

CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR

OA No. 271/2013 with MA No.261/2013 and  
OA No.484/2012 with MA No.308/2013 and 69/2013

Jodhpur, this the 18<sup>th</sup> day of December, 2013.

CORAM

Hon'ble Mr.Justice Kailash Chandra Joshi, Member (J)  
Hon'ble Ms. Meenakshi Hooja, Member (A)

OA No.271/2013

1. Prem Shankar S/o Shri Banshi Lal, aged 28 years, at present employed on the post of Sr. Asst Loco Pilot in the office of Chief Crew Controller, Suratgarh, NWR.
2. Mangal Singh S/o Shri Parwat Singh, aged 26 years, at present employed on the post of Sr. Asst Loco Pilot in the office of Sr. Section Engineer (Loco), Churu, NWR.
3. Surendra Singh S/o Shri Madan Singh, aged 30 years, at present employed on the post of Sr. Asst Loco Pilot in the office of Chief Crew Controller, Suratgarh, NWR.
4. Shiv Raj Singh S/o Shri Bhanwar Singh, aged 31 years, at present employed on the post of Sr. Asst Loco Pilot in the office of Sr. Section Engineer (Loco), Bikaner, NWR.
5. Balbir Yadav S/o Shri Bhola Ram, aged 30 years, at present employed on the post of Sr. Asst Loco Pilot in the office of Chief Loco Supervisor, (Bikaner Division), Rewari, NWR.
6. Dinesh Kumar Gupta S/o Shri Ram Harsh Gupta, aged 31 years, at present employed on the post of Sr. Asst Loco Pilot in the office of Chief Crew Controller, Hanumangarh Jn, NWR.

Address for Correspondence : C/o Prem Shankar S/o Shri Banshi Lal, R/o 2/G, TPT Railway Colony, Suratgarh, Distt. Sriganganagar.

....Applicants

Through Advocate Mr J.K. Mishra

Versus

1. Union of India through, the General Manager, HQ Office, North Western Railway, Malviya Nagar near Jawahar Circle, Jaipur-17.

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2. Railway Board through its Chairman, Railway Bhawan, New Delhi.
3. Senior Divisional Personnel Officer, Northern Western Railway, Bikaner Division, Bikaner.
4. Shri Murari Lal Meena, Sr. Asst Loco Pilot, through Chief Loco Supervisor, (Bikaner Division), Rewari, NWR.
5. Shri Satish Chandra S/o Shri Nand Ram, Sr. Asst Loco Pilot through Chief Loco Supervisor, (Bikaner Division) Rewari, NWR.

.....Respondents

Respondents No. 1 to 3 through Advocate Mr Vinay Jain  
 Respondents No. 4 & 5 through Advocate Mr Sikander Khan

OA No.484/2012

1. Sunil Kumar S/o Shri Chhitermal, aged about 31 years, at present employed on the post of Senior Assistant Loco Pilot in the Office of Sr. Section Engineer, Loco, NWR, Jodhpur.
2. Pawan Kumar Goyal S/o Shri Ramesh Chand Goyal, aged about 32 years, at present employed on the post of Senior Assistant Loco Pilot in the office of Sr. Section Engineer, Loco, NWR, Jodhpur.
3. Megh Ram S/o Shri Chothu Ram, aged about 28 years, at present employed on the post of Senior Assistant Loco Pilot in the office of Sr. Section Engineer, Loco, NWR, Jodhpur.

Address of correspondence :- C/o Om Prakash Solanki, 7<sup>th</sup> B, New Panchawati Colony, Near Bhaskar Circle, Ratanada, Jodhpur.

....Applicants

Through Advocate Shri J.K.Mishra

Versus

1. Union of India through, the General Manager, HQ Office, Northern Western Railway, Malviya Nagar, near Jawahar Circle, Jaipur-17.
2. Railway Board through its Chairman, Railway Bhawan, New Delhi.
3. Senior Divisional Personnel Officer, Northern Western Railway, Jodhpur Division, Jodhpur.
4. Shri Kuldeep Singh, Sr. Assistant Loco Pilot, office of Sr. Section Engineer, Loco, NWR, Jodhpur.
5. Shri Mithalal Meena, Sr. Assistant Loco Pilot, office of Sr. Section Engineer, Loco, NWR, Jodhpur.

