

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

**Original Application No.020/01330/2014,
MA/20/412/2017, MA 20/616/2017 & MA 20/81/2018**

Date of CAV: 23.08.2018

Date of Pronouncement: 04.09.2018

Between:

1. G. Mallu Naidu, S/o. Appa Rao,
Aged 29 years, Occ: Assistant Loco Pilot,
O/o. The Chief Crew Controller/
Departure Yard, Waltair Division,
East Coast Railway, Visakhapatnam.
2. S. Sundra Rao, S/o. Sanyasi, Aged 34 years,
O/o. The Chief Crew Controller/
Departure Yard, Waltair Division,
East Coast Railway, Visakhapatnam.
3. A. Prasad, S/o. Suryanarayana, aged 31 years,
Occ: Assistant Loco Pilot,
O/o. The Chief Crew Controller/
Departure Yard, Waltair Division,
East Coast Railway, Visakhapatnam.
4. K. Sobhana Kumar, S/o. Eswara Rao,
Aged 30 years, Occ: Assistant Loco Pilot,
O/o. The Chief Crew Controller/
Departure Yard, Waltair Division,
East Coast Railway, Visakhapatnam.
5. P. Malleswara Rao, S/o. Appa Rao,
Aged 31 years, Occ: Assistant Loco Pilot,
O/o. The Chief Crew Controller/
Departure Yard, Waltair Division,
East Coast Railway, Visakhapatnam.

... Applicants

And

1. Union of India, Represented by
The Chairman, Ministry of Railways,
Railway Board, Rail Bhavan, New Delhi.
2. The General Manager,
East Coast Railway,
Chandrasekharpur, Bhubaneshwar.
3. The Divisional Railway Manager,
Waltair Division, East Coast Railway,
Visakhapatnam.

4. The Divisional Personnel Officer-I,
Waltair Division, East Coast Railway,
Visakhapatnam.
5. Durgu Naidu Medasetty, S/o. Tata Rao,
Occ: Assistant Loco Pilot,
O/o. The Chief Crew Controller,
Waltair Division, East Coast Railway,
Visakhapatnam.
6. Chandan Kumar, S/o. Parmeshwari Yadav,
Occ: Assistant Loco Pilot,
O/o. The Chief Crew Controller,
Waltair Division, East Coast Railway,
Visakhapatnam.
7. Pappu Kumar, S/o. Shiv Shankar Sah,
Occ: Assistant Loco Pilot,
O/o. The Chief Crew Controller,
Waltair Division, East Coast Railway,
Visakhapatnam.
8. Anand Kumar, S/o. Kali Charan,
Occ: Assistant Loco Pilot,
O/o. The Chief Crew Controller,
Waltair Division, East Coast Railway,
Visakhapatnam.
9. Pankaj Kumar-I, S/o. Jadunandan Prasad,
Occ: Assistant Loco Pilot,
O/o. The Chief Crew Controller,
Waltair Division, East Coast Railway,
Visakhapatnam.

... Respondents

Counsel for the Applicant ... Mr. KRKV Prasad, Advocate

Counsel for the Respondents ... Mr. V.V.N. Narasimham, SC for Railways.

CORAM:

Hon'ble Mr. B.V. Sudhakar ... ***Member (Admn.)***
Hon'ble Mr. Swarup Kumar Mishra ... ***Member (Judl.)***

ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

The OA is filed questioning the seniority list prepared by the respondents in respect of Assistant Loco Pilots (ALPs) as on 1.1.2013 and against the impugned orders dt 30.10.2013 and 19.8.2014.

2. The brief facts of the case are that the applicants were recruited by RRB as Asst. Loco Pilots (ALPs) and allotted to East Coast Railway , who in turn posted them to Waltair division in July 2011. The applicants after appointment in the first batch of 40 candidates were given technical training at Electronic Traction Training Centre (ETTC) Vijayawada and in General and Subsidiary Rules (G&SR) at Zonal Railway Training institute (ZRTI), Sini. On conducting an exam in the technical stream, applicants were posted at Bacheli on 15.1.2012. After working for some time, since it was found that the applicants failed in G&SR they were redirected for training and taking the exam again in G&SR. Rule 303 of IREM , vol -I, reproduced below indicates the method of fixing seniority based on the timing of the training and performance:

303. The seniority of candidates recruited through the Railway Recruitment Board or by any other recruiting authority should be determined as under:

(a) *Candidates who are sent for initial training to Training Schools will rank in Seniority in the relevant Grade in the order of merit obtained in the examination held at the end of the training period before being posted against working post. Those who join the subsequent courses and those who pass the examination in subsequent chances will rank junior to those who had passed the examination. In case, however, persons belonging to the same RRB panel are sent for initial training in batches due to administrative reasons and not because of reasons attributable to the candidates, the inter-se seniority will be regulated batchwise provided persons higher up in the panel of RRB not sent for training in the appropriate batch (as per seniority) due to administrative reasons shall be clubbed along with the candidates who took the training in the appropriate batch for the purpose of regulating the inter-se seniority provided such persons pass the examination at the end of the training in the first attempt.*

(Authority Board's letter NO. E(NG)I-89/SR6/32(PNM) dated 19-3-93)

3. As per rule 303, an end of training exam, has to be held to fix the seniority of the candidates. However, the respondents prepared a combined seniority list based on marks secured by the candidates in different batches, where in which candidates

trained in subsequent batches are reported to be placed senior to those who got trained in preceding batches. This has led to grievances galore and hence this OA.

4. The applicants main contention is that end of the training exam was not conducted in both streams to fix seniority. Seniority was fixed taking marks secured in technical stream. Hence failure in G&SR exam should not be reckoned for seniority. Applicants in support of their claim state that in a sister railway division namely Bilaspore, seniority of ALPs trained in different batches was fixed on inter-se-merit within the same batch by placing the next batch candidates below the previous batch based on the end of training exam. Further, Bangalore CAT has also favoured fixing batch wise seniority on Post training exam (PTE) in OA 7/2010. When the applicants approached the respondents on the ground proclaimed by C.A.T., Bangalore Bench, it was rejected vide impugned lr. 19.8.2014. Applicants also claim that the Railway Board has advised South Central Railway that in the exigency of not holding an end of training examination they can follow panel merit of RRB. Applicants have also pointed out certain serious deficiencies like following different standards in fixing the maximum marks, in allowing re-examination, awarding higher marks than the maximum prescribed etc in their M.A 412/2017 linked to the present O.A.

5. Respondents in their response inform that 357 candidates sent in 14 batches to different institutes like TC/BZA, LTC/TATA, MGS, TC/KGP,KZJ have completed their training. The conditions stipulated for training was that those who were trained in earlier batches and pass the relevant exam will rank senior to those trained in subsequent batches as per Estt. Srl. No 59/93. Candidates who figure higher in the RRB merit list will have their seniority fixed as per para 303(a) of IREM Vol-I of 1989 read with correction slip 9. Posting orders would be issued

after receipt of character and antecedents C&A report. Respondents by mistake on receipt of the C&A report of the applicants, have posted them to Bacheli on 19.1.2012, based on marks secured in technical exam without awaiting receipt of marks in Safety and work rules (SWR) from SINI. Later on, after coming to know that the applicants failed in SWR the posting orders were cancelled on 15/3/12 & 17/2/12. They were sent for retraining and re-examination in SWR which they cleared on 26.3.2012. As the applicants have failed in SWR they were sent for training for the second time and seniority was fixed as per para 303 of IREM Vol-I. The respondents confirm that since the candidates were sent to different institutes the curriculum was different and hence developed their own methodology, as explained at para 3 (d) of counter, for fixing combined seniority for all the candidates of different batches, based on marks obtained in the training schools. Candidates with more marks ranked senior than those with lower marks. Applicants claim that those trained in subsequent batches should be ranked junior to them is incorrect, since respondents followed Rule 303(a) of IREM with correction slip 9, which states as follows:

“Candidates who are sent for initial training will rank in seniority in the relevant grade in the order of merit obtaining in the examination held at the end of the training period before being posted against working post. Those who joined subsequent posts and those who passed the examination in subsequent chances will rank junior to those who had passed the examination. In case however, persons belonging to the same RRB panel are sent for initial training in batches due to administrative reasons and not because of reasons attributable to the candidates, the inter-se seniority will be regulated batch wise provided persons higher up in the panel of RRB not sent for training in the appropriate batch as per “Seniority” due to administrative reasons shall be clubbed along with the candidates who took the training in the appropriate batch for the purpose of regulating the inter-se seniority provided such persons passed the examination at the end of the training in the first attempt”.

