

Central Administrative Tribunal
Patna Bench, Patna.
[Circuit Bench at Ranchi]
O.A./051/00131/2017

Date of CAV :- 16.09.2019
Date of Order :- 18.09.2019

C O R A M

HON'BLE SHRI JAYESH V. BHAIKAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER

1. Anurupam, son of Lata Ajay Kumar Sinha, aged about 52 years.
2. Amar Kumar Basu, son of Sri Anil Kumar Basu, aged about 47 years.
3. P.P.Ghosh, son of late Kali Pada Ghosh, aged about 47 years.
4. S.K. Jamir Hossain, son of S.K. Amir Hossain, aged about 47 years.
5. Satish Kumar son of Ari Brij Bihari Sharma, aged about 48 years.
6. Subodh Kumar, son of Sri Vijay Krishna Roy, aged about 47 years.
7. Amit Majhi, son of late Narendra Nath Majhi, aged about 45 years.
8. Kumar Sushil, son of Sri Randhir Kumar Singh, aged about 40 years.
9. Anil Kumar, son of late Ram Dayal, aged about 43 years.
10. Rajiv Prasad, son of Sri Dayanand Prasad, aged about 41 years.
11. Biswajit Ghosh, son of Sri Anil Kumar Ghosh, aged about 47 years.
12. Binay Kumar Pandit, son of Sri Ram Sarekh Pandit, aged about 42 years.
13. Swarup Das, son of late D.C. Das, aged about 48 years.
14. Niranjana Kumar, son of Sri Nageshwar Mandal, aged about 46 years.
15. Anil Kumar Mandal, son of late Keshav Mandal, aged about 52 years.
16. Parmeshwar Naik, son of Kalakar Naik, aged about 38 years.
17. Satyabrata Das, son of Gurupada Das, aged about 42 years.

.... Applicants.

By Advocate(s) : Mrs. M.M.Pal, Sr. Advocate
Mrs. Ruby Pandey
Vs.

1. The Union of India, through the General Manager, South Eastern Railway, Garden Reach, Kolkata -43.

2. Railway Board through the Dy. Director [Estt.] [P&A], New Delhi.
3. Chief Personnel Officer, II, Garden Reach – Kolkata -42 [W.B.].
4. Divisional Railway Manager [P], South Eastern Railway, C.K.P. Division, Chakradhapur, District Singhbhum [West] PIN No. 833102, Jharkhand.
5. Sr. Divisional Personnel Officer, South Eastern Railway, CKP Division, Chakradhapur, Dist. – Singhbhum [West], PIN No. 833102, Jharkhand.
6. Sr. Personnel Officer [P&T] CKP Division, Dist. – Singhbhum [West], PIN No.833102, Jharkhand.

..... Respondents.

By Advocate : Mr. Prabhat Kumar

ORDER

Per Mr. Dinesh Sharma, A.M.:- The case of the applicants is that they were appointed as Trainee Assistant Driver (Elect./Diesel) but they were all posted in Diesel cadre by the concerned authority though no option was called from them for their posting in Diesel Cadre or Electric Cadre. Subsequently, they were all sent for conversion training essential for their work in Electric cadre. After this training though they are being used in the Electric cadre but they were surprised to find that their seniority is being maintained separately in Diesel Cadre and consequently their promotion is not being considered in the Electric Cadre. They have raised a grievance for combining seniority for both Electric/Diesel a number of times, but no final decision has been taken by the respondents on their representations. They have also alleged that by an office order dated 25.09.2008 issued by Senior Personnel Officer (P&T) they were informed that in terms of Railway Board's letter dated 02.06.2006 it has been decided by the competent authority that seniority of Assistant Loco Pilots appointed after 01.01.2006 should be maintained in the common cadre. The applicants have also come to know

