

OA.No.170/00523-00525/2016/CAT/Bangalore Bench
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00523-00525/2016

DATED THIS THE 08th DAY OF JANUARY, 2019

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

1. Ch.Govinda Rao, aged 42 years
 S/o Jaggappadu
 Loco Pilot (Goods) – Working as Crew Controller/Hospet
 South Western Railway/Hospet R.S., Bellary Dt.
 Residing at 'Aswath Nivas', Joshi Compound
 Patel Nagar, Hospet-583 201.

2. V.Ravi Sankar, aged 44 years
 S/o Ramakrishnaiah
 Loco Pilot (Goods)
 South Western Railway/Castle Rock R.S.
 U.Kannada Dt.
 Residing at Flat No.S-4, Kalpatharu Apartment
 M.T.Colony, Gadag Road, Hubli-580 020.

3. Shajimon S, aged 42 years
 S/o Sivan K
 Loco Pilot (Goods) – Working as Crew Controller/Belagavi
 South Western Railway/Belagavi
 Residing at Flat No.GA-3, Pratamesh Residency
 Station Road, (Near Kubera Hostel) Miraj P.O.,
 Sangli District, Maharashtra-416 410.

....Applicants

(By Advocate Shri B.S.Venkatesh Kumar)

Vs.

1. Union of India
 Represented by the General Manager
 South Western Railway, Headquarters Office
 Hubli-580 020, Dharwar Dt., Karnataka.
2. The Chief Personnel Officer
 South Western Railway
 Headquarters Office
 Hubli Division, Hubli-580 020
 Dharwar Dt., Karnataka.
3. The Senior Divisional Personnel Officer
 South Western Railway, Headquarters Office
 Hubli Division, Hubli-580 020.
 Dharwar Dt., Karnataka.
4. The Railway Board, Rail Bhavan

New Delhi-110 001.
Represented by its Secretary.

5. Shri Vijayanand S.Naik
Loco Pilot (Passenger)
South Western Railway
Vasco-Da-Gama RS & P.O.,
Goa.
6. Shri Venkatesh S.Shirodkar
Loco Pilot (Passenger), South Western Railway
Belgavi (Belgaum) RS & PO, Belgaum District
Karnataka.
7. Shri Shivanand Meti
Loco Pilot (Passenger), South Western Railway
Hubli Division
Hubli-580 020. Dharwar Dt., Karnataka.
8. Shri P.Ravi Varma
Loco Pilot (Passenger), South Western Railway
Hubli Division
Hubli-580 020. Dharwar Dt., Karnataka. ...Respondents

(By Advocates Sri J.Bhaskar Reddy for R1-4 & Shri T.Narayana Swamy for R5 to 7)

ORDER

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The applicants have filed the present OA seeking the following relief:

- a. *Call for the records leading to the issue of Annexure A4 Letter bearing No.H/P.612/IV/RNG/ALP/Seniority dated 03.04.2014, issued from the office of the 3rd respondent, and quash the same to the extent it shows the dates of appointment/date of entry into the grade of respondents 5 to 8 as 18.12.2000.*
 - b. *Declare that the date of appointment/date of entry into the grade of respondents 5 to 8 as Assistant Loco Pilots should be the date on which they actually joined the working post after completing the period of training in April/May 2001 and direct the respondents accordingly;*
 - c. *Direct the official respondents to determine the inter-se seniority of the applicants and the respondents 5 to 8 in terms of Rule 302 read with Rule 308 of the IREM Vol.I, taking into consideration the declarations and directions in 8(i) and 8(ii) above;*
 - d. *Award costs of and incidental to this application.*
2. The applicants who are presently working as Loco Pilots (Goods) in the Hubli

