

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

**Misc. Application No. 62/2020
Misc. Application No. 143/2020
in
Original Application No.59/2020**

Date: 12.06.2020

CORAM:

**Hon'ble Sh. Jayesh V. Bhairavia, Member (J)
Hon'ble Sh. A.K.Dubey, Member (A)**

1. Shri Chandrasinh J. Parmar S/o Shri Jalamsinh Parmar, aged 41 years, working as Drafted CCCR (Loco Pilot) at Surendranagar, resident of Street No. 2, Darbari Plot, Behind Dajiraj High School, Wadhvana City, Surendranagar – 363 030.
2. Shri Sureshkumar G. Sharma S/o Shri Gangalaheri Sharma aged 44 years, working as Drafted CC (Loco Pilot) at Surendranagar, resident of House No. 2, Tulsi Nagar-2, Near New Railway Station, Surendranagar – 363 001.
3. Dilipsinh R. Rathod S/o Shri Ramsinh Rathod aged 50 years, working as Loco Pilot (Passenger) at HAPA, resident of Raj Park Zero, Plot No. 35/1 Near Victoria Bridge, Behind Jilla Seva Sadan, Jamnagar-361007.

..Applicants

[By Advocate : Ms. S.S.Chaturvedi]

Versus

- 1.Chairman/Joint Director, E(P&A), Railway Board, Rail Bhavan, New Delhi – 110 001.
- 2.Union of India notice to be served through General Manager, Western Railway, Churchgate, Mumbai – 400 020.
- 3.The Divisional Railway Manager(E),Rajkot Division, Kothi Compound,Rajkot-360001

.....Respondents

[By Advocate Sh. M.J. Patel]

O R D E R (Oral)

Per: Jayesh V. Bhairavia, Member (J)

1. Heard the learned counsel for the parties.
2. M.A. 62/2020 for joining together and to file one O.A. on behalf of applicants, is allowed and MA 62/2020 is accordingly disposed of.
3. In the present O.A. applicants have challenged the legality and virus of the RBE No. 108 of 2019 dated 3.7.2019 of said RBE whereby, the Railway Board had published the modified scheme for filling up the posts of Loco Running

Supervisors (Chief Loco Inspectors and Chief Crew Controllers – Chief Power Controllers – Chief Traction Controllers) [Annex.A/1] and prayed for quashing and setting aside Para – 3 of the said Scheme which pertains to eligibility for the post of Chief Loco Inspector. It is further prayed to replace the eligibility criteria contained in Para 3 of the impugned scheme dated 3.7.2019 (Annex.A/1) and also contained in the Advertisement/Notification dated 20.01.2020 (Annex.A/2) as per previous policy of RBE No. 51/2009 dated 26.3.2009.

The applicant has also alternatively prayed that a direction be issued to the respondents to count and consider the entire running service and foot-plate kilometres from the post of Assistant Loco Pilot (ALP) 1900/- GP for the purpose of eligibility criteria and to issue order to the respondents to consider applicants' eligibility in selection process stated in Annex. A/2.

4. The applicants' have also prayed for interim relief for a direction to the respondents to consider their representations and pass a speaking order and during the pendency of the OA sought relief for staying the Para 3 of the Railway Board's Circular i.e. RBE No. 108/2019 dated 3.7.2019 and eligibility criteria stated in Notification No. 20.01.2020 (Annex.A/2). Alternatively, by way of interim relief direction is sought to the respondents to consider the applicants eligible in the selection process started vide Notification dated 20.01.2020 as per eligibility criteria of previous policy dated 26.3.2009 (Annex.A/11).

5. The Applicants' have filed separate MA No. 143/2020 in the present O.A. and prayed for a direction to allow the applicants to appear in the written test scheduled on 17.6.2020. It is contended in the said MA that the respondents have issued the eligibility list bearing No. EM 1025/31/2/CLI dated 20.3/20.4.2020 for the promotion to the post of CLI. The respondents declared the applicants as ineligible and included their name in list 'B' (Annex.A/16). It is further contended that applicants have submitted their representation dated 21.4.2020 (Annex.A/17) requesting their consideration to be eligible in the selection process for the post of CLI. The said representation was forwarded vide letter dated 22.4.2020 to the D.R.M. (E), RJT (Annex.A/18).

