

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH**

Original Application No.180/00188/2015

Tuesday, this the 26th day of February, 2019

C O R A M :

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER**

A.Nelson, S/o.Abel,
Retd. Technician I/Tele/S.Rly., Trivandrum.
Residing at Puthuval Purayidam, Arathuvazhy,
Thumba, Thiruvananthapuram – 695 086.

...Applicant

(By Advocate – M/s.Varkey & Martin)

v e r s u s

1. Union of India
represented by the General Manager,
South Railway, Chennai – 600 003.
2. Divisional Personnel Officer,
Southern Railway, Trivandrum – 695 014.
3. M.Krishnan,
Senior Technician/Tele,
Southern Railway, Nagercoil Junction,
Tamil Nadu – 629 001.
4. R.Ravisankar,
Senior Technician/Tele, Southern Railway,
Ernakulam Junction, Kochi – 682 016.
5. P.Paul Pillai,
Sr. Technician, Tele,
Southern Railway, Nagercoil Junction.
6. P.Thanumalaya Sankaran,
Sr. Technician, Tele/Er.,
Southern Railway, Trivandrum Central,
Trivandrum – 14.

7. G.Yesunesan,
Sr.Technician, Tele/Er.,
Southern Railway, Trivandrum Central,
Trivandrum – 14.
8. Saji Jacob,
Sr.Technician, Tele,
Southern Railway, Kottayam.
9. G.Anil Kumar,
Sr. Technician, Tele,
Southern Railway, Trivandrum – 14. ...Respondents

(By Advocate – Mr.Sunil Jacob Jose [R1-2])

This application having been heard on 7th February 2019, the Tribunal on 26th February 2019 delivered the following :

ORDER

HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER

The applicant retired as Technician I/Tele in Pay Band Rs.5200-20200 + GP Rs.2800/- from the Trivandrum Division of Southern Railway on 30.6.2014. It is submitted that though restructuring of cadres in all Department of Railway Ministry had been ordered with effect from 1.11.2013, the Trivandrum Division has not implemented the restructuring and vacancies which occurred after 8.10.2013 are kept in abeyance in the name of the said cadre restructuring. By then the applicant retired from service on 30.6.2014 without being placed as Senior Technician/Tele in Pay Band Rs.9300-34800 + Grade Pay Rs.4200/- with effect from 1.11.2013 with consequential benefits. After the retirement the applicant came across a Memorandum of restructuring dated 24.7.2014 issued by the 2nd respondent increasing the post of Senior Technician/Tele from 15 to 27 with effect from 1.11.2013. The applicant made a representation on 5.8.2014

stating his claim for this post was reserved for Scheduled Caste candidates. The representation was ignored by the respondents and issued an OM dated 24.9.2014 promoting 12 Technicians I/Tele in PB Rs.5200-20200 + GP Rs.2800 as Senior Technicians/Tele in PB Rs.9300-34800/- + GP Rs.4200/- with effect from 1.11.2013. In the result the strength of SCs rose to 7 and that of STs to 2 in a cadre of 27 Senior Technicians. The permissible limit is 4 SCs and 2 STs only as per post based roster. Aggrieved by this he has made another representation on 1.10.2014 claiming benefit of Annexure A-3 order with effect from 1.11.2013 and consequential increase in the retirement benefits. But the same was not given to the applicant though he is eligible for promotion. Under these circumstances the applicant has no remedy for redressal of the grievance. Hence he approached this Tribunal. According to the applicant in the seniority list dated 8.1.2011 (Annexure A-7) Sl.Nos.2, 5, 9, 11 and 12 in A-3 belonged to SC, though the community of Sl. Nos.2, 5 and 9 are not shown as such in A-3. Sl.No.10 in A-3 belonged to ST consequently, among the 25 Senior Technicians/Tele, there are now 7 SCs and 2 STs, against the permissible number of 4 SCs and 2 STs for 27 posts. According to the applicant two SCs at Sl.Nos.11 and 12 in A3 Office Order were juniors to the applicant in the cadre of Technician I/Tele. Hence the applicant is entitled to be promoted as Senior Technician/Tele with effect from 1.11.2013 in preference to the respondents. It is also submitted that Sl.Nos.2, 5 and 9 who are SCs was not shown in A3 office order which is unjust and illegal.

