

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00044-00047/2015

DATED THIS THE 25TH DAY OF OCTOBER, 2018

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI DINESH SHARMA, MEMBER (A)

1. Jiby George,
S/o George,
Aged about 36 years,
Working as Loco Pilot Goods,
SW Railway,
Hubli – 580 020

2. Joshil C.K
S/o Ramadasan P.
Aged about 38 years,
Working as Loco Pilot Goods,

Crew Controller,
SW Railway,
Hubli – 580 020

3. Joseph K.D
S/o Devassy K.D.
Aged about 37 years,
Working as Loco Pilot Goods,
Power Controller,
SW Railway, Hubli – 580 020

4. B. Suri Demudu
S/o B. Ramu,
Aged about 37 years,
Working as Crew Controller,
S.W. Railway,
Tornagallu

.....Applicants

(By Advocate Shri B.S. Venkatesh Kumar)

Vs.

1. Union of India
Represented by General Manager,
South Western Railway,
Headquarters Office,
Hubli – 580 020

2. The Senior Divisional Personnel Officer,
South Western Railway,

Headquarters Office,
Hubli – 580 020

3. The Assistant Personnel Officer (M)
South Western Railway,
Headquarters Office,
Hubli – 580 020

4. Shri V.S. Thippeswamy,
Major,
Father's name not known,
Loco Inspector/Working as CCC,
Thornagal Railway Station,
Thornagal, Bellary District.

5. Shri B. Sreenivasulu,
Major,
Father's name not known,
Chief Power Controller,
Hubli Division, SW Rly,
HQrs, Hubli – 580 020

6. Shri A. Murugan,
Major,
Father's name not known,
Chief Loco Inspector,
C/o Office of CCC,
South Western Railway,
Hospet.

7. Shri Joseph Edward,
Major,
Father's name not known,
Working as Chief Crew Controller,
South Western Railway,
Belgaum

8. Shri K. Rajesh Babu,
Major
Father's name not known,
Chief Loco Inspector,
C/o CCC, SW Railway,
Hospet.

9. Shri M.F. Nadaf,
Major
Father's name not known,
Chief Loco Inspector,

C/o CPRC, SW Railway,
Hubli.

10. Shri Manivarnan,
Major
Father's name not known,
Working as Chief Loco Inspector,
SW Railway,
Castle Rock

11. Shri Jithosh K
Major
Father's name not known,
Working as LP Goods,
SW Railway,
Castle Rock.

12. Shri S.S.V.Ramprasad,
Major
Father's name not known,
Working as Chief Crew Controller,
SW Railway, Hospet.

13. Shri Shivakumar Pattanashetty,
Major
Father's name not known,
Working as Chief Loco Inspector,
Office of Chief Mechanical Engineer,
SW Railway,
Headquarters, Hubli.

14. Shri K. Mukthar Ahamed,
Major
Father's name not known,
Working as Chief Loco Inspector,
South Western Railway,
Belgaum

15. Shri C. Anil Kumar,
Major
Father's name not known,
Working as Chief Loco Inspector,
SW Railway, Castle Rock

16. Shri Shahul Hameed P.K.,
Major
Father's name not known,
Working as Chief Crew Controller,

South Western Railway,
Castle Rock (Uttara Kannada District)

17. Shri Venu Kothapalli,
Major
Father's name not known,
Working as Chief Crew Controller,
South Western Railway,
Vasco da Gama, Goa

18. Shri S. Karthic,
Major
Father's name not known,
Working as Loco Pilot Goods,
South Western Railway,
Castle Rock,
Uttara Kannada District

19. Shri M. Satyanarayana,
Major
Father's name not known,
Working as Chief Crew Controller,
South Western Railway,
Belgaum

20. Shri K. Muthyalu,
Major
Father's name not known,
Working as Chief Crew Controller,
South Western Railway,
Vasco da Gama, Goa

21. Shri N. Ramarangaiah,
Major
Father's name not known,
Working as Chief Crew Controller,
South Western Railway,
Headquarters, Hubli.

....Respondents

(By Shri N. Amaresh, Senior Panel Counsel for Respondent No.1 to 3 &
Shri T. Narayanaswamy, Counsel for Respondent No. 4,7,9, 11, 14 & 15)

O R D E R (ORAL)

(HON'BLE DR. K.B. SURESH, MEMBER (J))

Heard. There are two grounds which arise in this matter. One is the right of the applicants to be selected sans the Refresher Course which they claim as their right. They may have a right for a Refresher Course but that was in 2013. Even without the Refresher Course they had participated in the selection process and in 2015 found themselves to be debarred as not being competent enough. After that when they filed the OA the matter was already concluded and there is no question of any kind of Refresher Course at that point of time. By their own negligence the applicants had opted out of their right, therefore the applicants do not have any right.

