

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/020/00130/2018

HYDERABAD, this the 4th day of January, 2021

Hon'ble Mr. Ashish Kalia, Judl. Member

Hon'ble Mr. B.V. Sudhakar, Admn. Member



- 1.M.Ramesh Gandhi
S/o M.Satyanarayana,
Aged about : 39 years, Gr.'C',
Occ : Loco Pilot Goods/RJY,
R/o H.No.6-107/3, Aravinda Nagar, Morumpudi,
Rajahmundary – 533107, East Godavari District,
Andhra Pradesh.
- 2.SK.Meera Saheb S/o SK.Appa Rao,
Aged about : 46 years,
Occ : Loco Pilot Goods/RJY,
R/o H.No.4-23-29/1, Sivaji Street, AC Gardens,
Rajahmundary, East Godavari District,
Andhra Pradesh.
3. N. Venkata Rao S/o N.Adinarayana,
Aged about : 46 years,
Occ : Loco Pilot goods/RJY,
R/o H.No.3-15-58, Adarsh Nagar, Hukumpeta Road,
Rajahmundary, East Godavari District,
Andhra Pradesh.
4. G.Kanaka Rao S/o G.Gowrinaidu,
Aged about : 39 years,
Occ : Loco Pilot Goods/RJY,
R/o H.No.89-54-06, Gayatri Nagar, Morumpudi,
Rajahmundary, East Godavari District,
Andhra Pradesh.
- 5.K.Srihari S/o K.Govinda Rao,
Aged about : 39 years,
Occ : Loco Pilot Goods/RJY,
R/o H.No.3-531/B, Kasturibhai Street,
Rajahmundary-533101, East Godavari District,
Andhra Pradesh.
- 6.G.Nagaraju Reddy S/o G.Venkata Raju,
Aged about : 40 years,
Occ : Loco Pilot Goods/RJY,
R/o H.No.3-1188, Adarsh Nagar,
Rajahmundar, East Godavari District, Andhra Pradesh.

7. R.Srinivas S/o R.Narayana Murthy,
Aged about : 40 years,
Occ : Loco Pilot Goods/RJY,
R/o H.No.2-49-5,
Ambika Nagar, 3rd Street, Near I LTD,
Rajahmundry-533101,
East Godavari District, Andhra Pradesh.



8.B.Phalguna Rao S/o B.Ranga Rao,
Aged about : 39 years,
Occ : Loco Pilot Goods/RJY,
R/o H.No.20-08/02-19/B,
Adbaita Apartment, New Ayodhya Nagar,
Vijayawada-520003.

9.N.Praveen Kumar S/o N.Mark,
Aged about : 30 years,
Occ : Loco Pilot Goods/RJY,
R/o H.No.17-10-04,Punurivari Street,
Baptist Nagar, Vijayawada-520003.

10.Y.Siva Ganesh S/o Y.Nookayyalingam,
Aged about : 38 years,
Occ : Loco Pilot Goods/RJY,
R/o H.No.3-57, Kasinanookaraju Street,
Payakaraopet, Vizag District-533126.

11.P.Swamy Naidu S/o P.Narayana,
Aged about : 40 years, Occ : Loco Pilot Goods/RJY,
R/o H.No.03-15-62, Adarsh Nagar, Balajipet,
Rajahmundry-533107,
East Godavari District, Andhra Pradesh.

....Applicants

(By Advocate : Mr. K. Vignan Kumar)

Vs.

Union of India Rep by

- 1.General Manager,
South Central Railway,
Rail Nilayam, Secunderabad.
2. The Divisional Railway Manager,
Vijayawada Division,
South Central Railway, Vijayawada.

3.The Additional Divisional Railway Manager,
Vijayawada Division,
South Central Railway, Vijayawada.

4.The Sr.Divisional Electrical Engineer (TRSO),
Vijayawada Division,
South Central Railway, Vijayawada.



