

(RESERVED)

Central Administrative Tribunal, Allahabad Bench, Allahabad

**O.A. No. 330/00386/2020, O.A. No. 330/00487/2020
and O.A. No. 330/00601/2020**

This the 2nd day of March, 2021.

**Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)
Hon'ble Mr. Tarun Shridhar, Member (A)**

O.A. No. 386/2020 (Leading case)

1. Rohit Kumar Sharma aged about 36 years son of Sri Mahesh Kumar Sharma.
2. Quazi Shadab Uddine aged about 36 years son of late Quazi Shakil Uddine.
3. Jahar Singh aged about 34 years son of Sri Bhagwan Das.
4. Amit N.S. Chauhan, aged about 41 years son of Sri Narottam Singh Chauhan.
5. Shivpati Singh aged about 36 years son of Sri Tej Bahadur Singh.
6. Mukesh Kumar Yadav, aged about 39 years son of Sri Komall Singh Yadav.
7. Atik Ahmad aged about 40 years son of Sri Rafiq Ahmad.
8. Hirday Kumar aged about 38 years son of Sri Jagdish Prasad Anand.
9. Vivek Seth aged about 37 years son of Sri Hari Babu Seth.
10. Amit Singh Yadav, aged about 34 years son of late Gulab Singh Yadav.
11. Nand Kishore aged about 35 years son of Sri Kamal Singh.
12. Chandrakant Rahul, aged about 37 years son of Sri Mahendra Pratap..
13. Indrapal Singh Bhaduria, aged about 38 years son of Sri Kishan Lal Ahirwar.
14. Mohammad Haroon Mansuri aged about 44 years son of Sri Habib Khan.
15. Mohd. Sajid Ali, aged about 42 years son of late Abdul Wahid.
16. Pramod Kumar Goswami aged about 39 years son of Sri Ganga Prasad Goswami.
17. Sanjay Kumar Yadav aged about 40 years son of Chatur Singh Yadav.
18. Ravindra Kumar Verma aged about 35 years son of Sri Kalicharan Verma.
19. Sanjay Kumar aged about 33 years son of Sri Ram Charitar Prasad.
20. Mukesh Kumar aged about 37 years son of Sri Ramjeevan Shivhare.
21. Amelian Helarues Kujur aged about 36 years son of Sri Raphel Kujur.

All the applicants 1 thru' 21 are presently posted as Loco Pilot (Goods) at Jhansi under the Jhansi Division of the North Central Railway.

22. Gyanendra Mishra aged about 39 years son of Sri Brijendra Chandra Mishra presently posted as Loco Pilot (Goods) at Juhi under the Jhansi Division of the North Central Railway.

Applicants

By Advocate: Sri Shyamal Narain

Versus

1. Union of India through the General Manager, North Central Railway, Allahabad, U.P.
2. The Divisional Railway Manager, North Central Railway, Jhansi, U.P.
3. The Divisional Railway Manager (Personnel), North Central Railway, Jhansi, U.P.

Respondents

By Advocate: Sri L.M.Singh

O.A. No. 487/2020

1. Narendra Kumar aged about 38 years son of Sri Kamta Prasad Tiwari.
2. Fahad Sadat, aged about 37 years son of late Sadat Yar Khan.
3. Jagram aged about 34 years son of Sri Shiv Ram.
4. Arvind Kumar aged about 39 years son of Sri Sharda Prasad.
5. Kalideen aged about 35 years son of Sri Jagannath.
6. Kamta Prasad aged about 42 years son of Sri Binda Prasad.
7. Abdul Aleem Beg aged about 39 years son of Sri Abdul Mueed Beg.
8. Rajneesh Saxena aged about 33 years son of Sri Anup Kumar Saxena.
9. Arun Kumar aged about 38 years son of Sri Shiv Prasad.
10. Pawan Gupta aged about 36 years son of Sri Om Prakash Gupta.
11. Abhishek Kumar Agrahari aged about 32 years son of Sri Arun Kumar Agrahari.
12. Satish Kumar Namdeo aged about 40 years son of Sri S.D. Namdeo.
13. Dwarika Prasad Tamrakar, aged about 37 years son of L.T. Babu Lal Tamrakar.
14. Raj Kumar aged about 41 years son of Sri Lurkhur Ram.
15. Sonu Rajput aged about 34 years son of Sri Lallu Rajput.
16. Shiv Narayan Kushwaha aged about 40 years son of Sri Basanta.
17. Santosh Kumar aged about 48 years son of late Shiv Bodhan Prasad.
18. Bhuwanesh Kumar Awasthi aged about 42 years son of Sri Shiv Prasad Awasthi.

All the applicants 1 thru' 18 are presently posted as Loco Pilot (Goods) at Banda/Lobby under the Jhansi Division of North Central Railway.

Applicants

By Advocate: Sri Shyamal Narain

Versus

1. Union of India through the General Manager, North Central Railway, Allahabad, U.P.
2. The Divisional Railway Manager, North Central Railway, Jhansi, U.P.
3. The Divisional Railway Manager (Personnel), North Central Railway, Jhansi, U.P.

Respondents

By Advocate: Sri L.M.Singh

O.A. No. 601/2020

1. Javed Khan, aged about 33 years, son of Sri Mohd. Ismai.
2. Rohit Raj, aged about 35 years, son of Sri Shyam Bihari Thakur.
3. Jeetendra Kumar aged about 32 years, son of Sri Kedar Prasad.
4. Jaydev Likhar, aged about 37 years, son of Sri Narayan Das.
5. Dhan Singh, aged about 35 years, son of Sri Narayan Das.
6. Mohd. Ilyas, aged about 38 years, son of Sri Mohd. Usman.
7. Amit Kumar Verma, aged about 36 years, son of Sri Ram Kishan Verma.
8. Arun Kumar Tiwari, aged about 32 years, son of Sri Satya Prakash Tiwari.
9. Arun Kumar Verma, aged about 32 years, son of Sri Raja Ram.
10. Prem Prakash II, aged about 32 years, son of Sri Akhilesh Kumar Singh.
11. Saurabh Sahu, aged about 30 years, son of Sri Rajendra Kumar Sahu.
12. Hemant Kumar, aged about 33 years, son of Sri Kameshwar Prasad.
13. Harsh Kumar, aged about 40 years, son of Sri Ram Ayodhya Singh.
14. Praveen Kumar, aged about 41 years, son of Sri Chandra Mohan Sharma.
15. Vinod Keshari, aged about 37 years, son of Sri Hari Shankar Keshari.
16. Aniruddh Sharma, aged about 36 years, son of Sri Mahesh Kumar Sharma.
17. Shailendra Kumar aged about 35 years, son of Sri Prabhu Dayal.
18. Vikram Kumar aged about 36 years, son of Sri Ram Vinay Roy.

