

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 616 of 2011

Thursday, this the 22nd day of December, 2011

CORAM:

**HON'BLE Mr. JUSTICE P.R. RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

1. B. Radhakrishnan
S/o. N.G. Balakrishna Menon
Loco Pilot (Passenger)
Southern Railway, Shornur Railway Station & P.O
Shornur, Permanent Address: Kottarappat House
Konathukunnu (P.O), Thrissur District.
2. R. Rajendra Prasad, S/o. K. Rajappan
Loco Pilot (Passenger)
Southern Railway, Shornur Railway Station & P.O
Shorunu, Permanent Address : Kannattuveli House
Punnapra (P.O), Alappuzha District.
3. V.S. Ganesan, S/o. V.K. Sivasankaran
Loco Pilot (Passenger)
Southern Railway, Shornur Railway Station & P.O
Shornur, Permanent Address: Vilakkethu House
Anthikkad (P.O), Thrissur District – 680 641.
4. K.T. Venugopalan, S/o. Kotha
Loco Pilot (Passenger)
Southern Railway, Shornur Railway Station & P.O
Shorunu, Permanent Address: Kandanpadi House
Tharuvakonam (P.O), Panmana Via
Ottappalam – 679 501.
5. Pushpan T.K, S/o. T.V. Kumaran
Loco Pilot (Passenger), Southern Railway
Shornur Railway Station & P.O
Shornur, Permanent Address : Valiapurackal House
Puzhaveedu (P.O), Alappuzha – 688 009.
6. C.K. Ajithkumar, S/o. C.K. Govindan
Loco Pilot (Passenger)
Southern Railway, Shornur Railway Station & P.O
18/250 B, Kochupally Road
Thoppumpady, Cochin – 682 008.

- Applicants

(By Advocate Mr. T.C.G. Swamy)

[Signature]

Versus

1. Union of India represented by
The General Manager, Southern Railway
Headquarters Office, Park Town (P.O)
Chennai – 600 003.
2. The Divisional Railway Manager
Southern Railway, Palghat Division
Palghat.
3. The Senior Divisional Mechanical Engineer
Southern Railway, Palghat Division
Palghat.
4. The Senior Divisional Personnel Officer
Southern Railway, Palghat Division
Palghat.
5. Pradeep Kumar, Loco Pilot (Passenger)
[Under Orders of Promotion as Loco Pilot (Mail)]
Southern Railway, Shornur Railway Station
Shornur.
6. Abbas T.M, Loco Pilot (Passenger)
[Under Orders of Promotion as Loco Pilot (Mail)]
Southern Railway, Shornur Railway Station
Shornur.
7. Narayanankutty P
Loco Pilot (Passenger)
[(Under orders of Promotion as Loco Pilot (Mail)]
Southern Railway, Shornur Railway Station
Shornur.

- Respondents.

(By Advocate Mr. Thomas Mathew Nellimoottil for R1-4)
(By Advocate Mr. U. Balagangadharan for R5-7)

This application having been heard on 02.12.2011, the Tribunal on
21-12-11.... delivered the following:

ORDER

Hon'ble Mr. K. George Joseph, Administrative Member -

The applicants in this O.A are working as Loco Pilots (Passenger) at Shornur Junction Railway Station, Southern Railway. They are aggrieved by the order of the respondents by which their juniors have been promoted as

Loco Pilots (Mail) overlooking them and without even considering them for such promotion. They have prayed for the following reliefs:

- (i) Call for the records leading to the issue of Annexure A-1 and quash the same to the extent it relates to respondents 5 to 7;
- (ii) Declare that failure to consider the applicants for promotion to the post of Loco Pilot (Mail) in preference to respondents 5 to 7 is arbitrary, discriminatory and unconstitutional;
- (iii) Direct the respondents to consider the applicants for promotion as Loco Pilot (Mail) in preference to the respondents 5 to 7 and direct further to include the names of the applicants at the appropriate place in Annexure A-3 and direct further to grant the applicants the consequential benefit of promotion including arrears of pay and allowances with effect from the date of Annexure A-1 order;
- (iv) Award costs of and incidental to this application;
- (v) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case.

2. The applicants contended that the post of Loco Pilot (Mail) is a non-selection post to be filled on the basis of seniority, subject to the prescribed bench mark. Overlooking the applicants who were seniors, is totally arbitrary and discriminatory. In terms of Para 214(a) of the Indian Railway Establishment Manual, non-selection post is to be filled up by promotion of the senior most suitable Railway servant. The applicants have a right to be considered for promotion as Loco Pilot (Mail) in preference to the respondents 5 to 7, who are their juniors. There is no provision in the Manual or any orders of the Railway Board enabling the respondents to take away that right by inviting willingness or unwillingness to be promoted.

