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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 17.04.2017

CORAM:

**THE HONOURABLE MR. JUSTICE T.S. SIVAGNANAM
AND**

THE HONOURABLE MR. JUSTICE P. VELMURUGAN

W.P (MD) . No.21318 of 2014

and

M.P. (MD) Nos.1 and 2 of 2014

P. Narayana Vadivu

: Petitioner/Petitioner

Vs.

1. Union of India Represented by
The General Manager,
Southern Railway,
Park Town, Chennai - 600 003.

2. Divisional Railway Manager,
Southern Railway,
Tiruchirappalli Division,
Tiruchi.

3. The Sr. Divisional Mechanical Engineer,
Southern Railway,
Tiruchirappalli Division,
Tiruchi.

4. The Divisional Personnel Officer,
Southern Railway,
Tiruchirappalli Division,
Tiruchi,

5. The Registrar,
Central Administrative Tribunal,
Chennai - 600 104.

: Respondents/ Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance a Writ of Certiorarified Mandamus, to call for the records and order passed by the fourth respondent in his impugned order in his letter No.T/P.608/V/PR/LP/Gr.II/Vol VII, dated 29.07.2011, as well as the order passed by the fifth respondent, dated 06.01.2014 in O.A. No.327 of 2012 and direct the second respondent to fix the correct seniority of the petitioner by promoting her as Loco Pilot with effect from 29.04.2011 on par with junior against the existing reserved vacancies with all attendant and other benefits.



For Petitioner : Mr.T. Sakthi Kumaran
for Mr.A.Thirumurthy
For R1 to R4 : Mr.S. Manohar
For R5 : No appearance

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O R D E R

[Order of the Court was made by **T.S.SIVAGNANAM, J.**]

Heard Mr.T.Sakthikumaran, learned counsel appearing for the petitioner and Mr.S.Manohar, learned standing counsel appearing for the Southern Railway.

2.The petitioner, who is an employee of the Southern Railway, Tiruchirappalli Division, is before this Court, challenging the order passed by the Central Administrative Tribunal [hereinafter referred to as 'the Tribunal'], dated 06.01.2014 in O.A.No.327 of 2012. The petitioner approached the Tribunal by filing an application challenging the order passed by the fourth respondent, dated 29.07.2011. By the said order, the fourth respondent informed the petitioner that in terms of the Railway Board's Letter, dated 22.08.2008, the Assistant Loco Pilots/Senior Assistant Loco Pilots/Shunters, who have not completed two years of residency period should have 60,000 KMs. of Foot-plate experience for promotion to the post of Loco Pilot [Goods] in the Pay Band Rs.9,300-34,800 with Grade Pay Rs.4,200/-. As the petitioner has not completed 60,000 KMs in Foot-plates, the competent authority did not consider the petitioner's case for promotion as Loco Pilot [Goods].

3.The petitioner approached the Tribunal contending that the Railway Board's Letter No.101 of 2008 provides that the Loco Pilot Shunter, who has put in more than three months of service as Loco Pilot Shunter and bestows power to the General Manager to relax the period of residency period for those who have not completed two years residency period or who have not put in 60,000 KMs on Foot-plate. Therefore, the petitioner claimed relaxation on par with her juniors. Further, the petitioner would contend that her name was omitted from the promotional list without any show cause notice and the same is against the principles of natural justice. Further, reference was also made to Paragraph 7(7) of the Master Circular No.31.

4.The fourth respondent in their counter affidavit, filed before the Tribunal, submitted that the petitioner does not fulfil the conditions stipulated in Railway Board's Letter in RBE No.101 of 2008 and the details of the petitioner were submitted to the first respondent and her case for promotion as Loco Pilot



(Goods) could not be considered, as she did not fulfil the condition of having two years of experience and service as Assistant Loco Pilot with 60,000 KMs. Foot-plate experience.

5. The Tribunal, on considering the case and counter, by the impugned order, dated 06.01.2014, dismissed the Original Application filed by the petitioner holding that the respondents have rightly rejected the request for relaxation, as the petitioner did not possess the required 60,000 KMs. Foot-plate experience.

