

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTINGS:GWALIOR

Original Application No.202/00931/2016

Jabalpur, this Wednesday, the 13th day of February, 2019

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

S.K. Deora S/o Shri Asharam Singh Aged 52 years
Occupation Loco Inspector North Central Railway
Gwalior R/o E-5 Amar Kantak Enclave Near New Gayatri
Nagar Pul Gwalior 474003 **-Applicant**
(By Advocate –**Shri D.P.S. Bhadoriya**)

V e r s u s

1. Union of India, Through Secretary Ministry of Railways
Rail Bhawan Rafi Marg New Delhi 110001
 2. The Managing Director, Office of North Central
Railway Subedar Ganj Allahabad (UP) 211001
 3. The Chief Mechanical Engineer Head Quarter, Office of
Managing Director Office of North Central Railway
Subedar Ganj Allahabad (UP) 211001
 4. Divisional Railway Manager Divisional Office, D.R.M.
North Central Railway Jhansi (UP) 284001
 5. Divisional Mechanical Engineer (O&F) D.R.M. Central
Railway Jhansi (UP) 284001
 6. Assistant Divisional Mechanical Engineer, Central
Railway Gwalior (MP) 474001
- Proforma Respondents
7. Bhanu Pratap Singh Chandel
 8. Rajesh Sithole
 9. Kamlesh Kumar
 10. Ram Narayan No.7 to 10 all are Loco Inspector
through D.R.M. Central Railway Jhansi (UP) 284001

- Respondents

(By Advocate –**Shri M.K. Sharma**)

(Date of reserving the order:-04.02.2019)

ORDER

By Ramesh Singh Thakur, JM:-

This Original Application has been filed by the applicant being aggrieved by the illegal, malafide action and non action on the part of the respondents whereby the respondents promoted the respondents No.7 to 10 who are juniors to the applicant.

2. The applicant has prayed for the following reliefs:-

“8.i) The respondents may kindly be directed to pass appropriate order promoting the applicant from the date from his juniors have been promoted;

ii) Further direction may kindly be given to the respondents to award 30% of amount of basic pay as per Rule 2544 for the period on which the applicant discharged the duties of Loco Inspector i.e. from 06.12.2006 till the date the respondents promoted the applicant i.e. the date on which his juniors have been promoted;

iii) Alternatively respondents may kindly be directed to award the amount of 30% of basic pay for the period admittedly the applicant discharged the duties of Loco Inspector from 06.12.2006 to 24.02.2014;

iv) The 18% interest over the amount awarded by the respondents to the applicant in lieu of discharged additional duties of Loco Inspector.

v) Any other relief which is suitable in the facts and circumstances of the case in favour of the applicant may kindly be granted;

vi) Costs be awarded.”

3. The facts of the case are that the applicant was appointed vide order dated 09.09.1988 in the respondent-department on the post of Diesel Assistant. Thereafter he was promoted to the post of L.P. (Good) since 1997. The applicant performed the duties with sincerity and full devotion. The applicant vide order dated 24.08.2005 was promoted to the post of Loco Pilot (Passenger). A copy of order is annexed as Annexure A/4. Vide order dated 24.08.2005 (Annexure A/4), it is clear that though the applicant was promoted to the post of Loco Pilot (Passenger) but he was posted as Drafted CCOR at Gwalior by the same order. The applicant has submitted that the junior persons have been promoted to the post Loco Inspector vide panel in the year 2008/2011 but the

name of the applicant was not considered in the panel of 2008/2011, the reason is best known to the respondents. But the facts remained that the applicant is at that time was discharging the duty of Loco Inspector and the respondent authority was duty bound to consider the name of the applicant and promote the applicant from the date on which juniors have been promoted. Though the applicant was eligible for the promotion from the post of Loco Pilot (Passengers) to Loco Inspector is that either Loco Pilot (Goods) or Loco Pilot (Passenger) ought to have been completed 75000 kms actual driving as Loco Pilot either good or passenger. The applicant while holding the post of Drafted CCOR was having actual driving of 75000kms itself in the year 2005 when he was promoted to the post of Loco Pilot (Passenger) and was posted as Drafted CCOR. A copy of letter dated 09.08.2011 wherein the eligibility is mentioned for the post of Loco Inspector, is annexed as Annexure A/5. As the respondents No.7 to 10 are juniors to the applicant which is clear as per the

seniority list dated 06.03.2008 and of 27.10.2010 all appointments are of after 1988. The name of applicant is at Serial No.68 and private respondents are below the applicant. Copy of seniority list is annexed as Annexure A-6 and A-7. The private respondents have been promoted to the post of Loco Inspector and their names found place in the list of Loco Inspector dated 17.10.2012. Copy of same is annexed at Annexure A-8. On 17.11.2006 vide Power Controller (PC) message No.72, the applicant was directed to discharge the duties of Loco Inspector instead of Drafted CCOR, which is annexed as Annexure A-9. So, the applicant should have been empanelled for promotion. The applicant on various occasions have been named and designated as Loco Inspector. He has been sent for training of Loco Inspector from 11.07.2011 to 15.07.2011 at Tuglakabad. Copy of which is annexed as Annexure A/10.

