

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 254/2006

TUESDAY THIS THE 13th DAY OF NOVEMBER, 2007

C O R A M

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

K.C. Sebastian S/o C. Chandy
Retired Junior Engineer Grade-I
Ernakulam Marshalling Yard(Goods)
Southern Railway Ernakulam
residing at Kathanaruparambil, H.No. 176-A
Pardath Road, Eroor, Tripunithura.Applicant

By Advocate Mr. P. Ramakrishnan

Vs.

- 1 Union of India represented by the
General Manager, Southern Railway
Chennai.
- 2 The Divisional Railway Manager,
Southern Railway,
Trivandrum division
Thiruvananthapuram.
- 2 The Senior Divisional Personnel Officer
Southern Railway, Railway Divisional Office
Thiruvananthapuram. Respondents

By Advocate Mr. Sunil Jose, ACGSC

O R D E R

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant who is a retired Junior Engineer Grade-I of the
Trivandrum Division, Southern Railway at the Marshalling Yard,
Ernakulam, is aggrieved by the denial of his promotion to the post of

Section Engineer.

2 The applicant entered the service as a Khalasi in 1966 and became a Head Train Examiner/Junior Engineer Grade I on 1.11.1987. When three vacancies of Section Engineers had arisen in 1996, he approached this Tribunal in O.A. No. 1243/99 for consideration for promotion which was disposed of directing the respondents to consider and pass orders on the representation. Consequently the third respondent issued Annexure A-2 letter dated 14.5.2002 stating that the applicant had not qualified in the selections held in 1995 and 1996 and that the two vacancies had been subsequently filled up by direct recruitment on introduction of post based roster system. The applicant had submitted a detailed representation against Annexure A-2 to the second respondent. In the meanwhile, certain adverse remarks on the CRs were communicated to the applicant by Annexures A-4 and A-5 dated 18.8.2004. It is further submitted that restructuring in the cadre of Section Engineer was done by the instruction of the Railway Board. The applicant was overlooked at that time also and those juniors to him were promoted against the restructured vacancies by Annexure A-6 order dated 23.12.2004. Then the applicant had submitted a representation against his non-consideration on 29.12.2004 (Annexure A-7). He also approached Pension Adalat for settlement of his grievance. Since his representations were not given proper heed, this O.A. has been filed.

3 The following reliefs have been sought:-

(a) an order quashing and setting aside Annexure A-2,A-6 and A-8 to the extent it denies promotion to the applicant as Section Engineer

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(b) issue an order quashing and setting aside Annexure A-4

© Issue an order directing the respondents to consider and pass orders on Annexure A3,A5 and A7 forthwith.

(d) Issue such other orders and directions as are deemed fit in the facts and circumstances of the case.

4 Per contra, the respondents have submitted that the challenge against Annexures A-2, A-4 and A-6 is hit by inordinate delay and the applicant himself had admitted in para 3 of the O.A. that the Application is not filed within the limitation prescribed under Section 21 of the Administrative Tribunals, Act, 1985. It is further stated that the applicant has already contested two OAs unsuccessfully namely O.A. 492/96 and O.A. 1234/99 and he has approached the Tribunal again on the same issue in the present O.A. He has not submitted any appeal against the orders conveying the rejection of his representation or his non-promotion. He is relying on Annexure A-1 which is nothing but conveying the result of a refresher course meant for applicant and other similar staff and has no relevance to the selection and appointment. The applicant has in fact suppressed material facts and his prayer is hit by res judicata.

5 In the rejoinder, the applicant has submitted that the declaration in para 3 that the Application is not filed within time was a typographical error. It is further submitted that the earlier O.A. is not filed for the reliefs presently sought and therefore there is no suppression of material facts.

6 We have heard Shri Pratap Abraham for P. Ramakrishnan for the applicant and Ms Viji for Mr. Sunil Jose for the respondents.

7 The applicant has come before us impugning the orders at Annexure A-2, A-4, A-6 and A-8. Annexure A-2 order disposes of his representation which was directed by order of the Tribunal in O.A.1243/1999 and is dated 14.5.2002. The respondents have detailed the reasons therein by which he could not be considered for selection in the years 1995 and 1996 as he failed to secure the qualifying marks in the selection held in both the years and also in 2001. The applicant had not chosen to challenge this order in time before this Tribunal or go in appeal. Annexure A-4 is dated 18.8.2004 is only a communication of the adverse remarks in his ACRs and there are no grounds of challenge on this aspect. Annexure A-6 is an order of promotion granted to his juniors on restructuring in which it was specifically mentioned that the applicant has been passed over since he was not found suitable for promotion. The order is dated 23.12.2004. It has also not been challenged within the limitation period. None of his so called juniors promoted in this order have been impleaded in this O.A. Annexure A-8 dated 7.12.2005 is only an intimation to the applicant by the Pension Adalat communicating the date of holding of the Adalat. It is not clear what purpose will be served by quashing the same.

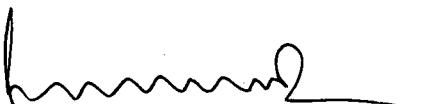
8 The applicant has also tried to overcome the question of res judicata stating that the relief prayed for in this O.A. is different from the reliefs claimed in O.A Nos. 492/96 and 1243/99. In fact, he has not mentioned anything about O.A. 492/96 in this Application. Regarding O.A. 1243/99 it has been mentioned that it was disposed of favourably to him whereas the actual position is that the order only directed disposal of his representation. His plea that he is not seeking the same reliefs is not tenable at all as the post of Chief Train Examiner and Section Engineer

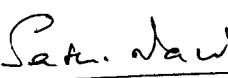
are of the same status and it is clear that he had been seeking promotion against this post right from 1996. He had been informed in unequivocal terms by Annexure A-4 that he has not qualified in the selection and in the restructured vacancies he was over-looked as he was not found suitable presumably based on service records. Not having challenged any of these orders at the relevant time, he cannot bring up the same issue again and again. We also observe that the applicant has suppressed material facts and he has not given any reason having kept quiet all these years.

9 In toto, on the grounds of limitation, res judicata and also on merit we do not see any reason to consider the prayers of the applicant in this O.A. The OA is dismissed.

No costs.

Dated 13.11.2007


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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