

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

O.A.NOS. 217, 218 AND 219 OF 2006
Cutack, this the 16th day of November, 2009

CORAM:

HON'BLE SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
AND

HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER
.....

In OA No. 217 of 2006

Sri Satyanarayan Pattanayak, aged about 38 years, son of Balaram Swain, Village Nilapalli, P.O. Kulasar, P.S.Rajranpur, Dist. Nayagarh, presently working as Loco Pilot Grade II Goods under the Chief Crew Controller, Khurda Road, At/PO/PS-Jatni, Dist.Khurda

In OA No. 218 of 2006

Rajat Kumar Mohanty, aged about 38 years, son of Banchhanidhi Mohanty, At/PO/PS Tangi, Dist.Khurda, presently working as Loco Pilot Grade II Goods under the Chief Crew Controller, Khurda Road, At/PO/PS-Jatni, Dist.Khurda

In OA No.219 of 2006

Laxmikanta Giri, aged about 37 years, son of Krutibas Giri, At/PO Nabara, P.S.Singla, Dist.Balasore, presently working as Loco Pilot Grade II Goods under the Chief Crew Controller, Khurda Road, At/PO/PS-Jatni, Dist.Khurda

Applicants

Advocate for applicants - M/s.Bimbisar Dash & S.K.Nayak

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In all the O.As.

1. Union of India, represented through the General Manager, East Coast Railway, Rail Vihar, Chandrasekharapur, Bhubaneswar.
2. Sr.Divisional Personnel Officer, office of the Divisional Railway Manager (P), East Coast Railway, Khurda Road, At/PO/PS-Jatni, Dist.Khurda.
3. Divisional Railway Manager, East Coast Railway, Khurda Road, At/PO/PS-Jatni, Dist. Khurda..... Respondents

Advocate for respondents - Ms.S.L.Pattnaik

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ORDER
JUSTICE K.THANKAPPAN, JUDICIAL MEMBER

Since the questions raised and the facts based on which the Original Applications have been filed are same, these O.As. have been heard together and are disposed of by this common order.

2. The applicants in these O.As. are now working as Loco Pilots, Grade II (Goods) in the Railways. By a notification dated 07.07.2005 issued by the Senior Divisional Personnel Officer, East Coast Railway, Khurda Road Division, options were called for from eligible Loco Running Staff to appear at the test for selection to form a panel of six (UR-04, SC -1 & ST-1) candidates for promotion to the post of Loco Running Supervisor, i.e., Loco Inspector. As per the said notification, Loco Pilots (Goods) Grade II in the pay scale of Rs.5000-8000/- (RSRP) with three years of experience as Loco Pilot (Goods)/Goods Driver, are eligible to apply for selection to the post of Loco Inspector. However, consequent upon cancellation of the said notification dated 07.07.2005, the Senior Divisional Personnel Officer issued a fresh notification on 09.11.2005, in which it was inter alia stipulated that Loco Pilots (Goods) Grade II in the pay scale of Rs.5000-8000 (RSRP) with minimum combined three years Footplate Experience as Goods/Senior Goods Drivers were eligible to apply for selection. On the basis of the said notification, options/applications were invited and scrutinized and the

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selection was to be conducted for the post of Loco Inspector to form a panel of candidates for promotion to the post of Loco Inspector. It is stated by the applicants that in terms of the Railway Board's letter dated 29.11.2004, only two years' service experience as Loco Pilot (Goods) Grade II is the eligibility criteria for selection to the post of Loco Inspector. The applicants have stated that since they have already put in two years of service as Loco Pilots (Goods) Grade II by 30.11.2005, non-inclusion of their names in the list of candidates called upon to appear at the written test is illegal. The applicants have, therefore, filed these O.As. commonly praying that the notification dated 9.11.2005 (Annexure A/14) and the notice dated 09/10.01.2006 publishing the list of eligible candidates and scheduling the dates of written test, be quashed. Further it has been prayed that the Respondents be directed to honour the decision of the Railway Board which has been taken and reflected in the letter dated 29.11.2004 and to allow the applicants to be considered for selection to the post of Loco Inspector taking their experience of more than two years into consideration.

3. The O.As. have been admitted by this Tribunal. At the time of admission this Tribunal passed an interim order on 14.3.2006 directing the Respondents to allow the applicants to take the test (in course of the recruitment for the post for the vacancies in the post of Loco Running Supervisor/Loco Inspector) that is going to commence from 17th March

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2006. The said interim order dated 14.3.2006 has been modified by an order dated 14.9.2006 by giving liberty to the Respondents to publish the result of examination and proceed with the recruitment except in respect of the applicants and further making the selection and appointment subject to the decision of the O.As.

