

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No.180/01051/2014

Wednesday this the 7th day of February, 2018

CORAM:

Hon'ble Mr.U.Sarathchandran, Judicial Member
Hon'ble Mr.E.K.Bharat Bhushan, Administrative Member

Shylaja.K,
Aged 39 years, W/o. Jyothikumar N.V.,
Technician Grade – III, Test Room,
Palakkad , S& T Department,
Southern Railway, Palakkad Division
residing at Qtr. 184 B, Hemambika Nager,
Palakkad

..... **Applicant**

(By Advocate – Mr. U. Balagangadharan)

V e r s u s

1. The Senior Divional Personnel Manager,
Southern Railway, Palakkad Division,
Palakkad – 678 001
2. The Chief Personnel Officer,
Southern Railway, Headquarters,
Southern Railway, Park Town, Chennai – 600 003.
3. The General Manager,
Southern Railway, Headquarters,
Park Town, Chennai – 600 003.
4. The Divisional Railway Manager,
Southern Railway, Palakkad Division,
Palakkad – 678 001.
5. Bijili K.V.,
Technician Grade-II, S & T Department,
Shornur Railway Station, Southern Railway,
Palakkad – 679 121.

..... **Respondents**

(By Advocate – Mr. Thomas Mathew Nellimoottil (R1-R4)
Mr. T.C. Govindaswamy (R5))

This Original Application having been heard on 01.02.2018, the Tribunal on 7.2.2018 delivered the following:

ORDER

Per: HON'BLE MR. E.K. BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

Original Application 180/01051/14 is filed by Smt.K.Shylaja, Technician Grade III, working under Southern Railway, Palakkad being aggrieved by Annexure A-6 order dated 20.8.2014 and Annexure A-8 order dated 01.10.2014 issued by the first respondent refixing her seniority below one Shri.S.Vinod in her cadre. She is also contesting Annexure A-9 Memorandum dated 11.11.2014 refixing her seniority position and Annexure A-12 order dated 12.11.2014, by which certain other individuals have been granted promotion on the ground of cadre restructuring, ostensibly ignoring the applicant's claim. The reliefs sought in the Original Application are as follows:-

- i) Call for the records leading to Annexure A-6, A-8, A-9 and A-12 and set aside the same as illegal and unsustainable.
- ii) Direct the 1st respondent to consider promoting the applicant as Technician Grade II being the next meritorious persons in Annex.A11 panel in preference to 5th respondent.
- iii) Direct the first respondent to pre-date the promotion of the petitioner as Technician Grade III with effect from 14.9.2009 notionally and grant consequential seniority in the post.
- iv) Declare that applicant is entitled to be considered and promoted Technician Grade III in preference to 5th respondent. ”

2. The facts of the case in brief are as follows:-

The applicant joined the respondent's service as Helper Grade II

in Signal and Telecommunication Department on 4.1.2005, on being advised by the Railway Recruitment Board. She came to be subsequently promoted as Helper Grade I in S&T Department. The next promotion available to her was to the level of Technician Grade III. She was eligible for the same under 25% quota meant for promotion based on seniority, subject to passing of Trade test. Pursuant to Annexure A-1 alert notice, a trade test was conducted and the applicant came out successful vide Annexure A-2. However, when the promotion order dated 14.9.2009 came out, the applicant's name was seen to have been omitted on the ground that she was availing maternity leave with LAP/CCL during the period from 19.8.2008 to 2.9.2010. On rejoining duty, she was promoted to the post of Technician Grade III with effect from 4.10.2010.