....Respondents

Respondents No. 1 to 3 through Advocate Mr Kamal Dave  
Respondents No. 4 & 5 through Advocate Mr S.K. Malik

**ORDER (ORAL)**

Per Justice K.C.Joshi, Member (J)

The OA Nos. 271/2013 and 484/2012 are being decided by this single common order because the issue involved in these OAs is identical i.e. regarding treatment of SC/ST candidates promoted on their own merit and on seniority and the applicants are mainly aggrieved with the Railway Board Circular RBE No. 126/2010 dated 1.9.2010 (which is para-materia to DOPT circular dated 10.8.2010) whereby it has been clarified that SC/ST candidates appointed by promotion on their own merit and seniority and not owing to reservation or relaxation of qualifications will be adjusted against unreserved points or reservation roster, irrespective of the fact whether the promotion is made by selection method or non-selection method.

2. Short facts of the case, as stated by the applicants, are that the applicants, belonging to unreserved category, were initially appointed to the post of Assistant Loco Pilot. For regulating the reservation on the posts to be filled in by promotions, the Department of Personnel and Training (DOPT) issued an OM dated 11.7.2002 for treating the persons promoted as per own merit. Basing on the same, second respondent issued RBE No. 128/2002 dated 7.8.2002 and RBE No.103/2003 dated 20.6.2003 and it was clarified that SC/ST

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candidates promoted as per own merit will be adjusted against unreserved points. The DOPT issued another OM dated 31.1.2005 and following the same, the respondents issued a clarification in identical terms vide RBE 77/2005 dated 6.5.2005 that the concept of merit was not involved in case of promotion by seniority cum merit and therefore, the instructions contained in RBE No.128/2002 and 103/2003 did not apply to the promotions made by non-selection method. On account of the queries made by various Zonal Railway and other units as to how to regulate the promotions of SC/STs done during the intervening period from 7.8.2002 to 6.5.2005, it was decided vide RBE 19/2009 dated 29.1.2009 that the instructions contained in circular RBE 77/2005 dated 6.5.2005 would take effect from 7.8.2002 but the promotions made prior to 6.5.2005 would not be disturbed and in case SC/ST candidates have been promoted by non-selection method in excess of reservation quota during the said period, they would be adjusted against reserved vacancies arising in future. Thereafter the DOPT issued another OM dated 10.8.2010 in the light of the judgment passed by CAT-Madras Bench in OA No.900/2005, S.Kalugasalamoorthy vs. Union of India and ors. prescribing that SC/ST candidates appointed by promotion on their own merit and seniority would be adjusted against unreserved points of the roster irrespective of the fact whether the promotion is made by selection method or non-selection method and the same was to be made effective from 2.7.1997 i.e. the date on which the post based roster was given effect to. Following the DOPT OM dated 10.8.2010, the second respondent issued RBE No.126/2010 dated 1.9.2010 and

withdrew their previous orders mentioned therein and the post based roster was made effective from 21.8.1997, the date from which the post based roster was adopted by the Railways.

The applicants in OA No.271/2013 stated that the applicants were initially appointed to the post of Assistant Loco Pilot in Bikaner Division of the North Western Railway. All of them were promoted as Senior Assistant Loco Pilot in the grade pay of Rs. 2400/- w.e.f. 1.5.2010. It has been further stated that the feeder post for promotion to the post of Loco Pilot Goods is Shunter and Assisstant Loco Pilot is the feeder post of Shunter. But a provision has been made that in case sufficient number of Shunters are not available, the persons holding the post of Senior Assistant/Assistant Loco Pilot would be considered for promotion to the post of Loco Pilot Goods on seniority cum suitability basis i.e. having bench mark. In the instant case, the applicants have come within the zone of consideration for promotion to the post of Loco Pilot Goods in Grade Pay of Rs. 4200/. It has further been averred that third respondent has prepared a suitability list of 45 candidates, for promotion to the post of Loco Pilot Goods in the pay scale of Rs. 9300-34800 + GP 4200, vide order dated 28.6.2013. The names of the applicants are placed at Sl.No. 31,32,33,34,35 and 36, respectively as at Ann.A/13. However, in the promotion order dated 8.7.2013 (Ann.A/2), the applicants did not find their place. It has been stated that the Sl.No.5 and 26-33 are promoted against shortfall, though there is no shortfall in SC/ST category. It has also been stated that the employees from 1 to 25 in the promotion order are sought to be promoted as per their own merit. Out of these 25 candidates, about

