

OA.No.170/00865/2016/CAT/Bangalore Bench
**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/00865/2016

DATED THIS THE 04th DAY OF FEBRUARY, 2019

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

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

1. Raj Verma,
Aged 29 years,
S/o Ravi Chandra Mahto,
Senior Assistant Loco Pilot,
South Western Railway,
Arsikere,
Residing at: Kalmardeshwara Nilaya,
Malleswara Nagara,
Besides Ashirwad School,
Arsikere – 573 103.

2. Chandan Kumar,
Aged 26 years,
S/o Bijendra Singh,
Senior Assistant Loco Pilot,
South Western Railway,
Arsikere,
Residing at: Kalmardeshwara Nilaya,
Malleswara Nagara,
Besides Ashirwad School,
Arsikere – 573 103.

3. Ranjeet,
Aged 30 years,
S/o Shailendra Kumar,
Senior Assistant Loco Pilot,
South Western Railway,
Arsikere,
Residing at: Kalmardeshwara Nilaya,
Malleswara Nagara,
Besides Ashirwad School,
Arsikere – 573 103.

...Applicants

(By Advocate Sri T.C.Govindaswamy)

Vs.

1. Union of India
Represented by the General Manager,
South Western Railway, Head Quarters Office,
Hubli – 20, Dharwar District,
Karnataka.

2. The Chief Personnel Officer,
South Western Railway, Head Quarters Office,
Hubli – 20, Dharwar District,
Karnataka .

3. The Senior Divisional Personnel Officer,
South Western Railway, Mysore Division,
Mysore-1.

.....Respondents

(By Advocate Sri J.Bhaskar Reddy)

O R D E R

(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 Annexure A1 bearing No.Y/P.612/V/Vol.XV dated 23/24.12.2015 issued by the 3rd respondent and quash paragraphs 3 and 7 of the same as arbitrary, discriminatory, ultra vires the statutory rules and hence, unconstitutional;*
- b. *Direct the respondents to determine the inter-se seniority strictly in accordance with paragraph 303(a) of IREM Vol.I duly treating the applicants as persons sent for training in first batch that commenced on 8.5.2013 and direct the respondents further to assign the applicant's seniority on that basis, with all consequential benefits arising there from;*
- c. *Award cost of and incidental to this application.*

2. The applicants who are presently working as Senior Assistant Loco Pilots in the Mysore Division of South Western Railway are aggrieved by the principle of assignment of seniority contained in paras 3 & 7 of the letter dtd.23/24.12.2015(Annexure-A1) issued by the 3rd respondent wherein they are placed at Sl.Nos.39,79 & 82 respectively. They submit that the principles adopted by the respondents are against the statutory seniority rules contained in Rules 302 & 303 of Chapter III of the Indian Railway Establishment Manual, Vol.I(Annexure-A2). The applicants are direct recruit Assistant Loco Pilots(ALPs) appointed in response to the Centralized Employment Notification bearing No.01/2011 published by the Railway Recruitment Board,

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Bangalore on being secured merit order of 107, 102 & 93 respectively. The applicants being persons within the merit order between 24 and 108 were directed to appear for training commenced from 8.5.2013 for batch Nos. 12 & 13. While the 3rd applicant joined the training in batch No.12, the 1st and 2nd applicants joined the training in batch No.13. The 1st applicant was the topper in the said batch having secured 258 marks in the examination conducted in the training. The other applicants had secured 208 and 202 marks respectively. In terms of para 303 (a) of the Indian Railway Establishment Manual Vol.I 'candidates who are sent for initial training to Training Schools will rank in seniority 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 batch wise provided persons higher up in the panel of the 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'. In other words, in the instant case, if any one between SI.Nos.24 and 108 were to have been sent for training in the subsequent batches, due to administrative reasons, such persons should be deemed to have been sent for training in 12th & 13th batches along with the applicants and their inter-se seniority determined based on the marks obtained by them vis-à-vis those who were in the merit order between 24 and

108. The rule 303(a) does not say that those who were sent for training in the earlier batches by the administration should be deemed to have been sent for subsequent batches for the determination of inter-se seniority as suggested in para 3 of Annexure-A1. Similarly, the contention in para 7 of Annexure-A1 that in respect of candidates who had failed in the final examination and came out successful in the supplementary examination they should be assigned seniority below all the candidates who attended training in the appropriate batch is also misleading and contrary to the factual and legal position. In other words, according to the respondents, if a person sent for training in the 1st batch fails in the examination conducted at the end of training, then he should be placed below only those who were sent for training in that batch. As a matter of fact, such persons should be placed below all the others who have qualified at the end of the training in the first instance. In fact there is no concept like conducting a supplementary examination for the failed candidates, probably it is only a repeat course and at any case, candidates who have failed cannot have a march over those who were sent for the subsequent batches due to administrative reasons, though all of them ought to have been sent together. They submit that the recruitment is conducted to all the existing vacancies notified. However, training is conducted in different batches only because the administration is not in a position to conduct training for all the selected candidates together for want of requisite facilities and teaching faculties in the training institutions.