5.The Sr. Divisional Personnel Officer,
Vijayawada Division,
South Central Railway, Vijayawada.

6. K. Prakasa Rao,
Occ : Senior Loco Pilot Shunter,
O/o The Chief Crew Controller / BZA,
South Central Railway, Vijayawada.

7.G. Joji,
Occ : Senior Loco Pilot Shunter,
O/o The Chief Crew Controller / BZA,
South Central Railway, Vijayawada.

8.M.Venkateswarlu,
Occ : Senior Loco Pilot Shunter,
O/o The Chief Crew Controller / BZA,
South Central Railway, Vijayawada.

9. B. Pratap Singh,
Occ : Senior Loco Pilot Shunter,
O/o The Chief Crew Controller / BZA,
South Central Railway, Vijayawada.

10.V.Ravi Kumar,
Occ : Senior Loco Pilot Shunter,
O/o The Chief Crew Controller / BZA,
South Central Railway, Vijayawada.

....Respondents

(By Advocate : Mr. N. Srinatha Rao, SC for Railways)

ORAL ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

Through Video Conferencing:

2. The OA is filed seeking promotion retrospectively to the post of Loco Pilot (Goods).



2. Brief facts are that the applicants were promoted as LP (Goods) with Grade Pay of Rs.4200/- w.e.f. 23.09.2016. Applicants worked as officiating LP (Goods) since 18.6.2014. As per Railway Board Memo dt. 3.9.2009 posts carrying GP of Rs.4200/- are to be filled up with those who secure a minimum of 6 marks which is the benchmark, against the maximum of 15 marks. Respondents issued a select list on 7.1.2016 by including unwilling employees and thereafter, promoted the applicants on 28.09.2016. Applicants claim that but for the unwilling employees not being screened out for promotion, they would have got the promotion retrospectively. Hence, the OA.

4. The contentions of the applicant are that their cause is supported by the Railway Board letter dt. 3.9.2009, 26.7.1999 and the order of this Tribunal in OA 333/2013 dt.28.04.2014 which was upheld by the Hon'ble High Court of Andhra Pradesh and the relevant SLP dismissed by the Hon'ble Supreme Court.

5. Respondents in their reply statement stated that promotions are to be effected based on traffic requirements and that there are no instructions to

call for willingness before promoting employees. If any employee declines the promotion offered, then he would not be considered for the promotion for one year. Action, thus, taken in the issue is as per rules.



6. Heard learned counsel for the respondents. Applicant's counsel called absent. He was absent earlier also. Case was called twice and since it belongs to 2018, based on the pleadings on record, the dispute was examined as under.

7(I) The grievance of the applicants is that they could have been promoted on 7.1.2016 instead of promoting them after 9 months on 28.09.2016, by following the process of first finding out the employees who were willing to be promoted and thereafter, undertake the promotion process. In this regard, we are of the view that when the promotions were effected in 2016, they have filed the OA in 2018 i.e. after a lapse of 2 years. The applicants should have approached the Tribunal in 6 months time after the promotions were effected or at least within one year as observed by the Hon'ble Supreme Court in **UOI & ors. v. Chaman Rana** in CA 2763-2764 of 2018 arising out of SLP (C) No.1118 & 1123 of 2018, on 12.3.2018:

"10. As far back as in P.S. Sadasivaswamy vs. The State of Tamil Nadu, (1975) 1 SCC 152, considering a claim for promotion belated by 14 years, this Court had observed that a period of six months or at the utmost a year would be reasonable time to approach a court against denial of promotion and that it would be a sound and wise exercise of discretion not to entertain such claims by persons who tried to unsettle the settled matters, which only clog the work of the court impeding it in considering genuine grievances within time in the following words :"

2..... A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226

nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters.



The petitioner's petition should, therefore, have been dismissed in limine. Entertaining such petitions is a waste of time of the Court. It clogs the work of the Court and impedes the work of the Court in considering legitimate grievances as also its normal work. We consider that the High Court was right in dismissing the appellant's petition as well as the appeal."

