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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH

O.A. No. 828 of 2006

Cuttack, this the 19<sup>th</sup> day of November, 2009

Radha Mohan Das

.....

Applicant

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 or not? ✓

(C.R. MOHAPATRA)  
(K. THANKAPPAN)  
ADMINISTRATIVE MEMBER  
MEMBER

JUDICIAL

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH

O.A. No. 828 of 2006

Cuttack, this the 19<sup>th</sup> day of November, 2009

CORAM:

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

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

.....

Radha Mohan Das, aged about 52 years, son of Braja Kishore Das, At-  
Chhaghar, P.O. Kusumati, P.S.Jatni, Dist. Khurda, at present working as  
Goods Driver/Loco Pilot, East Coast Railway, Khurda Road

..... Applicant

Advocates for applicant

- M/s D.R.Pattanayak, S.Pattanayak,  
N.S.Panda, A.K.Routray, N.Biswal  
and D.N.Pattnaik.

Vrs.

- 1) Union of India, represented by its General Manager, East Coast  
Railway, Chandrasekharpur, At/PO Bhubaneswar, Dist.  
Khurda.
  - 2) Divisional Railway Manager (P), East Coast Railway, At/PO  
Bhubaneswar, Dist. Khurda.
  - 3) Senior Divisional Mechanical Engineer, East Coast Railway, At-  
Khurda Road, P.O.Jatni, Dist.Khurda .....
- Respondents

Advocates for the Respondents - M/s D.K.Behera & S.K.Ojha.

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ORDER

JUSTICE K.THANKAPPAN, MEMBER(J)

Aggrieved by Annexure A/8 order dated 31.10.2006 issued  
by the Senior Divisional Mechanical Engineer, East Coast Railway,  
Khurda Road (Respondent No.3), whereby and whereunder the



applicant's prayer contained in the representation dated 20.12.2005 to consider him for promotion to the post of Loco Inspector has been rejected, the applicant has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, for the following relief:

- “(i) To quash the order of rejection dated 31.10.2006 vide Annexure-8.
- (ii) To direct the respondents to consider the case of the applicant for promotion to the post of Loco Inspector from 2004 and grant all such service, monetary and consequential benefits.
- (iii) To pass such other order/direction as deemed fit and proper.”

2. Brief facts of the applicant's case are that he was promoted to the post of Loco Pilot (Goods) Grade II w.e.f. 29.9.1999. In order to form a panel of 4 (UR-1, SC-1 and ST-2) for promotion to the post of Loco Running Supervisor, i.e., Loco Inspector in the pay scale of Rs.6,500-10,500 (RSRP), the Senior Divisional Personnel Officer, East Coast Railway, Khurda Road, issued Annexure A/1 notification dated 22.3.2004 calling for options from different categories of Loco Running staff, namely, Loco Pilot (Mail), Loco Pilot (Passenger) Grade I, Loco Pilot (Passenger) Grade II, Loco Pilot (Goods) Grade I, Loco Pilot (Goods) Grade II, with at least three years experience as Drivers, for selection. In response thereto, the applicant exercised his option and/or made application for selection to the post of Loco Inspector. The



applicant has stated that he and another employee, both belonging to unreserved/general category, were selected and since there was only one vacancy for the unreserved category, he was kept in the waiting list. Since one of the two posts reserved for ST community was not filled up due to want of suitable candidate belonging to the said community, the applicant made a representation on 15.7.2005 (Annexure A/2) to the Senior Divisional Mechanical Engineer, East Coast Railway, Khurda Road (Respondent No.3) to promote him to the post of Loco Inspector. As the said representation (Annexure A/2) remained unheeded to, he made another representation on 20.12.2005 (Annexure A/3) to the said Respondent No.3. While the matter stood thus, another notification dated 7.7.2005 (Annexure A/4) was issued for similar selection to form a panel of 6 (UR-4, SC-1 and ST-01) for promotion to the post of Loco Inspector. On his exercising option, the applicant's name was placed at Sl.No.4 of the list of eligible candidates (Annexure A/5) called upon to appear at the written test. Consequent upon cancellation of the notification dated 7.7.2005 (Annexure A/4), the Senior Divisional Personnel Officer, East Coast Railway, Khurda Road, issued a fresh notification dated 9.11.2005 (Annexure A/6), in which an additional eligibility criterion was prescribed, i.e., minimum combined three years Footplate Experience as Goods/Sr.Goods Driver/Passenger/Senior





