

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/01067/2017

Monday, this the 11th day of June, 2018

CORAM:

Hon'ble Mr. U. Sarathchandran, Judicial Member
Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member

E.A. Abdul Khadir,
Aged 49 years, S/o. Ahmedkutty,
Loco Pilot (Passenger)/Southern Railway/
Ernakulam Junction, Residing at Flat No. 1-B, "Metro Castle",
Mythri Lane, Madappat Road,
Thammanam P.O., Kochi – 682 032,
Ernakulam District. **Applicant**

(By Advocate – Mr. T.C. Govindaswamy)

V e r s u s

- 1 Union of India,
Represented by the General Manager,
Southern Railway, Head Quarters Office, Park Town P.O.,
Chennai – 600 003.
- 2 The Sr. Divisional Electrical Engineer/Operations,
Southern Railway, Trivandrum Division,
Thiruvananthapuram – 695 014.
- 3 The Chief Crew Controller/Southern Railway,
Ernakulam Junction Railway Station,
Kochi – 682 016. **Respondents**

(By Advocate – Mr. Thomas Mathew Nellimoottil)

This Original Application having been heard on 31.05.2018, the
Tribunal on 11.06.2018 delivered the following:

ORDER

***Per* U. Sarathchandran, Judicial Member**

1. Applicant is a Loco Pilot (Passenger) working in the Ernakulam

Junction Railway Station of Southern Railway. He is aggrieved by the act of the respondents detailing him for duty as Loco Pilot in Mail/Express trains, which is a higher post in his promotional hierarchy. He states that though he had represented his unwillingness to work as Loco Pilot (Mail/Express) considering his health conditions the respondents are compelling him to work as Loco Pilot (Mail/Express trains). He, therefore, has approached this Tribunal seeking relief as under:-

- (i) Call for the records leading to the issue of Annexure A7 and quash the same;
- (ii) Declare that the action on the part of the respondents 2 and 3 in compelling the applicant and detailing the applicant to work against the post of Loco Pilot (Mail/Express), despite the applicant being only a Loco Pilot (Passenger), is without jurisdiction, arbitrary, discriminatory and hence, unconstitutional and direct the respondents accordingly;
- (iii) Direct the respondents not to compel the applicant to work against the post of Loco Pilot (Mail/Express) contrary to the applicant's unwillingness;
- (iv) Award costs of and incidental to this Application;
- (v) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

2. Respondents resisted the OA contending that as per the existing cadre system followed by the Indian Railways, utilizing Loco Pilot (Passenger) in Mail/Express link is mandatory. They state that as per the cadre structure of the running staff, Loco Pilots are classified in three groups viz., Loco Pilot (Mail), Loco Pilot (Passenger) and Loco Pilot (Goods). The respondents further state:-

“4. Cadre sanction is planned in such a way that LP(M) is sanctioned as bare minimum as is required in the Mail/Express train link of a depot. For eg. ERS depot has 33+14 men link ie. 47 LP(M) are required to man all the Mail/Express trains at ERS depot any day. Now to cater the needs of leave and training of LP(M) category Loco Pilots, 30% of 47 strength is sanctioned extra in LP(P) category. Therefore running Mail/Express links on any day with leave & training requirements, utilization of LP(P) as officiating in Mail/Express link is inevitable in the system. Any curbing of the system shall

make LPs not available to man Mail/Express trains, at the same time Loco Pilots in LP(P) category shall become spare from duty as they won't have sufficient trains to operate in any day (ERS depot has 25 passenger trains in any day, whereas 41 posts of LP(P) are sanctioned).”

3. According to the respondents the Loco Pilot (Passenger) claiming unwillingness to work in Mail/Express trains amounts to refusal to perform duty. It is further state that the applicant as per his medical examination conducted on 06.10.2016 has got certified as fit in Aye one (A1) class and his next medical examination due is on 06.10.2018. The applicant has not produced any certificate from the Railway doctor or any private doctor to prove that he is medically incapable of working in Mail/Express trains and his unwillingness to work Mail/Express trains due to ill health is a willful act to mislead the Tribunal.