19. Rahul Raikwar, aged about 32 years, son of Sri Om Prakash.
20. Brajesh Kumar Rai, aged about 43 years, son of Sri Baboo Lal Rai.
21. Rakesh Kumar Chaurasia, aged about 37 years, son of Sri Ganga Ram Chaurasia.
22. Sher Singh Yadav, aged about 31 years, son of Sri Manik Chandra.
23. Ashish Kumar , aged about 36 years, son of Sri Sukkhan Lal.
24. Jaswant Kumar, aged about 37 years, son of Sri Jagdish Prasad.
25. Jawed Anwar, aged about 35 years, son of Sri Shekh Wasil.
26. Vikash Khare, aged about 36 years, son of Sri Krapaqramp Khare.
27. Ramesh Kumar Pathariya aged about 40 years, son of Sri Pooran Lal.
28. Naresh Kumar Verma, aged about 44 years, son of Sri Ghanshyam Das.
29. Pradeep Singh Kushwaha, aged about 42 years, son of Sri Ram Das Kushwaha.
30. Shankar Lal Meena, aged about 33 years, son of Sri Prabhu Lal Meena.
31. Brijesh Kumar aged about 40 years, son of Late Prakash Chand.
32. Syad Shahid Hasan, aged about 41 years, son of Late Iftakharul Hasan.
33. Devendra Srivastava, aged about 38 years, son of Late Babu Lal Srivastava.
34. Deepak Sen, aged about 40 years, son of Late Ram Charan Sen.
35. Mohd. Tanvir Khan, aged about 36 years, son of Late Mohd. Shamim.
36. Vivek Kumar Rajpoot, aged about 38 years, son of Sri Shyam Sunder Rajpoot.
37. Sumit Sahu, aged about 36 years, son of Late Munna Lal Sahu.
38. Chandan Singh, aged about 40 years, son of Late Kishori Sharan.
39. Ramesh Chander Raikwar, aged about, 46 years, son of Late Shankar Lal.
40. Brajesh Kumar, aged about 34 years, son of Sri Jageshwar Das.
41. Ved Prakash Nam Deo, aged about 42 years, son of Sri Chunti Lal.
42. Jai Kishan, aged about 33 years, son of Sri Ram Kishan.
43. Braj Gopal, aged about 36 years, son of Sri Chhakki Lal.
44. A.K. Akela, aged about 37 years, son of Sri Brahm Deo Mahto.
45. Kundan Kumar, aged about 29 years, son of Lal Babu Singh.
46. Harendra Kumar, aged about 36 years, son of Sri Braj Nandan Singh.

47. Ranjeet Kumar Sinha, aged about 38 years, son of Late Rajendra Kumar Sinha.
48. Chandra Bhushan Prasad, aged about 35 years, son of Sri Rajendra Prasad.
49. Man Singh Meena, aged about 35 years, son of Sri Girraj Meena.
50. Harsahay Meena, aged about 40 years, son of Sri Sukhji Ram Meena.
51. Aniruddh Pachouri aged about 37 years, son of Sri Ram Prakash Pachouri.
52. Amzad Ahmad Khan, aged about 40 years son of Sri Shamim Ahmad Khan.
53. Santosh Pathak, aged about 39 years, son of Late Saligram Pathak.
54. Sanjeev Singh Yadav, aged about 40 years, son of Sri Laxmi Narayan Yadav.
55. Brajesh Kumar aged about 32 years, son of Sri Pravesh Prasad.
56. Vivek Kumar Sahoo, aged about 33 years, son of Sri Jagdish Prasad Sahoo.
57. Ashwani Goswami, aged about 40 years son of Sri Lakan Lal Goswami.
58. Deepak Sharma, aged about 40 years, son of Sri Mahesh Sharma.
59. Pradeep Sahu, aged about 42 years, son of Sri Suresh Chandra Sahu.
60. M.K. Agrawal, aged about 48 years, son of Sri Ram Swaroop Pansari.
61. Pappu Kumar, aged about 31 years, son of Sri Surya Nath Singh.
62. Shailendra Kumar Dhariya, aged about 40 years, son of Sri Om Prakash.
63. Santosh Rajpali, aged about 41 years, son of Sri Pooran Lal Rajpali.
64. Rabish Kumar, aged about 35 years, son of Sri Kailash Mahto.
65. Anil Sahu, aged about 33 years, son of Sri Babu Lal Sahu.
66. Gajraj aged about 36 years, son of Sri Ram Kishore.
67. Ashok Aryan, aged about 31 years, son of Sri Amrendra Dubey.
68. Rajeev Chaurasiya, aged about 48 years, son of Sri Balswaroop Chaurasiya.
69. Amit Kumar aged about 42 years, son of Sri Dhruv Kumar Singh.
70. Jitendra Kumar, aged about 40 years, son of Sri Pitam Das.
71. Om Prakash Pandey, aged about 33 years, son of Sri Kamlesh Pandey.
72. Vishal Agarwal, aged about 37 years, son of Sri A.K. Agarwal.
73. Shiv Prakash aged about 36 years, son of Sri Heera Lal.
74. Kashi Ram Mishra, aged about 35 years, son of Sri Jag Prasad Mishra.

75. Kailash Chandra, aged about 35 years, son of Sri Harprasad.
76. Mahesh Kumar, aged about 35 years, son of Sri Shyam Lal.
77. Komal Kumar, aged about 39 years, son of Sri Asha Ram.
78. Rakesh Kumar, aged about 44 years, son of Sri Brandavan Lal.
79. Rana Gyan Rajan, aged about 34 years, son of Sri Shivkumar Prasad Singh.

All the above applicants, 1 thru' 79, are presently posted as Loco Pilot (Goods), at Jhansi under the Jhansi Division of North Central Railway.

80. Brajesh Narwaria, aged about 42 years, son of Sri Nathu Ram Narwaria.
81. Chandra Bhan Singh, aged about 40 years, son of Sri Ram Singh.
82. Bhawan Mohan Shukla, aged about 52 years son of Sri Uma Shankar Shukla.

The above applicants 80 thru' 82 are presently posted as Loco Pilot (Goods), at Gwalior under the Jhansi Division of North Central Railway.

83. Keshav Kumar Tiwari aged about 33 years son of Sri Kamal Deo Tiwari.
84. Dinesh Chaudhree aged about 37 years son of late Mahesh The above applicants 83 and 84 are presently posted as Loco Pilot (goods) at North Central Railway, Prayagraj.
85. Rajeev Kumar aged about 33 years son of Sri Ram Preet Mahto.
86. Kapil Sahu aged about 36 years son of Sri Ram Sewak Sahu

The above applicants 85 and 86 are presently posted as Loco Pilot (Goods) at Lalitpur under the Jhansi Division of North Cntral Railway.

87. Ravi Shankar Kumar, aged about 32 years son of Sri Shiv Kumar Prasad, presently posted as Loco Pilot (Goods) at DNR (Danapur) under the East Central Railway.
88. Kuldeep Sachan, aged about 34 years son of Sri Prakash Narain Sachan.
89. Ram Pratap Singh aged about 40 years son of Sri Kanchan Singh.
90. Mahesh Verma, aged about 32 years son of late Arjun Prasad.
91. Pushpendra Katiyar, aged about 34 years son of Sri Satish Chandra Katiyar.
92. Ajay Kumar aged abut 35 years son of Sri Ram Varan Roy.
93. Sangeet Kumar aged about 29 years son of Sri Nanhey Lal.
94. Santosh Kumar Sahu aged about 38 years son of Sri Ganga Ram Sahu.
95. Dharmendra Kumar Saini aged about 40 years son of Sri Moti Lal Saini.

