

O.A.Nos.598 & 724 of 2006

Cuttack, this the 11<sup>th</sup> of May, 2010

C O R A M:

THE HON'BLE MR.M.R.MOHANTY, VICE-CHAIRMAN

A N D

THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

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OA No.598 of 2006

1. Satyanarayan Pattanayak, aged about 37 years, S/o.Balaram Swain.
2. Chittaranjan Nayak, aged about 37 years, Son of Late Laxmidhar Nayak.
3. Rajat Kumar Mohanty, Aged about 37 years, Son of Banchhanidhi Mohanty.
4. Laxmikanta Giri, aged about 37 years, son of Late Krutibas Giri.  
Duryodhan Pradhan, aged about 38 years, So of Nakula Pradhan;
5. Biswaranjan Mishra, aged about 40 years, So of Late Purusottam Mishra;
6. Ranjit Kumar Behera, aged about 34 years, son of Harischandra Behera;
7. Sk. M.Mustafa, aged about 41 years, so of Late Sk.Abdul Rauf.;
8. Nishakar Samal, aged about 39 years, son of Late Jayadev Samal;
9. Sarat Kumar Mohanty, aged about 40 years, son of Narayan Mohanty;
10. Rabindra Kumar Palai, aged about 40 years, Son of Dhoba Palai;



12. Manas Ranjan Swain, aged about 37 years, Son of Netrananda Swain;
13. Ashok Kumar Mohanty, aged about 37 years, Son of Nabakishore Mohanty;
14. Balaram Nayak, aged about 36 years, Son of Govinda Nayak;
15. Siba Kumar Acharya, aged about 40 years, son of Manmohan Acharya;
16. Madhusudan Baliarsingh, aged about 36 years, Son of Laxman Baliarsingh;
17. Koraprasad Gouda, aged about 29 years, Son of Dhabaleswar Gouda;
18. Prasanta Kumar Mohanty, aged about 39 years, Son of Prafulla Chandra Mohanty, all are working as Loco Pilot (G)-II, STN-KUR office of the Chief Crew Controller, East Coast Railway, Khurda Road.

.....Applicants

Legal practitioner : M/s.Bimbisar Dash,  
Chinmay Patra.

- Versus -

1. Union of India represented through its General Manager, East Coast Railway, Chandrasekhpur, Rail Bihar, Bhubaneswar, Dist. Khurda.
2. Chief Personnel Officer, East Coast Railway, Chandrasekhpur, Rail Vihar, Bhubaneswar, Dist. Khurda.
3. Senior DPO, Khurda, East Coast Railway, Khurda Road Division, At/Po-Jatni, Dist. Khurda.
4. Chief Electrical Engineer, East Coast Railway, Chandrasekhpur, Rail Vihar, Bhubaneswar, Dist. Khurda.



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5. K.P.Kanungo, TLC;
6. Prasanta Kumar Mohanty, TLC;
7. B.N.Behera, TLC;
8. A.K.Lenka, TLC;
9. Pravat Kumar Mohanty, TLC;
10. S.K.Panda, TLC;
11. B.K.Das, TLC;

Respondent Nos. 5 to 11 are working in the Electrical Division in Head quarters at East Coast Railway, Chandrasekharpur, Rail Vihar, Bhubaneswar.

....Respondents

Legal Practitioner :Mr.G.Singh

[for Respondents 1 to 4]

Legal Practitioner: M/s.A.K.Mishra,J.Sengupta,

D.K.Panda,G.Sinha, A.Mishra,

[for Respondents.5 to 10]

OA No.724 of 2006

1. Babin Kumar Dash, aged about 40 years,, Son of Late Alekh Chandra Das, Elect. Goods Driver, East Coast Railway, Chandrasekharpur, Bhubaneswar.
2. Srimanta Kumar Panda, 40 years, son of Madhabananda Panda of Lingipur, PO.Sisupalgarh, Bhubaneswar-2, presently serving as TLC at Head quarters, East Coast Railway, Chandrasekharpur, Bhubaneswar.
3. Akshaya Kumar Lenka 41 years, son of Late Bhaskar Chandra Lenka of Tentuligadia, PO.Charampa Dist. Bhadrak, presently working as TLC, East Coast Railway, Chandrasekharpur, Bhubaneswar.

16

4. Pravat Kumar Mohanty, 38 years son of Khagesh Chandra Mohanty of Pariapatpur, PO.Kakarudrapur, Dist. Khurda.

5. Prasanta Kumar Mohanty, 40 years, son of GC Mohanty, Kuradhamalla, PO. Dalaiput, Khurda, son of GC Mohanty, Kuradhamalla, PO. Dalaiput, Khurda.

