

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

O.A.No.4095/2012
M.A.No.3458/2012

Tuesday, this the 1st day of August 2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)**

Shri Visheshwar Dayal
s/o Shri Chhote Lal
Ex Assistant Loco Pilot
Under DRM Northern Railway, Muradabad
R/o L-156, Naag Mandir Lane Sashtri Nagar
New Delhi

..Applicant

(Mrs. Meenu Mainee, Advocate)

Versus

Union of India : Through

1. General Manager
Northern Railway, Baroda House, New Delhi
2. Additional Railway
Northern Railway, Muradabad

..Respondents

(Mr. P.K. Yadav, Advocate)

O R D E R (ORAL)

Mr. K.N. Shrivastava:

Through the medium of this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following main reliefs:-

“8.1 That this Hon'ble Tribunal may be graciously please to allow this application and quash Annexure A2 vide which the representation of the applicant had been rejected.

8.2 That direct the respondents to promote the applicant as L.P. (goods) w.e.f. 05/03/2012 from which date his juniors have been promoted.

8.3 To direct the respondents to give consequential benefit of difference of pay and re-calculation of his retirement benefit after fixation of pay in the post of L.P. (goods) in the higher grade.”

2. The factual matrix of the case is as under:-

2.1 The applicant was initially appointed as a Khalasi on 01.07.1980 and in the year 1985 was transferred to Loco Department as Loco Cleaner. He was promoted as an Assistant Loco Pilot (Assistant Driver) w.e.f. 01.01.1998.

2.2 The next higher post in the promotional hierarchy is that of Loco Pilot (Goods) in the pay scale of `5000-8000 (`9500-49300) (*sic* `9300-34800) + Grade Pay of `4200/-).

2.3 The applicant participated in a selection process conducted by the respondents from 19.06.2012 to 20.07.2012 and was declared successful. The results were declared on 03.01.2012 (Annexure A-3). The applicant's name is at Sl.No.145.

2.4 The selected candidates were required to undergo training of M.P.-2 course at Zonal Training School, Chandosi. The applicant underwent the said training at the Zonal Training School from 19.06.2012 to 20.07.2012. The result of the training was declared on 01.08.2012 (Annexure A-4).

2.5 Respondent No.2 issued impugned office order dated 05.03.2012, in which 118 of the selected staff were promoted as Loco Pilot (Goods) and

were posted to various Stations. However, applicant's name did not figure in the said list.

2.6 The applicant submitted representation dated 12.03.2012 (Annexure A-5) against his non-inclusion in the list of promoted staff. He stated in the said representation that although his name was at Sl. No.145 of the select list, he has not been promoted to the post of Loco Pilot (Goods), whereas his juniors at Sl. Nos. 146, 151, 153 & 178, etc. have been promoted.

2.7 In response to the representation of the applicant, respondent No.2, vide letter dated 10.05.2012, informed him that he has not been selected, as he has not fulfilled the required conditions for promotion.

Aggrieved by the action of the respondents denying him promotion to the post of Loco Pilot (Goods), the applicant has filed the instant O.A. praying for the reliefs, as indicated in paragraph (1) above.

3. Pursuant to the notices issues, the respondents entered appearance and filed their reply, in which they have made the following important averments:-

3.1 As per the Railway Board instructions, the posts carrying the Grade Pay of `4200/- are proposed to be filled up by 'seniority-cum-suitability' or 'suitability with prescribed benchmark' (Annexure R-1).

3.2 The benchmark for promotion to the posts carrying Grade Pay of `4200/- is 06 marks out of 15 marks on the basis of last three years' ACRs. There were 232 posts of Loco Pilot (Goods), which were to be filled up. The

breakup of these 232 posts, category-wise is : unreserved 183, SCs 31 & STs 18.

3.3 The applicant participated in the selection process and in the provisional seniority-cum-suitability list, he was placed at Sl. No.145, vide office letter dated 03.01.2012, subject to passing the pre-requisite promotion course/training (M.P.-2/RNG-4). (Annexure R-3).

