

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00780/2014

Friday, this the 8th day of March, 2019

**Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member**

1. K.P.Varghese, aged 44 years
S/o.K.A.Papputty
Loco Pilot (Passenger), Southern Railway
Ernakulam Junction
Residing at “Karingen House”
Naduvattom P.O, Ernakulam District
Pin : 683 571
2. K.Gangadharan, aged 58 years
S/o.K.Kesavan Nair
Loco Pilot (Passenger), Southern Railway
Ernakulam Junction
Residing at: Vilayath Kallazhi House
Pudusseri, Cheruthuruthy P.O
Trichur District, Pin 679 531
3. K.A.Thomas, aged 55 years
S/o.K.C.Antony
Loco Pilot (Passenger), Southern Railway
Ernakulam Junction
Residing at 125/E, Railway Quarters, Ernakulam Junction
Cochin – 682 016
4. C.Sreekumaran Nair, Aged 48 years
S/o.Chellappan Nair
Loco Pilot (Passenger)
Southern Railway, Quilon Junction
Residing at “Hari Sree”. Panappetty
Poruvazhy P.O, Kollam, Pin 690 520
5. S.K.Balasubramanian, aged 45 years
S/o.S.Karuppasamy (late)
Loco Pilot (Passenger), Southern Railway
Quilon Junction
Residing at VNRA 149, Amma Veedu
Kurmjarpallil, Thirumullavaram, Quilon-691 012
6. J.Jayaprakash, aged 57 years
S/o.K.Janardhanan
Loco Pilot (Passenger), Southern Railway

Quilon Junction
Residing at “Ariya Nivas”
Eravipuram Nagar
Eravipuram P.O, Kollam, Pin 691 011

7. Saji N.M, aged 44 years
S/o.Mathew M.N
Loco Pilot (Passenger), Southern Railway
Quilon Junction, Residing at Nellippallil
Kanakkary P.O, Kottayam District
Pin 686 632
8. O.V.Rahula Kumar, aged 40 years
S/o.N.Vikraman
Loco Pilot (Passenger), Southern Railway,
Trivandrum Central
Residing at Lekha Nivas, TC 32/148
Madhavapuram, Trivandrum – 695 021
9. T.Deepthi Kumar, aged 46 years
S/o.G.Thulaseedharan
Loco Pilot (SNP), Southern Railway, Trivandrum Central
Residing at Sowparnika, TC No.48/897/1
Kalladimughom, Kanchiravila, Trivandrum – 695 009
10. S.Jayakumar, aged 47 years
S/o.N.Sreedhara Panicker
Loco Pilot (Passenger), Southern Railway
Trivandrum Central
Residing at “SIVAM”, TC. 10/2068 (6)
Thozhuvancode, Vattiyoorkavu P.O
Trivandrum – 695 013
11. K.B.Ranjith Kumar, aged 46 years
S/o.P.P.Bahuleyan
Loco Pilot (Passenger), Southern Railway
Nagercoil Junction, Permanent Address:
“BAVERI” Kaliyan Parambil
Ayyappankavu, Ernakulam, Kochi – 682 018
12. Y.James, aged 45 years
S/o.Y.K.Yohannan
Loco Pilot (Passenger)
Southern Railway, Quilon Junction
Residing at “VALSALA BHAVAN”
Mampallikunnam
Chathannoor P.O, Kollam – 691 572
13. B.Manoj, aged 47 years
S/o.K.Balachandra Panicker

Loco Pilot (Passenger), Southern Railway
Ernakulam Junction, Residing at A6, Orchid Park Apartments
Nethaji Nagar, Kadavanthra P.O, Kochi – 682 020

14. P.A Baby, aged 57 years
S/o.P.D.Antony
Crew Controller, Southern Railway
Ernakulam Junction
Residing at Pallipuram House,
Green Land Street
Palliyagadi, Paravattani, Trichur – 680 005
15. K.K.Rajan, aged 55 years
S/o.K.Krishnankutty
Loco Pilot (Passenger), Southern Railway
Ernakulam Junction Permanent Address: Kuriyedathodi House
Pulamanthole P.O, Malappuram District
Pin 679 323

..... **Applicants**

(By Advocate – Mr.T.C.G Swamy)