2. Whereas we now find after hearing that two of the selected candidates – Respondent No. 11 and 18 - did not have 75,000 kms foot plate qualification which is an essential basic qualification. The railways say that they will be given an additional training after selection when they complete their basic qualification of 75,000 kms foot plate training. This will not do. They are not qualified to be appointed. Their appointments are hereby quashed. It is also pointed out that the record of service of subsequent years after 2013 have been taken into account. In other cases we have held it to be illegal which has been upheld by the Hon'ble High Court which having gone up to the Hon'ble Apex Court and the Hon'ble Apex Court having dismissed the SLP it has become final. Even if uniformly such a qualification has been taken, that cannot be done.

3. In fact, the Hon'ble Apex Court has time and again decided on what basis qualifications have to be counted. We quote:

“11. The Hon’ble Apex Court in **PRAMOD KUMAR VS.U.P.SECONDARY EDUCATION SERVICES COMMISSION AND OTHERS** reported in (2008) 7 SCC 153 had held that **“if the essential qualification for recruitment to a post are lacking this illegality cannot be cured..”** Their Lordship held that when the Appellant was appointed to a teaching post for which prescribed educational qualification according to statutory provisions was BEd. degree. It was later on found that he obtained this BEd. degree from a University which is not a recognised one. The Hon’ble Apex Court had held that the applicant lacked the necessary qualification and therefore quashment of the appointment was legal.

In **POST MASTER GENERAL, KOLKATA AND OTHERS Vs. TUTU DAS** reported in (2007) 2 SCC (L & S) 179 the Hon’ble Apex Court had held that no regularisation is possible or permissible in exercise of executive powers and under Article 17 in attributing to the Statutory Rules or Constitutional Schemes. Their Lordship held that **“if at the given point of time the necessary qualification are lacking then whether they have continued in service for a long period or not, such illegality cannot be permitted as equality is a possible concept.”**

In **ASHOK KUMAR SONKAR vs. UNION OF INDIA** reported in (2007) 2 SCC (L & S) 19 the Hon’ble Apex Court had held **“even in the absence in a cut off date prescribed any, the cut off date is the last date for receipt of application must be considered as cut off date and in the instant case he was not having required qualification on the said cut off date he was not eligible for the post in question.”**

In **NATIONAL FERTILIZERS LIMITED VS. SOMVIR SINGH** reported in (2006) SCC (L & S) 1152 the Hon’ble Apex Court had held that **“there is a necessity to comply with the recruitment rules framed, when a recruitment is made the employer is bound to comply with the same any appointment in violation of such rules would render such appointment a nullity.”**

The Hon'ble Apex Court further held that “such person do not have any legal right to continue in service even though they have been working for a very long time and held that since the appointment of the respondent being illegal those of them who were in active service may be relieved from their posts.”

In MOHD.SARTAJ VS. STATE OF U.P. reported in (2006) SCC (L & S) 295 Hon'ble Apex Court had held that “in view of the lack of requisite qualification the Appellant did not hold any right over the post and therefore, no hearing required before cancellation of their services.”

In DR.M.S.MUDHOL VS. S.D.HALEGKAR AND OTHERS reported in 1993 SCC (L & S) 986 the Hon'ble Apex Court had held that “when a qualification of Master's Degree with atleast second division plus a degree in teaching is required under statutory rules, respondent possessing MA degree with third division and MEd degree with second division is not qualified.”

4. Therefore all these matters will be revisited by the respondents within the next two months and re-selection be made excluding all the candidates who were not qualified at that point of time excluding the two candidates whose selection we have now set aside. The stand taken by the railways that post inductional training will be given is neither here nor there and they have defeated the salient clause of the notification of 2013 but, at the same time, the applicants do not have a right to come to the Court now and claim that a Refresher Course ought to have been given to them earlier. Therefore the case of the applicants is hereby dismissed but at the same since the railways have adopted a technique unknown to law, we will impose a cost of Rs.50,000/- on them. The said amount has to be paid to the Legal

Services Authority of India within one month and receipt produced to the Court as their frivolous approach has led to this impasse.

5. The OA is disposed off accordingly with cost of Rs.50,000/-.

(DINESH SHARMA)
MEMBER (A)

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

/ksk/

Annexures referred to by the applicant in OA No. 170/00044-00047/2015

Annexure A1 Copy of the order notification dated 05.02.2013

Annexure A2 Copy of the representation dated 23.07.2014

Annexure A3 Copy of the memorandum dated 16.09.2014

Annexure A4 Copy of the representation dated 08.10.2014

Annexure A5 Copy of the memorandum dated 28.10.2014

Annexure A6 Copy of the memorandum dated 29.10.2014

Annexure A7 Copy of the OO dated 11.12.2008

Annexure A8 Copy of the note dated 03.01.2013

Annexure A9 Copy of the document in No. H/P.608/CS/LI/2013

Annexures with reply statement

Annexure R1 Copy of the RBE No. 113/2009

Annexures with reply statement of R 4,7,9,11, 14 & 15

Annexure R1 Copy of the Notification dated 05.06.2007

Annexure R2 Copy of the Office order No. 350/2008

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