3. It is also submitted that while the applicant was on maternity leave, some personnel had joined on direct recruitment/transfer and two of them, viz., Shri.P.K.Shelvam and Shri.Vinod were promoted as Technician Grade III and were placed above the applicant in seniority. The applicant represented for appropriate correction in the seniority list and her request was accepted. Accordingly, in Annexure A-4 seniority list her name was placed at Serial No.4. Subsequently when an alert notice was issued for promotion to Grade II, the applicant was above respondent no.5 in the standby list. However, on a representation made by the 5th respondent, orders at Annexure A-6 came to be issued by which respondent no.5 came to be placed above the applicant. She was also placed below Shri.Vinod at

serial no.9 on the ground that she had joined as Technician Grade III only on 4.10.2010. The applicant protested against this re-arrangement but her representation was rejected vide order dated 1.10.2014 on the ground that although she was eligible for promotion on an earlier date, she had assumed higher responsibilities of the superior position only with effect from 4.10.2010. Further, ignoring the applicant's claim, the 5th respondent was promoted as Technician Grade II (Annexure A-12) dated 12.11.2014 against which the applicant has filed this Original Application.

4. As grounds, the applicant submits that the impugned orders at Annexures A-6, A-8, A-9 and A-12 are arbitrary, illegal and are unsustainable in the eye of law. Ignoring the better claim of the applicant, 5th respondent has been promoted to the superior cadre in violation of all canons of service jurisprudence, regardless of the fact that the applicant had come out successful in the trade test. The 5th respondent has been illegally bestowed promotion as Technician Grade II. The fact that the applicant was on maternity leave is not a valid reason for denying her promotion and the action of the official respondents is against all principles of service jurisprudence.

5. Respondent Nos.1-4 have filed a detailed reply statement refuting the allegations in the Original Application. While admitting the dates of the applicant's service mentioned in the O.A, it is stated that she was on continuous leave from 19.8.2009 to 2.9.2010 on maternity / child care leave. Although she had passed the trade test for becoming eligible for

Technician Grade III post, she was not available to assume higher responsibilities of the promoted post. However, in keeping with service norms and rules of fair play, the applicant was given notional promotion with effect from 7.7.2010 on par with her junior Shri.P.K.Shelvam and actual benefits of promotion from 4.10.2010 ie., from the date she started shouldering higher responsibilities. Mere qualifying in the trade test which she did on 14.9.2009 does not bestow any indefeasible right on the applicant to get promotion. The promotion becomes effective only in terms of the order made and in the applicant's case, orders at Annexure A-3 dated 29.9.2010 alone is relevant. It is also important to note that the applicant had not challenged Annexure A-3 order at the relevant time. After having accepted the promotion, applicant is estopped from challenging subsequent orders at Annexure A-6, Annexure A-8, Annexure A-9 and Annexure A-12. In **S.O.Haryana v. Rameshwar Dass – (2010) 2 SLJ 378 (SC)** the Hon'ble Supreme Court has held that seniority counts from the date of appointment. Smt.K.V.Bijali, the respondent No.5, had moved to the Palakkad Division from Chennai as a request transferee and she had joined as Technician Grade III at Palakkad Division on 6.11.2009. According to para 312 of Indian Railway Establishment Manual, Volume I, respondent granted her seniority position only from 6.11.2009 being considered below the existing officials of the relevant grade of the Division on that date. The applicant had joined as Technician Grade III nearly a year later. Initially the applicant had been mistakenly assigned seniority above certain others as per Annexure A-4. Realising this as an inadvertent error, Annexure A-6 notice was issued to the

applicant and subsequently corrections were made. There is provision in para 228 of the IREM Volume I for making such corrections.

6. Respondent no.5 Smt.Bijli.K.V has also filed a detailed reply statement by which she had laid stress on the fact that she was considerably senior to the applicant in Railway service. She had been transferred to Palakkad Division on request and in accordance with the Railway Rules, she had been placed as juniormost in the category of Technician Grade III. Besides respondent no.5 is a direct recruitee and her appointment is not open to challenge by the applicant, she being only a promotee. The impugned orders were issued by the respondents after due application of mind and there is no illegality in the same.

