

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14004 of 2015

Balwant Singh Bhadoria son of late K.K. N. Singh, Resident of Railway Bungalow No. 7/B, Railway Inspectors Colony, P.O.- Karimganj, P.S.- Civil Lines, District- Gaya

... .. Petitioner/s

Versus

1. The Union Of India through the General Manager, East Central Railway Hajipur, Vaishali
2. Chief Personnel Officer, East Central Railway, Hajipur, Vaishali
3. Divisional Railway Manager, Mugalsarai Division, East Central Railway, Mugalsarai
4. Additional Divisional Railway Manager, Mugalsarai Division, East Central Railway, Mugalsarai
5. Divisional Railway Manager Personnel/Senior Divisional Personnel Officer, Mugalsarai Division, East Central Railway, Mugalsarai
6. Senior Divisional Electrical Engineer OPN, Mugalsarai Division, East Central Railway, Mugalsarai
7. Senior Divisional Electrical Engineer (TRS), Mugalsarai Division, East Central Railway, Mugalsarai
Personnel Officer, Mugalsarai Division, East Central Railway, Mugalsarai
8. Divisional Personnel Officer, Mugalsarai Division, East Central Railway, Mugalsarai
9. Divisional Signal and Telecommunication Engineer, Mugalsarai Division, East Central Railway, Mugalsarai
10. Surendra Sah son of Late R.P. Sah, Loco Inspector, East Central Railway, Danapur
11. Vishnu Yadav, son of Sri Sriram Yadav, Loco Inspector, East Central Railway, Danapur
12. Chandra Kant Singh, son of Late Mahaveer Singh, Loco Inspector, East Central Railway, Mugalsarai
13. Indu Prakash Singh son of R.B. Singh, Loco Inspector, East Central Railway, Mugalsarai
14. Sayed Zafrul Haque, son of Late S.S. Haque, Loco Inspector, East Central Railway, Gaya
15. Jitendra Nath Tiwari, son of Late A.N. Tiwari, Loco Inspector, East Central Railway, Mugalsarai
16. Ramesh Kumar son of Sri Shesh Narayan Singh, Loco Pilot G, Mugalsarai, TLC, East Central Railway, Hajipur

... .. Respondent/s



Appearance :

For the Petitioner/s : Mr.Gautam Saha, Advocate
For the Respondent/s : Mr.Mahesh Prasad
Mr. Sanjay Kumar Chaubey
Mr. P. Dixit
Mr. Naresh Dikshit
Mr. D. K. Sinha, Advocates

**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

(The proceedings of the Court are being conducted through Video Conferencing and the Advocates joined the proceedings through Video Conferencing from their residence.)

Date : 25-08-2020

Heard the parties.

Petitioner has prayed for following reliefs:-

“This writ petition has been filed for setting aside the order dated 30.05.2014 passed by the learned Central Administrative Tribunal, Patna Bench, Patna in O.A. No.585 of 2012 and 3 analogous cases whereby and whereunder the prayer of the petitioner as prayed in the Original Application No.586 of 2012 has been rejected without properly considering the facts and circumstances of the case and without considering the law laid down in the context.

This writ petition has also been filed for direction upon the respondents for making necessary correction / modification / amendment in E. Office Order No.307 of 2012 circulated through Docket No. EE/ TRS/ Running Super / Part II/ MGS dated 13.04.2012 issued by the respondent no.8, Divisional Personnel Officer, Mugalsarai as per the order of respondent No.5, Divisional Railway Manager (Personnel), Mugalsarai in order



to mention/ empanel the name of the petitioner at appropriate place as per his legal entitlement in the said E. Office Order dated 13.04.2012 for granting him promotion to the post of Loco Inspector (Electric) in the pay band Rs. 9300-34800/- with grade pay Rs.4600/- in view of the Railway Board's Order dated 07.06.2010 (R.B.E. No.81/2010) and also keeping in view the seniority position of the petitioner.

