

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 333 OF 2010
O.A. NO. 335 OF 2010
&
O.A. NO. 336 OF 2010

Wednesday, this the 20th day of July, 2011

CORAM:

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

1. OA 333/2010:

1. Seby P.B,
Assistant Loco Pilot
Southern Railway, Shornur.
Residing at "Pappary" House
Chandankunnu, Chattikkulam (P.O)
Chalakkudi, Thrissur District.

2. M.K. Pratheesh,
Assistant Loco Pilot,
Southern Railway, Palghat.
Residing at Moorkanadan House
Anjeri (P.O), Thrissur District

3. C. Santhosh,
Senior Assistant Loco Pilot
Southern Railway, Palghat.
Residing at Pulimoottil Vadakkathil Veedu
Edakkidom (P.O), Ezhukone
Kollam District.

Applicants

(By Advocate Mr. TCG Swamy)

versus

1. Union of India represented by
The General Manager
Southern Railway, Headquarters Office
Park Town (P.O), Chennai – 3.
2. The Divisional Mechanical Engineer
Southern Railway, Palghat Division
Palghat.
3. The Sr. Divisional Personnel Officer
Southern Railway, Palghat Division
Palghat.

4. Sreejith T.K., Senior Assistant Loco Pilot
(Under orders of promotion as Loco Pilot/
Goods/Calicut), Southern Railway
Calicut Railway Station, Calicut.

5. Abhimanyu K.P., Senior Assistant Loco Pilot
(Under orders of promotion as Loco Pilot/
Goods/Shornur), Southern Railway
Shornur Railway Station, Shornur.

6. Haridasan T.N, Senior Assistant Loco Pilot
(Under orders of promotion as Loco Pilot/
Goods/Shornur), Southern Railway
Shornur Railway Station, Shornur. **Respondents**

(By Advocate Mr.Thomas Mathew Nellimoottil (R1-3)

2. OA 335/2010:

1 Mathew Vincent,
Senior Assistant Loco Pilot/
Southern Railway/ Calicut.
Residing at "Vethani House"
Chandadakadave, Nalloornad Post
Mananthavady, Wayanad – 670 645.

2 Vinod Variyath Kunnummal
Senior Assistant Loco Pilot
Southern Railway, Calicut
Residing at Variyathu Kunnummal House
Elayur, Iruvetty Post
Malappuram District – 673 639 **Applicants**

(By Advocate Mr. TCG Swamy)

versus

1 Union of India, represented by
The General Manager, Southern Railway
Headquarters Office, Park Town (P.O)
Chennai – 3.

2 The Divisional Mechanical Engineer
Southern Railway, Palghat Division
Palghat.

3 The Senior Divisional Personnel Officer
Southern Railway, Palghat Division
Palghat.

4 Mohanan K, Loco Pilot (Shunting)
 (Under orders of promotion as Loco Pilot/
 Goods/ Mangalore), Southern Railway
 Mangalore Railway Station
 Mangalore.

5 Raghunathan P., Loco Pilot (Shunting)
 (Under orders of promotion as Loco Pilot/
 Goods/ Mangalore), Southern Railway
 Mangalore Railway Station
 Mangalore.

Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC (R1-3)

3. OA 336/2010:

1 Thomas Chacko,
 Assistant Loco Pilot/
 Southern Railway/Palghat
 Residing at Railway Quarters
 Old Railway Colony, Olavakkode
 Palakkad District.

2 Rajesh M.R,
 Senior Assistant Loco Pilot
 Southern Railway, Palghat
 Nallayani, Koovakandam (P.O)
 Thodupuzha, Idukki District.

Applicants

(By Advocate Mr. TCG Swamy)

versus

1 Union of India, represented by
 The General Manager, Southern Railway
 Headquarters Office, Park Town (P.O)
 Chennai – 3.

2 The Divisional Mechanical Engineer
 Southern Railway, Palghat Division
 Palghat.

3 The Senior Divisional Personnel Officer
 Southern Railway, Palghat Division
 Palghat.

4 Sureshkumar V.K, Loco Pilot (Shunting)
 (Under orders of promotion as Loco Pilot/
 Goods/ Mangalore), Southern Railway
 Mangalore Railway Station
 Mangalore.

5 Sreejith Kutty, Senior Assistant Loco Pilot
 (Under orders of promotion as Loco Pilot/

Goods/Palghat), Southern Railway
Palghat Railway Station, Palghat ... Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil (R1-3))

The applications having been heard on 20.07.2011, the Tribunal on the same day delivered the following:

ORDER

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER

The above OAs raise a common question of law and facts and hence they are disposed of by this common order.

