

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCHO.A No.348 & 356 of 2009

Tuesday, this the 29th day of December, 2009.

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HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE MR. K NOORJEHAN, ADMINISTRATIVE MEMBER

O.A.No.348/2009

1. Sam Joji George,
Assistant Loco Pilot,
Southern Railway, Ernakulam Junction.
2. Sooraj K.S.,
Assistant Loco Pilot,
Southern Railway, Ernakulam Junction.

....Applicants

(By Advocate Mr TC Govindaswamy)

V.

1. Union of India represented by the
General Manager, Southern Railway,
Headquarters Office, Park Town.P.O.
Chennai-3.
2. The Senior Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum-14.

....Respondents

(By Advocate Mr Thomas Mathew Nellimoottil)

O.A.356/2009Biju.K.C.,
Assistant Loco Pilot,
Southern Railway, Ernakulam Junction.

....Applicant

(By Advocate Mr TC Govindaswamy)

V.

1. Union of India represented by the
General Manager, Southern Railway,
Headquarters Office, Park Town.P.O.
Chennai-3.

2. The Senior Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum-14.Respondents

(By Advocate Mr Thomas Mathew Nellimoottil)

This applications having been finally heard on 18.11.2009, the Tribunal on 29.12.2009 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

These two O.As are almost identical and, therefore, they have been heard together and this common order is passed. The only difference is that while the applicants in O.A.348/2009 belong to ST community, the applicant in O.A.356/2009 belongs to SC community. They are aggrieved by the refusal on the part of the respondents to consider them for promotion to the Loco Pilot (Goods) against the quota earmarked for the members of the respective communities. The representation made by the applicants in both cases in this regard was also rejected by the common impugned order dated 28.4.2009/4.5.2009 stating as under:

"Your representation quoted above has been examined in detail.

As the reserved community employee who is senior to you in the cadre is not coming within the field of eligibility for considering him for selection to the post of LP(G)II on the date of issue of alert notice you are not eligible to be considered at present.

Moreover, item Nos.1&2 mentioned above are continuing in this Divin. On the seniority position assigned based on the judgment of the Hon'ble Central Administrative Tribunal, Ernakulam Bench against which appeal is pending for disposal."

2. The first applicant in O.A.348/2009, Shri Sam Joji George was initially appointed on 17.5.1999 as Assistant Loco Pilot in the Bangalore Division of Southern Railway. He was further promoted as Shunting Driver with effect from 6.3.2004 and as ad hoc Loco Pilot (Goods) with effect from 26.12.2005. While

thus working he was transferred on request and posted as an Assistant Loco Pilot in the Trivandrum Division of Southern Railway with effect from 30.10.2007. As regards the 2nd applicant in the said O.A, Shri Sooraj.K.S is concerned, he was initially appointed as an Assistant Loco Pilot in Chennai Division of Southern Railway on 1.8.2001. Thereafter, he was promoted as Senior Shunting Driver with effect from 16.5.2006 and as Goods Driver on regular basis with effect from 22.6.2006. While working in the said capacity, he was also transferred to Trivandrum Division of Southern Railway as an Assistant Loco Pilot with effect from 10.12.2006. Both the applicants, according to them, have fulfilled the requisite eligibility conditions for being promoted to the post of Loco Pilot(Goods). They also possess the valid competency certificate to discharge the duties of the post.

3. According to them, when there were 7 posts earmarked for the ST candidates in the Annexure A-1 notification dated 14.4.2009 only 3 eligible candidates belonging to the ST category were alerted to be in readiness for written examination as part of selection. They have submitted that there was no justification in the contention of the respondents that since the other reserved community employees who were senior to them were not coming within the field of eligibility, they cannot be considered because of their lower seniority positions. In this regard, they have relied upon the Note No.3 of the "Personnel Officers and Members of the Selection Board" constituted for conducting the selection for promotion to the posts classified as "selection" and issued by the Ministry of Railways vide letter No.E(NG)I-98/PM1/17 dated 20.10.1999. which reads as under:

NOTE(3)	It has to be got ensured that the number of eligible employees is calculated separately for the general vacancies and for the reserved vacancies. When the candidates are called in the ratio of 1:3 and in case there are not enough SC/ST candidates to make up the 1:3 ratio no general candidates should be called to make good this shortfall.
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4. The Applicant in O.A.356/2009, Shri Biju.K.C was initially appointed on 12.6.1997 as an Assistant Loco Pilot in the Palghat Division of Southern Railway. He was later promoted as a Senior Assistant Loco Pilot with effect from 1.11.2003 and as Loco Pilot (Goods) with effect from 7.11.2006. While thus working as Loco Pilot (Goods) on regular basis, he was transferred on request as Assistant Loco Pilot in Trivandrum Division of Southern Railway with effect from 6.9.2008. He has also denied the contention of the respondents that there were senior reserved community employees above him who were not coming within the field of eligibility and he could not be considered overlooking their claim for promotion first. He contended that for the 5 vacancies notified, zone of consideration should have been upto 15 candidates in the seniority list and he falls within such limit.

5. The learned counsel for the applicant Shri Mohan Kumar relied upon the judgments of the Apex Court in **State of Maharashtra and others v. Uttam Vishnu Pawar** [2008(1) SCC(L&S) 522] wherein it was held as under:

"6. The respondent-Uttam Vishnu Pawar filed Original Application No.930/1999 before the Maharashtra Administrative Tribunal Mumbai and sought a direction that his services which have been rendered by him in the earlier department may be counted for computing the period of 12 years service for Time Bound Promotion as per Government Resolution dated 8.6.1995. The Tribunal vide its order dated 14th March, 2000 allowed the claim of the respondent and held that the services rendered by the incumbent in the previous department shall be counted in computing the period of 12 years for Time Bound Promotion Scheme. Aggrieved against the order passed by the Tribunal, the State of Maharashtra-appellant herein filed a writ petition before the High Court. The Division Bench of the High

Court of Bombay after hearing both the parties affirmed the order of the Tribunal dated 14.3.2000.

7. The respondent herein was working as a Telephone Operator in Irrigation Department of the State of Maharashtra. Thereafter he made a request for his transfer from Mumbai Zone to Kolhapur Zone. The request of the respondent was acceded to and he was transferred on his own request from Mumbai Zone to Kolhapur Zone and he lost his seniority in Mumbai Zone and he joined in Kolhapur Zone on 14.6.1990 as a Junior Clerk at zero seniority. Thereafter, the State Government passed a Resolution dated 8.6.1995 giving a Time Bound Promotion to the persons who are stagnated in the Group C and D cadres for a long period. As per the said Resolution those persons who have put in 12 years of service and who fulfill other conditions laid down in the said Resolution were eligible for the next higher scale of pay. We are not concerned with the other conditions laid down in the Resolution dated 8.6.1995. We are only concerned with the limited question that whether the respondent is entitled to count his service rendered in the Mumbai Zone when he was transferred to Kolhapur Zone for purposes of computing 12 years of service so as to enable him to get the benefit of this Resolution. The Tribunal granted the benefit of past service to the respondent and the same was affirmed by the Division Bench of the High Court.

8. Learned counsel for the State of Maharashtra submitted that since the incumbent was at zero seniority in the Kolhapur Zone therefore his services rendered in the Mumbai Zone cannot be counted for computing the period of 12 years so as to give him the benefit of Time Bound Promotion Scheme as per Resolution dated 8.6.1995.

9. As against this, learned counsel for the respondent submitted that the incumbent has already lost his seniority and as per the transfer order he has been placed at the zero seniority level but it does not mean that he will lose the service put in by him in the Mumbai Zone. Learned counsel for the respondent has invited our attention to a series of cases of this Court where a view has been taken that if an incumbent is transferred to another zone either by way of public interest or on his own request in either situation the incumbent will get the benefit of past service without getting any benefit of seniority.