6. Khiresh Prasad Kanungo, 41 years, son of Gajendra Kanungo, Sibajinagar, Tulasipur, Cuttack.

7. Baikunthanath Behera, 41 years, son of Purna Ch. Behera, Kujang, Dist. Jagatsinghpur.

Petitioner Nos. 4 to 7 are working as TLC, at Headquarters, East Coast Railways, Chandrasekharpur, Bhubaneswar.

.....Applicants

Legal practitioner : M/s. Aswini Kumar Mishra, Jayadev Sengupta, D.K.Panda, G.Sinha, A.Mishra.

- Versus -



1. Union of India represented through its General Manager, East Coast Railway, Chandrasekharpur, Rail Bihar, Bhubaneswar, Dist. Khurda.

2. Chief Personnel Officer, East Coast Railway, Chandrasekharpur, Rail Vihar, Bhubaneswar, Dist. Khurda.

3. Chief Electrical Engineer, East Coast Railway, Chandrasekharpur, Rail Vihar, Bhubaneswar, Dist. Khurda.

.....Respondents

Legal Practitioner : M/s.R.N.Pal,K.Mohapatra,M.M.Mishra.

- 5 -

ORDER

17

MR. C.R.MOHAPATRA, MEMBER (A):-

Since prayers made in both the OAs are inter connected, though we heard the matter one after the other, we propose to dispose of these OAs through this common order which will govern both the cases.

2. There are 18 Applicants in OA No.598 of 2006. All of them are working as Loco Pilot (G)-II, STN-KUR, Office of the Chief Crew Controller, East Coast Railway, Khurda Road. Their grievance in nutshell is that in Annexure-1 dated 21.07.2007, the Assistant Personnel Officer (Staff)/E.Co.Railway notified eight vacancies of Loco Inspectors of Electrical Department directing the DRMs of three Railway Divisions of ECoRly to forward the names of volunteers who have five years experience as Loco Pilot-I (Pass), Loco Pilot-II (Pass) and Loco Pilot-II (Goods) for consideration. By order under Annexure-2 dated 02.08.2006 the eligibility criteria of experience of five years were changed to three years. As all the applicants had acquired three years foot plate experience they having been promoted to the post of

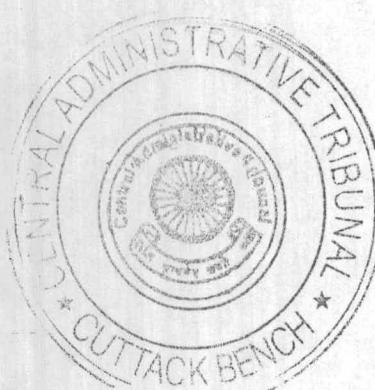


Loco Pilot w.e.f. 13.02.2003, submitted their application pursuant to the Notification under Annexure-1. The Assistant Personnel Officer (Staff) published a list under Annexure-4 showing names of seven persons as eligible to participate in the selection. Applicants' name did not find place in the said list, they approached this Tribunal in this OA filed under section 19 of the A.T. Act, 1985, seeking the following relief:



- "(i) The Original Application may be allowed;
- (ii) The order dated 14.08.2006 may be quashed;
- (iii) The applicants may be declared eligible to appear in the test;
- (iv) The Respondents may be directed to allow the Applicants to be considered for the post of Loco Inspector;
- (v) Such other order(s)/Direction(s) may be issued in giving complete relief to the applicants."

3. It is their contention that the ECoRailway was formed consisting of three Divisions namely, Khurda Road, Sambalpur and Waltair. The seven candidates whose names are shown at Annexure-4 to appear at the test, do not belong to any of the three Divisions of the Railway nor their seniority is maintained in any of the Divisions. They belong to other Railways and their seniority is maintained in their respective Railways where they are



7  
19

working whereas all the Applicants were having the pre requisite qualification and three years foot plate experience thereby becoming eligible to appear at the test for the promotion to the post of Loco Inspectors in Electrical Department of ECoRly. As such the cases of the Applicants ought not to have been ignored by the Respondents with a view to accommodate the Respondent Nos.5 to 11 by changing the eligibility criteria through another notification after the first notification was issued. In essence it is the contention of the Applicants that Respondents 5 to 11 are not at all eligible to apply and appear at the said test being not the employees of any of the three divisions of the ECoRly. They may get seniority in a particular cadre for their arbitrary manner of retrospective absorption but certainly such retrospective promotion cannot entitle them to claim to have the practical experience making them eligible to face the test for promotion to the post in question.