V e r s u s

- 1 Union of India, represented by the
General Manager, Southern Railway, Head Quarters Office
Park Town P.O, Chennai – 600 003
2. The Chief Personnel Officer
Southern Railway, Head Quarters Office, Park Town P.O
Chennai – 600 003
3. The Divisional Personnel Officer
Southern Railway, Trivandrum Division
Trivandrum – 695 014
4. The Secretary to the Government of India
Ministry of Railways (Railway Board)
New Delhi – 110 001

..... **Respondents**

(By Advocate – Mr.Thomas Mathew Nellimoottil)

This Original Application having been heard on 1.3.2019, the Tribunal
on 8.3.2019 delivered the following:

O R D E R

Per: Mr.E.K.Bharat Bhushan, Administrative Member

The Original Application No.180/00780/2014 is filed by Shri.K.P.Varghese and 14 other Loco Pilots (Passenger) of Southern Railway who are aggrieved by the alleged arbitrary assignment of date of promotion as Loco Pilot (Goods), resulting in financial loss to the applicants.

2. The reliefs sought in the Original Application are as follows:

- “(i) Call for the records leading to the issue of Annexure A8 and quash the same;
- (ii) Declare that the applicants are entitled to have their date of promotion as Loco Pilots (Goods) fixed with effect from 1.1.2006 or from such other earlier date as might be found just and proper by this Hon'ble Tribunal and direct the respondents accordingly;
- (iii) Direct the respondents to grant the applicants all the consequential benefits of declarations/directions in paragraphs 8(ii) and (iii) above within a time limit as might be found just and proper by this Hon'ble Tribunal;
- (iv) Award costs of and incidental to this application;
- (v) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case.”

3. While the applicants were working as Loco Pilots (Shunting)/Sr.Assistant Loco Pilots, they were entitled to be considered for promotion as Loco Pilot (Goods) against the vacancies for the years 2003, 2004 and 2005. The respondents in violation of the Railway Board instructions on the subject, failed to conduct promotion examinations in

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time. Finally, selection for promotion as Loco Pilot (Goods) was initiated during the early part of 2005. After the written examination was completed, in various centres, the results of the same were finally published by communication dated 2.12.2005 (Annexure A-1). All the applicants find a place in the said list.

4. Subsequent to Annexure A-1, the respondents published a panel of selected candidates by Memorandum dated 20.12.2015 (Annexure A-2). However, the promotion orders were issued under Office Order dated 09.01.2006 (Annexure A-3) only. The applicants took over the higher responsibilities of the post of Loco Pilot (Goods) in scale Rs.5000-8000 immediately after Annexure A-3 and have been drawing the scale of pay of Rs.5000-8000 with future increments on 1st of January of the subsequent years.

5. In the meanwhile, recommendations of the 6th Central Pay Commission were implemented as per the Railway Services (Revised Pay) Rules, 2008 notified on 4.9.2008 and new Rules came into force with effect from 1.1.2006. In line with Rule 10 of the Revised Pay Rules, 2008, employees completing six months and more in the revised pay structure as on 1st of July would be eligible to be granted an increment. The first increment after fixation of pay on 1.1.2006 in the revised pay structure would be granted on 1.7.2006 for those employees for whom the date of next increment was between 1st of July 2006 and 1st of January 2007. The applicants did not get the benefit of this as their orders of promotion were dated 9.1.2006. The

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applicants are aggrieved by the above alleged anomaly. It is in order to correct the same that the Railway Board issued orders under RBE No.40/2012 dated 23.3.2012 (Annexure A-4). It is maintained by the applicants that in terms of Annexure A-4 document, all those who were due their annual increment between 1st of February 2006 and 1st July 2006 would have their annual increment drawn in advance on 1st January 2006 itself and thereby would be eligible for the next increment on 1st July 2006.

6. The delay in processing the case of the applicants for promotion is the main reason by which the applicants stand to lose one increment. The reason for the delay is directly attributable to the respondents. Aggrieved by this, the applicants had filed representations at Annexure A-5 series. The applicants have relied on the instructions of the Railway Board contained in Annexure A-6 series pointing out the necessity for timely conducting of selection and issuance of promotion orders. It could be seen that at least in the case of the applicants, these instructions have been more honoured in the breach than in the observance. It was in this background that the applicant had approached this Tribunal by filing O.A 139/2014 and this Tribunal had issued orders at Annexure A-7 directing that representations made by the applicants are to be considered on merit and disposed of expeditiously.

