

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 1115 OF 2017**

Jitendra Naidu S/o Shri C.H.S.N. Rao, Aged About 39 Years, The Then Assistant Loco Pilot- II, Chief Crew Controller, Bilaspur, South Eastern Central Railway, Presently Working As Loco Pilot, Chief Crew Controller, Raigarh, South Eastern Central Railway, R/o Q.No.28/229, Chamru Gali, Near Agrawal Gudakhu Factory, Hemu Nagar- Ward No. 42 (Old- 38), Bilaspur, District Bilaspur Chhattisgarh
Contact No.9752444239

---- Petitioner**Versus**

1. Union of India Through its Secretary, Ministry of Railway, Rail Bhawan, New Delhi, PIN 110001.
2. Senior Divisional Personnel Officer, South Eastern Central Railway, Bilaspur Chhattisgarh.
3. Divisional Railway Manager, South Eastern Central Railway, Bilaspur Chhattisgarh.
4. Senior Divisional Electrical Engineer (OP), South Eastern Central Railway, Bilaspur Chhattisgarh.

---- Respondents

For Petitioner	:	Mr. Pawan Shrivastava, Advocate
For Respondents	:	Mr. Abhishek Sinha, Advocate

Hon'ble The Chief Justice
Hon'ble Shri Sanjay Agrawal, Judge.

Order on Board**Per Thottathil B. Radhakrishnan, Chief Justice****08/05/2017**

1. In its sum and substance, the petitioner challenged the seniority list (Annexure P/4), dated 18/11/2011 before the Central Administrative

Tribunal by filing Original Application No. 611 of 2012. That is the effect of the challenge levied by the petitioner to the rejection of his representation against the fixation of seniority. That was dismissed by the Tribunal. Hence this petition under Article 227 of the Constitution of India.

2. We have heard the learned counsel for the petitioner and the learned counsel for the respondents.
3. Even going by the pleadings of the petitioner before the Tribunal, reiterated before this Court; the fact of the matter remains that the petitioner is seeking relief to be placed above 350 persons who were appointed as Assistant Loco Pilots by direct recruitment. The persons who are sought to be displaced in the seniority list are obvious. They are the 350 persons, whose appointment, the petitioner says, have to be treated as made subject to the entry of the petitioner in the cadre. Without hearing those persons who would be affected by any disturbance of the seniority list, could not have been set aside by the Tribunal. No seniority list can be upset without affording opportunity of hearing to the persons who are likely to be adversely affected if the challenge raised is upheld or relief claimed is granted. It is not possible for the Court to pass an order altering the seniority unless those who are likely to be affected thereby are before the Court and have an opportunity to reply to the case set up by the petitioner. In a writ petition questioning *inter se* seniority, no order could be passed determining the *inter se* seniority without arraying the persons senior pleaded as party to the petition. See for support; *State of Orissa v. Binode Kishore Mohapatra* (AIR 1969 SC 1249), *Prabodh Verma v. State of Uttar*

Pradesh [(1984) 4 SCC 251], State of Rajasthan v. M/s Hindustan Sugar Mills Ltd. [(1988) 3 SCC 449] and Indu Shekhar Singh v. State of U.P. [(2006) 8 SCC 129]. It is also the law that when such affected persons are in specific number, as is in the case in hand, all of them should be impleaded and resort to the principles of representative action as akin to Order I Rule 8 CPC will not cure the defect. See: *K.H. Siraj v. High Court of Kerala [(2006) 6 SCC 395]*. The same principle applies to cases of selection as well.

