

(2021) 12 CAT CK 0010

In the Central Administrative Tribunal

Case No : Original Application No. 3195 Of 2016

Hari Krishan & Others

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 09-12-2021

Acts Referred:

Citation : (2021) 12 CAT CK 0010

Hon'ble Judges : Manjula Das, J; Mohd. Jamshed, Member (A)

Bench : Division Bench

Advocate : Yogesh Sharma, S.M. Arif, S.N. Sharma

Final Decision : Disposed Of

Judgement

Mohd. Jamshed, Member (A)

1. This O.A. has been filed by the applicants, who are working as Loco Pilots in Delhi Division of Northern Railway. The applicants were appointed as Assistant Loco Pilots initially and subsequently promoted as Loco Pilot Goods and Loco Pilot Passenger. The initial date of appointment of the applicants varies from 1987 to 2001. Applicant No.1 was appointed on 12.05.1989. It is stated that the Railway Board vide Circular dated 09.01.1998 abolished the post of Power/Crew Controllers and added them to the cadre of Drivers/Loco Pilots. Thus the duties of Power/Crew Controllers are being performed by the Drivers/Loco Pilots drafted to perform those duties. The applicants, working as Loco Pilot Goods, were, at different points of time, drafted to work as Crew Controllers. It is submitted that even for working as Crew/Power/TL Controller, the Drivers/Loco Pilots were required to have completed 75,000 kms of running/footplate experience and that all the applicants, who were drafted as Crew/Power/TL Controllers had completed 75,000 kms of train running experience. The applicants have continued to work as Crew/Power/TL Controllers, as and when required thereafter.

2. The respondents vide order dated 13.08.2013 invited applications for promotion through selection to the post of Chief Loco Inspector (CLI) from

amongst the eligible Loco Pilot Mail, Loco Pilot Passenger and Loco Pilot Goods. Thereafter, the respondents vide order dated 10.11.2015 issued the list of eligible Loco Pilots for appearing in the selection, which included the names of the applicants. Although the date of written examination was fixed as 05.12.2015, the selection was cancelled vide order dated 10.02.2016. Another notification was issued on 19.02.2016 for promotion by way of selection to the post of CLI in Pay Band II + Grade Pay Rs.4600 for filling up 105 posts. Loco Pilot Mail, Loco Pilot Passenger and Loco Pilot Goods were eligible to be considered. The applicants, who had also applied against the said notification, were however not included in the list of candidates and declared ineligible on the ground that they do not possess 75,000 kms of running experience.

3. It is contended by the applicants that they have been working for a number of years as Power/Crew/TL Controllers and when they were originally drafted to work as Crew/Power/TL Controller, they were required to have 75,000 kms of running experience and, therefore, having worked as Power/Crew/TL Controllers, they should also be eligible for applying to the post of CLI; and that the action taken by the respondents is illegal, arbitrary and against the prescribed guidelines. The present O.A. has been filed seeking the following relief(s):

"(i) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 19.5.16 (A/1) only to the extent by which the applicants have been declared not eligible for their promotion to the post of Loco Inspector PB- II-PG4200/- declaring to the effect that the same are illegal, arbitrary and discriminatory in the eyes of law and consequently, pass an order directing the respondents to allow the applicants to participate in the selection for the posts of Loco Inspector and consider for promotion if the applicants selected in selection with all the consequential benefits.

(ii) That in case for any reason, the Hon'ble Tribunal come to the conclusion that the applicants have not completed the 75000 Kms experience, the Hon'ble Tribunal may graciously be pleased an order directing the respondents to allow the applicants to participate in the selection as per Railway Board circular dt. 26.3.2009 and also direct the respondents to allow the applicants to complete the experience by posting them as Loco Pilot immediately.

(iii) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicant."

4. In the O.A., the applicants also sought interim relief by way of direction to the respondents to allow the applicants to appear in the written test provisionally. This Tribunal vide order dated 21.09.2016 directed the respondents to allow the applicants to participate in the selection process. However, their result shall be kept in a sealed cover and will not be declared without the permission of this Court. In terms of the interim order, the applicants were permitted to appear in the said selection.

