IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.11.2017

PRONOUNCED ON : 03.01.2018

CORAM:

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
and
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

W.P.No.27272 of 2011
and
M.P.No.1 of 2011

1. The Union of India,
   Represented by its Secretary,
   Ministry of Railways (Railway Board),
   New Delhi.

2. The General Manager,
   Southern Railway,
   Chennai.

3. The Chief Personnel Officer,
   Southern Railway,
   Chennai.

4. The Divisional Personnel Officer,
   Southern Railway,
   Salem Division,
   Salem. ... Petitioners

.. Vs ..

1. The Registrar,
   Central Administrative Tribunal,
   Madras Bench,
   Chennai - 600 104.
2. A.Shaik Dawood
3. M.Mohammed Ibrahim
4. T.S.Balarajan
5. K.Rajendran
6. S.Oliver Kamalakaran ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, to call for the entire records of the first respondent in O.A.No.920 of 2009 including the order dated

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04.10.2010 and quash the same.

For Petitioners	:	Mr.V.Radhakrishnan, Senior Counsel for Mrs.T.P.Savitha
For R-1	:	Tribunal
For RR-3, 4 & 6	:	Mr.V.Raghavachari
For RR-2 and 5	:	Notice served No Appearance

ORDER

(Order of the Court was made by RMT. TEEKAA RAMAN,J.,)

This Writ Petition is filed by the Railway Administration seeking to quash the order dated 04.10.2010 passed by the first respondent/Central Administrative Tribunal, Madras Bench, in O.A.No.920 of 2009.

2. The respondents 2 to 6 have filed the above O.A.No.920 of 2009 before the Central Administrative Tribunal seeking to set aside the proceedings of the fourth respondent therein/fourth petitioner herein in No.SA/P.608/VI/Passenger Driver, dated 02.01.2009 and to direct the respondents therein/petitioners herein to revise the seniority list of Loco Pilots as on 31.12.2005 and thereafter consider the filling up of the posts.

3. Applicants 1 to 5/Respondents 2 to 6 have filed the above O.A.No.920 of 2009 on the following facts:-

[i] All the applicants/respondents 2 to 6 herein were originally working in Palghat Division in Southern Railway as Loco Pilots (Goods) Grade-II in the scale of Rs.5000-8000 with effect from 01.11.2007 and the Southern Railway has formed a new Division at Salem.

[ii] All the applicants, who were working as Loco Pilots (Goods) Grade-II at Erode opted to come to newly formed Salem Division as Loco Pilots (Goods) Grade-II in the scale of Rs.5000-8000 (VCPC). The Divisional Personnel Officer, Salem, published a Provisional Seniority List of Running Cadre of Salem Division on 16.09.2008 and the applicants name found place at Sl.Nos.4 to 8.

[iii] The fourth respondent in the Original Application/Divisional Personnel Officer, Southern Railway, Salem, initiated action for selection to fill up 46 vacancies in the post of Loco Pilot (Goods) Grade-I in the scale of Rs.5500-9000 with a break up of SC-12, ST-4 and UR-30. The method of selection at that time consists of viva voce only. Pursuant to the above, the fourth respondent in the Original Application had

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issued an alert notice dated 02.01.2009 alerting 25 Loco Pilot (Goods) Grade - I in the scale of Rs.5500-9000 working in the Salem Division. As the vacancies are more, again the Divisional Personnel Officer gave another alert notice dated 05.01.2009 to Loco Pilot (Goods) Grade - II in the scale of Rs.5000-8000 who were also eligible for selection.

[iv] As a result of the implementation of the recommendation of VI CPC, the post Loco Pilots (Goods) Grade-II merged with the post of Loco Pilot (Goods) Grade-I in the scale Rs.5500-9000 in the Revised PB-II Rs.9300-34800 with Grade Pay Rs.4200. Similarly, the post of Loco Pilot (Passenger) Grade-II in the scale of Rs.5500-9000 merged with Loco Pilot (Passenger) Grade-I in the scale of Rs.6000-9800 and the corresponding new scale in PB-II Rs.9300-34800 with Grade Pay Rs.4200 and an additional allowance of Rs.500 was granted.

4. The respondents in the Original Application/Railway Administration filed counter inter alia contended that two existing grades were merged into one grade or posts have been upgraded and merged with higher grade. In the above circumstances, the Railway Board in the Circular dated 23.09.2008 directed not to make further promotions until further orders. However in the same circular, it was clearly stated that this ban will not apply to running categories viz., Loco Pilots and Guards as horizontal promotions wherein existing channel of promotion will continue till further orders. This clarification is a positive approval of the existing channel of promotions which will be valid. The Circular of Railway Board dated 23.09.2008 was challenged in this writ petition. Hence, as per the Railway Board circular dated 23.09.2008, insofar as running staff viz., Loco Pilots and Guards, as horizontal promotions, the existing channel will hold good and valid.

(i) It is the further submission of the learned counsel for the Railways that before selection list was published, the Railway Board issued another clarificatory circular in RBE/161/2009, dated 03.09.2009 in continuation to its earlier circular dated 23.09.2008. In view of the change in the methodology of selection, the Divisional Personnel Officer, Salem Division by letter dated 19.10.2009 cancelled the alert notice dated 02.01.2009 which is sought to be quashed in the above O.A.No.920 of 2009.