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Division of South Western Railway are aggrieved by the erroneous fixation of their seniority vis-à-vis the respondents 5 to 8 herein. The applicants are direct recruit Assistant Loco Pilots(ALPs) appointed in response to Employment Notification bearing No.02/1999 published by the Railway Recruitment Board, Bangalore. Having been selected for appointment, the applicants 1 and 3 were sent for initial training on 22.12.2000 and 21.12.2000 respectively. The 2nd applicant was also sent for training which commenced from 04.12.2000. While the 1st and 3rd applicants had their training initially in the Diesel Training School at Guntakal, the 2nd applicant had his first part of training at the Zonal Training Centre at Moula Ali in Hyderabad. After the initial training at Guntakal, the 1st and 3rd applicants were sent to Moula Ali and whereas the 2nd applicant was sent from Moula Ali to Guntakal. Since the examinations were conducted separately for these two batches, the results were also published by two separate orders. The 1st and 3rd applicants' results were published vide order dtd.15.05.2001(Annexure-A1) and they are at Sl.No.31 and 18 respectively. Similarly, the result of the 2nd applicant was published as per order dtd.07.05.2001(Annexure-A2) and he is at Sl.No.75 and the applicants have secured 69, 75 and 74 marks respectively. Respondents 5 to 8 were promotee Assistant Loco Pilots and they were working as Khalasi Helper, Technician Gr.II, Fitter Gr.III and Caretaker respectively. They had also undergone the training along with the 1st and 3rd applicants and their names in Annexure-A1 can be seen at Sl.Nos.66, 67, 65 and 73 respectively.

3. The applicants submit that the rules relating to determination of seniority of non-gazetted Railway servants is contained in Chapter III of the Indian Railway Establishment Manual Vol.I. In terms of Rule 302 of Chapter III, 'in categories of posts partially filled by direct recruitment and partially by

promotion, the criterion for determination of seniority should be the date of regular promotion after due process in the case of promotee and the date of joining the working post after due process in the case of direct recruit, subject to maintenance of inter-se seniority of promotee and direct recruits among themselves. When the dates of entry into a grade of promoted railway servants and direct recruits are the same they should be put in alternate positions, the promotee being senior to the direct recruits, maintaining inter-se seniority of each group'. In terms of Rule 308, in cases where probationary period is not extended and staff are confirmed at the end of such period, the date of appointment to the grade or post will be that on which the employee was sent to the training school for initial training or the date of joining the working post whichever is earlier. In terms of Rule 308, the dates of appointment of the applicants to the grade/post of Assistant Loco Pilots are 22.12.2000, 4.12.2000 and 21.12.2000 respectively whereas the dates of appointment of the respondents 5 to 8 to the post of Assistant Loco Pilot would only be in May 2001 i.e. on joining the post after completion of the training. In spite of that, the official respondents were placing the respondents 5 to 8 above the applicants in the seniority list, contrary to the statutory provisions provided for in Chapter III of the IREM Vol.I As per para 302 of IREM-I, the seniority list of the departmental candidates is prepared wherein the respondents 5 to 8 are placed at Sl.No.60, 54, 56 & 58 respectively whereas the applicants are placed at Sl.Nos.133, 123 & 127 respectively. In case of respondents 5 to 8, two dates are given under the column 'the date of appointment', the first one being representing their respective dates of initial appointment in the railway service and the second the date i.e., 18.12.2000 representing their date of appointment as Assistant Loco Pilot which is factually incorrect as the date on which they were initially sent for training and

their date of appointment is only the dates on which they joined the working post after completion of the training period. Promotees, during the period of their training, are retained in their parent cadre and the promotion becomes complete in the case of promotees only when they join the promoted post after the entire training is over. It is only on account of the erroneous reckoning of their date of appointment as 18.12.2000 that the respondents 5 to 8 have been shown above the applicants. Aggrieved by the same, applicants have submitted individual representations against the placement of respondents 5 to 8. 1st applicant submitted representation dtd.19.07.2014 (Annexure-A5), 19.10.2015(Annexure-A6) & 01.01.2016(Annexure-A7). But there is no response to any of these representations. Therefore, the applicants have filed the present OA praying for the relief as stated above.

