

**Central Administrative Tribunal
Principal Bench**

OA No. 3489/2016

Order Reserved on: 07.09.2017
Order Pronounced on: 13.09.2017

***Hon'ble Mr. V.Ajay Kumar, Member (J)
Hon'ble Ms. Nita Chowdhury, Member (A)***

Permanand, aged 41 yrs,
S/o Sh. Lakhi Chand,
Working as Loco Pilot Goods,
In Northern Railway, Ghaziabad in Delhi Division,
r/o 10/41, Chiranjiv Vihar, Ghaziabad (UP).

... Applicant

(By Advocate: Mr. Yogesh Sharma)

Versus

1. Union of India through the General Manager,
Northern Railway,
Baroda House, New Delhi.
2. The Divisional Railway Manager,
Northern Railway, Delhi Division,
State Entry Road, New Delhi.
3. The Divisional Peronsal Officer,
Northern Railway, Delhi Division,
State Entry Road, New Delhi.

... Respondents

(By Advocate: Sh. R.N.Singh)

ORDER

By Hon'ble Ms. Nita Chowdhury, Member (A)

This OA has been filed by the applicant as he has been denied promotion as Chief Loco Inspector for the reason that he does not fulfil the required qualification of 75000 kms. driving experience.

2. The reliefs asked for by the applicant are as follows:

“(i) That the Hon’ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 19.5.16 (A/1) only to the extend by which the applicant has been declared not eligible declaring to the effect that the same are illegal, arbitrary and discriminatory in the eyes of law and consequently, pass an order directing the respondents to allow the applicant to participate in the selection for the posts of Loco Inspector and consider for promotion if the applicant selected in selection with all the consequential benefits.

(ii) That in case for any reason, the Hon’ble Tribunal come to the conclusion that the applicants have not completed the 75000 Kms experience, the Hon’ble Tribunal may graciously be pleased to pass an order directing the respondents to allow the applicants to participate in the selection as per Railway Board circular dt. 26.3.2009.

(iii) Any other relief which the Hon’ble Tribunal deem fit and proper may also be granted to the applicant.”

3. Briefly stated, the facts of the case are that the respondents vide notification dated 19.02.2016 invited applications for promotion by way of selection to the post of Chief Loco Inspector in PB-II + GP 4600/- for filling up 105 posts. It is submitted that Loco Pilot Mail, Loco Pilot Passengers and Loco Pilot Goods are eligible to be considered. The applicant applied for the post of Chief Loco Inspector in the prescribed proforma within the specified time but the respondents issued the eligibility list vide order dated 19.05.2016 for appearing in the selection process in which applicant’s name has not been included and he has been declared ineligible for the reason that he has not completed 75000 Kms.

driving experience which is shown as 66904 Kms. at Sl. No.255 against his name whereas junior persons were declared eligible only for the reason that they have completed 75000 Kms. The names of some of junior are as under:

1. Sh. Ram Ratan Kumar s/o Sh. Tika Ram, serial no.283 in E.List.
2. Sh. Rama Shankar s/o Sh. Shanker Lal, serial no.285
3. Sh. Sushil Bhall s/o Sh. Back pati Bhatt, serial no.325
4. Sh. Vivek Kumar Ranjan s/o Sh. Ram Avatar, serial no.337

4. Learned counsel for the applicant submitted that more than 20 other junior persons have been declared eligible in the same eligibility list. It is pertinent to mention that as per the Railway Board circular dated 26.03.2009, there is a provision for the existing running staff who do not have the requisite 75000 Kms. of actual driving experience will also be eligible to be considered for the post of Loco Inspector, with the proviso that the shortfall will have to be made good by being deployed them on footplate duties, prior to their being actually posted to work as Loco Inspector. It is, however, submitted that as per the knowledge of the applicant, he has now completed 75000 Kms. driving experience but till date no reply has been received and now the respondents fixed the date of written test on 15.10.2016. The whole action of the respondents declaring him not eligible for the post of Chief Loco Inspector, even without considering the Railway Board circular and the fact that he

had not completed the footplate experience due to administrative fault of delay in his promotion and due to not allowing him to work on promotional post is totally illegal, arbitrary and against the rules.

5. Learned counsel for the applicant has relied on the judgment of Hon'ble Supreme Court in the case of **Union of India vs. Sadhana Khanna (Smt.)**, (2008) 1 SCC 720 wherein it was held as under:

“11. the respondent was offered appointment vide letter dated 5.7.1983 which is after 1.7.1983 from which the eligibility was to be counted. Hence, it is the Department which is to blame for sending the letter offering appointment after 1.7.1983. In fact, some of the candidates who were junior to the respondent were issued letters offering appointment prior to 1.7.1983. Hence it was the Department which is to blame for this. Moreover, in view of the Office Memorandum of the Department of Personnel and Training dated 18.3.1988 and 19.7.1989 the respondent was also to be considered, otherwise a very incongruous situation would arise namely that the junior will be considered for promotion but the senior will not.”