3. The applicants submit that they completed their training which commenced on 8.5.2013 and obtained marks 258, 208 and 202 respectively at the end of the training. Hence, their names should naturally find place among those who were sent for the training that commenced from 8.5.2013. They submit that after the training completed on 13.8.2013, they were posted against working

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posts and started functioning as Assistant Loco Pilots, well ahead of those who completed their training in the subsequent batch which commenced on 5.6.2013(Batch Nos.14, 15 & 16). The applicants were also promoted as Senior Assistant Loco Pilot in PB 1 + GP Rs.2400 later. Annexure-A1 seniority list dtd.23/24.12.2015 was published by the 3rd respondent in purported implementation of the orders of this Tribunal in OA.No.7/2010 dtd.15.3.2012(Annexure-A3). As there was difference of opinion in Annexure-A3 order, the matter was referred to 3rd Member who after elaborately hearing the matter rendered its decision on 1.1.2014 vide Annexure-A4. A look at Annexures-A3 & A4 would show that there is absolutely no need to make a departure from Rule 303(a), particularly with reference to the applicants' batch and at any case the rules nor the decision of the Tribunal enable persons sent for training in the 1st batch to be treated as having been sent for training in the subsequent batches for the purpose of determination of inter-se seniority based on the marks obtained at the end of the training. Similarly, the principle contained in para 7 of Annexure-A1 is also de-hors the rules because at the outset, there is no provision for a supplementary examination in the scheme of things and to have the names of the said persons included among those who qualified in the 1st batch itself. Such persons can at best be included only along with the persons of subsequent batches along with whom the so called supplementary examinations were undertaken by the failed candidates. They submit that the number of persons who attended the 1st training is immaterial nor is the size of the batch relevant for application of Rule 303(a) of IREM Vol.I. Hence, the rationale in para 3 of Annexure-A1 is not supported by law.

4. They further submit that no rule making power is vested in the Chief Personnel Officer, nor can any rules/instructions be issued by any lower authorities like the General Manager or the Chief Personnel Officer,

inconsistent with the provisions contained in the Indian Railway Establishment Manual(IREM) or the orders issued by the Railway Board. Paragraphs 3 and 7 of Annexure-A1 are inconsistent with Rule 303(a) of the IREM Vol.I are without jurisdiction, contrary to the statutory provisions, without due application of mind and hence opposed to the equality clauses enshrined in Articles 14 and 16 of the Constitution. They submit that the applicants 1 and 2 have filed representations dtd.16.1.2016(Annexure-A5 & A6 respectively) to the 3rd respondent. But the same have not been replied to till date. They submit that the seniority assigned to them as Senior Assistant Loco Pilots would now undergo variation in the light of Annexure-A1 that too without taking a decision on their representation, and if such an action is taken, substantial prejudice, irreparable injury and recurring monthly losses would be caused to them. Hence, they filed this OA praying for the relief as stated above.

5. The respondents 1 to 3 have filed reply statement wherein they submit that 123 candidates pertaining to 2005 RRB/BNC panel, from merit order No.65 to 758 have been appointed in Mysore Division. The candidates of 2005 RRB panel, were directed for initial training only on receipt of police verification reports. Since police verification report of merit order No.696 was received early, he was directed to attend initial training in the first batch i.e. 01/07. The seniority of the whole batch was assigned as per the marks obtained by the candidates in the initial training course duly interpolating all seniors who have attended training in later batches. The same seniority was challenged in OA.No.169/2010 and it was ordered by this Tribunal to recast the seniority in accordance with each year of RRB panel as the base and adjust the matters in accordance with para 303 of IREM. Accordingly, in pursuance to the orders dtd.1.1.2014 passed in OA.No.7, 169, 383, 273/2010 & 326/2011, the

