

.1.

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00344/2015

Friday, this the 16th day of March, 2018

C O R A M:

HON'BLE Mr.U.SARATHCHANDRAN, JUDICIAL MEMBER
HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

Rilna.K.T.,
W/o.Sanil Kumar.S.,
Lab. Assistant/Railway Hospital/Palakkad,
Southern Railway/Palghat Division.
Residing at Railway Quarter No.277-A,
Hemambika Nagar, North Railway Colony,
Kallekulangara P.O., Palakkad – 678 009.

...Applicant

(By Advocate – Mr.T.C.Govindaswamy)

V e r s u s

1. Union of India represented by the General Manager,
Southern Railway, Head Quarters Office,
Park Town P.O., Chennai – 600 003.
2. The Chief Personnel Officer,
Southern Railway, Head Quarters Office,
Park Town P.O., Chennai – 600 003.
3. The Sr. Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat – 678 002.
4. The Additional Divisional Railway Manager,
Southern Railway, Palghat Division,
Palghat – 678 002.

...Respondents

(By Advocate – Mr.Sunil Jacob Jose)

This Original Application having been heard on 5th March 2018, the Tribunal on 16th March 2018 delivered the following :

.2.

ORDER

HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

O.A.No.180/344/2015 is filed by Ms.Rilna.K.T., Lab Assistant working at Railway Hospital, Palakkad aggrieved by letter at Annexure A-1 dated 20.1.2011 by which she was offered the post of Lab Assistant Grade II instead of Lab Superintendent Grade III, Annexure A-2 letter dated 7.4.2015, rejecting her representation for appointment to the post of Lab Superintendent Grade III and Annexure A-3, Centralized Employment Notice No.4/2014 for para medical categories published on 1.11.2014 by which five posts of Lab Superintendent Grade III have been notified.

2. The relief sought in the Original Application are as under :

1. Call for the records leading to the issue of A-1 and A-2 and quash the same.
2. Call for the records leading to the issue of A-3 and quash the same to the extent it takes into consideration the vacancy against which the applicant was considered as per A-5 and A-8 denying the applicant consideration and appointment against the said vacancy.
3. Declare that the applicant is entitled to be considered and appointed against one of the three unreserved vacancies notified in A-3 in the category of Lab Superintendent Grade III at Chennai and declare further that the applicant is entitled to all the consequential benefits arising therefrom.
4. Direct the respondents to consider and appoint the applicant as Lab Superintendent Grade III against the vacancy for which the applicant was considered as per A-8 and found suitable and direct further to grant all the consequential benefits of such appointment with retrospective effect from the date of A-1 ie., 20.1.2011.
5. Award costs of and incidental to this application.
6. Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case.

.3.

3. The applicant is a B.Sc. (Medical Lab Technology). On the death of her father Shri.K.T.Krishnan she was offered and granted appointment as a Sweeper-Cum-Porter on compassionate grounds as per Office Order dated 19.3.2009 (Annexure A-4). While so, the applicant attended a written test for appointment as Lab Superintendent Grade III, in which she could not secure the minimum qualifying marks. Subsequently, she was informed that her case has been recommended to the Senior D.P.O, Palakkad and thereafter asked to give her willingness to attend a second chance examination vide Annexure A-7. She applied for the second chance examination and was invited to participate in the suitability test/written examination to be held on 23.11.2010 for the post of Lab Superintendent Grade III. She appeared in the test and found suitable as advised by Annexure A-9 dated 6.12.2010.

4. At this stage, she was surprised to receive the communication at Annexure A-1 dated 20.1.2011 stating thus :

“The vacancy position in the category of Lab Supdt. Gr.III in Pay Band Rs.9300-34800 with Grade Pay Rs.4200/- has been examined. While reviewing, it is seen that the above post has to be filled 100% by promotion and if eligible candidates are not available, then only the same should be thrown to open market. On examination it is seen that staff with requisite qualifications are available in the lower grade for promotion to the post of Lab Supdt. Gr.III in Pay Band Rs.9300-34800 with Grade Pay Rs.4200/-. If the above post is offered to you, the same would hamper the promotional prospects of the staff in the lower grade. Therefore, you could not be accommodated in the Pay Band of Rs.9300-34800 with Grade Pay Rs.4200/-. The error is regretted.

However, vacancies exist in the category of Lab Assistant Gr.II in Pay Band Rs.5200-20200 with Grade Pay Rs.2000/- and if you are desirous of joining the post, you may please call upon this office with the following on any working day within 15 days from the date of receipt of this letter.”

.4.

5. Left with no choice the applicant submitted her willingness and was issued with an Office Order dated 14.2.2011 offering her the post of Lab Assistant Grade II. The applicant accepted the post.