In view of the above legal principle, the applicants allowed things to happen and have now approached this Tribunal to unsettle the settled matter. Therefore, any interference at this stage is ill-advised.

II. Another argument of the applicants is that, if the unwilling were not considered, then in the said vacancies, the applicants could have been considered on 7.1.2016 itself. The applicants have a right to be considered for promotion and definitely not have a right to be promoted. Even if there are vacancies, it is for the respondents to decide to take up the exercise of promotion. In the instant case, the promotion is to the cadre of Loco Pilot (Goods) from Assistant Loco Pilot. Respondents have explained that depending on the loco traffic, promotions to Loco Pilot have been undertaken. Further, if most of the Asst. Loco Pilots are promoted as Loco Pilots in view of the availability of vacancies, then piloting the engines would not be possible, since an engine requires a Pilot and an Asst. Loco Pilot to pilot it. Therefore, availability of vacancies cannot be the sole reason for granting promotion. Besides, it is for the employee to accept or

decline the promotion and if he does the latter, then he would not be considered for promotion for one year.

III. Our remarks as at above are supported by the observations of the

Hon'ble Supreme Court in ***Mohd. Rashid v. Director, Local Bodies, New***



Secretariat & Ors in CA No. 136 of 2020 on 15.1.2020, as under:

12. The appellants who are aspirants for direct recruitment have no right for appointment merely because at one point of time the vacancies were advertised. The candidates such as the appellants cannot claim any right of appointment merely for the reason that they responded to an advertisement published on 12th September, 2013. Even after completion of the selection process, the candidates even on the merit list do not have any vested right to seek appointment only for the reason that their names appear on the merit list. *In Shankarsan Dash v. Union of India*⁶, a Constitution Bench of this Court held that a candidate seeking appointment to a civil post cannot be regarded to have acquired an indefeasible right to appointment in such post merely because of the appearance of his name in the merit list. This Court held as under:-

“7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in the *State of Haryana v. Subhash Chander Marwaha* [(1974) 3 SCC 220 : 1973 SCC (L&S) 488 : (1974) 1 SCR 165] ; *Neelima Shangla (Miss) v. State of Haryana* [(1986) 4 SCC 268 : 1986 SCC (L&S) 759] or *Jitender Kumar v. State of Punjab* [(1985) 1 SCC 122 : 1985 SCC (L&S) 174 : (1985) 1 SCR 899] .” 6 (1991) 3 SCC 47

Respondents have given bonafide reasons for not considering the promotions of the applicants earlier. Further, when the employees are being considered for promotion, it is for them to decline in advance, if they do not like to get promoted. Promotion is a beneficial act and therefore, while granting the same, all those eligible have to be considered.

IV. The law is well-settled that mere existence of vacancies or empanelment does not create any indefeasible right to appointment or promotion. Employer has the discretion and the right not to fill up the vacancies for valid and germane reasons. The Tribunal should not substitute its views over that of the respondents by issuing an order which would be difficult for them to comply at this juncture of time, after many years have passed consequent to their promotion. While stating the above, we echo the observations of the Hon'ble Supreme Court in ***Kerala State Road Transport Corporation v. P.R. Beedhava Roy & Anr.*** in Civil Appeal No(s). 3346 of 2019 [Arising out of SLP(C) No.8395 of 2019 (Diary No.21878/2018)] with Civil Appeal No(s). 3347 of 2019 [Arising out of SLP(C) No. 8396 OF 2019 (Diary No.21883/2018)], as under:



5. We have heard the counsel for the parties and opine that the order of the High Court is unsustainable. The cadre strength has rightly been held not to be a relevant consideration. The High Court has erred in issuance of mandamus to fill up a total of 97 vacancies, including those arising subsequently but during the life of the rank list. Vacancies which may have arisen subsequently could not be clubbed with the earlier requisition and necessarily had to be part of another selection process. The law stands settled that mere existence of vacancies or empanelment does not create any indefeasible right to appointment. The employer also has the discretion not to fill up all requisitioned vacancies, but which has to be for valid and germane reasons not afflicted by arbitrariness. The appellant contends a financial crunch along with a skewed staff/bus ratio which are definitely valid and genuine grounds for not making further appointments. The court cannot substitute its views over that of the appellant, much less issue a mandamus imposing obligations on the appellant corporation which it is unable to meet.