7. The applicants are aggrieved by the impugned order issued by the third respondent on 27.6.2014 rejecting the representations stating that the panel had been published on 20.12.2005 and since the applicants had not

completed the residency period of 2 years for promotion, the Division had approached the Headquarters seeking relaxation of the two year residency period and that the approval had been communicated only on 6.1.2006.

8. The respondents have filed a reply statement wherein the contentions raised in the Original Application by the applicants have been disputed. It is stated that promotions do involve a set of procedures and a pass in the written test alone cannot be taken as an order for promotion. The persons who had qualified as per Annexure A-1 had to be subjected to further scrutiny. This having been completed, a select panel was drawn up. The contentions raised in the Original Application that the applicants had all completed their residency period of 2 years is strongly opposed by the respondents. Annexure A-9 does not show the dates from which their service as Assistant Loco Pilot has been taken into account. In order to obtain relaxation in the residency period, a proposal had been taken up with the Railway Board and once it was received on 6.1.2006, orders were issued on 9.1.2006 itself.

9. On the subject of delay in filling up the vacancies, it is maintained by the respondents that the employer cannot be compelled to effect promotion on the date when the vacancies occurred. In any case, the instructions under Annexure A-6 series clearly mention that promotion can take effect only from the date the employees took over higher responsibilities. The applicants had taken over the post only after the promotion orders were issued and hence they cannot claim any retrospective effect on this aspect.

10. Heard Shri.T.C.G Swamy on behalf of the applicant and Mr.Thomas Mathew Nellimoottil on behalf of the respondents.

11. The applicants are essentially looking at pre-dating their promotion to 1.1.2006 with intent to claim an additional increment on 1st July 2006. This is the second round of litigation before this Tribunal. As directed at the first instance, the respondents have issued Annexure A-8 order in compliance with our direction. It is seen that the contention raised in the Original Application have been adequately explained in the impugned order. The first and foremost claim of undue delay has been suitably addressed and we see that no inordinate delay has been caused after the process of selection was initiated in June 2005. The posts were Loco Pilot (Goods) and the vacancies were for the years 2004-2005. After the process was initiated in June 2005, the examination had to be held at various centres without causing dislocation to the movement of trains. Finally, the select panel was approved on 20.12.2005. In view of the lack of residency experience of the candidates, the respondents also moved for obtaining exemption from this clause, which was subsequently received on 6.1.2006 and promotion orders were issued on 9.1.2006. There is, thus, no substance in the complaint that there has been inordinate delay in processing the promotions.

12. The employees had been claiming their annual increments on 1st January of every year and would continue to do so. Now by pre-dating their promotion as effective from 1.1.2006, they are expecting to obtain one more

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increment on 1.7.2006. We are of the view that this aspiration has no basis.

In view of the circumstance of the case, we see that there has been no injustice done to the applicants.

13. The Original Application is dismissed. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures

Annexure A1 - True copy of letter bearing No.V/P.608/VI/Goods.Dr/Vol.II dated 2.12.2005, issued from the office of the 3rd respondent

Annexure A2 - True copy of Memorandum bearing No.V/P.608/VI/Goods.Dr/Vol.II dated 20.12.05, issued from the office of the 3rd respondent

Annexure A3 - True copy of the office order bearing No.02/2006/RG(M) dated 9.1.2006, issued from the office of the 3rd respondent

Annexure A4 - True copy of RBE No.40/2012 dated 23.3.2012

Annexure A5 series True copy of representations submitted by most of the applicants to the 3rd respondent

Annexure A6 series True copy of Railway Board Orders dealing with the necessity for timely conducting of selection and issuance of promotion orders.

Annexure A7 - True copy of order dated 11 April 2014 in OA No.180/00139/2014 rendered by this Tribunal

Annexure A8 - True copy of letter bearing No.V/P.535/VI/RG/LP(G)Vol.V dated 27.6.2014, issued by the 3rd respondent

Annexure A9 - True copy of Chart showing service particulars of the applicants

Annexure A10 series True copy of Railway Board orders.

Annexure A-11 - True copy of OM bearing No.10/2/2011-E.III-A dated 7.1.2013, issued by the Ministry of Finance, Department of Expenditure

Annexure A-12 - True copy of OM bearing No.F-2-1/2015-E.III(A) dated 16 Oct 2015, issued by the Ministry of Finance, Department of Expenditure.

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