

(2005) 09 KL CK 0048

In the High Court Of Kerala

Case No : Writ Petition (C) No. 37118 of 2004

Sasidharan A. and another

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 23-09-2005

Acts Referred:

Citation : (2006) 1 KLJ 20 : (2006) 1 KLT 724

Hon'ble Judges : K.A. Abdul Gafoor, J;K. Hema, J

Bench : Division Bench

Advocate : Martin G. Thottan, for the Appellant; James Kurian (SC - Railways) and D. Sreekumar, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Abdul Gafoor, J.—These Writ Petitions arise out of a common judgment in four Original Applications decided by the Ernakulam Bench of the Central Administrative Tribunal. The issue raised before the Tribunal was with regard to the eligibility for promotion to the post of Train Clerks/Ticket Collector in the scale of pay of Rs. 3050-4590 in Group "C" in the Railways. Applications were invited for selection to the said posts against the quota of 33 1/3% set apart to the incumbents working in Group "D" posts like Pointsman Grade I as is revealed from Annexure A1 before the Tribunal in O.A. No. 551 of 1004. The O.A. with Annexures are marked in W.P. (C) No. 8147 of 2005 as Ext. P2. The said notification spells out that categories like PM I/CM I/LM I/Sr. GK in the scale of pay Rs. 3050-4590 come within the field of choice. PM I means Pointsman Grade I. Therefore, applications are invited from them as well. All the petitioners are Pointsman Grade I. They participated in the selection process. But, at the time of viva-voce they were excluded from the selection process on the ground that they are already in the scale of pay of Rs. 3050-4590, which is the scale of pay of Ticket Collector / Train Clerks, for appointment to which applications were invited and that the incumbents did have regular channel of promotion. This was challenged before the Central Administrative Tribunal. The Central Administrative

Tribunal also found that the view taken by the Railways was justifiable. Therefore, the applications were dismissed. Now, they have approached this Court challenging the finding of the Central Administrative Tribunal contending that going by Ext. P6 amendment (marked in W.P.(C) No. 8147 of 2005) to Para 189 of the Indian Railway Establishment Manual, Vol I, posts in Group "C" with the scale of pay of Rs. 825-1200/950-1400 which now stands revised to Rs. 3050-4590 are also eligible for being considered for promotion. Therefore, the view of the Tribunal was not justified. In this regard, the view taken by the Railway Board in Exts. R1 and R2 is also pressed into service. It is submitted that persons like petitioners were being considered by the Railways as is revealed by Ext. R1 and R2. Therefore, there was no reason now to take a different view. The promotion is governed by statutory rules in Para 189 of the Indian Railway Establishment Manual, which now stands amended as mentioned above from 10-3-1993, long before the issuance of the recruitment notification on 3-7-2003. There is no challenge against Ext. P6. Therefore, Ext. P6 forms part of the existing statute. The amendment incorporated inserting a Note at the end of Para 189 reads as follows:

Employees in lower group "C" scales of Rs. 825-1200/950-1400 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

(emphasis supplied).

2. Then the issue is whether Pointsman Grade I in the scale of Rs. 3050-4590 are having regular avenue of promotion. If they are having such regular avenue of promotion, necessarily, going by the said Note they will be out of the zone of consideration. On the other hand, if they do not have regular channel of promotion, necessarily, they will be within the zone of consideration.

3. We have gone through the averment contained in the Original Applications filed before the Tribunal. It did not contain any averment that the applicants before the Tribunal did not have any regular avenue of promotion. On the other hand, Ext. R1 clearly reveals that: For example, on some of the Railways Pointsman "A" who have regular avenues of promotion to categories like Switchmen and Shunting Jamadar in grade Rs. 4000-6000 and Goods Guards and ASMS in grade Rs. 4500-7000 are also being considered for promotion against the 33 1/3% quota.

This means that Pointsman Grade I are having regular chance of promotion though they were being considered earlier for promotion to 33 1/3% to Group "C" post. Now applying Ext. P6, such promotions are dispensed with. It cannot be said to be arbitrary. Therefore, when the petitioners are having regular channel of promotion they will be beyond the zone of consideration, going by Ext. P6. When the matter is viewed in that angle, the impugned order of the Tribunal cannot be said to be faulty to invite interference. The decision reported

in Nirmal Chandra Bhattacharjee and Others Vs. Union of India (UOI) and Others, does not have application to the case on hand because of the subsequent change in law as reflected in Ext. P6 amendment-referred to above.

But, at the same time, the case of the petitioners in W.P.(C) No. 37118 of 2004 stands on a different footing. In their case, notification was issued as per Ext. P2 dated 27-11-2002. The last date of submission of application was 31-12-2002. It is admitted by all that as on the publication of Ext. P2 and as on the submission of application pursuant to Ext. P2 by the petitioners and as on the last date fixed, prescribed both petitioners were only Pointsman Grade "D" in the scale of Rs. 2650-4000. It is true that the selection process did not get finalised as there were some more vacancies set apart against 33 1/3% reserved for Group "D" staff. Consequently, a revised notification was issued containing stipulation that those who responded pursuant to Ext. P2 need not make further application. It is while the application submitted by the petitioners were being considered, they were given grade promotion granting them scale of Rs. 3050-4590. Even then, they still keep their identity as Group "D". Going by Ext. P6 referred to earlier, there is no embargo for those included in Group "D" in the scale Rs. 2650-4000 for being considered for promotion against 33 1/3% even if they have regular channel of promotion. Merely because during the selection process petitioners were assigned higher scale, which does not disentitle them from being considered for promotion pursuant to Ext. P2 and P3 notifications. Therefore, in their case, as both of them were Group "D" at the relevant time they shall have eligibility for promotion. The contention of the selected candidates and the Railways that they will lose their chance for being considered even if they get higher scale during the process of selection, cannot be countenanced. Even in spite of the higher scale they continue to be in Group "D". Therefore, all the Writ Petitions except W.P.(C) No. 37118 of 2004 are dismissed and W.P.(C) No. 37118 of 2004 is allowed setting aside the decision of the Tribunal in O.A. No. 470/2004 and directing consideration of their case in accordance with law based on the observations and findings above.