6. Suffice to observe from Kulwinder Pal Singh Vs. State of Punjab, (2016) 6 SCC 532:

“12. In Manoj Manu v. Union of India, (2013) 12 SCC 171, it was held that (para 10) merely because the name of a candidate finds place in the select list, it would not give the candidate an indefeasible right to get an appointment as well. It is always open to the Government not to fill up the vacancies, however such decision should not be arbitrary or unreasonable.

Once the decision is found to be based on some valid reason, the Court would not issue any mandamus to the Government to fill up the vacancies...”



V. Further, promotion of the applicants is an administrative decision involving public interest. In the instant case, since respondents have to run the trains, they have to maintain a proper mix of Loco Pilots and Asst. Loco Pilots. Just because Loco Pilot vacancies are available promoting most of the Asst. Loco Pilots would jeopardize the movement of trains and which is not in public interest. We rely on the decision of the Hon'ble Supreme Court in **Nidhi Kaim & Anr v. State of M.P. & Ors.** in CA No. 1727 of 2016, as under, in stating the above

No doubt, that the overarching requirement of Constitution is that every action of the State must be informed with reason and must be in public interest.

VI. Further, respondents considered the applicants for promotion, when they were required to be promoted to meet organizational needs. There is no arbitrariness nor malafide intention in the decision of the respondents to consider the applicants for promotion on 28.09.2016 rather than on 7.01.2016. The reasons given are promotions to be based on traffic requirements and to maintain a proper ratio between the number of LPs and ALPs. When reasons are given, the applicants can have no grievance and the respondents will not be justified in appointing the applicants in a higher post with retrospective effect, as observed by Hon'ble Supreme Court in **K. Madhavan v. Union of India**, (1987) 4 SCC 566: 1987 SCC (L&S) 496, as under:

“15. There can be no doubt that if the meeting of the DPC scheduled to be held is arbitrarily or mala fide cancelled without any reasonable justification therefor to the prejudice of an employee and he is not considered for promotion to a higher post, the government in a suitable case can do justice to such an employee by granting him promotion or appointing him to the higher post for which the DPC was to be held, with retrospective effect so that he is not subjected to a lower position in the seniority list. But, if the cancellation or postponement of the meeting of the DPC is not arbitrary and is supported by good reasons, the employee concerned can have no grievance

and the government will not be justified in appointing the employee to the higher post with retrospective effect. An employee may become eligible for a certain post, but surely he cannot claim appointment to such post as a matter of right.”



VII. Moreover, options can be called for, when there are many alternatives available. In the instant case, there was only alternative to promote the eligible employees. Hence, the question of calling for willingness or otherwise would not arise, as held by the Hon’ble Delhi High court in **WP (C) No. 6946/2019 & CM No. 28874/2019 in UOI & Anr. V.**

Ramswarup & Ors. as under:

7. We do not find any merit in this submission. In the present case, the appointment is by way of promotion on the basis of seniority. The respondents were entitled to be promoted on 14-02-2000 itself when the juniors of the respondents were promoted to the post of Shunting Master Grade-II. The main ground for the refusal of promotion to the respondents is that they had not exercised their option. This argument is flawed because an “option” can be called for and exercised when two similar alternatives are presented before the optee and he is asked to choose one of them. There is no question of calling for an “option” from an employee on the issue whether he was to avail of seniority based promotion or not. There is nothing to show that the respondents had declined their promotion when offered, before or at the time of promotion of their juniors in 2000.”

