

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.**

O.A.210/00834/2016

Dated this Friday the 7th day of December, 2018.

**Coram : Dr.Bhagwan Sahai, Member (A)
Shri R.N. Singh, Member (J).**

Jatin Kumar Sharma,
(son of Shri Mohan Lal Sharma),
working as Loco Pilot (Passenger)
at Nandurbar (Group "C" post),
under Chief Traction Crew Controller,
Nandurbar, Western Railway,
State of Maharashtra - 425 412

.. Applicant No.1.

Rakesh Pal,
(son of Shri Bhaiya Lal Pal),
working as Loco Pilot (Passenger)
at Nandurbar (Group "C" post),
under Chief Traction Crew Controller,
Nandurbar, Western Railway,
State of Maharashtra - 425 412.

.. Applicant No.2.

(By Advocate Shri R.G. Walia).

Versus

1. Union of India, through
General Manager,
Western Railway,
Headquarters Office,
Churchgate,
Mumbai - 400 020.
 2. Divisional Railway Manager (DRM),
DRM' Office, Western Railway,
Mumbai Division,
Mumbai Central,
Mumbai - 400 008.
- ..Respondents.

(By Advocate Shri V.S. Masurkar).

Order reserved on : 25.09.2018

Order delivered on : 07.12.2018.

O R D E R

Per : Dr.Bhagwan Sahai, Member (A)

In this O.A. the applicants Shri Jatin

Kumar Sharma and Shri Rakesh Pal working as Loco Pilots (Passenger) at Nandurbar under Chief Traction Crew Controller, Western Railway seek quashing and setting aside of the communication contained in letter dated 12.12.2016 with all consequential benefits of seniority, promotion, pay fixation, arrears of pay, etc, and direction to the respondents not to transfer them to Churchgate thereby continuing them at Nandurbar on the same post.

2. Summarised facts of the case:

2(a). The applicants are working as Loco Pilots (Passenger) in the Loco Running Cadre of Drivers of Western Railway. They were initially appointed as Assistant Loco Pilots, then promoted as Loco Pilot (Goods) and thereafter further promoted as Loco Pilot (Passenger). There are various stations of the Western Railway Zone under which the Drivers/Loco Pilots are posted for running of the trains. In Mumbai City and surrounding areas, the local trains are run on electricity and are called EMU (Electrical Multiple Unit) trains.

2(b). Prior to 2014, the category of Motormen was separate and a person appointed as Motorman was treated as direct recruit. The Motormen belong to the Electrical Department of the Railways whereas the main drivers i.e. Loco Pilot (Passenger) belong

to the Mechanical Department of Railways.

2(c). Prior to June, 2014, both categories of Motormen and Loco Pilot (Passenger) were different and independent, and their seniority was also maintained separately. But by order of 02.06.2014 issued by Headquarters of the Western Railway, the posts of Loco Pilot (Passenger) and Motorman were merged and thus redesignated as Loco Pilot (Passenger) / EMU (Motorman). For filling up of vacancies of Loco Pilot (Passenger)/EMU (Motormen), combined notification of selection grade is to be issued and their postings is to be done as per the order of preference exercised by them as far as possible and based on seniority-cum-suitability.

2(d). The employees who fail in Psycho Test for Loco Pilot/EMU (Motormen) are to be posted as Loco Pilot (Passenger). The training programme for Goods to Passenger drivers also came to be modified to include contents of Loco Pilot/EMU (Motorman), so as to maintain an integrated cadre of Loco Pilot (Passenger)/EMU (Motormen). The Railway administration can always utilise Loco Pilot (Passengers) as Loco Pilot/EMU (Motormen) and vice-versa.

2(e). When the applicants were working as Loco Pilot (Goods), a notification dated 20.03.2015 was issued by the respondents for selection for

promotion to the posts of Loco Pilots (Passenger)/EMU (Motormen) containing list of eligible candidates in which the applicants were at Sr.No.58 and 38 respectively. Both the applicants exercised their option to be posted as Loco Pilot (Passenger) or Loco Pilot/EMU, thus indicating their first preference for posting as Loco Pilot (Passenger) and second option for Loco Pilot/EMU (Motormen). Vide letter dated 14.05.2015 the respondents issued final eligibility list for selection for the posts of Loco Pilot (Passenger)/EMU (Motorman) in which names of the applicants appeared at Sr.No.45 and 29, respectively.