11 candidates belong to SC/ST category and 8 persons are said to be promoted against reserved points. All other empanelled candidates belong to SC/ST category. There is admittedly no backlog vacancy for reserved candidates as per post based reservation roster and the very theme is deceptive. The applicants have gathered information regarding established cadre strength and the physical strength of the cadre of Loco Pilot Goods, which is 220 posts. Presently, 44 persons belong to SC and 13 to ST category and now 13 from SC and 6 ST candidates are sought to be promoted. It would lead to 57 SC and 19 ST against post based reservation which comes to 33 and 17 ST category and the applicants are being put out of zone of consideration due to application of the redundant circular since its very basis has been struck down.

In OA No.484/2012 also, the applicants were initially appointed to the post of Assistant Loco Pilot on 29.7.2009 and were posted in Samdari Railway Station in NWR and all belong to General i.e. unreserved category. They were all promoted as Senior Loco Pilot in the grade pay of Rs. 4200/- w.e.f. 1.5.2010 and subsequently were transferred to Jodhpur where they continue to work satisfactorily. That the third respondent issued a seniority list in respect of Senior Assistant Loco Pilot vide letter dated 22.12.2011 and their names are placed at Sl.No.103, 107 and 108. A provision has been made that Senior Assistant/Assistant Loco Pilot would be considered for promotion to the post of Loco Pilot Goods on seniority cum suitability basis i.e. having benchmark, and therefore, the applicant have come within the zone of consideration for promotion to the post of Loco Pilot

Goods. That despite the legal position, the third respondent has prepared the select panel for promotion to the post of Loco Pilot Goods vide order dated 23.11.2012 as at Ann.A/2. In the said order employees from Sl. No. 1 to 33 are sought to be promoted as per their own merit. Out of these 33 candidates about 19 candidates belong to SC/ST category. Further, the employees from Sl.No. 34 to 57 have been empanelled in view of shortfall (backlog) of SC/ST candidates, though there is no backlog vacancies for reserved candidates as per post based roster reservations and the applicants have been put out of zone of consideration due to application of redundant circular since its very basis has been struck down.

The applicants in both the OAs have further averred that the issue regarding giving reservations in promotion came up for consideration before the Hon'ble Punjab and Haryana High Court in the case of Lachhmi Narain Gupta and Ors. vs. Jarnail Singh and others, CWP No.13218/2009 and the same has been decided vide judgment dated 15.7.2011, while deciding the issue of reservation in promotion to the post of Income Tax Officer. In the above case, it has been held that reservation in promotion would be permissible to SC/ST category candidates as per post based roster only i.e. against reserved points only. According to the applicants, even otherwise the OM dated 10.8.2010 did not come out to be valid on the touchstone laid down in Nagaraj's case by the Apex Court. OM dated 10.8.2010 issued by DOPT providing to the contrary has thus been struck down by the Punjab and Haryana High Court in the above referred case. Therefore, it is stated that the impugned Railway Board's circular

dated 1.9.2010 cannot be sustained because it is consequential to and para-materia with the DOPT OM dated 10.8.2010. It is deemed to be quashed as well as rendered nugatory, thereby resulting in revival of Railway Board Circulars dated 6.5.2005 and 29.1.2009 which were sought to be withdrawn vide impugned circular dated 1.9.2010. It has been further stated that recently, Allahabad Bench of this Tribunal has entertained a similar issue in OA No.825/2012 and passed interim order on 7.8.2012 after brief narration of facts and legal position.

