

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No.211/00621/2015

Dated this the 1st day of August, 2017

CORAM: Hon'ble Shri Arvind Jayram Rohee, Member (J)
Hon'ble Ms. B.Bhamathi, Member (A)

1. Hemchand S/o Narayan Kunbi
 Aged about 53 years, working as
 Loco Pilot (Passenger), South
 Eastern Railway, Gondia, R/o
 Ajanta Aptt. New Subhedar Layout,
 Plot No. 612, Flat No F.1,
 Uday Nagar, Road, PO Ayodhya
 Nagar, Nagpur- 440 024.

2. Anandrao S/o Punitji Kangale,
 Aged about 48 years, working as
 Loco Pilot (Passenger), South
 Eastern Railway, Gondia, R/o
 Plot No 155, Vittal Nagar-2,
 Near Janki Nagar,
 Ring Road, Nagpur. **[Applicants No.1 and 2
 deleted vide Tribunal's
 order dated 28.09.2016]**

1. Vijay Narayan Dhawale
 Aged about 46 years, Loco Pilot
 Passenger, South Eastern Central
 Railway, Tumsar, R/o 30-Shivkripa
 Nagar, Kamptee Road, Behind
 Tashodhara Lawn Bhilgaon,
 Dist. Nagpur.

2. Bandu, S/o Namdeorao Patil,
 Aged about 50 years, Working as
 Loco Pilot, (Passenger), South
 Eastern Railway, Gondia,
 R/o Plot No. 18, Shiv-Krupa Nagar,
 Behind Yeshodhara Lawn,
 Kamptee Road,
 Nagpur.

..Applicants

(By Advocate Shri M.M. Sudame)

Versus .

1. The Union of India,
Through The General Manager,
South Eastern Central Railway,
HQ Office Bilaspr,
Chattisgarh- 495001.
2. The Divisional Raiwlay Manager,
South Eastern Central Railway,
Kings Way, Nagpur- 440001.
3. Divisional Personnel Manager,
South Eastern Central Railway,
Kings Way, Nagpur- 440001.
Age 42 years,
R/at: 15 Bunglow,
Behind Buddha Vihar,
Bhusawal-425201.
4. Anil Kumar
Loco Pilot (P)
5. Shrikant Mahulkar
Loco Pilot (P)
6. Dharam Gopal,
Loco Pilot (P)
7. Mohd. Jamil
Loco Pilot (P) **[Respondents No.4 to 7
deleted vide Tribunal's
order dated 28.09.2016]**
4. M.L. Katwe,
Loco Pilot (P), Nagpur.
5. A.M. Pardh,
Loco Pilot (P)
10. Sharad Kumar Walde
Loco Pilot (P)
**[Respondent No. 10 deleted vide Tribunal's
order dated 28.09.2016]**
6. Mujib Khan,
Loco Pilot (P)

7. Sanjay Wadle,
Loco Pilot (P)

..Respondents.

[Respondents No. 4 to 12 All working in
the O/o Divisional Personnel Manager, SEC
Railway, Nagpur-440001]

(By Advocate Shri Alok Upasani)

Reserved on :- 19.07.2017

Pronounced on :- 01.08.2017

O R D E R

Per:-Hon'ble Ms.B. Bhamathi, Member (A)

This OA has been filed by the applicant under
Section 19 of the Administrative Tribunals Act, 1985
seeking the following reliefs:-

"i) Call for record of
proceedings pertaining to Office
Order No. NPB/39/2015 dated
14.10.2015 issued by Divisional
Personnel Officer for Sr.
Divisional Personnel Officer
regarding Intra Division Own
Request transfer of Respondent
No. 4 to 12 (Annex. A/1); peruse
the same;

ii) Quash and set aside Order
No. NPB/39/2015 dated 14.10.2015
issued by Divisional Personnel
Officer for Sr. Divisional
Personnel Officer regarding Intra
Division Own Request transfer of
Respondent no 4 to 12 (Annex. A-
1);

iii) Direct the respondents to
re-cast the priority list for
Intra Division Request Transfer
of Loco Pilot (Pass) on the basis
of transfer policy dated

29.08.2005 as well as judgment of this Hon'ble Tribunal dated 1.08.2014 in OA No. 202/2014 and place the name of the applicants above respondent no 4 to 12, in the interest of justice;

iv) any other relief which this Hon'ble Tribunal deems fit in the facts and circumstances of the case;

v) allow this Original Application with cost.

2. The applicant No.1 joined in SEC Railway as Asst. Loco Pilot on 23.08.1994. He was promoted as Loco Pilot (Goods) in the year 1999. On 23.03.2011, he was promoted as Loco Pilot (Pass) and was transferred to Nainpur. He sought transfer on the same day while working at Nainpur on 18.04.2011. On 16.07.2011, he was called back from Nainpur to Nagpur and released on 19.07.2011 to perform Drafter TLC duty at Nagpur on administrative interest which he did till 03.01.2014. On 07.02.2012, he submitted request for transfer from Nagpur to Nainpur. During the period 18.04.2001 to 03.01.2014, there were three DPC meetings held for selection/promotion of Loco Pilots (passenger). Many Junior Loco Pilots had submitted request transfer applications and they were transferred to their choice place.

