

Central Administrative Tribunal Lucknow Bench

O.A. No. 56/2005

This, the 1st day of September 2008.

**Hon'ble Mr. Shanker Raju, Member (J)
Hon'ble Mrs. Veena Chhotray, Member (A)**

Vidya Dhar Mishra, son of late Tribuwan Nath Mishra resident of village Amethi , Post Office- Bhadar District- Sultanpur.

Applicant.

By Advocate : Sri R.R. Upadhyaya

Versus

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Hazratganj, Lucknow.
3. Divisional Railway Manager(Personal) Northern Railway Hazratganj, Lucknow.
4. Mandal Karmik Adhikari , Northern Railway, Lucknow.

Respondents.

By Advocate Sri N.K. Agrawal

Order

By Hon'ble Mr. Shanker Raju, Member (J)

Applicant by virtue of this order has impugned respondents order dated 30.7.2004 whereby on his request for promotion to the post of Driver (Goods) is rejected.

2. Applicant who was appointed as substitute Khalasi on compassionate grounds has requested for change of category to cleaner which was accepted. As such his seniority was fixed in the grade of cleaner at the bottom. Applicant was temporarily promoted to officiate as Second Fireman on 30.7.1978 and was promoted to officiate as Fireman on 5.7.1983. Applicant was accorded promotion as Diesel Assistant and also on restructuring as Senior Diesel Assistant w.e.f. 1.3.1993. Applicant was temporarily promoted to officiate as Shunter w.e.f. 20.6.93 and Sr. Shunter w.e.f. 20.10.97 . Pursuant to Vth CPC, his pay was fixed in the grade of Rs. 5000-9000 w.e.f. 20.10.97. Right from 1993, applicant was called through notification to

- 2 -

qualify the selection held for the post of Driver (Goods) where he appeared but could not qualify. On the 7th occasion in 2004, applicant did not appear in the selection. In the mean time, he has filed O.A. No. 557/95, which was disposed of on 18.12.2003 and as a result thereof, an order passed by the respondents rejected the claim of the applicant on the ground that having failed to qualify the test, applicant cannot be appointed.

3. A challenge has been made to the order dated 30.7.2004 passed by respondents in this O.A. to accord to the applicant promotion on the basis of provisional seniority list dated 10.1.1994 on the ground that on being appointed against the substantive vacancy, his service has to be regularized from 18.7.72 and as the juniors had been promoted, he should also be promoted with all consequences.

4. We have carefully considered the reply of the respondents. In our considered view the positive selection is held for the post of Driver Goods with a condition precedent for promotion irrespective of seniority is qualifying the test. As the applicant despite being afforded opportunities and after participation, when failed to qualify, he is not eligible to be appointed to the post of Driver Goods. In 2004, on his own violation, the applicant did not avail the opportunity of participation in selection, as such promotion not being a fundamental right and mere chances of promotion would not bestow any right upon him. Moreover when the right to be considered complied with by the respondents, applicant has no valid and legal claim for promotion. We do not find any legal infirmity in the orders passed by the respondents. The O.A. is found bereft of merit and is dismissed accordingly. No costs.

Chhotray
(Veena Chhotray)
Member (A)

HLS/

S. Raju
(Shanker Raju)
Member (J)