

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

**Original Application No.235/2015
Dated this the 23rd day of August, 2022.**

**Reserved On : 19.07.2022
Pronounced On: 23.08.2022**

CORAM:

**Hon'ble Sh. Jayesh V. Bhairavia, Member (Judicial)
Hon'ble Dr. A.K. Dubey, Member (Administrative)**



1. Mr.Ashok R.Patel,
Son of Ramanlal Patel,
Age about 48 years,
37, Mansi Nagar, At & Post Abrama,
Tal & Dist. Valsad – 396 001.
2. Bharatkumar Bhanabhai Sailor,
Son of Bharatbhai Sailor,
Age about 42 years,
14, Gayatri Raw House,
Jahangirpura,
Surat – 395 005.
3. Machha Gaureya,
Son of Polu Gaureya,
Age about 44 years,
327/328, Om Nagar Society,
Kharvasa Road, Dindoli,
Surat – 394 210.
4. Jatin Bhailalbhai Makwana,
Son of Bhailalbhai Makwana,
Age about 42 years,
A/40, Krishna Park-2,
Near Radhey Nagar,
Andada Gam,
Ankleshwar – 393 002.

5. Gulab Bhikha Patil,
Son of Bhikha Patil,
Age about 40 years,
89-A, Mahadev Nagar-4,
Dindoli, Surat – 394 210.

6. Vipul R. Singal,
Son of Ramjilal Singal,
34, Navdurga Society,
Near Chaupati Garden,
Nana Varachha,
Surat – 395 009.



7. Rajendrakumar Baluram Verma,
Son of Baluram Verma,
Age about 48 years,
16, Aakash Villa,
C/o Aakash Raw House,
Near Ramji Mandir, GIDC Road,
Pandesara,
Surat – 394 221.

8. Rajesg Dhanjibhai Yadav,
Son of Dhanjibhai Yadav,
Age about 42 years,
212, Aakash Raw House,
Near Ramji Mandir, GIDC Road,
Pandesara,
Surat – 394 221.

9. Kamlesh Ramshibhai Bamaniya,
Son of Ramshibhai Bamaniya,
Age about 41 years,
Flat no.201, Aakash Villa,
C/o Aakash Raw House,
Near Ramji Mandir, GIDC Road,
Pandesara,
Surat – 394 221.

10. Dilipkumar Rajaram Kosti,
Son of Rajaram Kosti,
Age about 42 years,
Railway Colony, Udhana,
Surat – 394 210.

11. Shriram Satyanarayan Prasad,
Son of Satyanarayan Prasad,
Age about 42 years,
Plot no.32, Devdarshan Society,
Mogra Wadi, Valsad – 396 001.

12. Shankarbhai Chandulal Modi,
Son of Chandulal Modi,
Age about 40 years,
C-204, Shivdarshan Plaza,
Desai Street, Udhana Gam,
Surat – 394 210.



13. Kitabsingh Bhogilal Prajapati,
Son of Bhogilal Prajapati,
Age about 42 years,
307/308, Om Nagar Society,
Karwasa Road, Dindoli,
Surat 394 210.

14. Guttula Kesav Rao,
Son of Kesav Rao,
Age about 40 years,
290, Krishnakunj society,
Karwasa Road, Dindoli,
Surat – 394 210.

15. Pratik Rameshchandra Vishwas,
Son of Rameshchandra Vishwas,
Age about 40 years,
A/4, 402 Shub Residency,
Hari Nagar – 3, Udhna ,
Surat – 394 210.

16. Ishwarbhai Jivabhai Meraiya,
Son of Jivanbhai Meraiya,
Age about 45 years,
Block no.48, Room no.588,
Sahyog apartment,
Satya Nagar, Udhna ,
Surat – 394 210.

17. Rajendrasingh Basantlal Verma,
Son of Basantlal Verma,
Age about 42 years,
Flat no.308, Aakash Villa,

C/o Aakash Raw House,
Near Ramji Mandir, Pandesara,
Surat – 394 210.