VIII. Besides, no retrospective promotions can be granted when none of the juniors of the applicants were promoted prior to them. It is not the case of the applicants that their juniors were promoted and they were ignored.

We rely on the observations of the Hon’ble Supreme Court in **Baij Nath Sharma v. Hon’ble Rajasthan High Court** at Jodhpur (1998) 7 SCC 44 as under in stating what we did:

“6. The appellant could certainly have a grievance if any of his juniors had been given promotion from a date prior to his superannuation. It is not the case here. From the promotional quota, four promotions were made only on 30-12-1996, i.e., after the appellant had retired. Those promoted were given promotions from the dates the orders of their promotions were issued and not from the dates the posts had fallen vacant. It is also the contention of the High Court that these four officers, who were promoted to the RHJS, were senior to the appellant as per the seniority list. The question which falls for consideration is very narrow and that is, if under the rules applicable to the appellant

promotion was to be given to him from the date the post fell vacant or from the date when order for promotion is made. We have not been shown any rule which could help the appellant. No officer in the RJS has been promoted to the RHJS prior to 31-5-1996 who is junior to the appellant."

IX. Hon'ble Supreme Court has also observed that promotion has to be considered from the date promotion is granted and not from the date vacancies were available in ***K.K. Vadera's 1989 Supp (2) SCC 625*** as under:



"There is no statutory provision that the promotion to the post of Scientist 'B' should take effect from July 1 of the year in which the promotion is granted. It may be that, rightly or wrongly, for some reason or other, the promotions were granted from July 1, but we do not find any justifying reason for the direction given by the Tribunal that the promotions of the respondents to the posts of Scientists 'B' should be with effect from the date of the creation of these promotional posts. We do not know of any law or any rule under which a promotion is to be effective from the date of creation of the promotional post. After a post falls vacant for any reason whatsoever, a promotion to that post should be from the date the promotion is granted and not from the date on which such post falls vacant. In the same way when additional posts are created, promotions to those posts can be granted only after the Assessment Board has met and made its recommendations for promotions being granted. If on the contrary, promotions are directed to become effective from the date of the creation of additional posts, then it would have the effect of giving promotions even before the Assessment Board has met and assessed the suitability of the candidates for promotion. In the circumstances, it is difficult to sustain the judgment of the Tribunal."

X. Applicants have relied on para 215 of IREM to claim that Respondents have not called for willingness or unwillingness from eligible employees before they were promoted as LP (Goods). Relevant portion of Para 215 is extracted hereunder for reference and its applicability to the case.

*"a) Selection post shall be filled by a positive act of selection made by Selection Boards, from amongst the staff eligible for selection. The positive act of selection shall consist of only written test to assess the professional ability of the candidates, for which reasonable advance notice should be sent, **except in the case of selection for promotion to posts in the categories of Teachers, Law Assistants, Physiotherapists, Telephone Operators, Instructors in Zonal Training Schools etc., Stenographers, Chief Typists,***



Protocol Inspectors, Receptionists, Publicity/Advertising Inspectors, Photographers/Cameramen and Hostel Superintendents, where the positive act of selection shall consist of both written test and viva-voce test. The staff in the immediate lower grade with a minimum of two years service in that grade only will be eligible for promotion, unless a longer length of service in the lower grade has been stipulated as a condition of eligibility for promotion in a particular category. The service for this purpose includes service, if any, rendered on ad hoc basis followed by regular service without break. The condition of two years service should stand fulfilled at the time of actual promotion and not necessarily at the stage of consideration. If by virtue of the above rule, a junior is eligible for promotion, his senior will also be eligible for such promotion, even though he might not have put in a total service of two years, or more, (if stipulated in particular category in the lower grade).

Provided that the positive act of Selection for promotion to the post of Loco Pilot (Passenger) will consist of viva-voce only to assess the professional ability of the candidates, after passing the prescribed promotional course.