4. For the simple reason that the persons who would be aggrieved by any order that may be issued by us or that would have been issued by the Tribunal, if we were to uphold the plea of the petitioner, are not on the array, this writ petition under Article 227 of the Constitution of India ought to go upholding the fact situation that the original application before the Tribunal stands dismissed.
5. Be that as it may, the petitioner is one who claims to have been appointed following empanelment of dependents of former employees who proceeded on voluntary retirement. Tribunal adverted to Sections 302 and 303 of the Indian Railway Establishment Manual (IREM) and turned down the plea of the petitioner.
6. Learned counsel for the petitioner made reference to *The Direct Recruit Class-II Engineering Officers Association v. State of Maharashtra, [(1990) 2 SCC 715]*, to buttress the point that seniority has to be determined on the basis of the date of initial appointment, that is to say, the date of first effective appointment. We have no doubt about it. Law has also been developed to the extent to say that when appointments are based on recommendations by the Public Service Commission or

other such selecting authorities, the seniority may even be determined on the basis of the first effective advice of the selecting agency concerned. These principles have withstood the test of time. However, such issues cannot be considered in the light of what is stated hereinabove.

7. That position notwithstanding, the manner of appointments under which the petitioner claims does not appear to be constitutionally sound to the extent to which it appears to have been used. The Railways appeared to have put in place a Safety Related Retirement Scheme ('SRRS'). This provides a system by which voluntary retirement of a Loco Pilot generates room for public appointment for one of the wards of the retiring employees. We have examined the Safety Related Retirement Scheme ('SRRS') of the Railways. It appears that lot of loopholes are available, where scouting for appointment in the Railways can be easily done by appropriately scheduling the time of retirement through a voluntary mode when a Loco Pilot deems it appropriate to put his offspring in the bandwagon of the Government servants in the Indian Railways. The Division Bench had, therefore, minted *inter alia*, the following on 10/04/2017:-

“We have heard learned counsel for the Petitioner for quite sometime. He is the son of a former employee of the Railways, whose voluntarily retirement was accepted on 18.5.2010. Before that, other persons were directly recruited to be Loco Pilots. The Petitioner was empaneled to be a Loco Pilot on the ground referable to his father's voluntarily retirement in terms of the Safety Related Retirement Scheme. He challenged the seniority over the direct recruits.

Reading Sections 302 and 303 of the Indian Railway Establishment Manual, the Central Administrative Tribunal turned down the plea of the Petitioner. Hence, this matter is filed invoking Article 227 of the Constitution of India. We state these facts for continuity of hearing of this case since the Petitioner's learned counsel has sought for an adjournment. We may however note that we are dealing with an application under Article 227 of the Constitution and scales of justice will not necessarily depend exclusively on the application of statutory provisions, particularly when the Petitioner is one who is standing with a benevolent mode of appointment referable to voluntarily retirement of his father under the Safety Related Retirement Scheme, the provisions of which, in our view, may have to be strictly construed since they may work into the rights of the open market candidates in the long run and thereby impair Articles 16 read with Article 14, when open market candidates are treated against the beneficiaries and decedents of persons who are Railway employees, that too when the parent is one who is surviving after going on a voluntarily retirement on his own volition.”

8. We are in an era where direct recruitment to public employment has become exceptionally competitive and the doors have to be opened for the best from the educated unemployed mass. Compassionate modalities of the appointment have been recognized as a soothing balm on the face of the uncertainties of life of a Government servant. That is always an exceptional situation. It has also been judicially settled that every compassionate appointment is an inroad into the open market quota. Such exercise ought to be the bare minimum and would be resorted to only when the circumstances demand such course when an

exceptional situation calling for compassion, in terms of the rules priority for compassionate appointment, outweighs the care doctrines of equality and equal opportunity in public employment, sanctioned as fundamental right in terms of Articles 14 and 16 of the Constitution of India.

9. We reiterate what we have quoted above from the order dated 10/04/2017 and treat it as part of this judgment.

10. The insurmountable position is that the original application could not have been allowed by the Tribunal on any count in absence of 350 persons, who were direct recruits on the array of respondents in the original application with opportunity to contest the petitioner's claim. We cannot but therefore affirm the decision of the Tribunal and dismiss this writ petition under Article 227 of the Constitution of India.

11. In the result, this writ petition is dismissed.

Sd/-

(Thottathil B. Radhakrishnan)
CHIEF JUSTICE

Sd/-

(Sanjay Agrawal)
JUDGE