3. Pursuant to the notices issued by this Tribunal, the Respondents have filed their reply statements in which the Respondents have strongly refuted the stands taken by the applicants. The Respondents have stated that in terms of the decision of the Railway Board contained in their letter dated 7.10.2002 Goods/Sr.Goods Drivers, Passenger/Sr.Passenger Drivers and Mail/Express Drivers having a minimum combined three years footplate experience as Goods/Sr.Goods Drivers, Passenger/Sr.Passenger Drivers/Mail/Express Drivers are only to be considered for the post of Loco Inspector. It has been specifically stated that since the applicants, who were appointed/promoted as Loco Pilots (Goods) Grade II w.e.f. 13.2.2003, having not put in three years of service in the said grade by 30.11.2005, i.e., the cutoff date prescribed in the notification dated 9.11.2005, are not eligible to be considered for selection to the post of Loco Inspector and therefore, the action of the Respondents in not including the applicants in the eligibility list of candidates remains unassailable.

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4. We have heard the learned counsel for the parties and perused the materials placed before us.

5. Shri B.Dash, the learned counsel for the applicant, reiterated the grounds urged in the O.As. and further submitted that since the applicants were eligible for selection to the post of Traction Loco Controller and Loco Inspector, vide Annexure A/5 dated 11.02.2005 and Annexure A/6 dated 7.7.2005 respectively read with the Ministry of Railway's letter dated 29.11.2004 (Annexure A/4), the applicants ought to have been called upon to appear at the written test to be held on 17.3.2006. This contention of Shri Dash is based on the notification dated 29.11.2004. Shri Dash also submitted that Annexure A/6 notification dated 7.7.2005 prescribes only three years experience as Loco Pilot (Goods) Grade II as on the date of notification whereas Annexure A/3 prescribes only three years experience as Driver for promotion to the post of Loco Running Supervisors. Shri Dash further submitted that as per Annexure A/4, a minimum of two years service is required to be completed in the immediate lower grade for promotion within Group C and since the post of Loco Inspector is within Group C, the applicants having been promoted as Goods Drivers years back, the insistence on Foot Plate Experience of three years is irregular and illegal and is not in accordance with the rules for promotion to the post of Loco Inspector. The further case of Shri Dash, the learned counsel is that a similar

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question was raised before Chandigarh Bench of the Tribunal and Hon'ble High Court of Punjab & Haryana, as reflected in the judgment dated 21.8.2007 passed by the Hon'ble High Court of Delhi in W.P. (C) No. 8515-17 of 2006, filed against the decision of the CAT, Principal Bench. The judgment passed by the Hon'ble Delhi High Court was challenged before the Hon'ble Apex Court and the SLP was dismissed. As per the judgment as upheld by the Hon'ble Apex Court, the requirement of Foot Plate Experience for three years is unsustainable. The further argument of the learned counsel for the applicants is that some of the candidates enlisted in Annexure A/15 do not have the required three years Foot Plate Experience and therefore, non-inclusion of the names of the applicants being discriminatory is bad and illegal and liable to be quashed.

6. To the above arguments, Ms. S. L. Pattnaik, the learned counsel appearing for the Respondents contended that even though Annexure A/6 notification was issued on 7.7.2005 stipulating three years service in the category of Loco Pilot/Driver as on the date of notification, no selection was made on the basis of the said notification. The said notification dated 7.7.2005 was superseded by Annexure A/14 notification in which as per the Railway Board's decision, three years combined footplate experience in the category of Loco Pilot/Driver was stipulated to be the eligibility condition to be reckoned as on 30.11.2005.

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Ms. Pattnaik invited the attention of this Tribunal to the Estt. Srl. No. 145/2002, RBE No. 180/2002, containing the Railway Board's letter No. E(P&A)II-93/RS-10, dated 07.10.2002 (Annexure R/8), in which the Railway Board insisted that Passenger/Sr. Passenger Drivers and Mail/Express Drivers having a minimum combined three years footplate experience as Goods/Sr. Goods Drivers, Passenger/Sr. Passenger Drivers/Mail/Express Drivers would only be considered for the post of Loco Inspectors. Further Ms. Pattnaik contended that Annexure A/4 is not applicable to the case of selection to the post of Loco Inspector. According to her, Annexure A/4, relied on by the learned counsel for the applicant, is only meant for promotion to the post of Driver and not to the post of Loco Inspector. The learned counsel further submitted that the contention of the applicants that some of the persons enlisted vide Annexures A/15 are not having the footplate experience cannot be considered by this Tribunal as they are not parties to this O.A. and that apart the Selection Committee have to see as to whether any candidate is lacking the stipulated experience or not. Hence there is no violation of Article 14 of the Constitution of India. As regards the decisions of the Hon'ble Punjab & Haryana High Court and the Hon'ble Delhi High Court as upheld by the Hon'ble Apex Court, the learned counsel for the Respondents submitted that those decisions are not applicable to the instant case.