The above applicants 88 thru' 95 are presently posted as Loco Pilot (Goods) at Juhi, Kanpur under the Jhansi Division of North Central Railway.

Applicants

By Advocate: Sri Shyamal Narain

Versus

1. Union of India through the General Manager, North Central Railway, Allahabad, U.P.
2. The Divisional Railway Manager, North Central Railway, Jhansi, U.P.
3. The Divisional Railway Manager (Personnel), North Central Railway, Jhansi, U.P.

Respondents

By Advocate: Sri L.M.Singh

ORDER

By Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)

Since the issue and grievance involved in all the three above mentioned O.As is the same and emanates out of the same impugned order dated 11.8.2020, with the same respondents, and since the pleadings and annexures are almost the same, all these O.As namely O.A. No. 330/00386/2020, O.A. No. 330/00487/2020 and O.A. No. 330/00601/2020, were clubbed together, vide order dated 2.11.2020 and all are being decided herewith by this common order. As the numbers of annexures and paragraphs of the pleadings are different in all the OAs, the O.A. No. 386/2020 is taken up as the leading case for the sake of clarity and convenience and the annexure numbers marked by the parties in O.A. No. 386/20 will be referred to in this judgment accordingly. However, there are some annexures, which have not been filed in O.A. No. 386/2020, but are filed in rest of two OAs. Those will be referred to in accordance with their numbers in the specific O.As.

2. We have heard at length Sri Shyamal Narain, who is the learned counsel for the applicants in all the three OAs, Sri L.M.

Singh, learned Standing Counsel for Railways, who is representing the respondents in all the these OAs, and have carefully perused the records as well as the judgments cited by learned counsel for parties.

3. The **reliefs** prayed by the applicants in the above mentioned OAs are quoted separately as under:-

In O.A. No. 386/2020, the applicants have prayed for the following reliefs:-

- i) That this Hon'ble Tribunal be pleased to quash and set aside the impugned order/notice dated 11.8.2020 (Annexure No.A-1 to compilation No. I).
- ii) That this Hon'ble Tribunal be pleased to grant such other relief as the applicants might be found entitled to in the facts and circumstances of the case.
- iii) That this Hon'ble Tribunal be pleased to award the costs of this Original application in favour of the applicants, throughout.

In O.A. No. 487/2020, the applicants have prayed for the following reliefs:-

- i) That this Hon'ble Tribunal be pleased to quash and set aside the impugned orders/notices dated 11.8.2020 and 25.8.2020 (Annexure Nos. A-1 and A-2 to compilation No.1 respectively).
- ii) That this Hon'ble Tribunal be pleased to grant such other relief as the applicants might be found entitled to in the facts and circumstances of the case.
- iii) That this Hon'ble Tribunal be pleased to award the costs of this Original Application in favour of the applicants, throughout.

In O.A. No. 601/2020, the applicants have prayed for the following reliefs:-

- i) That this Hon'ble Tribunal be pleased to quash and set aside the impugned orders/notices dated 11.8.2020 and 25.8.2020 (Annexure Nos A-1 and a-2 to compilation No.1 respectively).
- ii) That this Hon'ble Tribunal be pleased to grant such relief as the applicants might be found entitled to in the facts and circumstances of the case.
- iii) That this Hon'ble Tribunal be pleased to award the costs of this Original application in favour of the applicants, throughout.

4. For a correct decision of the controversy involved in all these OAs, it is necessary to have a glance on the background facts of the case. The applicants in these OAs are presently working as Loco Pilot (Goods) in North Central Railways. They were initially appointed as Diesel/Electrical Loco Assistant, which post, in due course, got re-designated as Assistant Loco Pilot.

5. The channel of promotion from Assistant Loco Pilot to Loco Pilot Mail, from lowest to higher level is as follows:-

- i) Assistant Loco Pilot to Shunter
- ii) Shunter to Loco Pilot (Goods)
- iii) Loco Pilot (Goods) to Loco Pilot (Passenger)
- iv) Loco Pilot (Passenger to Loco Pilot (Express/Mail).

6. The duties assigned to a Loco Pilot is to drive a train which can be a Goods train, a passenger train or an express/mail train. A Loco Pilot is assisted in the cabin of engine by one Assistant Loco

Pilot. The post of Loco Pilot is a safety category post, involving the risk and responsibility of safety of lives and properties of several persons. Therefore, before the Assistant Loco Pilots are assigned independent responsibility to drive a train, whether as Loco Pilot (Goods) or Loco Pilot (Passenger/Mail/Express), the Railway department mandatorily follow certain norms, like ensuring the passing of competency test and training etc. The feeder cadre for the post of Loco Pilot (Goods) is 'Shunter'. However, it appears that due to shortage of Shunters in Railways, who could be considered for promotion to the post of Loco Pilot (Goods), the Ministry of Railways vide **Railway Board's letter RBI No. 101/2008 dated 22.8.2008**,(hereinafter referred to as 2008 circular in short) (its copy has been annexed in all the OAs by the applicants and it is Annexure No. A-2 in the leading O.A.), decided that in the eventuality of non-availability of Shunters, the General Manager may consider the Assistant Loco Pilots with two years of service and 60,000 Kms. of foot plate experience, as eligible for promotion to Loco Pilot (Goods), subject to certain conditions. These conditions were specified as under:-

- "i) suitability of such Asst. Loco Pilots to work independently as Driver (Loco Pilot (Goods) shall be personally certified by the Mechanical/Electrical Officer (as the case may be), incharge of power of the Division concerned;**
- ii) Such promotee drivers be placed under the supervision of a dedicated Loco Inspector for 5 trips or 500 kms of driving whichever is earlier;**
- iii) For sections classified as "ghats", such promote drivers may work with a regular driver as 'co'**

driver' for seven days or 1000 kms. , whichever is later;

iv) provision of hands on training for independent loco driving to Diesel /Electrical Assistants in their induction and refresher courses shall be included in the course content for the promotional trainings;

v) Training centers should be got equipped with simulators progressively

7. The respondents assessed that they need 465 number of employees to work as Loco Pilot (Goods). They found 402 employees, out of available Assistant Loco Pilots, provisionally eligible vide a list annexed with the letter dated 22.12.2015 (Annexure No. A-3), issued by DRM (P), Jhansi. The names of all the applicants in the aforesaid three OAs, were found included in this list. Aforesaid letter dated 22.12.2015 (Annexure A-3) issued by DRM (P), Jhansi, which contains the list of 402 candidates/Assistant Loco Pilots, consisting all the applicants of aforesaid three OAs is also reproduced below for a ready reference:-

“Sub: Promotion to the post of Loco Pilot Goods PB 9300-34800 + G.P. 4200 by suitability with prescribed benchmark in transpiration power department on Jhansi Division.

