

(2023) 03 CAT CK 0053

In the Central Administrative Tribunal

Case No : Original Application No. 260, 00831 Of 2014

Prasanta Nanda & Ors

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 25-03-2023

Acts Referred:

Indian Railways Establishment Manual, 1989 — Rule 303

Citation : (2023) 03 CAT CK 0053

Hon'ble Judges : Swarup Kumar Mishra, Member (J); Pramod Kumar Das, Member (A)

Bench : Division Bench

Advocate : N.R. Routray, P.S. Acharya

Final Decision : Dismissed

Judgement

Swarup Kumar Mishra, Member (J)

1. Brief facts of the case as enumerated by Ld. Counsel for the applicants are that pursuant to the notification No. CEN-01/2010 for recruitment of Assistant Loco Pilots (ALPs in short), applicants as well as private respondent Nos. 5 to 10 were selected and they were placed in the panel of ALPs as prepared by the Khurda Road Division where the applicants were shown above Respondent Nos. 5 to 10. Applicants were sent for prescribed induction training on Electric Traction in the first and second batch on 19.09.2011/10.10.2011 and, on completion of said training in one chance, they were posted against the working post of temporary Assistant Loco Pilot (Elect.) w.e.f. 25.01.2012 and 23.02.2012 whereas Respondent Nos. 5 to 10 were sent for such training on 16.01.2012/17.01.2012 in sixth and seventh back and were posted on 16.04.2012/21.07.2012. Vide Annexure-A/1, Respondent No.3 prepared a provisional seniority list of ALPs as on 25.07.2012 with noting that seniority to be fixed after receipt of marks of training institution. Applicants and others submitted application on 16.07.2014 and thereafter on 05.08.2014 to Respondent No.3 with prayer to prepare the final seniority list batchwise as per

Rule 303 of IREM 1989. However, Respondent No.3 issued another provisional seniority list of ALP (A/4) as on 01.08.2014 but not in accordance with Rule 303 of IREM 1989. Pursuant to the order passed by this Tribunal in OA No. 625/2014, respondent No. 3 considered and rejected the representation dated 16.07.2014 vide speaking order dated 19.09.2014. Being aggrieved, the applicants have filed this OA with the following prayers:

"a. To direct the respondents to publish/issue the final seniority list of ALPs as per the merit list prepared by RRB/BBS in the year 2011 as well as as per Rule 303 of Indian Railway Establishment Manual 1989;

b. And to quash the speaking order dtd. 19.09.2014 under Ann.-A/6;

And pass any other order....."

2. Respondents have filed counter opposing the prayer of the applicant. Applicant has filed rejoinder thereof.

3. The sum and substance of the argument of the respondents is that initially a panel of 271 ALPS was received by the Sr. Divisional Personal Officer from the RRB, BBSR vide letter dated 18.08.2011 and they were asked to report before the Respondent No-3 on or before 21.09.2011. Thereafter, another lists of 20 and 16 candidates of ALPS were received on 19.09.2011 and 19.10.2011. As on 16.09.2011, 156 empanelled candidates had reported in the office of Respondent No.3, out of which, 105 candidates had been directed to Chief Medical Superintendent/E.Co.Railway/Khurda Road for pre-appointment Medical fitness and 31 candidates had reported after being fit in A-I category. The Sr. Divl. Electrical Engineer (OP) E.Co.Railway/Khurda Road (Respondent No.4) on 16.09.2011 had requested the Respondent No.3 to send the medically fit candidates to ELTC/Tata for their induction training to be commenced from 19.09.2011. In this connection the competent authority had decided that usually all the candidates are required to be sent for training in order of RRB merit. However, in case of non-availability of medically fit candidates, the available fit candidates can be sent for their training irrespective of RRB merit order requirements and their seniority will be reckoned as per Para-303 of IREM Vol-I. The said para 303 stipulates as under:

"Candidates who are sent for initial training to Training School will rank in Seniority in the relevant Grade in the order of merit obtained in the examination held at the end of the training period before being posted against working post. Those who join the subsequent courses and those who pass the examination in subsequent chance will rank junior to those who had passed the examination. In case, however, persons belonging to the same RRB panel are sent for initial training in batches due to administrative reasons and because of reasons attributable to the candidates, the inter-se seniority will be regulated batch wise provided persons higher up in the panel of RRB not sent for training in the appropriate batch (as per seniority) due to administrative reasons shall be clubbed along with the candidates who took the training in the appropriate batch

for the purpose of regulating the inter-se seniority provided such persons pass the examination at the end of the training in the first attempt.”

In view of the above provision of rules, the first batch consisting of 40 Trainee Asst. Loco Pilots were sent for their initial training irrespective of RRB merit order vide Letter No. P/ Elect(OP)/ Mech/ Rg/ Induction Training/ ALP/94 dated 17.09.2011 (R/4). It was already categorically mentioned in Note-4 of the said letter that seniority of the above mentioned ALPs sent for training will be fixed in terms of para-303 of IREM-Vol. Since the 1st batch of 40 ALPS who were now being sent for training due to administrative requirement are not as per RRB merit order, they will not have claim for seniority over the others ALPS, who will be sent for training subsequently. The seniority of all the ALPS who will be sent for training in different batches as per administrative convenience will be fixed based on the mark obtained by them at the end of the training programme and subject to passing training (written test) in the first attempt.

After the first batch consisting of 40 Trainee Asst. Loco Pilots were sent for their initial training, irrespective of RRB merit order, vide Annexure- R/4, 45, 03, 40, 05 and 37 numbers of Trainee Asst. Loco Pilots were sent for training vide letter dated 07.10.2011, dated 10.10.2011, dated 12.10.2011, dtd 21.10.2011 & dtd 31.10.2011 respectively (Annexure- R/5 Series). After receiving all the marks from the Training School, a consolidated statement was prepared and, accordingly, provisional seniority list was prepared vide Annex-A/4 dated 04.08.2014 and all the ALPS names have been arranged in order of marks secured by the trainee ALPS who were sent for training from time to time. Since no representation against such provisional Seniority list was received from any corner, the same was made final. The applicants approached this Hon'ble Tribunal in OA 625/2014 and consequent to the order passed by this Tribunal to dispose of their representation, the respondents considered the representation and passed speaking order intimating the same to the applicants. Relying on the decision of the Hon'ble High Court of Bombay, Nagpur Bench in WP No. 5888 of 2004 Sudhakar Gulabrao Raut & Others Vs Union of India & Others, respondents have prayed for dismissal of this OA.

4. After filing rejoinder and additional affidavit by the applicant and affidavit by the respondents, the matter was listed for hearing. In course of hearing, Ld. Counsel for both sides have reiterated their stand taken in the respective pleadings. After giving due consideration to the arguments perused the records.

5. According to the Ld. Counsel for the applicant, preparation of seniority list based on the para 303 of IREM was subject matter of challenge before the CAT, Bangalore Bench, Bangalore in OA Nos. 7, 169 and 383 of 2010. Due to difference of opinion of the DB, the matter was referred to 3rd Member and the 3rd Member opined that “since the rule in para 303 of IREM and other connected matrexxes found to be reasonable, legal and with the list amount of impediments embodied in it. There may not be any negative further reasons for going ahead with it as stated in Para 22 and 23 of my Hon'ble Sister's judgment, in my

