

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 06.03.2014

OA No. 291/00093/2014 with
MA No. 291/00082/2014 &
MA No. 291/00084/2014

Mr. Nand Kishore, counsel for applicants.
Mr. M.K. Meena, counsel for respondent nos. 1 to 3.
Ms. Kavita Bhati, counsel for respondent nos. 4 to 12.

Learned counsel for the applicants has submitted copies of rejoinder to the reply of the official as well as private respondents, and also copies of reply to both the MAs for vacation of interim order, with advance copies of the same to the learned counsels for the respondents. The same are taken on record.

Arguments heard.

Order is reserved.



(M. NAGARAJAN)
JUDICIAL MEMBER


(ANIL KUMAR)
ADMINISTRATIVE MEMBER

Kumawat

At. 12-03-2014

Order pronounced today in the open Court, by the aforesaid Bench.


12/3/14

For. C.O.

**Draft order in OA No. 291/00093/2014
(Krishan Kumar & Others vs. Union of India
& Others) is submitted herewith for
consideration.**

Anil Kumar
**(Anil Kumar)
Member (A)**

Hon'ble Member (J)

I agree.
R. W. G. P.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION No. 93/2014
With
MISC. APPLICATIONS NOS. 291/00082/2014
& 291/00084/2014

ORDER RESERVED ON 06.03.2014

DATE OF ORDER: 12.3.2014

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER
HON'BLE MR. M. NAGARAJAN, JUDICIAL MEMBER

1. Krishan Kumar son of Shri Kailash Chand Sharma, aged 32 years, working as Loco Pilot Shunting, Sr. Section Engineer (Loco), NWR Jaipur, resident of D-80, Indra Colony, Dausa.
2. Rakesh Yadav son of Shri Balveer Singh Yadav, aged 39 years, working as Loco Pilot NWR, Jaipur resident of W-5, Road No. 4, Railway Colony, Ganpati Nagar, Jaipur.
3. Anoop Singh Bishth son of Shri Magan Singh, aged 34 years, working as Loco Pilot Shunting, Sr. Section Engineer (Loco), NWR, Jaipur resident of Krishan Nagar, Purani Basti, Jagatpura, Jaipur.
4. Mahendra Kumar Meena son of Shri Sharwan Lal Meena, working as Loco Pilot Shunting, Sr. Section Engineer (Loco), NWR, Jaipur, resident of Village & Post Kolwa, Tehsil Bandikui/Baswa, District Dausa.
5. Mahesh Chand Meena son of Shri Vishambar Dayal Meena, aged 34 years, working as Loco Pilot Shunting, Sr. Section Engineer (Loco), NWR, Jaipur, resident of Village and Post Dhighariya, Tehsil Baswa, Dausa.
6. Vinod Kumar Verma son of Shri Kajod Mal, aged 32 years, working as Loco Pilot Shunting, Sr. Section Engineer (Loco), NWR, Jaipur resident of C/o W.S. Road No. 4, Railway Colony, Ganpati Nagar, Jaipur.

... Applicants

(By Advocate: Mr. Nand Kishore)

Versus

1. Union of India through General Manager, North Western Railway, Jawahar Circle, Jagatpura, Jaipur.
2. Divisional Railway Manager, North Western Railway, Power House Road, Jaipur.
3. Shri Lala Ram Meena, Sr. Divisional Personnel Officer, NWR, Jaipur.

Anil Kumar

4. Mahesh Chand Laskar, Sr. Assistant Loco Pilot, Sr. Section Engineer (Loco), NWR, Bandikui.
5. Shakti Singh son of Shri Hari Singh, Sr. Assistant Loco Pilot, Sr. Section Engineer (Loco), NWR, Bandikui.
6. Mouzi Ram Kumhar, Sr. Assistant Loco Pilot, Sr. Section Engineer (Loco), NWR, Bandikui.
7. Vaid Prakash Sharma son of Shri Jagdish Prasad, Sr. Assistant Loco Pilot, Sr. Section Engineer (Loco), NWR, Bandikui.
8. Ghanshyam Sharma son of Shri Ram Dayal Sharma, Sr. Assistant Loco Pilot, Sr. Section Engineer (Loco), NWR, Jaipur.
9. Vijay Kumar Sharma, Sr. Assistant Loco Pilot, Sr. Section Engineer (Loco), NWR, Jaipur.
10. Satendra Yadav, Sr. Assistant Loco Pilot, Sr. Section Engineer (Loco), NWR, Jaipur.
11. Sudershan Kumar son of Shankar Lal, Sr. Assistant Loco Pilot, Sr. Section Engineer (Loco), NWR, Phulera.
12. Gopal Khati son of Manna Lal, Sr. Assistant Loco Pilot, Sr. Section Engineer (Loco), NWR, Phulera.

