

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**ORIGINAL APPLICATION NO. 506 of 2013**

Thursday this the 28<sup>th</sup> day of January, 2016

**CORAM**

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

R.Sundaram, aged 54 years S/o S.Ramasamy,  
Technician Grade II/Electrical/Train Lighting,  
Southern Railway/Office of the Senior Section  
Engineer/Electrical/Train Lighting/Palakkad  
residing at Door No.430, Mettur Main Road,  
Podanur, Coimbatore District. 627103.

**...Applicant**

(By Advocate Mr. T.C. Govindaswamy)

Versus

1. Union of India represented by the General Manager  
Southern Railway, Headquarters Office,  
Park Town PO, Chennai.3.
2. The Sr. Divisional Personnel Officer,  
Southern Railway, Palakkad Division, Palakkad.2.
3. The Sr. Divisional Electrical Engineer,  
Southern Railway, Palakkad Division, Palakkad.2.
4. Shri K.S. Sasidharan, Technician Grade I  
Office of the Sr.Section Engineer/Electrical  
Train Lighting, Mangalore RS & PO.575001.

**...Respondents**

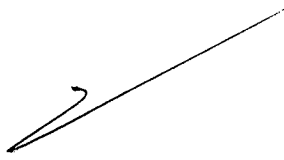
(By Advocate Advocate Mr. Thomas Mathew Nellimootil R 1 to 3)

This application having been finally heard on 18.01.2016, the  
Tribunal on 28 .01.2016 delivered the following:

**ORDER**

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

The Applicant and one K.Chandran were informed as per



Annexure A5 dated 27.5.2013 that their names were erroneously noted in the provisional seniority list published as per letter dated 25.2.2013 and that their names were deleted since their lien and seniority are to be maintained at Salem Division. This OA has been filed by the applicant to quash Annexure A5 and to direct the respondents to grant the applicant all the benefits as if he continued in the cadre of Technician/Train Lighting of Palakkad Division. The Applicant also wants to quash Annexure A2 dated 16.2.2010 which relates to promotion/transfer of the employees mentioned therein. The applicant seeks a direction to the respondents to consider promoting him as Technician Gr.I in preference to the 4<sup>th</sup> respondent who is shown at Sl.No.5 in Annexure A2.

2. The case of the applicant is stated in brief as follows:

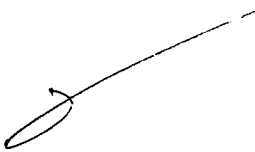
The applicant is working as a Technician Gr.II in PB-I Plus GP of Rs. 4200/-. The 4<sup>th</sup> respondent is junior to the Applicant. The 4<sup>th</sup> respondent and others were promoted as Technician Gr.II as per Annexure A1 dated 7.5.2007. In Annexure A1 the name of the applicant is shown at Sl.No.7 whereas the name of the 4<sup>th</sup> respondent is shown at Sl.No.13. Salem Division was formed with effect from 1.1.2007. The applicant was working at Palakkad. He did not opt for Salem Division and so he continued to be on the rolls of Palakkad Division. In March, 2011 the applicant came to know that some of his juniors were promoted as Technician Gr.I and posted to far off places like Mangalore. Applicant subsequently got a copy of that order vide Annexure A2.. As per Annexure A2 the 4<sup>th</sup> respondent who was junior to the applicant along with others were promoted as Technician Gr.I. The applicant does not suffer any disqualification. The



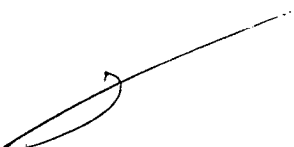
applicant and the other person shown in Annexure A5 made a representation dated 10.3.2011 vide Annexure A.3. No favourable action was taken. Thereafter a provisional seniority list was published (A4). All the juniors of the applicant were granted promotion.