(Authority:-Railway Board's letters No. E(NG)I-2000/PM1/41 dt. 7.8.03 and E(NG)I-2000/PM1/41 dated 12-09-05)

(b) The selection for promotion to a selection post shall be made on the basis primarily of merits.

(c) Promotion to selection post shall be made by the competent authority in accordance with the recommendations of a Selection Board in the manner detailed in paragraph 219 below. If, in any case, such authority is unable to accept the recommendation, a reference shall be made to the General Manager, who may if necessary constitute a fresh Selection Board at a higher level and whose decision in the matter shall be final.

(d) The Railway Board may adopt a procedure other than the one laid down in para 219 below while deciding individual cases of hardship.

(e) Eligible staff upto 3 times the number of staff to be empanelled will be called for the selection. The staff employed in the immediate lower grade on fortuitous basis will not be eligible for consideration.

(Authority:-Railway Board's letters No. E(NG)I-99/PM1/15 dt. 26.7.99)

Note (1): Persons who have expressed their unwillingness should not be reckoned for determining the zone of consideration and additional persons in lieu thereof may be called for the selection.

Note (2): If a candidate without giving unwillingness, does not appear in the selection, he has to be taken in the reckoning and therefore has to be called for supplementary selection. If he gives his unwillingness on a subsequent date after the selection has commenced, additional persons will not be called to compensate for him.

(Authority:-Railway Board's letters No. E(NG)I-99/PM1/15 dt. 26.7.99)

(f) (i) The assessment of vacancies for selection posts within the cadre will include the existing vacancies and those anticipated during the course of the next 15 months. All the vacancies, if any, existing and reported upon by a construction organisation including Railway Electrification and other projects should also be taken into account. For selection for ex-cadre posts actual vacancies plus those anticipated in the next two years should be taken into account.

(Railway Board's letter No. E(NG)I/96/PM1/19 dated 21.10.97)

(ii) The concept of anticipated vacancies referred to in (i) above should be deemed to connote the vacancies due to normal wastage (i.e. retirement or superannuation),

likely acceptance of notice for voluntary retirement/resignation; the vacancies in the higher grade in the channel, the filling up of which will result in the need to make consequent appointment from the proposed panel, staff approved to go on deputation to other units, staff already empanelled for ex-cadre posting, creation of posts already sanctioned by the competent authority, and due to staff likely to go on transfer to other Railways/Divisions during the period under consideration.

(Authority:-Railway Board's letters No. E(NG)I/97/PM1/31 dt. 17.2.98)"



As can be seen from the above, only those employees who expressed unwillingness need not be considered. In fact, an employee without giving unwillingness does not appear in the selection, then he has to be considered for the supplementary selection. Therefore, it is nowhere provided in the IREM clause cited, that the respondents should call for willingness/unwillingness of eligible employees for promotion, which in fact is the main thrust of the arguments of the applicants.

XI. In regard to the observation of this Tribunal in OA 333/2013 dt. 28.4.2014, which was upheld by the Hon'ble High Court in WP No. 20809/2014 on 28.7.2014, the Tribunal and the Hon'ble High Court did not have the benefit of the Hon'ble Supreme Court judgments later to 2014, cited above, to evaluate the dispute in its entirety. The Hon'ble Supreme Court dismissed the SLP filed on 09.03.2015. The OA was allowed because respondents agreed to delete the names of the unwilling candidates, but not in the OA on hand. It is pertinent to adduce that the observations of the Hon'ble Supreme court in 2016, 2018, 2019 and 2020 cited supra squarely apply to the case of the applicants. Other judgments of the Hon'ble Supreme Court relied upon prior to 2014 have not been discussed in OA 333/2013. Therefore, the verdict in OA 333/2013 may not be of much help to the applicants. More importantly, Hon'ble High Court for the State of Telangana and the State of Andhra Pradesh has observed at para 5 that the

respondents themselves agreed for deleting the names and therefore, the OA has been upheld, whereas in the present case, it is not so.