... Respondents

(By Advocate: Mr. M.K. Meena – Respondents nos. 1 to 3.
Ms. Kavita Bhati – Respondents nos. 4 to 12)

ORDER

PER HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

The applicants have filed this OA praying for the following reliefs:-

- (i) The impugned order dated 22.10.2013 and 01.11.2013 dated 24.05.2013 (Annex. A/1 & A/2) issued by the respondents may be declared arbitrary, bad in law and quashed and set aside so far as respondents nos. 4 to 12 are concerned.
- (ii) The respondents may be further directed not to issue promotion order in case of respondent no. 4 to 12 for the post of Loco Pilot Goods as they are not entitled for the same being junior to the applicants.
- (iii) Cost of the OA may also be awarded in favour of the applicants.
- (iv) Any other direction and orders, which are deemed proper in the facts and circumstances of the case may kindly be allowed to the applicants.

Anil Kumar

2. The brief facts of the case, as stated by the learned counsel for the applicants, are that the applicants are working as Loco Pilot Shunting at Jaipur. The applicants were promoted on the above post vide respondents order dated 30.12.2013 and resumed their duties at Jaipur. The posting of the applicants were issued because respondents nos. 4 to 12 refused the promotion for the post of Loco Pilot Shunting vide order dated 30.12.2013 (Annexure A/3). The private respondents nos. 4 to 12 have been debarred for promotion for one year for the post of Loco Pilot Shunting.

3. The learned counsel for the applicants submitted that the respondents vide their letter dated 29.07.2013 have informed that they were 58 vacancies for Loco Pilot Goods. The criteria for promotion to these posts was seniority cum suitability with prescribed bench mark.

4. The learned counsel for the applicants also argued that there were no 58 vacancies till 31.12.2013 but due to malafide intention of respondent no. 3, they have incorrectly stated that they were 58 vacancies. The criteria to fill up the posts of Loco Pilot was not 'Selection' basis.

5. Vide letter dated 22.10.2013, a list of eligible candidates was published. In this list, the name of the private respondents nos. 4 to 12 appeared from sr. no. 45 to 53.

Anil Kumar

6. Subsequently, the respondents published a list of successful candidates for promotion to the post of Loco Pilot Goods vide letter dated 01.11.2013 (Annexure A/2) in which the names of the private respondents nos. 4 to 12 also appeared at sr. no. 46 to 54.

7. The respondents vide office order dated 06.12.2013 (Annexure A/6) issued the promotion order for the post of Loco Pilot Goods for 48 employees.

8. The private respondents nos. 4 to 12 were promoted by the respondents on the post of Loco Pilot Shunting vide office order dated 16.12.2013 (Annexure A/7). However, they refused the promotion order and, therefore, vide office order dated 30.12.2013 (Annexure A/3), they were debarred for promotion to the post of Shunting for one year and in place of the private respondents, the applicants were promoted as Shunters. The applicants in compliance of this promotion order joined the post of Shunter.

9. The grievances of the applicants is that the official respondents are going to promote the private respondents nos. 4 to 12 to the post of Loco Pilot (Goods) though they have lost the seniority and lost their chance of promotion to the post of Loco Pilot (Goods) because they have refused for promotion to the post of Loco Pilot Shunting, which is a feeder post for promotion of Loco Pilot (Goods). The private respondents nos. 4 to 12 are still working on the post of Senior Assistant Loco Pilot whereas the

Anil Kumar

applicants are working on the post of Loco Pilot Shunting which is a promotion post from the post of Senior Assistant Loco Pilot.

