

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A.No.1504/2014
M.A.No.1274/2014

Order reserved on 28th October 2016

Order pronounced on 20th December 2016

**Hon'ble Mr. Raj Vir Sharma, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)**

1. Arshad Ali, aged 38 years
s/o late Mr. M.A. Ansari
working as Loco Pilot in Delhi Division
R/o 74, C-3 Railway Colony, Tuglakabad
2. Praveen Kumar, aged 44 years
s/o Mr. Ram Swroop
Working as Loco Pilot in Delhi Division
R/o B-1/611, Sector 4, Dr. Ambedkar Nagar
New Delhi -62

..Applicants

(Mr. Yogesh Sharma, Advocate)

Versus

1. Union of India through the General Manager
Northern Railway, Baroda House, New Delhi
2. The Divisional Railway Manager
Northern Railway, State Entry Road
New Delhi
3. The Additional Divisional Railway Manager (T)
DRM Office, Northern Railway, State Entry Road
New Delhi

..Respondents

(Mr. Kripa Shanker Prasad, Advocate)

O R D E R

Mr. K.N. Shrivastava:

M.A. No.1274/2014

M.A. seeking joining together in a single petition is allowed.

O.A. No.1504/2014

The applicants through the medium of this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985 have prayed for the following specific reliefs:-

“(i) That the Hon’ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 06.07.2012 (Annex.A/1) declaring to the effect that the whole action of the respondents not promoting the applicants for their posting on promotion posts of Loco Pilot Goods from the date of promotion of junior persons is illegal, arbitrary and discriminatory and consequently pass an order directing the respondents to promote the applicants to the posts of Loco Pilot Goods from the date of promotion of their junior persons with all consequential benefits including the arrears of difference of pay and allowances with interest w.e.f. 06.01.2009.”

2. The brief facts of the case are as under:-

2.1 The applicants joined the respondent-Railway Department as Assistant Loco Pilot. They earned promotion to the grade of Senior Assistant Loco Pilot. In the year 2008, the respondent No.2 conducted a selection for the post of Loco Pilot Goods (LPG) against promotional quota, both for Diesel and Electrical Wings. The select list was published on 07.10.2008. Both the applicants were selected and were given posting in the Electrical Wing Traction, Shakurbasti Station. They requested for change from Electrical Traction Wing to Diesel Traction Wing. At that time, they were posted at Northern Railway Station Tughlakabad.

2.2 According to the applicants, the Senior Crew Controller, Tughlakabad refused to release them on the ground of shortage of Assistant Loco Pilots in the Diesel Traction at Tughlakabad. Finally, they were released on 29.04.2011 and on the next day, i.e., 30.04.2011, they reported at Shakurbasti.

2.3 They were imparted the required professional training on promotion from 16.05.2011 to 21.05.2011. They applied to the Office of respondent No.2 for the issuance of competency certificate, but the same was denied by the ADME/Power on the ground that the select panel containing their names had since expired.

2.4 The applicants submitted their representation dated 14.07.2011 to ADRM (T) espousing their case. As no action was taken at the end of ADRM (T), they approached this Tribunal in O.A. No.1190/2012, which was disposed of vide order dated 12.04.2012, the operative part of which reads as under:-

“4. We have heard learned counsel for applicants. Since the representation given by the applicants has already been forwarded and the same has not been decided till date, we deem it fit to dispose of this OA at the admission stage itself without going into the merits of the case by directing the appropriate authorities to consider and decide their representations by passing a reasoned and speaking order within a period of six weeks from the date of receipt of a certified copy of this order under intimation to the applicants. No order as to costs.”

