

(2024) 12 PAT CK 1251

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No.9674 of 2024

Union of India

APPELLANT

Vs

Dinesh Kumar

RESPONDENT

Date of Decision : 18-12-2024

Acts Referred:

Citation : (2024) 12 PAT CK 1251

Hon'ble Judges : P. B. Bajanthri, J;Ramesh Chand Malviya, J

Bench : Division Bench

Advocate : Vishal Ranjan, Mayank Mohan

Final Decision : Dismissed

Judgement

P. B. Bajanthri, J

1. In the instant petition, petitioners-Railway Department have assailed the order of the learned Central Administrative Tribunal, Patna Bench, Patna dated 06.07.2023 passed in O.A./050/00935/2019.

2. Respondent-Dinesh Kumar and others have assailed the action of the petitioners insofar as non-consideration of their names for promotion or appointment to the post of Chief Loco Inspectors.

3. Learned counsel for the petitioners submitted that for the purpose of filling up the post of Chief Loco Inspectors source cadres and eligibility are from the feeder cadre namely Loco Pilot (Mail), Loco Pilot (Passenger) and Loco Pilot (Goods). Respondent-Dinesh Kumar and Ors are in the category of Loco Pilot (Passenger) and some of them are in the cadre of Loco Pilot (Goods). The post of Chief Loco Inspectors and Chief Crew Controllers/Chief Power Controller/Chief Traction Controllers is governed by RBE No. 108 of 2019 dated 03.07.2019 issued by the Government of India, Ministry of Railways/Railway Board. Para 3 of the Notification/Memorandum is in respect of eligibility to fill up Chief Loco Inspectors (CCC, CPRC & CTLC). Para 3 reads as under:-

"3. Eligibility: There will be a common selection from Loco Running staff for filling up the posts of CLIs and CLIs (CCC, CPRC & CTLC). LP (Mail), LP (Passenger) and LP (Goods) who have completed 5 lakh kilometers of actual footplate duties (actual footplate duties have been defined in Board's letter No. E (P & A) II/2007/RS/14 dated 12.02.2015) as Loco Pilots or have completed 10 years of actual service as Loco Pilots, whichever is earlier, would be eligible for selection through suitability (written examination) cum seniority. Drafted Loco Pilots working as CC, PRC and TLC on date can also apply for the selection provided they fulfil the eligibility criteria."

4. This has not been modified to the extent of eligibility criteria from the source cadre namely LP (Mail), LP (Passenger), LP (Goods) so as to identify the pay-scales of the respective source cadres to the extent that pay-scales are different. In this regard, clarification has been issued on 14th November, 2019 it will not benefit the petitioner for the reasons that unless and until Notification/Memorandum bearing No. RBE No. 108 of 2019 dated 03.07.2019 is modified to the extent of para 3 namely eligibility criteria. Further, he relied on Notification dated 16.08.2019 bearing No. E(P&A)/II/2017/RS-06 RBE No. 133/2019 and it relates to anomaly in fixation of pay of Chief Loco Inspectors appointed prior to 01.01.2016 with reference to their juniors appointed after 01.01.2016 and drawing more pay than the seniors. He is also relying on decision of the Hon'ble Supreme Court decision in the case of Union of India and Ors. vs. O.P. Saxena decided on 05.08.1997 in Civil Appeal No. 4662/97 and other analogous cases. He has pointed out certain grade pay and other material which has been taken note of by the Hon'ble Supreme Court.

6. Firstly, RBE No. 196/2019 dated 14th November, 2019 is not applicable to the case in hand on the score that as long as Notification/Memorandum RBE No. 108 of 2019 dated 03.07.2019 is not modified or amended in para 3 eligibility criteria (cited para). Secondly, Notification dated 16.08.2019 is in respect of pay anomaly and stepping up of pay. Notification dated 16.08.2019 is nothing to do for the selection and appointment to the post of Chief Loco Inspectors in the light of RBE No. 108 of 2019 dated 03.07.2019. Under service jurisprudence selection and appointment is governed by particular set of Rules or Notifications. Similarly, pay fixation rules are governed by separate set of Rules, therefore, they cannot be mixed up unless and until eligibility criteria under RBE No. 108/2019 dated 03.07.2019, in particularly para 3, is not amended or modified in accordance with law insofar as giving preference to such of the cadre which carries higher pay scale among the source cadres viz., Loco Pilot (Mail), Loco Pilot (Passenger) and Loco Pilot (Goods). In other words, 16.08.2019 Notification and November 14th, 2019 Notification are extraneous material in RBE No. 108 of 2019 dated 03.07.2019.

7. The cited decision in the case of O.P. Saxena (cited supra) is not applicable to the case in hand for the reasons that it was in a different context. In O.P. Saxena (cited supra) there is no occasion to interpret RBE No. 108 of 2019 dated

03.07.2019. Therefore, the cited decision is not applicable to the case in hand in view of Hon'ble Supreme Court decision in the case of Nair Service Society vs. Dr. T. Beermasthan & Ors. reported in (2009) 5 SCC 545, in para 48, it is held as under:-

"48. Several decisions have been cited before us by the respondents, but it is well established that judgments in service jurisprudence should be understood with reference to the particular service rules in the State governing that field. Reservation provisions are enabling provisions, and different State Governments can have different methods of reservation. There is no challenge to the Rules, and what is challenged is in the matter of application alone. In our opinion the communal rotation has to be applied taking 20 vacancies as a block."

8. In the light of aforementioned facts and circumstances, the petitioners have not made out a case so as to read certain pay-scales for the purpose of eligibility in para 3 of RBE No. 108 of 2019 dated 03.07.2019 as long as para 3 is not amended in the manner known to the law. In other words, whatever Notification relied to be read along with 03.07.2019 Notification namely 14th November, 2019 and 16th August, 2019 and 14th November, 2019 which are extraneous material to the selection and appointment or filling up of the post of Chief Loco Inspectors. Thus, petitioners have not made out a case so as to interfere with the order dated 06.07.2023 passed by learned Central Administrative Tribunal, Patna Bench, Patna in O.A./050/00935/2019.

9. Accordingly, the present writ petition stands dismissed.