

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCHO.A.No.112/2006

Monday this the 20th day of August, 2007

CORAMHON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

K.Eswaramoorthy, aged 59 years
S/o Kulandaiswamy,
Technician Grade I' (Carriage & Wagon)
Southern Railway, Erode,
residing at Door No.10, KT Raju Street,
Kengattu Thottam, Kollampalayam,
Erode. Applicant

(By Advocate Mr. T.C.Govindaswamy)

V.

- 1 Union of India, represented by
General Manager, Southern Railway,
Headquarters Office, Park Town Post,
Chennai.3.
- 2 The Divisional Railway Manager,
Southern Railway, Palghat Division,
Palghat.
- 3 The Senior Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat.
- 4 The Senior Divisional Mechanical Engineer,
Southern Railway, Palghat Division,
Palghat. Respondents

(By Advocate Mr. P.Haridas)

This application having been finally heard on 17.7.2007, the Tribunal on
20.8.2007 delivered the following:



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ORDER

Hon'ble Mr. George Paracken, Judicial Member

1 The applicant who is working as Technician Grade -I (Carriage &Wagon) under the Palghat Division of Southern Railway is aggrieved by (i) the Annexure.A9 letter dated 23.5.2006 informing him that he has failed in the suitability test and hence he was not promoted as Senior Technician in the scale of pay of Rs. 5000-8000 and (ii) the Annexure.A.10 panel dated 17.11.2004 placing four other employees for promotion to the said post.

2 The brief facts of the case; that vide Annexures.A1 and A2 orders Nos.RBE 177/2003 and RBE 5/2004 dated 9.10.2003 and 6.1.2004 respectively, the Railway Board have restructured certain Group C&D cadres w.e.f 1.11.2003. The respondents have filled up the resultant vacancies, vide Annexure.A4 Office Order dated 31.8.2004 by promoting 24 C&W Technicians Grade-I in the scale of pay of Rs. 4500-7000 as Senior Technician in the scale of Rs. 5000-8000. The post of Sr.Technician(C&W) being a non-selection post, it was filled up on the basis of seniority-cum-suitability. The suitability was assessed on the basis of viva-voce and verification of service records such as Service Register and Annual Confidential Report, by a duly constituted Departmental Promotion Committee. All those C&W Technician Grade -I who were promoted by the Annexure.A4 order were senior to the applicant. In order to fill up the 6 more vacancies in the grade of Senior Technician (C&W) arisen subsequently (UR 4, SC 1 & ST 1 of Sr.Technician (C&W), six more Senior Technicians (C&W) in the order of their seniority were called for assessment of their suitability on 2.11.2004 vide Annexure.A5 letter dated



28.10.2004. The applicant was the 4th candidate belonged to the OC category in the order of seniority. Out of the said 6 candidates Shri R.Ramu, Techn. Gr.I/MTPP belonging to ST category did not attend the suitability test. The Committee after making the assessment based on the service records and viva-voce of the five employees including the applicant who attended the suitability test on 2.11.2004 prepared the impugned Annexure.A10 panel of 4 employees who were found suitable for promotion to the post of Sr.Technician(C&W). The applicant's name was not included in the said panel. Later on, the remaining 4 (UR 3 & SC 1)employees who were found suitable were promoted as Senior Technicians vide the Annexure.A6 Office Order No.53/04 dated 15.12.2004. The applicant submitted the Annexure.A7 representation dated 1.1.2005 to the 4th respondent, ie., Sr. Divisional Mechanical Engineer followed by the Annexure.A8 reminder dated 12.5.2005 against the non-inclusion of his name in the promotion order. In reply to the said representations, the respondents issued the impugned Annexure.A9 letter dated 23.5.2005 informing the applicant that he was not promoted because he "failed in the suitability test". Applicant challenged the Annexure.A9 & A10 in this OA. According to him, he had actually passed the suitability test conducted by the respondents pursuant to Annexure.A5 but his name was not included in the Annexure.A10 in an arbitrary, discriminatory, deliberate and wilful manner and, therefore, the same is contrary to law and violative of the constitutional guarantees enshrined in Articles 14 and 16 of the Constitution of India. He submitted that neither the result of the Trade Test conducted pursuant to Annexure.A5 was communicated to him nor there was any order indicating that he had failed in the Trade Test. He