As a result of scrutiny of service recorded to consider the staff for promotions to fill up the 465 vacancies (UR= 367, SC 48, ST=50) for the post of Loco Pilot Goods in PB 9300-34800 + G.P. 4200 and as per

guidelines issued vide Rly Bd's L. No. E(NG)1-2008/PM-1/15 dated 3.9.2009, L.No.E(NG)1-2008/PM-1/15-Vol. II dated 7.6.2010, 21.11.11, E(NG)1-2008/PM-1/15 dated 15.1.2013 & 24.5.13, the following employees have been found suitable as per prescribed bench mark for the post of Loco Pilot Goods in transportation Power department

After this there is a list of names of 402 Assistant Loco Pilots, who were found eligible/suitable for the post of Loco Pilot (Goods), starting from Sl. No. 1 to Sl. No. 402.

None other eligible candidates are available.

The above candidates are warned (sic) (it may be warned) that merely placement on the provisional select list has no guarantee for retention for their names on the provisional select list which will depend on satisfactory service and fulfillment of the conditions mentioned in the Rly Bd's L. no. E (NG)10-2006/PM-7/21 dated 22.8.2008.

The above select list is purely provisional and subject to the outcome of the final decision in O.A. no. 825/2012 filed before Hon'ble CAT/ALD by Shri Santosh Kumar Singh & others Vs. UOI and others.

The placement of above candidate in the select list is also provisional subject to minimum sixty thousand Km foot place experience. If at any stage, it is found that any candidates has not completed sixty thousand Km foot plate experience on the date of suitability i.e. on 21.12.15, his name will be deleted from the select list.

The above select list is subject to free from DAR & Vig. Clearance.

The staff concerned may be advised accordingly and a copy of select list may be placed on the notice board for information of staff concerned.”

8. Thereafter, an order No. 828/2015 was issued on 31.12.2015 (Annexure A-4), under the signature of the same officer, who had issued eligibility list dated 22.12.2015. By the order dated 31.12.2015, 283 persons, out of 402 were promoted as Loco Pilot (Goods). Applicants in all the instant OAs, were included in this list also and were posted at different stations, like Jhansi, Banda and Gwalior etc.

9. A perusal of the aforesaid letter dated 31.12.15 (A-4) shows that it also contains the following conditions,:-

½ fuEufyf[kr deþkj; k ds uke bI a dk; k; ds I e&I ; d i= fnukd 22-12-15 ds vuI k yksik ½M ½ i hch 9300&34800 \$ 4200 ½hkh½ ds in ij inkufr gsrqfl yBV fyLV eaj[ks x; s gS budh inkufr yksik ½M ½ ds in ij dj in&LFkiuk budsuks ds vksn"ks x; s LVksu ij bl "ks ds I kfk dh tkh gSfd bu deþkj; k us fu/kjr ih&ieksuy dkz mRrh. k dj fy; k gA vr% deþkj; k dks inkufr inku djus I s iuz ibieksuy dkz dk mRrh. k gkuk I fu"pr fd; k tk; A

(Thereafter the names of 283 Assistant Loco Pilots are mentioned with their place of posting).

- 1- mijkDr inkufr vksk eluuh; dk; i;k fud vf/kdj.k bylgkcn eank; j vks I 825@2012 dsvfie fu.ks dsv/ku gksA
- 2- mijkDr inkufr rFk ifj. k eh Ykk i;k%vLFWb@i kotuy vkkj ij gksA

3- ;fn dkbZ ofj- deþljh inktufr lsfldlh dkj. Ma lsofpr jg x;k gks rks Hfo'; ea dfu'B deþljh dks fcuk uksVI fn; a inktufr dj ofjp deþljh dks inktufr fd;k tk; xA

4- ;fn dkbZ deþljh fuyEcu eags vFlok ml ds fo:) dkbZ "Mlr yffcr gS vFlok iHoh gS rks ml s inktufr u nh tk; s ,oa bI dh I puk bI dk; k; dks I Eiwkfooj.k I fgr nh tk; A

5- inktufr deþljh inktufr orsuku ea orsu fu/kj.k viuh vxyh orsu of) lspkgrsgs rksosviuk fodYi 01 ekj dsvlhj ns I drsgA

10. All these 283 employees enlisted in the aforesaid letter, were also granted pay scale of PB-2 + G.P. of Rs. 4200/- w.e.f. 31.12.2015. However, respondents at a later stage realized, that despite the fact that all these candidates having been found eligible for Loco Pilot (Goods), which carries a higher pay scale of PB -2 + G.P. of Rs. 4200/-, the two mandatory pre-conditions i.e. passing of competency test and working under the supervision of a Loco Inspector, before they could be given independent charge of running a train as Loco Pilot (Goods), were yet to be fulfilled. Hence, their pay fixation was directed to be revised with effect from a subsequent date, when those mandatory conditions were satisfied. This implied that certain excess amount already made, were required to be recovered and their future salary was also required to be regulated accordingly.

11. For this purpose, a show cause notice was issued by the respondents on 11.8.2020, seeking clarifications from the applicants, before re-fixation of their pay w.e.f. the date of passing of competency test etc. and for recovery of the excess amount paid to the applicants for the earlier period after 31.12.2015.

12. It is this impugned show cause notice dated 11.8.2020, which is under challenge in all these OAs. As some of the applicants have made representations, which was disposed of by the respondents by the order dated 25.8.2020 giving them further time of 15 days to submit their claim with proof., the order dated 25.8.2020 is also under challenge in two OAs i.e. O.A. No. 487/2020 and O.A. No. 601/2020.

13. Learned counsel for applicants has challenged the legality and correctness of the impugned notice dated 11.8.2020, and impugned order dated 25.8.2020, mainly on the following grounds:-

i) It is not merely a notice, but tone and tenor of this notice, clearly indicates that the respondents have already made up their minds to go ahead with the recovery and they are only doing lip-service of inviting representations from the applicants. In this regard, our attention has been drawn to the following part of the impugned notice:-

di ; k l o1 cf/kr dksukV djk; s ,oa ;fn og bl l Ecl/k eadN dguk pkgrs g@vFkok iR; konu iLr djuk pkgrs gS rks vki depkfj ; k l s iLr djs ,oa bl dk; k; dks i= iLr ds plng 14½ fnu ds vUnj fLktokuk l fu"pr djk l e; kof/k mijkr iLr iR; konuks ij dkbl dk; blgh ugh dh tk; xh ,oa ; g l e>k tk; xk fd depkfj ; k dks bl l Ecl/k eadN Hkh ugh dguk gS vki ekg vxLr 2020 l s fuEukuj k jy% fu/kkr oru dk Hkrku ,oa vf/kd gq s Hkrku jkf"k dh x.kuk dj vkl ku fdLrk eadVlsh depkfj ; k dks l fpr djrs gq a l fu"pr dh tk; xhA

ii) It is contended by Id. Counsel for the applicant that this Tribunal earlier, had already accepted this argument and had granted interim relief to the applicants by separate orders passed

in all these three OAs, by directing the respondents, not to take any action in pursuance of the impugned notice dated 11.8.2020.