4. In the counter filed by the departmental Respondents, it has been contended that to fill up the eight vacancies (UR-6, SC-1, ST-1) in Loco Inspectors, a decision was taken to conduct the

selection test on 29.06.2006. The date for selection was fixed on 19.08.2006. But due to certain administrative inconvenience/constraints the scheduled date of selection was changed to 19.08.2006 thereafter to 09.09.2006. Test was conducted in which applicants were allowed to participate but the result could not be published in compliance of the order of this Tribunal dated 22.08.2006. So far as the specific allegation of the applicants that respondents Nos.5 to 11 though not belonging to any of the divisions of ECoRly, their applications were entertained by the Respondents to allow them to participate in the selection test was bad in law, it is the contention of the respondents that in view of formation of new zone staff were drafted on option basis to work as Traction Loco Controller till such time regular incumbents became available. The lien of such Traction Loco Controllers is being maintained in their parent Railway. Question of regular selection and posting of Traction Loco Controllers and Loco Inspectors (Electrical/Mechanical) has been actively taken up by the Head quarters of this Railway. It has further been contended that the selection was conducted in





-9-

81

accordance with the Railway Board's instruction RBE No.180/2002. In paragraph 8 of the counter, it has been admitted by the Respondents that out of eighteen applicants seven applicants have the requisition qualification of three years foot plate experience and were coming within the zone of consideration but rest eleven applicants did not have the required foot plate experience but they have been allowed to appear at the test in compliance of the interim order of this Tribunal. It has been contended that in the circumstances as the applicants have got their relief claimed in this OA this OA is liable to be dismissed.

5. The Applicants have filed their rejoinder in which emphasis is given by them to the effect that respondents 5 to 11 having been brought on loan from other Divisions could not have been included in the list to appear at the test. Further it is contended that three years foot plate experience so as to come into zone of consideration cannot be insisted by the respondents as statute requires only two years experience when the promotion is within Group C. Accordingly, applicants questioned the declaration of

ineligibility of eleven applicants on the ground of non-fulfillment of the conditions.

6. Private Respondents 5 to 11 filed their counter. Besides the points taken by the Departmental Respondents in their counter, it has been contended by them that the plea of the applicants that they are not the employees of the ECoRly is blatant lie only to subterfuge the whole issue. It is the positive case of the Respondents 5 to 11 that the staffs who are working as Traction Loco Controller in the E.Co.Zonal Headquarters have been brought as per Railway Board's option transfer during the Zone formation. Since they have come from the running category the administration was in dilemma for their fixation of lien either in the Division or at the Headquarters and after consultation with both the union of the zone decided to regularize the seven TLCs in the ECoRly headquarters from the date of their joining in the ECoRly as they have joined the ECoRly on option basis to work in the new zonal headquarters only. Their lien was also cut off from their parent railway i.e. from S.E.Railway/S.E.C.Railway. It was contended by the Respondents 5 to 11 that the applicants have



underplayed the importance of safety in the running of trains. Loco Inspectors are supposed to counsel train Drivers about safe running of trains. Such counseling can be given by Loco Inspectors who are having both experience and practical knowledge of running trains safely and hence three years foot plate experience has been made as essential requirement for the post of Loco Inspector. Accordingly, Respondents 5 to 11 opposed the prayer of the applicants.

7. By filing separate Original Application No. 724 of 2006 the seven Applicants who are the Respondents 5 to 11 in OA No. 598 of 2006 have prayed the following relief:

"to direct the Ops to absorb the petitioners as Loco Inspector in the Headquarters establishment or in the alternative direct the Ops to consider the case of the petitioners for promotion when their juniors were promoted in Khurda Road Division, Sambalpur Division and Waltier Division, Sambalpur Division and Waltier Division taking into consideration the continuous service of the petitioners in the rank/cadre; AND

To direct the OPs that person those who are continuing in the Divisional cadre are not entitled to be considered for the Post of Loco Inspectors available in the Headquarters establishment which has been made by way of re-designation."