4. The applicant since 2006 discharged the duty of Loco Inspector till the order dated 24.02.2014, 31.03.2014 and 28.03.2014 have been passed. So, the action of the

respondent department is in violation of Article 14 of the Constitution of India. The applicant has also raised the question of entitlement as per Rule 2544 of Indian Railway Establishment Code Vol. II whereby 30% of basic pay drawn in the revised scale of pay will be reckoned as emolument for the period which a person worked as Loco Inspector after 01.01.1993. So, the applicant has raised the question of entitlement w.e.f.24.02.2014, 03.03.2014 and 28.03.2014 along with interest.

5. The respondents have filed their reply. The replying respondents have raised the preliminary objection to the fact that the respondent No.1 is not been properly impleaded. So this O.A. is not maintainable due to non-joinder of necessary party. It has been submitted by the replying respondents that the applicant is holding the substantive post of Loco Pilot. He was promoted to the post of Loco Pilot (Passenger)-II, in the pay scale of Rs.5500-9000/- (RSRP) and was posted in the same capacity to the Gwalior Railway Station and was placed at

Serial No.21 to discharge the duty of Drafted/CCRO Gwalior bearing the same pay scale vide order dated 24.07.2005 (Annexure A/4). The promotion cum posting order bears the condition that since the applicant has already received the benefits of the present post of Loco Pilot, including the pay scale and pay fixation. The other condition was that he will also not be entitled to be senior above and over to his juniors due to his promotion/posting. It has been specifically submitted by the replying respondents that the applicant was never been promoted to the post of Loco Inspector and he was posted as stationed duty post of Drafted/CCRO while his substantive post remained as Loco Pilot. Due to ending post of the Drafted/CCOR, the applicant was returned back (not the reversion) to his original substantive post of Loco Pilot (Mail) as per rule. So, the applicant is only entitled to draw the pay scale of Rs.5500-9000 (RSRP) with grade pay of Rs.4600/- for the post of Loco Pilot (LP) Mail/Railway w.e.f.01.09.2008 in terms of order of respondents vide

No.40/2010 (MACP) dated 07.06.2010 for the financial upgradation in MACPs. It has been specifically submitted by the replying respondents that the applicant refused to participate in the selection process of Loco Inspector vide Annexure RA/1 and has been granted the benefit of MACP grade pay of Rs.4600/-, which is equivalent to Loco Inspector grade pay of Rs.4600/- vide order dated 24.05.2010 (Annexure RA/2). The respondent-department has also raised the question of limitation under Section 21 of the Administrative Tribunal Act, 1985 as the impugned orders dated 24.08.2005 (Annexure A/4), 24.02.2014 (Annexure A/11), 03.03.2014 (Annexure A/12) and 28.03.2014 (Annexure A/13) have been challenged. These impugned orders have well considered in the earlier order of Tribunal vide order dated 18.08.2015 in OA No.202/336/2014. The disputed issues have already been decided and took finality, since dismissal of the preferred writ petition No.7371/2015 and RP No.141/2016 (Annexure A/1, A/2 and A/3 of this O.A.) by the High

Court. This Tribunal vide order dated 18.08.2015 (Annexure A/1) has dismissed the O.A. No.202/336/2014.

6. It has been submitted by the replying respondents that the matter is of 2005 (Annexure A/4) and then of 2011-12 and the orders impugned are of 2014 (Annexure A/5, A/11, A/12 and A/13), so, this O.A is barred by limitation. Moreover, this matter has been earlier adjudicated by this Tribunal in O.A. No.202/336/2014 which has been dismissed vide order dated 18.08.2015 (Annexure A/1) and has been upheld by the Hon'ble High Court vide Annexure A/2 and A/3. It has been specifically submitted by the replying respondents that the applicant was working as CCOR against the drafted post of running staff cadre. The post of Loco Inspector is a selection post in running cadre and the applicant has not appeared in the selection process of Loco Inspector held in the year 2008 to 2011. So, the applicant has not been promoted on the post of Loco Inspector and his junior whose were selected after participating in promotional process on the post of

Loco Inspector were correctly promoted on the post of Loco Inspector. A notification dated 09.08.2011 (Annexure A/5) has been issued to fill up the post of Loco Inspector through selection, per se legal. The private respondents No.7 to 10 were selected on the post of Loco Inspector after selection and the applicant did not appear in the selection process and submitted his refusal on 31.07.2012 (Annexure RA-1). It has been further submitted by the replying respondents that the applicant has granted the Grade Pay of Rs.4600/- with pay scale under MACP Scheme which is equivalent to the grade pay scale of Loco Inspector. It is submitted that the applicant, after screening, was posted on drafted post of CCOR at Gwalior vide letter dated 24.08.2005 (Annexure A/4) and his drafted period has been extended vide letter dated 24.05.2010 (Annexure RA/2) with the approval of the General Manager, North Central Railway. The applicant could not send for running duties at that time in the exigency of service. It has been further submitted by the

replying respondents that the applicant has not been promoted as Loco Inspector, so he has not entitled for 30% of basic allowances. The applicant was working on non-running/stationary duty as per Para 907 of the IREM (Annexure RA/3). So the applicant is only entitled for pay element of running allowance namely 30% of basic pay applicable for the day and accordingly the applicant has been paid as per rule. It has been submitted by the respondents that the charge of supervise the work, allotted as Drafted CCOR/Loco Pilot work, created any right to be promoted on the higher post of Loco Inspector does not arise since the applicant refused to appear for selection process for the post of Loco Inspector (Annexure RA/1). So there is no violation of Articles 14, 16 & 21 of the Constitution of India and is not entitled for any allowance.

