

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/00482/2017

DATED THIS THE 05th DAY OF APRIL, 2019

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

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

1. Sri.Sudarshan D.S.
S/o. Sri.D.Srinivasa Rao
Aged 43 years
Loco Pilot (Pass)
S.W.Railway, Bangalore-560023.
2. Sri.K.M.Suresh
S/o Sri.Munikrishnappa
Aged 42 years
Loco Pilot (Pass)
S.W.Railway, Bangalore-560023.
3. Sri.Pradeep Kumar
S/o.Sri.Nandalal
Aged 46 years
Loco Pilot (Pass)
S.W. Railway, Bangalore-560023.
4. Sri.Biju Paul
S/o Sri.Paul Kalappurakal
Aged 42 years
Loco Pilot (Pass)
S.W.Railway, Bangalore-560023.

....Applicants

(By Advocate Shri K.Shiva Kumar)

Vs.

1. Union of India
Rep. by General Manager
South Western Railways
Gadag Road, Hubballi-580020.
2. Senior Divisional Mechanical Engineer
South Western Railway
Bangalore-560023.
3. Senior Divisional Personnel Officer
South Western Railway
Bangalore-560023.

...Respondents

(By Advocate Sri J.Bhaskar Reddy)

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

The facts of the case are as follows:

The applicants who were initially appointed as Assistant Loco Pilots in 1997 through Railway Recruitment Board, Bangalore and Chennai were subsequently promoted as Sr.Assistant Loco Pilot, Loco Pilot(Goods) etc. in the normal avenue in the Running Cadre of the Mechanical Department and presently working as Loco Pilots(Passenger). The post of Loco Pilot(Mail) is a non-selection post in the running category of the Mechanical Department which is filled up from the feeder category of Loco Pilot(Passenger). Such posts are filled up by promotion of the senior most suitable Railway servant. The suitability of the Railway servant is determined by the authority competent to fill the posts on the basis of the record of service. A senior Railway servant may be passed over only if he is declared as unfit to hold the post in question and a declaration of unfitness should ordinarily have been made sometime previous to the time when promotion of Railway servant is being considered. The authority making the promotion should record briefly the reason for such supersession. For promotion to the non-selection posts the staff in the immediate lower grade with a minimum of two years of service is only considered. The number of eligible staff called for consideration should be equal to the number of vacancies plus those anticipated during the next one year due to normal wastage, i.e. retirement etc., likely acceptance of request for voluntary retirement, staff approved to go on deputation to other units, staff already empanelled for ex-cadre posts, creation of additional posts already sanctioned by competent authority and staff likely to go on transfer to other Railways. Since the reservation for SC/ST is available even in case of promotions ordered to fill the posts both by selection

and non-selection method, it is required to be followed based on the post based reservation roster that is being maintained for each post/grade which should not exceed 15% & 7.5% respectively.

2. The applicants submit that the Railway Board by their letter dtd.7.8.2002(Annexure-A1) communicated that SC/ST candidates appointed by promotion on their own merit and not owing to reservation or relaxation of qualifications will not be adjudged against the reserved points of the reservation roster and they will be adjudged against the unreserved points. It further stated that the SC/ST candidates appointed on their own merit and adjudged against unreserved points will retain their status of SC/ST and will be eligible to get benefit of reservation in future/further promotions, if any. Since the promotions in the case of non-selection posts are based on seniority-cum-fitness and the concept of merit is not involved in such promotions, it was clarified by the Railway Board by their letter dtd.6.5.2005(Annexure-A2) that instructions contained in Board's letter dtd.7.8.2002 and 20.6.2003 would not apply. Further the Railway Board by their letter dtd.29.1.2009(Annexure-A3) stated that the instructions contained in letter dtd.6.5.2005 would take effect from 7.8.2002 and promotions already finalized prior to issue of board's letter dtd.6.5.2005 need not be disturbed. Subsequently, the Railway Board by their letter dtd.1.9.2010(Annexure-A4) withdrew their earlier letter dtd.6.5.2005 and clarified that the SC/ST candidates appointed by promotion on their own merit and seniority and not owing to reservation or relaxation of qualifications will be adjudged against unreserved points of reservation roster, irrespective of the fact whether the promotion is made by selection method or non-selection method and these orders would take effect from 21.8.1997 the date on which the post based reservation roster was introduced in Railways. The said order

was issued based on the DoPT vide OM dtd.10.8.2010 which was challenged in the High Court of Punjab & Haryana in CWP.No.13218/2009 wherein the OM was quashed by the High Court vide order dtd.15.7.2011. Against the said order, SLPs were filed before the Hon'ble Supreme Court which passed interim order on 3.2.2015 ordering status quo to be maintained in respect of the promotion orders.