8. In the said OA No. 724 of 2006 it is the stand of the Respondents that when a new establishment is created in Railway, staff from different





24 12

divisions and zones are drafted on option to manage the office in which they have to work (in the new establishment) and keeping their lien in their parent organization as in the present case. However, after full-fledged functioning of the ECoRly after being trifurcated from S.E.Railway, a joint meeting was conducted on 13.12.2005 in the presence of the two recognized Unions and consequently all the applicants have been absorbed in the higher grade post of TLC and regularized w.e.f. 01.11.2003 vide office order dated 21.02.2008. It has been stated that as the Loco Inspectors are supposed to counsel train drivers about safety running of trains and such counseling can be given by Loco Inspectors who are having both experience and practical knowledge of running trains safely and hence as a matter of policy it was decided by the competent authority that instead of automatic promotion to Loco Inspector as claimed by the applicant, the same should be done by way of positive act of selection by giving opportunities to all other eligible running staff of ECRly zonal HQs and divisions. The Respondents vehemently denied the allegations made by applicants in paragraphs 4.24 to 4.28 of the

Original Application. It has been stated by the Respondents that it is true that bull has two horns and it is also true that when he attacks anybody he uses his two horns. But in this case ECoRly is not a bull rather a cow and in Hindu Shastra we call cow as mother and it is widely known to everybody the role/duty of the mother. Accordingly, Respondents have prayed for dismissal of this OA.

9. Learned Counsel appearing for both sides have reiterated the stand taken in their respective pleadings and after giving in-depth consideration to each of their submissions, perused the materials placed on record. In view of the above, we do not think it necessary to burden this order by recording the arguments advanced by Learned Counsel for both sides which are nothing but reiteration of the contentions taken in their respective pleadings. In view of the stand taken by the Respondents we also see no difficulties in taking a firm view in the matter that in view of the order dated 21.02.2008 regularizing the services of the Respondents 5 to 11 in OA No. 598 of 2006 retrospectively w.e.f. 01.11.2003, the challenge made by the Applicants in OA No.598 of 2006 that



26

Respondent Nos. 5 to 11 being not the regular employees of any of the Divisions of ECoRly ought not to have been permitted to participate in the selection is not sustainable and consequently inclusion of their names in the list of candidates to participate in the selection is held to be valid. Similarly it has been admitted by the Respondents that out of 18 Applicants seven were having the eligibility criteria of three years foot plate experience. Through rejoinder the Applicants have stated that three years foot plate experience is not necessary as the posts come under the Group 'C'. This submission of the Applicants is refuted by the Respondents, relying on the specific provision of the notification. Be that as it may, the Applicants have not challenged the notification stipulating the condition that one must have three years foot plate experience to be eligible to apply/appear at the test. As such, we do not agree with such contention of the applicants that three years foot plate experience is not required. It is for the competent authority to decide what should be the criteria of selection for such a sensitive position.

10. Likewise, after the order dated 21.02.2008 regularizing the services of the Applicants





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in OA No. 724 of 2006 and in view of the policy decision of the Railway to fill up the posts of Loco Inspector by way of positive act of selection, we do not find any justification to grant this prayer of the Applicants to absorb as Loco Inspector. Hence, this prayer of the applicants is rejected. Their alternative prayer is to direct the Ops to consider them for promotion when their juniors were promoted in Khurda Road Division, Sambalpur Division and Waltier Division, taking into consideration their continuous service in the rank/cadre. This prayer is also not sustainable as per the conscious policy of the Respondents to fill up the posts of Loco Inspector by a positive act of selection. The applicants, pursuant to the notification made by the Respondents, having applied for the same appeared at the test and hence are estopped to seek direction for promotion by absorption straightforward. They have to abide by the result of such selection. The Applicants cannot approbate and reprobate by seeking direction to consider their cases for Divisional Cadres and at the same time seeking direction not to consider the Divisional cadre employees against Headquarters

vacancies. As such, this prayer of the Applicants is held to be without any merit and is thus, rejected.

11. In the light of the discussions made above, the Respondents having admitted that out of 18, seven applicants in OA No. 598 of 2006 fulfilled the conditions and in compliance of the orders of this Tribunal all of the applicants participated in the test, the Respondents are now required to publish the result of the seven applicants (out of 18) who were, according to them, eligible to face the test plus seven applicants who are Respondents 5 to 11 in OA No. 598 of 2007 (Applicants in OA No. 724 of 2006) and thereafter to take further follow up action to fill up eight posts (UR-6, SC-1 & ST-1) of Loco Inspectors based on their relative performance. The entire exercise shall be completed within a period of 180 days from the date of receipt of this order.

12. In the result, with the observations and directions made above, both the OAs stand disposed of. There shall be no order as to costs.

TRUE COPY

(M.R.MOHANTY)  
VICE CHAIRMAN

(C.R.MOHANTY)  
MEMBER (ADMN.)