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7. We have anxiously considered the contentions of the learned counsel for the parties. The question to be considered is whether the applicants are justified in praying for the relief as they sought in the O.As. or not. Admittedly, the applicants are Loco Pilots (Goods) Grade II in the Railways. As per the stipulation contained in Annexure A/14, three years' Footplate Experience for a Loco Pilot (Goods) Grade II is required to make him eligible to be considered for promotion to the post Loco Inspector. The contention of the learned counsel for the applicants on this aspect is that Annexures A/2, A/3 and A/4 prescribe only experience in the feeder category as the eligibility condition without insisting on Footplate Experience. In this context, it is relevant to quote Annexure A/4, the Railway Board's letter dated 29.11.2004 as under:

“Sub: Relaxation of two years residency period in the case of running staff.

In terms of extant procedure regulating promotion of staff within Group C, a minimum of two years service is required to be completed in the immediate lower grade for promotion. This requirement can be relaxed by GMs personally in all categories, except in the case of running categories, to one year wherever such relaxation is found to be inescapable in the interest of administration.

The staff side in the DC-JCM have raised a demand for relaxation of two years residency period in the immediate lower grade for promotion of Drivers also. The matter has been carefully considered by the Board after obtaining the views of the Railways. It has been decided that the two years service condition may be relaxed for promotion of Drivers also with the personal approval of the General Manager wherever such relaxation is found to be inescapable in the interest of administration subject to condition of fulfillment of one year's service in the immediate lower grade or a foot plate experience of 40,000 Kms whichever is later. The Board



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have also decided that the working of Drivers so promoted with relaxation should be monitored more closely by Loco Inspectors.

3. It has been further decided that in order to obviate the need of granting relaxation in such an important safety category post, the Railways should take adequate measures like advance planning for the running cadre including recruitment and timely selections and promotions."

Reading of the above would show that the contention of the learned counsel for the applicants is misplaced as it does not relate to the promotion to the post of Loco Inspector, but to the post of Driver. Further, Annexure A/4 itself would indicate that the working of such Drivers so promoted with relaxation should be monitored more closely by Loco Inspectors, which means that provisions contained in Annexure A/4 are not applicable to the case of selection to the post of Loco Inspector. The next point to be considered is whether Annexure A/5 could be pressed into service on the question of selection to the post of Loco Inspector. We have already found that Annexures A/3 and A/4 have no application to the instant case. Annexure A/5 dated 11.2.2005 is only with regard to the eligibility criteria for the post of Traction Loco Controller. It inter alia speaks about two years service experience as Loco Pilots (Goods/Passenger/Mail) for promotion to the post of Traction Loco Controller and therefore, has no application to the instant case. As Annexure A/6 notification dated 7.7.2005 has admittedly been cancelled, the reliance placed by the learned counsel for the applicants on the same has no relevance. It has to be examined as to

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whether the eligibility condition of 'a minimum combined 3 (three) years Footplate Experience as Goods/Sr.Goods Driver, Passenger/Sr.Passenger Driver/Mail/Express Driver, as prescribed in the notification dated 9.11.2005, is sustainable in the light of the decisions of the Railway Board. In support of the said stipulation of eligibility condition, the Respondents have relied on the Railway Board's letter 7.10.2002 (RBE No.180/2002) which is quoted below:

"An instance has been brought to the notice of the 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 Loco Inspectors, adequate foot-plate experience for them is considered necessary. It has, therefore, been decided that hence forth, Goods/Sr.Goods Drivers, Passenger/Sr.Passenger Drivers and Mail/Express Drivers having a minimum combined three years footplate experience as Goods/Sr.Goods Drivers, Passenger/Sr.Passenger Drivers/Mail/Express Drivers would only be considered for the post of Loco Inspectors.

2. Accordingly, item Nos. (i) & (ii) of para 3.4 of letter No. E(P&A)II-83/RS-10 (iv) dated 25.11.1992 and item No.(i) of Para 1 of letter No. E(P&A)II-83 RS-10(iv) dated 16.5.1996 would stand modified to the above extent. The above modification will not be applicable in cases where selection process has already been initiated in terms of the instructions contained in Board's letter dated 25.11.1992 *ibid.*"

From the above it is clear that cancellation of Annexure A/6 notification is based on the policy decision of the Railway Board modifying their earlier decisions contained in the letters dated 25.11.1992 and 16.5.1996.