3. The applicants further submit that since about 5 notifications issued by the DoPT and Railways were contrary to the status quo order passed by the Hon'ble Supreme Court, contempt petitions were also filed and contempt notice was issued by the Hon'ble Supreme Court. While hearing of the said contempt petition, the Learned Solicitor General gave an undertaking that till such time the main matter along with contempt petition is decided, no further promotions of reserved category persons to unreserved posts will be made based on the DoPT OM dtd.10.8.2010 and Railway Board circular dtd.14.9.2010. Further to that, the Railway Board issued a letter dtd.30.9.2016(Annexure-A5). Further to the said letter of the Railway Board, a communication was issued by the Chief Personnel Officer, SW Rly., on 21.4.2017(Annexure-A6) stating that the SC/ST candidates who are coming on their own seniority to be charged against reserved points only and not against the UR points. In spite of which, the 3rd respondent issued an order on 23.5.2017(Annexure-A7) promoting the junior employees belonging to reserved community overlooking the senior UR employees in gross violation of the status quo orders of the Hon'ble Supreme Court and the commitment made by the Learned Solicitor General before the Hon'ble Supreme Court. When Sri R.K.Gopalaswamy(SC) has been promoted against UR point on 16.9.2016(Annexure-A8), he should be charged against the SC point when subsequently SC point arises, thereby the UR post occupied by him to be released

and to be filled by promoting the senior most UR employee who is the 1st applicant herein. In the non-selection posts, the anticipated vacancies for one year to be taken into consideration. In 2016, two SC employees and one ST employee have been promoted against the reserved points. When so, it is not known, how two more SC and ST employees have been promoted against SC/ST requirement. By acting against the orders of the Railway Board and the Chief Personnel Officer, the 3rd respondent has done great injustice to the applicants and their due promotion has been denied for no fault of them. The action of the 3rd respondent is nothing but contempt and makes him as an accused in the contempt petition pending before the Supreme Court. The 1st applicant has approached the 3rd respondent with so many representations(Annexures-A9 to A12) but there is no reply on the same. Aggrieved by the same, the applicants have filed the present OA seeking the following relief:

“Call for the records in which the promotions to the post of Loco Pilot(Mail) have been ordered on 16.9.2016 and 23.5.2017 along with the relevant Post Based Reservation Roster Register and order for the promotion of the applicants to the post of Loco Pilot (Mail) from 23.5.2017 duly revising the earlier promotion ordered on 23.5.2017 in compliance to the commitment made before the Hon'ble Supreme Court and the orders of the Railway Board and the Chief Personnel Officer.”

4. The respondents have filed their reply statement wherein they submit that for promotion to the post of Loco Pilot(Mail), employees in the immediate lower grade with a minimum of two years of service is only considered. The respondents initiated process for filling up the post of Loco Pilot(Mail) existing as on 29.9.2015. As per assessment, 23 posts of Loco Pilot/Mail was proposed to be filled with community break up of UR-15, SC-06 & ST-02 from the immediate lower post of Loco Pilot/Passenger. During the process of filling up the post of Loco Pilot/Mail, there was a reduction in sanction of Loco Pilot(Mail) from 109 to 94 due to cadre review and also due to reinstatement of employees removed from service and

repatriation of Loco Pilot/Mail from other categories viz. CPRC/CCRC. Due to reduction in posts, there was 7 excess representation of UR employees in the post based roster. Hence, after adjusting the UR employees in the post based roster, 4 posts with community breakup of 01-ST, 2-SC and 1-UR posts were filled in the cadre of Loco Pilot/Mail vide office order dtd.16.9.2016(Annexure-A8). Out of 4 employees promoted Sri.R.K.Gopalaswamy(SC) is charged against UR point as he had come on his own seniority and not against reserved point. The other three posts were filled by 2 SC and 1 ST employees as per post based roster points. The action of the respondents in filling up these posts by employees belonging to reserved category is in consonance with the Railway Board's letter dtd.1.9.2010 according to which the earlier letter dtd.6.5.2005 is withdrawn by the Railway Board.