6. On a perusal of the impugned order, we find that the Tribunal did not go into the question as to whether the petitioner had satisfied the conditions stipulated in the Railway Board's Letter No.101 of 2008, but proceeded merely on the basis that she did not possess the requisite qualification. Further, the petitioner's consistent case is that she is entitled to get relaxation.

7. On a perusal of the Railway Board's Letter in RBE No.101 of 2008, dated 22.08.2008, we find that the Railway Board considered that in the eventuality of non-availability of Shunters, General Managers may consider Diesel/Electrical Assistants (redesignated as Assistant Loco Pilot (Diesel Electrical)) with 2 years service as Diesel Assistant/Electrical Assistant and 60,000 KMs. experience on Foot-plate, for selection for promotion to the post of Loco Pilot (Goods) subject to certain conditions. Subsequently, by another Railway Board's Circular, dated 26.03.2009, certain clarifications were issued.

8. The petitioner's case itself is that she being a lady, her case has not been considered for no fault of her and her name was dropped from the list of persons eligible for promotion. The petitioner's further case is that there was a word that Loco Pilot/Shunter should have completed two years of residency period and in the same Letter in Paragraph No.1, it has been quoted through Railway Letters, dated 03.08.1995, 13.12.1995 and 01.05.1996, which speak about the powers of relaxation of residency period for Shunters by General Manager, for being considered for the post of Goods Driver and such relaxation has been denied to the Petitioner. Further, it is contented that the petitioner, being a lady, the Administration ought to have provided Running Room; Rest Rooms; and Accommodation facilities, so as to enable her to work as a Driver on onward trip as well as return trip. But, in the petitioner's case, she will go as Assistant Driver on onward trip and on reaching some point, she will be sent back as a Passenger with Emergency Duty Pass to return to Head Quarters after working in the booked Train. The petitioner was able to earn only 32,500 KMs in Assistant Loco Pilot and Senior Assistant Loco Pilot and whereas, male drivers will earn more than 60,000 KMs. on both trips (To and



Fro) and therefore, for the fault of the Administration, the petitioner should not be penalised.

9. Further, the petitioner's case is that she was forced to do work Stationery duties in Chief Crew Controller Office, Power Controller Office and the said services will not be taken into account for earning Kilometers in the running Train. The loss of earning Kilometers by the petitioner was due to the adherence of administrative instructions only. Thus, it is the contention of the petitioner that the Railway Board's Letter in RBE No.101/2008, dated 22.08.2008, has not been taken into consideration in true letter and spirit by the respondents. The petitioner would state that she was given with Certificate and Cash award of Rs.1,500/- by the Chief Mechanical Engineer, Southern Railway, Chennai, for averting an accident during her Loco Pilot- Shunting service (4 ½ months) and she was also awarded with Certificate by the Senior Divisional Operations Manager, Southern Railway, Trichy, on 25.04.2014, for efficient performance in Train operations.

10. Thus, we are of the considered view that the matter requires to be examined by the first respondent/the General Manager, Southern Railway, Chennai, in a more pragmatic manner. Taking into consideration the abovesaid contentions of the petitioner which were not considered by the first respondent, nor focussed before the Tribunal, we deem it appropriate to remand the matter for fresh consideration to the first respondent. Accordingly, this Writ Petition is allowed and the impugned order passed by the Tribunal, dated 06.01.2014, is set aside. Consequently, the order passed by the fourth respondent, dated 29.07.2011, is set aside and the matter is remanded to the first respondent, for fresh consideration. The above exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To

1. The General Manager,
Union of India,
Southern Railway,
Park Town, Chennai - 600 003.

2. The Divisional Railway Manager,
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Tiruchi.



3.The Senior Divisional Mechanical Engineer,
Southern Railway,
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4.The Divisional Personnel Officer,
Southern Railway,
Tiruchirappalli Division,
Tiruchi,

5.The Registrar,
Central Administrative Tribunal,
Chennai - 600 104.

+1 CC to MR.S.MANOHAR, Advocate, SR No. 52480

+1 CC to MR.A.THIRUMURTHY, Advocate, SR No. 52340

KM/SMN2

PSM/JC/03.05.2017/5P/8C

ORDER MADE IN
W.P (MD) . No.21318 of 2014
& M.P.(MD)Nos.1 and 2 of 2014
17.04.2017