3. Respondents 1 to 3 filed reply statement resisting the claim of the applicant contending as follows:

The lien and seniority of the applicant is not maintained in Palghat Division. Hence he is not entitled to seek the reliefs as claimed in this OA. The applicant, while working as Tech Gr.III/Train lighting at Coimbatore in the year 2007 was promoted as Technician Gr.II/Train Lighting and was transferred to Palghat Division as per Annexure A1 order before the formation of Salem Division. He had reported at Palghat Division on 4.6.2007 and registered for transfer to Coimbatore and Podanur vide his application dated 5.6.2007 which was received in the office of the respondents on 11.6.2007. While registering his name for transfer the applicant accepted the conditions incorporated in the transfer registration application that once a transfer is ordered based on the application, unless the request is meanwhile withdrawn, it will be binding on him. (vide Annexure R.1). The applicant did not withdraw the request of transfer registered by him. Salem Division was formed on 1.11.2007 carving out major areas of Palghat Division. Coimbatore and Podanur are coming under Salem Division. On formation of Salem Division employees were accommodated in that division "as is where is basis ". In terms of the decision taken as per the negotiations with organized trade unions, the CPO Southern Railway had instructed that such of the employees who

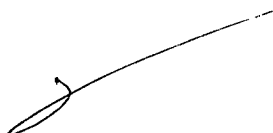


were working in the territorial jurisdiction of Salem Division, but had registered their names for transfer to the stations in the territorial jurisdiction of Palghat Division are to be provided with lien and seniority in Palghat Division and vice versa and they will be transferred on 1:1 basis. Options were thus called from employees working in the erstwhile Palghat Division and who had registered for transfer to the stations coming under Salem Division to submit their willingness or unwillingness to continue their request transfer registration vide Annexure R.2. In that list the name of the applicant appears at Sl.No.54. The applicant did not submit his unwillingness for request transfer to Coimbatore under Salem Division. Hence a final list was published showing the lien of the applicant in Salem Division vide Annexure R.3. where the applicant appears at Sl.No.9. The applicant has not cancelled or withdrawn his request for transfer to Coimbatore or Podanur. Since his lien and seniority was maintained in Salem Division, he was not considered for promotion in Palghat Division. The 4th respondent and few others in the list (Annexure R3) subsequently cancelled their request for transfer registration to the stations in the Salem Division and they had applied for retaining their lien in Palghat Division. It was agreed and they were allowed to continue. Nothing prevented the applicant to seek such reliefs at the material time. Therefore, the 4<sup>th</sup> respondent was considered for promotion to Technician Gr.I/Train Lighting and was promoted as per Annexure A2 Order. That benefit cannot be extended to the applicant. Seniority list indicating the lien at Salem Division was published in 2010 and 2012 vide Annexure R.4. However, in 2013 vide Annexure A4, lien at Salem, was left out to be noted in the




marginal remarks. When the error was noticed subsequently it was rectified issuing Annexure A5 dated 27.5.2013. and his lien is maintained at Salem Division. While the applicant was working as Technician Gr.III at Coimbatore he was promoted as Technician Gr.II and was posted at Palghat as per Annexure A1 order of the year 2007. Pursuant thereto the applicant joined at Palghat on 5.6.2007. After joining there, he registered his name for transfer to Coimbatore and Podanur as per Annexure R1. A final list was published on 1.9.2008 stating that the applicant's lien is at Salem since he did not submit his unwillingness to work at Salem Division. Therefore, he cannot be considered for promotion in Palghat Division. If the applicant had any grievance on the non-assignment of seniority in Palghat Division he should have sought remedy in 2003 or 2009 immediately after issuance of Annexure R.3 letter. Again the applicant did not file any application. Annexure A2 order was passed in Feb.2010. Now this OA has been filed after more than four years without stating any reason for delay. Though applicant says that representation Annexure A3 was filed, it was not received in the office of the respondents. Thus respondents contend that the applicant is not entitled to the reliefs claimed in this OA.

4. The points for consideration are whether Annexure A5 is liable to be quashed (ii) whether the applicant should be allowed to be in the cadre of Technician in Palghat Division (iii) whether Annexure A2 as far as it relates to the 4<sup>th</sup> respondent is liable to be set aside and (iv) whether the applicant is entitled to be promoted treating him as the officer borne in the cadre of Palghat Division.?



