

**Central Administrative Tribunal
Ernakulam Bench**

OA No.216/2013

Thursday....., this the 8th day of October, 2015

CORAM

HON'BLE MR.JUSTICE N.K.BALAKRISHNAN, JUDICIAL MEMBER

HON'BLE Mrs. P.GOPINATH, ADMINISTRATIVE MEMBER

C.K.Viswanathan Achari, 61 years
Retd Technician Grade
Southern Railway, Shornur.
Residing at Chirakkanottu House
Ulanad P.O., Kulanada, Pathanamthitta.

Applicant

(By Advocate: Mr.U.Balagangadharan)

Versus

1. The Senior Divisional Personnel Officer
Palakkad Division, Southern Railway, Palakkad-678 002.
2. The Senior Divisional Engineer
Palakkad Division, Southern Railway, Palakkad-678 002.
3. The Section Engineer (Electrical)
Southern Railway, Shornur Railway Station
Shornur-679 121.

Respondents

(By Advocate: Mr.Thomas Mathew Nellimoottil)

This Original Application having been finally heard on 22nd September, 2015, this Tribunal delivered the following order on 8th October, 2015:

ORDER

By Mrs.P. Gopinath, Administrative Member

Applicant who retired from service as Technician on 31.3.2012 from the Southern Railways is aggrieved by the denial of promotion to the post of Sr.Technician. He seeks the following reliefs:-

- (i) Direct the first respondent to consider promoting him to the post of Sr.Technician in the PB of Rs.9300-34800 with GP of Rs.4200 w.e.f. 1.9.2011 notionally and grant all consequential benefits viz., re-fixation of pay, arrears of pay, refixation of pension, arrears of pension etc.



(ii) Declare that the applicant is entitled to be promoted as Sr. Technician with effect from 1.9.2011 and further entitled for all consequential benefits viz., revision of pay, arrears of pay, revision of pension and arrears of pension etc.

2. According to the applicant, earlier the total cadre strength of Sr. Technician was 8. However, it was increased to 12 w.e.f. 1.11.2003 due to cadre restructuring. When the Salem Division was introduced with effect from 1.11.2007, the cadre strength came down to 6 and the respondents scrapped all the old roster and started afresh. While drawing up fresh roster, all the existing persons who had been earlier charged against roster points were charged again causing duplicity. For cadre strength of 14 or less, "L" shaped roster is followed. Applicant contends that information obtained through RTI revealed that the cadre strength of Sr. Technician as on 10.2.1995 was 8. Due to restructuring, the cadre strength was increased to 12 on 1.11.2003. Consequently, the points were expended upto 12 in the "L" shaped roster. With the formation of Salem Division, the cadre strength has been reduced to 6. It is alleged that the respondents with the intention to give undue advantage to SC candidates charged persons against third cycle of the roster who were once charged earlier. Therefore, there is duplicity, which is totally repugnant to the principle of communal roster. This has resulted in reverse discrimination as could be evident from the fact that when one Shri.Kittunni, a UR candidate, retired, the vacancy was to be filled by promoting another UR candidate, in this case the applicant. But the vacancy was filled by a SC candidate. Hence this OA.

3. The respondents in their reply statement contend that there was no provision for promoting an unreserved category employee against the SC reserved vacancy. After the formation of Salem Division, the sanctioned strength of Senior Technician/Train Lighting in Palghat Division was 6. As per post based roster which was in operation with effect from 10.2.1995, L-shaped roster was to be followed for filling up the promotional vacancies in posts where the sanctioned strength was below 14. Post based Rosters are in operation from 10.2.1995 consequent on judgment of the Constitution Bench in the case of *R.K.Sabharwal Vs. State of Punjab* (1995) 2 SCC 745 as well as



Union of India Vs. J.C.Malik 1978 (1) SLR 844. At the time of assessment of suitability, the applicant's suitability was assessed inadvertently treating the 3 vacancies as unreserved ones whereas there were only 2 UR vacancies and 1 SC vacancy. The applicant being the 3rd unreserved as per his seniority, his turn would not have come for promotion during this vacancy assessment period. The respondents have relied on the decision of the Apex Court rendered in the case of *State of Uttar Pradesh Vs. Rajkumar Sharma* 2006 (3) SCC 330 which held that *"if the State Committed a mistake it cannot be forced to perpetuate the same mistake"*. The applicant is not entitled for any revision of pension since he had not held the post of Senior Technician/Train Lighting till his retirement and also not eligible for promotion to the post as per his turn for promotion, hence the OA is liable to be dismissed, contend the respondents.

4. Heard learned counsel for the applicant and the respondents and perused the written submissions made.

5. The implementation of the post based roster has been in operation since 10.2.1995 which clearly stipulates that the reserved vacancies cannot be filled by unreserved employees until it is de-reserved. Secondly, before de-reserving, it should be ensured that there are no reserved category employees awaiting promotion in the feeder grade, whose opportunity for promotion will be lost if the same was done. In this case, there were 2 SC eligible employees available in the feeder grade of Technician Grade-I/Train lighting for promotion to Senior Technician/Train Lighting.

6. After the creation of Salem Division, Palghat Division's strength in the category was reduced from 12 posts on 1.6.2008 to 6 posts. Further, the officials working in both the above stations were retained on an as-is-where-is basis and separate gradation/seniority lists were drawn up for Palghat & Salem Divisions and the persons working in the Divisions were borne on the seniority list of their respective Divisions. After the bifurcation of the Divisions, the persons working in the respective Divisions are borne in the recast seniority lists in the respective Divisions, and charged against the roster point in the

newly created Division. Thereafter the excess or shortfall of categories have to be worked out to be filled in future by the respective vacating community category in the 14 point L-shaped roster, wherein after filling the sixth point as per categories indicated in the roster from 1-6 the L-shaped roster will move horizontally to fill vacancies as per category indicated.

7. On a comparison of Annexure A6 and A4 seniority lists with the Model Roster produced by the applicant, it is observed that L-shaped roster has been maintained in the vertical by respondents upto Sl.No.6; from there-onwards the respondents' roster moves in a horizontal position upto the 9th point; and thereafter the roster maintained by respondents again moves down vertically as per points 1 to 6 in Annexure A4. The post based roster drawn up following the Apex Court judgment in *R.K.Sabharwal Vs. State of Punjab* has been followed by the respondents. Hence both seniority and communal reservation has been adhered to in the seniority list so drawn up as per sanctioned strength in the L-shaped roster.

8. We are unable to find any merit in the OA. Therefore, we are of the view that the OA is liable to be dismissed. Accordingly, the OA is dismissed. No order as to costs.



(Mrs.P.Gopinath)
Administrative Member



(N.K.Balakrishnan)
Judicial Member