6. Heard the learned counsel appearing for both sides.

7. Seniority decides the career prospects of an employee. Such being its importance utmost care need to be taken to follow prescribed rules for fixing seniority so that there is transparency and uniformity. In the issue on hand the rule to be followed is para 303 (a) of IREM VOL –I of 1989 with correction slip 9. The respondents have not followed this rule. The fallacies noticed contravening the rule when highlighted will help in arriving at a truthful conclusion. The candidates were supposed to be examined in two streams namely technical and SWR simultaneously at the end of the training. It was not done. The candidates were sent to different institutes and trained with a different curricula leading to there being no uniformity in assessing the capability of the candidates. Subjecting candidates to different standards of evaluation to fix a common seniority sans logic. Hastiness seen in posting applicants to Bacheli without awaiting marks obtained in SWR but on marks obtained in technical stream is against the rule quoted. Variations and discrepancies in terms of fixing different maximum marks by different institutions, following different modes for allowing reexamination, awarding more than the maximum marks etc are serious in nature and have a far reaching impact i.r.o seniority , as pointed out in MA 412/2017 to this OA. These have not been answered by respondents.

8. Rejecting the suggestion that Bilaspur division has fixed batch wise seniority as per Para 303 (a) of IREM is difficult to appreciate. This rule is universal and applicable across the spectrum of divisions of the railways. Even the Bangalore CAT has echoed the concept of batch wise seniority but was not considered by the respondents despite the emergence of grievances on this count. Applicants when sent for retraining/ re-exam in SWR on 15.3.2012 they cleared it

on 26.3.2012, within a short period. Moreover, the respondents posting them on regular duty on 19.1.12 albeit they have not cleared SWR and thereafter cancelling the posting as late as 15.3.12 has led to four batches being trained. This delay on part of the respondents has adversely impacted the seniority of the applicants which cannot be denied. Prompt action would have allowed them to clear the exam with the same batch or at the most with the subsequent batch. The respondents claim that they have conducted a main exam which is not envisioned in the cited rule, which only speaks of the end of the training exam in all the streams simultaneously. Such a course has not been adopted. Combining all the batches and fixing the seniority is not prescribed in the rule cited.

9. The purpose for conducting the end of the training exam to fix seniority was to let the candidates know that the training is to be taken seriously and their seniority depends on performance at the end of the training exam. More so, as ALPs belong to the safety cadre. However, the very spirit of the exam was lost by not conducting the end of the training exam, lack of uniformity in evaluating the candidates, discrepancies pointed out in MA 412/2017 remain unanswered and inordinate delay in ordering re-exam in SWR making applicants junior to many. Hence the mode and method adopted by the respondents in fixing the seniority violates the rule discussed and is arbitrary. Therefore the action of the respondents in fixing the seniority of the ALPs has to be set aside. Having adopted arbitrary ways to fix seniority by the respondents it would be difficult for the tribunal to set it right by advising the respondents to follow the rule of batch wise seniority at this juncture of time. However, the best alternative to resolve the impasse would be to fix the seniority, is to follow rule 303 (b) of IREM vol –I which reads as under:

303 (b) In the case of candidate who do not have to undergo any training in training school, the seniority should be determined on the basis of the merit order assigned by the Railway Recruitment Board or other recruiting authority.

10. Respondents admitted that they did adopt this rule on a previous occasion when advised by this tribunal in resolving a grievance in OA No 874/2005. When the training processes has suffered many glitches as expounded, the very purpose of using training as a tool to fix seniority is defeated. Though it would have imparted the required knowledge but it fails in being construed as a standard to fix seniority. Therefore, application of rule 303 (b) of IREM vol-I to the present case would therefore be apt. Hence to ensure fairness to one and all, the respondents are directed to fix the seniority based on merit order assigned by Railway Recruitment Board for the candidates to be appointed as ALPs vide CPO/BBS's lr no. ECoR/Pers/Recttt/ALP/Appt dt 28.7.2011, by taking up with the Railway Board. Time calendared is five months from date of receipt of this order.

11. The OA is allowed. In view of the orders passed in the main OA, MA/20/412/2017, MA 20/616/2017 & MA 20/81/2018 stand disposed of accordingly. Parties will bear their own costs.

(SWARUP KUMAR MISHRA)
MEMBER (JUDL.)

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 4th day of September, 2018

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