6. Pressing the point that there were no eligible persons in the feeder cadre for promotion as Lab Superintendent Grade III, the applicant has produced Annexure A-11 provisional seniority list of Lab Superintendent and Lab Assistant as on 31.10.2013. The applicant's contention is that since none was available in the feeder cadre for promotion as Lab Superintendent, the respondents ought to have resorted to direct recruitment through Annexure A-3. The applicant submitted representation dated 19.12.2014 to the 2nd respondent to consider her for appointment against one of the vacancies of Lab Superintendent Grade III notified through Annexure A-3 notification. As she was not favoured with a reply she submitted another representation dated 11.2.2015. Thereafter she received communication at Annexure A-2 dated 7.4.2015 rejecting her representation. Applicant submitted that she has been arbitrarily and illegally deprived of an opportunity of being appointed as Lab Superintendent Grade III. Hence this O.A.

7. As grounds the applicant submitted that Annexure A-1 and Annexure A-2 are arbitrary, discriminatory, contrary to law and hence violative of the constitutional provisions enshrined in Articles 14 & 16

.5.

of the Constitution of India. When she had made the claim ie. in 2009 there were no eligible candidates for promotion as Lab Superintendent Grade III as is seen from the provisional seniority list produced. Thus, as per what is stated in Annexure A-1, the respondents should have resorted to open recruitment as no eligible candidates were available in the feeder cadre. The applicant was eligible to be considered for appointment on compassionate grounds against the Graduate Level category. One of the vacancies of Lab Superintendent Grade III at Chennai notified by Annexure A-3 was the vacancy to which the applicant was considered for appointment as per Annexure A-6 and Annexure A-8. Hence the action of the respondents in denying consideration to the applicant is patently arbitrary and illegal.

8. Per contra, the respondents have filed a reply statement opposing the O.A. They have taken the preliminary objection that even though the applicant has joined the post of Lab Assistant Grade II as per Office Order dated 14.2.2010 the O.A has been filed after a lapse of four years and hence is hit by law of limitation. In view of the special circumstances of the case of the applicant being invited to appear for a test for the post she had applied for and then on coming out successful, being denied the same, we have decided to disregard the time lag pointed out by the respondents and proceed to consider the O.A on merits. The respondents submitted that the applicant was initially appointed as Sweeper-Cum-Porter

.6.

on compassionate grounds as a provisional measure. Since she was a B.Sc. (MLT) she was subsequently considered for appointment as Lab Superintendent Grade III. She was found suitable for the post on her second attempt.

9. It has been further submitted that the applicant had been erroneously called for the post of Lab Superintendent Grade III. Hence she had to be informed of the correct position which was done through the communication at Annexure A-1. In this context they have referred to Railway Board's Letter No.E(NG)II/2001/RR-1/20 dated 12.11.2001 (RBE No.225/2001) and Railway Board's Letter No.E(NG)I-2008/PM1/15 dated 3.9.2009 (RBE No.161/2009). Since adequate number of officers were available in the feeder cadre she could not be accommodated in the post of Lab Superintendent Grade III at that point of time. On her willingness to join the post of Lab Assistant Grade II she was appointed to the post. On 1.4.2015 she was promoted as Lab Assistant Grade I.

10. The respondents have cited various decisions of the Hon'ble Supreme Court to argue that the compassionate appointment is not a matter of right and once accepted and appointed to a post on compassionate grounds the employee cannot contend that she/he was entitled for a higher post. **SAIL v. Madhusudan Das in 2009 (2) SLJ 243** and **IG (Karmik) v. Prahalad Mani**

Tripathi in (2007) 2 SCC (L&S) 417 refers. We see no dispute on this score. Recruitment to Lab Superintendent Grade III announced in the Centralized Employment Notice No.4/2014 (Annexure A-3) was necessitated as there was no eligible person in the feeder cadre of Lab Assistant in 2014. It is clearly to be seen that this particular vacancy had arisen subsequent to the appointment of the applicant as Lab Assistant. As compassionate appointment is granted only to tide over immediate financial crisis upon the death of the breadwinner in the family the applicant cannot claim that she ought to have been granted an employment according to her qualification. They have further submitted that two employees, namely, Shri.Surenderan and Shri.Suriya who were eligible in the feeder cadre were promoted on 30.12.2013 against the vacancies which existed at the time of appointment of the applicant.

11. During the course of hearing on 5.3.2018 the respondents produced a copy of Office Order No.MD/89/2017 dated 8.12.2017 wherein it is seen announced as follows :

Having been selected by a duly constituted Selection Committee and placed in the panel for the post of Lab Superintendent in Level 7 of VII PC Pay Matrix (GP Rs.4200/-) vide this Office Memorandum cited, the undermentioned employees working as Lab Tech. in Level 5 of VII PC Pay Matrix (GP Rs.2800/-) are promoted as Lab Superintendent in Level 6 of VII PC Pay Matrix (GP Rs.4200/-) and posted to the stations as detailed below.

Sl. No.	Name S/Shri/Smt.	Com	Design Station &	Station to which posted on promotion as	Charged against	Remarks
1	Kunal Kumar Singh	UR	Lab Tech/RH/PER	Lab Supdt/RH/PER	UR	Against an existing vacancy.
2	K.T.Rilna	UR	Lab Tech/RH/PGT of PGT Dn.	Lab Supdt./RH/PGT of PGT Dn.	UR	Against the higher grade post of Para II above.
3	R.Lavanya	SC	Lab Tech/RH/GOC of TPJ Dn.	Lab Supdt./RH/GOC of TPJ Dn.	SC	Against an existing vacancy.
4	C.Sumathi	UR	Lab Tech/RH/GOC of TPJ Dn.	Lab Supdt./RH/GOC of TPJ Dn.	UR	Against the transferred post of Para I above.

