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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00161/2015

Tuesday this the 15th day of January, 2019

C O R A M :

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

D.Ajay, S/o.R.K.Dinesan,
Junior Engineer/Electrical/Overhead Equipment/
Traction Distribution/Southern Railway/Tambaram.
Permanent Address : "Anamika Bhavan",
Karikkakom P.O., Thiruvananthapuram – 695 007.

...Applicant

(By Advocate Mr.T.C.Govindaswamy)

v e r s u s

1. Union of India represented by the General Manager,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai – 600 003.
2. The Chief Personnel Officer,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai – 600 003.
3. The Senior Divisional Personnel Officer,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai – 600 003.
4. The Railway Recruitment Board (RRB),
Government of India, Ministry of Railways,
Thampanoor, Thiruvananthapuram – 695 001.
represented by its Chairman.
5. The Divisional Personnel Officer,
Southern Railway, Thiruvananthapuram Division,
Thiruvananthapuram – 695 014.

...Respondents

(By Advocate Mrs.P.K.Radhika)

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This application having been heard on 9th January, 2019, the Tribunal on 15th January, 2019 delivered the following :

ORDER

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

O.A.No.180/161/2015 is filed by Shri.D.Ajay, Junior Engineer/Electrical/Overhead Equipment/Traction Distribution/Southern Railway/Tambaram. He is aggrieved by the failure on the part of the respondents to consider and post him against one of the vacancies of Junior Engineer/Electrical in Thiruvananthapuram Division of Southern Railway in preference to and with effect from the date of such appointment of those who were below him in the common rank list published by the Railway Recruitment Board, Thiruvananthapuram. The reliefs sought in the O.A are as follows :

1. Declare that the applicant is entitled to be considered and posted as JE/Elec/Drawing in the Trivandrum Division of Southern Railway with effect from 9.7.2012, in preference to and at least on par with the applicant's juniors Ms.S.G.Rejina and Ms.U.S.Nisha referred to in para 4(n) above, and direct the respondents accordingly.
2. Direct the respondents to consider and post the applicant as JE/Elec/Drawing with effect from 9.7.2012 in the Trivandrum Division of Southern Railway and direct further to grant all the consequential benefits thereof.
3. Award costs of and incidental to this application.
4. Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

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2. The applicant had joined the service of the Railways as an Assistant Loco Pilot in the Palakkad Division of Southern Railway, with effect from 18.10.2004 and was transferred to the Trivandrum Division during the year 2009. Being a holder of Diploma in Electrical Engineering, he applied against the Employment Notice Bearing No.5/2010 dated 6.3.2010 (Annexure A-1) for the post of Junior Engineer/Electrical in the pay band of Rs.9300-34800 + GP Rs.4200/-. The number of vacancies in Southern Railway to be filled up through this recruitment was notified to be UR 24, SC 23, ST 6 and OBC 17 totalling 70.

3. The results were published as per Notification dated 17.10.2011 (Annexure A-3). After having been selected, as per Annexure A-4 direction, the applicant was required to report before the 4th respondent RRB, Thiruvananthapuram on 17.11.2011 for verification of documents. Subsequently he was asked to report to the Headquarters at Chennai. On completion of all formalities, an offer of appointment, a copy of which is available at Annexure A-6 dated 8.8.2012, was issued to him. Thereupon the applicant was relieved by the 5th respondent to take up the appointment at Chennai and accordingly he joined the post as a Junior Engineer/Electrical/Traction Distribution (Annexure A-8). Immediately on joining the Chennai Division, the applicant requested for a posting to Thiruvananthapuram Division by way of representation dated 4.3.2013 (Annexure A-9).

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4. As his representation evoked no positive response, the applicant made further inquiries and came to know that a number of persons selected along with the applicant and placed below in the rank list, were posted in Thiruvananthapuram Division overlooking the applicant. As per information obtained through Right to Information Act and as per the merit list, a copy of which is available at Annexure A-10, the applicant was placed at Sl.No.12 whereas two candidates Ms.S.G.Rejina and Ms.U.S.Nisha who were placed at Sl.Nos.29 & 30 were accommodated under the Thiruvananthapuram Division. Their date of appointment as per Annexure A-11, which is a provisional seniority list brought out on 31.12.2014 Mr.S.G.Rejina and Ms.U.S.Nisha are shown as 9.7.2012 whereas the applicant was appointed only in the month of October, 2012, despite being placed higher in the merit list than the other two. Faced with this injustice, the applicant submitted a representation on 15.10.2015 to the 2nd respondent, a copy of which is provided at Annexure A-12.