10. The learned counsel for the applicant submitted that the post of Loco Pilot (Goods) are to be filled by seniority cum suitability from the post of Loco Pilot Shunting and in case sufficient number of employees are not available working on the post of Loco Pilot Shunting only then with the approval of the General Manager, Senior Assistant Loco Pilot with certain conditions can be promoted to Loco Pilot (Goods). In the present case, the applicants are working on the post of Loco Pilot Shunting. Therefore, the private respondents nos. 4 to 12 cannot be promoted to the post of Loco Pilot (Goods) ignoring the claim of the applicants who are working on the post of Loco Pilot Shunting, which is a feeder cadre for Loco Pilot (Goods).

11. The learned counsel for the applicants prayed that the impugned order dated 22.10.2013 (Annexure A/1), dated 01.11.2013 (Annexure A/2) and 24.05.2013 (Annexure A/5) be quashed and set aside and the official respondents be directed not to promote private respondents nos. 4 to 12 to the post of Loco Pilot (Goods).

12. The learned counsel for the official respondents and private respondents have filed their reply.

Anil Kumar

13. The official respondents have submitted that the order dated 22.10.2013 (Annexure A/1) is an order with regard to publishing the list of eligible candidates who are entitled for promotion to the post of Loco Pilot (Goods) on qualifying the final test, whereas the order dated 01.11.2013 is the suitability list of the persons who have been promoted to the post of Loco Pilot (Goods) after adjudging their suitability as per relevant rules and the circular of the Railway Board.

14. He submitted that the applicants were selected on the post of Loco Pilot Shunting vide order dated 30.12.2013 whereas the private respondents nos. 4 to 12 were selected to the post of Loco Pilot (Goods) vide order dated 01.11.2013 i.e. prior to the selection of the applicants. The panel was based on seniority cum suitability. The panel was prepared on the basis of seniority list of the Senior Assistant Loco Pilots dated 01.11.2013. The applicants were junior to the private respondents in the seniority list of Senior Assistant Loco Pilot.

15. He further submitted that in absence of sufficient number of Loco Pilot Shunters, the General Manager is competent to consider the promotion of Senior Assistant Loco Pilot to the post of Loco Pilot (Goods). In the present case, the General Manager has approved the promotion from Senior Assistant Loco Pilots to the post of Loco Pilot (Goods). He further submitted that the assessment of the vacancies for the post of Loco Pilot (Goods) has been rightly calculated.

Anil Kumar

16. To fill up the vacancy of Loco Pilot (Goods), the selection was made from the post of Shunters plus Senior Loco Pilots and a final list of 58 suitable candidates was published vide letter dated 01.11.2013 (Annexure A/2). This list included the employees who were holding the post of Shunters as well as Senior Assistant Loco Pilot.

17. The learned counsel for official respondents, Mr. M.K. Meena, submitted that the promotion in the category of Loco Pilot (Goods) is through selection from the feeder post of Loco Pilot Shunter and in case suitable number of Shunters are not available for promotion to the post of Loco Pilot (Goods) then with the consent of the General Manager subject to fulfilling certain conditions, Senior Assistant Loco Pilots are also promoted to the post of Loco Pilot (Goods). The private respondents nos. 4 to 12 being senior to the applicants in the cadre of Senior Assistant Loco Pilot were placed on suitability list for promotion to the post of Loco Pilot (Goods) (Annexure A/2)

18. He further submitted that private respondents nos. 4 to 12 have been debarred for promotion to the post of Loco Pilot Shunter in the Grade Pay of Rs.2400/- but would be entitled to be promoted on the post of Loco Pilot (Goods) as & when vacancies arise in future.

Anil Kumar

19. He also submitted that this issue was also raised by one of the recognized union. It was examined and the Headquarter has upheld the action taken by the Division and issued direction to promote the selected staff on the post of Loco Pilot (Goods) in the grade pay of Rs.4200/- subject to availability of vacancies. Therefore, the OA has no merit and it should be dismissed with costs.