iii) It is next contended that all the applicants are Group 'C' employees, working on such post since 31.12.2015 and therefore, no recovery is possible against them in wake of the law as laid down by the Hon'ble Supreme Court in the landmark case of **State of Punjab and others Vs. Rafiq Mashig and others, 2015 (4) SCC page 334**. The law laid down by Hon'ble Supreme Court in Rafiq Mashih's case has also been recognized and enforced, as per circular RBE No. 72/2016 dated 22.6.2016 (Annexure No. A-7) which has adopted the same mutatis mutandis.

iv). The further submission of Id. Counsel for the applicant is that the impugned notice is also violative of the **RBE No. 101/2008 dated 22.8.2008** and therefore, the impugned notice needs to be withdrawn on the ground of merits.

v). Learned counsel for the applicants, while drawing our attention to annexue No. A-8 in O.A. 487/2020 and Annexure A-2 in O.A. No. 601/2020, which is the impugned order dated 25.8.2020, passed by the respondents on the representations made by some of the applicants of O.A. No. 487/2020 and O.A. No. 601/2020 and which is under challenge in these 2 OAs, has contended that even assuming for the sake of argument that the order dated 11.8.20 is a show cause notice, the order dated 25.8.20 is certainly not a show cause notice and therefore, it can be challenged in a court of law.

14. On the aforesaid grounds, it has been prayed that the OAs be allowed and the reliefs claimed be granted.

15. In support of his contention, learned counsel for the applicants has placed reliance on the following judgments:-

- i) **Oryx Fisheries Private Limited Vs. Union of India and others (Special Leave Petition (c) No. 27615/2008**
- ii) **K.I. Shephard & Others Vs. Union of India and others reported in 1988 AIR 686,**
- iii) **Satyam Iron and Steel Co. Pvt. Ltd. Vs. Commissioner of C.Ex (Writ Petition No. 28405 (W) of 2014.**

16. The respondents have filed Counter Affidavit in all the OAs, raising a preliminary objection about the maintainability of the OAs by contending that the challenge in these OAs, is to a show cause notice and as per well settled legal position, a show cause notice cannot be challenged in a court of law, except, in a case, where it is issued by a person having no authority or jurisdiction to issue such notice. Whereas, in the instant matter, the respondent Railway department had full authority to issue notice to the applicants. Moreover, the applicants had ample time and opportunity to reply to such notice but instead of giving reply to the notice, they have rushed to the Tribunal, challenging the impugned notice dated 11.8.2020, by means of O.A., which are liable to be dismissed on the ground of maintainability.

17. It is next contended by Id. Counsel for the respondents that interim relief of staying the recovery of order dated 11.9.2020 was given to the applicants at the admission stage, without calling counter reply, only in view of the inability of learned counsel for the

respondents to produce the authority based on which the impugned order/notice has been issued. It is contended that only on the ground that while hearing on interim relief on the very first day of admission, when the respondents' counsel had no instruction and the stay was granted only till the next date of listing, it cannot be said that such order or authority to pass such order/notice never existed with the respondents. In this regard, our attention has been drawn to para 1327 of Indian Railway Establishment Code, which says that if a mistake in pay fixation has been noticed within 5 years, the recovery of excess payment can be made.

18. It is next contended that as per 2008 circular, the pay of the promoted employees was to be determined only after passing of the required mandatory pre-promotional course and grant of competency certificate of working independently as Loco Pilot (Goods). Admittedly, all the applicants are Assistant Loco Pilots, which is not a feeder cadre for the post of Loco Pilot Goods, because the feeder post for such is of Shunters, whereas the 2008 circular specifically mandates that all the employees coming from non-feeder category are required to have a competency certificate, before driving a train independently and their pay cannot be fixed in the higher scale of the promotional post till such competency certificate is achieved. Hence, the plea of the applicants cannot be sustained.

19. On the aforesaid grounds, it has been prayed by Id counsel for the respondents that all the OAs are liable to be dismissed and be dismissed.

Findings:

20. We have given our thoughtful consideration to the rival submissions, made by the learned counsel for both the parties.

21. The key issues to be decided in this case are:-

(1) whether the challenge to the impugned order/notice in the OAs is maintainable?

(2) Whether the impugned notice/order is violative of 2008 circular or any other circular?

(3) Whether the applicants are entitled to the benefits of judgment rendered by Hon'ble Apex Court in the case of Rafiq Masih (supra)?.

22. In so far as the legality of the impugned notice qua the 2008 circular or any other circular issued by the respondents, is concerned, it would be useful to recollect even at the cost of repetition the relevant conditions mentioned in the aforesaid circular dated 22.8.2008 (Annexure No. A-2), which are reproduced below:-

i) Two years service as Diesel/Electrical Assistant (re-designated as Assistant Loco Pilot Diesel/Electrical) and 60,000 Kms. Experience on foot plate;

ii) The suitability of such Assistant Loco Pilots to work independently as Driver/Loco Pilot (Goods) to be personally certified by the Mechanical/Electrical officer (as the case may be), in-charge of power Division concerned.

iii) Such promotee drivers be placed under the supervision of a dedicated Loco Inspector for five trips or 500 Kms of driving, whichever is earlier.

iv) **For section classified as Ghats, such promote drivers may work with a regular driver as co-drivers, for 7 days or 1000 kms. , whichever is later.**

23. Thus, the aforesaid RBE 2008 circular letter (Annexure No. A-2 to the O.A.) clearly shows that nowhere does it specifies that the promotion would be granted even without fulfillment of the mandatory conditions mentioned above. A bare perusal of the aforesaid Railway Board circular, clearly shows that before promotion to Loco Pilot (Goods), Assistant Loco Pilots are mandatorily required to fulfill the specified conditions, which are meant to meet the competency requirement. This appeals to reason also because the feeder category for the post of Loco Pilot (Goods) is normally Shunter category and not from the category to which all the applicants herein belongs to. Therefore, to give such persons full responsibility of driving a train independently without enquiring that whether they have acquired the required competency, would amount to keeping at risk the safety of lives and property of public.

24. A perusal of Annexure No. A-3, filed by the applicants, which is the letter dated 22.12.2015, consisting the list of 402 candidates shows that it is clearly mentioned in it that all the above candidates are warned that merely placement in the provisional select list has no guarantee for retention of their names in the provisional select list , which will depend on satisfactory service and fulfillment of conditions mentioned in letter dated 22.8.2008.