2. The applicants in each of the cases belongs to Scheduled caste / Scheduled Tribe. It is their case that the respondents instead of filling up the SC /ST short fall vacancies for promotion to the post of Loco Pilot (Goods), the same is being filled up by general candidates. All the applicants are at present working as Senior Assistant Loco Pilots, Southern Railway. The next promotion post is that of Loco Pilot (Goods). According to the applicants, the post of Loco Pilot (Goods) are to be filled up in terms of the Railway Board order bearing RBE No.101/2008 dated 22.08.2008. Annexure A-1 is the order produced along with OA 335/10. As per terms contained in Annexure A-1, Assistant Loco Pilots with two years service and 60,000 kms. footplate experience is entitled to be considered for promotion as Goods Drivers (Loco Pilot (Goods)) subject to fulfillment of certain other conditions, viz., they have to undergo the pre promotional training course and only if they have successfully completed the training and competency certificate is obtained, they will be considered eligible to be promoted to the post of Loco Pilot (Goods). But the grievance of the applicants is that they are not being sent for pre promotional training course, as a result the post reserved for Sc / ST are being filled up by

general candidates. This is a clear violation of their right to be considered for promotion guaranteed under Article 16 of the Constitution of India. It is also their case that the delay in sending them for the pre promotional training course, will virtually amount to denial of promotion to the reserved class. Though in the case of applicants in OA 335/10, they have already completed the course and obtained the certificate of competence still they are not promoted to the post of Loco Pilot (Goods). Because of this, the applicants are subjected to substantial prejudice, irreparable injury. According to them, there are few more among the senior most SC/ ST candidates awaiting for promotion to Loco Pilots (Goods). It is pointed out that there are three classes among the SC / ST employees eligible yet not being promoted against the short fall vacancies. (i) persons who are fully eligible having undergone pre promotional training course and obtained the competency certificate (ii) persons who have completed the entire course of training successfully and qualified in the written examination but not given the certificate of competency and (iii) persons who have not been sent for the promotional course at all like S/Shri Sebi P.B., M.K.Pratheesh, C.Santhosh etc. Therefore, they impugn the promotion given to general candidates in the vacancies earmarked for SC / ST candidates. The applicants, therefore, pray that Annexure A-6 order of promotion given to general candidates to fill up the short fall vacancies, the preferential claim of the applicants for promotion in the reserved category quota in the SC/ST category is illegal and unconstitutional. They also seek a direction to the respondents to consider the applicants for promotion as Loco Pilot (Goods) and such other consequential benefits, they are entitled.

3. The applicants in OA 336/2010 have under went the pre promotional training course and are awaiting for the competency certificate to be issued. The applicants in OA 333/2010 are the persons who have not yet been sent for pre promotional training course.

4. Separate reply statements have been filed in each of the cases. According to the respondents all the applicants have been sent for pre promotional training course and they would become qualified for promotion only after obtaining the necessary competency certificate on successful completion of their training. Since the process is not yet completed, by giving them the certificate of competency, on a temporary measure, the reserved vacancies (short fall vacancies) are filled up from the general candidates as there is dearth for Loco Pilots (Goods) to avert public inconvenience and in administrative exigencies, such measures are absolutely justified.

5. We have heard both sides. It is not in dispute that certain percentage of vacancies are ear-marked for promotion to the post of Loco Pilot (Goods) to the SC/ST candidates. The applicants are all in the feeder category viz., Assistant Loco Pilot. They belong to SC/ST category. Respondents has no case that the vacancies ear-marked for the applicants are not being filled up. But according to them, they are constraint to fill up the vacancy by promoting the general candidates only as a temporary measure due to administrative exigencies for want of qualified hand in the reserved category.

6. At this distance of time, all the applicants were sent for training course and hence it is not necessary to give any direction to sent them for training. In the case of applicants in OA 335/10, they have got a definite case that they have already undergone the pre promotional training and obtained the competency certificate. In the reply statement it is contended that the applicants in OA 335/10 have been qualified but that will not confer any right for them to be promoted especially since there are seniors to the applicants in the reserved category awaiting for promotion. We are not examining the question as to whether applicants are all seniors among the SC/ST candidates eligible to be considered for promotion to the post of Loco Pilot (Goods) on satisfactory completion of pre promotional training course. The larger question that arises for consideration is the delay in the matter of sending the persons like the applicants for pre promotional training course. At this stage, since all the applicants have been sent for pre promotional training, what we need is to direct the respondents to issue the competency certificate to those who successfully completed the pre promotional training course, if not already issued, without any further delay. In this connection, Mr.TCG Swamy, the learned counsel for applicants in all the three cases submits that all the applicants have been issued with the competence certificate after completion of the training course. But there may be others similarly situated, we are not told of their position. In the circumstances, we direct that all those SC/ST candidates who have completed the training successfully be issued the competency certificate and this exercise may be completed as expeditiously as possible within six weeks from today and thereafter fill up the reserved vacancies in accordance with law within a period of one month thereafter.

7. OAs are allowed as above. No costs.

Dated, the 20th July, 2011.

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K GEORGE JOSEPH
ADMINISTRATIVE MEMBER

JUSTICE P.R.RAMAN
JUDICIAL MEMBER

VS