

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH:CUTTACK

ORIGINAL APPLICATION NO.184,186/ 2005 & 856/2006

Cuttack this the 13th day of August, 2008

Pradeep Kumar Barik, etc.	Applicants
Vrs.		
Union of India and others	Respondents

FOR INSTRUCTIONS

- 1) Whether it be referred to the Reporters or not?
- 2) Whether it be sent to the Principal Bench, CAT, or not?

(C.R.MOHAPATRA)
ADMINISTRATIVE MEMBER

(K.THANKAPPAN)
JUDICIAL MEMBER

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CORAM:

HON'BLE SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
AND
HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER

...
IN O.A.NO.184/2005

Pradeep Kumar Barik, aged about 31 years, S/o.Pranaballav Barik of Vill-Anakira, PO-Biridi, Dist-Keonjhar – presently working as a Passenger Driver (Loco Pilot) (Passenger G-2), Sambalpur Division, East Coast Railway, Sambalpur

...Applicant

By the Advocates: Mr.S.Samantray
-VERSUS-

1. Union of India represented by the G.M., East Coast Railway, At-Rail Bihar, Chandrasekharpur, Bhubaneswar, Dist-Khurda
2. Asst.Mechanical Engineer, Sambalpur Division, East Coast Railway, At/PO/Dist-Sambalpur
3. Divisional Personnel Officer, East Coast Railway, Sambalpur, At/PO/Dist-Sambalpur
4. Gautam Bandyopadhyay, aged about 39 years, S/o. Haradhan Bandyopadhyay, at present working as Locl Inspector, Sambalpur, East Coast Rly., At/PO/Dist-Sambalpur permanent resident At/PO-Gushkara (Patra Para), Dist-Bardhaman, W.B.
5. Subash Chandra Sarangi aged about 37 years, S/o. Batakrushna Sarangi, at present working as Locl Inspector, STC Kharagpur, At.PO-Panhanga, Via-Niali, PS-Niali, Dist-Cuttack
6. Sudip Kumar Biswas aged about 32 years, S/o.Shaymlal Biswas at present working as Locl Inspector, Sambalpur East Coast Rly, At/PO/Dist-Sambalpur – At-Salua, PO/PS-Chakdah, Dist-Nadia, West Bengal

...Respondents

By the Advocates: M/s.R.C.Rath(Res. 1to3)
Mr.T.Rath(Intervenor)

IN O.A.NO.186/2005

1. K.L.Kumar, aged about 30 years, S/o.K.Raj Kishore, M.I.G. 28, Stage-I, Nilakantha Nagar, Berhampur – presently serving as Power Controller, E.Co.Railays, Chandrasekharpur, Bhubaneswar, Dist-Khurda

2. Utpal Mondal, aged about 38 years, S/o.Late Ajit Kumar Mandal, Chunakhali, Nimtala, Cossiom Bazar, Murswadabad, presently working as Power Controller, E.Co.Railways, Chandrasekharpur, Bhubaneswar
3. S.N.Thakur, aged about 35 years, S/o.late Atulananda Thakur of Village/Post-Srikhanda, Dist-Burdwan, presently serving as Passenger Driver (E.Co.Rlys.), E.Co.Rlys, Sambalpur
4. G.Komuraiah, aged about 32 years, S/o. Rajaiah, PO-Rukmapur, Choppadandi, Dist-Karimnagar, A.P-505 415, Power Controller, E.Co.ailways

...Applicants

By the Advocates: M/s.A.K.Mishra, J.Sengupta,D.K.Panda,Gopal Sinha,Amrit Mishra

-VERSUS-

1. Union of India represented by the G.M., East Coast Railway, At-Rail Bihar, Chandrasekharpur, Bhubaneswar, Dist-Khurda
2. Divisinal Railway Manager, East Coast Railway, Sambalpur Division, Sambalpur
3. Divisional Railway Manager(Mech.), East Coast Railway, Sambalpur, Sambalpur
4. Gautam Bandyopadhyay, aged about 39 years, S/o. Haradhan Bandyopadhyay, at present working as Locl Inspector, Sambalpur, East Coast Rly., At/PO/Dist-Sambalpur permanent resident At/PO-Gushkara (Patra Para), Dist-Bardhaman, W.B.
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...Respondents

By the Advocates: M/s.R.C.Rath(Res. 1 to3)

