

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W. P. (S) No. 1499 of 2018

Trilochan Singh Mukesh

---Petitioner

Versus

1. Union of India through General Manager, Garden Reach,
South Eastern Railway, Kolkata
 2. Divisional Railway Manager, South Eastern Railway, DRM Building
Hatia, District-Ranchi
 3. Sr. Divisional Personnel Officer, South Eastern Railway,
DRM Building, Hatia, District-Ranchi
 4. Divisional Electrical Engineer (OP) South Eastern Railway,
DRM Building, Post Hatia, District-Ranchi
 5. Arun Kumar Das, Chief Cure Controller, (Loco Pilot Passenger),
Loco-Muri, Platform No. 2, District-Ranchi
- Respondents

CORAM: **Hon'ble Mr. Justice Aparesh Kumar Singh**
Hon'ble Mr. Justice Deepak Roshan

Through: Video Conferencing

For the Petitioner : Mr. Ravi Kumar Singh, Advocate
For the Respondents : Mr. Mahesh Tewari, Advocate

05/04.01.2022 Heard learned counsel for the parties.

2. Petitioner, who was appointed on 8th August, 2005 was serving the Railway as Assistant Loco Pilot. According to him, he was absent from duty for the period January 2015 to April, 2015 and September, 2015 total 109 days and pay of that period was deducted. He was denied mileage allowance of 160 Kms. per day, which comes to 17,440 Kms. loss. According to the petitioner, no notice or show-cause was issued upon him. Though he was always ready for performing his duties during the said period, but the Respondent did not assign him any duty. According to the petitioner, he has been penalized without any basis, therefore, he approached the learned Central Administrative Tribunal in O.A. No. 051/00235/2015 for a direction upon the respondents to regularize the period of his absence of 109 days with 160 Kms. mileage benefit and to pay entire monetary benefits with interest and penal interest and other consequential benefits. Petitioner had impleaded the Chief Cure Controller, (Loco Pilot Passenger), Loco-Muri, Platform No. 2 by name as respondent no. 5 in O.A as also in the present writ petition. Respondent no. 5 had appeared and filed his separate written statement in the OA; which is Annexure-7 to the present writ application.

3. Petitioner has made categorical assertion in the grounds at para-3 against Chief Loco Inspector (CLI), though he was not impleaded as a party. In Paras- 14 and 15, name of respondent no. 5, though has been deleted but averments have been directed against the respondent that despite representations

made, his grievances were not redressed. Petitioner has also stated that he had no accident record during the last 5 years. The marking under the Drivers Grading Booklet framed by Railway Board for 100 marks which includes 20 marks for accident record during last 5 years, is also not proper. Had he been given the same, he would have secured 70 marks instead of 50 and would have secured Grade-B comfortably. Petitioner has also alleged that no foot plating/counselling was conducted by Chief Loco Instructor, Muri after 14th July, 2014 and before 1st January, 2015 and despite repeated demands, he was not supplied the decision of CLI-Muri, who had made a concocted decision with malafide intention.

4. As noted above, the CLI-Muri has not been impleaded as a party respondent to answer specific allegations against him. Respondent no. 5, has in his written statement filed before learned CAT, made categorical statement that the applicant had been called for competency test, but he did not appear before the authority concerned (Annexure-B series). He refused to attend reassessment competency test to be held on 28th November, 2015 (Annexure-P). It has further been stated at para-9.4 that the Muster Roll from January, 2015 to September, 2015 would show that the applicant was absent from duty in different months for a total of 70 days. The applicant also did not join training despite letter issued by the Superior Authority. The statements made in the written statement of respondent no. 5 apparently remained unrebutted before learned CAT.

5. Respondent nos. 1 to 4 had filed their written statement and have also filed their counter affidavit in the present writ application. According to them, categorization of drivers are done in two categories AB and C as per Drivings Grading Booklet formulated by Railway-Board. According to respondent nos. 1 to 4, there is a provision to categorize the Loco Pilot on the basis of their performance of duties as assigned. If he is assigned in C-Category, then there is a provision to send him immediately to training school to improve his safety norms and to ensure proper running operation of train. Since the applicant was de-categorized by the Chief Loco Inspector on 1st January, 2015 from safety Category-B to safety Category-C, he was instructed to proceed for training to STC Kharagpur, but he disobeyed the order and willingly remained absent from his assigned duty. Loco Pilot job is a highly sensitive and safety category job. It is necessary for de-categorized driver of lower category to undergo refresher course to improve himself, but the applicant never obeyed the instruction and remained absent from duty.

Learned counsel for the petitioner submits that without proper and full plating, categorization of Loco Pilot cannot be done. Despite representations made to the superior officials against CIL, his grievances remain un-redressed. He further submits that if the total period of absence is counted, it would be much more than 109 days. The petitioner has always been willing and ready to report to the duty. As such, without any notice or show-cause, not only the mileage allowance of the petitioner has been denied on the plea of absence from duty, but he has been de-categorized to Category-C without following the proper procedure by the Chief Loco Inspector. Learned Tribunal failed to take into account the specific case of the applicant in proper perspective and rejected the O.A on erroneous finding.