12. We have heard Shri.T.C.Govindaswamy, learned counsel appearing for the applicant and Shri.Sunil Jacob Jose, learned standing counsel for the Railways. We have also gone through the documents, records made available. By virtue of the document produced at the time of hearing on 5.3.2018 it is seen that the applicant has been promoted as Lab Superintendent and to that extent her grievance has been redressed. However the relief she has sought is with reference to the time she was initially appointed as Lab Assistant. By producing the provisional seniority list at Annexure A-11 she contends that atleast one post of Lab Superintendent was lying vacant on 31.10.2013. This refers to the entry relating to Shri.Bidosh.K.R., Annexure A-11(3). None of the 8 employees in the seniority list of Lab Assistant who formed the feeder cadre were eligible for that post at that time, according to her contention. The applicant had started

working at the level of Sweeper-Cum-Porter despite being a graduate with specific Lab Technician degree. It also remains a fact that she was invited to appear for a test to become a Lab Superintendent. On the second chance she had also been successful in the same. At this point the respondents abruptly reversed their stance stating that the post is reserved for promotees only and there are large number of eligible hands available in the feeder cadre. This is actively disputed by the applicant.

13. As the applicant has already been the beneficiary of the promotion albeit given late in 2017, the question whether she is eligible for the promotion in 2010 when she had been found suitable for the post is an issue we can ask the official respondents to consider. We feel that the O.A can be disposed of with a direction to the respondents to consider the applicant's case for retrospective promotion as Lab Superintendent Grade III with effect from 20.1.2011. This shall be done within three months from the date of receipt of a copy of this order.

14. The O.A is disposed of as above. No costs.

(Dated this the 16th day of March 2018)

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

(U.SARATHCHANDRAN)
JUDICIAL MEMBER

asp

List of Annexures in O.A.No.180/00344/2015

1. **Annexure A-1** - True copy of Letter bearing No.P(S)268/VIII/CGA/Tech dated 20.1.2011 issued on behalf of the 2nd respondent.
2. **Annexure A-2** - True copy of Letter bearing No.PB/CS/30/PGT/2008/12 dated 7.4.2015 issued on behalf of the 2nd respondent.
3. **Annexure A-3** - True copy of Centralized Employment Notice No.4/2014 dated 1.11.2014 issued by the Government of India, Ministry of Railways to the extent it relates to the post of Lab. Superintendents in Chennai.
4. **Annexure A-4** - True copy of Office Order bearing No.T/IV/06/09 dated 19.3.2009 issued by the 3rd respondent.
5. **Annexure A-5** - True copy of Letter bearing No.PB/CS/30/PGT/2008/12 dated 3.6.2009 issued from the office of the 2nd respondent.
6. **Annexure A-6** - True copy of Letter bearing No.PB/CS/30/PGT/2008/12 dated 8.7.2009 issued on behalf of the 2nd respondent.
7. **Annexure A-7** - True copy of Letter bearing No.J/P.CON/CGA/19/2008 dated 13.7.2009 issued by the 3rd respondent.
8. **Annexure A-8** - True copy of Letter bearing No.PB/CS/30/PGT/2008/12 dated 9.11.2010 issued by the 2nd respondent.
9. **Annexure A-9** - True copy of Letter bearing No.PB/CS/30/PGT/2008/12 dated 6.12.2010 issued by the 2nd respondent.
10. **Annexure A-10** - True copy of Office Order bearing No.MD/12/2011 dated 14.2.2011, issued on behalf of the 2nd respondent.
11. **Annexure A-11** - True copy of communication bearing No.P(S)612/VIII/Lab dated 6.5.2014 issued from the office of the 2nd respondent.
12. **Annexure A-12** – True extract of Rule 165 of Section 'B' of Chapter I of the Indian Railway Establishment Manual Vol.I.

13. **Annexure A-13** - True copy of representation dated 19.12.2014 addressed to the 2nd respondent, less its annexures.
 14. **Annexure A-14** - True copy of representation dated 11.2.2015, along with the forwarding letter of the Additional Divisional Railway Manager dated 19.3.2015.
 15. **Annexure A-15** - True copy of Railway Board letter bearing No.E(NG)II/2001/RR-1/20 dated 12.11.2001.
 16. **Annexure A-16** - True copy of Railway Board Order bearing RBE No.161/2009 dated 3.9.2009.
 17. **Annexure R-1** – Representation dated 6.9.2009.
 18. **Annexure R-2** – Representation dated 6.9.2009 and 19.10.2009.
 19. **Annexure R-3** – Office Order dated 1.4.2015.
 20. **Annexure R-4** - Office Order dated 30.12.2013.
-