

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 51 of 2013

Wednesday, this the 30th day of September, 2015

CORAM:

Hon'ble Mr. Justice N.K. Balakrishnan, Judicial Member
Hon'ble Mrs. P. Gopinath, Administrative Member

1. K.M. Suresh Babu, aged 47 years,
 S/o. Narayanan, Technician Grade I,
 Office of the Senior Section Engineer/
 Overhead Equipments (OHE), Traction
 Distribution Wing of the Electrical Dept.
 Southern Railway, Shoranur Railway Station,
 Residing at Kolarmunda House, Poongode PO,
 Malappuram District, Pin – 679 327.
2. P.K. Ramesan, aged 36 years,
 S/o. P.P. Krishnan, Technician Grade I,
 Southern Railway, Office of the Senior Section
 Engineer/Overhead Equipments (OHE),
 Traction Distribution Wing of the Electrical Dept.,
 Southern Railway, Palakkad Railway Station,
 Residing at Parayanthodi House, Thenur PO,
 Palakkad, Pin – 678 612.
3. K. Pradeep, aged 36 years,
 S/o. V. Kumaran, Technician Grade I,
 Southern Railway, Office of the Senior
 Section Engineer/Overhead Equipments (OHE),
 Traction Distribution Wing of the Electrical Dept.,
 Southern Railway, Palakkad Railway Station,
 Residing at Koottapura House, Near Railway
 Rest House, Olavakkode, Palakkad,
 Pin – 678 002. **Applicants**

(By Advocate : **Mr. T.C.G. Swamy**)

V e r s u s

1. Union of India, represented by the General Manager,
 Southern Railway, Headquarters Office, Park Town PO,
 Chennai – 600 003.
2. The Senior Divisional Personnel Officer,

Southern Railway, Palakkad Division, Palakkad-678 002.

3. The Divisional Railway Manager, Southern Railway, Palakkad Division, Palakkad – 678 002.
4. Sri Ahammed Musthaffa, Technician Grade I, Office of the Senior Section Engineer, Traction Distribution Wing, Overhead Equipments (OHE), Southern Railway, Palakkad Junction Railway Station, Palakkad – 678 002.
5. M. Rajesh Kumar, Technician Grade I, Office of the Senior Section Engineer, Traction Distribution Wing, Overhead Equipments (OHE), Southern Railway, Palakkad Junction Railway Station, Palakkad – 678 002. **Respondents**

[By Advocates : Ms. P.K. Radhika (R1-3) &
M/s. Varkey & Martin (R5)]

This application having been heard on 18.9.2015, the Tribunal on 30/09/2015, delivered the following:

O R D E R

Hon'ble Mr. Justice N.K. Balakrishnan, Judicial Member -

This Original Application has been filed by the three applicants for a declaration that they are entitled to be placed senior to respondents 4 & 5 in the cadre of Technicians (OHE) of the Traction Distribution Wing of Electrical Department of Southern Railway. They also seek a direction to be given to the respondents to grant the applicants the consequential benefits as well.

2. The case of the applicants is summarized as follows:-
 - 2.1. The applicants are Technician Grade-I/Over Head Equipments in the Traction Distribution Wing of Electrical Department of Southern Railway. Applicants and respondents 4 & 5 are persons who were initially appointed

on compassionate grounds consequent upon the demise/medical de-categorization of their respective father of the parties mentioned above. The 1st applicant was appointed as a Technician Grade-III with effect from 14.10.1997. Other applicants were initially appointed as Loco Khalasis and later appointed as Technician Grade-III with effect from 17.11.1997. Their initial appointment as Group-D of the 2nd and 3rd applicant was on 28.3.1997 and 26.3.1997 respectively. As per Annexure A4 posting order the names of the applicants 2 & 3 are at serial Nos. 8 & 10 respectively. The 4th respondent is shown as serial No. 1 and 5th respondent is at serial No. 4. The name of the 1st applicant is not seen in Annexure A4 because he was appointed by another order. The applicants are working in the open line organization not related to administrative office. The applicants and respondents 4 & 5 were promoted as Technician Grade-I by Annexure A5 common order dated 14.10.2008. The seniority list was published on 1.7.2010 vide Annexure A6. The applicants' names are seen there as serial Nos. 6, 7 & 8. The respondents are at serial Nos. 4 & 5 respectively. It was only then the applicants came to know about the *inter-se* seniority between the applicants and respondents 4 & 5. Immediately the applicants submitted representations dated 30.11.2011. The claim was rejected by the respondents vide Annexures A1 to A3. All the applicants were appointed simultaneously. No competitive examination had taken place for the appointment on compassionate grounds. Hence, according to the applicants the official respondents ought to have taken the date of birth as the criterion for determination of *inter-se* seniority and the applicants should have been

placed above respondents 4 & 5. Since it was not done this Original Application has been filed.

