

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. No. 439 OF 2013

Monday this the 22nd day of August, 2016

CORAM:

**HON'BLE Mr. JUSTICE N.K. BALAKRISHNAN, JUDICIAL MEMBER
HON'BLE Mrs. P. GOPINATH, ADMINISTRATIVE MEMBER**

M. Ramaswamy,
S/o. R. Manickam,
(Rtd. Technician Gr.I/Loco/PGT)
Residing at : North Mudaliyar Street,
Shornur (P.O), PIN - 679 121.

- Applicant

(By Advocate Mr. T.C. Govindaswamy)

Versus

1. Union of India represented by
The General Manager, Southern Railway,
Headquarters Office, Park Town (P.O),
Chennai - 600 003.
2. The Senior Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat - 678 002.
3. The Divisional Personnel Officer,
Southern Railway, Salem RS & PO,
Salem - 636 001. - Respondents

(By Advocate Mrs. K. Girija)

The application having been heard on 27.07.2016, the Tribunal
on 22.8.16 delivered the following:

O R D E R

Per: Mr. Justice N.K. Balakrishnan, Judicial Member

The applicant has approached this Tribunal for a declaration
that he is entitled to be considered and promoted against one of the

vacancies of Senior Technicians that arose on application of Annexure A-3 Railway Board's order (RBE Circular No. 177/2003 dated 09.10.2003). The applicant retired on superannuation on 28.02.2010.

2. The gist of the case set up by the applicant is as follows:

On account of dieselisation and electrification of traction, a substantial section of Loco staff were rendered surplus and thus they were re-deployed elsewhere. The applicant's juniors who were re-deployed, progressed further and reached the level of Master Craftsmen, Travelling Ticket Inspectors, Passenger Drivers, Mail Drivers etc., Persons who were seniors and retained in the cadre continued to be in the Khalasi cadre for several years. After several years, the applicant was promoted as Technician Grade III and later as Technician Grade II in the then scale of pay of Rs. 4000-6000 (vide Annexure A-1). The applicant was later promoted as Technician Grade I as per Annexure A-2 dated 02.06.2004. On and with effect from 01.11.2007, part of the Palghat Division was carved out to form Salem Division. Employees who were working in the respective territorial jurisdiction were deemed to have been absorbed in that Division where willingness is given to be transferred to the parent Division or to the new Division, as the case may be. The applicant was at the relevant time working at the Palghat Division and he was deemed to have been retained in the Palghat Division. The applicant belongs to Artisan cadre of the Mechanical

5

Department. Various grades in the different categories are maintained based on a percentage distribution of the different grades in the cadre. A restructuring of Group-C and Group-D cadres was done by the Railways as per Annexure A-3. As per Annexure-E of A-3, Artisan staff were restructured. Artisan staff has a four tier system; in the scale Rs. 5000-8000 they are called as Master Craftsman/Senior Technician; the number of posts to be operated is 8% of the total strength. The applicant was already working as a Technician Grade I in the scale of Rs. 4500-7000 and therefore applicant was eligible to be considered and promoted as Senior Technician/Master Craftsman in the scale of Rs. 5000-8000 with effect from 01.01.2006. The respondents did not grant the benefit of Annexure A-3 order in so far as it related to grant of promotion as Master Craftsman. The 3rd respondent promoted three of the Technicians/Loco as Senior Technicians as per Annexure A-4 dated 08.01.2010. Those 3 persons are Shri Palaniswamy, Shri R. Balakrishnan and Shri K. Mohanraj. Shri Palanisamy is at Sl.No. 1 (above the applicant) while Shri R. Balakrishnan is junior to the applicant at Sl. No. 5. Shri R. Balakrishnan and Shri K. Moahanraj are also juniors to the applicant. If the ratio of Annexure A-3 is implemented in Palghat Division, the applicant would have been promoted as a Master Craftsman/ Senior Technician.