3.4 The applicant was sent for M.P.-2 course with other candidates from 19.06.2012 to 20.07.2012 and his result was declared together with other candidates on 01.08.2012. He was declared successful. The applicant was also required to undergo three months' training of Shunter before joining the promoted post of Loco Pilot (Goods) in Pay Band – 1 `9300-34800 with Grade Pay of `4200/-, but he could not undergo the said training, as he retired on 31.07.2012, and hence he could not be given the benefit of promotion to the post of Loco Pilot (Goods).

4. The applicant has filed rejoinder to the reply filed on behalf of the respondents, in which, *inter alia*, he has rebutted the contentions of the respondents in paragraph 9 of the reply that 'Applicant had to pass the requisite test in time which he could not. On the other hand his junior became successful in completing the same'. It is stated by the applicant that he was never sent for training of Shunter by the respondents, whereas his juniors were sent and hence the same cannot be held against him.

5. On completion of pleadings, the case was taken up for hearing the arguments of the parties today. Arguments of Mrs. Meenu Mainee, learned

counsel for applicant and that of Mr. P.K. Yadav, learned counsel for respondents were heard.

6. Both the learned counsel, by and large, reiterated the points mentioned in the respective pleadings of their clients.

7. We have considered the arguments of learned counsel for the parties and have also perused the pleadings and documents annexed thereto.

8. Admittedly, the applicant had participated in the selection process for promotion to the post of Loco Pilot (Goods) and he was declared successful vide order dated 03.01.2012 (Annexure A-3). Thereafter, as per procedural requirement, he was sent by the respondents for undergoing training of M.P.-2 course at Zonal Training School, Chandosi. He underwent the said training from 19.06.2012 to 20.07.2012. The result of the training was declared on 01.08.2012 (Annexure A-4) and he was declared successful.

9. The respondents have contended that the applicant was required to undergo three months' training of Shunter before joining the promoted post of Loco Pilot (Goods). The respondents knew very well that the applicant was going to retire on 31.07.2012 and as such he could not have been sent for three months' training of Shunter before being promoted to the post of Loco Pilot (Goods). It is noticed that a candidate selected in the selection process for promotion to the post of Loco Pilot (Goods) was required to undergo two trainings, namely, one month training at Zonal Training School, Chandosi and thereafter three months' training of Shunter. The applicant's selection through the selection process for promotion to the post Loco Pilot (Goods) was declared on 03.01.2012

(Annexure A-3). The respondents ought to have taken cognizance of the fact that the applicant was to superannuate on 31.07.2012. They should have sent him for these two trainings well in time, so that he could have completed these trainings and promoted and posted as Loco Pilot (Goods), and thus he would have been got opportunity of actual working on the said post. Instead of showing the alacrity, the respondents deputed him for one month's training at Zonal Training School, Chandosi from 19.06.2012 to 20.07.2012, leaving no room for the second training of three months. Under these circumstances, the stand of the respondents that since the applicant did not complete three months' training of Shunter and hence could not have been promoted to the post of Loco Pilot (Goods) is bizarre and flawed.

10. So far as the competence of the applicant for the post is concerned, it is amply proved that he was, in fact, suitable and competent by virtue of his being declared successful in the selection process as well as in the first training at Chandosi. We are, therefore, of the view that the respondents are completely at fault in not facilitating three months' training of Shunter to the applicant well in time and hence, they are not justified to deny him promotion on that ground. Accordingly, we feel that it will be just and proper if the applicant is granted the pensionary benefits of the post of Loco Pilot (Goods) considering that he has already superannuated from the service on 31.07.2012.

11. In the conspectus of discussions in the foregoing paragraphs, the respondents are directed to grant notional promotion to the applicant to the post of Loco Pilot (Goods) as on 31.07.2012, the date when he

superannuated, and grant him all the pensionary benefits commensurate to that. This shall be done within three months from the date of receipt of a copy of this order. It is made clear that the applicant is also entitled for all consequential benefits, including arrears of pension. It is further clarified that he shall not be entitled for any interest on the arrears of pension.

12. The O.A. is accordingly allowed. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

August 1, 2017
/sunil/