5. The respondents submit that the Railway Board by their letter dtd.29.1.2009 had clarified that the instructions contained in letter dtd.6.5.2005 would take effect from 7.8.2002 and promotions already finalized prior to issue of Board's letter dtd.6.5.2005 need not be disturbed. The SC/ST candidates who have been promoted during the period 7.8.2002 to 6.5.2005 by non-selection method, by virtue of their seniority position in the feeder grade or otherwise, in excess of reservation quota prescribed for them, are to be adjusted against the reserved vacancies arising in future. Further it is clarified that senior SC/ST candidates coming in the normal zone of consideration against the posts to be filled by non-selection method cannot be denied promotion on the ground that there is no reserved vacancy or there is excess representation of that particular reserved category. Thus SC/ST candidates may get promotion by non-selection method in excess of reservation prescribed for them provided they fall within the normal zone of consideration as per their seniority position. However, such SC/ST candidates may be adjusted against

reserved vacancies arising in future.

6. The respondents further submit that when the Learned Solicitor General gave an undertaking in Contempt Petition No.314/2016 that till such time the main matter along with the contempt petition is decided, no further promotions of reserved category persons to unreserved posts will be made based on the DoPT OM dtd.10.8.2010 and the Railway Board circular dtd.14.9.2010. The respondents have filled up 4 posts of Loco Pilot(Mail) which is prior to the assurance given by the Ld.Solicitor General of India and Railway Board letter dtd.30.9.2016 and the promotions ordered are based on the earlier instructions issued by Railway Board vide Annexure-A4 and they are governed by the letters/circulars issued by the Railway Board. As such the promotion of Sri.R.K.Gopalaswamy has been issued prior to the issue of Railway Board letter dtd.30.9.2016 and is based on his seniority in the post of Loco Pilot(Passenger). The applicants have not arrayed the affected employees as parties in the OA, however, the respondents will take action to review those cases after finalization of SLP pending before the Hon'ble Supre Court.

7. The applicants have filed their written arguments note wherein they submit that in the promotion ordered on 16.9.2016, Sri.R.K.Gopalaswamy who belong to reserve category has been promoted to occupy the UR point as per his seniority. The other 3 employees have been promoted against the SC/ST requirement. While filling up of 19 posts subsequently on 23.5.2017, four posts have been filled up by promoting the junior SC/ST employees overlooking the senior UR employees. In the said order under condition No.5, it has been stated that SI.No.16 to 19 were promoted against SC/ST requirement. When SC/ST requirement have already been fulfilled in the earlier order issued in 2016, it is not known how the SC/ST

requirement arose in the next promotion ordered within 8 months when the anticipated vacancies for next one year is taken into account at the time of assessment. When the anticipated vacancies are taken for next one year at the time of assessment of vacancies in 2016 and 2 SC and 1 ST posts have been filled up in 2016 against SC/ST requirement, how 4 more reserved vacancies would have arisen in 2017 needs to be clarified by the respondents. It is admitted by the respondents in the reply that the SC/ST candidates promoted by non-selection method as per seniority would be adjusted against reserved vacancies arising in future. But the same was not followed by them while issuing the promotion order in May 2017. If that had been followed, Sri.R.K.Gopalaswamy(SC) who was promoted on 16.9.2016 against UR point should have been adjusted against the SC vacancy arose in 2017. Had it been done, the UR point released by him could have been filled up by promoting the 1st applicant who is senior to the SC/ST employees promoted against SC/ST requirement. The statement of the respondents in the reply that they are reviewing the cases of promotion ordered in favour of reserved community employees charged against UR points and they issued show cause notice to the four reserved employees promoted in 2017, clearly establishes that the respondents have committed mistake by promoting the in-eligible employees at the cost of the applicants. In the show cause notice issued to Sri Bharath on 4.6.2018, it has been admitted by the respondents that he has been inadvertently promoted and it was proposed to withdraw the promotion. This clearly establishes that the claim of the applicants is correct and genuine. Though 5 months have passed from issuing of show cause notice, no action seems to have been taken by the respondents to revert those four in-eligible employees and promote the four applicants who are eligible to the post of Loco Pilot(Mail).