5. Respondents have filed counter affidavits and opposed the contention made by

the applicants in the O.A. It is also submitted that vide Railway Board's letter dated 09.01.1998, the cadre of Power/Crew/TL Controller was abolished and the same has been added to the cadre of Drivers, the relevant paras of which reads as under:

"(a) The cadre of Power/Crew Controllers with distinct scales of pay will be abolished. Thus Loco Running Supervisors will consist of only Loco Inspectors. The number of posts, as existing on the date of issue of these orders, in the cadre of Power Controllers and Crew Controllers, including posts of Chief Power/Crew Controllers, will be added to the cadre of Drivers.

xxx xxx xxx xxx

(d) Drivers drafted to perform such duties will be eligible for payment of allowances in lieu of kilometreage of 120 kms per day at the rates applicable to them, even if posted at their Headquarters. Such staff would not be eligible to claim TA/DA and special pay."

As the cadre of Power/Crew/TL Controller has been abolished and the Drivers are assigned to lookafter the duties of Power/Crew/TL Controllers, any eligibility for drafting the Drivers to work as Power/Crew/TL Controllers cannot be considered for selection to the post of CLI.

6. On the direction of the Tribunal vide order dated 26.10.2021, the respondents were directed to clarify the position with regard to the driving experience of applicant No.1. The documents produced on 16.11.2021 by the respondents have been taken on record. An MA has also been filed by the learned counsel for applicants on 26.10.2021 with certain documents. Relied upon judgments by the learned counsel for the applicants have been taken note of.

7. We heard Mr. Yogesh Sharma, learned counsel for applicants, Mr. S.M. Arif, learned counsel for official respondents No. 1 to 3 and Mr. S.N. Sharma, learned counsel for private respondents No. 4 to 16 and perused the pleadings on record.

8. The applicant No.1 was initially appointed in the Railways on 12.05.1989 and posted in Delhi Division of Northern Railway. After his initial appointment, he was promoted as Senior Assistant Driver, Shunter and thereafter as Loco Pilot Goods on 22.08.1999. Other applicants were also appointed as Assistant Loco Pilots between 1987 to 2001 and were promoted as Loco Pilot Goods on different dates. It is also on record that the applicants were drafted to work as Power/Crew/TL Controllers with effect from 2002 onwards for different durations. The applicant No.1 was drafted to work as Power/Crew/TL Controller from 31.08.2002 to October, 2008 and 16.01.2012 onwards, as per the affidavit filed by the respondents on 29.07.2019. Other applicants have also worked as Power/Crew/TL Controllers for different durations.

9. The respondents sought applications from eligible Drivers for selection to the post of CLI, vide circular dated 13.08.2013. The selection could not take place and was subsequently cancelled and re-notified on 19.02.2016 with increased

number of posts. The eligibility for CLI was 75,000 kms of actual driving experience as on 19.02.2016. Respondents have submitted details indicating that none of the applicants were having 75,000 kms of actual driving experience as on 19.02.2016. It is submitted that applicant No.1 has have only 1971 kms of experience and other applicants have varied experience, which are of less than 75,000 kms. Accordingly, the applicants were not found eligible for selection to the post of CLI.

10. The fact remains that in the year 1998, the separate cadre of Power/Crew/TL Controller was abolished and added to the strength of Drivers/Loco Drivers. Suitable Loco Pilots were deployed to work as Power Controllers/Crew Controllers/TLCs. These Drivers were also eligible for payment of allowances in lieu of kilometreage of 120 kms per day at the rates applicable. It is thus obvious that there was no mode of selection for a different cadre of Crew/Power Controller since 1998 and only the Drivers/Loco Pilots were deputed to work, as and when required. It is also submitted by the respondents that post 09.01.1998, these posts of Crew/Power Controllers are being managed by those Drivers, who have 5,000 kms of actual driving experience. This has been modified vide RBE No.51/2009 dated 26.03.2009, which provides that only Drivers having minimum 75,000 kms of actual driving experience shall be eligible to be drafted as Power/Crew Controllers.

11. The process for selection of CLI was initiated in 2013 and in terms of calculations of actual kilometers earned by the applicants, it was observed that applicant No.1 had earned only 1971 kms and other applicants also had less than 75,000 kms of actual driving experience.

12. Various documents have been presented before the Tribunal by the applicants as well as by the respondents. A few things are evident including the fact that the old record pertaining to the period prior to 2006 is not available. The applicants, on the other hand, have submitted that their very induction as Power/Crew/TL Controller was based on requirement of 75,000 kms of experience and the kilometres earned by them, as indicated subsequently, are incorrect. In support of their claim, they have also annexed certain documents through MA No. 3209/2021 mentioning that the applicant had completed 75,000 kms, when they were drafted to work as Crew/Power/TL Controller. A letter has also been placed dated 01.09.2017 issued by Senior Crew Controller, Gaziabad indicating that the record of actual driving experience in favour of applicant No.1 is not available, as the record prior to 2006 has already been destroyed.

