

Central Administrative Tribunal
Principal Bench, New Delhi.

OA-2091/2004

New Delhi this the 26th day of October, 2004.

Hon'ble Shri Shanker Raju, Member(J)
Hon'ble Shri S.K. Malhotra, Member(A)

Shri Amrik Singh,
S/o Sh. Balwant Singh,
Working as Investigating Inspector
(Vigilance) in the office of the
Railway Board, Rail Bhawan,
New Delhi.

..... Applicant

(through Sh. B.S. Mainee, Advocate)

Versus

Union of India through

1. The Secretary,
Railway Board,
Ministry of Railways,
New Delhi.
2. The Chief Administrative
Officer, Diesel Loco Modernisation
Works, Patiala(Punjab).
.....

Respondents

(through Sh. H.K. Gangwani, Advocate)

Order (Oral)

Hon'ble Shri Shanker Raju, Member(J)

Heard the learned counsel.

2. MA, which is un-numbered, is stated to be filed by the respondents for deletion of respondent No.2 i.e. Railway Board from the array of parties.

AN

3. Learned counsel of the respondents states that as the General Manager has delegated powers to the Chief Administrative Officer, who has to take decision at DMW regarding participation of the applicant in Limited Departmental Competitive Examination for the post of Assistant Material Manager (for short 'AMM'), the Railway Board has nothing to do with this case and has to be deleted.

4. On perusal of the reply, we find that a reference has been sent from Patiala to the Railway Board regarding eligibility of the applicant and other similarly circumstance. On the advice of the Railway Board dated 13.7.2004, a decision has been taken to delete the name of the applicant from the eligibility list. In this view of the matter, we are of the considered view that Railway Board is a necessary party and, as such, request of the respondents is turned down.

5. In this case, applicant has assailed deletion of his name from the eligibility list of AMM, on the ground that as he joined after the cut off date, he has not completed the eligibility period.

6. Learned counsel of the applicant contends that transfer on mutual consent and transfer on request cannot be treated on different footing. Reliance has been placed on a decision of Co-ordinate Bench of this Tribunal in Sandeep Kumar & Ors. Vs. U.O.I. & Ors. (2153/2001) decided on 4.12.2002. It is contended that the issue is no more res integra, which leads to quashing of the order of the respondents holding that for the purpose of eligibility, the service rendered in both the Units has to be considered.

7. On the other hand, respondents' counsel vehemently opposed the contentions and stated that the applicant had joined the organization much later than the cut off date. In continuation of 1999 selection under 30% LDCE quota, the applicant, who has not

completed the eligibility criteria i.e. non-fortuitous service, his name has been deleted from the eligibility list.

8. The Apex Court in Renu Mullick (Smt.) Vs. U.o.I. & Anr. (1994(26) ATC 602) has held that service rendered prior to unilateral transfer at own request also counts for determining the eligibility condition, though such transfer downgrades seniority.

9. In this view of the matter, the Tribunal in Sandeep Kumar Kaushik's case (supra) relied upon the Full Bench decision of the Tribunal in TA-65/1987 decided on 5.10.1987 (K.A. Balasubramanian Vs. U.O.I. & Ors.) wherein it was observed that the service rendered by LDC in another Unit where he can be transferred, his service is to be counted for the purpose of eligibility criteria and not for seniority. Therefore, the cut off date has no significance and relevance for the purpose of computing eligibility condition i.e. non-fortuitous service of the applicant.

11. We respectfully agree with the ratio laid down in Sandeep Kumar Kaushik's case which covers the issue involved in the present case.

12. In this view of the matter, whether it is a mutual transfer or transfer on request, the same has to be dealt with on the same footing and the service rendered in two Units cannot be ignored for the purpose of determining the eligibility criteria i.e. non-fortuitous service. As the applicant is eligible, the order passed by the respondents deleting his name from the eligibility list in the light of ratio laid down in Renu Mullick's case, is liable to be quashed.

13. In the result, the OA is allowed and the impugned order is quashed. The respondents are directed to consider the applicant as eligible for the post and permit him

either to appear in the written examination initiated by them vide letter dated 10.12.2003
or any further examination to be held in future. *NO costs*

SKM
(S.K. Malhotra)

Member(A)

S. Raju
(Shanker Raju)
Member(J)

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