6. Learned counsel for the applicants submitted that aforesaid MA i.e. M.A. No. 143/2020 is for allowing them to appear in the examination by way of interim relief, be taken up for hearing as an urgent case. Accordingly, the same has been

taken up for hearing, respondents have filed their reply [though it is under office objections, however, learned counsel for respondents assured to rectify the objection(s)], a copy of said reply was served upon counsel for applicants and in response to it applicants have filed their rejoinder. The counsel for the applicants insists upon to allow the applicants' to appear in the written test to be held on 17.6.2020 for filling-up the post of CLI by way of interim relief during the pendency of the OA.

7. It is noticed that respondent No. 3 i.e. Divisional Railway Manager (E), Rajkot Division, Western Railway, by its Notification dated 20.1.2020 invited applications from the employees who are fulfilling the eligibility conditions referred in the said Notification/Advertisement for filling up the vacancies for the post of Chief Loco Inspector (CLI) Scale Rs. 9300-34,800 + Rs. 4600/- (GP) – NECH Department – RJT Division in the prescribed proforma (Annex.A/2).

8. The grievance of applicants is that respondents have modified and introduced new eligibility criteria for the post of Chief Loco Inspector vide RBE No.108/2019 dated 03.07.2019 issued by Ministry of Railway / Railway Board (Annex.A-1) and the said eligibility criteria has been followed by the respondent No. 3 while inviting applications for filling up the posts of CLI.

It is noticed that the Railway Board had issued RBE No. 108/2019 dated 3.7.2019 (Annex.A/1) thereby modified the scheme for filling up the posts of Loco Running Supervisors (Chief Loco Inspectors-Chief Crew Controller- Chief Power Controllers – Chief Traction Controllers), after referring Railway Board's letter dated 25.11.1992 to 27.12.2016. The relevant paras of terms and conditions of the said Scheme read as under :-

"1. Board's letters related the scheme for filling up the posts of Chief Loco Inspectors and Chief Crew Controllers / Chief Power Controllers / Chief Traction Loco Counsellors are referred to above. The question of rationalisation of the said scheme has been engaging the attention of the Railway Board of quite some time. Certain modifications in the existing scheme were issued vide Board's letter No. 2001/M(L)/467/2/dt. 12.11.2012, however they were kept in abeyance vide Board's letter No. E (P&A) II / 2009 / RS /17 dt. 27.3.2014 and 23.7.2014.

1.1 In this connection, Board constituted an empowered committee to study and put up recommendations for consideration by the Board. The empowered committee after careful consideration and in consultation with both the recognised federations viz. , AIRF & NFIR, has submitted its report to the Board and after partial acceptance of the same it has been decided to modify the scheme as given in the following paragraphs however retaining the method of selection process.

2. XXXX XXX

2.1 XXXX XXX

2.2 XXXX XXX
2.3 XXXX XXX

3. Eligibility : *There will be a common selection Loco Running Staff for filling up the posts of CLIs and CLIs (CCC, CPRC & CTLC). LP (Mail), LP (Passenger) and LP (Goods) who have completed 5 lakhs kilometers of actual footplate duties as Loco Pilots or have completed 10 years of actual service as Loco Pilots, whichever is earlier, would be eligible for selection through suitability (written examination) cum seniority. Drafted Loco Pilots working as CC, PRC and TLC on date can also apply for the selection provided they fulfil the eligibility criteria.*

3.1 The Medical standards for selection to the post of CLIs should conform to the existing medical standards A-3.

3.2 Medically decategorised Loco Pilots up to the medical standard A-3 and also possessing the driving experience as per paragraph 3 above would also be eligible to apply for the selection in terms of Board's letter No. E(P&A)II/2006/RS/21 dated 3.1.2007.

4. Selection : Options from eligible and willing loco running staff for vacant posts of CLIs and CLIs (CCC, CPRC & CTLC) should be called for by the personnel department in the divisions after assessing the vacancies. A panel should be formed through a selection process of suitability cum seniority. The suitability should be based on written examination along with APARs, Service record and Driving record. The process will be completed by a committee of three officers as per laid down procedure."