25. The respondents, at a later stage, realized that an irregularity has been caused by them in promoting the Assistant Loco Pilots to the post of Loco Pilot (Goods), without ensuring that whether all of them have fulfilled the required mandatory conditions or not. Therefore, they issued the impugned show cause notice dated 11.8.2020, which is reproduced below for a ready reference:-

dk; k^y;
eMy jy i c^{ld} 1/10/2019
>W h
fnuk^{ld} & 11-08-2020

^i = I ai h@fofo/k @y^{ld}ks i k; yV@, yvkj

I h h h@>W h c^{ld} Xofy; j ,oatgh

fo'k; & fnuk^{ld} 31-12-2015 dks I -yksi k@ofj-I -yksi k- I s yksi k-xq yoy&6 e^{ld}
i nk^{ld}ur de^{ld}pfj; kadsoru dk i p%fu/k^y.k ds I c^{ld} e^{ld}

jyos c^{ld} ds i = I 0 E(NG)I-2006/PM 7/21 fnuk^{ld} 22-08-2008
vkjchb^{ld} I 0 101@2008 ds fun^{ld}ku^{ld} kj egki c^{ld} eg^{ld}; ds vu^{ld}knu I s
fuEufrf[kr I ayksi k@ofj-I ayksi k- xM i s 1900@2400 I s yksi k-xq xM i s
4200@yoy&6 e^{ld}ftudh nks o'k^{ld} dh I dk i w^{ld}gks x; h Fk^{ld} o ftUgk^{ld} 60000
fdyke^{ld}Vj QVlyV i w^{ld} dj fy; s Fk^{ld} dks bI d; k^y; ds i=k^{ld} i h@328@yks
i k-xq@2015@, yvkj fnuk^{ld} 31-12-2015 ds }kjk i nk^{ld}ur fd; k x; k Fk^{ld} buds
oru dk fu/k^y.k i h i h l h mRrh.k^{ld} gks o I {kerk mijk^{ld}ur yksi k-xq ds i n i j
dk; k^y.k fd; s tkus ds frfFk I s fd; k tkuk Fk^{ld} i jUrq budks oru fu/k^y.k
i nk^{ld}ur frfFk fnuk^{ld} 31-12-2015 I s dj fd; k x; k Fk^{ld} ftI dks fu; ekud kj
I z^{ld}ks[kr fd; k tkuk vko"; d g^{ld} vr% oru fu/k^y.k fuEu i dkj I s fd; k
tkuk g^{ld}, oa bl nk^{ld}ku g^{ld}s vf/kd Hk^{ld}krku dh x.kuk dh tk jgh g^{ld} ftI I s
vki dks voxr djks g^{ld}s vkl ku fdI rk^{ld}eadV^{ld}h I fuf"pr dh tk; xhA

di ; k I oI cf/kr dks u^{ld} djk; s ,oa ; fn og bl I Ecl/k e^{ld}dN dguk
pkgrs g^{ld}@vFkok iR; konu iLr^{ld} djuk pkgrs g^{ld} rks vki de^{ld}pfj; i k^{ld} I s i klr
djs ,oa bl d; k^y; dks i = i klr ds pl^{ld}g 1/4% fnu ds vU^{ld}nj flktokuk
I fuf"pr dj^{ld} I e; kof/k mijk^{ld}ur i klr iR; konuks i j dk^{ld}z dk; zkgh ugha dh
tk; xh^{ld} ,oa ; g I e>k tk; xk fd de^{ld}pfj; k^{ld} dks bI I Ecl/k e^{ld}dN Hk^{ld} ugh
dguk g^{ld} v^{ld} elg vxLr 2020 I s fuEku^{ld} kj i p%fu/k^{ld}jr oru dk Hk^{ld}krku
, oa vf/kd g^{ld}s Hk^{ld}krku jkf"k dh x.kuk dj vkl ku fdLrk^{ld}eadV^{ld}h de^{ld}pfj; k^{ld}
dks I fpr djks g^{ld}a I fuf"pr dh tk; xhA

WkyhJhokLroh
drseMy jy icld

1/dk0½

>kw h

ifr% I hfu-Mh0bD@vki h] I hfu-Mh, e-bz@vks .M, Q , oa I hfu-Mh, Q-, e-
>kd h dks I pukFkA
ofj-e-dk-vf/kdkjh]vij e.My jy icld/kd@e.My jy icld/kd egkn;
dks I pukFkA

26. It is well settled legal position that a show cause notice cannot and should not be challenged in a court of law, except under certain rare circumstances. Hon'ble Supreme Court has deprecated judicial interference at the stage of issuance of show cause notice unless it is without 'jurisdiction' or in abuse of process.

27. In the case of **Satyam Iron and Steel Co. Pvt. Ltd (supra)**, the Hon'ble Calcutta High Court while relying on its earlier judgment in the case of Indian Cardboard Industries Ltd. Vs. Collector of Central Excise 1992 (58) ELT 508 Cal. has enumerated the exceptions when a show cause notice can be challenged as under:-

“The exception, carved out in the case of Indian Cardboard Industries Limited (Supra), in my opinion, still holds the field. The aforesaid exception can be aptly quoted hereunder:

“15. On the basis of the decisions cited it appears that the Court in exercise of its jurisdiction under Art. 226 of the Constitution will interfere with a show cause notice in the following circumstances:

(1) When the show cause notice ex facie or on the basis of admitted facts does not disclose the offence alleged to be committed;

(2) *When the show cause notice is otherwise without jurisdiction;*

(3) *When the show cause notice suffers from an incurable infirmity;*

(4) *When the show cause notice is contraiy to judicial decisions or decisions of the Tribunal;*

(5) *When there is no material justifying the issuance of the show cause notice.” Therefore, to sum up, the High Court can interfere under [Article 226 of the Constitution of India](#) against a show cause notice where the same is issued by an authority in exercise of the power which is absent; the facts does not lead to commission of any offence; the show cause notice is otherwise without jurisdiction; it suffers from incurable infirmity; against the settled judicial decisions or the decisions of the Tribunal and bereft of material particulars justifying commission of offence. The Supreme Court, in the case of [Union of India v. Vicco Laboratories](#), reported in 2007 (13) SCC 270 + (S.C.) also deprecates interference at the stage of issuance of show cause notice by the authorities unless it is without jurisdiction or in abuse of process of law in the following words:*

“Normally, the writ court should not interfere at the stage of issuance of show cause notice by the authorities. In such a case, the parties get ample opportunity to put forth their contentions before the authorities concerned and to satisfy the authorities concerned about the absence of case for proceeding against the person against whom the show cause notices have been issued. Abstinence from interference at the stage of issuance of show cause notice in order to relegate the parties to the proceedings before the

authorities concerned is the normal rule. However, the said rule is not without exceptions. Where a show cause notice is issued either without jurisdiction or in an abuse of process of law, certainly in that case, the writ court would not hesitate to interfere even at the stage of issuance of show cause notice. The interference at the show cause notice stage should be rare and not in a routine manner. Mere assertion by the writ petitioner that notice was without jurisdiction and/or abuse of process of law would not suffice. It should be prima facie established to be so. Where factual adjudication would be necessary, interference is ruled out.” “31. Since the authority have not decided the issue finally as the petitioner was invited to give defence to the allegations made in the said show cause notice, this Court does not feel that any case within the parameters, as set forth in the above noted report, has been made out. Since the time to file reply to a show cause notice, has expired, as the petitioner decided to challenge the said show cause notice before this Court, this Court feels that the petitioner should be given another opportunity to file reply thereto. The petitioner is directed to file reply to the impugned show cause notice within three weeks from date. The adjudicating authority is requested to dispose of the proceedings initiated against the petitioner within the reasonable period. It goes without saying that this order shall not be construed to have any impact on the merit or demerit of the respective case of the parties and it is open to the authority to decide the proceedings independently without being influenced by any observations made herein and by referring the reasoned order contending

the findings on the respective contentions of the parties.”