3. The applicant being the senior most should have been promoted against that post with effect from the date on which the applicant became due to be promoted against that post. Annexure A-5 representation was given. But the request made by the applicant was turned down. Hence, he has approached the Tribunal claiming the relief as aforesaid.

4. The claim is strongly resisted by the respondents by filing reply statement, the gist of which is as under:

The post of Senior Technician in the scale Rs. 5000-8000 constitutes a part of the regular hierarchy of the artisan cadre thereby making it as a notional functional channel of promotion for Technician Grade-I. Para 214(c) (i) of the Indian Railway Establishment Manual Vol. I prescribes a minimum service of two years, which should be fulfilled at the time of actual promotion. The applicant was ineligible for promotion to the post of Senior Technician/Loco against one of the vacancies that arose by application of Annexure A-3 or with effect from 1st April of the year in which the vacancy arose after the application of Annexure A-3. The applicant could complete two years of residency period in Technician Grade II / Loco only on 03.06.2007. His eligibility for promotion as Senior Technician arose only from 04.06.2007 subject to availability of vacancy in the post of Senior Technician / Loco and as per his turn/seniority. The applicant stood at Sl. No.4 in the seniority position as could be seen from Annexure A-1 and A-II. Hence, the



applicant can aspire for promotion only after his turn in seniority. The first two seniors of the applicant were considered for promotion as Senior Technician/Loco only in the year 2010 as can be seen from Annexure A-4 order. The applicant cannot be considered for promotion overlooking those seniors. The applicant was working as Technician Grade-I/Loco. The next promotional post as per hierarchy is Senior Technician/Loco. After the implementation of the VIth CPC, the equivalent pay scale applicable to Technician Grade-I is Pay Band-I i.e 5200-20200 with Grade Pay of Rs. 2800/-. The next promotion is in Pay Band-2 i.e 9300-34800 + GP 4200/-. The applicant's claim for promotion to the post of Senior Technician is against the vacancy which arose from 01.04.2004. The claim has been filed only in 2013 and as such, it is barred by limitation also. No sanctioned post of Senior Technician/Loco exists in Palghat Division. Formerly, the post was designated as Master Craftsman Loco. Later it was re-designated as Senior Technician/Loco. The pay scale applicable to Master Craftsman/Senior Technician was Rs. 5000-8000, as per Vth CPC. After implementation of the 6th CPC the equivalent Pay Band applicable to Senior Technician was PB-II – 9300-34800 with Grade Pay of Rs. 4200/-. After formation of Salem Division, bifurcating the erstwhile Palghat Division with effect from 01.11.2007 32 posts in the Technician/Loco category which were operated in the territorial jurisdiction of newly formed Salem Division stood transferred to Salem

Division, on 'as is where is' position. Annexure A-2 is the book of sanction as on 01.11.2007 of Salem Division. The incumbents holding the post of Senior Technician (Loco) and other Technicians who were then working under the Senior Section Engineer at Coonoor stood transferred to Salem Division along with their posts in the Technician/Loco category. As a result of the same, in Palghat Division, after formation of Salem Division, there are only 24 posts available in Technician/Loco Skilled category including 9 posts in Technician Grade III category which were created for allied activities for Loco maintenance side. No Senior Technician/Loco post is available in Palghat Division (see book of sanction Annexure R-3). As per Annexure R-3, no sanctioned posts of Senior Technician / Loco in Pay Band – II exists in Palghat Division with effect from 01.11.2007. Since no such sanctioned posts were there, the claim made by the applicant cannot be sustained. Therefore, the respondents prays for dismissal of the O.A.

5. The point for consideration is whether the applicant is entitled to be considered for promotion to the vacancy of Senior Technician/Loco?