2.5 Pursuant to the *ibid* order of the Tribunal, the ADRM (T) – respondent No.3 passed a detailed speaking order, which is impugned in this O.A. (Annexure A-1). The relevant parts of the said order are extracted below:-

“a) Applicants while working as Assistant Loco Pilots were placed on provisional panel of LPG on being declared passed in written test vide this office I.No.758E/580/Pt.VIII/P-7 dated 7.10.2008. Subsequently, their promotion order to the post of LPG were issued vide this office letter No.758E/580/Pt.VIII/P-7 dated 22.01.2009 subject to passing of MP-II & PE-III, pre-requisite promotional courses.

b) Thereafter applicants didn't show their willingness to move on promotion, rather they requested to be promoted in the same traction in which they were working in other words, they refused to take

promotion at that time. Accordingly their pre-requisite promotional training could not be finalized.

- c) Their request for promotion as LPG on same traction was considered by the Administration & subsequently orders were issued vide this office L.No.758E/580/Tr/LPG/P-7 dated 13.06.2009 by placing them in the same traction. Since passing of the promotional course is a pre-requisite condition to promote an individual to the post of LPG, applicants underwent the said training after said notification/ order.
- d) With regard to non-issuance of Competence Certificate as pointed out by the applicants in said OA, it is noticed that the concerned officer didn't issue the Competence Certificate as required for promotion in safety categories assuming that the panel has been expired.

The issue was further examined in the terms of Para 220(c) of IREM, which states that:

“In case an employee lower in the panel has officiated whereas one higher in the panel has not officiated for reasons beyond the latter's controlled such as sickness non-released by the administration on promotion, the latter employee will not be required to appear for fresh selection. If, however, the senior person does not officiate for reasons of his own, this implied that he has refused promotion. In that case, the next junior is the rightful person to be promoted and the employee who is deemed to have refused promotion under this sub-para will not be entitled to protection in such a case.”

Accordingly instructions were again passed vide this office L.No. 758-E/580/Pt.XIII/P-7 dated 21.06.2012 to promote the applicants in compliance to CAT orders dated 12.04.2012 in said OA. Consequently they have resumed the duties at SSB as advised by Sr. CC/SSB L.No.2/1E/BC dated 08.06.2012.

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1. Applicants had not shown their willingness for promotion as LPG issued vide this office order No.758/E/580/Pt-VIII/P-7 dated 22.01.2009. Orders were revised in terms of the office letter vide this office L.No.758E/580/Tr/LPG/P-7 dated 13.06.2009 by considering their request for placing them in same traction in which they were working in the said order dated 13.06.2009 it was made clear that they would not be eligible for any benefit on transfer.

2. Their grievance has further been examined, in the light of PS No.11272 (RBE No.85/95), which states that:

“Instances have come to notice of the Board where staff have not been relieved by the Administration in time even on promotion, for long period on one ground or the other resulting in claim for stepping up

of pay of the concerned staff. Recently, such a case was also taken up by AIRF in the form of PNM.

The matter has been considered carefully by the Board in the light of deliberations held in the PNM meeting and it has been decided that while the benefit of stepping up of pay is not tenable in such cases, the administration should take special care to ensure that the employees are relieved, without any undue delay so that they may join the new place of posting on promotion in time. Case of staff not being relieved even within months of the issue of the promotion order, should be put up to DRM or Head of the office and Controlling Officer held accountable for not relieving the concerned staff.”

Accordingly the relief as sought by the applicants for pay protection or stepping up of pay in addition to promotion to the post of LPG is not tenable and not admissible.”

Aggrieved by the impugned Annexure A-1 order, the applicant filed this O.A. praying for the aforementioned relief.

3. Pursuant to the notices issued, the respondents entered appearance and filed their reply. The applicants, thereafter, filed their rejoinder.

4. With the completion of pleadings, the case was taken up for hearing the arguments of learned counsel for the parties on 28.10.2016. Mr. Yogesh Sharma, learned counsel for applicants and Mr. Kripa Shanker Prasad, learned counsel for respondents argued the case.