4. The applicants further submit that the vacancies in the cadre of Assistant Loco Pilot is filled partially by promotion and partially by direct recruitment and in terms of Rule 302 read with Rule 308 of IREM Vo.I, the date of appointment of the respondents 5 to 8 should be shown only with reference to the date on which they actually joined the working post on promotion after completion of training whereas in the case of the applicants, the date of appointment should be the date on which the training commenced.
5. The respondents 1 to 4 have filed reply statement wherein they submit that the Secretary, Railway Board(4th respondent) is not the necessary party as the cause of action involved in this case is regarding fixation of seniority of Group-C employees which is within the powers of the General Manager of the Zonal Railway and hence the 4th respondent may be deleted from the array of the respondents. They further submit that after successfully completing the training, the applicants who belong to E.N.No.02/1999 of RRB/Bangalore

were assigned seniority according to the marks obtained in the initial training and seniority list was published. This seniority was challenged by RRB candidates wherein applicant No.2 of the present OA was also one of the applicants in OA.No.273/2010. The other similar matters in OAs.No.7/2010, 169/2010, 383/2010, 273/2010 and 326/2011 were heard by the Hon'ble Chairman as the 3rd Member and passed order dtd.1.1.2014 based on which the seniority list of ALPs was re-casted and the provisional seniority list dtd.21.2.2014 was published. The issue which is settled by the Tribunal is raised again and again by the applicants and the representation dtd.16.3.2014(Annexure-R1) of the 1st applicant wherein he contended that his name is missing in the provisional list of ALPs released on 21.2.2014 is disposed of by the 3rd respondent vide his notice dtd.02.04.2014(Annexure-R2) stating that the name of the applicant No.1 has now been included. Aggrieved by the re-casted seniority list published in terms of orders of the Hon'ble CAT in OA.No.273/2010, the 1st applicant submitted two more representations vide Annexure-A5 & A7 which were not replied by the 3rd respondent since the provisional seniority list dtd.21.2.2014 was issued and the official respondents cannot go beyond the scope and guidelines given by the Tribunal in OA.No.273/2010 wherein the Tribunal clearly laid down the yardstick to be followed in assigning the seniority in case of RRB candidates and departmental candidates and also regulations of inter-se seniority in respect of RRB candidates deputed for training in different batches. Therefore, the applicants cannot claim seniority over and above respondents 5 to 8.

6. The respondents further submit that the present OA filed by the applicants are in the nature of questioning and challenging the order dtd.1.1.2014 of the Hon'ble Tribunal in OA.No.273/2010 and hence, bad in law. The order in the

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said OA has attained finality and the official respondents in due compliance of the order have re-casted the seniority and any amount of representation by the applicants cannot be considered by the official respondents at this stage. If the applicants are aggrieved by the order in OA.No.273/2010, they have to assail the same by filing a Writ Petition before the Hon'ble High Court of Karnataka and not by way of filing another OA. The other applicants in OA.No.273/2010 have very well accepted the seniority assigned to them and have not agitated over the issue of seniority assigned in view of the orders in the said OA.

7. The respondents 5 to 7 have also filed reply statement reiterating the submission made by the official respondents in their reply and submit that the seniority list dtd.21.2.2014 of ALPs was prepared based on the decision of the Hon'ble Tribunal in OA.No.273/2010 vide order dtd.1.1.2014 wherein the Tribunal has laid down the yardsticks to be followed for assigning the seniority in the case of RRB and departmental candidates and regulations of inter-se seniority in respect of the RRB candidates deputed for training different batches. Thereafter, the official respondents after considering the objections/representations submitted by all the persons including the 1st applicant whose name is missing in the list of 21.2.2014 have again published the seniority list dtd.3.4.2014 of ALPs including the name of the 1st applicant. The said list is also in accordance with law and in conformity with the decision of the Tribunal in OA.No.273/2010. There is no illegality or irregularity in preparing the seniority list.
8. The averments of the applicants about the rules relating to determination of the seniority of non-gazetted railway servants and referring to rule 308 stating that the dates of appointment of the applicants to the ALPs grade on