In view of the above, the impugned circular dated 1.9.2010 and order dated 8.7.2013 in OA No.271/2013 and 23.11.2012 in OA No.484/2012 are not in accordance with law and therefore, the applicants have prayed for the following reliefs:-

In OA No.271/2013

- (i) That the applicants may be permitted to pursue this joint application on behalf of three (sic) applicants under rule 4(5) of CAT Procedure Rules 1987.
- (ii) That impugned circular dt. 1.9.2010 (Annexure A-1), issued by the Railway Board and order dated 8.7.2013 (Annexure A/2), to the extent of providing unwarranted reservation to SC/ST candidates, and all consequential orders thereof may be declared illegal and the same may be quashed and applicants may be allowed with all consequential benefits including consideration of their due promotion to the post of Loco Pilot Goods as if the impugned circular dated 1.9.2010 (A/1) were never in existence.
- (iii) That any other direction, or order may be passed in favour of the applicants, which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
- (iv) That the costs of this application may be awarded.

In OA No.484/2012

- (i) That the applicants may be permitted to pursue this joint application on behalf of three applicants under rule 4(5) of CAT Procedure Rules 1987.
- (ii) That impugned circular dt. 1.9.2010 (Annexure A-1), issued by the Railway Board and order dated 23.11.2012 (Annexure A/2), and all consequential orders thereof may be declared illegal and the same may be quashed and applicants allowed with all consequential benefits including consideration of their due promotion to the post of Loco Pilot Goods as if the impugned circular dated 1.9.2010 (A/1) were never in existence.
- (iii) That any other direction, or orders may be passed in favour of the applicants, which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
- (iv) That the costs of this application may be awarded.

3. The official as well as private respondents by filing separate replies/short replies/additional submissions have denied the right of the applicants. The respondents have stated that the process of promotion is initiated strictly in adherence to the circular of Railway Board having statutory force and admittedly till date the circular has all authority and power as required for a statutory circular. The Central Administrative Tribunal being a statutory body can examine the grievance in the context of statutory rules and till the statutory rules are in force or till the statutory rules are not held to be violative of constitutional provisions, operation of the same cannot be withheld. The instructions issued earlier vide Railway Board letter dated 6.5.2005 and 29.1.2009 were withdrawn by circular dated 1.9.2010. The DOPT OM merely clarifies that the status of a reserved category candidate who is promoted on his own merit and seniority not owing to reservation or relaxation of qualification, is required to be adjusted

against the unreserved post. It has been further stated that the Railway Board circular dated 1.9.2010 is just and proper and is still in existence. Since the Railway Board has not withdrawn this circular, therefore, the respondents have rightly followed the circular.

The official respondents in OA No.271/2013 have submitted that 33 vacancies of Loco Pilot Goods are to be filled up and out of this, 6 employees of earlier panel were included and remaining 27 employees were selected from the list issued by the department as Ann.A/13. It has also been submitted that the promotion list (Ann.A/2) which has been issued by the department in which Sl. No. 1 to 25 (except Sl.No.5) have been promoted as per their own merit and the employees as shown from Sl.No.26 to 33 have been promoted against the reserved vacancies. It has been further submitted that the department is maintaining the reservation and as per reservation only the promotions are made. If an employee belonging to SC/ST category is promoted on his own merit then his post cannot be treated under the reserved category. The applicants are showing the complete members of SC/ST confusing the issue that more reservation has been made. In fact, the SC/ST candidates promoted on their own merit are to be adjusted against General Posts and accordingly treated as General Candidates. They are not to be counted as promoted against posts reserved for SC and ST.