2(f). The applicants claim that while exercising their preferences, they had given first preference for posting as Loco Pilot (Passenger) on the main line passenger trains. By order of 26.08.2015 the applicants were sent for EMU training on local training in Mumbai i.e. Motorman training from 05.04.2016 to 18.06.2016. They underwent the training from 05.04.2016 to 17.06.2016 but one day prior to the conclusion of the training, based on an order dated 16.06.2016 they were relieved to attend the Station at Nandurbar as the applicants themselves had requested for transfer from Churchgate to Nandurbar. By order dated

12.12.2016, the applicants who had joined on their promotional post vide order dated 16.06.2016 without completion of their EMU training were sent back to report to CCI (Electrical) CCG for completion of rest of the training. The applicants have sought quashing of this order with consequential benefits and for their retention at Nandurbar. However, by an interim relief granted on 21.12.2016, since then the applicants have been continued till now at their place of posting i.e. Nandurbar.

2 (g) . For working on the passenger trains the training is referred to as DRGP training (Driver Promotional Course - Goods to Passenger). It is claimed that the applicant No.2 had already undergone the DRGP training during 2014-15 and is now working on regular basis. The applicants claim that it is unfair to send them for EMU training. The applicant No.1 had represented for withdrawal of his name from that training but did not receive reply.

2 (h) . The applicants also claim that by impugned order of 26.08.2015 they would be forced to work as EMU (Motorman) and not continued as Loco Pilot (Passenger) which was their first preference. Both the applicants were relieved from Churchgate on 04.04.2016 on promotion and they joined the EMU

training at Churchgate on 05.04.2016. Although they had applied for transfer from Churchgate to Nandurbar, subsequently they were directed to undergo the complete conversion training for EMU because both were on AC locomotive. When they were undergoing the conversion training of EMU, both of them were transferred as per their own request from Churchgate to Nandurbar and were relieved vide letter dated 16.06.2016 and assumed charge as Loco Pilot (Passenger) at Nandurbar on next date i.e. 18.06.2016.

2(i). Son of applicant No.1 is studying in 10th class and his daughter in 8th class at Nandurbar. Therefore, action of the respondents to send him for the remaining EMU training by order of 12.12.2016 is whimsical and without any justification. The impugned order is contrary to law and rules.

3. Contention of the parties:

The applicants and their counsel have contended that -

3(a). the order of the respondents dated 12.12.2016 is absolutely illegal and wrong as the respondents themselves had posted the applicants at Nandurbar to work as Loco Pilot (Passenger);

3(b). the order is absolutely whimsical and capricious and there is no reason whatsoever to

force the applicant to undergo EMU training, as they had already undergone that training from 05.04.2016 to 17.06.2016 and relieved on 17.06.2016;

3(c). the impugned order is violative of Articles 14, 16 and 21 of the Constitution. Since the applicants had clearly exercised option to be posted first as Loco Pilot (Passenger) and then as Loco Pilot EMU (Motormen), and that option was accepted by the respondents and accordingly they were posted at Nandurbar to work as Loco Pilot (Passenger);

3(d). son of applicant No.1 is studying in 10th Standard and daughter in 8th Standard in Nandurbar. The impugned act of respondents in issuing the order of 12.12.2016 is whimsical and a classic example of abuse and misuse of power and the applicants apprehend that they are being shunted out from Nandurbar station to accommodate in their place some other employees;

3(e). the applicants have independent right to challenge the memorandum which affects them adversely. Policy of the respondents provides that posting as Loco Pilot (Passenger) and Loco Pilot (EMU) has to be done as per order of option exercised and the applicants had exercised it in favour of Loco Pilot (Passenger). The applicants

were suitable and eligible for the post of Motorman as per letter dated 21.03.2016 and they applied for transfer and got registered their names for such transfers. There is no question of completion of EMU training as pleaded by the respondents as they had already worked as Motormen.

The respondents and their counsel have contended that -

3(f). the applicants are challenging the Memorandum dated 12.12.2016 which has been issued to implement the directions of this Tribunal in earlier O.A.488/2016 and hence the status-quo granted by the Tribunal on 21.12.2016 is liable to be vacated. On 21.12.2016, on this O.A., the Tribunal directed the respondents to maintain status-quo as on that day and this interim relief has continued since then. In such a situation the respondents submit that there cannot be status-quo but the matter should be decided on merit and the order of 21.12.2016 be vacated.

