I/13

**CENTRAL ADMINISTRATIVE TRIBUNAL**
**JODHPUR BENCH; JODHPUR**

**Original Application Nos. 302/2004,24/2005 & 30/2005**

**Date of decision: 08.09.2006**

**Hon'ble Mr. Kuldip Singh, Vice Chairman**

**Hon'ble Mr. J P Shukla, Administrative Member.**

**Original Application Nos. 302/2004**

1. Ashok Singh, S/o Shri Ratan Singh aged 51 years r/o quarter No. L 195-C Old Loco Colony Jodhpur.
2. Nar Singh, S/o Shri Chander Lal, aged 57 years, r/o quarter No. 187-B New Loco Colony, Jodhpur.
3. Jaffar Hussain, S/o ShriVahabuddin, aged 56 years, r/o quarter No. L 51 A Old Loco Colony, Jodhpur.
4. Shera Ram, S/o Shri Heera Ram, aged 49 years, r/o quarter No. L 71 A Old Loco Colony, Jodhpur.
5. Hanuman Singh, S/o Shri Balu Singh, aged 52 years, r/o plot No. 83-B 'Panchwati Bachchharaj Ji Ka bagh, Road No. 11, Sardarpura, Jodhpur.
6. Gurmukh Singh, S/o Shri Ratan Singh, aged 47 years, r/o L. 125-B Old Loco Colony, Jodhpur.
7. Goma Ram, S/o Shri Jetha Ram, aged 55 years, r/o T.N.52. New Loco Colony, Jodhpur.
8. Arjun Dan, S/o Shri Shakti Dan, aged 55 years, r/o L.50 Old Loco Colony, Jodhpur.
9. Chauth Mal, S/o Shri Ganga Ram, aged 52 years, r/o plot No.13, Agarchan Fatehchand colony, Sec. No. 5 Jodhpur.

All the applicants are working as Senior Goods Driver North Western Railway, Jodhpur.

Applicants.

**VERSUS**

1. Union of India through the Secretary, Ministry of Railways, Rail Bhawan, New Delhi.
2. The General Manager, North Western Railway, Jaipur.
3. Senior Divisional Personnel Officer, Divisional Railway Manager office, North Western Railway, Jodhpur.
4. Senior Deputy Mechanical Engineer, Divisional Railway Manager Office, North Western Railway, Jodhpur.

Respondents.

I/14

10

**Original Application Nos. 24/2005**

1. Banna Ram S/o Shri Labu Ram Ji aged 55 years, r/o House No. A Rikitiya Bheru Ji, PWD colony, Jodhpur. ( Rajasthan)

2. Madan Singh, S/o Bheru Singh Ji, aged 54 years, r/o Bypura Merta Road, Distt Nagaur ( Rajasthan )

3. Madan Lal, s/o Shri Mithan Lal Ji, aged 50 years, r/o Railway Gate No. 100, Subhash Nagar, Merta Road, Distt. Nagaur ( Rajasthan )

4. Karan Singh, S/o Shri Ranchhod Singh, aged 48 years, r/o Ramapeer Colony, High Court, Colony, Jodhpur (Rajasthan)

All are presently on the post of Senior Goods Driver and performing duties of Passenger drivers at Jodhpur with respondent No. 3

: Applicant.

**VERSUS**

1. Union of India through the General Manager, North Western Railway, Jaipur.
2. The Senior Divisional Personnel Officer, Divisional Railway Manager's Office, North Western Railway, Jodhpur.
3. Senior Divisional Mechanical Engineer, Divisional Railway Manager's Office, North Western Railway, Jodhpur.

: Respondents.

**Original Application Nos. 30/2005.**

Jagdish Ram, S/o Shri Ram Preet Ram, aged 46 years, R/o L-27 B Old Loco Colony, Jodhpur ( Rajasthan )

(Presently on the post of Senior Goods Driver and performing duties of passenger driver under Respondent No. 3)

: Applicant.

**VERSUS**

1. Union of India through the General Manager, North Western Railway, Jaipur.

I/15

2. The Senior Divisional Personnel Officer, Divisional Railway Manager's Office, North Western Railway, Jodhpur.
3. Senior Divisional Mechanical Engineer, Divisional Railway Manager's Office, North Western Railway, Jodhpur.

: Respondents.

Mr. K K Shah, Mr. Vivek Shah & Mr. Jog Singh : Counsel for the applicants in all the 3 OAs.