It is in consonance with the decision of the Railway Board that the fresh notification (Annexure A/14) has been issued stipulating three years

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Footplate Experience as the eligibility criterion. In OA No.533/HR/2003, *Dilraj Singh & ors vs. Union of India and others*, decided by the Chandigarh Bench of the Tribunal on 20.1.2004, the applicants were promoted to the post of Passenger/Goods Drivers and after working in the same capacity, were selected to the post of Power Controller/Crew Controller/Traction Loco Controller for a tenure of three years. When they were debarred from appearing at the written test and viva voce for selection to the post of Loco Inspector on the ground of their lacking three years Footplate Experience, they had approached Chandigarh Bench of the Tribunal. The Tribunal by their order dated 20.1.2004 directed the Respondent-Railways to consider the tenure of the applicants as Power Controller/Crew Controller/Traction Loco Controller for the purpose of counting Footplate Experience required for the post of Loco Inspector and to allow them to participate in the departmental examination for selection to the post of Loco Inspector. It is thus clear that the applicants before Chandigarh Bench of the Tribunal had worked as Goods/Passenger Drivers and Power Controller/Crew Controller/Traction Loco Controller for more than three years by the prescribed date. The said order passed by Chandigarh Bench was upheld by the Hon'ble High Court of Punjab & Haryana. In O.A.No.1041 of 2005 decided on 6.2.2006 and O.A.No.1669 of 2005 decided on 16.12.2005 by the Principal Bench of the Tribunal, which gave rise to

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W.P. (C) No. 8515-17 of 2006 (Union of India and another v. Rakesh Kumar & others) and W.P. (C) No. 4539-41 of 2006 (Union of India and another v. Ashok Kumar and others) decided on 10.9.2007, the applicants were appointed/promoted as Goods/Passenger Drivers and after working in the said grade, were screened and posted as Power Controller/Crew Controller/Traction Loco Controller. When they were debarred from participating in the selection process for the post of Loco Inspector, they had approached the Tribunal. The Tribunal having allowed the claim of the applicants, the Railways filed writ petitions before the Hon'ble Delhi High Court. Their Lordships in para 17 have clearly observed as follows:

"17. Firstly, we find that the respondents had gained Footplate Experience for about 8 to 10 years since they were working as Diesel Assistants/Drivers since their appointments in 1988-1991. The Tribunal has specifically dealt with, and rejected, the submission of the petitioner herein in this respect in Dilraj Singh (supra). The respondents would have to participate in the selection process consisting of a written test and a viva voce, and only on their coming out meritorious, would they be promoted as Loco Inspectors. Even the petitioner considered that experience as sufficient for granting ad hoc promotions to some of the respondents as Loco Inspectors. It cannot be said that for purposes of granting ad hoc promotions, and working as Loco Inspectors on ad hoc basis, the respondents need not have satisfied the requirement of experience, while the said requirement of experience is necessary for granting regular promotions. The nature of duties and responsibilities remain the same whether one works in ad hoc capacity or in substantive capacity. It is not even the petitioner's case that those Controllers who had been granted ad hoc promotions, and who did not have the requisite three years Footplate Experience as Drivers, were in any way found deficient in discharge of their duties as Loco Inspectors. From the

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aforesaid, it appears that the claim of the petitioner that the experience of three years on Footplate as Drivers is non-negotiable, does not appear to be justified."

From the reading of the above, it is clear that the applicants in the O.As. before the Principal Bench and the respondents in the writ petition before the Hon'ble Delhi High Court had the Footplate Experience for more than three years, having worked as Drivers for more than 8 to 10 years. The SLPs filed against the said decision of the Hon'ble High Court of Delhi have been dismissed. In the instant case, by the cutoff date, i.e., 30.11.2005, the applicants, who were appointed/promoted to the post of Loco Pilot (Goods) Grade II w.e.f. 13.02.2003, did not put in three years service as Loco Pilots (Goods) Grade II and, therefore, they cannot be said to have gained three years Footplate Experience. In view of this, we hold that the decisions of Chandigarh Bench and Principal Bench and that of the Hon'ble Punjab & Haryana High Court and Delhi High Court (supra) are not applicable to the present case in as much as the facts of those cases and the instant case are totally distinguishable.

8. In consideration of all the above, we hold that the Original Applications are devoid of merit. The Original Applications are accordingly dismissed. The interim orders passed by the Tribunal stand vacated. No costs.

Sd/-
Member (A)

Sd/-
Member (D)