OA.No.170/00865/2016/CAT/Bangalore Bench seniority lists of Asst. Loco Pilots(ALP) pertaining to RRB panels 2005, 2006, 2007 and 2010 have been revised vide office letter dtd.22.1.2016 and the seniority list of ALPs pertaining to 2011 RRB panel has been published vide office letter dtd.23/24.12.2015. All the three applicants who belong to CEN-01/2011, RRB/BNC panel and their merit order Nos.107, 102 & 93 were allotted to Mysore Division. The candidates who are selected for the post of ALP have to attend and qualify in the initial training course before their absorption to working post, which is mandatory. For the initial training of ALPs commenced w.e.f. 8.5.2013, the slot allotted to Mysore Division was 40 vide letter dtd.2.5.2013 and as there was large number of vacancies exist in LP category and there was urgency in filling up the posts of ALPs to manage day to day working of train services, further approval was communicated from HQs/O/UBL to direct the candidates for initial training pending receipt of police verification report. The candidates as per RRB panel position, who were found fit in medical examination were called to report to the office to attend initial training commencing w.e.f. 8.5.2013. As sufficient time was not given to the candidates to report to the office to attend training all the candidates who have been called, could not turn up to the office to attend training in time. Hence, instead of the slot allotted to Mysore Division vacant, the candidates below the panel who have reported the office have been directed for initial training commenced w.e.f. 8.5.2013 to fill up the slot of 40. It is submitted that para 303(a) of IREM states persons belonging to the same RRB panel are sent for initial training due to administrative reasons, the inter-se seniority will be regulated batch wise provided persons higher up in the panel of the RRB not sent for training in the appropriate batch 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. As could be seen, the slot allotted for Mysore Division for deputing candidates for initial training was 40 and candidates merit order No.1 to 40 in the panel could have been sent for training. As the candidates from 1 to 40 were not ready to be sent for initial training there was an exigency of ALPs, the candidate below the merit order No.40 were sent for training in the allotted slot to make use of the training schedule. Subsequently, candidate in the merit order No.1 to 40 were sent for initial training in the different batches. This arrangement is made purely on administrative grounds and not attributable to candidates. As such, SI.No.1 to 40 were considered for assignment of their seniority in the above slot and the candidate who were attended initial training below the merit order No.40 were considered for assignment of their seniority in the appropriate batch on their merit order. The candidates who have requested for time to attend training have been placed below i.e. in the batch in which they attended training vide SI.No.52, 66 and 109 etc. in the seniority list of ALPs of 2011 RRB panel. Accordingly, the candidates higher up in the panel who could not be sent for training due to administrative reasons were clubbed with the employees who took training in the appropriate batch i.e. batch No.12 & 13 and appropriate batch of the applicants as per their RRB merit order is batch No.14, 15 & 16. Hence, they do not have claim over their seniors of batch 12 & 13.

6. They submit that as per the orders of this Tribunal, the seniority list of 2011 RRB panel has been published in accordance with the RRB Panel as the base and the seniority of the employees have been assigned in accordance with para 303(a) and 304 of IREM Vol.I. Accordingly, the applicants have been assigned seniority at SI.No.39, 79 and 82. The candidates who have passed the training in supplementary examination (not in repeat course) have been

OA.No.170/00865/2016/CAT/Bangalore Bench assigned seniority below all the employees of their appropriate batch which is in order in terms of IREM para 303(a). Hence, the seniority assigned in favour of the applicants and also the candidates who have passed training in supplementary exam (not in repeat course) below all the candidates of appropriate batch in the seniority list is in order. The representations received from the applicants against the provisional seniority list dtd.23/24.12.2015 have been disposed of vide office letter dtd.25.4.2016(Annexure-R1) and the provisional seniority list has been treated as final vide office letter dtd.1.7.2016. Now the seniority list in the category of Sr.ALPS as on 22.8.2016 has also been issued vide letter dtd.25.8.2016 and the applicants have not submitted any representation against their seniority position in the category of Sr.ALPS.

7. The applicants have filed rejoinder reiterating the submission already made in OA and submit that the contention of the respondents in the reply that candidates from 1 to 40 were not ready to be sent for initial training and they could not turn up to the office to attend the training only supports the case of the applicants. But the fact remains that the applicants were sent for training which commenced on 8.5.2013. It cannot be said that the candidates higher up in the panel who could not be sent for training due to administrative reasons were clubbed with the employees who took initial training in batches 12 and 13, without explaining the reasons as to what are the administrative reasons for not sending those candidates for the earliest batches. In accordance with para 303(a) of IREM Vol.I, candidates sent for training in the earlier batch should be placed in the seniority amongst the particular batch in order of merit obtained in the examination. The respondents have not replied to the contentions raised by them in regard to powers of Chief Personal Officer to make rule inconsistent with the provisions contained in IREM or

Railway Board orders. Hence, all the contentions of the respondents are liable to be denied as false and incorrect.