3. This claim has been stoutly resisted by the official respondents contending as follows:-

3.1. The applicants were appointed on compassionate ground in October/November, 1987. After successfully undergoing apprenticeship for three years they got qualified in the trade test and then they were absorbed in the working post of 'Technician Grade-III' in November/December, 2000. Hence, the applicants were entitled for assignment of seniority in November/December, 2000. After their regular appointment in the year 2000 seniority lists were published in the years 2002, 2003, 2006, 2008, 2009, 2010 and 2011. Based on the assigned seniority they were promoted to still higher grades of Technician Grade-II in 2003 and Technician Grade-I in 2008. No representation was filed challenging the seniority in 2000, 2003 or 2008. It should have been filed within one year from the date of publishing the seniority list as can be seen from Annexure R1. The applicants accepted the seniority all these years and so they cannot now claim for revision of seniority after more than 12 years of their regular appointment. The provisional seniority was published on 8.11.2002. Representations were called for from employees. After considering the representations the final seniority list was published on 10.4.2003 vide Annexure R2. Thereafter, lists were published in 2006, 2008, 2009, 2010 and 2011. All these years representations were called but the seniority position continued as such. The applicants had no objection so far.

4. The 5th respondent filed reply statement reiterating the contentions raised by the official respondents. It is stated that as per the seniority list respondents 4 & 5 are above the applicants and so the claim for revision of seniority made by the applicants is unsustainable. Applicants 2 and 3 were considered for fitment in Grade-II by letter dated 1.9.2004 much later than the promotion given to the 4th respondent and the 5th respondent. Thus, the fifth respondent prayed for dismissal of the OA.

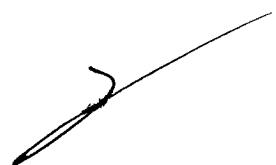
5. A rejoinder was filed by the applicants reiterating the contentions raised in the application and refuting the allegations made in the reply statements filed by the respondents.

6. Again additional reply statement was filed by the official respondents reiterating the contentions taken earlier in the original reply statement. It is contended that the averments raised in the rejoinder are unsustainable.

7. We have heard the learned counsel for the applicants and the learned counsel appearing for the official respondents as well as the 5th respondent.

8. The following points are raised for consideration:

- i) Whether the applicants are entitled to get the seniority revised as claimed by them; and
- ii) whether they are entitled to get any other benefit as claimed in this Original Application?

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9. It is not disputed that as per Paragraph 103(iv) of IREM an apprentice or a trainee means a person undergoing a training with the view to employment in Railway service, who draws pay, leave salary, subsistence allowance or stipend during training but is not employed in or against a substantive vacancy in the cadre of a branch of a department. On satisfactory completion of his training he is eligible for appointment of probation in a substantive vacancy but no guarantee of such appointment is given. Therefore, it is contended by the respondents that the applicants as well as the 4th and 5th respondents could be considered for regular absorption only after completion of their training course which continued for a period of three years. The 1st applicant was appointed on 14.10.1997. Paragraph 303(b) of IREM specifies that in the case of candidates who do have undergone any training in the training school the seniority should be determined on the basis of the merit order assigned by the Railway Recruitment Board or other recruiting authority.

10. The power of making appointment on compassionate grounds vests with the Divisional Railway Manager. Admittedly, the applicants and respondents 4 & 5 were appointed on compassionate grounds. The respondents would contend that the priority for appointment is drawn based on the date of demise of the Railway employees, medical unfitness etc. Considering the date of death/demise of the respective father of 4th and 5th respondents they have preferential right for consideration for appointment

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over the applicants based on the date of demise. It is pointed out that paragraph 304 of the IREM Volume-I is applicable only in the case of selection and as such paragraph 304 of the IREM has no application at all. Paragraph 314 of IREM also is not applicable since none of the applicants is promoted from a lower grade. The applicants and the two respondents were appointed in Group-C after subjecting them for a suitability test. Respondents 4 & 5 were provisionally appointed as Carriage and Wagon Khalasis in March, 1997. For assignment of seniority as Technician Grade-II/OHE the date of regular absorption will have to be reckoned.