Passenger Driver, Mail/Express Driver. Soon thereafter the applicant by his representation dated 20.12.2005 to Respondent No.3 claimed the benefit of promotion to the post of Loco Inspector as was extended to one S.K.Chakrabarti on the basis of his purported selection to the post of Loco Inspector pursuant to the notification dated 22.3.2004 (Annexure A/1). Being aggrieved by the non-consideration of his said representation by the Respondent No.3, the applicant earlier filed OA No. 470 of 2006 before this Tribunal. The Tribunal disposed of the said O.A. by order dated 26.5.2006 directing the Respondent-Railways to consider and dispose of the applicant's representation dated 20.12.2005. Respondent No.3 by order dated 31.10.2006 (Annexure A/8) disposed of the applicant's representation. In view of this, the applicant has filed this O.A. with the prayers referred to above.

3. In their counter, the Respondent-Railways have stated that the applicant was promoted to the post of Goods Driver/Loco Pilot (Goods), Grade II, on 29.9.1999. He was at the relevant time working as Safety Instructor. One Sri S.Srichandan, who was senior to the applicant, was empanelled against one unreserved vacancy sought to be filled up pursuant to the notification dated 22.3.2004. The Respondents have disputed the claim of the applicant that after being selected pursuant to the notification dated 22.3.2004 he was kept in the waiting list. As

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regards the claim of the applicant that he was denied the benefit of promotion as was extended to one Sri S.Chakravarty who was empanelled pursuant to the notification issued in 2001 and promoted in 2002, the Respondents have stated that though Sri Chakravarty was selected and empanelled in 2001, due to administrative reasons, he was not promoted to the post of Loco Inspector in 2001, but was promoted in 2002. The Respondents have also stated about the cancellation of the notification dated 7.7.2005 and issuance of fresh notification dated 9.11.2005. They have stated that the eligibility criterion of minimum combined three years Footplate Experience was prescribed in the notification dated 9.11.2005 on the basis of the Estt.Sr.No.145/02. It has also been stated by the Respondents that some of the candidates were called upon to appear at the written test in compliance with the interim orders issued by the Tribunal in OA Nos. 217 to 219 of 2006. It has been stated by the Respondents that the applicant's representation dated 20.12.2005 to consider him for promotion to the post of Loco Inspector has been rightly rejected by order dated 31.10.2006. With these averments, the Respondents have submitted that the O.A. is without merit and liable to be rejected.

4. From the above pleadings of the parties, the following points arise for our consideration:

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- (i) Whether the applicant was selected and kept in the waiting list for promotion to the post of Loco Inspector pursuant to the notification dated 22.3.2004;
- (ii) Whether the applicant was entitled to be considered for promotion to the post of Loco Inspector with effect from 2004 with all service benefits;
- (iii) Whether the impugned order dated 31.10.2006 (Annexure A/8) is sustainable;
- (iv) Whether the applicant is entitled to any relief?

5. We have heard Shri D.R.Pattnayak, the learned counsel appearing for the applicant and Shri S.K.Ojha, the learned Standing Counsel (Railways) appearing for the Respondents and have perused the materials placed before us.

6. It is the case of the applicant that pursuant to the notification dated 22.3.2004 (Annexure A/1) he along with another unreserved category employee was selected for promotion to the post of Loco Inspector, and while the other candidate was promoted, he was kept in the waiting list. We have examined Annexure A/1 notification dated 22.3.2004. In this notification it has been stated that selection was sought to be held to form a panel of four candidates, the breakups of which were UR-1, SC-1 and ST-2. It is thus clear that there was only one vacancy for

unreserved category. The applicant has admitted that he belongs to the unreserved category. He has stated that while the other candidate belonging to the unreserved was empanelled and promoted, he was kept in the waiting list. It has nowhere been mentioned in the said notification that a 'waiting list' has to be prepared beyond the panel of four. The applicant has also not produced any waiting list prepared by the Respondents pursuant to the said notification in which his name finds place. In support of his plea that he was kept in the waiting list for promotion, he cited the case of one Mr. S.K.Chakravarty. According to the applicant, Mr.Chakravarty was empanelled in 2001 for promotion to the post of Loco Inspector and after nine months of his selection, Mr.Chakravarty was promoted in the year 2002. On the same analogy, it was claimed by the applicant that he should have been promoted to the post of Loco Inspector in 2005 in as much as he was selected and kept in the waiting list in 2004. The Respondents have stoutly refuted this claim of the applicant and have stated that the applicant was neither selected nor kept in the waiting list for promotion to the post of Loco Inspector. They have further stated that Mr.Chakravarty was selected and empanelled in 2001 and promotion ~~was~~ order was issued in his favour only in 2002 due to administrative reasons. The applicant has not refuted this statement of the Respondents by filing rejoinder affidavit. On the above analysis, we





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hold that the applicant was not selected for promotion to the post of Loco Inspector pursuant to the notification dated 22.3.2004, far less kept in any waiting list, and therefore, the applicant was not entitled to be considered for promotion to the post of Loco Inspector with effect from 2004 with all service benefits.