True, Hon'ble Supreme Court has dismissed the SLP filed on 09.03.2015 by a non speaking order. In accordance with the law laid by Hon'ble Supreme Court in ***Kunnhayammed v. State of Kerala (2000) 6 SCC 359***, dismissal of SLP does not mean that the law has been laid down. Nevertheless, in view of the latest judgments of the Hon'ble Supreme court on the subject referred to, we are of the view that the applicants are not entitled for the relief sought.

XII. We have also gone through the Railway Board letter dt. 3.9.2009, cited by the applicants, which is extracted hereunder:

“SERIAL CIRCULAR No. 143 /2009 No. P[R]535/VII Dated: 10-09-2009

Copy of Board's letter No. E[NG]I-2008/PM1/15 dated 03.09.2009 is published for information, guidance and necessary action. Board's letters dated 23.09.2008 and 24.04.2009 quoted therein were circulated as SC Nos. 124/2008 and 63/2009, respectively.

Copy of Board's letter No. E[NG]I-2008/PM1/15 dated 03.09.2009 [RBE No.161/09]

Sub: Implementation of recommendations of 6th CPC – Merger of grades – Revised classification and mode of filling up of non-gazetted posts.

Reference this Ministry's letters of even number dt. 23.09.2008 and 24.04.2009, on the above subject.

2. The matter has since been considered by the Board. The views of organized labour have also been taken into account. Since the issue of laying down revised classification and mode of filling up may take further time, therefore, it has been decided that as a one time exemption promotion to all vacancies as existed on 31.08.2009, may be made as indicated in the enclosed statement. The following methodology may be adopted for effecting the promotions in question:

[a] Posts carrying the grade pay Rs.4200, proposed to be filled up by 'Seniority-cum suitability' or with 'Suitability with prescribed benchmark', as indicated in the statement, may be filled up with benchmark of 6 marks out of 15 marks in last three years ACRs, duly considering the existing instructions for promotions based on confidential reports.

[b] Posts carrying the grade pay Rs.4600 & above, proposed to be filled up by 'Suitability with prescribed benchmark', may be filled up with benchmark of 7 marks out of 15 marks in last three years ACRs, duly considering the existing instructions for promotions based on confidential reports.

[c] For [a] & [b] above, in case CRs for 2008-09 for all candidates in the zone of consideration, are not available, ACRs upto year 2007-08, may be taken into account.

[d] Extant instructions necessitating DAR/Vig. etc. clearance, shall continue to hold good.

[e] Posts earmarked against Selection/General Selection /LDCE quota, wherever prescribed as per enclosed statement, will be filled up as per existing procedure.

[f] Existing eligibility conditions like passing of Trade Test, Aptitude test, possessing of requisite foot-plate experience, passing of promotional course for being eligible for consideration for promotion as pre-condition or for being deployed in promotional post, shall continue to hold good.

[g] The residency period for promotion to higher posts including for promotion to merged grades will be two years, unless a longer length has been prescribed in terms of existing instructions for promotion to higher posts.

2.1. In cases, where existing classification of 'Selection' has been dispensed with, promotions, may be made on the basis of 'Suitability with prescribed benchmark'. All pre-promotional training courses may continue as per existing procedure of passing pre-promotional course / training.

2.2. Promotions to the posts carrying the Grade Pay below Rs.4200, shall continue to be made as per existing procedure, since Railways/PUs have already been advised vide this Ministry's letter of even number dt. 23.09.2008 and clarified vide letter dt. 24.04.2009 that, only the promotions within and to merged grades, were not to be effected, while all other promotions were to be continued to be made as per existing classification.

2.3. For the purpose of filling up of direct recruitment and promotee quota vacancies in the grade pay of Rs.4200 and 4600, the following shall be followed:

[i] The posts in grade pay Rs.4200 in cadre of technical supervisors, shall be divided in the existing percentage of 26% [Recruitment grade of Rs.5000-8000] and 24% [promotee grade Rs.5500-9000]. The senior most 24% staff and posts in grade pay Rs.4200, shall be kept in a separate block and the remaining bottom most 26% posts of the total cadre of supervisors shall be filled up as per the existing practice of filling up through Promotee, LDCE and DR quota.

