

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No. 13 of 1997

Present : Hon'ble Mr. Justice A.K. Chatterjee, Vice-Chairman
Hon'ble Mr. M.S. Mukherjee, Administrative Member

Ashim Kumar Ghosh Chowdhury, working as
Driver (Goods) under Loco Foreman, Beli-
ghata, Eastern Railway, Sealdah, resi-
ding at 123/E, Mogal Bagan Railway Quarter,
Narkeldanga, Calcutta-11.

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Applicant

-Versus-

1. Union of India, through the General Manager, Eastern Railway, 17, N.S. Road, Calcutta-1 ;
2. General Manager, Eastern Railway, 17, N.S. Road, Calcutta-1 ;
3. Chief Personnel Officer, Eastern Railway, 17, N.S. Road, Calcutta-1 ;
4. Divisional Railway Manager, Eastern Railway, Sealdah Division, Sealdah ;
5. Chief Motive Power Engineer (Running Loco), Eastern Railway, Calcutta.

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Respondents

Counsel for the applicant : Mr. S.K. Dutta
Mr. T.K. Biswas

Counsel for the respondents : Mr. P.K. Arora

Heard on : 7.3.97
11.3.97 & 21.3.97 - Order on : 2.4.1997

O R D E R

A.K. Chatterjee, VC

The petitioner is a Driver (Goods) under Loco-Foreman at Beliaghata, Eastern Railway since 3rd August, 1994, prior to which he had worked as a Shunter. On 31.5.96, a circular was issued by the Chief Personnel Officer on the subject of formation of a panel for the post of Loco Running Supervisor (Steam and Diesel)

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in the scale Rs.2000-3200/- . It was stated in the circular that Drivers of ^{Mail} ~~Mail~~ Express and Passenger Trains and also Goods Drivers with atleast five years experience were eligible for consideration subject to the option given by them. It was further stated that as one time relaxation, Shunters, who have passed Driver's ^{training} from Jamalpur and also Shunters with two years experiences were eligible for consideration. A written test was held on 21.9.96 and 30 candidates, who have qualified in such test were directed to appear in a viva-voce test on 24th & 26th December, 1996. The petitioner's contention is that the power to relax or modify rules was embodied in para-114 of Indian Railways Establishment Manual - Vol.I, 1989, which has since been deleted and, therefore, the ~~the~~ relaxation ~~was~~ given in the said circular cannot be sustained. It was also urged that in terms of the aforesaid circular, the petitioner was ineligible for consideration as he did not put in five years service as Driver but Shunters being eligible, the result is that many Shunters, who were junior to the petitioner may be promoted to the post of Loco Running Staff leading to an anomalous situation. The petitioner, therefore, has filed this application, inter alia, for an order quashing the aforesaid circular dt.31.5.96 and the resultant selection which has been made pursuant thereto.

2. The respondents in their counter have stated that in view of non-availability of sufficient ^{number} ~~opportunity~~ of literate staff from among Drivers, options were also invited from Shunters with two years experience and Shunters, who have passed Driver's training from Jamalpur in exigencies of service with the approval of the competent authority. They have also said that it was decided by the competent authority to decentralise the post of Loco Running Supervisor and the written test, which was held in September, 1996 was

treated as cancelled by a letter dt. 25.10.96 but on further review, it was decided that the selection process should be restored and finalised and the decentralisation would take place after the selection was completed. Accordingly, Viva-voce test was held on 24th & 26th December, 1996 but out of 57 vacancies, only 30 staff had qualified in the written test.

3. We have heard the 1d. Counsel for both the parties and perused the records before us. Now, there was no controversy that the petitioner did previously work as Shunter for more than two years which is the feeder grade for promotion to the post of Driver(Goods), but he has not yet completed the requisite period of service as Driver(Goods), which has since been reduced from 5 years to 3 years to be eligible for consideration for the post of Loco Running Supervisor. If the petitioner's contention that power to relax as given in Rule 114 of the Indian Railways Establishment Manual - Vol.I, 1989 is upheld and the option invited from Shunters with two years experiences or Shunters with Driver passed training from Jamalpur is struck down, the petitioner himself will be disqualified for consideration for appointment to the post of Loco Running Supervisor. In other words, the petitioner will have no locus standi to ^{Challenge} ~~quash~~ the impugned circular dt. 31.5.96. The 1d. Counsel for the respondents, on the other hand, has stated the circumstance under which relaxation was made as one time exception and he has argued that even though Rule 114, which confers power on the competent authority to relax has been deleted, still it has no application to the case of promotion and the zonal authorities were quite competent to prepare avenues of promotion. We do not propose to enter into the question whether the power to relax was available to the competent authority because such a question could be raised by the petitioner only if he was eligible

for consideration by having rendered three years service as Driver(Goods). The Ld.Counsel for the respondents has stated that vacancies in the post of Loco Running Supervisor are still available and it was open to the petitioner to give an option even now as he had undoubtedly worked as Shunter for more than two years. This is a fair proposal and we find no reason to reject it. Indeed, such an opportunity will give the petitioner to qualify for the higher post of Loco Running Supervisor, which after all is his real grievance.

4. For reasons indicated above, the application is disposed of with this order that the petitioner may within three weeks from this date give an option in the manner prescribed in the impugned circular dt.31.5.96 and if such an option is given, a supplementary written test shall be held followed by a viva-voce test in case the petitioner qualifies in the former. The question of seniority of the petitioner, if ultimately he is appointed as a Loco Running Supervisor is left open.

5. No order is made as to costs.

M.S. Mukherjee
2/4/97
(M.S. Mukherjee)
Member(A)

A.K. Chatterjee
2.4.97
(A.K. Chatterjee)
Vice-Chairman