18. Kirtikumar Nagindas Dumsia,
Son of Nagindas Dumasia,
Age about 42 years,
56, Shambhaji Chock,
Navangr, Limbayat,
Surat – 394 210.



19. Saleem Ibrahim Sayed,
Son of Ibrahim Sayed,
Age about 39 years,
Plot no.B/52, Nilam Raw House,
Surat-Navsari road, Unn,
Surat 394 210.

20. Gulab Rajmal Pawar,
Son of Rajmal Pawar,
Age about 44 years,
44-B, Shivaji Raw House,
Nava Gam, dindoli Road,
Surat – 493 210.

.....Applicants

(By Advocate Mr.P.H.Pathak)

Versus

1. Union of India,
(Notice to be served through
The Chairman,
Railway Board Rail Bhavan,
New Delhi 110 001.
2. General Manager,
Western Railway,
Church Gate,
Mumbai 400 020.
3. Divisional Railway Manager,
Divisional Office,
Mumbai Central division,
Mumbai – 400 008.

4. Chief Section Crew Controller,
Western Railway,
Locoloth,
Udhna Railway Station.
Udhna, Dist. Surat – 395 005.
5. N.D.Rathod,
Motorman, Sr. No.1 in
Combine seniority list.
6. Shivilal Bairy,
Motorman, Motorman, Sr. No.2 in
Combine seniority list.
7. A.K.Mishra,
Motorman, Sr. No.3 in
Combine seniority list.
8. Anil Kumar Gupta,
Motorman, Sr. No.65 in
Combine seniority list.
9. B.M.Krishma Rao,
Motorman, Sr. No.101 in
Combine seniority list.
10. V.K.Agrawal,
Motorman, Sr. No.105 in
Combine seniority list.
11. Sandip S. Madhukar,
Motorman, Sr. No.107 in
Combine seniority list.
12. Dipesh Kumar Rathod,
Motorman, Sr. No.115 in
Combine seniority list.



All from respondent no.5 to 12
Notice to be served through
Divisional Railway Manger,
Divisional Office,
Mumbai Central Division,
Mumbai 400 008.

...Respondents

(By Advocate Mr. M.J.Patel)

ORDER

Per: Dr. A.K. Dubey, Member (A)

1. Aggrieved by the communication dated 6.6.2014 & 26.02.2015 (Annexure-A/1 Colly) the applicants have filed this OA seeking following reliefs:-



- “(A) *The Hon’ble Tribunal be pleased to declare the impugned decision of the respondent no.2 and 3 dated communicated vide letter 6.6.2014 [with enclosures] no.E/LT/839/21/1(M/Man) communicated to the applicant/s under RTI vide letter dated 26.5.2015 at Annexure A/1 to this application as illegal, unjust, arbitrary and violative if Articles 14 and 16 of the Constitution of India and be pleased to quash and set aside the same.*
- (B) *Be pleased to declare that the two different cadres of Locopilot [Passenger] and Motorman cannot be merged together giving seniority above the existing employees of the Locopilot Passengers cadre and further direct to fix seniority of Motorman as per their original cadre of employment in the bottom seniority list of Locopilot Goods.*
- (C) *Be pleased to declare that the decision of the respondents dated 6.6.2014 at Annexure A/1 and the seniority published merging the two different cadres as illegal, unjust, arbitrary and violative of Articles 14 and 16 of the Constitution of India.”*

2. The case of the applicants in brief is that the two cadres namely loco pilots and motorman have been proposed to be merged and thereupon, common seniority list has been proposed, putting the Motorman above the loco pilots. Applicants contend that these two cadres have different recruitment pattern and their seniority lists are separate, and by merging the two, promotional avenue of loco pilots would be adversely affected.

- 2.1 While proposing such a proposal, no opportunity of being heard was afforded to the employees who were likely to be affected and whose objections were ignored.

