

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCHORIGINAL APPLICATION NO. 245 of 2013

Thursday this the 26th day of November, 2015

CORAM

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

K.P.Unnikrishnan, aged 58 years
S/o Sankaran Nambeesan (late)
(Retd. Welder Gr.I/Office of the Sr.Section Engineer/
Carriage & Wgon/Southern Railway/
Coimbatore Junction)
residing at Karuvattu Pushpakam, Mandakkad,
Malampuzha Post, Palghat District. 678651.

...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 Chief Personnel Officer,
Southern Railway, Headquarters Office,
Park Town PO, Chennai-3.
3. The Divisional Railway Manager,
Southern Railway, Salem Division,
Salem-636001.
4. The Divisional Personnel Officer,
Southern Railway, Salem Division,
Salem-636001.
5. The Senior Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat-678002.

...Respondents

(By Advocate Mrs. K. Girija)

This application having been finally heard on 18.11.2015, the Tribunal on 26.11.2015 delivered the following:

O R D E R

Per: Justice N.K.Balakrishnan, Judicial Member

Complaining of denial of promotion as Sr.Technician in PB 2 plus GP 4200/- the applicant has filed this application. He was initially appointed as Mechanical Khalasi on 12.7.1973 and was promoted as Welder Gr.III and then as Welder Grade II and later as Welder Gr.I with effect from 26. 6.1987. There was restructuring of Group C and Group D cadre under the RBE Establishment No.177/2003 vide Annexure A2.. In terms of Annexure A2 a review as undertaken on the basis of functional, operational and administrative requirements. The applicant belonged to Palakkad Division. On and w.e.f. 1.11.2007 certain portions of Palakkad Division were carved out to create new Salem Division. 55% of the existing posts were transferred to the newly formed Salem Division. The remaining 45% of posts were retained in Palakkad Division. Even after formation of the Salem Division various cadres continued to be and remained in Palakkad and Salem Division until the cadres of the Salem Division was closed w.e.f. 31.5.2008. The applicant was the seniormost in Welder Gr.I as on 1.11.2007 for promotion as Senior Technician. Due to bifurcation, more than 25% in the cadre of Welders were transferred to Salem Division. The cadre consisted of 4 grades and therefore allotment of posts in the different grades should be confined to the grades mentioned in Annexure A2. When Salem Division was formed none of the Sr. Technician was transferred to Salem Division. Thus applying the percentage in Annexure

A2 applicant being the seniormost among the Technician Gr.I of Salem Division should have been considered and promoted as Sr.Technician. While so as per order dated 7.4..2009 one of the Welders (Gr.I) was promoted as Senior Technician vide Annexure.A3. Shri Thilakarajan was junior to the applicant in Palakkad Division. But the applicant was not given promotion. The applicant's counterparts in Palakkad Division who were juniors to the applicant in length of service were enjoying the benefit of promotion as Sr.Technician. Annexure A7 representation was given. Hence the applicant has filed the application claiming the reliefs as afore stated.

2. The respondents opposed the claim contending as follows.

The number of posts of Master Craftsman subsequently called as Senior Technician in the erstwhile Palakkad Division was only 2 prior to the cadre restructuring. Those two posts were operated at Shoranur. As per Railway Board letter dated 9.10.2003 the cadre of Welder was restructured by Palakkad Division. Consequent to such cadre restructuring one additional post of Sr. Technician (Welder) was pinpointed to Shoranur in addition to the 2 existing posts at Shoranur. 55% of posts in the sanctioned strength in ministerial cadre was transferred to Salem Division but in respect of field unit it was decided to operate those posts on "as is where is" basis. Field unit posts are normally technical posts which required for operating the machine installations and equipments. At the time of bifurcation all the three posts of Sr.Technician (Welder) were operated at Shoranur and hence those 3 posts remained in Palakkad Division. Salem Division was formed w.e.f. 1.11.2007. Options were called

for from non gazetted staff to be transferred to Salem Division. The applicant did not opt for Palakkad Division. The applicant was expected to know that there was no post of Sr. Technician for Salem Division and there was no chance for promotion as Sr. Technician (Welder) in Salem Division. Since the applicant did not opt for Palakkad Division he could not get the promotion. Since there was no post in Salem Division the applicant could not be promoted. He was communicated accordingly. Restructuring of cadre will be in respect of sanctioned cadre strength as on 1.11.2013. Had the applicant continued in Palakkad Division he would have got opportunity for promotion as Sr. Technician as a result of cadre restructuring. The applicant would have retired on superannuation on 30.11.2014 but he submitted an application dated 4.10.2012 for voluntary retirement from service owing to age related ailments. That was accepted by the competent authority. Hence the respondents contend that the applicant is not entitled to the reliefs sought for.

3. The point for consideration is whether the applicant is entitled to be considered for promotion as Sr. Technician (Welder) in PB 2 plus GP of Rs. 4200/- and for consequential benefits emanating therefrom:

4. We have heard the learned counsel appearing for the parties and have perused the pleadings and documents on record.

5. It is not disputed that Salem Division was formed w.e.f. 1.11.2007. Though the applicant contends that 55% of the employees who were in Palakkad Division were transferred to Salem Division, that has been denied by the respondents pointing out that the aforesaid 55% was

with respect to the ministerial staff and not with respect to technical staff. It is not disputed that there was restructuring of Group C and Group D cadre in Palakkad Division on 9.10.2003 as per which the sanctioned strength of Welder in artisan staff category as on 18.8.2003 was as shown below:

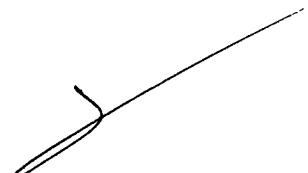
Stations

cate gor y	Pay	MA Q	CA N	CL T	SR R	PG T	PT J	CB E	MT P	ON R	ED	SA	MT PP	Total	
Welder	-50 00				2										2
MC M	800 0														
Welder- I	450 0- 700 0	1	1		4		1	3	1	2	3				16
Welder- II	400 0- 600 0	3		1	1			1	1	2	2	2			13
Welder- III	305 0- 459 0	1					1	1	1		4	4	1		9
Total	5	1	1	7		2	5	3	4	9	2	1	40		

Therefore, it is seen that as on that date, the number of posts of Master Craftsman subsequently called as Senior Technician in Palakkad Division was 2. It was contended that subsequently an additional post of Sr.Techician (Welder) also arose and that also was in Palakkad Division. Thus in Palakkad Division there were 3 posts of Senior Technician (Welder). According to the respondents this fact was known to the applicant but he still opted to continue in Salem Division. The fact that some of the juniors were promoted as Sr.Techician is not disputed but

those persons had opted Palakkad Division. All the three posts of Senior Technician were retained in Palakkad Division only. Therefore, according to the respondents, it was the fault committed by the applicant in not opting Palakkad Division; rather he opted to continue in Salem Division and therefore, it is too late for him to contend that he should be granted promotion projecting a plea that the applicant's junior who was working in Palakkad Division was granted promotion as Senior Technician.

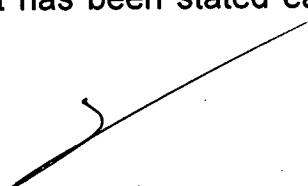
6. It is contended by the respondents that so far as the field unit was concerned it was decided to operate those posts on "as is where is basis". The field posts are normally technical posts required for operating machineries for running of trains and for production of instruments and tools and also for repair work to maintain coaches and wagons etc. Those posts which have been restructured as stated earlier continued to be at Shoranur (Palakkad Division). As such the contention that the applicant should have been promoted as Senior Technician cannot be sustained, the respondents contend. It is further contended when no post of Master Craftsman (subsequently called Senior Technician) was available in Salem Division, the applicant cannot aspire for promotion as Sr.Technician. The applicant should have been diligent while opting to continue in Salem Division. He was expected to know that all the three posts of Senior Technician were retained in Palakkad Division and the field of operation was in Shoranur within the Palakkad Division. The contention that ratio of 55 : 45 has to be maintained with regard to field unit posts also cannot be accepted. That plea is found to be unsustainable. The respondents would



contend that the applicant cannot compare himself with his erstwhile colleagues in Palakkad Division because the situation that was prevailing in Palakkad and Salem Division was different. There is no case for the applicant that any posts of Sr.Technician was there in Salem Division after the formation of the Salem Division and as such the question of the applicant getting that post does not arise at all, the respondents contend. The contention that such a post should have found a place in the book of sanction is not something which this Tribunal is to go into. Annexure A4 is a representation given by the applicant to the Senior DPO, Southern Railway on 1.4.2010 as per which the latter was informed that for over 23 years the applicant has been in Welder Grade I without being promoted to the post of Sr.Technician and thus he requested for consideration of his request for promotion. \

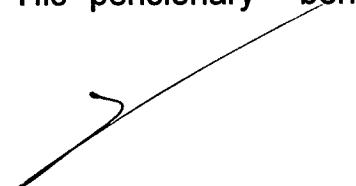
7. It is not disputed that as per Annexure A6 seniority list, as it stood as on 1.1.2010, the applicant was the senior most Welder Gr.I to be promoted as Sr.Technician (Welder). Annexure A7 is another representation dated 17.4.2012 sent by the applicant where also promotion to Senior Technician in Welder category was sought by the applicant. It is stated by the applicant that the reasons stated by the respondents that no post of Senior Technician is available in the book of sanctions is not a ground to deny higher grade to the applicant. According to him by an administrative review and process the post of higher grade (Senior Technician) could have found a place in the book of sanction.

8. From what has been stated earlier it is clear that the applicant



was not diligent in filing his option statement when Salem Division was formed. The applicant was expected to know that three posts of Senior Technician was retained in Palakkad Division and there was no such post at Salem Division. The applicant was also expected to know that he will not get promotion as Senior Technician if he continued in Salem Division itself. The fact that his erstwhile junior in Palakkad Division got promotion as Senior Technician was on account of the fact that he opted to continue in Palakkad Division. Such a situation will always be there. That cannot be a ground for an officer who opted to be in another Division to get himself compared with his counter-parts in another Division. Therefore, that is not a reason for the applicant to get promotion as Senior Technician that the date be reckoned for getting promotion as Senior Technician.

9. It is contended by the respondents that subsequently a restructuring took place in 2013 but before that, the applicant opted to have voluntarily retired from service and accordingly the applicant left the service w.e.f. 1.2.2013. Had the applicant continued till 31.1.2014 the actual date of superannuation, he could have got promotion as Sr.Technician after the creation of the post of Sr.Technician in Salem Division. But however the fact remains that the applicant was seniormost Grade I Welder and continued to be in that post for nearly 23 years. So considering it as an exceptional circumstance, we direct that the applicant be granted notional promotion as Sr.Technician with effect from 1.1.2013 (without arrears) and his pay shall be re-fixed accordingly but only for the purpose of pension. His pensionary benefits shall be determined



accordingly. This exercise shall be done within two months from this date.

10. It is made clear that this order is passed considering it as a special circumstance and it shall not be used as a precedent.

11. O.A is disposed of as above. No order as to costs.


(P. Gopinath)
Administrative Member

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(N.K. Balakrishnan)
Judicial Member