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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/000051/2015

Thursday, this the 14th day of March, 2019

CORAM:

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

Shri D.Sunilkumar,
Aged 44 years,
S/o K.Damodaran Nair,
Office Superintendent,
Electrical Branch, Office of Divisional
Electrical Engineer, Southern Railway,
Thiruvananthapuram – 695 014.Applicant

(By Advocate Mr.T.A.Rajan)

Versus

1. The Union of India
represented by General Manager,
Southern Railway, Chennai.
2. The Divisional Personnel Officer,
Divisional Office, Southern Railway,
Thiruvananthapuram – 695 014.
3. The Divisional Electrical Engineer,
Divisional Office, Southern Railway,
Thiruvananthapuram-695 014.
4. Ms.Bindu Aloysius,
Office Superintendent,
Office of Divisional Electrical Engineer (TRD0,
Divisional Office, Southern Railway,
Thiruvananthapuram – 695 014.

(By Advocate Mr. Sunil Jacob Jose for Respondents)

This application having been heard on 11th March, 2019, the Tribunal on 14th March, 2019 delivered the following :

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ORDER

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

OA No.51/2015 is filed by Shri D.Sunil Kumar, Office Superintendent, Electrical Branch, Southern Railway, Thiruvananthapuram. He is aggrieved by the promotion given to the 4th respondent to the post of Office Superintendent in the restructured vacancy in preference to him. The reliefs sought in the OA are as follows:

- I) Call for the records leading to Annexure A3 and set aside it.
- II) Declare that the promotion given to the fourth respondent to the post of Office Superintendent under LDCE quota as illegal.
- III) Declare that the applicant is entitled to be promoted to the post of Office Superintendent in preference to the fourth respondent and also seniority in the said post.
- IV) Direct the respondents to promote the applicant to the post of Office Superintendent with effect from 01.11.2013 with all consequential benefits including seniority.
- V) Award costs of and incidental to this application.
- VI) Grant such other relief, which this Honourable Tribunal may deem fit and proper in the circumstances of the case.

2. The applicant had joined the respondent organisation as Peon on 07.10.1993. He appeared for the selection to the post of Junior Clerk and came out successful. Accordingly, he was appointed as Junior Clerk on 03.03.2008 and was promoted as Senior Clerk on 01.11.2010.

3. The Railway Board by order dated 08.10.2013 had introduced restructuring of Group 'C' cadre posts. A copy of the said order is at

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Annexure A1. According to this restructuring, three posts of Office Superintendent have come into being from 01.11.2013. The applicant submits that he is the second senior most person from the eligible list of Senior Clerks of the Electrical Department and is entitled to be promoted as Office Superintendent with effect from 01.11.2013.

4. He further submits that out of 17 Office Superintendents under the Electrical Department of Thiruvananthapuram Division as on 31.10.2013, three persons held the position having qualified under LDCE quota. As per extant Rules, 20% of the posts of Office Superintendent are to be filled up in this fashion, it is to be inferred that there is no vacancy for Office Superintendents under LDCE quota as on that date. Naturally on restructuring with effect from 01.11.2013 also there would be no vacancies for the said quota.

5. But the second Respondent by order dated 10.12.2013 promoted Smt. Beena Santhosh and the 4th Respondent as Office Superintendents against 20% LDCE quota. The copy of the said order is at Annexure A3. As there were no vacancies in existence for the LDCE quota on that date and afterwards, the promotion given to the two persons under LDCE quota is illegal, the applicant claims. He filed a representation against Annexure A3 order, but to no avail.

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6. Again, the second Respondent by order dated 26.08.2014 promoted the applicant and two others, Smt.Beena Santhosh and Smt.Radhika P. As can be seen from this document marked as Annexure A5, Smt.Beena Santosh is the same person who was promoted to the post of Office Superintendent under LDCE quota as per Annexure A3. As Smt.Beena Santhosh is senior to the applicant, he has no complaint regarding the promotion accorded to her. But the promotion given to the 4th Respondent by Annexure A3 has not been modified or cancelled and this is patently unjust as she is junior to the applicant.

7. In the reply statement filed on behalf of the Respondents-1to3 ,a preliminary ground is raised that the OA is hit by limitation. Annexure A3 is dated 10.12.2013 and the OA has been filed only in January, 2015 without an Application for Condonation of Delay. The applicant had accepted the promotion when it was granted to him as per Annexure A5 and hence is estopped from claiming an earlier date for the said promotion. The promotion given to the 4th Respondent is due to her coming out successful in the selection held for the post of Office Superintendent post against LDCE quota and there is nothing illegal about her posting. The applicant, being the second person in the seniority list of Senior Clerks, is not automatically eligible for promotion with effect from 01.11.2013.

8. The promotions at Annexure A3 had been based on a selection which

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had been conducted on Zonal level across all Departments. The two employees referred to in Annexure A3 had come out successful from the Electrical Department of Thiruvananthapuram Division and were fitted against the direct vacancies arisen on implementation of cadre restructuring. The applicant has filed a rejoinder and additional rejoinder wherein he has reiterated the contentions raised in the OA. It is strongly averred that there were no vacancies for LDCE candidates for promotion to the cadre of Office Superintendent, because the 20% quota in the cadre had been fully utilized. When the vacancies were reduced to 15 with effect from 01.11.2013 there is even less scope for promoting a candidate under LDCE quota. While Smt. Beena Santosh is senior to the applicant, 4th Respondent is junior. By being granted promotion with effect from 10.12.2013, Respondent-4 is placed senior to the applicant, who was promoted only on 26.08.2014. This is not justified as the LDCE quota being fully utilized, what was open for the respondents was to faithfully follow seniority as per Clause-4 of the restructuring ordered under Annexure A1.

9. We have heard Shri T.A.Rajan for the applicant and Standing counsel for the respondents. All pleadings were examined.

10. It is admitted that there remained three vacancies of Office Superintendent as on 01.11.2013 consequent to restructuring of the cadre. The respondents issued Annexure A3 order promoting Smt. Beena Santhosh

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and the 4th Respondent, Senior Clerks, as Office Superintendents. The applicant claims that he is senior to Respondent-4 and this claim is not disputed by the respondents. So also was the contention that while 20% quota is allowed for LDCE candidates, the quota in this case had been fully utilized by placement of three candidates under this category mentioned in the OA/rejoinder. The Respondent-4, for her part, did not choose to appear before this Tribunal. Thus the reply filed by the respondents is inadequate on the point of averments strongly pressed by the applicant. We do not accept that the OA is time barred because the fact of his having made representations before the respondents is not disputed by the latter.

11. After examining the pleadings of both sides, we conclude that the OA has merit and it succeeds. The applicant will be deemed as having been promoted from the date, Respondent-4 was promoted and he will be entitled to retain his seniority vis-a-vis 4th Respondent in the category of Office Superintendent. However, there shall be no order as to any financial benefits as claimed by the applicant with retrospective effect. Orders in this regard have to be issued within two months from the date of receipt of a copy of this order. OA is disposed of. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures in O.A. No.180/000051/2015

- 1. Annexure A1:** True copy of the order No.PC-III/2013/CRC/4 dated 08.10.2013.
- 2. Annexure A2:** True copy of the order No.V/P.524/VIII/EL(GS)/Restructuring dated 31.03.2014.
- 3. Annexure A3:** True copy of the Order No.V/P.535/VIII/EL/GS dated 10.12.2013 of the second respondent.
- 4. Annexure A4:** True copy of the representation dated 05.05.2014 submitted by the applicant.
- 5. Annexure A5:** True copy of the order No.V/P.524/VIII/Elec.//(GS) dated 26.08.2014.