7. Coming to point no.(iii), we find that the applicant's representation dated 20.12.2005 has been rejected by the Respondent-Railways as per the impugned order Annexure A/8 on three grounds. Firstly, he was not selected and empanelled for promotion to the post of Loco Inspector in 2004. Secondly, his case was not similar to that of Mr.S.Chakravarty. Thirdly, he did not have minimum combined 3 years Footplate Experience as Goods Driver. In view of our findings in the preceding paragraph, the first and second grounds taken by the Respondent-Railways for rejecting the applicant's prayer contained in his representation dated 20.12.2005 remain unassailable. So far as the third ground is concerned, it has to be examined as to whether the Respondent-Railways are justified in rejecting the applicant's claim for promotion by treating him as lacking three years Footplate Experience. It was submitted by the learned counsel for the applicant that having admittedly been promoted/appointed to the post of Loco Pilot (Goods) Grade II with effect from 29.9.1999 and having worked in that capacity for more than

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six years by the cutoff date, i.e., 30.11.2005 as prescribed in the notification dated 9.11.2005, the applicant has gained three years Footplate Experience as Loco Pilot (Goods) Grade II, and it is unfair and unreasonable on the part of the Respondent-Railways to hold that the applicant was lacking the said experience by the cutoff date. It was submitted by the learned counsel that while the applicant was working as Loco Pilot (Goods) Grade II, the Respondents posted him as Safety Instructor in public interest. The learned counsel also contended that pursuant to the notification dated 22.3.2004 (Annexure A/1) and the notification dated 7.7.2005 (Annexure A/4) the applicant had applied for consideration for selection to the post of Loco Inspector and had admittedly been included in the list of eligible candidates. Some of the employees, like the applicant, who had also applied and participated in the selection process pursuant to Annexure A/1 notification were also empanelled and promoted in the meantime. The learned counsel further contended that imposition of this additional eligibility criterion of 'three years Footplate Experience' purportedly on the basis of the Estt.Srl.No.145/02 of the Railway Board works out discrimination to the applicant and other similarly placed employees in as much as though they were Loco Pilots (Goods), the Respondent-Railways made them work in some other similar posts in public interest. In support of his contentions,

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the learned counsel relied on the judgment dated 10.9.2007 passed by the Hon'ble High Court of Delhi, in W.P ( C ) No. 8515-17/06 (*Union of India and another v. Rakesh Kumar &ors*), and W.P.( C ) No. 4539-41 of 2006 (*Union of India and another v. Ashok Kumar & others*).

8. We have carefully gone through the pleadings as well as the judgment of the Hon'ble High Court of Delhi in the case of *Union of India and another, etc. v. Rakesh Kumar & others, etc.(supra)*. As indicated in the preceding paragraphs of this order, admittedly the applicant was promoted/appointed to the post of Loco Pilot (Goods) Grade II w.e.f. 29.9.1999. As per Annexure A/1 notification dated 22.3.2004 and Annexure A/4 notification dated 7.7.2005, he being eligible for selection for promotion to the post of Loco Inspector, was included in the lists of candidates to appear at the selection test. It was only because of the additional eligibility condition prescribed in Annexure A/6 notification that he was treated by the Respondent-Railways to be ineligible for appearing at the selection test for promotion to the post of Loco Inspector. This eligibility condition is to the effect that Loco Pilot (Goods) Grade II should have minimum combined three years Footplate Experience as Goods Driver as on 30.11.2005 to become eligible to appear at the selection test for promotion to the post of Loco Inspector. The Respondents in paragraph 6 of their counter have stated