2.2 The Applicants No. 1 to 9 are Loco Pilot (Passenger) and the rest are working as Loco Pilot (Goods). Applicants contend that their promotional avenues as per the Loco Running Supervisors hierarchy chart is: Loco Pilot (Goods) Gr.-II to Loco Pilot (Goods) Grade-I to Loco Pilot (Passenger) to Loco Pilot (Mail) to Loco Inspector (Electrical) to Chief Loco Inspector (Electrical). Applicants contend that the Motormen are a different cadre and they ply the local trains / trams in Mumbai; and their recruitment is based on direct recruitment (70%) and from amongst departmental candidates who qualify for the same (30%). Both cadres are separate and separate seniority list of the two cadres were maintained and accordingly, the avenues of promotion were also different. From amongst Loco Pilot (Goods), whosoever intended to be absorbed as Motorman had to give their option and after selection, they were absorbed as Motorman, but with different seniority and they did not have further promotion in the LP category. Thus, a Loco Pilot could opt for going for the post of Motorman after his due selection. Whenever there was selection for the promotion to the post of Motorman in the scale of Rs. 9300-34800/- a condition was invariably introduced that candidates selected as Motorman would have to undergo the prescribed training and only on successful completion of such training, the employee concerned would be posted to work as Motorman and on their absorption as Motorman, they will have no right to promotion in the present cadre. This position, applicants aver, is refuted from the letter dated 01.08.2013 (Annex.A/6). The post of Motorman is treated as Promotional post from amongst Loco Pilot – Passenger and Goods i.e. in 30% of vacancy whereas 70% of



the posts are for direct recruitment. In the light of stipulation in the letter dated 01.08.2013 (Annex.A/6) the juniors who opted for the post of Motorman, lose their seniority in the cadre of Loco Pilot – Passenger and Goods. Further, regular promotional avenue as reflected above is also different for the two categories and now, the post of Loco Pilot (Passenger) is treated as equivalent to the cadre of EMU, i.e. Motormen.



2.3 The applicants' plea is that while working in the cadre of Loco Pilot (Passenger) their seniority cannot be allowed to be adversely affected by merger of Motorman cadre with theirs' and thus, combined seniority list of both cadres cannot be made just on the basis of scales being the same. Applicants have averred that due to issuance of combined seniority list dated 27.11.2014 (Annex.A/7) they and several others were affected adversely due to merger of cadres.

2.4 The applicants also put forth the point that prior to merger, whenever the post of Mail Motorman was filled up, they were never informed that if they did not opt for Motorman, their seniority would be adversely affected and such Motorman would become senior to the applicants. In addition, the Goods & Passenger Loco Pilots were compulsorily required to opt for Motorman. Applicants say is that the letter of the Divisional Railway Manager dated 20.03.2015 (Annex. A/8), clearly conveys this position. Applicants thus plead that their service conditions have been sought to be arbitrarily changed without any order of the Railway Board, which is violative of Articles 14 and 16 of the Constitution.

3. M.A.No.235/2015 for joint application was allowed.
4. In their reply, respondents submit that in Western Railway, there are two separate cadres of Loco Pilot and Motorman whereas, in the Central Railway there is a common cadre and common channel of promotion as per the provision in Para 140 of the IREM, which was not followed by the Western Railway. The GM (E) CCG vide letter dated 02.06.2014 (Annex.A/1, Colly) had stipulated the modalities for filling up the post of Loco Running Staff/ Loco Pilot (EMU Service) as per the revised AVC. It contains stipulation about combined seniority list too. Respondents aver that both the Unions had also accepted the merger as it was beneficial to all EMU/Loco Running staff. This arrangement was as per the Para 140 of IREM which was being followed in other Zonal Railways including Central Railways since beginning. The said policy guideline was circulated to all concerned vide letter dated 6.6.2014 and had also been supplied to one of the applicants Sh. Dilip Koshti under his RTI application.