Mr.T.Rath(Intervenor)

IN O.A.NO.856 OF 2006

Kailash Chandra Mohanta, aged about 32 years, Son of Nakula Mohanta – at present Goods Driver (Loco Pilot, Gr.II), Locl/TIG East Coast Railway, Titilagarh, East Coast Railway Divn, Sambalpur

...Applicant

By the Advocates: M/s.Neelakantha Panda, B.B.Mishra, P.R.Mishra, M.R.Bhera,J.Pattanaik

-VERSUS-



1. Union of India represented through it's General Manager, East Coast Railway, Chandrasekharpur, PO-Chandrasekharpur, Bhubaneswar, Dist-Khurda
2. The Chairman, Locl Inspector,Selection Committee-2005, East Coast Railway, Sambalpur
3. Divisional Personnel Officer, E.Co.Railway, Sambalpur
4. Sri Goutam Bandhopadhyay, Pass Driver, East Coast Railway, Sambalpur Division, Sambalpur
5. Sri Subash Ch.Sarangi, sr.Pass Driver, East Coast Railway, Sambalpur Division, Sambalpur

...Respondents

By the Advocates: M/s.S.K.Ojha

A.K.Sahoo(Res.1 to 3)

Mr.T.Rath(R.4 & 5)

ORDER

MR.JUSTICE K.THANKAPPAN, JUDICIAL MEMBER:

All the above three Original Applications have been filed challenging the selection and appointment for the year 2004-05 to the post of Loco Inspector in the scale of Rs.6500-10,500/- in the Mechanical Department of Sambalpur Division under the East Coast Railway. All these applications are based on various grounds.

2. O.A.No.856 of 2006 though filed against the selection, the applicant instead of challenging the selection, has assailed the promotion given to the Private Respondents as they are not having the requisite qualifications.

3. Since the factual matrix of the O.As, the contentions raised therein and the relief sought are of same and similar nature, all these O.As having been heard together are being disposed of by this common order.

4. The short facts which are necessary for the disposal of all the O.As are as follows. As per Notification dated 16.7.2004, applications were invited by the Respondent-Department to fill up the posts of Loco Inspectors in the pay scale of Rs.6500-10,500/- and as per the above notification, options were also called for from



the willing and eligible Goods/Sr.Goods Driver, Passenger/Sr.Passnenger Drivers, Mail/Express Drivers who are having minimum three years foot plate experience in view of instructions contained in Establishment Sl.No.145/2002. The last date of receipt of applications was fixed to 6.8.2004. In pursuance of the above notification, all the applicants and others filed their respective applications for selection. Accordingly, written tests were conducted on 18.1.2005, 21.1.2005 and 28.1.2005 respectively. All the applicants had also participated in the written test and the candidates who were declared qualified were called for the interview and scrutiny of service records and the Annual Confidential Reports on 30.11.2006 and on that day itself a panel prepared was also approved by the competent authority. Since the names of the applicants were not found place in the panel, the applicants have filed the present Original Applications challenging the method and procedure of selection followed by the Respondent-Department. The applicants have raised the following contentions:

- i) Since the applicants are all employees coming within the feeder cadres, viz., Assistant Driver, Shunting Driver, Goods Driver, Passenger Driver etc. for selection to the grade of Loco Inspectors, they ought to have been selected.
- ii) The selection made by the Respondent-authorities is not in accordance with the rules and regulation followed by the Department as they have not considered some of the letters issued by the Railway Board in the matter of recruitment and selection to the post of Loco Inspectors.



iii) Some of the selected candidates, particularly the private respondents, are not having the requisite qualifications as Goods Driver, besides three years foot plate experience and hence their selection is liable to be quashed.

5. Replying to the above contentions, the Respondent-Department as well as the Private Respondents have filed their respective counters.

6. In the counter affidavit filed for and on behalf of the Respondent-Department, it has been contended that the allegation of the applicants that the selection now made to the post of Loco Inspectors is not in accordance with the rules and regulations followed by the Department is not correct. They have stated that once the applicants have already participated in the selection process they are now estopped from challenging the very process and procedure and/or rules or instructions governing such selection. Further, the Respondent-Department have stated that all the applicants before this Tribunal could not be selected as they were not having the requisite qualifications of three years foot plate experience and therefore, the selection made by the authorities is legally sustainable.

