

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

WEDNESDAY, THE 24TH DAY OF JUNE 2015/3RD ASHADHA, 1937

OP (CAT) .No. 105 of 2015 (Z)

AGAINST THE ORDER/JUDGMENT IN OA 106/2014 of CENTRAL ADMINISTRATIVE
TRIBUNAL,ERNAKULAM BENCH DATED 28-05-2015

PETITIONER:

S.ARANGANATHAN AGED 35 YEARS
S/O.R.SUBRAMANIAN, PRESENTLY WORKING AS HELPER
LOCO WORKSHOP, PERAMBUR, SOUTHERN RAILWAY
RESIDING AT 34/13 TVS NAGAR, 6TH CROSS ROAD, PADI
CHENNAI-50.

BY ADV. SRI.MARTIN G.THOTTAN

RESPONDENTS:

1. THE GENERAL MANAGER
SOUTHERN RAILWAY, HEADQUARTERS OFFICE, PARK TOWN
CHENNAI-3.

2. CHIEF MECHANICAL ENGINEER
SOUTHER RAILWAY, CHENNAI - 3

3. CHIEF WORKSHOP MANAGER
LOCO WORK, SOUTHERN RAILWAY, PERAMBUR
CHENNAI -3.

4. V.RAJKAMAL
S/O.M.VINAYAKAM, TRACKMAN, SSE/P.WAY/VELLORE
TRICHY, RESIDING AT 101/98 MAIN ROAD, KALINJUR
VELLORE-6.

5. A.LAKSHMINARAYANAN
S/O.AMBALAGAN, TRACKMAN, SSC/P WAY/ALLEPPEY
RESIDING AT 14/1, GOPALAPURAM 1ST STREET, TVK NAGAR
CHENNAI.

R1-R3 BY ADV. SRI.TOJAN J.VATHIKULAM,SC,RAILWAYS
R BY SRI.C.S.DIAS,SC, RAILWAYS

THIS OP (CAT) HAVING COME UP FOR ADMISSION ON 24-06-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER(S) ' EXHIBITS

P1 : TRUE COPY OF THE ORIGINAL APPLIATION NO.OA/180/00106/2014 FILED
BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

P2 : A TRUE COPY OF THE REPLY STATEMENT FILED BY THE RESPONDENTS IN
OA/180/00106/2014

P3 : A TRUE COPY OF THE ORDER DATED 28-5-2015 PASSED BY THE TRIBUNAL IN
OA/180/00106/2014.

RESPONDENT(S) ' EXHIBITS : NIL

/TRUE COPY/

P.A. TO JUDGE

**P.R. RAMACHANDRA MENON &
BABU MATHEW P. JOSEPH JJ**

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Dated, this the 24th day of June, 2015

JUDGMENT

Ramachandra Menon J.

Cancellation of promotion already ordered in case of the petitioner along with five other persons enlisted in Annexure A2 dated 23.11.2013 without giving an opportunity of hearing and also without stating any specific reasons is under challenge in this original petition.

2. The challenge was raised initially before the Tribunal, but no interference was made and the original application was dismissed as per Ext. P3 order dated 28.05.2015, which is sought to be intercepted by filing the original petition.

3. Heard the learned counsel for the petitioner and the learned standing counsel for the Railways at length.

4. The sequence of events as revealed from the proceedings is that the petitioner was working as track man in Trivandrum Division of Southern Railways. While working as above, Annexure A1 notification was issued by the third respondent on 04.12.2012 inviting

applications from qualified helpers(Khalasis) who have put in a continuous regular service of two years in Railways as on 12.11.2012 to be considered for promotion to the post of Welder Grade III. Pursuant to the said notification, petitioners along with others submitted application. In the course of further process they proved their mettle; pursuant to which they were selected and promoted as 'Welder Grade III' as per Annexure A2 order dated 23.11.2013. The petitioner is placed at serial No. 6, among the 6 candidates found as qualified. But the said order came to be cancelled as per Annexure A3 order dated 29.11.2013, absolutely for no reason at all, but for mentioning that it was issued as per the approval of the competent authority. This made the petitioner to challenge the said proceedings joining hands with one Haridas (who was at serial No. 5 of Annexure A2) by filing O. A before the Central Administrative Tribunal.