22.12.2000, 4.12.2000 & 21.12.2000 and the appointment of the respondents 5 to 8 would only be May 2001 i.e. joining the post after completion of the training etc., are all without any substance since on selection of these respondents who were GDC candidates on successful in the examination are sent for training along with the applicants and they also completed the training and being successful in the examination, they were appointed earlier than the applicants. The seniority list of ALPs appointed in response to the employment notice No.02/1999 was practically remains unsettled on account of various litigations and show cause notices were given to certain ALPs and no show cause notice was given to the applicants and the 3rd respondent has issued the seniority list is without any substance. The seniority list is now re-casted based on the decision of the Hon'ble Tribunal. After re-casting the seniority list, now once again the applicants are raising the issue which does not call for interference by this Tribunal and hence the OA is liable to be dismissed.

9. The applicants have filed rejoinder wherein they denied the submission made by the official respondents as well as private respondents. They submit that the 4th respondent i.e. Railway Board being the policy making body is a necessary party as far as this OA is concerned and therefore the prayer for deleting him from the party array is legally unsustainable. They further submit that the OA.No.273/2010 was filed for determination of the inter-se seniority between direct recruits recruited through the same EN No.2/1999. The present OA is filed between direct recruits viz. applicants and promotees viz. respondents 5 to 8. The averment that the Tribunal in OA.No.273/2010 clearly laid down the yardstick to be followed in assigning seniority in the case of RRB candidates and departmental candidates is factually incorrect. The yardstick to be followed in the matter of determination of seniority as between

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RRB candidates and departmental candidates was not the subject matter in OA.No.273/2010 nor was such an issue identified or decided by this Tribunal. The issue in the present OA is not covered by the decision in OA.No.273/2010. The applicants are not challenging the conclusions and directions in OA.No.273/2010 and there is no need to challenge the same as they are not aggrieved by the said decision. The issue in the present OA is entirely different. The reasons given by the respondents for not considering the representations are not legally or factually sustainable. It is a clear case of arbitrary and deliberate failure to exercise jurisdiction.

10. The representations were submitted against wrong assignment of seniority between the applicants and the respondents 5 to 8. At any case, the respondents 5 to 8 have been assigned their seniority only by virtue of a wrong date of appointment granted to them and not for any other reason. The contention that the seniority issue has already been cleared by virtue of the decision in OA.No.273/2010 is not legally or factually correct and are denied. It is true that the respondents 5 to 8 have participated in a General Departmental Competitive Examination(GDCE) and thereby got promoted as Assistant Loco Pilots. In fact, the promotion granted to them is also set off for the purpose of grant of financial upgradation under the ACP/MACP scheme. They would also have been granted a fitment under FR.22(I)(a)(1). Therefore, the case of the respondents is one of promotion and the regular promotion comes into force only when they take over independent charge of the post after training. It is for that reason, the date of appointment of the respondents should be the date on which they actually joined the post after completion of the period of training in April/May 2001. The mere fact that the respondents 5 to 8 were promoted through a GDCE does not alter the seniority rule i.e., Rule 302 of the Indian Railway Establishment Manual. The respondents 5 to 7 did

not touch the legal issue indicating on what basis the date of their regular appointment in the cadre of ALPs would be different from May 2001. Up to May 2001, they were drawing only the pay and allowances attached to their parent cadre and their designation also continued to be the same until they were given regular appointment in May 2001. The pay fixation as regards these respondents was also made with reference to the cadre of ALPs only with effect from May 2001 the date on which they took over as ALPs on various dates and not from an earlier date. The service records of these respondents maintained by the official respondents would prove this fact.

11. We have heard the Learned Counsel for the parties. The Learned Counsels for the applicants and the respondents have made submissions reiterating the factual position and their points as highlighted by them in the OA and the reply statements. The applicants have filed written arguments note practically reiterating the points already made in the OA.

