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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 6442/2014**

Date of decision: 4th May, 2016

UNION OF INDIA AND ANR Petitioner
Through Mr. Jagjit Singh, Ms. Rashmi
Malhotra and Ms. Priyanka Bharihoke, Advocates.

versus

MAHESH CHANDER & ORS Respondent
Through Mr. Lalta Prasad, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J. (ORAL)

Union of India through General Manager, Northern Railway, Baroda House, New Delhi by this petition impugns order dated 3rd April, 2013 passed in OA No.1836/2012 and order dated 19th May, 2014 passed in Review Application No.149/2013.

2. By the first impugned order passed by the Central Administrative Tribunal, Principal Bench, New Delhi, the aforesaid OA filed by 33 applicants, who are respondents before us, was allowed with a direction that the said respondents would be interpolated in the select list of Loco Pilot Goods (LPG) issued in the year 2005. The impugned order dated 3rd April,

2013 records the reason for granting the said relief as parity with some others, who had cleared the Loco Pilot Goods Selection Test in the year 2008 and were granted identical relief in OA No. 1892/2007.

3. We have heard the learned counsel for the petitioner and the respondents-applicants.

4. Written examinations were held in July and August, 2005 for filling up 609 vacancies in the posts of Loco Pilot Goods (Goods Driver). As per the Recruitment Rules, First Fireman/Diesel/Electrical Assistants (including Shunters with less than three months' service) were eligible and entitled to sit in the said limited departmental examination provided they had put in (a) six years' service (combined as Second Fireman and First Fireman/Diesel Assistant/Electrical Assistant) or (b) two years' service as First Fireman(Diesel Assistant/Electrical Assistant, and (c) had 60,000 kilometres experience on foot-plate as First Fireman/Diesel Assistant/Electrical Assistant.

5. The respondents herein along with several others, who met the eligibility criteria, had applied and participated in the said examination for Loco Pilot Goods (Goods Driver). A select list of those, who had cleared the said examination, was published on 20th June, 2005. The respondents

herein did not qualify and had failed the said test. Some others, who were junior or senior to the respondents in their original grade, had qualified and cleared the said test.

6. One Jitender Singh and 62 others, who were not permitted and allowed to appear in the 2005 examination, raised their grievance and had filed OA No.1892 of 2007. The said OA was decided by the Tribunal by order dated 14th August, 2008 with the following directions:-

“It goes without saying that if the applicants pass in this selection in the first attempt and they are empanelled, not only their names would be interpolated in the earlier panel of 2005 by giving them the benefit of seniority from the same date from which their juniors have been promoted but their pay would also be fixed on proforma basis from the same date. Actual from the date, they shoulder the responsibilities of the next higher post.”

A bare reading of the aforesaid directions would reflect the reason why the said directions were mandated. The applicants in OA No.1892 of 2007 were wrongly denied and were not permitted to appear in the 2005 examination for selection as Loco Pilot Goods (LPG). They had suffered loss of seniority to those selected in 2005, without opportunity to compete and get selected. Wrongful denial of the right to compete and try for selection had caused prejudice and irreparable harm. They had been deprived of their

right to take a march on their senior and in fact made junior to their juniors, who had got selected. The Tribunal, therefore, had directed that in case the said applicants clear the said examination in the first attempt, their names would be interpolated in the earlier panel of 2005 by giving them the benefit of seniority from the date their junior had been promoted. Their pay would be fixed on proforma basis from the same date, but they would be given actual pay from the date they shoulder responsibility at the said post.

7. The impugned order dated 3rd April, 2013 holds that the respondents herein would be entitled to the same benefit on the principle of parity and equality with Jitender Singh and 62 others. Noticeably, the respondents herein had appeared in the subsequent selection examinations held in the year 2008 in which Jitender Singh and 62 others had participated along with other eligible employees including the respondents herein.

8. We have considered the reasoning given by the Tribunal and are unable to find any justification and reason for treating the respondents herein as equal and *pari passu* to Jitender Singh and 62 others. The respondents herein were allowed and had competed and participated in the 2005 selection test for the post of Loco Pilot Goods (LPG), but they had failed. They did not qualify. This is a significant and crucial fact, which

distinguishes the case of the respondents herein from the case of the Jitender Singh and 62 others. The claim of parity and equivalence, therefore, should have been rejected. The respondents herein cannot be equated and identified with Jitender Singh and 62 others.

9. For the aforesaid reasons, we allow the present writ petition and set aside and quash the order dated 3rd April, 2013 by which OA No. 1836/2012 was allowed. As a sequitur, the order dated 19th May, 2014 passed in the Review Application is also set aside. The OA No.1836/2012 filed by the respondents herein will be treated as dismissed. There will be no order as to costs.

SANJIV KHANNA, J.

NAJMI WAZIRI, J.

MAY 04, 2016
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