7. The applicant has filed rejoinder to the reply filed by the respondents. The applicant has reiterated its earlier stand taken in the O.A. and has submitted that the applicant though officiating as Loco Inspector, has not

been promoted, on the contrary the juniors have been promoted. It has been further submitted by the applicant that he has already been granted the grade pay of Rs.4600/- on account of grant of financial upgradation under the MACP which is the grade pay of Loco Inspector also. The applicant has submitted that he was promoted to the post of Loco Pilot Goods to Loco Pilot Passenger and by the same order he has been directed to assign the duties of Drafted CCOR. So the applicant has been designated as Loco Inspector which is clear from the letters submitted along with Annexure A/10. The applicant has reiterated its earlier stand to the fact that as per the rules the applicant is entitled for allowance of 30% of basic pay from the date he performed and worked on the post of Loco Inspector. The applicant has received the allowance of 30% of basic pay only for the period of December 2006 to July 2007. Since July 2007 single penny of the amount i.e. allowance of 30% of basic pay has not been paid to the applicant up to the date by which the applicant was directed to perform

the duties on his original post i.e. Loco Pilot (Mail) the applicant joined on 20.03.2014 to his original post. Though the authority has recommended for payment of the allowance 30% of basic pay as the applicant was performing the duties of Loco Inspector vide letter dated 20.12.2007 (Annexure A/17).

8. We have heard the learned counsel for the parties and have also gone through the documents attached with the pleadings.

9. From the pleadings it is not disputed that the applicant was holding the substantive post of Loco Pilot and he was promoted to the post of Loco Pilot (Passenger) II in the pay scale of Rs.5500-9000 (RSRP). It is also not further disputed that the applicant was posted in the same capacity to the Gwalior Railway Station to discharge the duty of Drafted/CCOR, Gwalior bearing the same pay scale vide composite order dated 24.08.2005 (Annexure A/4). The main question has arisen for consideration before us is that, whether the applicant has ever been

promoted to the post of Loco Inspector. The main argument put forth by the applicant is that as per Annexure A/4 dated 24.08.2005, the applicant was promoted to the post of Loco Pilot (Passenger) and the applicant was discharging the duty of Loco Inspector. The applicant has also relied upon Annexure A/9 dated 06.12.2006 whereby it has been specified that the applicant drafted CCOR/GWL will look after the work of RDI/GWL as well as monitoring of Drivers and shunters vice Shri Vilas Aphley. The applicant has also relied upon Annexure A/10, whereby the designation of the applicant has been shown as Loco Inspector but from the reply of the replying respondents it has been clearly submitted by the respondents that the applicant was not promoted to the post of Loco Inspector. It has been specified that the applicant was posted in the same capacity to the Gwalior Railway Station and was placed at Serial No.21 to discharge the duty of Drafted/CCOR, Gwalior bearing the same pay scale vide composite order dated 24.08.2005. It

has been further submitted by the replying respondents that the posting of Drafted/CCOR the applicant returned back (not the reversion) to his original substantive post of Loco Pilot (Mail) as per rule. It has been further submitted by the respondents that the applicant has not appeared in the selection process to the post of Loco Inspector and submitted his refusal on 31.07.2012. So the applicant has been given opportunity to appear in the selection process for the post of Loco Supervisor. So the submission made by the replying respondent is believed to the fact that the applicant did not participate in the selection process. Moreover, the replying respondents has clearly spelled out regarding the selection of the respondents No.7 to 10 to the fact that they participated in the selection process and they were selected and ultimately promoted to the post of Loco Supervisor. In regard to issue raised by the applicant that he has been given the grade pay of Rs.4600/- on account of MACP, the replying respondents have specifically replied that the applicant has been granted grade pay of Rs.4600/-,

which is equivalent to the grade pay of Loco Inspector. So from the pleadings itself it is clear that the applicant has not been promoted to the post of Loco Inspector and not entitled for 30% running allowance on discharging duty of Loco Inspector. Moreover, since the applicant has refused to appear for the selection process which is clear from Annexure RA/1. From Annexure RA/2 it is also clear that the competent authority i.e. General Manager has given the approval for extension of one year from 24.08.2008 to 23.09.2009 and further from 24.08.2009 to till the availability of fresh hand screened and drafted CCOR/PCOR vide letter dated 25.04.2010.

10. In view of the above, we are of the view that there is no illegality in the action of the respondent-department and there are no reasons to interfere with the order of the respondent-department.

11. Resultantly, this O.A. is dismissed. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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