4. A reply statement was filed by the respondents 1 to 3 before the Tribunal pointing out that authority issued notification as per Annexure A1 was not authorized to have it circulated through other divisions; as the requirement was in the workshop situated at Perambur in Chennai. The Tribunal observed that order of

promotion was issued on 23.11.2013 and same was not given effect to. Infirmary with regard to the process of selection, for want of approval of competent authority as stated by the respondents 1 to 3 was recorded and cancellation of Annexure A2 order as per Annexure A3 dated 29.11.2013, which is just 6 days after passing Annexure A2, was upheld. The Tribunal also observed that absolutely no vested right was conferred upon the applicants and as such, interference was declined and the original application was dismissed. This in turn is under challenge in this writ petition.

5. The learned standing counsel appearing for the Railways sought to reiterate the stand taken by the Railways in the reply statement filed before the Tribunal. The main contention is that no prior approval was obtained for widening the zone of consideration to other divisions and as such, there is nothing wrong in having cancelled Annexure A2 because of the administrative reasons mentioned in Annexure A3. It is also pointed out that there is no violation of any principle of natural justice so far as the order of promotion vide Annexure A2 had not come into effect. This Court finds that Annexure A2 order itself says that it would come into effect only from the date of enshrouding the higher

responsibilities attached to the promotional post, which is still to take place.

6. Eventhough the findings and reasoning given by the Tribunal are not liable to be interfered under any circumstances, the factual position revealed from the proceedings is that there was acute shortage of qualified hands in the post of 'welder' in the work shop at Perambur. The factual position that a quota is earmarked for the workers of Railways, particularly by virtue of paragraph 159 of the Indian Railways Establishment Manuel, is not disputed. The notification issued itself reveals the availability of such privilege and zone of consideration which was originally stipulated as per Annexure A1, referring to the same as from the Helpers (Khalasis), subsequently widened vide corrigendum dated 04.12.2012.

7. It is true that Annexure A3 cancellation has been effected by the 3rd respondent clearly mentioning that it has the 'approval of the competent authority'. At the same time, it has to be noted that Annexure A2 has been issued by the very same authority; which has also been issued 'with the approval of the competent authority', as shown in the last sentence. Yet another aspect to be considered in the background of acute shortage of qualified hands

is that, despite existence of 'eight' vacancies as notified, in spite of circulating the notifications in various divisions, the respondents could identify only 'six' qualified hands as enlisted in Annexure A2 i.e demand and supply is not adequately satisfied, which may adversely affect the organizational interest of the respondent Railways. The learned counsel for the petitioner submits that, when the file was put up before the 3rd respondent, it was simply cancelled by the 3rd respondent referring to 'want of approval'. No such direction to have cancelled the list has been issued by the first respondent who is the competent authority; submits the learned counsel.

8. Considering the facts and circumstances, this Court finds it fit and proper to grant an opportunity to the petitioner to file an exhaustive representation before the first respondent, referring to the sequence of events. If any such representation is filed within 'two weeks' from the date of receipt of a copy of this judgment, the same shall be considered and appropriate orders shall be passed, also considering the fact whether the persons enlisted in Annexure A2 can be permitted to join the post in question or whether the further selection process does require to be pursued. Such orders

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shall be passed in accordance with law, at the earliest, at any rate, within three months from the date of receipt of a copy of this judgment.

The writ petition is disposed of.

sd/-

**P. R. RAMACHANDRA MENON,
JUDGE.**

sd/-

**BABU MATHEW P. JOSEPH,
JUDGE.**

kmd