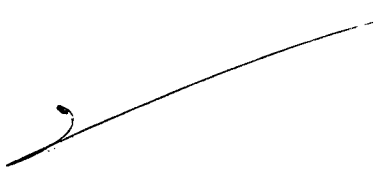
5. Annexure A5 is the rectification order dated 27.5.2013 issued by the Divisional Office, Palghat as per which it was stated that the name of the applicant and that of one K.Chandran were erroneously noted against the categories as shown in 4<sup>th</sup> column stating that their lien and seniority are maintained at Salem Division and not in Palghat Division, It was so mentioned in the remarks column. According to the respondents the applicant and Chandran mentioned above were in the seniority list of Salem Division having their lien at Salem Division. Annexure R4 is the provisional seniority list where the name of the applicant appears at Sl.No.5. That is the seniority list of Technician Grade II of Salem Division. The contention raised by the applicant that he was not aware of the seniority list published as per Annexure R4 cannot be countenanced for a moment. There are 14 other names also in the very same list. The specific contention raised by the respondents is that when Salem Division was formed on 1.11.2007 carving out major areas of Palghat Division, the employees were accommodated in Salem Division in "as is where is" position. It is also stated that subsequently a decision was taken by the Chief Personnel Officer, Southern Railway through negotiation with the trade union organization and had instructed that such of the employees who were working in the territorial jurisdiction of Salem Division, but had registered their names for transfer to the stations in the territorial jurisdiction of Palghat Division are to be provided with lien and seniority in Palghat Division and vice versa and they will be transferred on 1:1 basis. It is also contended that options were thus called from employees working in the erstwhile Palghat Division and who had registered for transfer to the



stations coming under Salem Division to submit their willingness or unwillingness to continue their request transfer registration vide Annexure R.2. The last date for submitting the option was 14.11.2008. The applicant did not submit his option. He did not also submit his unwillingness to continue in Salem Division.

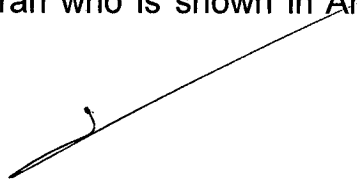
6. It is vehemently argued by the learned counsel for the applicant that even if any such option was given or in a case, unwillingness was not communicated, still the employee is entitled to withdraw the option but there is no iota of evidence to show that the applicant had ever submitted any sort of willingness or unwillingness nor did he submit an application for withdrawal of his lien in Salem Division, and to have his lien in Palghat Division. Annexure R.1 is the application for registration of request which would show that the applicant had requested for transfer to Coimbatore Junction or Podanur on 5.6.2007. That is not disputed by the applicant.

7. Annexure R.2 is the letter dated 1.7.2008 issued by Divisional Office of Southern Railway, Personnel Branch to all branch officers of Palghat Division etc where it was stated that the cadre between Palghat Division and Salem Division was closed on 31.5.2008. It is also stated that the list of employees who are working in Palghat Division but registered for transfer to Salem Division is appended to Annexure R.2. It is stated that they are provided with lien in Salem Division. It is further stated that the employees in the said list who is or are not willing to continue with their request for transfer to Salem may give in writing their unwillingness duly forwarded by the supervisors on or before 14.7.2008. Any unwillingness letter received after 14.7.2008 will never be entertained. If no such



unwillingness letter is received by the date mentioned it will be taken as willingness on the part of the employee to continue their request transfer registration to Salem Division. Therefore, the argument vehemently advanced by the learned counsel for the applicant that the willingness can be withdrawn subsequently has no legs to stand. The list accompanying Annexure R.2 shows the names of employees having lien in Salem Division. The applicant's name appears at Sl.No.54 shown as Technician Grade II. His date of registration was shown as 11.6.2007. Annexure R3 is a similar letter dated 1.9.2008 as per which it was stated that all employees whose names are shown in the list provided with lien in the newly formed Salem Division and the employees and that they will not considered for promotion in the Palghat Division since they are attached with Salem Division by way of provision of lien. In view of this, the registration made by these employees excluding trackman for request transfer to different stations in Salem Division stands cancelled. The applicant is not a Trackman. Name of the applicant appears at Sl.No.9 in the Electrical Division.