The official respondents in OA No.484/2012 have submitted that as per post based roster, there is a backlog vacancy of reserved candidates to the tune of 14 for SC and 1 for ST. In order to fill up backlog position for reserved candidates including new points of

SC/ST as per roster register, total 21 SC and 4 ST are to be considered for suitability from out of turn seniority and 33 posts of Loco Pilot Goods are to be filled up by General candidates. It is being clarified that name of SC/ST candidates falling in the suitability list from Sr. No. 1 to 33 are included on the basis of their general seniority and as such the incumbents from Sl.No. 1 to 33 shall not be counted against the reserved posts of Loco Pilot Goods.

The private respondents in their reply have averred that as per provisions of Indian Railway Establishment Manual the post of Loco pilot goods is selection post from the very beginning and therefore the contention mentioned by the applicants are not relevant. The circular dated 1.9.2010 is not applicable as the posts of Loco Pilot goods is a selection post and in selection post the persons who are having their own merit and seniority are not to be counted against reserve points. With regard to the judgment of Hon'ble Punjab and Haryana High Court in the case of Lachhmi Narain Gupta (supra), it is stated that the same has been challenged before the Hon'ble Supreme Court by way of SLP and the same is still pending and the judgment of the Coordinate Bench is applicable in the present case. Respondents have further stated that the process of promotion is undertaken in consonance with the statutory circular of Railway Board. The private respondents in their reply have also submitted that the applicants could not demonstrate as to how there is no shortfall whereas the respondents have narrated that there are deficiencies and the private respondents are being considered against the backlog vacancies.

4. The applicant have filed rejoinder to the reply filed by official as well as private respondents reiterating the submissions made in the OAs. It has been reiterated that the OM dated 10.8.2010 issued by DOPT has been struck down by Hon'ble Punjab and Haryana High Court and no order based on that, least to say Railway Board circular/clarification, can have any existence. The applicants have referred the order passed on 9.1.2012 passed by the Hon'ble Bombay High Court in WP No.8381/2011, Shri Chowalloor Vicent Joseph vs. All India Income Tax SC/St Employees Welfare Federation in which their Lordships have clarified the position of OM dated 10.8.2010 that the same did not exist and there was no question of implementing the same and modified the order of the CAT-Bombay Bench. The respondents are calling the RBE No. 126/2010 as existing law and thus they are giving their defence on misconceived and non-existing law. It is further stated that the post of Loco Pilot is to be treated as a non-selection post till 31.12.2013 (refer Ann.R/2 in OA No.271/2013), therefore, the concept of own merit does not apply to the instant case and the promotions are required to be made as per seniority cum suitability and the reserved points are to be adjusted by the candidates falling within the seniority limits by applying the posts absorbed reservation roster, but the respondents are endeavouring to apply the own merit concept in non selection posts also by invoking RBE No. 126/2010 which has been declared illegal and its basis struck down.

5. Heard the learned counsel for the parties and perused the material available on record. So far as relief regarding permission to pursue joint OA is concerned, the same is allowed.

6. Counsel for the applicant contended that the respondents i.e. the Railway Department is promoting the officials on the post of Loco Pilot Goods counting the backlog vacancies from the year 1997 and as per Annex. A/2 in OA No.271/2013, transfer, promotion/posting order of 33 candidates has been issued. He further contended that in Annex. A/2 of OA No. 271/2013, it has been mentioned that officials at S.No.5 and from S.No. 26 to 33, have been enlisted due to the shortfall of the SC/ST candidates. Counsel for the applicant further contended that in OA No. 271/2013 the respondents in their reply admitted that there were 57 anticipated vacancies, out of which 6 candidates have already been promoted and there were 51 vacancies in Bikaner Division. In OA No.484/2012 as per Ann.A/2, 57 persons have been declare eligible for promotion of which Sl.No.34 to 57 are said to be against shortfall of SC/ST. He further contended that in MA No. 308/2013 filed by the official respondents in OA No. 484/2013 it has been averred that 29 posts are less than the actual requirement of Loco Pilot Goods in Jodhpur Division.