5. The respondents in their reply have primarily raised two main objections to the reliefs prayed for by the applicants:

(i) The O.A. is hopelessly time barred in view of the fact that the applicants have prayed for quashing the impugned order dated 06.07.2012 whereas the instant O.A. has been filed on 28.04.2014, i.e., almost a lapse of about two years. In this connection, they placed reliance on the judgment of the Hon’ble Supreme Court in the case of

Union of India & others v. M.K. Sarkar, 2009 (14) SCALE 425,

in which it has been held as under:-

“...The issue of limitation or delay and latches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a Court’s direction...”

They have further stated that the applicants have not filed any M.A. seeking condonation of delay in filing the O.A.

- (ii) The applicants had made a request to the administration for promoting them as LPG on the same Traction, i.e., Diesel Traction, which was allowed vide order dated 13.06.2009. Passing of promotional course is a pre-requisite condition to promote an individual to the post of LPG in terms of the paragraph 220 (c) of IREM, which has already been quoted by the respondents in their Annexure A-1 order and reproduced in paragraph 2.5 above.

6. The applicants in their rejoinder to the reply filed by the respondents have stated that there has been no delay in filing the O.A. It is stated that the applicants had filed C.P. No.369/2013 for non-implementation of the Tribunal’s order dated 12.04.2012 in O.A. No.1190/2012. After the said order of the Tribunal was complied with by the respondents vide their impugned Annexure A-1 (colly.) O.M. dated 06.07.2012, the Tribunal closed the C.P. vide order dated 26.08.2013. After that, the applicants filed the instant O.A. on 28.04.2014, i.e., after eight months and hence there has not been any delay in filing the O.A.

7. With regard to the second objection of the respondents, it is stated by the applicants in the rejoinder that it is absolutely incorrect on the part of the respondents to say that the applicants did not show their willingness for promotion or they refused to take promotion at that time. The applicants have stated that they were willing to join at the new place of posting but they were not relieved due to shortage of staff.

8. Arguments of the parties were heard on 28.10.2016. We have considered the arguments of learned counsel for the parties and have also perused the pleadings and documents annexed thereto.

9. Before we dwell upon the substantive issue involved in the O.A., we consider it appropriate to deal with the question of delay in filing the O.A. From the records, it is quite clear that the C.P. filed by the applicants for non-compliance of Tribunal's order dated 12.04.2012 passed in O.A. No.1190/2012 was closed by the Tribunal vide order dated 26.08.2013. The O.A. has been filed within eight months thereafter. As such, we hold that the O.A. has been filed well within the prescribed time frame.

10. Now we come to the substantive issue involved. Admittedly, the applicants were selected for the post of LPG and posted to Electric Traction at Shakurbasti Station and they requested the competent authority to change their Traction from Electrical to Diesel. They did not join the new place of posting. However, after their Traction was changed from Electrical to Diesel Wing, they were released on 29.04.2011 and on the very next day, i.e., 30.04.2011, they reported at Shakurbasti. On account of their late joining at the new place, on promotion, they could undergo the professional training from 16.05.2011 to 21.05.2011 along with junior batches. There is

nothing on record to show that although they were wanting to join at the new place of posting, i.e., Electrical Wing Traction, Shakurbasti Station, but they were not allowed to do so by the Senior Crew Controller, Tughlakabad due to shortage of staff. As such, the natural presumption would be that the delay has occurred only on account of the applicants requesting for change of their Traction and after their request was considered, they got themselves relieved from Tughlakabad and joined at the new place of posting at Shakurbasti Station.

11. Paragraph 220 (C) of IREM applies to the case of the applicants, as the circumstances described therein are *akin* to that of the applicants. Hence, considering the principles laid down in the IREM, we have no hesitation in holding that the applicants are not entitled for protection of their seniority, as the delay in undergoing the professional training course, on promotion, is entirely attributable to them.

12. In the conspectus of the discussions in the foregoing paragraphs, we do not find any merit in the O.A. It is accordingly dismissed.

No order as to costs.

(K.N. Shrivastava)
Member (A)

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(Raj Vir Sharma)
Member (J)