5. Respondents have filed a reply statement in which they have pointed out that the O.A is considerably delayed and is barred by limitation. The applicant had joined Chennai Division for training on 17.10.2012. He had sought a transfer to Thiruvananthapuram only on 4.3.2013 (Annexure A-9). No action could be taken on this representation, as there was no vacancy in Thiruvananthapuram. On selection by

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Railway Recruitment Board the selected candidates were posted to different branches of Electrical Department based on their merit and fitness and those who possess Annexure A-3 medical fitness and were high placed in the merit list were allotted Traction Rolling Stock (TRS)/Traction Distribution (TRD) branches and those who were below in both medical examination as well as merit list were placed in General Services. The two candidates referred to in the O.A are both women and for this reason they have been posted to the Electrical Drawing Department as the work involved in that department is mostly within the office. The reply statement goes on to narrate other factors which are mostly irrelevant to the issue at hand.

6. We have heard Shri.T.C.Govindaswamy on behalf of the applicant and Smt.P.K.Radhika on behalf of the respondents. We do not see any ostensible reason why a higher placed candidate was given a posting at Chennai while persons with lesser marks were accommodated in Kerala itself. What is more beguiling is the fact that the higher placed candidate was asked to join much later than the lower placed candidates thereby depriving him of seniority, as what matters is date of joining/date of completion of training. We are at a loss to understand what reasons prevailed upon the respondents to take such a view. If there are valid reasons at least those are not available to this Tribunal. However, we cannot also lose sight of the fact

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that neither of the two candidates over whom the applicant is claiming seniority have been impleaded as a party and not being given an opportunity to be heard.

7. Under these circumstances, we are of the view that the O.A can be disposed of by directing 2nd respondent to consider the representation, a copy of which is available at Annexure A-12 and take a valid view after considering all factors. This shall be done as expeditiously as possible and in any case within 30 days from the date of receipt of a copy of this order. No costs.

(Dated this the 15th of January 2019)

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures in O.A. No.180/00161/2015

- 1. Annexure A1** – A copy of the Government of India, Ministry of Railways, Railway Recruitment Boards, Centralized Employment Notice bearing No.5/2010 dated 6.3.2010.
- 2. Annexure A2** – A copy of the Hall Ticket issued to the applicant from the office of the 4th respondent.
- 3. Annexure A3** – A copy of the Results Notification dated 17.10.2011 issued by the 4th respondent.
- 4. Annexure A4** – A copy of the letter bearing No.RRB/TVC/05/2010/Cat 73 dated 18.10.2011, issued from the office of the 4th respondent.
- 5. Annexure A5** – A copy of the letter bearing No.P(S)/268/VII/RRB/JE/2011 dated 2.1.2012, issued from the office of the 3rd respondent.
- 6. Annexure A6** – A copy of the letter bearing No.M/P(E)563/V/TRD/DRQ/RRB/CGA/JE dated 8.8.2012 issued from the office of the 3rd respondent.
- 7. Annexure A7** – A copy of the Office Order bearing No.Elec/TRD/289/2012 dated 17.10.2012, issued by the Chennai Divisional authorities.
- 8. Annexure A8** – A copy of the Office Order bearing No.M/P/Elec./TRD/30/2014 dated 30.1.2014, issued from the office of the 3rd respondent.
- 9. Annexure A9** – A copy of the representation dated 4.3.2013 submitted by the applicant to the 2nd respondent.
- 10. Annexure A10** - A copy of the communication bearing No.P(Coord)RTIA/2014/4385 dated 21.3.2014, issued by the Deputy Chief Personnel Officer/L, M&E & PIO in the office of the 3rd respondent.
- 11. Annexure A11** –A copy of the provisional seniority list of JE/Drawing/Electrical Branch published by the Southern Railway/Headquarters as on 31.12.2014.
- 12. Annexure A12** – A copy of the representation dated 15.1.2015, addressed to the 2nd respondent.

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13. Annexure R1 – A copy of the Headquarters Office vide letter dated 19.6.2012.

14. Annexure R2 – A copy of the Chennai Division's letter dated 11.9.2012.

15. Annexure R3 – A copy of the RRB panel seniority vide revised provisional seniority list dated 16.12.2014 issued by Chennai Division.

16. Annexure R4 – A copy of the Thiruvananthapuram Division's letter dated 11.5.2012.