6. Learned counsel for the respondents has referred to the contents of the counter affidavit and also the findings recorded by learned Tribunal. According to him, the attributes of Loco Pilots are periodically examined and evaluated with regards to driving technique, knowledge of safety, operating Rules, technical knowledge, trouble shooting, personal habits and accident record during last five years, for which 100 marks have been provided. It is stated that for conducting such evaluation, notice or show-cause notice is not required to be issued to the working Loco Pilot. After observing the performance of the applicant on the above safety aspects by the assigned CLI, the applicant was categorized from safety Category-B to safety Category-C and was instructed to proceed for training to improve his above safety aspects by sending refresher course. However, he disobeyed the order of the senior supervisor. In response to the representation, a written and viva-voce examination committee was formed but the applicant did not turn up. Since, he has been marked absent from duty, he was not getting salary on the basis of 'no work no pay'. Since the applicant did not report to KGP Training Institute, nor at the office of respondents, so he was treated as absent from duty. He did not turn up for competency test on 2nd November, 2015.

According to the petitioner, he has undergone training upon receipt of the letter of CLI dated 1st January, 2016 on 4th July, 2016 immediately on 12th July, 2016. As such, the interference drawn by learned Tribunal that the applicant deliberately refused to attend duty and refresher course training, is not correct.

7. We have considered the submissions of learned counsel for the parties and taken note of the materials placed from record as noted above. Categorization of driver, as per the scheme formulated by the Railway Board in

the form of a Drivers Grading Booklet prescribed five different categories under which the record of Loco Pilot is to be evaluated for a total of 100 marks. Petitioner alleges improper evaluation by the Chief Loco Instructor and has contended that no foot plating counselling was conducted with the petitioner after 14th July, 2014 before 1st January, 2015 and that no accident for the last 5 years was added in the result of the petitioner. However, despite his demand, he was not supplied the decision of CLI which shows that it was a concocted decision. However, though specific averments have been made against CLI-Muri, but he has not been impleaded as a party respondent. Though the respondent no. 5 was impleaded by name and certain averments were made in paras 14 and 15 of the writ petition, but the name of respondent no. 5 has been deleted in those paragraphs by the petitioner. The allegation of the petitioner regarding improper evaluation and assessment while de-categorizing him in safety category-C as against individual officer of the Railway, remained unsubstantiated.

8. On the other hand, the respondent no. 5, who appeared before learned CAT had made categorical averments in the written statement that the applicant was absent for 70 days for the period January, 2015 to September, 2015 and he had not appeared for competency test despite letter issued to him. The competency reassessment test were also held on 28th November, 2015, which he refused to attend vide Annexure-E Series. These averments remained unrebutted. Evaluation on such a technical grading of Loco Pilot is to be done as per the procedure prescribed by the Railway Board which this Court, in exercise of the powers of judicial review, should not get into it as it is a technical matter in the domain of the expert. Needless to say that the safety requirement to be fulfilled by any Loco Pilot is of highest priority to ensure passenger safety and that no accident takes place. Despite being de-categorized in safety category-C, the applicant refused to undergo necessary refresher training to improve his skill on the defined parameters. Learned Tribunal considered all aspects of the matter and held as under :

“8. On going through the entire pleadings, we are amazed by the tolerance of the department in retaining such undisciplined employee in service. Instead of attending the refresher training, the applicant has made a representation on 12.2.2015, stating that though he has been called by the CCC/Muri for refresher training, the same is not due to him. By this letter (Annexure R/3], the applicant wants to command the department that when he shall undergo refresher training, forgetting the ground reality that he was de-categorized on 1.1.2015 from safety category B to safety category C and was entrusted to proceed for training to Kharagpur, but applicant disobeyed the order of the Superior officer and wilfully remained absent from his assigned duty. The conduct of the applicant

seems to be highly improper and rather objectionable and not acceptable in a disciplined service like Railways. Further, as per policy of categorization of drivers, a letter was issued by the respondent no. 5 to the applicant on 11.2.2015, directing him to proceed to Kharagpur for training, but the applicant neither reported at the training institute nor at the office of the respondents for which he has been treated as absent. Once a responsible higher officer marks an employee absent, no pleading or argument cannot be entertained showing his presence in the office. One gets salary for performing one's duty and not for merely attending the office. Since the applicant did not attend the refresher course and did not attend the duty, the question of giving him monetary benefit during the period of absence and granting benefit of k.m mileage does not arise. Hence ordered."

9. On consideration of the conspectus of facts and the materials on record noted above, this Court does not find any perversity in the findings of the learned Tribunal, so as to interfere in exercise of the writ jurisdiction of this Court. The writ petition being devoid of merit, is accordingly dismissed.

(Aparesh Kumar Singh, J)

(Deepak Roshan,J)