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

+ W.P.(C) 305/2018 & CM APPL. 1281/2018 (*stay*)

UNION OF INDIA AND ANR. Petitioners

Through: Mr. Jagjit Singh with Mr. Ashok
Singh & Mr. Preet Singh, Advs.

versus

VISHESHWAR DYAL Respondent

Through: Ms. Meenu Mainee, Adv.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

19.03.2019

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1. Challenging an order passed by the Central Administrative Tribunal on 01.08.2017 in O.A. No.4095/2012, the Railway Administration has filed this writ petition.
2. Respondent Shri Visheshwar Dyal invoked the jurisdiction of the Central Administrative Tribunal under Section 19 of the Administrative Tribunals Act, 1985 and sought indulgence into the matter inasmuch as he prayed that he be granted promotion as a Loco Pilot (Goods) w.e.f. 05.03.2012 i.e. the date on which his juniors have been promoted to the aforesaid post and to give consequential benefit, namely, difference of salary and thereafter re-calculate the pensionary benefits due to him as at the time of invoking the jurisdiction, after his representation was rejected vide 'Annexure A2', the respondent employee had already retired from service.
3. The respondent was appointed as a Khalasi on 01.07.1980. He was thereafter transferred to the Loco Department as Loco Cleaner and promoted as an Assistant Loco Pilot (Assistant Driver) on 01.01.1998. The next

promotion from this post was to the post of Loco Pilot (Goods) in the pay scale of ₹5000-8000 (₹9500-₹49300) (*sic* ₹9300-34800) + Grade Pay of ₹4200/-).

4. It is the case of the applicant that he participated in the process of selection for appointment to this post and on 03.01.2012 he was declared successful and qualified for promotion and his name was kept at Sl. No. 145. After the select list was published, the selected candidates were to undergo M.P.-2 training course in the Zonal Training School at Chandosi. It is said that the applicant underwent this course between 19.06.2012 to 20.07.2012 wherein also in the result declared on 01.08.2012 he was successful. However, when the notice of promotion was passed promoting various persons as Loco Pilot (Goods) on 05.03.2012 the applicant's name did not figure. The applicant submitted representation on 12.03.2012 complaining about non-inclusion of his name in the promotion list when he was informed that he was not selected for promotion as he did not fulfil the required conditions for promotion. Subsequently, he was informed that the condition was that the applicant did not undergo three months' training of Shunter and therefore he could not be promoted before his retirement on 31.07.2012.

5. The Central Administrative Tribunal took note of all these aspects of the matter, found that as per the instructions received by the Railway Board, promotion exercise was to be carried out for promotion to the post in question which is to be filled up on the basis of 'seniority-cum-suitability' or 'suitability with prescribed benchmark'. The benchmark advised was 6 marks out of 15 marks on the basis of three years' ACRs. There were 232 posts and it is seen that after the applicant/respondent herein filled the benchmark he was shortlisted for promotion by the Select Committee.

He also underwent the M.P.-2 training course as per instructions of the Railway Board from 19.06.2012 to 20.07.2012 but as he had retired on 31.07.2012 and he could not undergo the training of Shunter he was not promoted as the training itself was held already after his retirement. The learned Tribunal took note of all these factors and from Para 8 onwards in the impugned order dealt with the issue in extenso and came to the conclusion that the applicant was successful in the selection process and as per the procedural requirement issued he also underwent the training of M.P.-2 course in the Zonal Training School, Chandosi where also he was declared successful.

6. The only ground on which he had been denied promotion was that he could not undergo the three months' training of Shunter and therefore he could not be promoted. The Tribunal found that it is the respondents who were responsible for having delayed in sending the applicant or even conducting the said process of training. The applicant was declared successful on 03.01.2012 and from 03.01.2012 till his retirement except for conducting the M.P.-2 course at Zonal Training School, Chandosi, no action was taken for conducting the three months' training course and for this the applicant should not suffer and granted the benefit by treating him to have been promoted with all consequential benefits and in Para 11 the following directions were issued:

“11. In the conspectus of discussions in the foregoing paragraphs, the respondents are directed to grant notional promotion to the applicant to the post of Loco Pilot (Goods) as on 31.07.2012, the date when he superannuated, and grant him all the pensionary benefits commensurate to that. This shall be done within three months from the date of receipt of a copy of this order. It is made clear that the applicant is also entitled

for al consequential benefits, including arrears of pension. It is further clarified that he shall not be entitled for any interest on the arrears of pension.”

7. Before us today, the main argument canvassed was that vide circular dated 26.08.2009 the Railway Board has laid down the following conditions and as the petitioner has not undergone the Shunter’s training he was rightly denied promotion. The stipulation contained in the circular dated 26.08.2009 ‘Annexure R3’ reads as under:

“Sub: Promotion of Loco Pilots Goods (LPG) from Asstt. Loco Pilot (ALP)

During a presentation held on 21.8.09, General Manager has decided that ALPs getting directly selected as Loco Pilot Goods should not be permitted to work a train independently (as LPG) without undergoing three months experience of locomotive handling as Diesel Shunter/Engine Turner. This is considered necessary to ensure safety of train operation.

A proper record of these ALPs getting locomotive handling experience as diesel shunter/ET should be kept to prevent their deployment on stationary duties during this period. This aspect of adequate locomotive handling experience should be checked by the concerned officers before permitting these ALPs to work a train independently.”

8. Apart from the fact that during the course of hearing we had categorically asked the counsel for the Railway as to whether the requirement of undergoing this three months’ Shunter training is a statutory requirement under the promotion rule, nothing is brought to our notice to say so. On the contrary, the findings recorded by the Tribunal go to show that the only requirements were undergoing the selection process based on ‘seniority-cum-suitability’, suitability to be judged on the basis of

benchmark fixed and undergoing the M.P.-2 training. The requirement of the circular dated 26.08.2009 seems to be an administrative requirement which is not provided in the promotion rule. Be that as it may be, the fact remains that even in the matter of sending the applicant for this training the respondents have caused the delay and the Tribunal having taken note of all these factors has recorded a reasonable finding in Para 10 which reads as under:

“10. So far as the competence of the applicant for the post is concerned, it is amply proved that he was, in fact, suitable and competent by virtue of his being declared successful in the selection process as well as in the first training at Chandosi. We are, therefore, of the view that the respondents are completely at fault in not facilitating three months’ training of Shunter to the applicant well in time and hence, they are not justified to deny him promotion on that ground. Accordingly, we feel that it will be just and proper if the applicant is granted the pensionary benefits of the post of Loco Pilot (Goods) considering that he has already superannuated from the service on 31.07.2012.”

9. Taking note of the aforesaid reasonable approach of the Tribunal, we see no reason to make any indulgence into the matter now in these proceedings under Article 226 of the Constitution of India. The petition is accordingly dismissed. The pending application also stands disposed of.

CHIEF JUSTICE

ANUP JAIRAM BHAMBHANI, J

MARCH 19, 2019

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