that a Committee was constituted vide CPO's letter dated 17.03.2006 to review the issue of combined seniority of Loco Running Staff and to submit recommendations after consulting all the Divisions and both the recognized unions. This Committee submitted its report on 26.02.2006 which shows that the cadres of Electric and Diesel Loco Pilots are separate in some divisions or parts of division and have been combined in some other divisions. This report shows that there is no uniform policy in the Indian Railways for maintaining combined seniority list of Electric/Diesel. The applicants have alleged that since tractions have been progressively converted into electrified sections there is a remote chance of promotion amongst diesel drivers, whereas if combined seniority is maintained they will get opportunity of their promotion in Electric Section. The applicants have also mentioned about some Assistant Drivers under SE Railways , Kharagpur having filed an OA 138/2005 before Kolkata Bench of the Tribunal wherein this Tribunal by its order dated 15.02.2015 had directed the Railway authorities to determine the inter-se seniority between the two groups of employees, and after such seniority position is finalized, to consider their promotional prospects. It is also mentioned in the OA that the said decision dated 15.02.2015 passed in OA 138/2005 was also referred in the Committee report dated 22.06.2006 (there is an apparent error in these statements since an order dated 15.02.2015 could not have been referred to in the committee report dated 22.06.2006). The applicants have alleged that the grievances of the petitioners in OA 138/2005 are identical to that of the applicants in this OA. The applicants have prayed for directing

the respondents to prepare a combined seniority list for loco running staff, both for Electrical and Diesel, and to extend the benefit of promotion to the applicants along with staff of the electric wings. Since during the pendency of this OA some orders were issued for filling up of certain posts, without giving the benefit of such combined seniority, the applicants, were allowed to add further prayers for quashing parts of such orders dated 28.08.2017 where the respondents have allegedly denied the benefit of combined seniority.

2. The respondents have filed a written statement denying the claim of the applicants. They have stated that the South Eastern Railway is running with both the electrical and diesel loco with separate cadre for those staff whose date of appointment are prior to 01.01.2006. They have further stated that as per guidelines circulated under Railway Board's letter No. E(NG) I-2006/PM7/12 dated 02.06.2006, the cadre of Loco Pilots who have been appointed on or after 01.01.2006 are combined. Since the applicants belong to diesel (Mech.) cadre and appointed prior to 01.01.2006 the question of merging of seniority and granting of promotion against the vacancies of electric cadre does not arise. They have also stated that keeping the cadre separate has not blocked the promotion chances of the applicants and some of the seniors to the applicants in diesel cadre, though appointed after the employees in electrical cadre were promoted before electrical cadre. It is also alleged that during the last periodical crew review meeting held at HQ/GRC, it was decided that henceforth (i.e. w.e.f. 01.04.2017) the vacancies of Crew Controller over Chakradharpur Division

will be filled by calling options from the Loco Pilots of both Diesel and Electrical cadre on the basis of combined seniority. They have prayed for dismissing the OA since the claim of the petitioners about remote scope of promotion is baseless.

3. The applicants have filed a rejoinder in which they have reiterated their earlier claim. They have also alleged that the comparative table given by the respondents to show 3 persons getting earlier promotion does not give the full picture as less vacancies are getting created in the diesel sector now. They have again stated that, after conversion by giving training, crews like the applicants are doing electric work but are being treated in Diesel cadre. The applicants have also questioned the decision dated 28.08.2017 (Annexure R/4) because combined cadre of Electric and Diesel has been introduced only for selection post which, according to them, has no meaning since separate cadres are being continued for the post of LP (P), LP(G) and LP(Mail).

4. We have gone through the pleadings and heard the learned counsel for both the parties. As is clear from the pleadings mentioned above, the main issue is whether to have a separate seniority list of electric and diesel Loco Pilots/Assistant Loco Pilots or to have a combined seniority list as has been done in all the Divisions since 01.01.2006 and was already done in some divisions (other than SER) before that date. In this respect, the most crucial document which is responsible for maintaining these two different practices amongst various divisions is the report of the committee on merger of seniority of loco running staff (Elec. and Diesel) dated

22.06.2006 (Annexure A/4). This report gives a detailed background of the issue and also mentions the directions given by the Kolkata Bench of the Tribunal on this issue (admittedly identical to the issue raised in this OA). This report discusses in detail the various practices adopted under various Railways and also describes the views of Recognized Unions along with Railway Board's recent directives in this matter. The conclusion and proposed solution of this Committee are reproduced below in verbatim:-

" Conclusion and proposed solutions

Equal or even equivalent promotional prospects across departments or for different categories within the same dept while desirable are not always possible and indeed cannot be guaranteed. Technological obsolescence, as is the case here, is an ongoing process and is bound to create short-term imbalances. These ripples often turn out to be self-stabilizing and find ways to settle down in the long run.

