

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00055/2019**
[MA/050/00392/19, MA/050/00145/19 & MA/050/00390/19]

Reserved on : 27.11.2019
Pronounced on: 29.11.2019

C O R A M

**HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER**



Chit Ranjan Kumar Rajak, Son of Sri Satyendra Rajak, Assistant Loco Pilot (Electrical), East Central Railway, Barauni, District- Begusarai (Bihar).

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Applicant.

By Advocate: - Mr. M.P. Dixit

-Versus-

1. The Union of India through the Secretary, Railway Board, Ministry of Railways, Rail Bhawan, New Delhi- 110001.
2. The General Manager, East Central Railway, Hajipur, P.O.- Digghi Kalan, PS – Hajipur (Sadar), District- Vaishali, Pin Code- 844101 (Bihar).
3. The General Manager (Personnel), East Central Railway, Hajipur, P.O.- Digghi Kalan, P.S.- Hajipur (Sadar), District- Vaishali, Pin Code- 844101 (Bihar).
4. The Principal Chief Electrical Engineer, East Central Railway, Hajipur, PO- Digghi Kalan, P.S.- Hajipur (Sadar), District- Vaishali, Pin Code- 844101 (Bihar).
5. The Deputy Chief Personnel Officer (HRD), East Central Railway, Hajipur, PO- Digghi Kalan, PS- Hajipur (Sadar), District- Vaishali, Pin Code- 844101 (Bihar).
6. The Divisional Railway Manager, East Central Railway, Sonpur, District- Saran (Bihar), Pin Code- 841101.
7. The Senior Divisional Personnel Officer, East Central Railway, Sonepur, District- Saran (Bihar), Pin Code- 841101.
8. The Senior Divisional Electrical Engineer, East Central Railway, Sonepur, District- Saran (Bihar), Pin Code- 841101.
9. The Senior Divisional Mechanical Engineer, East Central Railway, Sonepur, District- Saran (Bihar), Pin Code- 841101.
10. The Senior Divisional Financial Manager, East Central Railway, Sonepur, District- Saran (Bihar), Pin Code- 841101.

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Respondents.

By Advocate(s):- Mr. B.K. Choudhary with Mr. Kumar Sachin for official respondents.

Mr. J.K. Karn for Intervenor (Amit Kumar Singh & 35 Ors.)

Mr. S.K. Datta with S.K. Singh for Intervenor (Pinkai Nandan & 2 Ors.)

ORDER

Per Dinesh Sharma, A.M:- In the instant OA, the applicant has

prayed for declaring the order of respondent no. 6 dated 02.01.2009 (the impugned order), as contained in Annexure A/3, as null and void due to it being contrary to their own decision dated 27.01.2017 (Annexure A/1).

They have also prayed for declaring Part-2 of the aforementioned order dated 02.01.2019 whereby merging of cadres has been ordered to be given retrospective effect, i.e. from 01.01.2016. The aforementioned order dated 02.01.2019 is a record of the meeting held with the Loco Running Staff regarding combined seniority of Diesel and Electric Loco Pilots. It was decided in this meeting that Electric and Diesel Loco Running Cadre will be merged w.e.f. 01.01.2016 and a combined seniority list would be prepared and shared with Unions and the Loco Running Staff within 7 days seeking their suggestion. After getting objections within 15 days a final seniority list will be published within 7 days thereafter. The decision also provides for proforma promotion and fixation benefits at all levels if such revised joint seniority list created a situation where junior staff gets promotion and senior staff does not or gets it later. The applicant has challenged this decision mainly on the ground that it is against the decision taken earlier vide letter dated



27.01.2017 according to which the merger of ALP (Elec.) and ALP (Mechanical) was to be done w.e.f. that date (27.10.2017). He has also alleged that such decision is without any authority and would adversely affect a person like him who has joined Sonepur Division on his own request (on 21.07.2016) and accordingly he has been placed in the bottom seniority. The applicant has also alleged that there are five Divisions in East Central Railway and such merger is happening only under Sonepur Division while two separate categories (for mechanical and electric Loco Pilots) are still being maintained in the other Divisions. The applicant requested interim relief by way of staying of the impugned order. An ad interim stay order (dated 16.01.2019) was passed by this Tribunal in this OA on ground that this Tribunal had granted similar interim relief on 11.12.2018 in another OA (OA/050/01023/2018), in an allegedly similar situation.