Mr. Manoj Bhandari : Counsel for the respondents in All the three OAs.

**ORDER**

**Mr. Kuldip Singh, Vice Chairman.**

As the facts, the issue involved and the reliefs claimed are the same these three applications are heard together and are being disposed of by the common order.

2. In all the three OAs, the applicants have challenged the order dated 23.11.2004, and prayed for setting aside the same qua the applicants. The applicants in O.A. No. 302/2004 have further prayed that they be treated as Loco Pilot (passengers) in the pay scale of Rs. 5500-9000 ( R.S.R.P. ) with effect from 01.11.2003. The applicants in O.A. No. 24/2005 have prayed that Annex. A/2 dated 11.08.2004 be suitably amended by adding the names of the applicants in the list of Senior Goods Driver promoted with effect from 01.11.2003. The applicant in O.A. No. 30/2005 has prayed for that he be treated as Loco Pilot ( Passengers) with effect from 1.11.2003 and Annex. A/2 dated 11.08.2004 be suitably amended by adding the name of

I/16

the applicant in the list of Senior Goods Driver promoted with effect from 01.11.2003. Presently all the applicants are working as Goods Driver in the pay scale of Rs. 5000-8000. They are eligible to be promoted as Senior Goods Driver (non-selection post)/ Passenger Pilot (Selection post) in the pay scale of Rs. 5500-9000. But, though the pay scale of Senior Goods Driver and Passenger Pilot is the same the process of promotion is different since the former is a non-selection post and the latter is the selection post. Thereafter they can be posted as Senior Passenger pilot (20% by promotion and 80% by selection)/ Mail Pilot (100% by seniority) even though the pay scale pertaining to both these post is the same. The applicants in O.A. Nos. 302/2004 and 24/2005, were promoted as Senior Goods Driver (now re-designated as Loco Pilot Goods Grade –I) in the pay scale of Rs. 5500-9000, vide order dated 03.12.2003 and the applicant in O.A. No. 30/2005 was promoted as Senior Goods Driver vide order dated 11.08.2004. It is further stated that the respondent department carried out restructure of various posts and framed provisions for promotion to the restructured posts vide letter dated 06.01.2004(Annex. A/3). It is stated that as per para 4 of the said letter, modified selection will be held only on scrutiny of service records and confidential reports without holding any written and viva voce test as one time exception. It is also mentioned in the said letter that vacancies which existed on 01.11.2003, except direct recruitment quota and those arising on that date from

I/17

F-3

the cadre restructuring including chain/resultant vacancies should be filed from the panel approved on or before 01.11.2003 and current on that date and the balance in the manner indicated in para 4 of the ibid letter. It is averred that the applicants in O.A. Nos. 302/2004 and OA No.24/2005 were promoted with effect from 01.11.2003, since there names existed in the panel approved prior to 01.11.2003 and the applicant in O.A. No. 30/2005 was promoted with effect from 14.08.2004, in view of the same policy. It is also averred that vide order dated 03.12.2003, a total of 22 Goods Driver were promoted as Senior Goods Driver. The applicants came to know that 10 posts of Senior Goods Driver (Loco Pilot Goods Driver Gr. I) were surrendered by the respondents after 01.11.2003 and hence the applicants would be deemed to have been promoted as on 01.11.2003 as per policy dated 06.01.2004 (Annex. A/3). After being promoted to the post of Senior Goods Driver, the applicants had been performing the duties of piloting the passenger trains for almost more than a year and even till date they are performing their duties in the passenger trains. It is further averred that since the Loco Pilot(Passenger) is a selection post, the applicants were directed to appear in the written examination for the post which was held on 18.12.2004 and onwards. It is stated that there is no financial discrimination involved in both the posts, however passenger train pilot has got a better deal because of fixed time of operation, whereas the Goods driver has no fixed time of

operation and has least priority. Therefore asking the applicants to appear in the examination for the post on which they had been performing their duties for almost more than a year without any complaint would be illegal. Therefore the applicants have prayed that the impugned Annex. A/1 be declared as unjust, arbitrary, illegal and be quashed. It is also stated that as per the restructuring scheme for the vacancies, which arose prior to 01.11.2003 the promotees, were exempted from written test as a one-time measure and all the applicants fell within such exemption.