[ii] Similarly, to fill up the posts of Section Engineers in grade pay Rs.4600, the posts shall be divided in the ratio 21:29. The senior most 21% staff and posts will be placed in a separate block and remaining 29% posts of the total cadre of supervisors shall be filled up by promotees and direct recruits as per the existing practice.

[iii] Same principle will be followed to fill up all vacancies of grade pay Rs.4200 & 4600.

3. The scheme for filling up vacancies, arising on or after 01.09.2009, will be issued in due course in consultation with the federations.

3.1. The vacancies existing should be filled up expeditiously."





Clause (c) clearly states that CRs of all candidates in the zone of consideration have to be taken into consideration. The Memo does not stipulate calling for unwillingness or willingness of the employees for promotion. The applicants are trying to extrapolate the phrase “suitability with prescribed benchmark” at clause 2.1 of the letter to claim that willingness for promotion has to be called for. The phrase only meant to examine the suitability as per the Benchmark by the respondents and it does not mean anything further as imagined by the applicants. Even the Railway Board letter dt. 16.04.1982 cited by the applicants is hereunder extracted, is of no assistance to them:

Copy of Bd's letter No. E(NG) 1-81/PMI-282 dated 16.04.1982

Sub: Selection procedure for filling up 'selection' posts.

References are being received by the Ministry of Railways from the Railway Administration indicating that they are finding it difficult to finalize the selections out of the candidates equal to X3 of the assessed vacancies as many of the candidates in the consideration Zone either express their unwillingness or do not fulfill the eligibility qualifications or submit representations. The Ministry of Railways have considered the matter and have decided that the persons, who have expressed their unwillingness and those who do not fulfill the eligibility conditions should not be reckoned for determining the field which should consist of persons willing and eligible to the extent of three times the vacancies.

Serial Circular No. 49/82. Circular letter No. P®554/II, dt. 29.4.82”

Again in the said memo, it is only stated that those employees who expressed unwillingness need not be considered. It did not stated that the respondents should call for willingness of eligible employees.

XIII. Promotion is what all employees look for and rarely few employees decline for reasons of health, transfers and other personal reasons. It is for the employees to express unwillingness and not for the employer to ascertain the same. Burdening the respondents with such an exercise for promotion to various cadres will be farfetched and leads to valuable consumption of resources in terms of men, material and time. The letter dated 26.7.1999 (SC 221/1999), extracted hereunder, referred to by the applicants also does not speak about calling for willingness, but only states not to consider those who have expressed unwillingness.



*“SERIAL CIRCULAR No. 221/1999
(Circular letter No.P(R)436/IREM/Vol.IV dt.1.9.99)*

Copy of Board's letter No. E(NG) 1-98/PMI/15 dated 26.07.99 is published for information and necessary action.

Copy of Bd's letter No. E(NG) 1-98/PMI/15 dated 26.07.99 (RBE No.149/99)

Sub: Amendment to IREM

Xxx

Note (1) Persons who have expressed their unwillingness should not be reckoned for determining the zone of consideration and additional persons in lieu thereof may be called for selection

Para (2) If a candidate without giving unwillingness, does not appear in the selection, he has to be taken in the reckoning and therefore has to be called for supplementary selection. If he gives his unwillingness on a subsequent date after the selection has commenced, additional persons will not be called to compensate for him.

(Authority: Ministry of Railways's letter No.E (NG) 1-81/PM 1/282 dated 16.04.82 and E (NG) 1-99/PMI/15 dated 26.07.99)“

Other averments made have also been gone through and found to be irrelevant.

XIV. Hence, from the above, it is evident that there is no merit in the OA from the perspective of rules as well as law and hence, the same is dismissed, with no order as to costs.



(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

/evr/