4. Applicant filed rejoinder refuting the contentions in the reply statement. According to the applicant, respondents are trying to be hyper-technical without looking into the issue from a human angle. It is also contended that 15 of the applicant's juniors in the cadre of Loco Pilot (Passenger) are also regularly officiating as Loco Pilot (Mail) and that as many as seven of the applicant's juniors who have declined promotion are regularly officiating as Loco Pilot (Mail).

5. We have heard both sides and perused the record. The applicant's grievance is that he being a Loco Pilot (Passenger), forcing him to work in Mail/Express trains is causing undue hardships especially from the point of view of his health. He states that he had made several

representations and the same were ignored and finally rejected by Annexure A7 impugned order. Annexure A7 reads:-

“Your representation has been carefully perused by the undersigned. In the present situation it is not possible to consider your request due to the acute shortage of crew in M&E. The daily casualty in M&E cadre at ERS dpeot is 10. This causulaity met from passenger cadre only. Since your are the seniormost LP(P), it is very difficult to consider juniors in this place frequently. Hence your utilization in express trains could not be avoided.

Your may please cooperate with your crew controller for better working environment.”

6. It appears that one of the applicant's grievances is that while working in Mail/Express trains for long he had suffered acute physical problems i.e., severe back pain, varicose trouble in his legs. Referring to the aforesaid health problem he states in Annexure A1 representation that after continuous and regular exercise he is now well.

7. The Railway, on the other hand, contends that it is on account of the need for timely running of the trains and in the exigencies of service the Loco Pilots (Passenger) are also deputed for doing the work of Loco Pilot (Mail/Express) and hence there is nothing illegal about it. We are of the view that considering the nature of work in the Indian Railways, the contentions of the respondents are quite valid. Nothing could be established by the applicant that making him to work in the Mail/Express trains is opposed to any conditions of service in the rules or to the Railway Board's instructions. The respondents have made it clear in the reply statement that any curbing of the practice of utilizing Loco Pilot (Passenger) as officiating Mail/Express Loco Pilots will result in non-availability of Loco Pilots to run the Mail/Express trains.

8. Yet another contention by the learned counsel for the applicant was that the person who had issued Annexure A7 impugned order (respondent No.2) is not competent to depute the Loco Pilot (Passenger) for working in Mail/Express trains. We find no merit in that contention because the impugned arrangement is temporary in nature done in the exigencies of service. Such arrangements are made at the level of respondent No. 3 for practical convenience in view of the exigencies of the timely running of the trains.

9. Applicant states that working in Mail/Express trains is affecting his health. But no medical records were produced by him in support of it. The statement by the respondents that the applicant was adjudged medically fit in last periodical medical examination is not contradicted by the applicant..

10. Taking stock of the facts and circumstances of this case, we find no merit in this OA as the arrangement impugned is an internal affair within the Railway for the smooth and timely running of the trains. We are not inclined to allow the OA. OA is dismissed. No costs.

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

(U.SARATHCHANDRAN)
JUDICIAL MEMBER

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List of Annexures of the Applicant

Annexure A-1 - A true copy of representation dated 05.12.2016 addressed to the 2nd respondent.

Annexure A-2 - A true copy of duty roster list published by the 3rd respondent for 05.12.2017.

Annexure A-3 - A true copy of duty roster list published by the 3rd respondent for 06.12.2017.

Annexure A-4 - A true copy of representation dated 06.12.2017 submitted to the 2nd and 3rd respondents.

Annexure A-5 - A true copy of representation submitted to the 3rd respondent dated 06.12.2017.

Annexure A-6 - A true copy of duty roster for 07.12.2017 issued by the 3rd respondent.

Annexure A-7 - Order bearing No. V/E/OP/XV/RG dated 14.12.2017, issued by the 2nd respondent.

List of Annexures of the Respondents

Annexure R1 - True copy of COM letter No. T.305/VI/EC/CR dated 25.05.2011, wherein the cadre review calculation is available.

Annexure R2 - True copy of the physical fitness certificate of the applicant issued by Sr. Divisional Medical Officer, S.Rly, Trivandrum on 06.10.2016.