This writ petition has also been filed for direction upon the respondents for making necessary correction / modification / amendment in Establishment Office Order No.312 of 2012 circulated through Docket No. EE/ TRS/ Running Super / Part II/ MGS/11 dated 13.04.2012 issued by the respondent No.8, Divisional Railway Manager (Personnel), Mugalsarai in order to place/mention the name of the petitioner at appropriate place as per his legal entitlement in the said E. Office Order dated 13.04.2012 for granting him promotion to the post of Loco Inspector (Electric) in the pay band Rs.9300-34800/- with Grade pay Rs.4600/-.

This writ petition has also been filed for direction upon the respondents for making necessary correction / modification / amendment in the alleged Order dated 10.04.2012 of the respondent No.4, Additional Divisional Railway Manager, Mugalsarai wherein it has been alleged that the said respondent no.4 has approved the empanelment of seven (7) General category and two (2) Reserved category candidates for promotion to the post of Loco Inspector (Electric), after calling the same from the respondent authorities.



This writ petition has also been filed for direction upon the respondents to grant the petitioner promotion to the post of Loco Inspector (Electric) in the pay band Rs.9300-34800/- with grade pay Rs.4600/- with retrospective effect along with all consequential benefits.

This writ petition has also been filed for direction upon the respondents to produce all relevant records regarding the case of the petitioner before this Hon'ble Court for its perusal and consideration in the interest of justice and fairplay.

This writ petition has also been filed for granting any other appropriate relief or reliefs which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

Briefly stated the facts of the case is that notification dated 22.10.2010 was issued for appointment on the post of Loco Inspector (Electric) in the pay band of Rs.9300-34800 + grade pay Rs.4600/- against general seats (7) SC (1) ST(1), for which applications were invited from Employees serving as Electric Loco pilot (Mail), Electric Loco pilot (Passenger), Electric Loco pilot (Goods) having pay scale of Rs.9300 - 34800 + grade pay Rs.4200/- with eligibility condition that applicant must have running experience of 75,000 km. as Loco pilot. Recruitment was to be made in accordance with Railway Board Circular RB.E- 81/2010 dated 7.6.2010. In Clause-2.1 it was clarified that circular is applicable where



promotion is to be done on basis of seniority cum suitability as stipulated in RBE 81/2010 dated 07.06.2010.

RBE No.161/2009 dated 3.9.2009 was issued by Railway Board as one time measure for promotion on all left over vacancies of non gazetted post due to merger of grades on account of implementation of 6th CPC, which was subsequently amended by RBE No.81/2010 dated 7.6.2010 by which benchmark for grade pay Rs. 4600/- as prescribed 7 was amended as “8” and vacancies as existed on 31.8.2009 was amended as 31.12.2011, however, other conditions of letter dated 3.9.2009 remained unchanged.

In the circular dated 3.9.2009, (161/2009) in clause (e), it has been stated that posts earmarked against selection / general selection / LDC quota wherever prescribed as per enclosed statements, will be filled up as per existing procedure and same clause was not amended by circular RBE 81/2010 dated 07.06.2010

Written examinations were held and results were published on 3.6.2011 in which 20 candidates including petitioner before Tribunal, who secured marks above 60% were found to be eligible for promotion to the post of Loco Inspector (Electric). Thereafter, scrutiny test, which consists of evaluation



of ACR and service record for the last three years was carried out and thereafter panel was prepared on 02.03.2012 on the basis of marks obtained in written examination and service record and as name of petitioner was below in the merit list, he could not be appointed on the post of Loco Inspector (Electric).

According to petitioner, the selection on 7 posts among the 20 candidates who were found eligible were to be made on seniority –cum- suitability and not on merit-cum-seniority as done by the respondents which is contrary to the circular RBE No.161/2009 dated 03.09.2009 and RBE No.81/2010 dated 7.6.2010 issued by the railways, according to which promotions on the post of Loco Inspector was to be made on seniority-cum-suitability basis.

