

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD**

Dated: This the 25th day of October 2016

PRESENT

HON'BLE DR. MURTAZA ALI, MEMBER – J
HON'BLE MS. NITA CHOWDHURY, MEMBER – A

Original Application No. 1005 of 2006

Yashwant Kumar Arya son of Ram Prasad Arya R/o 556, Kalimai Talpura, Jhansi (U.P) 284001, at present posted as Loco Pilot (Shunter) Ticket No. 463 N.C.R. Jhansi.

.....Applicant

By Adv: Shri M.K. Upadhyaya

VERSUS

1. Union of India through General Manager, N.C.R., Allahabad.
2. Chief Personnel Officer (Karmik Shakha) N.C.R., Allahabad.
3. D.R. (Karmik), N.C.R., Division Jhansi.
4. Senior Divisional Electric Engineer (TRO) (OP) N.C.R., Jhansi.
5. D.R.M. DRM Office, Jhansi.
6. Chief Crew Controller, NCR, Jhansi.

..... Respondents

By Adv: Shri A.K Pandey

ORDER

BY HON'BLE DR. MURTAZA ALI, MEMBER – J

Through this OA filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant seeks following reliefs –

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- "(i) To issue an order or direction commanding the respondents to give promotion benefit to the petitioner in pursuance of selection for the post of Loco Pilot in the scale of Rs.5000-8000/- w.e.f. 2.3.2006 in comprision with juniors mentioned at serial No. 5 -16.**
- (ii) To issue any other writ, order or direction in the nature of mandamus directing the respondents to hold another examination and selection as per law.**
- (iii) Any other suitable relief be awarded".**

2. The brief facts of the case are that the applicant had joined as Assistant Driver at Jhansi Division on 1.11.1995. He belongs to Scheduled Caste. He was required to impart 3-4 weeks training/coaching for Departmental Promotion Examination as per Railway Board Circular dated 15.12.1997 (Annexure A-2). He was directed to attend pre-promotional training from 15.9.2003 vide order dated 15.9.2003 (Annexure A-3) and was further directed to attend the training from 25.9.2003 vide letter dated 25.9.2003 (Annexure A-4) and from 16.1.2006 to 21.1.2006 vide letter dated 12.1.2006 (Annexure A-5). It is stated that he was withdrawn on 18.1.2006 after giving training only for 3 days vide letter dated 19.1.2006 (Annexure A-7). It is alleged that without completing 3 weeks training, he was directed to appear in the written examination for the promotional post of L.P.G-II in Loco Running Cadre, to be held on 10.2.2006 vide letter dated 9.2.2006 (Annexure A-8). He requested for 15 days training at Kanpur or

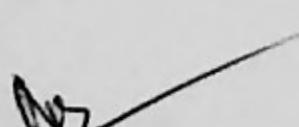
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Jhansi vide application dated 9.2.2006 and 10.2.2006 (Annexure A-9) but his request was not conceded to. The applicant had also sent a representation dated 10.3.2006 (Annexure A-10) complaining that mandatory training of 15/21 days was not given to him and he was directed to appear in the written examination in which he appeared. A provisional panel of candidates who passed the said examination for promotion to the post of LPG -II in Loco Running Cadre at Jhansi Division has been issued vide letter dated 2.3.2006 (Annexure A-11) and final selection list for promotion has also been declared vide letter dated 3.3.2006 (Annexure A-12). The name of applicant does not find place in the said selection list for promotion. The applicant has filed representation on 20.3.2006 (Annexure A-13) for quashing the selection list dated 2.3.2006 and for allowing him to appear in the examination after undergoing required training but no action has yet been taken by the respondents.