humble view along with Para 6 and 7 of my Hon'ble Brother's judgment seems to be more proforma for universality even when conflicting claims are settled and therefore there shall be given directions to the railways to re-cast the seniority in accordance with the each year of RRB Panel as the base and adjust the matters in accordance with the Para 303 IREM after issuing the show cause notices and dealing with the representations of the employees and not in accordance with the RRB merit list alone, as is claimed. Therefore, all the OA's are partly allowed finding more merit in Para 06 and 07 of my Brothers judgment". Therefore, it has been submitted by the Ld. Counsel for the applicant that the preparation of seniority list based on the result of the training is bad in law. By drawing our attention to the letter of the Railway Board dated 12.09.2022 (A/8), it has been submitted that in the meantime the respondents amended the para 303 of IREM and by virtue of such amendment the applicants are entitled to the relief claimed in the OA. Accordingly, Ld Counsel for the applicant has prayed that in view of the amended provision of the IREM and the decision of the CAT, Bangalore Bench, this OA may be allowed.

6. Per contra, Ld Counsel for the respondents has submitted that the seniority list was prepared in accordance with the provision of the rules. The CAT, Bangalore Bench did not quash the said rule, as such, preparation of the seniority list based in accordance with rules cannot be faulted with. Further, it has been submitted that the amended provision of the rules having no retrospective effect is not applicable to the present case. In this regard, Ld. Counsel for the respondents has placed reliance on the decision of the Hon'ble Bombay High Court in W.P(C) No. 5888/2004 disposed of on 01.08.2019 (Sudhakar Gulabrao Raut & Others Vs Union of India & Others) and has prayed that there being no merit in this OA, the same is liable to be dismissed.

7. It may be recorded that the job of the ALP is highly critical nature, directing affecting the safety of passengers and smooth running of trains. If the candidates are given seniority simply on the basis of RRB Panel then the required importance of attending to the training and excelling at the training will be defeated. It is for this reason, the Railway, as a matter of policy, have considered and made the training and passing of the PTE as a pre-requisite for giving appointment to ALPs. Keeping in mind the aforesaid provision, prior to completion of training they are designated as Stipend ALPs. In this OA, the applicants have not challenged the provision of the rule made by the Railways as a matter of policy. The applicants after being selected subject to production of medical fitness certificate were inducted to training. Those, who had produced the medical fitness certificate irrespective of their position in the RRB list were inducted to the training course in administrative/public interest of filling up of the vacancies, specifically stating in the order given to them for training that "the seniority of the ALPs sent for training will be fixed in terms of para 303 of IREM-Vol.I. Since the previous batches of ALPs who are not being sent for training due to administrative requirement are not as per RRB merit order, they will not have any claim for seniority over the other ALPs who will be sent for training

subsequently. The seniority of all the ALPs who will be sent in different batches as per administrative convenience will be fixed based on the mark obtained at the end of the training programme and subject to passing training (written test) in the first attempt". The applicants accepted such condition without any objection and after being coming out successful in training started working under the Railways. After a long lapse of time when the draft seniority was published in accordance with the rules prevailing at the relevant time, the applicants came out with a plea that the preparation of the panel based on the unamended para 303 of IREM is not in order. Thus, interfering in the matter would not only tantamount to unsettle a settled matter after a long lapse of time but also encroaching upon the policy decision of the Railway, which is impermissible under law. We have examined the decision of the Bangalore Bench. The Bangalore Bench decision has no application to the present case because the Bangalore Bench did not considered the decision of the Hon'ble Bombay High Court and the point of issue/law involved in the present case. Insofar as the plea of the applicants that since the provision of para 303 IREM has been amended by the Railways and the seniority list is to be recast as per the amended provision, is found to be unjustified because the amendment came into effect from 12.09.2022. There is no mention that the said amendment will have retrospective effect and, thus, by applying the decision of the Hon'ble Bombay High Court referred to above, this Tribunal is under obligation to hold that the said amended provision has no application to the case of the applicants. It was contended on behalf of the applicant that since the trainees were deputed to undergo training at different places in different groups therefore there may be dissimilarity or irregularity in assessing their merits and awarding marks to them, but this Tribunal on the basis of materials on record did not find any merit in such contention of the applicant.

8. In view of the above, we see no merit in this OA, which is dismissed accordingly.