(ii) Thereafter, the Divisional Personnel Officer had taken into consideration all the vacancies that existed as on 31.08.2009 applying the norms prescribed in Railway Boards letter dated 03.09.2009. The Divisional Personnel Officer in his office order No.SA/43/2009 dated 30.10.2009 promoted 37 employees as Loco Pilot Passenger in the Pay Band of Rs.9300-

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34800+GP+4200.

(iii) Before this selection list was published on 30.10.2009, the applicants have filed the above O.A.No.920 of 2009 on 05.09.2009 seeing for the aforesaid reliefs.

(iv) The letter dated 02.01.2009, which is impugned in the above Original Application was cancelled by letter dated 19.10.2009.

5. On consideration of the rival submissions made by both the parties, the Central Administrative Tribunal, Madras Bench, has passed an order directing the respondents in the Original Application/Railway Administration to recast the seniority list of Loco Pilot (Goods) Grade-I & Grade-II as on 31.12.2005 and thereafter, based on the recast seniority list, to fill up the post of Passenger Driver as has been done by the South Central Railway. As against the said order, the Railway Administration has preferred the present writ petition before this Court.

6. Mr.V.Radhakrishnan, learned Senior Counsel appearing for the petitioners would contend that the respondents 2 to 6/applicants have not challenged the earlier promotion of 8 employees, who are compared in the Original Application without impleading them as parties. It is further contended that the directions and clarificatory circulars of the Railway Board dated 23.09.2008 and 03.09.2009 were followed which are in force on the date of publication of the selection list dated 30.10.2009 and altogether, they are different and not subject matter of challenge in the Original Application. The learned Senior Counsel also contended that the Circulars given by the South Central Railway dated 24.02.009 and 17.03.2009 are invalid, since they are impliedly cancelled or superseded by subsequent Circulars of the Railway Board in RBE 161 of 2009, dated 03.09.2009.

7. We have heard the learned counsel appearing for the respondents 3, 4 and 6. Though notice was served on the respondents 2 and 5, they have not chosen to appear.

8. As per the stand of the appellants/Railway Administration, as a result of the implementation of the recommendation of VI CPC, in many cases, two existing grades were merged into one grade or posts have been upgraded and merged with higher grade. The admitted factual matrix being the Railway Board has issued a Circular dated 11.09.2008 merging the post of Loco Pilot Grade - II with Loco Pilot Grade - I in the scale in PB-II Rs.9300-34800 with Grade pay Rs.4200. The stand of the appellants/Railway Administration is that as a result of the acceptance of recommendation of VI CPC, in many cases, two

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existing grades have been merged into one grade pay or posts have been upgraded and merged with higher grade thereby, affecting the existing channel of promotions. In such circumstances, as the matter of promotion of non gazetted staff with such merged or upgraded and merged with some grade post has been considered and it has been decided to promote them in the upgraded and merged higher grade pay which should not be made until further orders, is the essence of the communication dated 11.09.2008, stated supra.

9. During the course of the argument, the learned counsel appearing for the respondents 3, 4 and 6 has brought to the notice of this Court about the qualification issued by the South Central Railway i.e., one of the Central Railway under the Railway Board, Government of India, which has informed from the said letter dated 11.09.2008 that recasting of seniority list of Loco Pilots (Goods) Grade-I and Grade-II is in the proper procedure and in view of the merger of both cadres and consequent to VI pay commission report, rightly recast the seniority in the merged post. Thereafter, extended the same to the Railway Pilot (Goods). It appears from the order under challenge that the Central Administrative Tribunal has taken the interpretation of the service jurisprudence that when two posts are upgraded or merged with into one category, any promotion to higher category from that merged category takes place only after drawing consolidated seniority list in the merged category and accordingly, concurred with the letter of the South Central Railway and also directed the South Railway to follow the same, taking into consideration the narrow campus in the point involved in this case.

10. Admittedly, the above said two posts viz., Loco Pilot (Goods) Grade-I and Grade-II has been merged by Circular dated 11.09.2008 and taking into consideration the various vacancies, the South Central Railway has fixed the cut off date as 31.12.2005 and in such circumstances, we find that the order of the Central Administrative Tribunal directing the appellants/Railway Administration to recast the combined seniority list of Loco Pilot (Goods) Grade-I and Grade-II as on the cut off date viz., 31.12.2005 is well merited and well considered which does not call for any interference by this Court and the cut off date fixed as in the case of South Central Railway and the various communications of Railway Board do not call for any interference at our end. In this view of the matter, we do not find any infirmity or illegality in the order passed by the Central Administrative Tribunal and hence, the writ appeal is liable to be dismissed.

11. In the result, the Writ Petition is dismissed by confirming the order dated 04.10.2010 passed by the first

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respondent/Central Administrative Tribunal, Madras Bench, in O.A.No.920 of 2009. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(IV)

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Sub Assistant Registrar

jrl

To

The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai - 600 104.

+1cc to Mr.V.Raghavachri, Advocate, S.R.No.235
+1cc to Mr.T.P.Savitha, Advocate, S.R.No.341

W.P.No.27272 of 2011

KGK(CO)
RRK(08/02/2018)

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