7. Heard Shri.U.Balagangadharan, learned counsel appeared for the applicant, Shri.Varghese represented by Shri.Thomas Mathew Nellimoottil, Standing Counsel for the Railways and Shri.T.C.G Swamy, learned counsel appeared for the 5th respondent. We have gone through all pleadings and records.

8. The main contention of the applicant is that she had responded to the alert notice and had duly passed the trade test for promotion as Technician Grade III, finding a place in the panel issued on 14.9.2009. It is admitted that she was on maternity/CCL from 19.8.2009 to 2.9.2010. The applicant was available to take up higher position of Technician Grade III only after she re-joined duty. The respondents, based on a representation made by the applicant, pre-dated her promotion from 7.7.2010 counting it from 4.10.2010 for disbursement of actual benefit. However, the official

respondent stand firm in their interpretation that actual promotion can be granted to an employee only from the date he or she assumes the responsibilities of the higher position. This is quoted as a common principle adopted in the service of the respondents and we do not find any arbitrariness in this feature of general policy. Naturally certain others went on to become seniors to the applicant in subsequent selections. It is also seen that the respondents have taken care to pre-date the applicant's promotion on par with some juniors. However, the official respondents were well within their rights to correct the document at Annexure A-11 by issuing orders at Annexure A-12 dated 12.11.2014 selecting respondent No.5, for the Grade II position.

9. Going through the facts of the case and after examining contending claims made by the learned counsel for the parties, we do not discern any impropriety in the action taken by the official respondents. Hence, we are of the view that the Original Application is devoid of merit and deserves to be dismissed. Accordingly, the Original Application is dismissed. No costs.

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

(U.SARATHCHANDRAN)
JUDICIAL MEMBER

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List of Annexures of the applicant

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| Annexure A-1 | - | True copy of the alert notice No. J/P.524/VII/Tech(Tels.)Gr-II to Helper/Tels dated 20.07.2009 issued by first respondent. |
| Annexure A-2 | - | True copy of the communication No. J/P.524/VII/Tech(Tele)Gr. II to Helper/II/Tele dated |

08.09.2009 issued by the first respondent.

- Annexure A-3 - True copy of relevant page of the order No. J/P.524/VII/Sr.Tech.Gr.I.(Tele) dated 29.09.2010 issued by first respondent.
- Annexure A-4 - True copy of the Seniority list No. J/P.612/VII/Vol.IX dated 16.07.2014 issued by first respondent.
- Annexure A-5 - True copy of the alert notice No. J/P.524/VII/Sr.Tech.Gr.I, II & III/Tele/Vol.I dated 13.02.2014 issued by the first respondent.
- Annexure A-6 - True copy of communication No. J/P612/VII/Vol.IX dated 20.08.2014 issued by first respondent.
- Annexure A-7 - True copy of the representation dated 27.08.2014 submitted by the applicant to first respondent.
- Annexure A-8 - True copy of communication No. J/P612/VI/Vol.IX dated 01.10.2014 issued by first respondent.
- Annexure A-9 - True copy of communication No. J/P612/VII/Vol.IX dated 11.11.2014 issued by first respondent.
- Annexure A-10 - True copy of communication No. J/SG 155/TT/Signal/15 dated 29.03.2014 issued by the first respondent.
- Annexure A-11 - True copy of communication No. J/P524/VII/Sr. Tech.&Gr.I,II,III (Vol.I) dated 21.05.2014 issued by first respondent.
- Annexure A-12 - True copy of Order No. J/SG66/2014 dated 12.11.2014 issued by first respondent.

List of Annexures of the 1st Respondents

- Annexure R1 - True copy of the promotion orders dated 28.06.2010.

List of Annexures of the 5th Respondents

- Annexure R5 (a) - A true copy of order bearing No. J/P.676/VII/Vol.8 dated 08.09.2009, issued by the 1st respondent.
- Annexure R5 (b) - A True copy of relieving order bearing No. REP/Mas/Staff/F.3 dated 05.11.2009, issued by the Section Engineer Tele./REP/Mas.

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