28. Learned counsel for the applicants has relied upon two judgments of Hon'ble Supreme Court rendered in **Oryx Fisheries Private Limited Vs. Union of India and others and K.I. Shephard & Others Vs. Union of India and others**, in support of his pleadings regarding maintainability of present OAs against show cause notice.

29. We have perused both these judgments carefully and are of the view that no benefit can be given out of these judgments to the applicants because the facts are entirely different. Oryx Fisheries' case before Hon'ble Supreme Court, was a case between exporter/supplier (applicant) and buyer of seafoods and other related products. The goods/shrimps were supplied, under a contract to the buyer. After taking possession of the goods/ shrimps supplied, the buyer, found that the fishes were of very poor quality. A dispute arose between them. The goods packages being perishable, and the validity of shrimps packages having expired, ultimately the entire consignment of shrimps was to be destroyed.

A claim amounting to Rs. 83000/- US dollars was made by the buyer Co. to the supplier co. for the loss suffered by it due to cheating the buyer co. by supply of decomposed shrimps, unfit for human consumption, by means of a letter addressed to Chairman, Marine Products Export Development Authority, in short (MPEDA), which in turn sought clarification from the Exporter/supplier . In addition to it, the buyer also issued a legal notice to the supplier asking it to pay 83000 US dollars plus the destruction cost within 7

days. The applicant (supplier) replied to the notice and denied all the allegations.

The letter sent by Director, MPEDA was also replied by the exporter. The Director , MPEDA decided to convene a joint meeting between the buyer and supplier to arrive out some amicable settlement between the two but when the mediation efforts also failed, the Director MPEDA issued a show cause notice dated 23.1.2008, calling upon the appellant supplier to show cause why their certificate of registration should not be cancelled.

The appellant replied to this notice vide its letter dated 4.2.2008. However, without giving the appellant any opportunity of personal hearing, the registration certificate of appellant (supplier) was cancelled.

In the background of the aforesaid facts, the question for consideration before Hon'ble Apex Court was whether the respondents, in cancelling the registration certificate of the appellant acted fairly and in compliance with principles of natural justice? (para 18 of the judgment) and the Hon'ble Supreme Court held that even a quasi judicial authority must act fairly and record reasons in support of its conclusion, for maintaining judicial accountability and transparency. Accordingly, Hon'ble Supreme Court quashed the impugned orders as well as the show cause notice, giving liberty to the authorities concerned to proceed from the stage of show cause notice afresh in accordance with law and following a fair procedure.

Thus, the facts discussed above clearly indicate that in the above cited case, the show cause notice was duly replied in time by the appellant but as opportunity of personal hearing was not given to him, the impugned order as well as the notice were quashed by Hon'ble Supreme Court, whereas in the instant OAs, the applicants

have not yet replied the show cause notice and have rushed to the Tribunal for quashing the same.

It is noteworthy that although in O.A. Nos. 487/2020 and 601/2020, an order dated 25.8.2020 passed on the representations made by some applicants is also under challenge, but a careful perusal of it shows that even this order cannot be treated as a final order. For a ready reference, the aforesaid order dated 25.8.2010 is reproduced below:-

mRrj e?; jyos

dk; kly;
eMy jy i cdkd 1dk0%
>W h
fnukd 25-08-2020

^i = I ai h@fofo/k @ydkls i k; yV@, yvkj

I h h h@>W h cdkd Xoky; j ,oatgh

fo'k; % fnukd 31-12-2015 dks I -yksi k@ofj-I -yksi k- I s yksi k-xq yoy&6 e@
inkur deplkj; k ds oru dk i p% fu/kly.k gry ikr iR; konu ds
I cdk eA

&&&&

vi dks bl dk; kly; ds I el {; d i = fnukd 11-08-2020 ds }jk jyos
ckMz ds i = I 0 E(NG)I-2006/PM 7/21 fnukd 22-08-2008 vkjcbz I 0
101@2008 ds funzkuq kj egki cdkd egkn; I s I ayksi k@ofj-I ayksi k- xM i s
1900@2400 I s yksi k-xq xM i s 4200@yoy&6 e@ftl e@ftu deplkj; k dh
nks o'kks dh I ok i wkl gks x; h Fkh o ftUgkus 60000 fdylkVj QWlyV i wkl dj
fy; s Fk mudks bl d; kly; ds i = k i h@328@yksi k-xq@2015@, yvkj
fnukd 31-12-2015 ds }jk i nklur fd; k x; k FkkA mDr ckMz ds i = fnukd
22-08-2008 ds vuq kj deplkj dk oru fu/kly.k i nklur ij muds }jk i h i h
I h , oal ckerk 1dei hVh hz i jhkk mRrh.k dhus ds mijkUr yksi k-xq ds in ij
dk; kq.k fd; s tkus ds frfFk I s fd; k tkuk Fk ijUrq budk oru fu/kly.k
i nklur vkn'k fnukd 31-12-2015 I s dj fd; k x; k Fk bl I cdk eA I cdk/kr
deplkj; k I s i = fnukd 11-08-2020 ds }jk jyos ckMz ds i = fnukd 31-12-
2015 ds }jk tks deplkj mijkDr jyos ckMz ds fn"kkfunzkuq kj i nklur
"krk ds fnukd 31-12-2015 dks i wkl ugha dj rs Fk mudks fnukd 31-12-2015 I s
yksi k-xq xM i s 4200 e@ oru fu/klyr dj vf/kd Hkkrku dh x.kuk dj
vkl ku fdLrk e@ dVl&h gry l oI cdk/kr deplkj; k dks mfp e?; e I s ukVI

tkjh fd; k fd; k Fkk ft l ea l cf/kr deplkj; k l s mijkUr jyos ckMz ds i = fnukd 22-08-2008 ds l cik ea l k{; l fgr vkonu ekas x; s Fkk

bl l cik ea deplkj; k ds }jk k vonu i klr gq s ft l ea muds }jk k i y%osu fu/kkj.k grqjyos ckMz ds i = fnukd 22-08-2008 ds fo:) dkbz Bkd l k{; i Lrj ughs fd; k gA