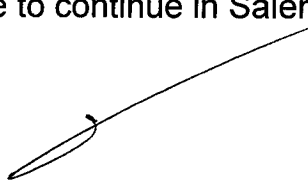
8. It is important to note that the applicant did not challenge Annexure R2 and Annexure R3 but feigns ignorance and contends that he is still in Palghat Division. Since Annexures R2 and R3 were issued in 2008 the applicant cannot now contend that his seniority position should be reckoned as the one included in the Palghat Division. He appears at Sl.No.5 in Technician Gr.II. The respondents contend that the applicant wanted to beguile the court stating incorrect facts. He did not even say that the other employee Mr.Chandran who is shown in Annexure A5 had filed





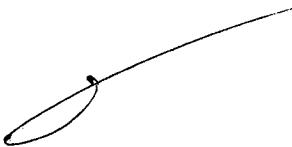
OA before this Tribunal and his application OA 463/2014 was already dismissed by this Tribunal as per order dated 9.2.2015. Even after expiry of 11 months the applicant conveniently omitted to state that fact.

9. Annexure R5 is the order dated 7.8.2012 with respect to the request for cancellation of lien of staff maintained at Salem Division and now working in Palghat Division. It is now stated that consequent on the bifurcation of Palghat Division and formation of Salem Division the cadre was closed on 31.5.2008. As instructed by the CPO/MAS employees who have registered for transfer, lien may be provided before the cadre closure in the Division to which the employees are seeking transfer. It was decided that the employees who are working in Salem Division and registered for transfer to Palghat Division were provided with a lien in Salem Division. The list of employees, accompanying Annexure R5, shows the names of the employees working in Palghat Division who were provided with a lien at Salem Division. It was further stated that none of the employees requested for transfer to Salem Division and to retain them in Palghat Division itself. In that list the name of the applicant appears at Sl.No.14. Therefore, all these documents would clearly show that the contention raised by the applicant that he was unaware of all these aspects is unworthy of credence. Annexure R5(3) states that the employees working in Palghat Division having lien at Salem Division have been advised to submit their willingness or otherwise, whether they want to continue their lien at Salem Division or not, and accordingly many of the employees submitted their willingness but admittedly applicant did not submit his willingness or otherwise to continue in Salem Division.



10. It is vehemently argued by the learned counsel for the applicant that now applicant is neither in Palghat Division nor in Salem Division. That is absolutely incorrect, learned counsel for the respondents would submit. The documents would show that the applicant is shown as the officer having his lien in Salem Division. Only on the basis of an erroneous entry in Annexure A4 the whole claim has been founded. It was well clarified, how that mistake had crept in which necessitated the issuance of Annexure A5 letter. In the light of the documentary evidence referred to above, it is crystal clear that the applicant had all along been having his lien in Salem Division, though he is permitted to work in Palghat Division. The question of withdrawal of option would arise only if he had submitted his unwillingness to be in Salem Division. Since he is now in the seniority list of Salem Division, if he had any grievance against his seniority list position, he should have challenged the seniority list within the prescribed time. The seniority list published in the year 2008 was not challenged. The Seniority list of 2012 (Annexure R4) has also been not challenged. It is also pointed out that the applicant had never questioned the promotion of the so called juniors from Salem Division. The lien of the applicant had to be maintained at Salem Division based on the registration of his request for transfer to Coimbatore/Podanur Junction as per Annexure R3 letter. He did not submit his unwillingness to have his lien in Salem Division. He did not submit any representation even thereafter for more than four years.