20. The learned counsel for the private respondents, Ms. Kavita Bhati, submitted that private respondents nos. 4 to 12 are senior to the applicants in the seniority of Senior Assistant Loco Pilot. They have been duly selected for the post of Loco Pilot (Goods). Their selection to the post of Loco Pilot (Goods) is dated 01.11.2013 (Annexure A/2) which is prior to the promotion of the applicants to the post of Loco Pilot Shunter i.e. 30.12.2013 (Annexure A/3). Therefore, the applicants have no case to agitate.

21. The learned counsel, Ms. Kavita Bhati, also submitted that the promotion was based on seniority cum suitability with prescribed bench mark as prescribed in RBE No. 161/2009 dated 03.09.2009.

22. The learned counsel also submitted that private respondents nos. 4 to 12 have never refused promotion to the post of Shunter. On being promoted to the post of Shunter, they informed the official respondents that they have been placed in the panel of

Amit Kumar

promotion for the post of Loco Pilot (Goods) vide order dated 01.11.2013, therefore, they should be promoted to the post of Loco Pilot (Goods) in future vacancies.

23. However, the official respondents have treated as refusal for promotion and debarred them for one year for promotion to the post of Shunter. The official respondents did not take any explicit refusal from the private respondents nos. 4 to 12, therefore, they should not have debarred the private respondents nos. 4 to 12 from promotion to the post of Shunter for a period of one year.

24. She pointed out that office order dated 30.12.2013 vide which the private respondents nos. 4 to 12 have been debarred for promotion to the post of Shunter itself states that they have given the option for the promotion to the post of Loco Pilot (Goods) and that they are on the select list of Loco Pilot (Goods).

25. She argued that the applicants were never on the suitability list or the selected panel for the post of Loco Pilot (Goods).

26. With regard to the debarment of promotion, she referred to the Circular of the Western Railway (Annexure R/6) which provides that an employee who has given refusal, will be debarred for promotion for one year to that post only. However, he will be entitled for promotion to other categories for which his name appeared in the final/select list. His further promotion will also be

Anil Kumar

made in whichever other category a vacancy occurs first. She argued that according to these provisions, the private respondents nos. 4 to 12 can be promoted to the post Loco Pilot (Goods) even if they have refused the promotion to the post of Shunter because the post of Loco Pilot (Goods) is a different category than the post of Shunter.

27. She further argued that since there was a short fall of the candidates in the category of Shunters, therefore, with the approval of the General Manager, Senior Assistant Loco Pilot were also considered for promotion to the post of Loco Pilot (Goods). It is not disputed that private respondents nos. 4 to 12 were senior to the applicants in the seniority of Senior Assistant Loco Pilot. Therefore, having been found suitable, their names were placed in the panel of Loco Pilot (Goods). Thus there is no irregularity in the promotion of private respondents nos. 4 to 12 and the OA has no merit and it should be dismissed with costs.

28. The applicants have filed the rejoinder.

29. Heard the learned counsel for the parties and perused the documents on record. It is not disputed between the parties that the applicants are junior to the private respondents nos. 4 to 12 in the seniority list of Senior Assistant Loco Pilots. However, the contention of the learned counsel for the applicants is that as on date, the applicants are working on the post of Shunters which is a

Anil Kumar

promotion post from Senior Assistant Loco Pilot. It is not disputed between the parties that the promotion channel for the post of Loco Pilot (Goods) is Loco Pilot Shunter. If sufficient number of Loco Pilot Shunters are not available then with the approval of the General Manager, the Senior Assistant Loco Pilot can also be considered for promotion to the post of Loco Pilot (Goods). Thus it is clear that the post of Loco Pilot Shunter is a feeder cadre for promotion to the post of Loco Pilot (Goods) and only in the absence of sufficient number of Loco Pilot Shunters, Senior Assistant Loco Pilots can also be considered for promotion to the post of Loco Pilot (Goods).