6. We have heard the learned counsel appearing for the parties and have gone through the records.

7. RBE Circular No. 177/2003 dated 09.10.2003 (Annexure A-3)

has been very much relied upon by the learned counsel for the applicant. It is pointed out by the learned counsel for the applicant that as can be seen from Annexure -E'(2) A-(3) that Artisan staff has a four tier system. Those staff in the scale of Rs. 5000-8000 are called as Master Craftsman/Senior Technician. According to the applicant, the number of posts to be operated is 8% of a total strength. Applicant was working as Technician Grade – I in the scale of 4500-7000. Thus, according to him, he was eligible to be considered for promotion as Senior Technician/Loco in the scale of 5000-8000 which has been replaced as per VIth CPC to PB-2 Rs. 9300-34800 + Grade Pay Rs. 4200/-. Annexure A-1 which is the promotion and posting of loco staff dated 23.11.2001 has been relied upon by the applicant to show that Shri R. Balakrishnan, who was granted promotion from Salem Division was junior to the applicant - Shri Ramaswamy. Even as per Annexure A-1, Shri Pazhaniswamy was Sl. No.1. There were two other persons above the applicant.

8. Annexure A-2 is another promotion order dated 02.06.2004 as per which Loco Technician Grade-II in scale 4000-6000 were promoted in the scale 4500-7000. Those promotees were retained at the present station against the existing vacancies. That order was issued by the Palghat Division. It is seen that the applicant figures there at Sl. No. 4

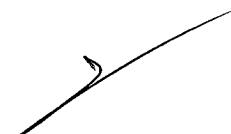
whereas Shri R. Balakrishnan and Shri Mohanraj are seen at Sl. No.5 and 6. Therefore, according to the applicant, since Shri Balakrishnan and Shri Mohanraj were granted promotion, his claim for promotion should not have been denied by the respondents.

9. The plea so raised by the applicant has been stiffly refuted by the respondents pointing out that the applicant now claims for promotion as Master Craftsman/Senior Technician at Palghat Division. Admittedly there was bifurcation of Palghat Division and a new Division - Salem Division was formed on and with effect from 01.11.2007. It is contended by the respondents that as per para 214 (c)(i) Indian Railway Establishment Manuel Vol. I, the minimum service of two years in the existing grade is prescribed for promotion and as such, the applicant was ineligible for promotion to the post of Senior Technician against one of the vacancies for Senior Technician that arose by application of restructuring as provided under Annexure A-3. Admittedly, Shri Pazhanisamy was senior to the applicant. As per the seniority position, the applicant stands at Sl. No.4. Therefore, he can aspire only after his seniors got promotion. There is yet another important aspect which cannot be lost sight of. The promotions of Shri Balakrishnan and Shri Mohanraj were effected and given from Salem Division according to the vacancy position available in Salem Division. After the formation of Salem Division with effect from 01.11.2007, the applicant who opted

to remain in Palghat Division cannot aspire for promotion to the post in Salem Division. It is contended by the respondents that as per Annexure R-(1), the sanctioned posts as per book of sanction, before and after restructuring is as follows:-

Category	No. of sanctioned Post before restructuring	No. of sanctioned posts after restructuring
Senior	2	4
Technician/Loco		
Technician Gr.I/Loco	17	19
Technician Gr. II/Loco	14	12
Technician Gr. III/Loco	14	12
Total	47	47

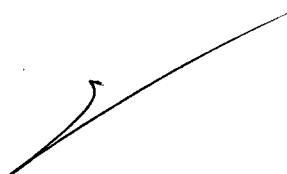
10. It is further contended by the respondents that earlier total sanctioned post was 44 in the category of Technician/Loco, in the skilled posts, in the erstwhile Palghat Division. After formation of the Salem Division bifurcating the erstwhile Palghat Division, 32 posts in the Technician/Loco category which were operated within the territorial jurisdiction of Salem Division stood transferred to Salem Division itself, on 'as is where is basis'. Therefore, the percentage of calculation made by the applicant based on Annexure A-3 cannot come to his rescue. It was stated that the incumbents in the post of Senior Technician/Loco and other technicians who were working under the Section Engineer at Coonoor also stood transferred to/ retained Salem Division along with these posts in their existing Technician/Loco. Thus according to the respondents, after formation of Salem Division, there were only 22 posts



available in the Technician/skilled category including 9 posts in the Grade-III category. According to them, there was no sanctioned posts of Senior Technician/Loco available in Palghat Division. Therefore, the claim now made by the applicant is for a post which does not exist at all; the respondents contend.

