

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.**

O.A. No. 575/2013

Date Of Decision: 30th October, 2018.

**CORAM: HON'BLE SHRI. R. VIJAYKUMAR, MEMBER (A).
HON'BLE SMT. RAVINDER KAUR, MEMBER (J).**

Shri Krishnkant Madeppa Desai (Office Supdt.)
O/o. Divisional Railway Manager (Mech. Branch),
Central Railway, Solapur.
(R/at:102, Veershaiv Nagar, Bajipur Road,
Solapur 413 004)

....Applicant.

(By Advocate Shri D.N. Karande)

Versus

1. The Union of India,
Through the Secretary,
Railway Board, Rail Bhawan,
New Delhi- 110 001.
2. The General Manager,
Central Railway, CST,
Bombay- 400 001.
3. The Divisional Railway Manager (P),
Central Railway, Solapur- 413 004.
4. Senior Divisional Personnel Officer,
Central Railway, Solapur.

....Respondents.

(By Advocate Shri V S Masurkar)

ORDER (Oral)

PER:- R. VIJAYKUMAR, MEMBER (A).

This application was filed on
23.09.2013 by the applicant under Section 19
of the Administrative Tribunals Act, 1985
seeking the following reliefs:-

- "a) To allow the Original Application.
- b) To quash and set aside the Orders

dated 06.09.2013 and dated 14.08.2013,

c) To declare that, the applicant is eligible to appear for selection for the post of Chief Loco Inspector, on the basis of medical category assigned to him by the Railway Doctor,

d) To direct the respondents to consider the case of the applicant for the post of Chief Loco Inspector, by holding special exam, for him, as he is denied the right guaranteed under Art. 16 of the Constitution.

e) To pass any other just and appropriate orders which are considered necessary in the facts of the case,

f) To award the cost of application."

2. The applicant has a Diploma in Mechanical Engineering who commenced service on 06.02.1991 and then became Loco Pilot (Passenger) on 21.01.2001. He allegedly suffered a medical incident in 2008 after which he was medically decategorized after examination by the Competent Medical Authority and in orders dt. 06.12.2008, he was declared as "not fit to work as Loco Pilot in Aye-one but fit to work in Aye-one and below category for a job not involving train running and train passing duties with glasses N.V." Following this decategorisation, he was offered to be

adjusted and with his acceptance, he was provided alternative appointment as Office Superintendent in office orders No. 43/09 dt. 02.09.2009 and 12.10.2009 and he joined on 15.10.2009.

3. Prior to absorption in the alternative post, he had applied for the post of Loco Pilot(Goods) but was not found suitable in the written test. Further, in response to a notification, for the post of AME(Assistant Mechanical Engineer) with higher grade pay than the applicant's, issued on 22.07.2009, he applied against 30% LDCE quota but he was advised that he was ineligible in letter dt. 17.05.2012 on the grounds that he had been absorbed as Office Superintendent in the Ministerial cadre. Thereafter, a notification was issued selection for the post of Chief Loco Inspector on 27.05.2013, calling for willingness from eligible Loco Pilots. The post of CLI(Chief Loco Inspector) has the same pay band and grade pay as for Office Superintendent which was being held by the

applicant at that time. Although applicant was not a Loco Pilot at that point in time in 2013, he applied on the strength of a notification issued by the Railway Board No. E(P&A)II-2007/RS-14 dt. 26.03.2009 on filling up posts of Loco Inspectors and Power Controllers/Crew Controllers which modified the previous eligibility criteria as below:-

(i) The words "three years footplate experience" mentioned in eighth line of para 1 of Board's letter No. E(P&A)II-83/RS-10 dated 07.10.2002 may be replaced by "75000kms of actual driving experience as drivers". This shall also be applicable in the case of drivers medically decategorised upto the level "A-3" who are considered eligible for selection for the post of Loco Inspectors in terms of Board's letter No. E(P&A)II-2006/RS-21 dated 03.01.2007.

(ii) Para 2(b) of Board's letter dated 09.01.1998 *ibid* may be substituted as under:-

"2(b) To perform the duties hitherto being performed by Power/Crew Controllers in the Control Office or in the place where the Crew Controllers were headquartered, eligible and suitable Mail/Express Drivers, Sr. Passenger/Passenger Drivers and Sr. Goods/Goods Drivers will be drafted. Only drivers having a minimum of 75000 kms. Of actual driving experience shall be eligible to be drafted as Power/Crew Controllers."

(iii) Existing running staff, including drivers medically decategorized up to the level "A-3", who are posted as Power/Crew Controllers, shall be eligible to be considered for the post of Loco Inspector, if they are already having the requisite 75,000 kms of actual driving experience.

(iv) Existing running staff, posted as Power/Crew Controllers, who are not medically decategorised and who do not have the requisite 75,000 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 footplate duties, prior to their being actually posted to work as Loco Inspector.

2. The above modification will not be applicable in cases where selection process has already been initiated in terms of the instructions contained in Board's Letter dated 25.11.1192, 09.01.1998 and 07.10.2002 *ibid*.