vr% i klr i R; konuks dk v/; u djus ds mijkUr rFkk jyos ckMz ds i = fnukd 22-08-2008 ea fn; s x; s fn"kkfunzks ds vuq kj deplkj; k ds i R; konu dk fuLrkj.k djrs gq s tks deplkj h fnukd 31-12-2015 dk jyos ckMz ds i = fnukd 22-08-2008 vkbchbZ l q; k 101@2008 dh "krk dk i qkZ ugha djrs Fks yfdu ml ds inLufur vknsk fnukd 31-12-2015 ds inLufur ij osu fu/kkj.r dj fn; k x; k Fkk mudk osu fu; euq kj i h-i-h-l h ,oa dEi hVh i jh{k k mRrh.kz djrs dh frfFk l s fu/kkj.k djrs gq ekg vxLr 2020 ds fu; fer osu fd }jk k Hkxrku fd; k tk jgk gA

mDr l cik ea; g Hk voxr djk; k tk rk gsf fd fnukd 11-08-2020 dks tkjh i =@l ph ea l Eefyr l Hk yksi k-xq tks fnukd 31-12-2015 l s gq vf/kd osu Hkxrku dh dVfsh ds l cik ea l k{; l fgr viuk i R; konu 15-12-2020 rd bl d; k y; e i Lrj djrs gsrc Hk muds vkonu dks Lohdkj dj mi ds i R; konuks dks jyos ckMz ds funzksuq kj fuLrkj.r fd; k tk; xkA rnki jkUr mudh fl RkEcj 2020 l s vkl ku fdLrkj.e vf/kd gq osu Hkxrku dh jk"k dh dVfsh i jkEhk dh tk; xkA

di ; k l o] cf/kr deplkj; k dks 0; fDrxr : i l s voxr djk; A

1/4kj-i h-i ky%

drseMy jy i clu/kd 1/dk0%

>h

ifr% l hfu-MhObD@vki h] l hfu-Mh, e-bz@vks .M, Q ,oa l hfu-Mh, Q, e- >k h dks l pukFkA

ofj-e-dk-vf/kdkj h] vi j e.My jy icu/kd@e.My jy i clu/kd egkn; dks l pukFkA

30. Thus, it is clearly apparent that even by the aforesaid impugned order dated 25.8.2020, the applicants have been granted a further time of 15 days to present their case along with proof.

Therefore, we have no hesitation to hold that the applicants had the time and opportunity to submit their representations along with required proofs and to wait for the result, but they have rushed to Tribunal, hence, the orders dated 25.8.20 and 11.8.20 both are in nature of show cause notice, issued by a competent authority, whereby time and opportunity has been granted to the applicants to reply or represent before the authorities. As the applicants without replying or without furnishing the required proofs have rushed to the Tribunal by means of instant OAs, we are not inclined to interfere at this premature stage.

31. In so far as the recovery part is concerned, the Hon'ble Supreme Court in a catena of judgments has held that excess payments of public money or tax payers money belongs neither to the officers, who have effected overpayment nor the recipients, therefore, in case of irregular/wrong pay fixation, any such amount paid or received without authority of law, can always be recovered, barring few exceptions of extreme hardship but not as a matter of right. In such situation, law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment to the payees and financial loss to the State exchequer.

32 In view of the above discussion, we are of the opinion that , merely on the basis of the fact that this Tribunal, at the admission stage had granted interim relief to the applicants without calling counter reply from the respondents, by staying the recovery till the next date, does not mean that even after exchange of affidavits and hearing final arguments from both sides, the position will remain the same.

33. It is also noteworthy that interim reliefs granted to the applicants, was challenged by the respondents before the Hon'ble High Court by means of Writ-A No. 12823/2020 (Union of India and 2 others Vs. Central Administrative Tribunal and 22 others), which was decided by the Hon'ble High Court vide order dated 16.12.2020 (filed before us on 22.1.2021) with a direction to expedite the hearing of the OA and to decide it within a period of one month from the date of receipt of copy of the order. It was further directed that if the OA is not disposed off within the period given above, interim relief granted by the Tribunal, will come to an end automatically.

34. Learned counsel for the applicants has repeatedly argued that as all the applicants are Group 'C' employees, recovery cannot be made from them in the wake of law laid down by the Hon'ble Supreme Court in the land mark case of ***Rafiq Masih (supra)***.

35. In our humble opinion, the judgment of ***Rafiq Masih*** is not applicable in the instant OAs, because infact there is no order of recovery issued by the respondents and only a notice for recovery has been issued. It is seen earlier that even by the impugned order dated 25.8.2020 also, time has been granted to the applicants to represent their case. However, the applicants without submitting their representations and required proof, have rushed to this Tribunal. In the aforesaid circumstances, when infact, there is no order of recovery, we cannot quash it by placing reliance of Rafiq Masih case.

36. All the applicants, despite having full knowledge of the mandatory conditions for promotion to the post of Loco Pilot Goods,

are trying to take undue advantage of the mistake committed by the department while promoting them to post of Loco Pilot (Goods) without fulfilling the mandatory conditions/competency. There is a catena of judgments of Hon'ble Apex Court, wherein it has been held that a mistake committed earlier, at any point of time, cannot be permitted to be perpetuated in all times to come and pay fixation can be done in accordance with entitlement under intimation to the applicants. No one can be paid higher emoluments without doing job required for securing the said emoluments and a trainee cannot be said to be a full-fledged promote of a higher level. Therefore, the respondents have the full right to go back and to hold that the applicants will be deemed to be promoted from the date they got their competency certificate and they would be eligible for promotion from the date of receipt of said competency certificate. There is nothing wrong in the aforesaid decision taken by the respondents Railways.

37. No doubt, the applicants were placed in a select list of employees after having completed the minimum requisite conditions of 6000 Kms. foot plate and 2 years of experience of Assistant Loco Pilot. However, there is always a distinction between the "Eligibility" and "Sufficiency of Qualification" or Competency by fulfilling the conditions to handle a job. Logically, the applicants were entitled to higher pay scale on fulfilling the conditions because only then, they would be actually performing the higher level task. Hence, the applicants cannot be given the higher pay scale of promotional post while they were under training and yet to fulfill the conditions, required for promotion, as clearly mentioned in 2008 circular. We cannot read more into the circular

than specified, in wake of the well settled legal position regarding the interpretation of statute/ guidelines/circulars.

38. On the basis of the aforesaid discussions, the conclusion seems to fall in favour of the respondents and the balance of justice is certainly with them. We are in agreement to the grounds taken by the respondents and are of the firm opinion that **all the three OAs are liable to be dismissed. Accordngly, all the OAs are dismissed. There shall be no order as to costs.**

39. However, before parting with the judgment, we direct the respondents that since the time to file reply to the impugned show cause notice/order/ making representation, has expired, as the applicants decided to challenge the said show cause notice before this Court, this Court feels that the applicants should be given another opportunity to file reply thereto. Therefore, all the applicants are directed to file reply to the impugned show cause notice within three weeks from today. The adjudicating authority is directed to dispose of their representations within a reasonable period, preferably within 2 months from the receipt of representation along with a certified copy of this order. It goes without saying that this order shall not be construed to have any impact on the merit or demerit of the respective case of the parties and it is open to the authority to decide the proceedings independently without being influenced by any observations made herein.

**(Tarun Shridhar)
Member (A)**

**(Justice Vijay Lakshmi)
Member (J)**

HLS/-