Respondent –railways has filed their written statement according to which vacancies were to be filled by general selection with prescribed benchmark, service records and ACR. In written test, 20 candidates including petitioner were found eligible but thereafter final panel was to be drawn after scrutiny of ACR and service records and same was prepared on 10.4.2012. The circulars as referred mandates promotion on selection post on merit-cum-seniority basis. Loco Inspector (Electric) is not an ex-cadre post but selection post and as such



appointment is to be made on the basis of select list prepared on merit after adding marks obtained in written examination, evaluation of ACR and service record for the last 3 years and same is in tune with RBE No.113/2009 dated 19.6.2009 which has been issued pursuant to judgment dated 15.3.1996 in M. Ramjayaram Vs. General Manager, South Central Railway and others (1996 (1) SC SLJ 536) which is reproduced below:-

RB/Estt. No. 13/2009

भारत सरकार (GOVERNMENT OF INDIA)
रेल मंत्रालय / MINISTRY OF RAILWAYS
(रेलवे बोर्ड / RAILWAY BOARD)

No.E(NG)I-2008/PM7/4 SLP

New Delhi, dated (19.06.2009)

The General Managers(P)

All Indian Railways

& Production Units.

(As per standard list)

Sub:- Selection Procedure for promotion to General Selection Posts – Placement of names on panel - instructions regarding.

“As the Railways are aware, in pursuance of Hon’ble Apex Court’s judgement dt.15.03.1996, in M. Ramjayaram Vs. General Manager, South Central Railway and others, 1996 (1) SC SLJ 536, it was held that it is illegal to award marks for ‘Seniority’, for promotion to General Posts, i.e., those outside the normal channel of promotion, for which eligible volunteers are called from different categories whether in the same department, or, from different departments, Board vide their letter No.E(NG)I-98/PM1/11, dt.16.11.1998, had modified the Selection Procedure to such General posts. These instructions are contained in para 219(j) of Indian Railway Establishment Manual(IREM), Vol.1, 1989, as amended from time to time. In terms of instructions contained in clause (iii) below para 219(j), final panel in such cases, is required to be drawn up in the order of seniority from amongst those who secure a minimum of 60% marks in professional ability and 60% marks in the aggregate, provided that those securing a total of 80%, or, more marks, are classed as ‘Outstanding’ and placed at the top of the panel, in the order of seniority. Besides above provisions, separate instructions prescribing different methods for placement of names on panel, in a few categories, viz, LDCE quota in the category of Sr. Clerks(Rs.4500-7000), Commercial/Traffic Apprentices (Rs.5500-9000), for induction of intermediate Apprentices for eventual absorption as JE-II (Rs.5000-8000) in various technical departments, qualified staff quota in the category of Skilled Artisans Gr.II(Rs.3050-4590) in various engineering departments, LDCE quota in the categories of Office Superintendent Gr.II(Rs.5500-9000) and Staff & Welfare Inspectors Gr.I(Rs.6500-10500)etc., have also been issued.



2. The instructions regarding formation of panel in the order of seniority, have been under challenge before various Courts/tribunals for granting relief in terms of placement of names on panel in the order of merit based on the marks obtained in such General Selections. The provision of placement of names on final panel in the order of seniority, as indicated above, has been struck down by High Court/Punjab & Haryana, in Writ Petition No.4746/2002 vide judgment dt.09.04.2008. High Court have, inter-alia, held that, since in such General Selections, candidates are not from the same seniority units and there is no common seniority list on the basis of which their names can be placed in the order of seniority, therefore, promotion to such posts should be made only on the basis of merit, uninfluenced by seniority of the candidates. The Hon'ble High Court have accordingly declared the provision of arranging the names on final panel in the order of seniority in General Selections as wholly illegal and arbitrary and set aside the same. The Special Leave Petition No.16774/2008 filed before the Hon'ble Supreme Court against the High Court's above-mentioned judgment, has also been dismissed on 05.01.2009.