3. By order dated 16.12.2004, the applicants in O.A. No. 302/2004 were permitted to appear in the examination but the respondents were directed not to declare the results of the applicants and the selection so made shall be subject to the result of that O.A. In the other two OAs. O.A. No. 24/2005 and 30/2005, no such order was passed.

4. The respondents are contesting the OAs by filing separate reply to each OA. The respondents have stated that the OAs are not maintainable since the applicants have failed to show that senior Goods Drivers on the basis of experience could be promoted and designated as Passenger Driver and as per rules and hierarchy of posts the post of Passenger Driver is a selection post and applicants tried to mislead the Tribunal and tried to get interim orders in their favour. It is also stated that

I/19

the applicants have not impleaded the 4 senior most Goods Driver who were promoted as passenger driver from amongst the panel existing prior to 01.11.2003 as one time exception under the restructuring scheme and hence the OAs are liable to be dismissed on the ground of non-impleadment of necessary parties. It is stated that the applicants were granted promotion under the restructuring scheme with effect from 01.11.2003 as Senior Goods Driver. It is further stated that the post of Loco pilot (Passenger Gr. II) in the pay scale of Rs.5500-9000 is a selection post and is to be filled from the category of Senior Goods Driver in the scale of pay of Rs.5500-9000 through a positive act of selection (written test and paper suitability) and in case sufficient number of Senior Goods Driver are not available on roll then the selection could be made from the grade of eligible Goods Driver in the scale of Rs. 5000-8000. The next higher post of Loco Pilot (Mail) in the Grade of Rs. 6000-9800, is a non selection post and the same is to be filled on the basis of seniority cum suitability from the category of Passenger Driver in the grade of Rs.5500-9000.

5. It is submitted by the respondents that prior to the implementation of restructuring scheme, which became operative with effect from 01.11.2003, the applicant who were working in the grade of Rs.5000-8000 were promoted to the grade of Rs.5500-9000 against the existing vacancies with effect from 03.12.2003. One of the applicants Shri Karan Singh

in O.A. No. 24/2005 was promoted as Loco Pilot Goods Driver Gr. I vide letter dated 11.08.2004 for the reason that he had not completed two years of service as on 03.12.2003. The respondents have further stated that though initially 22 employees were promoted but due to implementation of orders of restructuring 14 employees were due to be promoted and hence the revised order of promotion dated 11.08.2004 was issued. Out of 14 only 12 were given the benefit from 01.11.2003 and the remaining two were given benefit after they become free from punishment. It is submitted that the post of Loco Pilot is a selection post and can only be filled in by due process of selection and in administrative interest the staff is put to work on officiating basis to higher grade but the same does not confer the right of regularisation in that cadre unless employee finds place in the panel after passing through due process of selection. Hence the applicants have correctly been called to appear in the written test for the post of Loco pilot Gr. II to be held on various dates. It is further stated that a panel of 4 loco pilot for the post of Passenger Driver was available on 31.10.2003 and as per the directions of the Railway Board dated 03.06.2004, the panel approved on or before 05.01.2004 which is in currency as on date will remain live and empanelled candidates will be considered for promotion with effect from 01.11.2003 against the upgraded vacancies and therefore out of 04 candidates except Shri Bhupat Rai who was under going punishment two were promoted with effect from 01.11.2003

I/21

and Shri Premchand who was under punishment on 01.11.2003 was promoted after completion of punishment from 18.02.2004 It is averred that on 31.10.2003 there were 4 vacancies in the cadre of Loco Pilot Mail Grade Rs.6000-9800 and 7 vacancies were existing in the cadre of Loco Pilot (pass), but there was decrease by 4 in the cadre of Loco Pilot Gr. II Passenger Driver Gr.II in the scale of pay of Rs.5500-9000 and in all 11 vacancies in the cadre of Loco Pilot Pass Gr.II and hence 11 Loco Pilots Goods Gr.I/II were to be considered for promotion by modified selection. Against these 11 vacancies 4 have been considered from the available panel and for the remaining a panel has been prepared by modified procedure in the cadre of Loco Pilot leaving a slot of 02 for application of rule of reservation. Thus the applicants who were not due to be considered as per seniority, eligibility and limitation of vacancies under the scheme of restructuring have been called to appear in the selection vide the impugned letter dated 23.11.2004 and the same has been issued. As per instructions contained under RBE 05/2004, vacancies arising after 01.11.2003 will be filled in by normal selection procedure. The Post of Loco Pilot (pass) Gr.II/Passenger Driver is a selection post and therefore except Shri Ashok Singh, Shri Arjun Dan and Shri Jaffar Hussain rest of them have to appear in the selection notified by the impugned order. Hence it is submitted that the applicants have no case and they have appear under the

I/22

restructured scheme. Hence the respondents have prayed for dismissal of the OAs.