7. This Tribunal heard the learned counsel appearing on behalf of the applicants, the learned counsel appearing on behalf of the Respondent-Department as well as the learned counsel appearing on behalf of the Private Respondents in all the three O.As. and perused the materials on record.

8. The main thrust of contention raised by the learned counsel for the applicants is that the selection now made to the post of Loco Inspectors is not based on the procedure adopted for such selection nor is it in accordance with the rules and



regulations followed by the Railway Board, as all the selected candidates are not having the requisite qualifications as per the notification issued by the Respondent-Department. If so, the entire selection is liable to be quashed and the Respondent-Department should be directed to conduct another selection test wherein the applicants should also participate.

9. The learned counsel appearing on behalf of the Respondent-Department including the private respondents have raised their contention that once the selection is over following the procedure prescribed by law adopted by the Selection Committee, the applicants are estopped from challenging the same. The learned counsel for the Respondents further contended that as per the judgment of the Apex Court in *Madan Lal & Ors. vs. State of Jammu & Kashmir & Ors.* reported in AIR 1995 SC 1088, once a person participated in a selection process, he is estopped from challenging the said selection process. Further, the learned counsel for the Respondents submitted that the selection so made was for the year 2004-05 and having the said selection process been over already, it is belated to challenge in the year 2005 and 2006 and therefore, the Tribunal should not entertain the claim of the applicants at all.

10. After considering the contentions raised by the learned counsel appearing on either side and on perusing the relevant rules governing the selection and appointment of Loco Inspectors, this Tribunal is to decide whether the applicants are entitled to any relief as claimed in the present O.As.

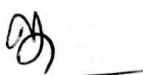
11. As per the instructions issued by the Railway Board (Annexure-R/1) for filling up vacancies of Loco Inspectors, it is mandatory that a candidate should have three years foot plate experience. Annexure R/2, the guidelines laid down by the Railway



Board contain the method of selection and stages of selection process which are quite elaborate. Having participated in the selection test and having been considered through the process and procedures as prescribed in Annexures R/1 and R/2, we are of the view that the applicants are not entitled to challenge the selection process followed and adopted by the Selection Committee. It is pertinent to note that having acknowledged the entire clauses in Annexure-R/1 and Annexure R/2, the applicants had appeared at the written test. With regard to selection of some non-experienced candidates, the learned counsel for the Respondents invited the attention of this Tribunal to the instructions of the Railway Board, which read as follows:

“An instance has been brought to the notice of Board that in a selection held for filling up vacancies of Loco Inspectors on one of the Railways, a candidate though a Passenger Driver was not having 3 years of foot-plate experience. The issue has been examined by the Board. In view of the duties to be performed by the Loco Inspectors, adequate foot-plate experience for them is considered necessary. It has, therefore been decided that henceforth, Goods/Sr.Goods Drivers, Passenger/Sr.Passenger Drivers and Mail/Express Drivers having a minimum combined three years foot-plate experience as Goods/Sr.Goods Drivers, Passenger/Sr.Passenger Drivers/Mail/Express Drivers would only be considered for the post of Loco Inspectors”.

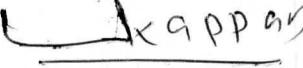
12. Having regard to the above position of instructions issued by the Railway Board the contention of the learned counsel for the applicants that some of the selected candidates are not having the requisite experience cannot be considered at this stage and it is left to the authorities to satisfy themselves as to whether the candidates so selected are having the requisite qualifications or not. In the circumstances, as we have already held above that unless and until the applicants have a right to challenge the selection, all the Original Applications are liable to be dismissed. Since the selection



in question was for the year 2004-05, the delay occurred may not be a good reason. But as per the settled principles of law the applicants are estopped from challenging the selection process. On the question of selection of non-experienced candidates to the grade of Loco Inspectors, as averred in O.A.No.856/06, we are of the view that if any such candidate has been selected, empanelled and/or appointed, it is left to the Respondent-Department to consider as such and if they are not entitled for any selection on the question of experience, the matter shall be considered according to law.

13. With the above observation, all the three Original Applications stand dismissed being devoid of any merit. No costs.


(C.R.MOHAPATRA)
ADMINISTRATIVE MEMBER


(K.THANKAPPAN)
JUDICIAL MEMBER