11. It is vehemently argued by the learned counsel for the applicants that no seniority list was made available to the applicants till 2011 and only when they came to know in 2011 as to their position vis-a-viz respondents 4 & 5 to which the impugned replies were furnished. But that is refuted by the respondents. The date of termination of service of the respective fathers/breadwinners of the applicants and respondents are furnished in paragraph 3 of the additional reply statement as under:-

“1 st applicant	Shri K.M. Suresh Babu	10.03.1995
2 nd applicant	Shri P.K. Rautesari	29.10.1995
3 rd applicant	Shri K. Pradeep	06.05.1996
4 th respondent	Shri S. Ahammed Musthafa	03.04.1992
5 th respondent	Shri M. Rajeshkumar	03.04.1993”

12. As regards the method of recruitment on compassionate grounds; it is subject to the application of the candidate; it is stated that an authenticated copy of the order of appointment is kept in the personal file. Paragraph 321 of IREM reads:

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"321. PERMISSION TO RAILWAY SERVANTS TO PERUSE SENIORITY LIST:-

(a) Railway servants may be permitted to see the seniority lists in which their names are placed, or if this cannot conveniently be arranged, they may be informed, on request, of their place on the seniority list.

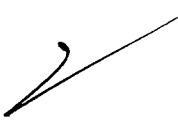
(b) Staff concerned may be allowed to represent about the assignment of their seniority position within a period of one year after the publishing of the seniority list. No case for revision in seniority lists should be entertained beyond this period."

Therefore, the contention raised by the applicants that they were not aware of the publication of the seniority lists or that they had no occasion to know or to have access to the seniority list also cannot be sustained. Annexure R2 is the revised seniority list of Technician Grade-III published on 10.4.2003.

13. The applicants could not refute the plea that the respondents 4 & 5 were appointed as Carriage & Wagon Khalasis in March, 1997 and that they were subjected for a suitability test for appointment to Group-C service. The applicants also could not refute the fact that after successful completion of apprenticeship the 4th and 5th respondents were regularly absorbed in the working post of Technician Grade-III in November/December, 2000. Similarly the fact that the seniority list was published in 2002 and it was again published on 10.4.2003 also could not be refuted by the applicants. It is pointed out by the learned counsel for the respondents that the same seniority continued even thereafter and every time seniority list was published and it was never objected to by the applicants. Even otherwise, the seniority of respondents Nos. 4 & 5 who appeared above the applicants' name cannot be challenged at all in view of the fact that their seniority position was not fixed based on paragraph 304 of IREM.

14. Even if it is assumed for the worst position that the placement of respondents 4 & 5 above the applicants is incorrect, still the applicants cannot now contend that the seniority should be revised since the seniority list was published in the year 2003 and it continued to be so till it was finally revised in the year 2011. The applicant wanted to wriggle out of the situation contending that they are challenging only the seniority list of 2011, obviously oblivious of the fact that the said seniority list is only a continuation of the seniority list as it existed in the year 2003. The seniority position continued as such since 2003 and so the plea now raised by applicants that the seniority position seen in the list of 2011 alone is attacked is too facile to be countenanced.

15. It is argued that there must exist sufficient ground for the satisfaction of the Tribunal to condone the delay and that entertainment of belated claims will defeat the very object of the Act. The Apex Court decision in *State of Karnataka v. Laxuman - 2005 (8) SCC 709* has also been relied upon by the official respondents to fortify the submission that the right available to a litigant becomes unenforceable if the litigant does not approach the court within the time prescribed. The law is intended for the diligent. The law expects a litigant to seek the enforcement of a right available to him within a reasonable time of the arising of the cause of action and the reasonable time reflected by the various articles of Limitation Act. A subtle device has been devised by the applicants contending that the application is not belated in view of the fact that their representations dated



30.11.2011 were disposed of by Annexures A1 to A3 only on 27.2.2012. A stale claim cannot get revived by this sort of subtle devices and subterfuges ingeniously devised by the party after a decade, by submitting a representation and getting an adverse order and then contending that the limitation should start only from the date of representation if it is not being disposed of or if disposed of from the date of reply. That is not the intendment of the legislature.