10. In this connection our attention was invited to the case of Dwijen Chandra Sarkar and Another Vs. Union of India and Others (1999) 2 SCC 119. In that case the incumbent was transferred from Rehabilitation Department to P & T Department in public interest at zero level seniority in the P & T Department but his past services were counted for giving him the benefit of the Scheme on completion of 16 years of service. In the said case the Court relied on an earlier decision of this Court in the case of Renu Mullick Vs. Union of India (1994) 1 SCC 373 wherein in identical situation the transferee was not permitted to

count her service rendered in former Collectorate for the purpose of seniority in the new charge but she was permitted to count the service rendered by her in earlier Collectorate for other purposes except seniority.

11. Similarly, in the case of Scientific Advisor to Raksha Mantri Vs. V.M. Joseph (1998) 5 SCC 305 it was held by this Court that the service rendered in another department which helps for determination of eligibility for promotion will be counted but not for seniority. Again, in the case of A.P. State Electricity Board Vs. R. Parthasarathi (1998) 9 SCC 425, the government servant was transferred and absorbed in the Electricity Board. It was held that the services rendered in the previous department could be counted towards requisite experience of 10 years for eligibility for promotion.

12. Our attention was also invited to the case of Union of India Vs. V.N. Bhat 2004 AIR SCW 1399. In that case also in identical situation the incumbent was transferred from one department to another. He lost his seniority in the new department but his service was counted for purposes of promotion.

13. Therefore, in view of the consistent approach of this court, it is no more res integra that the incumbent on transfer to the new department may not get the seniority but his experience of the past service rendered will be counted for the purpose of other benefits like promotion or for the higher pay scale as per the Scheme of the government.

14. In this view of the matter, we are of the opinion that the view taken by the Tribunal and affirmed by the Division Bench of the High Court is correct and there is no ground to interfere with the impugned judgment and order of the High Court. Consequently, the appeal is dismissed. No order as to costs.

15. For the reasons stated herein above, these appeals are also dismissed. No order as to costs."

6. In the reply statement, the respondents have denied that the applicants have the requisite eligibility for promotion to the post of Loco Pilots (Goods). They have submitted that the Railway Board, vide letter No.E(NG)I-2006 PM7/21 dated 22.8.2008 (Annexure R-1), advised that in the eventuality of non-availability of Shunters, with the approval of General Managers, they may consider Diesel/Electrical Assistants (redesignated as Asstt. Loco Pilot (Diesel/Elect.) with 2 years service as Diesel Assistant/Electrical Assistant and 60,000 km experience on footplate, for selection for promotion to the post of

Loco Pilot (Goods) subject to certain conditions stated therein. They have, therefore, submitted that for being considered for selection to the post of Loco Pilot (Goods), the Assistant Loco Pilots are required to have put in minimum 2 years service as Assistant Loco Pilot and 60,000 km experience in footplate. As regards the applicants are concerned, they have not put in 2 years of service as Assistant Loco Pilot in Trivandrum Division as they have the bottom seniority. They have also submitted that the 2nd applicant in O.A.348/2009 viz, Shri Sooraj.K.S has joined the Trivandrum Division only in December, 2008 and not on 10.12.2006 as claimed by him.

7. The applicants, along with the rejoinder, have filed a copy of Annexure R-7 letter of the Railway Board dated 21.3.2006 according to which counting of service rendered in the old unit is permissible on own request transfer for the purpose of qualifying service for promotion in the new unit. The aforesaid order reads as under:

"R.B.E.No.34/2006

Sub: Counting of service rendered in the old unit on 'own request transfer' for the purpose of qualifying service for promotion in new unit.

[E(NG)I-2006/PM/I/5 dated 21.3.2006]

As the Railways are aware in terms of extant instructions staff transferred on request basis are treated as direct recruits in the new seniority unit/cadre for the purpose of seniority and the service rendered in the absorbing unit alone counts for eligibility wherever a minimum length of service is specified as a condition for consideration for promotion including promotion to general selection post.