3. In the counter reply filed on behalf of respondents, it has been submitted that applicant was required to undergo pre-promotional training from 26.12.2005 as per letter dated 22.11.2005 for which he was duly informed but he did not turn up to receive the letter of training. Further he was proposed to be sent for training w.e.f. 2.1.2006 but he applied for leave and requested to send him for training w.e.f 9.1.2006. He was

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nominated for training in the batch commencing 9.1.2006, which was a last batch but the applicant did not avail the opportunity provided to him. The applicant was again asked to attend the training from 16.1.2006 to 21.1.2006 but he intimated that he would attend the training only after resuming his duties. The applicant had already undergone pre-promotional training in April 2005 for a period of 2 weeks and the candidates who could not complete the training, were permitted for only one week training as per letter dated 2.5.2005 (Annexure CA-5). It has been alleged that the applicant was directed several times for attending the training but he always refused and did not complete his training. It has further been submitted that if the applicant had felt that he was not imparted proper pre-selection training, he could have refused to appear in the written test held on 10.2.2006 but once he appeared in the written examination, it is to be presumed that he had no objection in appearing in the written examination. As the applicant could not qualify the said examination, he could not get place in the list of empanelled staff. An enquiry was also conducted on his complaints for not sending him for training and the enquiry report disclosed that the applicant himself did not go for training for which he himself was responsible.

 [Signature]

4. In the rejoinder, the applicant reiterated the averments made in O.A. and further stated that he was directed to undergo training between 16.1.2006 to 21.1.2006 but he was given training for 3 days only and the Railway Authorities acted against Railway Board instruction contained in letter dated 15.12.1997 which provides training of pre-selection coaching for three to four weeks.

5. Heard Shri M.K. Upadhyay, learned counsel for the applicant and Shri D. Tiwari proxy counsel for Shri A.K. Pandey, learned counsel for the respondents and perused the record.

6. Learned counsel for the applicant submitted that due to non providing pre-promotion training as contained in Circular dated 15.12.1997, the applicant could not qualify the examination for the post of LPG-II in Loco Running Cadre, held on 10.2.2006 and, therefore, he is entitled to get benefit of said promotion from the date when their juniors have been given promotion to the post of Loco Pilot in the scale of Rs.5000-8000.

7. Learned counsel for the respondents argued that several opportunities were given to the applicant to undergo such

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training but he always avoided to attend such training. However, he has already undergone pre-promotion training for 2 weeks and 3 days.

8. On perusal of Railway Board Circular dated 15.12.1997 (Annexure A-2), it appears that on the recommendation of Parliamentary Committee on the welfare of Scheduled Castes and Scheduled Tribes, it was provided that pre-selection/promotion training/coaching should be provided to the eligible SC/ST employees, so that they may come out successful in the examinations to be held for promotion. The Circular dated 15.12.1997 is being reproduced below –

"Letter No. 96-E/SCT)-I/80/1 Pt. XVII, dated 15.12.1997 received from Govt. of India, Ministry of Railways, (Rly. Board) New Delhi addressed to the General Manager, Central Railway and others.

Sub: Imparting training to eligible Scheduled Caste and Scheduled Tribe, Railway Employees before selection or promotion.

Ref: Board's letter No. (1) E.(SCT) 71/CM/15/40 dt. 28.8.71 (2) E (SCT) 74 CM 15/1 dt. 16.1.74 (4) 88-E(SCT)-1/42/2 dt. 18/11.4.91.

The following recommendation has been made in the 8th report of the Parliamentary Committee on the welfare of Scheduled Castes and Scheduled Tribes pertaining to South Central Railway.

Recommendation No. 3, 4

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The Committee feel that is necessary to have an intensive, pre-selection/training for SCs & STs. They also feel that to make them more suitable for higher posts and to expose them to modern methods of technology a larger number of Scheduled Caste and Scheduled Tribe candidates should be selected to provide them pre-selection training. It will instil confidence among them and bring them upto the required standard of efficiency. The Committee also recommended that this should be done expeditiously in order of protect the interests of SCs and STs.