3(g). the action of the respondents is strictly in accordance with the rules and in compliance with the order of the Tribunal dated 28.06.2016 in O.A.488/2016 and, therefore, this O.A. is liable to be dismissed with cost;

3(h). prior to year 2014, a Driver/Loco Pilot was inducted as Motorman as per the Railway Board

guidelines of 22.01.1990 i.e. after qualifying the departmental selection and then absorbed as Motorman on passing the prescribed training. During this process applications were invited from all eligible Loco Pilots who had submitted their requests and completed requisite requirement such as aptitude test, selection procedure, etc and were absorbed as Motormen on successful completion of training programme prescribed for this post from time to time. Earlier there were separate cadres and seniority of Motormen and Loco Pilots as Motormen were treated as ranker. But vide letter of GM(E) dated 02.06.2014, for better avenues of promotion for the post of Loco Running Staff including that of Loco Pilot (Passenger) and Loco Pilot (EMU), they were merged along with their modalities. This was done for better promotional opportunities/prospects to both the cadres after prolonged consultation with the Railway Board and both the recognized Unions accepted the merging as it was beneficial for promotion to EMU/Loco Running Staff;

3(i). since the employees in the eligibility range are well conversant with their jobs based on the training undergone from time to time, this exercise has been done for the first time in Mumbai Division after the merger of two cadres of Loco

Pilot (Passenger) and EMU (Motormen) which requires only additional conversion training;

3(j). the applicants along with other employees who were found suitable for promotion and had exercised the option regarding preference to work as Loco Pilot (Passenger) on main line have been promoted and posted as Loco Pilot (Passenger)/EMU (Motorman) at Churchgate so that they can undergo conversion training of EMU and after passing it they would be absorbed as Motormen on regular basis as per the Memo of 21.03.2016. The running staff have to be imparted training for promotional posts according to seniority in the feeder cadre to keep back up of trained hands, which means Loco Pilots (Goods) or Loco Pilot (Passenger) have to undergo requisite training course. The applicants were also promoted accordingly but they wrongly joined on the promotional posts before completing the required training and thus they got registered their names for transfers, as per the procedure while issuing next promotion orders;

3(k). the employees are to be considered first for transfers against vacant posts and accordingly the applicants were considered for transfer from Churchgate to Nandurbar vide letter dated 16.06.2016 which is as per law. Issuance of the above transfer orders was while they were under

Loco Pilot (EMU) training but they came to be wrongly relieved before completion of that training. Since the applicants have not completed their training, they were sent back for completing rest of the training vide letter dated 12.12.2016 and on its completion they have been advised to report to the concerned authority. However, the applicant No.1 has not completed mandatory training for working on the promotional post and hence he has to complete the training of EMU although his name was wrongly nominated for DRGP training, which has been withdrawn later as he has to first complete the training of EMU and thereafter DRGP. The applicant No.2 has completed the DRGP training and he will be sent back to Nandurbar after completing the remaining part of the EMU training;

3(1). as per option exercised by the applicants, they were transferred from Churchgate to Nandurbar and, therefore, their claim that they would be forced to work as Motormen and not as Loco Pilot (Passenger) is wrong and baseless. In view of these facts, the O.A. is misconceived and, therefore, it should be dismissed;

3(m). it is correct that the posting of Loco Pilot (Passenger) or EMU (Motormen) is done as per the option exercised and the applicants had chosen the first option i.e. of Loco Pilot (Passenger) and

second option of EMU (Motorman). Since at the time of their posting, there were no vacancy of Loco Pilots (Passenger), the second option was considered and promotion orders were issued vide letter dated 21.03.2016. Since the applicants had got their names registered for transfer and were considered accordingly. But based on letter dated 16.06.2016, while they were undergoing training, they came to be relieved by mistake before completion of the on-going training;

3(n). since the Loco Pilots (Passenger) are posted as Loco Pilot EMU (Motormen) only on successful completion of the EMU training, the claim of the applicants that they had already worked as Motormen is incorrect. Since the applicants had not completed the mandatory training for working on the promotional post, it was necessary for them to complete the EMU training. Since the applicant No.2 has completed the DRGP training, he was sent back to Nandurbar after completion of rest of EMU training.

