

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 321 OF 2011

Wednesday, this the 13th day of March, 2013

CORAM:

**HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

A.Raman
Technician Grade I/Telecommunication
Signal & Telecommunication Wing
Araloimoli RS & PO
Southern Railway, Kanyakumari District
Residing at No.X/76, Pandarapuram
Viswasapuram, Thovalai Post
Kanyakumari District, Tamil Nadu ... Applicant

(By Advocate Mr. TCG Swamy)

versus

1. Union of India represented by the
General Manager, Southern Railway
Headquarters Office, Park Town PO
Chennai – 600 003
2. The Chief Personnel Officer
Southern Railway
Headquarters Office, Park Town PO
Chennai – 600 003
3. The Divisional & Telecommunication Engineer
Southern Railway, Trivandrum Divisional
Thiruvananthapuram – 695 014
4. The Chief Signal & Telecommunication Engineer
Southern Railway
Headquarters Office, Park Town PO
Chennai – 600 003 ... Respondents

(By Advocate Mrs. K.Girija)

The application having been heard on 13.03.2013, the Tribunal on the same day delivered the following:

ORDER

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER

The applicant is presently working as a Technician Grade I, Telecommunications in the Pay Band of Rs.5200-20200 plus Grade Pay of



Rs.2800/- in the Telecommunication Wing of the Signal & Telecommunication Department of Southern Railway, Trivandrum Division. He belongs to Scheduled Caste community. He is aggrieved by his non selection to the post of Junior Engineer, Grade I despite selection and placement in the panel . It is the case of the applicant that he was considered for promotion to the post of Junior Engineer, Grade II against 20% vacancies to be filled up based on Limited Departmental Competitive Examination. He was duly included in the selection list. After successful training, the applicant was transferred and posted to Mysore Division. Out of 19 persons promoted, 18 were accommodated in the same Division and the applicant was the only person posted to Mysore Division of the Southern Railway. At the material time because of the domestic problem he could not accept the promotion on transfer. He preferred OA 171/2001 praying for a declaration that he is eligible to be considered for promotion to the post of Junior Engineer, Grade II (Tele) in the then existing vacancy at Trivandrum Division. OA was disposed of with a direction to consider the applicant's representation. Annexure A-3 is the copy of the order. Subsequently and in purported compliance of the order, the applicant was informed that there was no vacancy for retention in grade Rs. 5000-8000. It is also stated that either he has to move on promotion on transfer or refuse promotion on transfer in which case, he will be considered after the lapse of one year from the date of issue of the order depending on the availability of vacancy before 20.11.2001 or in Trivandrum Division after 20.11.2001. If he refuses on the 2nd occasion, his name will be deleted from the panel. Annexure A-4 is the copy of the order dated 04.05.2001 issued in this behalf. It is the case of the applicant that pursuant to Annexure A-4, applicant was not relieved from the post. Several representations were made thereafter. Annexure A-4 is



against the principle of legitimate expectations. The applicant prays for a declaration that he is entitled to be considered and promoted against the existing vacancy of Junior Engineer Grade II (Tele) meant for SC community and to direct the respondents to consider his case for promotion.

2. In the reply statement filed by the respondents it is contended that as per the extant rules, promotion list will expire after lapse of two years. Para 220 (a) IREM Volume I is produced as Annexure R-1 for reference. The applicant was empanelled in the year October, 2000 and the panel expired in October, 2002. In the meanwhile, he refused promotion and as per rules at Para 224 1 (i) of IREM, Volume I, a copy of which is produced as Annexure R-2, he was debarred from promotion for one year and further was reluctant to take up the higher post. The policy of decentralization of the post of Junior Engineer, Grade II (Tele) came into effect with effect from 20.10.2001 with the consent of the Organised Labour. As a result, two incumbents of Junior Engineer, Grade II (Tele) post were rendered surplus at Trivandrum Division. They were issued with orders posting them as Junior Engineer to Mysore and SBC Divisions as there were no posts of Junior Engineer, Grade II to accommodate them at Trivandrum Division. Both had approached the Tribunal aggrieved by their transfer to Bangalore and Mysore since there were no vacancies to accommodate them at Trivandrum Division. The Tribunal directed the respondents, viz., General Manager in OA 1097/2001 and OA 1101/2001 to dispose of their representations. Accordingly, the representations was considered and ordered for their retention at Trivandrum Division against the two higher grade JE- vacancies that existed at the material time. There were no vacancy of Junior Engineer, Grade II (Tele) to accommodate the said regular incumbents to the said post, the



applicant's claim for retention on promotion is not tenable. The applicant ought to have taken the right course of action in carrying out the promotional transfer to Mysore Division and should have immediately registered for a transfer back to Trivandrum Division in which case he would have been accommodated in the promoted post long back. The cause of action for the litigation got time barred more than a decade ago. It is also contended that the applicant never expressed his willingness to be considered against a vacancy that arose after 20.11.2001 in Trivandrum Division despite instructions contained in Annexure A-4 of the OA. Though a selection was conducted in Trivandrum Division to fill up one vacancy of SE, Grade I (Tele) meant for SC during 2008 against LDCE quota, the applicant did not challenge the said selection. He had not requested to be considered against the said vacancy. Anyhow, the applicant cannot claim promotion to a vacancy that arises after many years simply due to the reason that he got selected to the post long back and in violation of rules on the currency of the selection panel. The vacancy position in the category of JE II (Tele) in Trivandrum Division were mentioned in Para B of the reply statement. The applicant is not liable to be considered for posting against the SC vacancy in promotional quota as he has not been selected in the selection held in 2010 on account of his unwillingness to participate and the same is annexed as Annexure R-3. The selection he underwent in 2000 and the Annexure A-4 disposal issued in 2001 have nothing to do with the selection conducted in 2010 in Trivandrum Division and hence he cannot seek a posting based on the selection held long ago in the year 2000.

3. We have heard the counsel on both sides. It remains the fact that the applicant was considered for promotion to the post of Junior Engineer



(Tele) and he was included in the select list. Since there was no vacancy to accommodate the applicant at Trivandrum at the relevant point of time, he was promoted and transferred to Mysore Division. The applicant himself admits the fact that there were some domestic problems and he was not prepared to move out from Mysore. The applicant therefore, forfeited his right for promotion for one year. Subsequently, Annexure A-4 was issued. In response to Annexure A-4, no option was given by the applicant nor did he express his acceptance to move out from Mysore Division on being promoted. Further, inclusion of the applicant in the select list is in 2000, whereas this OA was filed in the year 2011. The list expired in October 2002. In the factual background of the case, it cannot be said that there was any illegal denial of promotion to the applicant. It was only because of his own volition that he did not accept his promotion on transfer and subsequently when Annexure A-4 was issued, no reply was given to Annexure A-4 nor expressed his willingness to go to Mysore Division. Subsequently the validity of the list expired. In the circumstances, the case of the applicant lacks merit and the applicant is not entitled for any reliefs prayed for in the OA. Hence OA is **dismissed**. No costs.

Dated, the 13th March, 2013.



K GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R. RAMAN
JUDICIAL MEMBER

VS