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that as certified by the Senior Divisional Mechanical Engineer, Khurda Road (Respondent No.3), vide his letter No. Mech/TRS/18/22/Selectioni/57 dated 6.1.2006, the applicant did not complete the 'combined 3 years Footplate Experience'. This letter and/or certificate dated 6.1.2006 has not been produced by the Respondents before this Tribunal. It is not known as to how the applicant did not complete minimum combined three years footplate experience as on 30.11.2005 when he was promoted/appointed to the post of Loco Pilot (Goods) Grade II w.e.f. 29.9.1999. The applicant has stated in his representations (Anexures A/2 and A/3) that having been promoted as Loco Pilot (Goods) Grade II on 29.9.1999 he had completed 6 years service as a Goods Driver, that he had undergone periodical medical examination, that he was paid monthly mileage allowance as admissible to Running Staff, that he was supplied with Loco Pilot Uniforms, that he had attended refresh courses periodically, that he had attended and passed Ambulance Course and Safety Camps. These statements of the applicant were not specifically refuted by the Respondents in their counter except stating that the applicant was working as Safety Instructor. It is thus clear that the applicant though promoted as Loco Pilot(Goods)Grade II and worked in that capacity for some period, was posted by the Respondent-Railways to work as Safety Instructor having the same or similar nature





of duties as Loco Pilot (Goods) Grade II which made him entitle to all the privileges and required him to attend and complete various courses and trainings. In view of this, the statement of the Respondents that the applicant had not completed the minimum combined three years footplate experience is held to be untenable. Similar question was raised before the the Chandigarh Bench of the Tribunal in OA No. 533/HR/2003, *Dilraj Singh & ors. Vs. Union of India & ors*, (decided on 7.10.2002) and before the Principal Bench in OA No.1941/05 & MA No.940/05, decided on 6.2.2006 and in OA No.1669/2005 decided on 16.12.2005, which have been referred to by the Hon'ble High Court of Delhi in the judgment in the case of *Union of India and another etc. vs. Rakesh Kumar & others (supra)*. In *Dilraj Singh's case (supra)* the applicants, who were Passenger/Goods Drivers posted as Power Controller/Crew Controller/Traction Loco Controller, challenged their exclusion from being empanelled for the post of Loco Inspector by the Respondent-Railways on the basis of the Railway Board's circular dated 7.10.2002. The Chandigarh Bench allowed the O.A. and 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 as and when such departmental examinations are held. This decision of the Chandigarh Bench was upheld by the Hon'ble High Court of Punjab & Haryana which dismissed the writ petition filed by the Railway administration. The applicants in O.A.No. 940 of 2005 & MA No. 940 of 2005 before the Principal Bench were initially appointed as Diesel Assistants/Fireman Grade A and over the years they earned several promotions including Goods Driver and Passenger Driver. The Principal Bench, relying on the decision of the Chandigarh Bench in the case of *Dilraj Singh and others vs. Union of India and others* (supra), held that the tenure of the applicants on the post of Power/Crew Controller could not be excluded for the purpose of counting 3 years footplate experience required for the post of Loco Inspector, especially when they were retaining their lien on the post of Drivers Goods and accordingly allowed the O.As. This order of the Principal Bench was challenged by the Railway Administration by filing writ petitions before the Hon'ble High Court of Delhi. By judgment dated 10.9.2007 their Lordships rejected the pleas of the Railways and upheld the decision of the Principal Bench. The SLPs filed against the judgment passed by the Hon'ble Delhi High Court have been dismissed. In the facts and circumstances of the present case and in the light of the decisions of the Chandigarh Bench and the Principal Bench of the

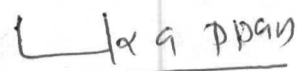


Tribunal, which have been upheld by the Hon'ble High Courts of Punjab & Haryana and of Delhi, we hold that the applicant being promoted/appointed to the post of Loco Pilot (Goods) Grade II on 29.9.1999 can be treated to have completed combined three years footplate experience required for promotion to the post of Loco Inspector by counting his tenure as Loco Pilot (Goods) Grade II and Safety Instructor and the decision of the Respondent-Railways as contained in the order 31.10.2006 (Annexure A/8) rejecting the applicant's claim for consideration for promotion to the post of Loco Inspector is unsustainable and liable to be quashed.

9. In the light of the discussions made above, we partly allow the Original Application. Annexure A/8 order dated 31.10.2006 is quashed. The Respondents are directed to consider the entire tenure of the applicant as Loco Pilot (Goods) Grade II/Safety Instructor for the purpose of counting Footplate Experience required for the post of Loco Inspector and allow the applicant to participate in the departmental examination for selection to the post of Loco Inspector as and when such departmental examinations are held.

There shall be no order as to costs.

  
(C.R. MOHAPATRA)  
ADMINISTRATIVE MEMBER

  
(K. THANKAPPAN)  
JUDICIAL MEMBER