6. In reply, the respondents have clarified their position and stated that the applicant was promoted as Senior Assistant Driver, Shunter and Loco Pilot Goods in PB-II Rs.9300-34800 with GP of Rs.4200/- and he resumed duty physically on 21.06.2009. Presently, the applicant is working as Loco Pilot Goods under Senior Crew Controller, Ghaziabad in Delhi Division of Northern Railways. As he earned 66904 Kms of actual driving experience on

19.02.2016, he was issued notification for the selection of Chief Loco Inspector in PB-II with GP Rs.4600/-. The applicant filed an OA No.291/2010 before this Tribunal for the benefit of promotion as Loco Pilot Goods at par with junior and the same was allowed on 29.10.2010 in favour of the applicant from the date of 31.01.2007 at par with junior and fixation of performa given to the employee from the same date. But the applicant has physically resumed duty on 22.06.2009. Due to non-completion of 75000 kms. of actual driving experience as on 19.02.2016, the applicant is not eligible to appear in the selection of Chief Loco Inspector as per RBE No.51/2009 dated 26.03.2009 and RBE No.11/2015 dated 12.02.2015. Applicant has not completed the rules of eligibility mentioned in para no.(IV) of RBE no.51/2009 dated 26.03.2009 for eligibility of Chief Loco Inspector, which reads:

“Existing running staff posted as power/Crew controllers who are not medically de-categorized and who do not have the requisite 75000 Kms of actual driving experience will also be eligible to be considered for the post of Loco Inspector with the proviso that the shortfall will have to be made good by them by being deployed on foot plate duties prior to their being actually posted to work as Loco Inspector.”

7. The above order of 26.03.2009 was one time exemption which is clear from Railway Board letter No.E(P&A)II-2011/RS-15 dated 13.06.2016. As the applicant has not completed 75000 Kms. of actual driving experience, his name was not included in the

eligibility list as per RBE no.51/2009 dated 26.03.2009. It is not a case of discrimination in the eyes of law but it is case of filling up the post in accordance with relevant rules and law. The post of Chief Loco Inspector is very important post, it is a Loco running supervisor post. The Chief Loco Inspector motivate drivers from time to time for better and safe movement of the trains and hence no relaxation in the required standard of experience can be given.

8. Learned counsel for respondents further submitted that the case of Sadhana Khanna (supra) is not similar to this case. He vehemently denied that the applicant has not at all been discriminated against.

9. After hearing both the parties and examining the record it becomes clear that the Railways have very specific rules with regard to eligibility conditions for filling up the posts of Chief Loco Inspector and in view of the request made for relaxation with regard to filling of these posts they have re-examined this matter and put it up to the Railway Board inviting attention to the DC/JCM Item No.29/2011 wherein "it was requested that Loco Pilots who are not having 75000 Kms footplate experience may also be considered for selection to the posts of Loco Inspector with the provision that the shortfall will be made good by them prior to their being actually posted to work as Loco Inspectors and also to the Minutes of the DC/JCM meeting held on 25.06.2014 wherein it

was agreed to re-examine the matter and put up to the Board. The case has been re-examined by Board and the demand has not been found feasible for acceptance. It may be noted that only a one time relaxation was given under para 1 (iv) of Board's letter dated 26.03.2009 only for those Power/Crew Controllers who were already drafted and posted from the existing running staff as Power/Crew Controllers without the requisite 75000 Kms of actual driving experience. As this eligibility was introduced vide letter dated 26.03.2009, the dispensation had to be given to them for being considered eligible for selection as Loco Inspectors with the proviso that the shortfall would have to be made good by them before being actually posted to work as Loco Inspectors. This relaxation cannot be extended to other loco pilots who do not have 75000 Kms of footplate experience.”

5. In this context, we refer to the observation of the Principal Bench of this Tribunal in **Arjun Lal Meena (St) vs. Union of India**, OA No.3768/2011, which squarely covers the present case reads thus:

“12. If all the above paragraphs are read together, the intention of the Railway Board is absolutely clear that from 26.3.2009 it would be absolutely necessary for the drivers to have 75,000 kms of actual driving experience for being eligible for the post of Loco Inspectors. The applicants before us were appointed as drivers. The post of Loco Inspector is a promotional post, therefore, naturally they have to conform to the minimum requirement eligibility as prescribed by the Railway Board. Para (iv) of above letter dated 26.3.2009 does not give this dispensation

to the normal Loco Pilot (Goods), Loco Pilot (Passenger) or Loco Pilot (Mail), therefore, it is not open to the applicants to claim that they should also be allowed to appear for selections to the post of Loco Inspectors without having the 75,000 kms driving experience. Admittedly, applicants do not have the actual driving experience of 75,000 kms as drivers. If this dispensation was to be given to all the drivers, it would mean the policy decision taken by the Railways would be thrown out of the windows. After all, it is for the administration to decide the eligibility criteria for a particular post. No direction can be given by the court which is contrary to the policy decision taken by the Railways in this context. It is relevant to note that the eligibility as laid down in letter 26.3.2009 was clearly mentioned in the Notification dated 20.12.2010 itself. We are thus satisfied that the relief, as claimed by the applicants, cannot be given in the present case.”

10. In view of the eligibility requirements laid down by the Railway Board, it is clear that the applicant does not fulfil the eligibility criterion laid down for filling up the post of Chief Loco Inspector, therefore, no discrimination is being made against the applicant. We find that the applicant has not been able to make out any case for our intervention in this matter. We agree with the respondents that they have acted as per the rules. Accordingly, we do not find any merit in the OA and the same is dismissed.

(Nita Chowdhury)
Member (A)

(V. Ajay Kumar)
Member (J)

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