3. The official respondents in their reply statement submitted that the

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practice of calling for willingness or unwillingness from eligible Loco Pilots (Passenger) for promotion was adopted since 2009 by the 3rd respondent in order to overcome the problem of refusal of promotion resulting in acute shortage of crew for running Mail/Express trains. The notification calling for willingness or unwillingness of employees for filling up the vacancies of Loco Pilots (Mail) were displayed on the Notice Board as per usual practice. But it was not entered in the standing order book of Shornur Depot. The applicants did not signify their willingness before 28.06.2011, i.e. the date on which the promotion proposal was initiated. Therefore, they were not considered for promotion along with the other five employees of the Shornur Depot. Now that they have given their willingness after 28.06.2011, their cases are under consideration.

4. The party respondents in their reply statement submitted that the applicants had seen the notice and had consciously opted out as they never expected that on getting promotions, postings would be at Shornur. In fact, the applicants had discussed the matter with them.

5. We have heard Mr. T.C. Govindaswamy, learned counsel for the applicants, Mr. Thomas Mathew Nellimoottil, learned counsel for the official respondents 1 to 4 and Mr. U. Balagangadharan, learned counsel for the respondents 5 to 7 and perused the records.

6. The post of Loco Pilot (Mail) is a non-selection post to be filled on the basis of seniority subject to suitability. The applicants were bye-passed for promotion as they failed to signify their willingness to be promoted before the



cut off date. The Rule 214 which governs the field of promotion to non-selection post, is extracted as under:

"214. (a) Non selection posts will be filled by promotion of the senior most suitable Railway servant. Suitability whether an individual or a group of Railway servants being determined by the authority competent to fill the posts on the basis of the record of service and/or departmental tests if necessary. A senior Railway servant may be passed over only if he/she has been declared unfit for holding the post in question.

(Authority:- Railway Board's letter No. E(NG)I-2002/PM-I/37 dated 01.11.2002)

(b) When, in filling of a non-selection post, a senior Railway servant is passed over the authority making the promotion shall record briefly the reason for such supersession.

(c) In respect of promotions to non-selection post, the following principles should be followed?

(i) Staff in the immediate lower grade with a minimum service of two years in that grade will only be eligible for promotion, unless a longer length of service in the lower grade has been stipulated as a condition of eligibility for promotion in any particular category. The service for this purpose includes service, if any, rendered on ad hoc basis followed by regular service without break. The condition of two years' service should stand fulfilled at the time of actual promotion and not necessarily at the stage of consideration. If by virtue of the above rule, a junior is eligible for such promotion, his senior will also be eligible for such promotion, even though he might not have put in a total service of two years, or more (if stipulated in a particular category in the lower grade).

(Authority:- Railway Board's letter No. E(NG)I-85-PM1/13(RRC) dt. 09.02.87 and E(NG)I-97/PM1/39 dated 07.08.98)."

(emphasis supplied)

7. The above rule does not provide for calling willingness before considering promotion. In fact, Annexure A-1 promotion order dated 01.07.2011 provides that those who are promoted as Loco Pilots (Mail) should



advise their willingness or otherwise within 15 days of the order to the concerned office. Those who refuse promotions will be debarred from promotion for one year and will loose seniority to their juniors who accept promotions. Though the practice of calling for willingness to be promoted was adopted with the good intention of preventing the critical post of Loco Pilot (Mail) remaining vacant on account of refusal to accept promotion, it has no legal sanctity. At the same time, provision is made in the Indian Railway Establishment Manual to penalize those who refuse promotion. Therefore, non consideration of the applicants for promotion on the ground that they did not express their willingness to be promoted before a certain date is illegal and void, that too, without serving notice to the applicants individually. On this count alone, the O.A is liable to be allowed.

8. We do not go into the merits of the contention of the party respondents as there are sufficient vacancies available to accommodate them as well as the applicants. The respondents themselves have stated that the promotion of the applicants is under consideration. In the circumstances, the O.A. is allowed as under.

9. The respondents are directed to consider the applicants for promotion as Loco Pilot (Mail) and to grant promotion to those applicants who are found fit with effect from the date of appointment of the respondents 5 to 7 with the benefit of pay fixation, but with no arrears of pay and allowances till the date of joining the promotion post, within a period of three months from the date of receipt of a copy of this order.

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10. No order as to costs.

(Dated, the 22nd December 2011)


K.GEORGE JOSEPH
ADMINISTRATIVE MEMBER


JUSTICE P.R. RAMAN
JUDICIAL MEMBER

cvr.