30. With regard to the position of vacancies to the post of Loco Pilot (Goods), the official respondents in Para 4(i&ii) of their written reply have given a chart showing the cadre position in the running category as under:-

S.No.	Category	Pay Band Grade Pay	Cadre	On Roll	Vacancy
1.	Loco Pilot Goods	9300-3400 4200	282	234	48
2.	Loco Pilot Shunter	9300-34800 4200	6	6	0
3.	Loco Pilot Shunter	5200-20200 2400	23	23	0

This shows the vacancy in the Loco Pilot (Goods) were 48 and against these 48 clear vacancies, 48 employees were promoted by the official respondents vide order dated 06.12.2013 (Annexure A/6). However in reply in Para 4(iv), they have stated that 58 vacancies to the post of Loco Pilot (Goods) were rightly assessed including anticipated vacancies by following all existing instructions.

Amit Kumar

From the statement of the respondents in their written reply, it appears that there were 48 clear vacancies but there were 10 anticipated vacancies. However, the respondents have not clarified in their reply as to how these 10 anticipated vacancies were calculated. Respondents should have clarified the position since the total number of vacancies have been disputed by the applicants.

31. With regard to the statement of the learned counsel for the applicants that criteria for selection to the post of Loco Pilot (Goods) was to be seniority cum suitability upto 31.12.2013 and not on selection basis, the respondents in their reply have categorically stated that the post of Loco Pilot (Goods) is in the pay band of Rs.9300-34800 with Grade Pay Rs.4200/- and, therefore, the selection criteria for this post was suitability with prescribed bench mark (Annexure A/5 RBE No. 161/2009 dated 03.09.2009).

32. We have carefully perused the instructions of the Railway Board RBE No. 161/2009 dated 03.09.2009 which provides the criteria for promotion. We find that the post carrying the post of Grade Pay Rs.4200/- would be filled up by seniority cum suitability or suitability with prescribed bench mark as indicated in the statement attached to this circular. In the statement attached to the Circular, the criteria for promotion to the post of Loco Pilot (Goods) with grade pay of Rs.4200/- has been prescribed as 'Suitability with prescribed bench mark'. Thus we are of the opinion that the respondents have followed these instructions and there is

Anil Kumar

no illegality or irregularity in choosing the criteria for promotion to the post of Loco Pilot (Goods) and on this point, the applicants are not entitled for any relief in the present OA.

33. It is not disputed between the parties that the private respondents nos. 4 to 12 are senior to the applicants in the grade of Senior Assistant Loco Pilot. Therefore, when the private respondents nos. 4 to 12 are selected to the Loco Pilot (Goods) vide letter dated 01.11.2013 (Annexure A/2), they were senior to the applicants and till such date, the applicants can have no grievance. Therefore, we do not find illegality/infirmity in the notification dated 22.10.2013 (Annexure A/1) and letter dated 01.11.2013 (Annexure A/2).

34. However, subsequently, the private respondents nos. 4 to 12 were promoted from Senior Assistant Loco Pilot to the post of Loco Pilot Shunters vide order dated 16.12.2013 (Annexure A/7) but they did not join that post. A perusal of this letter clearly shows that the post of Shunter is a promotion post from the Senior Assistant Loco Pilot. However, private respondents nos. 4 to 12 did not join to this promoted post on the ground that their names are on selected list of Loco Pilot (Goods). However, it is not disputed that as on 16.12.2013 when the private respondents nos. 4 to 12 were promoted to the post of Shunter, they were not offered any appointment to the post of Loco Pilot (Goods) in pursuance of their name being on the panel on the post of Loco Pilot (Goods) vide

Anil Kumar

letter dated 01.11.2013. Thus as on 16.12.2013, the private respondents nos. 4 to 12 were working on the post of Senior Assistant Loco Pilot.

35. Further the respondents vide their letter dated 30.12.2013 (Annexure A/3) debarred the private respondents nos. 4 to 12 for one year to the post of Shunter and promoted the applicants to the post of Shunter in lieu of private respondents nos. 4 to 12. Now the question for consideration before us is whether the private respondents nos. 4 to 12 could be promoted to the next post i.e. Loco Pilot (Goods), if they have been debarred for promotion from the post of Shunter. It is not disputed that the post of Shunter is a feeder cadre for the post of Loco Pilot (Goods) and only in absence of sufficient number of Shunters being available for promotion to the post of Loco Pilot (Goods), the Senior Assistant Loco Pilot can be considered with the prior approval of General Manager for promotion to the post of Loco Pilot (Goods). In this connection, the learned counsel for the private respondents, Ms. Kavita Bhati, drew our attention to the circular of the Western Railway (Annexure R/6) which provides that an employee even on debarment would be eligible for promotion to other categories for which his name appeared in the panel/select list.

