

(2023) 09 CAT CK 0012

In the Central Administrative Tribunal

Case No : Original Application No. 180, 00586 Of 2019

P.K. Preethi

APPELLANT

Vs

Union Of India Represented By The General Manager,
Southern Railway, Head Quarters Office, Park Town P.O
Chennai ? 600003 & Others

RESPONDENT

Date of Decision : 11-09-2023

Acts Referred:

Citation : (2023) 09 CAT CK 0012

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

Bench : Division Bench

Advocate : T.C. Govindaswamy, Kala T. Gopi, Thomas Mathew Nellimoottil,
Shameena Salahudheen

Final Decision : Allowed

Judgement

Sunil Thomas, Member J

1. The applicant joined service under the 3rd respondent Southern Railway as a Track Woman. By Annexure A3 notification issued by the 3rd respondent dated 16.7.2010 applications were invited for promotion to the post of Junior Clerk (Office Clerk) against 33 and 1/3rd percentage promotion quota. The applicant, though responded to the notification and was qualified in the selection process, one Syam Mohan was promoted against the sole unreserved vacancy, by Annexure A4. The selection was challenged by the applicant herein in OA No. 977 of 2011, which was dismissed. She preferred OP (CAT) No. 3775 of 2013. It was allowed by the High Court by Annexure A5 judgment dated 23.9.2015. It was held that the applicant was entitled to be promoted to Group-C by applying Rule/paragraph 189 of Indian Railway Establishment Manual (IREM). The appointment of Syam Mohan was quashed. The respondents were directed to reconsider the case of the petitioner in terms of the above direction.

2. It emerges that the above judgment was challenged by Syam Mohan before

the Supreme Court and the SLP preferred was stated to be pending at the time of institution of the OA. In the meanwhile Annexure A5 was implemented and applicant was promoted by Annexure A6 dated 23.6.2016 with effect from 28.6.2016. Syam Mohan was reverted. Accordingly, the applicant joined on 28.6.2016. Thereafter, she submitted Annexures A9 and A10 representations requesting to grant her proforma promotion with effect from 22.7.2011, i.e. the date on which Syam Mohan was promoted by Annexure A4. These representations were not immediately responded. However, Annexure A1 provisional seniority list was published. The applicant was placed at serial No. 10. Respondents Nos. 4 to 7 in the OA were placed above the applicant. The applicant claims that she ought to have been placed between respondents Nos. 5 and 6. In the meanwhile Annexure A10 was rejected by Annexure A2 order.

3. The applicant has approached this Tribunal seeking essential relief of quashing Annexures A1 and A2 and relief No. (iii) which is as follows:

“(iii) Declare that the applicant is entitled to be deemed to have been promoted as Junior Clerk (Office Clerk) with effect from 2.7.2011 and declare further that the applicant be placed between Sl. No. 5 and 6 in A1 seniority list and direct the respondents accordingly.”

4. Heard the learned counsel for the applicant, learned Senior Panel Counsel on behalf of the Railways and learned counsel appearing on behalf of private respondents Nos. 4, 6 and 7. Respondent No. 5 though served, remained absent.

5. In the reply statement the essential contention set up by the respondents was that in the OP (CAT) there was no direction to promote the applicant with retrospective effect and the direction was only to consider the applicant as per rule/paragraph 189 of the IREM. Hence, the applicant was not entitled for any relief as sought.

6. When the OA was taken up learned counsel for the applicant placed before us the order of the Hon’ble Supreme Court in Civil Appeal Nos. 8016 and 8017 of 2016 which was disposed of by a common order dated 25.7.2023. It was filed challenging Annexure A5 judgment and by a separate proceeding the said Syam Mohan was directed to be promoted, presumably in a separate promotion process. The above order clearly shows that Annexures A5 judgment of the Hon’ble High Court was not interfered with but some relief was granted to Syam Mohan.

7. Regarding the private respondents herein, it was submitted by the counsel that respondent No. 4 has retired. 6th respondent was promoted as Office Superintendent in SC category. 7th respondent, who is disabled, did not appear for the examination. Hence, he has forfeited his right. In the above circumstances, any order passed in this OA is not likely to affect the contesting respondents.

8. The only question that arises herein now, is whether the applicant is entitled

to be promoted notionally under proforma promotion with effect from 22.7.2011, i.e. the date on which Syam Mohan was promoted. The purport of Annexure A5 judgment clearly shows that the applicant was entitled to be promoted by virtue of rule/paragraph 189 of IREM. The learned counsel for the applicant placed reliance on the judgment of the Supreme Court in Jayachandran C. v. State of Kerala & Ors. 2020 (2) KHC 478. That was a case wherein the applicant in the above case was wrongly excluded from appointment. Ultimately it was held that when the incumbent was excluded from appointment on account of an illegal act by the respondents, which was later set right, the select list was liable to be revised and the incumbent would be deemed to be part of the appointment as if he had been appointed originally as per the original select list. The incumbent was entitled for notional appointment from that date and consequential seniority. The above decision is directly applicable to the facts of the present case. In the light of the clear finding that the applicant ought to have been appointed in the selection process consequent to exclusion of the incumbent in Annexure A4, she is entitled to be given notional promotion with effect from 22.7.2011.

9. Hence, we are inclined to grant the relief as sought for by declaring that the applicant is entitled to notional promotion with effect from 22.7.2011 with all consequential benefits thereon. The OA is allowed to the above extent. Appropriate orders shall be passed by the 3rd respondent re-fixing his seniority and quantifying the benefits due to her, as expeditiously as possible within a period of three months from the date of receipt of a copy of this order. No costs.