12. We have gone through the main contentions of the applicants and replies of the respondents in detail. The applicants have raised the point relating to the inter-se seniority between promotees who come on promotion through a departmental examination and the directly recruited Assistant Loco Pilots(ALPs) recruited through RRB. The applicants point out that while in the case of directly recruited ALPs, the date of joining the training would determine the seniority as per para-308 of the rules regulating seniority of Railway servants, in the case of persons promoted, the criterion for determination of seniority should be the date of regular promotion after due process. In this case, the applicants have also contended that the respondents No.5 to 8 were holding the grade of posts earlier held by them during the course of training whereas the applicants were holding the posts of

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ALP during the course of training itself. The respondents 5 to 8 have completed their training in May 2001 only and therefore taking their seniority from the date of joining from 18.12.2000 is erroneous. This specific point of the promotee officers continuing to be holding the lower posts earlier held by them during the course of training as well as the specific provisions of rules 308 and 302 have not been answered by the respondents. The respondent Railways have also mechanically cited the point that all these issues have been settled in OA.No.273/2010 dtd.1.1.2014 in which one of the applicants is also a party stating that the only course left for them will be to file a writ petition against the orders of this Tribunal in OA.No.273/2010 instead of agitating the same issues in this application. A perusal of the detailed order in OA.No.273/2010 would clearly establish that the issue dealt in that application is relating only to para 303 of IREM relating to fixation of seniority among different batches of directly recruited employees. In fact the specific order in OA.273/2010 is as follows:

6. Therefore, since the rule in Para 303 IREM and other connected matrixes are found to be reasonable, legal and with the least amount of impediments embedded in it, there may not be any negative further reasons for going ahead with it. What is stated in Para 22 and 23 of my Hon'ble Sister's judgment, in my humble view along with Para 6 and 7 of my Hon'ble Brother's judgment seems to be more akin proforma for universality even when conflicting claims are settled and therefore there shall be given directions to the railways to re-cast the Seniority in accordance with the each year of RRB Panel as the base and adjust the matters in accordance with the Para 303 IREM after issuing the show cause notices and dealing with the representations of the employees and not in accordance with the RRB merit list alone, as is claimed. Therefore all the OAs are partly allowed finding more merit in Para 06 and 07 of my Brothers judgment. A copy of the totality of the orders may be annexed to each of the OAs and circulated.

13. Therefore, the respondents' main contention that the issue in this application is already dealt with in OA.No.273/2010 lacks merit. The OA is therefore allowed with a direction to the respondents to recast the seniority list dtd.03.04.2014(Annexure-A4) accordingly within a period of two(2) months from the date of receipt of this order. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicants in OA.No.170/00523-00525/2016

Annexure-A1: A true copy of order bearing No.ZTS/673/EXAMS/PRO.ASST
DRIVERS/C-24/RESULT dated 15th May 2001, issued by the Zonal
Training Centre, Moula Ali

Annexure-A2: A true copy of order bearing No.ZTS/673/EXAMS/PRO.ASST
DRIVERS/C-22/RESULT dated 07th May 2001, issued by the Zonal
Training Centre, Moula Ali

Annexure-A3: A true copy of communication bearing

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No.H/P.612/IV/RNG/ALP/Seniority dated 21.02.2014, issued from the
office of the 3rd respondent

Annexure-A4: A true copy of Letter bearing No.H/P.612/IV/RNG/ALP/Seniority dated
03.04.2014, issued from the office of the 3rd respondent

Annexure-A5: A true copy of representation dtd.19.07.2014 submitted by the 1st
applicant

Annexure-A6: A true copy of representation dtd.19.10.2015

Annexure-A7: A true copy of representation dtd.01.01.2016

Annexure-A8: A true copy of relevant rules regulating seniority of non-gazetted
railway servants as published in Chapter III of IREM-I

Annexures with reply statement filed by R1-4:

Annexure-R1: Representation dtd.16.03.2014

Annexure-R2: The respondent No.3 issued notice dtd.02.04.2014

Annexures with reply statement filed by R5, 6 & 7:

-NIL-

Annexures with rejoinder:

-NIL-

Annexures with written arguments note filed by the applicants:

-NIL-