16. The applicants wanted to contend that since their representations were disposed of by Annexures A1 to A3 in February, 2012 and since the applications were filed within one year from the date of Annexures A1 to A3, the applications are well within the time prescribed under Section 21(1) (a) of the Administrative Tribunals Act. But it is important to note that a representation of this nature will not revive a stale claim because of the fact that the seniority list was published in the year 2003. As per paragraph 314 of IREM the seniority position should have been challenged within one year from the date of publication of the seniority list. It is in this connection the respondents have pointed out Rule 321 IREM which prescribes that the seniority list would be made available to each employee. Therefore, the contentions that the applicants were unaware of the seniority list published in the year 2003 cannot be swallowed for a moment. It is also pertinent to note that the very same seniority list continued and it was published during subsequent years till 2011. Simply by challenging the seniority list of 2011 the applicants cannot contend that the cause of action did not arise in 2003. Since the cause of action arose in 2003 it has to be found that Section 21(1)

(a) of the Administrative Tribunals Act cannot help the applicant at all to save the period of limitation. In the light of Annexures R1 and R2 the contention to the contrary advanced by the applicants cannot be sustained at all.

17. In *State of Tamil Nadu v. Seshachalam*, 2008 (1) SLJ 413 (SC)= (2007) 10 SCC 137, it was held by the Supreme Court as under:

“Some of the respondents might have filed representations but filing of representations alone would not save the period of limitation. Delay or latches is a relevant factor for a Court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or latches on the part of a Government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant.”

18. It is trite law that representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone without examining the merits of the claim. The modus 'representation' adopted by the claimants was deprecated by the Hon'ble Supreme Court in *C Jacob v. Director of Geology & Mining & Anr.* - (2008) 10 SCC 115 where it was held in paragraphs 10 & 11 as under:

“10. Every representation to the government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the department, the reply may be only to inform that the matter did not concern the department or to inform the appropriate department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.

11. When a direction is issued by a court/tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the

court or tribunal, such an order does not revive the stale claim, nor amount to some kind of 'acknowledgment of a jural relationship' to give rise to a fresh cause of action."

19. It is argued by the learned counsel for the 5th respondent that Annexures R5(a) and R5(b) the seniority lists produced by him would reveal that all the employees were given the copies of the seniority list published at the appropriate time. If the applicants had any grievance regarding the assignment of the seniority they should have resorted to the remedy at the relevant time. Not only that, a second chance also arose for the applicants when the 2nd and 3rd applicants were allotted for trade test as per letter dated 1.9.2004 as evidenced by Annexure R5(c). It is pertinent to note that by that time respondents 4 & 5 had already been promoted to Technician Grade-II/OHE from 8.8.2003. That order also was not challenged at all by the applicants. The contention that the applicants were suddenly informed of the seniority only in the year 2011 can only be a brazen lie. Annexure R5(c) the communication issued to the applicants 2 & 3 with regard to the trade test for promotion to Technician Grade-II would demolish the case of the applicants that they were totally unaware of the publication of the seniority. The plea made by the applicants that they came to know about the seniority list of Traction Distribution Staff only when A6 was published by the 3rd respondent is a reason trotted out by the applicant on a fallacious premise that a fresh lease of life can be given to a still born child.

20. We have no hesitation to hold that the seniority list was published in



the year 2003 and during subsequent years and so the cause of action did arise in 2003 itself. The sole object of the application is only to unsettle the settled seniority position. It is trite law that the seniority list after having been settled for once should not be liable to be reopened after lapse of many years at the instance of a party who has during the intervening period chosen to keep quiet. Raking up old matters like seniority after a long time is likely to result in administrative complications and difficulties. Therefore, in the interest of smoothness and efficiency of service such matters should be given a quietus after lapse of time. Here the applicants have come forward with a challenge against the seniority after about ten years. The settled position cannot be allowed to be unsettled by resorting to such stale claims, vide the Supreme Court decisions in *Melcom Lawrence Cecil D'Souza v. Union of India - AIR 1975 SC 1269*, *R.S. Makashi & Ors. v. I.M. Menon & Ors. - AIR 1982 SC 101*, *K.R. Mudgal & Ors. v. R.P. Singh & Ors. - AIR 1986 SC 2086*, *G.C. Gupta & Ors. v. N.K. Pandey & Ors. - AIR 1988 SC 654*, *Dr. Ku. Nilofar Insaf v. State of Madhya Pradesh & Ors. - AIR 1991 SC 1872*.

21. In the light of what have been stated above we have no hesitation to hold that the applicants are not entitled to any relief in this application. It is hence dismissed. No order as to costs.


 (P. GOPINATH)
 ADMINISTRATIVE MEMBER

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 (N.K. BALAKRISHNAN)
 JUDICIAL MEMBER