13. The entire claim of the applicants is based on the facts that they had been drafted to work as Crew/Power Controller for which the eligibility was 75,000 kms of running experience and, therefore, once they have been drafted to work as Crew/Power Controllers, they were automatically eligible to be considered for selection of CLI. The respondents have found them ineligible indicating that none of them completed 75,000 kms. To this the applicants have argued that their record prior to 2006 is not available and, therefore, kilometres prior to 2006

have not been taken into account. Railway Board vide RBE No.11/2015 dated 12.02.2015 have clarified the position as under:

"Sub: Filling up posts of Loco Inspectors and Power Controllers/Crew Controllers.

Kindly refer to Board's letters of even no. dated 26.03.2009 on the subject noted above. In this connection, some of the Railways have sought clarifications whether minimum guaranteed kilometres, incentives kilometres/ghat section kilometres and shunting kilometres will be included in calculating the eligibility criteria of 75000 Kms foot plate experience.

2. It is clarified that all the driving duties performed by a loco pilot in the locomotive cab are footplate duties. The experience gained by a loco pilot by performing actual footplate duties is his driving experience. The minimum guaranteed kilometres, incentives kilometres/ghat sections kilometres and shunting kilometres, where actual footplate duties are not performed may not be taken into account while considering the eligibility criteria of running staff for the selection of LIs/PRCs/CCs.

3. Please acknowledge receipt.

Sd/-

(K. Shankar)

Director(E(P&A)

Railway Board"

14. The fundamental point herein is that the eligibility of 75,000 kms for running staff with regard to performing actual footplate duties is not akin to the minimum guaranteed kilometres provided as incentive etc., where actually footplate duties were not performed and may not be taken into account while considering the eligibility of running staff for selection of LIs etc. On the basis of this order of Railway Board, the eligibility has been worked out by the respondents and it is found that the applicants have not earned 75,000 kms of actual running experience. Thus the claim of the applicants is confined to only one point, i.e. non availability of record prior to 2006. This aspect has not yet been clarified by the respondents in their counter affidavit or the additional documents filed by them including the letter dated 12.11.2021.

15. The facts of the cases relied upon by the learned counsel for the applicants are different from the claim of the applicants herein. This Tribunal has already granted interim relief permitting the applicants to participate in the selection process. However, their results have not yet been declared. It would be worthwhile mentioning here that the role of the Tribunal is limited to the extent that such selections of safety category posts in the Railways has to be decided by the respondents very very carefully so as to ensure that the safety of Rail operations is in no case adversely impacted due to such decisions.

16. The applicants have participated in the selection in terms of the interim order passed by this Tribunal. Their results are kept in sealed cover. The results of the applicants should now be opened by the respondents and in case any applicant/applicants have been found to be successful in the selection process, their eligibility should be rescrutinised in view of the documents provided by the respondents, including the letter from Senior DEE/RSO dated 12.11.2021 addressed to Divisional Personnel Officer, New Delhi with annexures and also the documents provided by the learned counsel for the applicants as part of the MA No.3209/2021. In case, it is found that the applicants, who are successful in the selection process, possess the required 75,000 kms of actual running experience, this eligibility shall be considered towards their selection. Those who are not qualified in the selection, will not be examined further. In those cases where it is not possible to ascertain the actual running kilometres earned by any of the applicants, who is successful during the selection and whose record may not be available, such applicant/applicants shall be considered eligible in case they have completed 75,000 kms of actual running experience till the date of passing of this order. The applicants in their OA in relief (ii) submitted that the applicants should be allowed to participate in the selection process and the respondents may be directed to allow the applicants to complete the required 75,000 kms of experience by posting them as Loco Pilots immediately. The applicants have already participated in the selection and further directives shall be applicable for them.

17. In view of the above mentioned, the O.A. is disposed of with the following directions:

(i) The results of the applicants kept in sealed cover shall be opened.

(ii) Cases of those who are found to be successful in the selection and are otherwise qualified shall be re-examined by the respondents, in the light of the documents made available regarding their actual running experience. In case of such applicants whose running record prior to 2006 is not available for some reason, their actual running experience post 2016 till the date of this order shall be taken into account and those found having earned 75,000 kms of running experience as Loco Pilots shall be considered for selection as CLI.

(iii) Those applicants who are not successful in the selection process, permitted in terms of the interim order given by this Tribunal, shall not be considered for their eligibility.

18. The above exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

There shall be no order as to costs.