5. XXXX

6. XXXX

7. XXXX

8. XXXX

9. The above instructions would take effect from the date of issue of this letter. In cases where the selection process for filling up the post of CLIs has been initiated (that is, notifications has already been issued), in terms of earlier eligibility conditions, the same may be finalised accordingly. Other features of the extant policy on the subject, which have not been modified by the above mentioned instructions, will remains unchanged.

10. This has the approval of the President and issued with the concurrence of the Finance Directorate of the Ministry of Railways."

9. According to counsel for applicants', the aforesaid eligibility criteria is not in consonance with the object of the role/duty needs to be performed by Chief Loco Inspector. It is further submitted that in fact, said Clause 3, is not much rational and arbitrarily introduced by the respondents. It is also contended that as per previous policy dated 26.3.2009, eligibility criteria to appear in the examination of CLI was required only 75000 Kms. actual foot-plate experience as Loco Pilot. However, as per the new modified scheme under RBE no. 108/2019, the eligibility criteria has been enhanced to 5 Lakh kms. actual Foot Plate experience as Loco Pilot or 10 years service as Loco Pilot, has been prescribed. The said modification is without any basis. It is practically impossible to complete the criteria of 5 Lakh kms. actual Foot Plate in 10 years as Loco Pilot. Counsel for applicants further contended that under the modified scheme Annex. A/1 and also according to Advertisement / Notification dated 20.1.2020, the respondents

have stated that actual foot plate duties have been defined in Board's letter dated 22.2.2015, therefore, the said Railway Board's letter i.e. RBE No. 11/2015 dated 12.2.2015 (Annex.A/15) required to be referred for the purpose of definition of foot plate duties of Loco Pilots according to the said RBE of the Railway Board it was clarified that all the driving duties performed by a Loco Pilot in the Locomotive Cab are foot plate duties. The experience gained by a Loco Pilot is by performing actual foot plate duties and his driving experience. The minimum guaranteed kms. Incentive / Ghat Sections kms. and shunting kms., were actual foot plate duties are not performed, may not be taken into account while considering the eligibility criteria of running staff for the selection of LIs / PRCs / CCCs.

It is further contended by the counsel for applicants that applicant No. 1 was promoted as Loco Pilot (Goods) on 6.7.2013 and till now as Loco Pilot completed the foot plate kms. 1,12,123 within 7 years.

The applicant No. 2 was promoted as Loco Pilot (Goods) on 9.9.2014 and till now as Loco Pilot completed the foot plate kms 1,34,703 within 6 years.

The applicant No.3 was promoted as Loco Pilot (Goods) on 30.3.2010 and till now as Loco Pilot completed the foot plate kms. 2,40,375 within 10 years.

10. It is submitted by the applicants that in Rajkot Division, it is practically impossible to complete the eligibility criteria of 5 Lakhs kms. It is also contended that the post of CLI is in group 'C' for which higher eligibility criteria has been fixed whereas, for promotion to a group 'B' post i.e. ADME (L) Group 'B' the eligibility criteria has been fixed lesser than the group 'C' post. Therefore, the action of the respondents for modifying the eligibility criteria is arbitrary and discriminatory.

11. The learned counsel for applicants also submitted that this Tribunal can decide the virus of impugned scheme which has fixed the eligibility criteria for selection to the promotional post of CLI. He placed reliance on the **L. Chandra's** case for the aforesaid submission. It is submitted that though the respondents have declared the applicants as ineligible for participation in the written test as per the eligibility criteria however, since they have challenged the legality of the

RBE no. 108/2019 dated 3.7.2019 they may be allowed to appear in the examination and result may be kept in sealed cover.

12. On the other hand, counsel for respondents, Shri M.J.Patel submits that respondents have filed their counter reply to the O.A. as well as reply in M.A. and denied the claim of applicants including grant of interim relief.