6. We have heard the learned counsel for the parties and gone through the records very carefully including the procedure for selection post. There is no dispute that under the restructuring scheme, the respondents have modified the selection procedure and they had given one time exception and subsequent vacancies were to be filled under normal selection procedure. It has also been provided that normal vacancies existing on 01.11.2003 except direct recruitment quota and those arising on that date from this cadre restructuring including chain/resultant vacancies should be filled in the following sequence.

(i) from panels approved on or before 01.11.2003 and current on that date
(ii) and the balance in the manner indicated in para 4 of the scheme. ( modified procedure )

which provides that if an individual railway servant becomes due for promotion to a post classified as a selection post the existing selection will stand modified in such a case to the extent that selection will be based only on scrutiny of service records and confidential report without holding any written and viva voce test. The case of the applicants is that since their names had been approved in the panel as per Annex. R/4 to the rejoinder in O.A. No. 302/2004 dated 30.10.2003, which is definitely earlier to 01.11.2003 and therefore they should have been promoted to the post Passenger Driver without following the procedure prescribed under the modified selection and they

could not be called upon to appear in the test as per annex. A/1 dated 23.11.2004.

7. The next question arises is as to what were the number of vacancies available for promotion to the post of Passenger Loco Pilot Driver in the scale of pay Rs. 5500-9000 at the time of restructuring. According to the respondents 11 vacancies were available for Passenger Loco Pilot Gr. II. Against those 11 vacancies 4 employees had been considered out of the available panel and for remaining a panel of 6 has been prepared by modified selection procedure in the cadre of Loco Pilot Pass/Passenger Driver Gr. Rs. 5500-9000 vide letter dated 07.01.2005. But the vacancies which had arisen after 01.11.2003 are to be filled up by normal process of selection and that is why the applicants have been called to appear in the written examination and the impugned notification has been issued to fill up those vacancies which had arisen after the implementation of the restructuring scheme after 01.11.2003. The counsel for the respondents had also drawn our attention to the existing panel which was prepared after the supplementary test held and Annex. R.2 to O.A. No. 24./2005 shows that this was prepared before 01.11.2003. The applicants have failed to show that their names existed in the panel prepared prior to 01.11.2003, as if they were selected for the post of Passenger/Goods Driver. The learned counsel for the applicants had taken us through Annex. A/4 to O.A. No. 24/2004 dated 03.12.2003 and submitted that their names

I/24

existed in the panel. However, on going through the same we find that the same contains the names of those employees who have qualified in the written test and found to be eligible to appear in the viva voce etc and the supplementary examination is still to be held, which was held on 11.07.2003 and the panel at R.2 was prepared subsequent to that. Thus the applicants could not get promotion because they could not be empanelled nor they can be given promotion under the modified scheme because of their seniority or otherwise eligibility. Now, they have been called to appear in the test for the vacancies, which have arisen after restructuring. The main plank of argument of learned counsel for the applicants was Annex A/4. But a reading of that makes it clear that these persons only qualified in the written test. Merely because they had qualified in the written test it cannot be said that their names had been approved in the panel of selection to the post of Passenger Driver. Thus none of the applicants name can be stated to be in the panel for the post of Passenger Loco Driver as on 01.11.2003 and they had a right to be given promotion to the said post. In our view unless an employee had undergone the entire process of selection he cannot claim that his name existed in the panel. Hence in this case, none of the applicants name had appeared in the panel and the action of the respondents in calling the applicants to appear in the written test for the subsequent post of Passenger Loco Pilot is to be upheld.

I/25
21

8. The mere fact that the applicants had been performing the duties of passenger driver for more than a year does not entitle them to be posted on regular basis as passenger driver without undergoing the selection process as provided under the rules.

9. In view of the foregoing discussion, we find no merit in these applications and accordingly they are dismissed. No costs.

**( J P Shkula )**
**Administrative Member**

**(Kuldip Singh)**
**Vice chairman**

Jsv.

Part II and III destroyed
in my presence on 11/4/14
under the supervision of
section officer (J.) as per
order dated 31/01/14

Section officer (Record)

9/6/08

R/Lyg
21/9/18