4. Analysis and conclusions:

We have perused the application memo, rejoinder filed by the applicant, reply and sur-rejoinder of the respondents, and the arguments advanced by the counsel on both the sides. Based on this consideration, we conclude as follows:-

4 (a) . As stated by the applicants themselves in Para 4.5 of the O.A. memo, vide order of 02.06.2014 issued by the Western Railway Headquarters, the two posts of Loco Pilot (Passenger) and EMU (Motorman) have been merged and redesignated as Loco Pilot (Passenger)/EMU (Motorman). It has also been stated by the applicants themselves in the above mentioned para that while filling up vacancies of Loco Pilot (Passenger)/EMU (Motorman) combined notification for selection is to be issued.

4 (b) . They have further stated that posting of Loco Pilot (Passenger)/EMU will be done as per order of preference exercised for Loco Pilot (Passenger)/Loco Pilot (EMU), as far as possible and by considering seniority-cum-suitability. The suitability would be judged by selection or as per the procedure at the relevant time. The employees who fail in Psycho Test for Loco Pilot/EMU will be posted as Loco Pilot (Passenger). For Mumbai Division employees existing training programme for Goods to Passenger Drivers will be suitably modified to include Loco Pilot (Passenger)/EMU training contents to have integrated cadre of Loco Pilot (Passenger)/EMU (Motorman). The Administration can utilize Loco Pilot (Passenger) as Loco Pilot/EMU and vice-versa.

4 (c) . In view of these clear stipulations under

the modalities, therefore, the contention of the applicants that there was no need for sending them for EMU training and after that training they would be forced to work as EMU (Motorman) is baseless and not acceptable. It is totally against the orders of merger of the two cadres cited by the applicants themselves and also stated by the respondents.

4 (d) . We also note that the language used by the applicants in Para 1(E) of the O.A. memo such as action of the respondents is absolutely arbitrary, illegal, absurd, malicious to dislodge them from present place of posting under the guise of EMU (Motorman) training and similar language used elsewhere reflects very poorly on their part. Use of such language in official correspondence and in proceedings before the Tribunal needs to be deprecated. The applicants ought to have avoided use of such harsh language. They must use sober and persuasive language.

4 (e) . As explained by the respondents in their submissions, for the merged cadre of Loco Pilot (Passenger)/EMU (Motorman), the required training is mandatory so that depending upon necessary requirements, they can be posted either as Loco Pilot (Passenger) or Loco Pilot (EMU)/(Motorman), although as far as possible preference is to be given while posting on these posts as per the

option exercised. Therefore, the apprehension of the applicants in this regard that they would be posted only as EMU (Motormen) after completion of the EMU training is hypothetical and unfounded. In fact as members of the merged cadre, they have to be prepared to be posted as Loco Pilot (Passenger) as well as Loco Pilot (EMU)/(Motorman).

4 (f). The applicants then working in the cadre of Loco Pilot (Passenger)/EMU were transferred and posted to Nandurbar vide order dated 16.06.2016. After their promotion, they were deputed to undergo the required EMU training which they joined but before completing it, vide order dated 16.06.2016 they came to be relieved and then they were sent back for completing the remaining part of training vide order of 12.12.2016. In fact relieving them before completing the training for which they had been deputed, was a mistake on the part of the respondents which they have admitted. It has to be appreciated that even if the posting orders have been issued before completion of the on-going training course, they ought to have been relieved only after its completion for which they have to be sent back later. While relieving them as above was a wrong action because of communication gap and lack of coordination between different offices of the respondents dealing with these issues (which

ought not have taken place), there is nothing wrong in completing the remaining part of their required EMU training. In fact it will be to their advantage that they complete this required EMU training also for their future promotional avenues. However, about this issue the applicants have attempted to make a mountain out of a mole hill and that too by using harsh language.

4 (g). As regards the earlier completed DRGP training by the applicant no.2, he is not being forced to do again, as claimed by the respondents. Also because of the interim relief granted on 21.12.2016, the applicants have already continued working as Loco Pilot (Passenger) at Nandurbar for the last two years.

4 (h). In view of the above analysis of the facts, we find no merit in the O.A. and it deserves dismissal.

5. Decision :

In view of this the O.A. is dismissed. The interim relief granted on 21.12.2016 stands vacated.

(R.N. Singh)
Member (J)

(Dr.Bhagwan Sahai)
Member (A).

H.