13. It is further submitted that in July, 2019, the respondents have declared the eligibility criteria for filling up the post of Chief Loco Inspector by way of promotion which includes written test and selection process. Paras 1 and 1.1 of the RBE No.108/2019, dated 03.7.2019 (Annex.A-1) clearly explained the object for modifying the scheme for filling up the post of Loco Running Staff (CLI /CCC/ CPRC/ CTLC) after considering the Railway Board's letter from 25.11.1992 to 27.12.2016. It is further submitted by learned counsel for the respondents that it is prerogative of the employer to frame and fix terms and conditions of service of their employees including the eligibility criteria for promotional post(s). The learned counsel for respondents also submits that the policy decision of the Railway Establishment is just and proper and within their administrative domain. The learned counsel for the respondents placed reliance on the judgment passed by the Hon'ble Apex Court in the matter of **Narmada Bacho Andolan v/s. Union of India & Ors.** (2000) 10 SCC 664 wherein, it was held that "cause in the exercise of their jurisdiction will not transgress into field of policy decision". Further, in the case of **Sumaglam Nagrath v/s Union of India & Anr.** {1999 SCC (L&S) 1318}, the Hon'ble Apex Court held that "it is not for the Tribunal to examine the wisdom of rules.... . Policy decision is not debatable in judicial forum". Since the applicants are not eligible to apply or claim for the post of Chief Loco Inspector for want of their experience/eligibility under the requisite Scheme RBE No. 108/2019, therefore, they are not entitled for any relief including any interim relief as prayed.

14. We have perused the material available on record.

15. It is noticed that in terms of Notification dated 20.1.2020 (Annex.A/2), the respondent No. 3 published a List of eligible employees' for appearing in the Selection (Written Test) for promotion to the post of Chief Loco Inspector vide Notification dated 20.04.2020 (Annex.A/16) wherein, name of applicants have not been incorporated since they did not find eligible to appear in the same.

16. It is further noticed that applicants herein also admitted that as per the existing scheme / eligibility criteria for the promotional post of CLI, they did not fulfil the requisite eligibility in terms impugned policy decision of the Railway Board dated 3.7.2019 under RBE No. 108/2019 as also conditions stipulated in advertisement/notification dated 20.1.2020 (Annex.A/2). However, it is the grievance of the applicants that the newly modified impugned policy dated 3.7.2019 whereby eligibility of Loco Running Staff who have completed 5 Lakh Kms. of actual foot plate duties as Loco Pilot or have completed ten years of actual service as Loco Pilot, whichever is earlier, is very excessive and the said eligibility criteria is not rationale and, therefore, it is submitted by applicants that they should be given opportunity to apply on the basis of earlier schemes / policy under which completion of only 75000 Kms. actual foot plate duties were prescribed. In other words, their sole contention is that they should be considered to be eligible for appearing in written test on the basis of previous scheme/policy. It is also the contention of the applicants that since they are, at present, only pray for interim relief by which they may be allowed to appear in the written test till the final disposal of the O.A.

17. In our considered view, the submission of the applicants contended in this M.A., is not acceptable in the light of factual matrix on record as also the law laid down by Hon'ble the Apex Court in ***"Balco Employees' Union v. Union of India,"*** (2002) 2 SCC 333, wherein, it has been held that a Court cannot strike down a policy decision taken by the Government merely because it feels that another policy would have been fairer or wiser or more scientific or logical. It is not within the domain of the Court to weigh the pros and cons of the policy or to test the degree of its beneficial or equitable disposition." It is neither advisable nor permissible for the Tribunal to sit on appeal on the policy decision of employer with respect to selection process for promotional post of CLI including the eligibility criteria for the said post.

18. As discussed herein above, the respondents have published a List of Eligible Employees dated 20.4.2020 (Annex.A/16), wherein, 33 employees have been found eligible for appearing in the written test. It is also seen that undisputedly, applicants were not found eligible for appearing in the selection (written test) for the post of Chief Loco Inspector in terms of the existing scheme dated 3.7.2019 and as per the Notification dated 20.4.2020 (Annex.A/16), thus, it

cannot be said that any fundamental right of the applicants has been infringed due to their non inclusion in the list of eligible employees for written test to be held on 17.6.2020.

19. In view of aforesaid factual matrix, we do not find it appropriate to accept the submission of applicants', hence, the M.A. No. 143/2020 is devoid of merit, accordingly we dismiss M.A. No. 143/2020. Both the M.As stand disposed of. Put up the O.A. on 29.06.2020.

(Dr.A.K.Dubey)
Administrative Member

(J.V.Bhairavia)
Judicial Member