8. We have heard the Learned Counsel for both the parties and perused their contentions made in the OA and the reply statements. There are two issues raised by the applicants: One, the interpretation of para 303(a) of IREM and two, the placing of failed candidates at the end of all the batches and not at the end of the appropriate batch. Regarding the first issue, as per para-303(a) of IREM, in the case of persons who are higher in the RRB merit list who are sent in later batches for training due to administrative reasons, they shall be given the seniority in the appropriate batch which they were eligible for based on their ranking provided they passed the examination at the end of the training in the first attempt. This is to ensure that the persons with higher rankings in the list of RRB are not denied the opportunity of becoming seniors merely because there are administrative reasons for their not being sent for the earlier batches which they were entitled for. The converse cannot be taken to be correct i.e. persons who are lower in the RRB merit list but are sent for training earlier need to be brought down to the later batches merely because the batch-wise seniority has to be fixed. Admittedly, the applicants are lower in RRB rankings compared to some of the persons who are actually deputed for training in the later batches. The respondents have in para-3 of the letter dtd.23/24.12.2015(Annexure-A1) stated as follows:

‘The number of candidates undergone training in one batch is considered as the size of each batch. In other words if 15 candidates attended training in a particular batch, the size of the batch is considered as 15 and candidates as per the panel position in the select list have been considered in the appropriate batch.’

However, in hypothetical situation where all the persons deputed for training in one batch have successfully cleared it, the batch size would be taken as that number plus the number of persons with higher ranking in RRB list who

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should have been part of this batch but were sent for training later. Therefore, the size of the batch will obviously increase to accommodate the extra number of these persons higher in the merit list in RRB. The applicants' claim that candidates from rank 24 to 108 numbering about 84 persons were called for the first round of training in batches 12 & 13 commencing from 8.5.2013. The respondents also would admit that the usual size of the batch is 40. As contended by the applicants, in the seniority list in Annexure-A1 there are even candidates who have failed in the first round but passed in a supplementary exam finding themselves to be seniors to the applicants. This appears to be an anomalous situation and the total number of persons in this batch is also only 37 including the persons with the higher ranking in RRB trained in the later batches (about 5 persons). Going through the list in Annexure-A1, we find that there are very few persons who have actually undergone training in the earlier batches but have been brought down in the seniority because they were lower in the RRB list. When the respondents have taken a stand that the seniority will not be based on the merit in the RRB list but based on the marks obtained in the examination after training, it is appropriate that while every opportunity is given to the persons with the higher rankings to get themselves accommodated in the appropriate batch of training which they are entitled to, it is not correct to bring down the persons who had already undergone training in the earlier batches and have also cleared the exams in the first attempt to an imaginary appropriate batch at a later date. The number of such persons is not high and therefore, we direct the respondents to make suitable changes in the seniority list as at Annexure-A1 and give consequential benefits of promotion etc. to the persons concerned including those apart from the applicants in this OA. This they may do so within the next two(2) months. On the second issue of placing the failed

candidates at the end of all the batches instead of at the end of the appropriate batch, we do not find any merit in the contention of the applicants.

9. The OA is allowed with the above orders. No costs.

(C.V.SANKAR)
MEMBER (A)

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

/ps/

Annexures referred to by the applicants in OA.No.170/00865/2016:

Annexure-A1: A true copy of the letter bearing No.Y/P 612/V/Vol.XV dated 23/24.12.2015 issued by the 3rd respondent

Annexure-A2: A true extract of paragraphs 302 and 303 of Chapter 3 of IREM, Vol. I

Annexure-A3: A true copy of the common order in O.A. No. 7/2010 and connected cases dated 15.03.2012 rendered by this Hon'ble Tribunal

Annexure-A4: A true copy of the decision of Hon'ble 3rd Member dated 01.01.2014 in O.A.No.7/2010 and connected cases

Annexure-A5: A true copy of the representation submitted by the 1st applicant dated 16.01.2016 addressed to the 3rd respondent

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Annexure-A6: A true copy of the representation submitted by the 2nd applicant dated 16.01.2016 addressed to the 3rd respondent

Annexures with reply statement:

Annexure-R1: Copy of the letter dated 25.04.2016

Annexures with MA.No.192/2018 filed by the applicant:

Annexure-MA1: Copy of promotion order dated 08.05.2018