4. Meanwhile, he had also represented on 05.12.2012 claiming that he had been temporarily medically decategorised from Loco Pilot category and requested a further medical examination. It appears that this claim that the medical decategorisation was temporary was assumed as correct by his superior officer, the Senior DME, who recommended as much to the

Inspector is that Drivers medically decategorised up to level of Aye-three are also eligible for posting as Loco Pilot in terms of the Board's orders of 03.01.2007 as also mentioned in the orders of 26.03.2009. He argues that although he is medically unfit for Aye-one category, he is still fit for Aye-three category and therefore, can be posted. He claims that the Chief Loco Inspector is a non-running cadre and therefore, when he can be considered for the post of Assistant Mechanical Engineer (AME) in 2010, he could be considered for the lesser paid post of CLI.

7. Respondents have pointed to his rejection for the post of AME and that was unsuccessful in the written test for Loco Pilot (Goods) for which he had applied before his absorption in the alternative post. Further, he was not considered for the post of AME since he was already absorbed in the Ministerial Cadre. With reference to his claim that he was eligible in terms of the orders of Railway Board dt. 26.03.2009, they

state that the orders specifically relate to existing running staff including Drivers who are medically decategorised up to the level of Aye-three and are posted as Crew Controllers. They also deny his claim stating that Chief Loco Inspector is in-charge of Loco Pilots and needs to monitor Loco Pilots working during train running on Locomotives. Chief Loco Inspectors are also required to attend trouble shooting on Locos in Passenger Yard, Freight Yard, at Fuelling Points. The medical certificate given to the individual specifies that he should be placed in a job not involving train running and train passing duties with glasses N.V. and therefore, he is not eligible for appearing for selection for the post of CLI.

8. In his rejoinder, the applicant has enclosed the duties of CLI as issued by the Railway Board and claimed that these jobs were of supervisory nature which did not require medical qualifications prescribed by the Board. He has also raised some questions of discrimination which have eventually been

denied by respondents in their sur-rejoinder.

9. The various papers filed by the applicants and respondents have been examined and the counsels were heard during final arguments.

10. One of the arguments raised by learned counsel for respondents is that the circular of 26.03.2009 was also not applicable to the applicant since it could have only prospective effect and he had been medically decategorised well before that date.

11. Although the applicant has only challenged and sought relief in regard to his eligibility and selection for the post of Chief Loco Inspector and has claimed that the post of CLI was of non-running cadre, he has also made reference in his Grounds to a need for repeated medical examination on the plea that the previous examination has held his condition to be of a temporary nature. Reference to the medical certificate annexed by applicant shows that this is entirely untrue and the claim for second medical

examination was only raised by the applicant in his letter(Annexure A-8) dt. 11.12.2012 and endorsed without any apparent basis by his supervising officer in letter dt. 05.12.2012(Annexure A-7). This plea is contrary to facts and further, no relief is claimed of this kind and also cannot be granted.

12. On the aspect of the applicant's interpretation of the orders of the Railway Board dt. 26.03.2009 cited supra, it is apparent that they refer to existing running staff at every stage in the order especially at para 1(iii & iv). Further, Para 1(i) refers to medically de-categorised drivers up to level Aye-three who are considered eligible for selection for the post of Loco Inspector. The applicant had spent four years in the Ministerial cadre by the time recruitment was proposed in 2013 and moreover, he had even earlier in 2009, prior to absorption in the Ministerial cadre, failed in the written exam for the post of Loco Inspector. Therefore, provisions of

this order cannot be favourable to the applicant.

13. The applicant has also referred to a list of duties for a Loco Pilot for Diesel and Steam Traction and Electric traction although the applicant claims that these are of supervisory in nature and have no requirement of level of medical fitness for running cadre, required for safety categories. However, a plain reading shows a requirement at I(2): Joint signal sighting, II(3): Checking the performance of engine crews, II(5): Training drivers on main line and ghat sections and educating them in troubleshooting, II(8): Testing of loco running staff and conduct ambush checks, II(9): To accompany and monitor the trains carrying V.I.Ps, II(11): Any special drivers and trials as ordered by Headquarters/ Division, II(13): To train drivers of poor calibre allotted to him by giving intensive training online. These duties plainly include running duties. Moreover, the requirements for a job are to be specified

and administered by the executive authority and so long as no discrimination has been practised, the applicant cannot seek to quash such decisions of the Executive Authority. The applicant has not alleged any arbitrariness in this matter and only made a general claim that the Chief Loco Inspector is a supervisor whereas the duties as listed in the Annexure provided by applicant show quite the contrary. Moreover, given that these are extremely relevant to safety in train operations, it is entirely the domain of the respondents to decide what medical requirements and qualifications are to be set and find the appropriate candidates for the job. This Tribunal cannot issue any orders in the nature of mandamus directing them to do otherwise.

14. In the circumstances, this OA is dismissed without any order as to costs.

(Ravinder Kaur)
Member (J)

Ram.

(R. Vijaykumar)
Member (A)