2. Both the federations, viz, AIRF and NFIR have requested for reconsideration of the above instructions and have requested that the total service of the employee, i.e. in the old as well as in the new unit/cadre should be taken into account for determining his eligibility for promotion in the new unit.

3. The matter has, accordingly, been considered by the Board and in partial modification of instructions contained in this

Ministry's letter No.E(NG)I-96/PM4/14 dated 17.4.1997 (Bahri's 55/97, p.42) decided that:

- (i) while persons who seek transfer on request basis will continue to be assigned bottom seniority in new unit/cadre as per the extant procedure, the service rendered by them in the old unit may be reckoned for determining their eligibility wherever a minimum length of service is prescribed as a condition for promotion including promotion to 'General Posts in the new unit, subject to the condition that the service so allowed to be counted does not exceed the length of service of their immediate senior in the new unit; and
- (ii) the benefit of counting of service at (i) above will be applicable only in those cases where the staff join the new unit on request transfer in the same category of posts. For example, this benefit will be admissible in a unit as ASM but not in a case where a Commercial Clerk in the old unit joins on request transfer in another unit as Office Clerk.

4. These instructions will be applicable from the date of issue of this letter."

8. We have heard the learned counsel on both sides. The first question for consideration is whether the applicants have rendered 2 years service as Assistant Loco Pilots to become eligible for promotion as Loco Pilot(Goods) Gr.II. The other question for consideration is that whether it is mandatory that they should have rendered 2 years regular service as Assistant Loco Pilot (Goods) in Trivandrum Division itself for such consideration and their services as Loco Pilots in other Divisions cannot be considered as qualifying service. The promotion to the post of Loco Pilots (Goods) are governed by the Annexure R-1 instructions issued by the Railway Board dated 22.8.2008. According to the said instructions, Assistant Loco Pilots (Diesel/Elec) with 2 years service as Diesel Assistant/Electrical Assistant and 60,000 KM experience on foot plate are eligible for consideration for promotion to the post of Loco Pilot subject to the following conditions:

- (i) Suitability of such Asstt. Loco Pilots to work independently as Driver (Loco Pilot (Goods) shall be personally certified by the Mechanical/Electrical officer (as the case may be), incharge of Power of the Division concerned;
- (ii) Such promotee drivers be placed under the supervision of

- a dedicated Loco Inspector for 5 trips or 500 kms of driving whichever is earlier;
- (iii)For sections classified as 'ghats' such promotee drivers may work with a regular driver as 'co-driver' for seven days or 1000 kms. Whichever is later;
- (iv)Provision of hands on training for independent loco driving to Diesel/Electrical Assistants in their induction and refresher courses shall be included in the course content for the promotional trainings.
- (v)Training centres should be got equipped with simulators progressively."

It is for the respondents to consider the applicants whether they have satisfied the above conditions or not. If they are found fulfilling those conditions, the respondents cannot insist that the two years service rendered by them should have been in Trivandrum Division itself. The judgment of the Apex Court starting from **Renu Mallick's case(supra)** to **Uttam Vishnu Pawar's case(supra)** relied upon by the applicant's counsel clearly make a distinction between seniority and other purposes. Applying the law laid down in the above judgments in the present case, while the applicants can get only bottom seniority in Trivandrum Division on their transfer there, their past service cannot be ignored for other benefits like promotion or higher pay scales. The instruction issued by the Railway Board in RBE No.34/2008 (supra) is also in consonance with the aforesaid principle.

9. We, therefore, allow this O.A and direct the respondents to consider the applicants for promotion to the post of Loco Pilots (Goods) against the vacancies reserved for the Scheduled Tribe/Scheduled Caste categories without insisting for the two years of service as Assistant Loco Pilots in Trivandrum Division itself subject to their fulfilling the other prescribed conditions. There shall be no order as to costs.

K. NOORJEHAN
ADMINISTRATIVE MEMBER

GEORGE PARACKEN
JUDICIAL MEMBER

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