alleged that he was singled out on account of his trade union activities. He has, therefore, sought an order from this Tribunal to quash the Annexure.A9 letter dated 23.5.2005 and a direction to the respondents to include his name in the Annexure.A10 panel dated 17.11.2004 and to consider and promote him as Senior Technician with effect from the date from which those included in Annexure.A6 were promoted with all consequential benefits.

3 The respondents in their reply have submitted that the issue of promotion to the post of Technician Grade II was already in question in OA 684/04 and this Tribunal has held that holding of trade test cannot be faulted. They further submitted that the post of Senior Technician is a non-selection post and it was required to be filled up on the basis of seniority-cum-suitability. The Applicant and four others have attended the suitability test conducted by the constituted selection committee on 2.11.2004, but the committee did not recommend his name because of the adverse remarks recorded in his Annual Confidential Report "Not fit for promotion". Though the said adverse remarks were communicated to him vide letter dated 24.6.2003, the appeal preferred by him against the said adverse remarks was rejected. The respondents have denied the averments of the applicant that he had qualified in the selection and he was meted out with discriminatory and hostile treatment on account of his trade union activities. They have also submitted that the O.A is not maintainable and it is barred by limitation.

4 In the rejoinder filed by the applicant, he has reiterated his earlier submissions in the O.A that he had actually passed the suitability test and it was for the respondents to substantiate their claim to the



contrary with documentary proof. He has alleged that there was actually no proper selection at all in the matter. He has also submitted that in terms of Annexure.A-11 instructions dated 5.3.1986 and Annexure.A12 letter dated 23.2.1988 the respondents have already issued instructions to delete the column relating to "fitness for promotion" from Section-II of the C.R. Form for Group 'C' staff and to include the column "special attributes" as a Sub-Section in its place and hence there was no question of writing the remarks in the confidential report "not fit for promotion". Regarding delay in filing the OA, the applicant submitted that the Annexure.A9 letter dated 23.5.2005 was issued to him in reply to his Annexures.A7 and A8 representations dated 1.1.2005 and 12.5.2005 respectively and hence there was no delay in filing the present O.A.

5 We have heard Shri T.C.Govindaswamy for the applicant and Shri P.Haridas for the respondents. The Senior Divisional Personnel Officer, Palakkad was also present in the court on our direction. We have also gone through the records produced by the respondents. It is noticed that the format used for recording the confidential report was the same as the one prescribed by the Annexure.A12 letter of the respondents dated 23.2.1988. In the said format there was no column to indicate whether a person was fit for promotion or not? However, the Reviewing Officer in his remarks dated 3.5.2003 recorded as under:

"The employee is not safety conscious. He got injured on duty on 22.2.2003 and in IOD side till date. He is an unsafe worker and not fit for promotion."

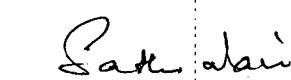
The aforesaid remarks against the applicant were communicated to him by the respondents on 24.6.2003. He made representation against the same

on 21.7.2003 and after due consideration of the same, the competent authority rejected it and held on 25.1.2004 that "remarks stand good". The applicant never challenged the aforesaid remarks in his C.R. dossier before any competent court of law. The Departmental Promotion Committee has taken note of the aforesaid remarks and it was on the basis of the same, the Committee came to the conclusion that his name should not be recommended for promotion to the post of Sr.Technician. We do not find any infirmity in the selection process or in the findings of the Selection Committee. In the above facts and circumstances of the case, we do not find any merit in this OA and accordingly the same is dismissed. There shall be no order as to costs.

Dated this the 20th day of August, 2007


GEORGE PARACKEN
JUDICIAL MEMBER

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SATHI NAIR
VICE CHAIRMAN