2. The respondents have filed a written statement in which they have denied the claim of the applicant. It is stated that merger of Diesel and Mechanical Loco running staff has been done following a policy decision taken under RBE No. 69 of 2006. It is stated that, after the issue of letter dated 27.01.2017, by which the merger was decided to be done prospectively from that date, a number of employees represented against the decision and had also filed OA 735 of 2016 before this Tribunal. Following this, a meeting was called with the CPO/IR representative of the recognized unions of the ECR, LPs of both cadres



(Diesel and Electric) and their concerned Branch Officers of the Sonepur Division. It was decided in this meeting that seniority of both the cadres, i.e. Diesel and Electrical should be merged after the closing date of cadre of Electric Department, which was 31.12.2015. This decision was taken in consultation with, and to the best satisfaction of, all the Employees' Union and was in the interest of all the employees. The decision has been taken considering the future career progression of Loco Running Cadres, the combined seniority is in the interest of all concerned, and the applicant will also be get benefited after merging of seniority from 01.01.2016 as he has joined in Sonepur Division on 21.07.2016. It is further stated that no junior has been promoted after 21.07.2016, i.e. the date of joining of the applicant and there is absolutely no loss to the applicant in common seniority list. The written statement also points out that in the impugned order dated 02.01.2019 it is clearly stated that if it is found in the combined seniority list that any junior has been promoted and any senior has not been promoted or has been promoted after his junior, in that case that senior will be given the benefits of proforma promotion and fixation. On all these grounds, the respondents have prayed for vacating the interim order and for dismissing the OA.

3. A number of MAs (MA 145/19, MA 390/19 & MA 392/19) have been filed by another set of Railway employees requesting for allowing them to be joined as parties to this OA (MA/050/00145/2019 & MA/050/00390/2019) and not to extend the ad-interim order dated



16.01.2019 (MA/050/00392/2019) as their interest are also getting affected by the decision taken in the current OA.

4. The applicant has filed rejoinder reiterated the submissions made in the OA and denied the submissions made by the respondents in the written statement. The applicant has also filed replies to the Misc. Applications denying the claims made therein.



5. The matter was heard on 27.11.2019 where the learned counsel for both the parties and also the learned counsels of persons requesting for joining as parties (applicants in the Misc. Applications) also appeared and argued. We have gone through the pleadings and heard the arguments. The claim of the applicant is mainly based on the argument that any merger between two streams which is done retrospectively and which adversely affects any person is bad in law and therefore the decision taken on 02.01.2019, for effecting merger of Elec. And Diesel ALPs w.e.f. a past date, should be set aside. The learned counsel for the applicant cited a decision of Hon'ble Patna High Court in Project Uccha Vidayala Shiksha Sangh & Ors. Vs. State & Ors. [2000(1) PLJR 287] to support the argument that the Government cannot and should not alter and modify any circular retrospectively which may affect and prejudice the right of Government servants. It was also argued by the learned counsel that the Department could not change their earlier decision dated 27.01.2017 by which such merger was to be effected from that date (27.01.2017). The learned counsel for the respondents argued



that in this case no prejudice was caused by the retrospective merger of the two cadres as it was done after consultation with all the affected parties and was in fact beneficial to all including the applicant. The learned counsel for the respondents also pointed out that the decision for merger is according to the policy of the Railway Board as expressed in RBE No. 69/2006 and is being implemented all over India. Even the impugned order clearly mentions that after implementing it in Sonepur Division the same will be replicated in other Divisions of East Central Railway. The learned counsel also pointed out that the interim order issued by this Tribunal has been obtained by misleading the Tribunal about similarity of facts though the matter involved in OA/050/01023/2018 was not at all connected with the merger of Loco Pilots and was in fact related to merger of Commercial Clerk and Enquiry-cum-Reservation Clerk and therefore had no similarity with the facts of this case.

6. We find that the impugned order is *prima facie* a decision to implement the policy of the Railways to establish a common cadre of Loco running staff and therefore it cannot be considered to be without any authority or to be against the policies of the Railways. The only issue which remains is whether such merger can be done retrospectively. It has been clarified, and is also apparent from the impugned order, that the decision to do the merger retrospectively has been done after consultation with all the concerned parties/their representatives and no

one other than the applicant has questioned this decision. A large number of persons, on the other hand, have filed misc. applications for intervening as parties, have requested for vacating the interim stay and for allowing the merger to proceed. The learned counsel for the applicant has questioned the locus standi of these misc. applicants alleging that most of them are senior Assistant Loco Pilots/Loco Pilots who are unaffected by this decision. Irrespective of whether these persons' claims to be affected are found to be correct or not, in the light of the categorical assertion by the respondents that the applicant is not going to be affected adversely and, in the eventuality of any apprehension of the applicant turning out to be true, the respondents have already provided a measure to resolve such issues, we do not think it is necessary to stop the process of merger which has been set in motion by the impugned order. We, therefore, dismiss the OA and vacate the interim order issued by this Tribunal on 16.01.2019. The applicant will, however, be free to take appropriate legal recourse (including approaching this Tribunal) if any of his bona-fide legal rights get adversely affected by the proposed retrospective merger. In the light of this decision, all the MAs become infructuous and are disposed of accordingly. No order as to costs.

[Dinesh Sharma]
Administrative Member
Srk.

[Jayesh V. Bhairavia]
Judicial Member