8. The respondents have filed their written arguments submitting that all the applicants were promoted as LP/Mail vide office order dtd.30.11.2018(Annexure-R3). In view of the applicants have got the relief sought for in the OA, the OA has become infructuous and the OA may be disposed of accordingly.

9. We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. It is clear from the pleadings and the arguments that there cannot be any dispute for the promotion ordered on 16.9.2016 which was prior to the assurance given by the Learned Solicitor General of India before the Hon'ble Apex Court and Railway Board letter dtd.30.9.2016. The applicants have rightly contended that Shri R.K.Gopalaswamy who belongs to the reserved category has been promoted to occupy the un-reserved post as per his seniority and three other employees have been promoted against SC/ST requirement. However, subsequently on 23.5.2017, four posts have been filled up by promoting junior SC/ST employees contrary to the assurance given before the Hon'ble Apex Court. The person earlier promoted namely Sri R.K.Gopalaswamy was not shown against the reserved vacancy in 2017 and some more persons have been promoted. The applicants contend that the SC/ST requirement having been already fulfilled in the earlier order issued in 2016, they are not able to understand as to how within 8 months some more vacancies have arisen when anticipated vacancies are also considered every year which is accepted by the respondents. The applicants point out that the respondents in their reply have stated that the SC/ST candidates promoted by non-selection method as per seniority would be adjusted against the reserved vacancy arising in future but the same has not been followed by them in May 2017. The statement of the respondents in the reply that they are reviewing the cases of promotions ordered in favour of the reserved community employees

charged against un-reserved posts in 2017 also confirms the point made by the applicants. The applicants also state that notices have been issued to the reserved category employees promoted in 2017 and this has not been challenged by the respondents. The respondents have admitted in para-13 of their written arguments that they are reviewing the promotions of the employees belonging to the reserved community issued vide letter dtd.23.5.2017 in view of the letters issued by the Railway Board and CPO, South Western Railway, Hubli. Respondents further submit in the written arguments that the applicants in this case have been promoted subsequently vide office order dtd.30.11.2018(Annexure-R3). But the fact remains that the exercise has not been done strictly as per the extant position and in any case the vacancy to be shown under the reserved category in May, 2017 will have to be first adjusted against Shri R.K.Gopalaswamy. The respondents are therefore, directed to complete the process of review of promotions which were done subsequent to the Railway Board instructions dtd.30.9.2016 and the commitment given by the Learned Solicitor General in the Hon'ble Apex Court and consider the cases of the applicants from the date they are originally eligible as per the extant instructions. To cite an example, the first person to be promoted from the un-reserved category will have to be accommodated at least from May 2017 instead of July 2018 as has been ordered vide Annexure-R3 when the reserved category person having been promoted on his own merit based on seniority will be shown against the reserved vacancy thus releasing one un-reserved post.

10. The OA is allowed as above. No costs.

(C.V.SANKAR)
MEMBER (A)

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

/ps/

Annexures referred to by the applicant in OA.No.170/00482/2017

Annexure-A1: Copy of Railway Board letter RBE 128/2002
Annexure-A2: Copy of Railway Board letter RBE 77/2005
Annexure-A3: Copy of Railway Board letter RBE 19/2009
Annexure-A4: Copy of Railway Board letter RBE 126/2010
Annexure-A5: Copy of Railway Board letter RBE 117/2016
Annexure-A6: Copy of Chief Personnel Officer letter dtd.21.4.2017
Annexure-A7: Copy of the promotion order dtd.23.5.2017
Annexure-A8: Copy of the promotion order dtd.16.9.2016
Annexure-A9 - A12: Copy of representations of applicant No.1

Annexures with reply statement:

-NIL-

Annexures with written arguments note filed by the applicant:

-NIL-

Annexures with written arguments note filed by the respondents:

Annexure-R2: Assessment of vacancies existing on 29.9.2015
Annexure-R3: Office order dtd.30.11.2018