- 4.1 Respondents have further stated that the issue was discussed with the association during the course of Fast Track Committee meeting in presence of Running Staff & officials of Railway Board wherein it was concluded that 'there is no such channel of upward movement as Mail / Express Loco Pilot for Western Railway Motorman'. Accordingly, it was suggested to bring the system at par with other Zonal Railways as per the report of the meeting. Apart from this, it is also stated that earlier the induction to Motormen category based on suggestion made by RDSO in the light

of the recommendation in the report of Commissioner of Railway Safety Eastern Circle was notified by the Railway Board vide letter dated 04.01.1990 which was circulated on 30.01.1990 (Annex.R/1) framing guidelines for filling up the post of Motormen category.

- 4.2 Respondents also aver that there is no percentage laid down for filling up the vacancies of Motorman through Direct Recruitment and departmental candidates through selection; only where it is not possible to fill up the post by eligible and suitable Drivers, the Railway Administration can make good the short fall by direct recruitment through Railway Recruitment Board.



- 4.3 Vide letter dated 02.06.2014(Annex.A/1, Colly), the direct recruit Motormen were asked to submit their option for merger with LP passenger in the same scale. The Ranker Motormen who were included as Motorman from LP/driver category through department selection, were merged with the combined provisional seniority list of LP (pass) / EMU. At any rate, there was no restriction on LPs switching over to Motorman after qualifying the selection test, psychological test and the prescribed training. Above all, this merger is mandated by para 14 of IREM.

- 4.4 Respondents have averred that representations made by the applicants were replied vide letter dated 10.2.2015 (Annex.R/2) and the allegation that no opportunity was given to them, was not true.

5. Rejoinder has been filed on behalf of the applicants reiterating their stand that Motormen were a different cadre and there was no order of the Railway Board to combine the seniority list of Motormen and

Loco Pilots. Apparently only 4 out of 100 candidates had given option and hence, in the garb of this tactic, name of such employees cannot be included pushing the applicants down. Applicants have narrated that the merger had taken place purported to be effected only to favour EMU staff particularly when there is no provision under Para 140 of the IREM to merge two different cadres.



5.1 Learned counsel for the applicants has submitted written arguments reiterating the applicants' contention. Relying on the order of this Tribunal in OA No.1185/1994 reported as Sajjan Singh Ahluwalia vs. Union of India & Ors. (2001) 1 ATJ 3230, the counsel contends that the reply filed by the Divisional Personnel officer has filed this reply without authorization, and hence the reply of the respondents has to be objected to.

6. Heard the parties' counsel and gone through the records, and papers brought before us. Undisputedly, the communication dated 06.06.2014 (Annexure-A/1, Colly) specifies the modalities for fitting up the posts of loco Running Staff/LP (EMU service) as per the revised AVC. It specifies the modality for combined seniority list. This merger has been impugned mainly on the apprehension of loss of promotional avenue and on the ground that the two cadres were not to be merged. However, we see that these two cadres were ordered to be merged mainly on the plea that elsewhere these two were the common cadre and not the respective ones. Further, such merger was not violative of provisions of rules/instructions.

7. At any rate, we also see that there was a provision to file objection to the combined seniority list, should an employee feel dissatisfied with it, which clearly affords an opportunity to the aggrieved employees to represent against the proposed move of combined seniority. A decision about maintenance or curation of a cadre is the prerogative of the employer and here, the respondents proposed to merge the two cadres on the grounds of their administrative /operational exigency and in our considered view, their decision *per se* does not suffer from any legal infirmity. Their steps of operationalizing the proposed merger has given opportunity to the affected persons to represent against it. Thus it is not a case of not affording opportunity to represent; and the move has not been against provision of Para 140 of IREM.

Under this factual matrix, we do not find merit in the OA. OA fails and is therefore dismissed. No Costs.



(A. K. Dubey)
Administrative Member

(Jayesh V. Bhairavia)
Judicial Member

SKV