspirant.

4. It seems that pending the proceedings two persons were appointed by order dated 2.12.2016. A copy of the said order was placed before us at the time of hearing. It is also to be noted that no interim relief was granted at the time of

admission.

5. The learned counsel for the respondents invited our attention to the order in OP (CAT) No. 230 of 2019 of the Hon'ble High Court of Kerala against the order in OA No. 778 of 2017. In that case notification invited applications for appointment to the post of Ticket Examiners in level-3 with Grade pay of Rs. 1,900/-. As per the notification those who were entitled to apply were employees in the pay carrying Grade Pay of Rs. 1,800/-. The applicants who were in the Grade pay of Rs. 1,900/- challenged the said process of selection. OA was allowed. The order in OA was challenged by the respondents in that OA, who were employees in the Grade Pay of Rs. 1,800/-. OA was allowed on the ground that the Railways at the various other divisions had allowed employees having Grade Pay of Rs. 1,900/- to be considered for selection under the 33 and 1/3% quota permitted to Group-D categories. The OP filed by the parties who were in the Grade Pay of Rs. 1,800/- was dismissed noting that there were various anomalies in that cadre and also specifically with reference to the quota for selection under 33 and 1/3%. That position cannot be equated in the case here which appears to be a clear case of affording an avenue to those who were already in the Grade Pay of Rs. 1,800/-.

6. Having considered this fact and also having taken note of the fact that notwithstanding the fact that the OA was filed in the year 2016 and also that the persons who were selected have not been brought on record, we are not inclined to allow the OA at this distance of time, especially when we do not find any discrimination in confining the selection to the persons in the Grade pay of Rs. 1,800. OA fails and it is accordingly, dismissed. No costs.