11. Annexure A-3 would show that there is no sanctioned post of Senior Technician/Loco in the Pay Band 9300-34800 with Grade Pay Rs. 4200/- in Palghat Division with effect from 01.11.2007. The claim made by the applicant based on the promotion given to Shri Balakrishnan and Shri Mohanraj, who were earlier juniors to the applicant, while all of them were in Palghat Division, cannot thus be sustained. Those erstwhile juniors could be promoted as Senior Technician because they opted Salem Division. When there is no sanctioned post in Palghat Division the claim made by the applicant that he should be promoted as Senior Technician/Loco cannot be sustained. The restructuring effected in 2003 does not help the applicant because of the bifurcation and transfer of the post of Senior Technician/Loco to Salem Division.

12. There can be no denial of the fact that promotion to higher Pay Band can be considered only against posts for which sanction actually exists. In view of absence of any sanctioned posts, in Senior Technician/Loco category, the claim made by the applicant is only to be turned down.

A handwritten signature in black ink, appearing to be a stylized 'J' or a similar mark, is located at the bottom center of the page.

13. It is also pointed out by the respondents that the employees were given opportunities for redeployment and also for making options. The applicant did not make use of the same. The claim now made by the applicant in 2013 challenging what transferred in 2007 or prior to that cannot be sustained at all. It is barred by limitation also, the respondents contend. The right available to a litigant became unenforceable if he does not approach the Court within the time prescribed. [See **State of Karnataka v. Laxuman (2005) 8 SCC 709** and **Karnataka Power Corporation Ltd. v. Thangappan (2006) 4 SCC 322** and **State of Tamilnadu v. Sheshachalam (2007) 10 SCC 137**] There can also be no dispute regarding the fact that after the formation of Salem Division the seniority position maintained in the two divisions are entirely different. The applicant who belongs to Palghat Division cannot claim promotion based on the promotion granted to his counterpart in Salem Division. It is not disputed by the applicant that his seniority is maintained in Palghat Division only. Had he opted Salem Division, he would have been senior to Balakrishnan and Mohanraj referred to earlier. The plea raised by the respondents that as per Annexure R-3, no sanction was given to the post of Senior Technician/Loco, in Palghat Division has not been countered by the applicant. It was also contended by the respondents that the employees who had registered their names for transfer to Palghat Division, were considered for transfer to Palakkad duly maintaining their lien. The applicant at no point of time had opted for Salem Division. In

fact, before bifurcation, the applicant had sought a transfer to Palakkad and after bifurcation, he continued to remain in Palghat Division. The seniority units of Salem and Palghat Divisions are undisputedly different. Therefore, the applicant cannot compare himself with his counterpart in Salem Division.

14. The respondents would contend that in fact the application is barred by limitation. It is also stated that making representations will not save the limitation. It is not necessary to dwell much on those aspects. Even otherwise, the claim made by the applicant is found to be devoid of any merit. Mere chances of promotions are not conditions of service and the fact that there was reduction in the chances of promotion does not tantamount to change in the conditions of service. It was one created by the applicant by not opting to go to Salem Division but opting to continue in Palghat Division. A right to be considered for promotion is a term of service but mere chances of promotion are not (see Supreme Court decision in *State of Maharashtra v. Chandrakanth Anand Kulkarni AIR (1981) SC 1990*). For the reasons stated earlier we find no merit in this Original Application. It is hence dismissed. No order as to costs.

(Dated, this the ^{22nd} day of August, 2016)


(Mrs. P. GOPINATH)
ADMINISTRATIVE MEMBER


(N.K. BALAKRISHNAN)
JUDICIAL MEMBER