

(Reserved on 07.08.2019)

*CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD*

This the 04th day of September, 2019

Present:

HON'BLE MS. AJANTA DAYALAN, MEMBER-A.

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER-J

Misc. Stay Application No. 330/01706/2019

IN

Original Application No. 330/00809/2019

Ajay Kumar Srivastava and othersApplicants.

V E R S U S

Union of India and others. Respondents

Present for the Applicants : Shri Vinod Kumar

Present for the Respondents : Shri P.K. Rai

ORDER ON INTERIM RELIEF

(Delivered by Hon'ble Ms. Ajanta Dayalan, AM)

Heard Shri Vinod Kumar, learned counsel for the applicants and Shri P.K. Rai, learned counsel for the respondents.

2. The present OA has been filed by the applicant Ajay Kumar Srivastava and 10 others seeking quashing of order dated 27.12.2018 (Annexure-1) advising that acceptance of refusal of Assistant Loco Pilots, Shunters and ETs for getting their promotion to Loco Pilot (Goods) be withdrawn and they be immediately deputed for next pre-promotional training programme at their associated training centres. The applicants have also sought quashing of order dated 25.06.2019 (Annexure-2) rejecting the request of the applicants for acceptance of their refusal for promotion. This order has been passed in pursuance of this Tribunal's order dated 18.06.2019 passed in OA No. 643/19 directing the respondents 'to dispose of the representation of the applicants' by passing a reasoned and speaking order.

3. The applicants have also moved an amendment application no. 1707/19 seeking quashing of list dated 03.06.2019 (wrongly mentioned as 06.03.2019 at some places in the amendment application) declaring the applicants as 'fit' for promotion to the post of Loco Pilot (Goods). This list has been prepared based on bench mark and confidential reports of the applicants.

4. The applicants have also moved a stay application no. 1706/2019 seeking stay of the effect and operation of the above three orders (but date of one order is mentioned as 17.12.2018 and not 27.12.2018).

5. The case of the applicants is that a list of 150 persons has been prepared by the respondents' department based on confidential report and bench mark. These persons have been found fit for promotion to the post of Loco Pilot (Goods). The applicants pleaded that they are not willing for this promotion even though they are found suitable and, therefore, they should not be forced to accept their promotion, which is the purport of the orders being sought to be quashed.

6. Learned counsel for the applicants also stated that stay in a similar case of same applicants has been granted by this Tribunal in Single Bench vide order dated 18.06.2019 (Annexure-5) in vacation bench.

7. On the other hand, learned counsel for the respondents pleaded that the order dated 25.06.2019 is a reasoned and speaking order. The order itself states that the applicants were initially appointed as Assistant Loco Pilot (Elect) and were promoted as LPS-II/LPS-I and subsequently they were promoted as Loco Pilot (Goods) but have refused this promotion. This refusal was temporarily accepted by the administration. However, vide letter dated 27.12.2018, it was advised that ALPs/Shunters/ETs are not recruited to continue as such throughout their life, but are recruited for operation of trains through proper training and experience on line. As

such, refusals accepted earlier were withdrawn and ALPs/Shunters/ETs were deputed for next pre-promotional training programme. Those personnel who do not qualify the training programme were to continue to be booked for the next pre-promotional training programme and were not to be booked for train operation duties till they qualify the said programme. The order further states that after review in compliance of the Tribunal's order dated 18.06.2019, it was found that the post of Loco Pilot (Goods) is classified as sensitive and safety category for the purpose of train operations and as such this post cannot be kept unfilled. The panel has been prepared as per avenue of promotion of Loco Pilot Cadre. Learned counsel for the respondents stated that order dated 03.06.2019 has been issued in view of the interest of Railway administration and avenue of promotion of Loco Pilot Cadre. As such, the same is fully justified and does not deserve interference.

8. We have heard the arguments of learned counsels of both parties and have given our thoughtful consideration to the entire matter.

9. It is true and generally it may be correct to assume that the employees not willing for promotion need not be forced to accept promotion. However, in the instant case, it is categorically stated by the respondents' department that the post of Loco Pilot (Goods) is classified as sensitive and safety category post for the purpose of train operation and as such, the post cannot be kept unfilled. We also note that ALPs/Shunters/ETs are not recruited to continue as such throughout their life. They are recruited for train operation. We also observe that it may not be possible for the Railways to recruit fresh staff from out-side, who would be inexperienced in train operation, and to get the work of train operation done from such freshly recruited staff. The operation of trains is very important for transportation of goods and public at large and hence, its safe operation is also very important. Moreover, the post of

Loco Pilot (Goods) is a promotional post and the Railway is not able to fill-up this post from outside and the post cannot be kept unfilled. In view of the above, we are of the clear opinion that the post of Loco Pilot (Goods) needs to be filled and hence, this Tribunal does not feel the need for any interference in the impugned orders.

10. It is noted that vide order 03.06.2019, 150 persons have been declared suitable for the post of Loco Pilot (Goods) and as such, it cannot be said that any discrimination has been caused to the applicants.

11. It is also noted that order dated 18.06.2019 in OA No. 643/2019 was passed by the Single Bench during summer vacation and the operation of the orders dated 27.12.2018 and 03.06.2019 was stayed as representation of the applicants was pending at that time. In any case, the stay granted was only till disposal of representation till 25.06.2019 and 10 days thereafter i.e. till 05.07.2019. It is not effective now. Further, nature of the two OAs is quite different. The order in earlier OA was for disposal of representation which has already been decided now by passing a reasoned and speaking order dated 25.06.2019. Present OA is for quashing of this order dated 25.06.2019 and other associated orders.

12. In view of all above, the prayer for interim relief is not allowed and the MA No. 1706/2019 for interim relief is rejected.

13. The respondents may file counter within 4 weeks. The applicants may file rejoinder, if any, within two weeks thereafter.

14. List on_____.

Member (J)

Member (A)

Anand...