2. Notices were issued and respondents have filed their reply statement. It is submitted by the respondents that as a result of cadre restructuring the sanctioned strength in the category of Senior Technician/ Telecommunication got revised from 15 to 2, ie., an increase of 12 posts as per the revised percentage. The break up of these 12 posts to be filled up is 9 UR, 2 SC and 1 ST based on the post based roster. It is submitted that the applicant was not eligible to be considered for promotion as per his seniority against an unreserved post and accordingly Annexure A-2 representation was not calling for any action. The points meant to be filled up with SC were 17 and 24. The Sl.Nos.2, 5 and 9 of Annexure A-3 belong to SC and it is an inadvertent mistake that the same has not been shown in Annexure A-3. The 3 employees are seniors to the applicant and they have been charged against point Nos.18, 22 and 27, all meant for UR, in implementing the cadre restructuring as per Annexure A-3. The respondents have further submitted that the applicant has failed to establish the availability of 7 SCs and 2 STs in the cadre strength of 27. They have further submitted that SC employees who got into the grades on merits are not eligible to be counted against the special reservation meant for SC. The 3 SC employees at Sl.Nos.2, 5 and 9 in Annexure A-3 are entitled to be promoted as per their own seniority and as they have not got the benefits of reservation in Annexure A-3, their names cannot count against the requirement of SC and accordingly, Annexure A-3 is perfectly in order. Railway Board as per letter No.99-E(SCT)I/25/13 dated 1.9.2010 have clarified that SC/ST candidates appointed by promotion on their own merit

and seniority and not owing to reservation or relaxation of qualification will be adjusted against unreserved points of reservation roster. It is further submitted that the applicant has retired on 30.6.2014 and pay was finalized as Rs.5886/- which is in order. Lastly prayed for dismissal of the O.A.

3. Heard learned counsel for the parties at length and perused the records. The question poised by the applicant before this Tribunal is whether reservation point in terms of Annexure A-8 should be carried out at Sl.Nos.4, 10 and 16 keeping 15% SC quota and Sl.Nos.8 and 20 for ST quota. During the course of the argument it transpired that there is no quarrel as regards to vacancies up to Sl.No.15 which is prior to restructuring of cadre and after restructuring of cadre the post at Sl.No.16 should have been given to SC, 20 to ST and 24 again to SC. As per Annexure A-7/2 Sl.No.16 is shown as unreserved vacancy though Sl.No.20 is correctly shown as ST again. But Sl.No.24 again shown as unreserved vacancy which is in violation of roster system. We are convinced that the question raised by the applicant before this Tribunal herein found favour with the present roster system in Annexure A-3 is not correct. Hence the post based roster is to be manned then Sl.Nos.16, 20 and 24 vacancies should have been given to the reserved candidates. Roster point should be accordingly corrected and the applicant herein should also be considered if he is found otherwise eligible to fitment for his promotion against his junior to the reserved vacancies. Roster system of non selection post should be considered for non selection post. The criteria normally followed is

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seniority cum fitness. We fail to understand how the reserved candidate has been considered on the basis of merit for the unreserved post in the non selection post. So there is merit on the side of the applicant. We hereby set aside Annexure A-3 and direct the respondents to recast the seniority list and 12 more vacancies added therein in terms of the roster system at Annexure A-8 Railway Board letter.

4. The O.A is disposed of accordingly. The orders shall be complied with, within a period of 90 days from the date of receipt of a copy of this order. No order as to costs.

(Dated this the 26th day of February 2019)

ASHISH KALIA
JUDICIAL MEMBER

E.K.BHARAT BHUSHAN
ADMINISTRATIVE MEMBER

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List of Annexures in O.A.No.180/00188/2015

- 1. Annexure A-1** – True copy of the Memorandum No.V/P.524/IX/S&T/Restructuring dated 24.7.2014.
 - 2. Annexure A-2** – True copy of the representation dated 5.8.2014 submitted by the applicant.
 - 3. Annexure A-3** – True copy of the order No.63/2014/S&T dated 24.9.2014 issued by the 2nd respondent.
 - 4. Annexure A-4** – True copy of the representation dated 1.10.2014 submitted by the applicant.
 - 5. Annexure A-5** – True copy of the settlement letter No.V/P 626/statement dated 30.6.2014.
 - 6. Annexure A-6** – True copy of the Pension Payment Advice No.0604210647 dated 30.6.2014.
 - 7. Annexure A-7** – True copy of the extract of the seniority list of Tech.I/Tele vide No.V/p.612/IX/Vol.II dated 8.1.2011.
 - 8. Annexure A-8** – True copy of the Railway Board letter No.95-E(SCT)1/49/5/2 dated 21.8.1997.
 - 9. Annexure A-9** – True copy of the order RBE No.102/2013 dated 8.10.2013.
 - 10. Annexure A-10** – True extract of the post based roster as per RBE No.114/97 dated 21.8.1997.
 - 11. Annexure R-1** – True copy of the Railway Board's Order, RBE No.19/2009 issued under No.2008-E(SCT)I/25/8 dated 29.1.2009.
 - 12. Annexure R-2** – True copy of the Railway Board's Order, RBE No.126/2010 issued under No.99-E(SCT)I/25/13 dated 1.9.2010.
 - 13. Annexure R-3** – True copy of the PBC No.180/2010 issued under No.P(R)171/Policy/SCT dated 30.11.2010 of Chief Personnel Officer, Southern Railway, Chennai.
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