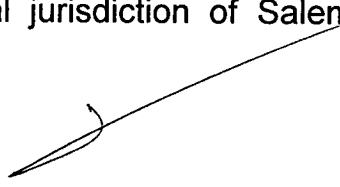
11. The learned counsel for the respondents pointed out that similar cases of other applicants were dismissed by this Tribunal vide orders in O.As 340/2010, 343/2010, 712/2010 and 713/2010. It is not necessary to



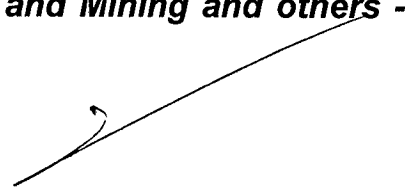
probe into whether the facts of those cases are identical or not. Repeated representations will not surmount the law of limitation. Therefore, since the applicant did not challenge the seniority list of 2008 published in Salem Division, he cannot now challenge the seniority list after about five years. See the Decision of the Hon'ble Supreme Court in **S.S.Rathore's case AIR 1990 SC 10.**

12. As stated earlier the applicant did not challenge Annexure R.3 dated 1.9.2008 as per which the applicant was shown at Sl.No.9 in the Electrical Division as Grade II. He made no representation nor did he challenge Annexure R3 at the appropriate time. As he had earlier requested for transfer to Coimbatore/Podanur Junction his lien and seniority continued to be maintained at Salem Division. An erroneous inclusion in Annexure A4 will not confer on the applicant any right to get the lien transferred to Palghat Division. At the risk of repetition it is stated that reasons for cancellation of that seniority list have been well stated by the respondents, and consequently Annexure A5 the impugned order was passed. There is no illegality or irrationality in the order so passed by the respondents.

13. It is contended by the applicant that as per Annexure A2 order, the 4<sup>th</sup> respondent K.Sasidharan was promoted as Technician Grade I/TL. It is contended that Shri Sasidharan mentioned above was junior to him, as can be seen from Annexure A1 dated 7.5.2007. But it is pointed out by the respondents that the 4<sup>th</sup> respondent and few others in the list at Annexure R3 subsequently cancelled their request for transfer registration to the stations in the territorial jurisdiction of Salem Division and they



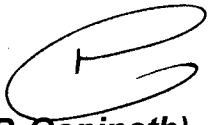
applied for retention of their lien in Palghat Division. That was based on the decision arrived at as has been delineated earlier. The applicant did not opt to file any such representation seeking similar reliefs. Therefore, the 4<sup>th</sup> respondent who was given lien in Palghat Division was considered for promotion as Technician Grade I/TL and that was why he was promoted as per Annexure A2 order dated 16.2.2010. This OA was filed on 23.7.2013. It has already been said that repeated representations will not surmount the law of limitation. The contention that the applicant was unaware of that order cannot be accepted at all since he was well in service at the relevant time. The contention that the order was not communicated to the applicant is only a reason trotted out to get out of the period of limitation. From 2008 onwards the applicant remained quite without raising any objection against the seniority list or against his lien being continued in Salem Division. No request was made by him for transferring his lien to Palghat. Since Annexure A2 order was passed in 2010 he should have filed the OA within one year from that date. If any representation was filed, the further period he would be entitled to get is six months more. That period stood expired more than one year prior to the filing of this OA. The applicant was not diligent in the matter. The law leans in favour of the diligent and frowns upon delay and lethargy. Without submitting any application for condoning the delay and without stating any convincing reason, the applicant cannot request for setting aside Annexure A2 by which the 4<sup>th</sup> respondent was given promotion as Technician Gr.I. See also the decision in ***State of Karnataka Vs. Laxuman – (2005) 8 SCC 709*** and the decision in ***C.Jacob Vs. Director of Geology and Mining and others - 2008 (10) SCC 115***



and also ***Union of India and others Vs. A. Durairaj (dead) - JT 2011 (3)***

**SC 254.** Though a vague plea was raised by the applicant that so many persons who were junior to him were granted promotion, there is nothing on record to show that the applicant had ever raised any objection questioning the seniority etc. of those persons. Seniority which had been settled four or five years back cannot be unsettled now based on a vague plea that the applicant was not aware of the publication of seniority list.

14. For the reasons stated earlier we find no merit in this O.A, it is accordingly dismissed. No order as to costs.

  
(Mrs.P. Gopinath)  
Administrative Member

  
(N.K. Balakrishnan)  
Judicial Member

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