2.1. Applicant No. 2 was appointed on 01.06.1984

and on completing training joined on 25.08.1993 as Asst. Loco Pilot at Nagpur. Thereafter, on 19.04.1999, he was promoted as Electrical Goods Driver. He was again promoted on 21.05.2000 as Loco Pilot (Goods). Thereafter, on 05.09.2011, he was promoted as Loco Pilot (Passenger) and transferred to Nainpur. On 10.05.2011, applicant sought transfer from Nainpur to Nagpur.

2.2. The respondents prepared a priority list for transfers of Loco Pilot (Pass) in which Shri Babru Bahan Pal is at Sr. No. 38 and Shri Balaram Pal is at Sr. No. 39. One Shri Subrata Majumdar is at Sr. No. 47. Shri D. Bhattacharya and Shri Samresh Paul are at Sr. No. 5 and 6. Applicant No. 1 is at Sr. No. 52 and Applicant No. 2 is at Sr. No. 44.

2.3. The priority was challenged by Shri Babru Bahan Pal, Shri Balaram Pal and Shri Subrata Majumdar at Sr. No. 38, 39, and 47 respectively by the OA No. 202/2014 decided on 01.08.2014. The applicants in that OA submitted that their names were not correctly included in the priority list and arbitrarily and erroneously the criteria of date of physical joining at Gondia was considered for deciding their priority number. The Tribunal held that as per paragraph no. 5 of transfer policy dated 29.08.2005 regarding transfer

within the division, priority should be given for transfer of Senior staff to more popular stations according to the vacancy and request transfer registered by senior employees already working in the grade, should be considered first. Hence, the OA was allowed in favour of applicants in OA 202/2014.

2.4. Pursuant to the Order of the Tribunal, the respondents, by amended order dated 13.10.2014, corrected the priority list but did not correct it in accordance with paragraph no. 5 of transfer policy. The names of Shri Babru Bahan Pal, Shri Balaram Pal and Shri Subrata Majumdar at Sr. No. 38, 39 and 47 respectively were simply brought above Shri D. Bhattacharya and Shri Samresh Pal(private respondents in the said OA) in the amended priority list.

2.5. Contrary to the judgment of the Tribunal, the respondents issued the impugned order dated 14.10.2015 for intra division transfer. By transferring respondent No. 4-12 to Nagpur, contrary to the transfer policy, Establishment Rule 207/2005 and ignoring the seniority of the applicants, vide the impugned order, in the priority list prepared by the respondents, the two applicants have been shown as junior because the Railway Administration have prepared priority list on the basis of date of receipt of application for

transfer which is illegal.

2.6. The respondents did not challenge the judgment of the Tribunal in OA 202/2014. The applicants are aggrieved that despite the judgment, the respondents prepared an intra-division priority list in violation of Establishment Rules 207/2005 as directed by Tribunal on the basis of date of receipt of application for request transfer.

2.7. Applicants filed OA 2168/2016 and 2171/2016 for the implementation of the rule as their case was absolutely identical to that of Shri Babru Bahan Pal, Shri Balaram Pal and Shri Subrata Majumdar.

2.8. The learned counsel for the applicant has also relied upon the judgment of this Tribunal in other similiarly situated OA.s viz. 2018/2015 and 2022/2015 decided on 08.08.2016, in favour of applicant's, further relying on the order in OA 202/2014.

3. The respondents have denied that the Tribunal's Orders in OA 202/2014 were not complied with. Pursuant to the order in the OA, the priority list was amended and revised priority list was circulated by letter dated 13.10.2014. The priority numbers mentioned by the applicants in this OA is not tallying with the priority numbers annexed by the

applicants.

3.1. The Tribunal directed to recast the position of the applicants in the priority list in OA 202/2014, in view of the peculiar facts and circumstances of the case and undertaking given by the Administration in the promotion and transfer order of the applicants in OA 202/2014 to give preference to the seniors at the time of their transfers, whereas no such undertaking was given to the applicants in the present OA in respect of their transfer.

3.2. Para 5 of the Establishment Rule No. 207/2005 pertains to transfer within the division. For own request transfers priority should be followed. For transfer on promotion, senior staff should be posted to more popular stations according to the vacancies. Request transfers registered by senior employees already working in the grade should be considered first.

