

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.23/2016

Date of Decision: 05.03.2020.

CORAM: DR. BHAGWAN SAHAI, MEMBER (A)
R.N. SINGH, MEMBER (J)

1. Dadasaheb Sakharam Sawant,
Age 55 years,
Working as Loco Pilot (G) C.Rly. Daund,
R/at Shivajinagar, Ganga Apartment,
Room No.6, Near Punekar Hospital,
At & Po. - Daund, Dist. Pune (MS) -413 801.
2. Ram Mallesha Kanthekar,
Age 48 years,
Working as Loco Pilot (G) C.Rly. Daund,
R/at Railway Quarter No. J-12/B,
Near Kurkumb Mori, Railway Colony,
At & Po. - Daund, Dist. Pune (MS) – 413 801.

... *Applicants*

(Advocate Shri K.B. Rajan)

VERSUS

1. Union of India,
Through the General Manager,
Head Quarter Office, Central Railway,
C.S.T. Mumbai 400 001.
2. The Divisional Railway Manager,
Divisional Office, Central Railway,
Solapur (MS) – 413 001.

... *Respondents*

(Advocate Shri V.S. Masurkar)

ORDER (Oral)

Per : R.N. Singh, Member (J)

Heard Shri K.B. Rajan, learned counsel
for the Applicant and Shri V.S. Masurkar,
learned counsel for the Respondents.

2. In the present OA, the applicants, 02 in number, have challenged the order dated 31.12.2014 (Annex. A-1) vide which the applicants have been informed that their seniority has been assigned above Shri Suresh Malijee Koli, whose name is appearing at Sr.No.96 of seniority of ALP Gr.Rs.3050-4590 (RSRP) published vide Division's Lr.No.SUR/P/Mech/1/ALP/DOII/Seniority dated 03.08.2005 and the applicants have also been considered for all other consequential benefits at par with Shri Suresh Malijee Koli and the same shall be awarded to them within short time, if any. The applicants therein have also been informed that both of them are further eligible for promotion as LP(Goods) Gr.Rs.09300-34800+4200 GP w.e.f. 24.01.2011 on Proforma basis at par with their junior Shri Suresh Malijee Koli, LP(G). The impugned order dated 31.12.2014 further informs that their seniority has now been assigned above Shri Suresh Malijee Koli, whose name is appearing at Sr.No.182 of seniority of LP(G) Gr.Rs.9300-34800+4200 published vide letter dated 25.07.2013. The applicants have also challenged the Office

order No.03/2015 dated 06.01.2015 vide which the promotion date of both the applicants to the post of LP(G) have been antedated.

3. The Applicants in the present OA, have prayed for the following reliefs;

8.i) *To issue an appropriate writ, order, or direction and proceedings pertaining to the case, and after examining the legality and validity of the impugned orders dated 31.12.2014 (Annex. A-1) and order dated 06.01.2015 (Annex.A-2) issued by the Respondents, the same be quashed and/or set aside.*

8.ii) *To direct the respondents to assign the seniority of the applicants as Loco Pilot (Goods) Gr.Rs.9300-34800+4200 GP at par with their erstwhile 14 juniors w.e.f. 13.06.2008, as per the orders dated 05.03.2012 of the Hon'ble CAT in OA No.278/2006.*

8.iii) *To declare that the applicants are entitled to get consequential benefits such as fixation of pay and arrears of difference of pay w.e.f. 13.06.2008 as Loco Pilot (Goods) by treating as regular promotion not as proforma promotion.*

8.iv) *To pass such other further orders as may be deemed fit, just and proper in the interest of justice.*

8.v) *To direct the respondents to pay the cost of this application.*

8.vi) *To permit the applicants to file this joint OA.*

8.vii) *To direct the respondents to consider the joint representation dated 08.01.2015 (A-1) of the applicants and pass reasoned speaking orders."*

4. With assistance of the averments made in the OA, particularly in para 4.11 the learned counsel for the applicants argues that the respondents have erroneously considered the applicants on proforma promotion as Loco Pilot w.e.f. 24.01.2011 on par with Shri Suresh Malijee Koli, Respondent No.3, whereas the applicants should have been considered for promotion on regular basis w.e.f. 13.06.2008 on par with Respondent No.4 as mentioned because the 14 respondents have become juniors to the applicants. However, when it has been pointed out to the learned counsel for the applicants that though the applicants have referred to 14 respondents in para 4.11 of the OA, however, none of them has been impleaded in the present OA except the 02 respondents i.e. the official respondents only, he submits that in fact all those 14 respondents were impleaded by the applicants in the first round of litigation i.e. OA No.278/2006 which was disposed of by this Tribunal vide order/judgment dated 05.03.2012, therefore, these 14 respondents are not necessary parties in the present OA.

5. From prayer 8(ii) as noted herein above, it is evident that the applicants want to get the seniority assigned as Loco Pilot (Goods) on par with their erstwhile 14 juniors w.e.f. 13.06.2008 in compliance of directions of this Tribunal in order dated 05.03.2012 in OA No.278/2006 which was filed by these very applicants.

6. In response to notice from this Tribunal, the respondents have filed reply affidavit and they have opposed the claim of the applicants. With the assistance of the reply filed by the respondents, the learned counsel for the respondents submits that the directions of this Tribunal dated 05.03.2012 in OA 278/20016 were complied with by the respondents. In compliance thereof, the seniority of the applicants has been re-fixed and consequential benefits have also been accorded to them. He further argues that once the applicants were satisfied with the compliance of the directions of this Tribunal, this Tribunal has subsequently closed the Contempt Petition. He further argues that if at all the applicants have wanted the execution of the directions of

this Tribunal in the order date 05.03.2012, in the previous round of litigation, by way of OA No.278/2006, remedy lies somewhere else and not by way of filing present OA. He argues that in the absence of impleadment of the persons who are likely to be affected, if at all the reliefs sought by the applicants are allowed in the present OA, the present OA is not maintainable. He reiterates his submission that the present application filed under Section 19 of the Administrative Tribunals Act, 1985 is not maintainable as substitute for the execution of the order dated 05.03.2012 or the contempt proceeding.

7. We have perused the pleadings available on record and have also considered the submissions made by the learned counsels for the parties.

8. We find force in the submissions made by Shri Masurkar, learned counsel for the Respondents. The Applicants who have themselves impleaded 14 so called juniors in the previous round of litigation i.e. in OA No.278/2006 and again they referred them as respondents in WP No.7548/2012 but have not impleaded any of them even in their

representative capacity, we are of the view that the present OA is not maintainable for non-joinder of the necessary parties. We are also of the view that the present application filed under Section 19 of the Administrative Tribunals Act, is not maintainable as for execution of the order dated 05.03.2012 in OA No.278/2006, original application under Section 19 of the Administrative Tribunals Act, 1985 is not the remedy.

9. In view of the aforesaid, the OA is dismissed. However, in the facts and circumstances, no order as to costs.

(R.N. Singh)
Member (J)

(Dr. Bhagwan Sahai)
Member (A)

dm.

JD
13/03/2020