7. Counsel for the respondent Nos. 1 to 3 has also admitted this position and so far as OA No. 271/2013 is concerned, there are 51 vacancies in Bikaner Division for which process of promotion has already been initiated. They have also admitted this fact, so far as OA No. 484/2012 is concerned, that there is shortage of 29 vacancies of Loco Pilot Goods in Jodhpur Division and there are 62 vacancies in the total cadre of Loco Pilots. Counsels for the official respondents further contended that the vacancies

are being increased on the sanction of different rail routes and after every six months cadre is being reviewed by the respondent-department on the grounds of new sanction of trains, therefore, exact number may increase even after filing the additional affidavit. Counsel for the official respondents contended that promotions have been stayed by this Tribunal and non-filling of vacancies is creating the shortfall of Loco Pilots for running the trains properly. He also stated that the applicants in both OAs are also eligible to be considered for promotion. As far as the post of Loco Pilot Goods is concerned, the counsel for the respondents stated that it is a selection post but special permission has been given to fill it up by non-selection method and such procedure has been extended upto 31.12.2013 (refer RB/Estt.No.51/2013 dated 24.5.2013, Ann.R/2 in OA No. 271/2013).

8. Counsels for the private respondents contended that a similar controversy came before the Division Bench of the CAT-Jaipur Bench in OA No.63/2011 and while dealing with the controversy in the case of Income-Tax Department, the Division Bench considering the different judgments of the Hon'ble Supreme Court pronounced in the case of Ajit Singh Januja vs. State of Punjab, (1996) 2 SLR 71; K. Manorama , 2010 (10) SCALE 304; R.K. Sabharwal SLJ 1995 (2) 227; M. Nagraj, (2006) 8 SCC 212; Suraj Bhan Meena, (2011) 1 SCC 467; Union of India vs. Virpal Singh Chauhan, (1995) 6 SCC 684 and the judgment rendered by the Hon'ble Punjab and Haryana High Court in the case of Lachhmi Narain Gupta and Ors. and the recent judgment rendered by the Hon'ble Supreme Court in Civil Appeal No. 2608/2011 in the case of U.P. Power Corporation Ltd. vs. Rajesh Kumar and Ors. decided on 27.04.2012, directed the Income-Tax department to proceed with the exercise of promotion subject to the final disposal of the SLP pending before the Hon'ble Supreme Court against the judgment of the

Hon'ble Punjab & Haryana High Court in the case of Lachhmi Narain Gupta & Ors. vs. Jarnail Singh & Ors.

9. We have considered the contentions of all the parties and also recorded the facts as admitted by all the parties in their pleadings. After thoughtful consideration of the arguments advanced by all the parties, we are also of the view to dispose of the OAs with certain directions because promotions have been stayed by this Tribunal in OA Nos. 271/2013 and 484/2012.

10. Accordingly, both the OAs are disposed of with following directions:-

- a. The Railway Department may complete the exercise undertaken by it for promotion to the post of Loco Pilot Goods and the official respondents i.e. Railway Department shall promote the officials after considering their candidature as per law;
- b. The promotions so made shall be subject to the outcome of SLP pending in Hon'ble Supreme Court against the judgment of the Hon'ble Punjab & Haryana High Court in the case of Lachhmi Narain Gupta & Ors. vs. Jarnail Singh & Ors.
- c. The seniority list prepared by the official respondents shall also be subject to the final outcome of above SLP pending in Hon'ble Supreme Court.
- d. The respondents shall consider the case of the applicants as per the prevailing circulars and rules in force particularly letter dated 24.05.2013, R.B/Estt No. 51/2013.
- e. The applicants shall be at liberty to redress their grievances after the final outcome of the above SLP.

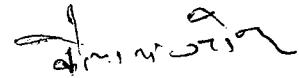
11. With above observations, the OA No. 271/2013 and 484/2012 stand disposed of with no order as to costs.

12. In view of above, MA Nos.261/2013 and 69/2013 for deletion of respondent No.2 from the array of parties have rendered infructuous, and

accordingly, the same are dismissed as rendered infructuous. As the order has been passed in both the OAs, the MA for modification of stay order also stands disposed of in the light of observations made above.



(MEENAKSHI HOOJA)  
Administrative Member



(JUSTICE K.C.JOSHI)  
Judicial Member

R/ss