2. *In Board's letter No. E (SCT) 71 CM 15/40 dt. 28.8.71 (Chapter XXI of Railway Board's brochure on the reservation for SC/STs 3rd Edition, 1985) it has been provided that in regard to higher grades in safety categories which are filled by selection from lower grade, arrangement may be made to impart training before promotion to the candidates belonging to the Scheduled Castes and Scheduled Tribes who are within the field of consideration for selection so that they may come out successful. If they failed to come up to the qualifying standard and the quota is left unfilled, such candidates may again be given vigorous training, these candidates may be considered for promotion at the next opportunity.*
3. *Further, as per instructions contained in Board's letter No. F. (SCT)74 CM 15/1 dated 26.1.74 (Chapter XX of Railway Board's Brochure on the reservations for SC/STs, and Edition, 1985) in order to improve the representation of SC/STs in services, all eligible candidates from the reserved communities who are otherwise eligible and are likely to come under consideration for a post should be given special suitable pre-selection coaching by the Railway Administration so that they may perform better in the written test as well as viva-voce.*
4. *The above instructions have earlier been reiterated also vide Board's letter No. 80(E)SCT 15/58 'F' dt. 28.9.81(Chapter XX of Railway Board's Brochure on reservation for SC/ST., 3rd Edition, 1985).*

5. Further, vide Board's letter No. 88-E. (SCT)-I/42/2 dt. 8/11.4.91, it was pointed out that pre-selection/pre-promotion training in safety categories has not produced desired results. Therefore, it was desired that this training must cover the syllabus of the examinations to be conducted for selections to Safety Category posts and should be imparted as far as possible in the Zonal Training Schools/System Technical Schools for a period of 3-4 weeks.

6. It is once again reiterated that the extant instructions regarding pre-selection/promotion training/coaching for the eligible SC/STs may pleased be adhered to strictly and in effective manner so that SCs/STs performance may come up to the required standard and quota posts are filled by the earmarked community candidates. The outcome of training/training programme may be reviewed as annually by the CTO so that pre-selection training may prove more result oriented.

Please acknowledged receipt.

**Sd/- illegible
(Ram Prakash)
Exe. Director Estt. (Res.)"**

9. From the perusal of letter dated 25.12.2005 (Annexure CA-2), it is evident that the applicant was directed to take one week training of pre-Goods Driver selection commencing from 26.12.2005. From the office report dated 27.12.2005 (Annexure CA-3 & CA-5), it appears that the applicant had refused to receive the said letter for pre-promotion training. On perusal of letter dated 8.1.2006 (Annexure CA-6), the applicant was directed to attend pre-selection training commencing from 9.1.2006 and he

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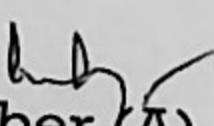
was also informed that it was the last batch of SC/ST training. The said letter was sent to his house and as per report of call boy Shri Ganesh Prasad (Annexure CA-7), the father of applicant refused to receive such letter on the pretext that the applicant was not available in his residence. In spite of full knowledge of proposed training the applicant did not attend the pre-selection training and he was marked absent. The applicant was again directed to attend the pre-promotion training commencing from 16.1.2006 to 21.1.2006 vide letter dated 12.1.2006 (Annexure CA-8) but he intimated that he would attend the training only after resuming his duties. The letter dated 2.12.2005 (Annexure CA-9) and letter dated 18.4.2005 further shows that the applicant had already been imparted pre-promotion training for two weeks commencing 7.4.2005 (Annexure CA-10) and lastly he was given pre-promotion training for three days w.e.f. 16.1.2006 to 18.1.2006 (Annexure A-7).

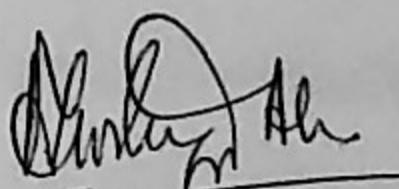
10. There is no such provision in the Rules that if any SC/ST candidate is not imparted pre-selection training under certain circumstances, he would be entitled for promotion without qualifying in the selection process. The conduct of applicant shows that he wanted to undergo pre-selection training at his own convenience and several times he refused to attend such training

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programmes and in these circumstances, we are of the considered view that no case of applicant is made out for promotion to the post of Loco Pilot without qualifying its examination. Even before appearing in the said examination, the applicant did not raise this issue and when the applicant could not qualify the examination, he is pleading that he could not qualify the said examination due to not providing the necessary training before such examination.

11. In view of the above, we do not find any force in this O.A. and is accordingly dismissed. There is no order as to costs.


Member (A)


Member (J)

Manish