3. The matter has, accordingly been carefully considered by the Board and it has been decided that in cases of promotion to General Posts in which candidates are called from different categories, whether in the same department or from different departments and where zone of consideration, is not confined to three times the number of staff to be empanelled, panels should be strictly prepared as per merit, with reference to marks obtained by the candidates in 'Professional ability' and 'Record of Service'. Subject to usual relaxation for SC/ST staff, wherever permissible, those securing less than 60% in 'Professional ability' and 60% in aggregate, will not be considered eligible for inclusion in the panel. Further, the service records of only those © candidates who secure a minimum of 60% marks in 'Professional ability', shall be assessed. Since the final panel has to be drawn on the basis of merit, there will be no scope for erstwhile provision of placement of candidates who secure 80% or more marks, classified as 'Outstanding', on the top of the panel.

3.1. These instructions will supersede all previous instructions, as far as the same relate to the provision of arranging names on the final panel in the order of seniority, for promotion to General Posts. However, all other conditions, as contained in the specific instructions for a particular category, shall continue to hold good.

3.2. These instructions shall be applicable with immediate effect, i.e., from the date of issue of these orders, to all panels for promotion to General Posts. Any previous selection panel drawn up otherwise, before issue of this letter, need not be reopened.

4. Accordingly, the Indian Railway Establishment Manual, Volume I, 1989 is also amended, as per ACS No.209 enclosed.

(D.V. Rao)
Joint Dir. Estt.(N),
Railway Board"

Chapter II, Section 'B'- Rules governing the promotion of Group 'C' staff.

I. Substitute the following for the opening sentence of existing sub-para(j) of Para 2019:-

“(j) For general posts, i.e., those outside the normal channel of promotion for which candidates are called from different categories whether in the same department or from different departments and



where zone of consideration is not confined to three times the number of staff to be empanelled, the selection procedure should be as under:-“

II. Substitute the following for the existing clause (iii) below sub-para(j) of Para 219:-

“The final panel should be drawn up in the order of merit based on aggregate marks of ‘professional ability’ and ‘Record of service’. However, a candidate must secure a minimum of 60% marks in ‘Professional ability’ and 60% marks in the aggregate, for being placed on the panel. There will be no classification of candidates as ‘Outstanding’.”

(Authority: Railway Board’s letter No.E(NG)I-2008/PM7/4 SLP dt. 19.06.2009)”

After considering the rival contentions, the Central Administrative Tribunal considered different circulars issued by the Railways for selection on the post of Loco Inspector (Electric). Notification dated 22.10.2010 refers to RBE No.81 / 2010 dated 7.6.2010 and same is modification of earlier circular dated 3.9.2009 (RBE No.161 /2009) and Tribunal found that whole confusion had arisen as railways did not refer its earlier circular dated 19.6.2009 (RBE No.113/2009) which provides guideline for promotion on selection post which was issued pursuant to judgment of Hon’ble Supreme Court in the case of M. Ramjaiyaram Vs. General Manager, South Central Railway and others since reported in 1996 (1) SC SLJ 536 in which the Apex Court has held select list to be prepared on merit and no separate weightage can be granted for seniority. The Tribunal has also taken note of correction slip No.209, according to which, final panel has to be drawn on basis of merit based on



aggregate marks of professional ability and record of service, however, a candidate must secure a minimum of 60 marks in professional ability and 60 marks in the aggregate for being placed on panel.

The Tribunal has found that final list has been prepared on the basis of marks secured in written test and service records which are in conformity with the guidelines issued by the railways as well as direction issued by the Apex Court and rejected the plea of petitioner that selection is to be made on seniority-cum-suitability.

This Court does not find any error or infirmity in the order passed by the Central Administrative Tribunal and accordingly, writ petition is dismissed.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.09.2020
Transmission Date	NA