3.3. In view of the above provisions, Para 5 can be invoked only when the staff are transferred on promotion to outstations. They are being allotted more popular stations. In the present OA, applicants were already transferred on promotion to Nainpur and reported on 19.04.2011 and 30.07.2011 respectively. Thereafter, they were transferred on promotion to

Tumsar Road and Gondia respectively and are presently seeking transfer in the same capacity from Tumsar Road and Gondia to Nagpur vide applications dated 01.04.2014 and 24.08.2013 on their own request, where only priority assigned from the date of registration has to be followed and according to which their turn is yet to come. The allegation that respondents transferred private respondents No. 4 to 12 to Nagpur, contrary to transfer policy and ignoring the seniority of the applicant is, therefore, denied.

3.4. It is submitted that due to closure of narrow gauge section of Nagpur division, the excess staff in the cadre are redeployed in different stations of Nagpur division against vacancies with due consideration of request submitted by the Loco Pilot (Pass) in accordance with transfer policy and weightage to the senior most staff.

3.5. Legal notice issued by applicants was received on 19.12.2015 and even before giving reply to the notice, the applicant filed this instant OA, which is premature and hence not maintainable.

3.6. We have heard the learned counsels for the applicants and official respondents(R-1 to R-3) and carefully perused the records and the citations relied upon. No one has appeared on behalf of the private

respondents, despite due service of notice.

4. Heard the learned counsels and perused the records. A perusal of the records shows that applicant No.1 and 2, R-No. 4-7 and R-10 were deleted vide order dated 28.09.2016 by allowing MA 2195/2016 filed by applicant. Accordingly, applicants No. 1 and 2 were deleted and the present applicants A-3 and A-4 were renumbered as 1 and 2. Similarly, Respondents at 8, 9, 11 and 12 were renumbered as R-4, R-5, R-6 and R-7, after deletion of R.No 4 to 7 and R-10. However, the line below the array of parties remained unamended and reads as "Respondents No. 4 to 12 all working in the Office of Divisional Personnel Manager."

5. Further, in the main OA and relief clause, the amendments have not been carried out. At Para 6, 4.9, 4.12, 4.14, there is still reference to R-4 to R-12. The relief clause as extracted at Para 1 of this order also retains R-4 to 12 at Para 8.1, 8.2 and 8.3.

6. In view of the above, due to incomplete amendment of the main OA, and unamended claims in the relief clause against non-existent/deleted parties, even after re-numbering the surviving private respondents, R-4 to 7, it is legally not desirable or feasible to adjudicate this OA in the above circumstances. The OA is, therefore, not maintainable.

7. Further, the MA 904/2015 which was filed along with the OA to join original applicants 1 to 4 was not considered for disposal by this Tribunal. Despite non-disposal, the applicant has carried out the amendments in the array of parties in respect of both applicants and private respondents, as carried out in the OA. Since, the MA 904/2015 was not disposed, the amendment of the array of parties was restricted to OA only and not to MA. Consequently, the MA still continues with the original array of parties, in respect of applicants and respondents and not with the amended array of parties. Hence, MA is also not maintainable.

8. It is the contention of the respondents that applicants approached the Tribunal without filing any representation. The legal notice was sent on 19.10.2015 (wrongly shown as 19.12.2015 in the reply to the OA at Para 8). Hence, the OA was premature. There is force in the contentions of the respondents.

9. Further, a perusal of the legal notice dated 19.10.2015 shows that it was sent as a contempt notice with reference to the impugned order dated 14.10.2015 regarding redeployment which is the impugned order in this OA. The legal notice was not signed by applicant No.1 (in amended OA).

10. The learned counsel for applicant has filed

order in OA 2171/2015 decided on 8.8.2016 filed by applicant No.2 in this OA and order in OA No.2168/2015 decided on 8.8.2016 filed by applicant No.1 in this OA. In the said OA.s, both the applicants had challenged the order of 12.01.2015 which was dismissed as non-maintainable, since the Tribunal found that there was a mismatch in the names of private respondents and the numbers assigned. On similar grounds, both the OAs were dismissed as non-maintainable but liberty was granted to file fresh OA incorporating a proper relief para. However, in this OA also, the similar problems persist for us to hold the present OAs to be as non-maintainable.

11. The respondents have submitted that the priority numbers in the list mentioned in this OA is not tallying with the priority numbers annexed by the applicants. No rejoinder has been filed in response to this vital contention, which is at the core of deciding this OA on merits.

12. Therefore, in view of the discussions, the OA is held non-maintainable. Accordingly, interim relief stands vacated. However, liberty is granted to applicants to file representations to R-3 who shall take a view in this matter, interalia, referring to the decision of this Tribunal in OA 202/2014, OA 2018/2015

and 2022/2015 and pass a reasoned and speaking order within a period of eight weeks from the date of receipt of certified copy of this order. The Tribunal has not gone into the merits of the case in this OA.

13. Accordingly, OA is disposed of as non-maintainable. No costs.

(Ms.B. Bhamathi)
Member (A)

(A.J. Rohee)
Member (J)

Ram.