Defining the problem: In a nutshell, the diesel tractions are being progressively converted into electrified sections and thus the requirement of diesel drivers has been downward turn. This conversion, which is not uniform, either in time or in terms of areas has led to a situation where (depending on which traction dominates), staff in diesel and electric wings are facing unequal promotional prospect.

A realistic assessment of the situation presents before us the reality that diesel tractions are being phased out and unless other alternatives in the form of bio-diesel are rapidly made available and turn out to be economically feasible, conversion to electric traction remains a fact that is best not ignored. In view of the above backdrop, Railway Board's said directives and also practice being followed by other Railways, the following recommendations/suggestions are submitted for consideration: -

- (a) As per Board's directives communicated vide their letter dated 02.06.2006, merger of seniority of Loco Running staff (Diesel and Electrical) has become mandatory so far as new entrants recruited directly through RRBs or by induction through selection from diesel and electric loco sheds are concerned. Accordingly, necessary orders have to be issued immediately for implementation of these instructions of Board.
- (b) As regards seniority and promotion prospects of the existing Assistant Loco Pilots (diesel and electrical), it is suggested that seniority of both cadres be merged from a prospective date to be decided by the General Manager. This option, if by far the

most implementable in that, it does not tamper with the situation and location of present incumbents and affects those who are anyway entering in a combined manner through the RRB exams.

In this case, it will have to be decided that the vacancies arising in both cadres will be consolidated for the purpose of promotion. In other words, the cadres of existing ALPs (diesel and electrical) will be separate but their promotion will be on the basis of combined vacancies arising in both cadres as per merged seniority. This proposal is in the line with the system being followed by the WAT Division of East Coast Railway and also to certain extent in accordance with the directives given by the Hon'ble CAT/KOL as referred to in para 3 of order dated 15.02.2005 in OA No. 138/05 (**Annex-XV**).

It is to clarify that once the seniority is maintained as the combined one the staff within the zone of consideration according to the combined seniority diesel or electrical will be promoted/posted at these stations irrespective of vacancies of any particular wing. However, the cadre of diesel and electric wing will be maintained as a separate one, with the command structure as per the directives of Railway Board conveyed recently (Letter dtd 2.6.06 and 22.09.2004-Annex-XII & XIII)."

5. The learned counsel for the applicants argued that these conclusions are arbitrary and therefore should not be followed. The reason why the complete conclusions are reproduced above is to show that there is nothing in these conclusions which make them appear to be arbitrary or without any reason. The Committee has defined the problem, made a realistic assessment of the situation and suggested for merger of cadres from a prospective date. It will be wrong on the part of this Tribunal to substitute its own opinion for the considered opinion and suggestions given by a duly constituted Committee which had examined all the relevant factors following our direction in OA 138/2005. Hence, though it is an admitted fact that the diesel and electrical cadres/seniority lists have been combined from 01.01.2006, for reasons of expediency and practicality, the department has found it advisable not to do this merging for those who got

recruited before 01.01.2006 and in the Divisions where it was not already merged. On a query to both the learned counsels whether they had any information about any other merger of these two separate streams done in any other Division after the recommendations of this Committee, both the counsels admitted that they have no information about any such merger having been done (where it was not already done) in any other division after the suggestions made by this Committee. Therefore, we cannot come to the conclusion that SER is the only outlier which is maintaining separate seniority list for those recruited before 01.01.2006. We have also noticed that even in SER, for further promotion to Crew Controller's post the concept of combined seniority list has already been implemented by seeking options for promotion to those jobs from both diesel and electrical wings. The fact remains that any merger of these separate lists will make some people above others in the combined list and it may create bad blood amongst those who are not before this Tribunal but will be affected by such merger. We do not find any evidence of any willful or arbitrary discrimination against the applicants. Delays in promotional prospects due to technological changes are inevitable in a changing scenario. It will not be correct on the part of the Tribunal to intervene at the request of the applicants of this OA and direct the respondents to combine two seniority lists only because the applicants' promotional prospects have become lesser. However, since the applicants are as much the employees of the Railways as are the loco pilots in the Electrical Wing, it is expected that the Department will take proper care of their promotional prospects and ensure

that their chances of promotion are not significantly affected due to technological changes. The OA is disposed of accordingly. No order as to costs.

[Dinesh Sharma]M[A]

[Jayesh V. Bhairavia]M[J]

Srk.