36. She argued that the post of Shunter and the post of Loco Pilot (Goods) are of different categories and, therefore, even if the private respondents nos. 4 to 12 have been debarred for promotion

Anil Kumar

to the post of Shunter, they could still be promoted to the post of Loco Pilot (Goods), it being a different category. Therefore, now the question arises whether the post of Loco Pilot (Goods) is a different category of post than the Shunter.

37. We are not inclined to agree with the contention of the learned counsel for private respondents, Ms. Kavita Bhati, that the post of Shunter and the Loco Pilot Goods are of different categories. It is not disputed between the parties that employees who are Senior Assistant Loco Pilot are promoted to the post of Shunter and then they are promoted to the post of Loco Pilot (Goods). The rules also provide that Senior Assistant Loco Pilots would be eligible for promotion to the post of Loco Pilot (Goods) if sufficient number of Shunters are not available for promotion to the post of Loco Pilot (Goods). Thus it is clear that that if the employees working as Shunters are available then they have to be necessarily considered for the post of Loco Pilot (Goods) and only when the list of employees working on the post of Shunter is exhausted then with the approval of the General Manager and with certain conditions, the Senior Assistant Loco Pilots can be considered for the post of Loco Pilot (Goods). Therefore, we are of the considered view that the post of Shunter and Loco Pilot (Goods) are not of different categories. If the interpretation given by the learned counsel for the private respondents is accepted then it would create anomaly. For example, if an employee refuses his promotion for Shunter, which is a next higher grade from Senior Assistant Loco Pilot and is

Anil Kumar

debarred for promotion to the post of Shunter for one year but before the expiry of period of one year, he is promoted to the post of Loco Pilot Goods then it would defeat the very purpose of debarment of the employees for promotion to the post of Shunter. Normal channel of promotion is that an employee working as Senior Assistant Loco Pilot is promoted to Shunter and then from Shunter to Loco Pilot (Goods). Therefore, it cannot be said that Shunter and Loco Pilot (Goods) belong to different category.

38. From the reply of the official respondents, it is clear that private respondents nos. 4 to 12 have not been promoted to the post of Loco Pilot (Goods) so far and as on date, they are working as Senior Assistant Loco Pilot Goods whereas the applicants are working on the post of Shunters. According to the rules, if the employees working on the post of Shunters are available, they will be considered for promotion to the post of Loco Pilot (Goods) and only in the absence of sufficient number of employees working on the post of Shunters, Senior Assistant Loco Pilots would be considered for promotion to the post of Loco Pilot (Goods) with the approval of the General Manager. In the present case, the private respondents nos. 4 to 12 are senior to the applicant in the grade of Senior Assistant Loco Pilot but as on date, the applicants are working on the post of Shunters. The private respondents nos. 4 to 12 did not join the post of Shunter on being promoted and subsequently the applicants were promoted to the post of Shunters in place of private respondents nos. 4 to 12. Therefore, we are of

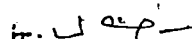
Anil Kumar

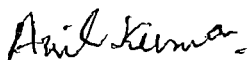
the view that if the post of Loco Pilot (Goods) is to be filled up in future, the applicants would have to be considered prior to private respondents nos. 4 to 12 and to this extent, the applicants are entitled for relief.

39. Thus the respondents are directed to consider the case of the applicants for promotion to the post of Loco Pilot (Goods) as the applicants are working on the post of Shunter and according to the rules they have the right to be considered for promotion to the post of Loco Pilot (Goods) prior to the claim of the private respondents nos. 4 to 12, who are presently working as Senior Assistant Loco Pilots.

40. Thus the OA is partly allowed with no order as to costs.

41. In view of the order passed in the OA, the MA No. 291/00082/2014 and 291/00084/2014 for vacation of the interim order are disposed of accordingly.


(M. NAGARAJAN)
MEMBER (J)


(ANIL KUMAR)
MEMBER (A)

AHQ