

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

O.A. No. 303/2008

New Delhi, this the 2nd day of August, 2016.

HON'BLE MR. P.K. BASU, MEMBER (A)
HON'BLE DR. BRAHM AVTAR AGRAWAL, MEMBER (J)

1. Sanjay Kumar,
Senior Inspector (PPP),
Railway Board,
Ministry of Railways,
Rail Bhawan, New Delhi.
2. Dileep Kumar Saxena,
Senior Lecturer,
Northern Railway Supervisors' Trg. Centre,
Charbagh Lucknow.
3. Prem Kumar Yadav,
J.E.-II (C&W)
Northern Railway,
Sarai Rohilla,
Delhi.

.. Applicants

(By Advocate : Mrs. Meenu Mainee)

Versus

Union of India : Through

1. The Secretary,
Railway Board,
Ministry of Railways,
Rail Bhawan, New Delhi.
2. General Manager,
Northern Railway,
Baroda House, New Delhi.

.. Respondents

(By Advocate : Shri Shailendra Tiwary)

ORDER (Oral)**By Hon'ble Mr. P.K. Basu**

It is stated by the learned counsel for the applicant that applicants No.1 and 3 have since retired, she is pressing only the case of applicant No.2 – Shri Dileep Kumar Saxena may be considered.

2. The applicant had appeared in Limited Departmental Competitive Examination for Assistant Mechanical Engineer (AME) – Loco/DSL Stream. Five posts were earmarked for General candidates. The respondents had issued a show cause notice to the applicant and issued impugned order dated 28.01.2008 denying the applicant to appear in the viva-voce for the purpose.

3. The main contention of the respondents was that according to circular dated 17.04.1997 of Railway Board, only the period of service after an employee moves on to the new unit where he is absorbed from the earlier unit is to be counted. Since this period of the applicant was less than five years as stipulated in the rules for eligibility for consideration, he was not considered for promotion.

4. Learned counsel for the applicant points out that in O.A. No.2153/2001, this very letter dated 17.04.1997 was under challenge and it had been quashed by the Tribunal vide order dated 04.10.2002 based on the judgment of the Hon'ble Supreme Court in

Smt. Renu Mullick Vs. Union of India and Another, (1994) 26 ATC 602. It is further stated that in a subsequent order dated 05.01.2006 in O.A. 1817/2005 again based on the same very judgment of the Hon'ble Supreme Court, the Tribunal directed the respondents to reconsider the eligibility of the applicants in those cases for taking into consideration the period of service in the earlier units.

5. Learned counsel for the respondents reiterates the earlier stand that as per circular dated 17.04.1997, the respondents were to consider only the period after absorption, and this was informed to the applicant vide letter dated 31.12.2007 that in terms of circular dated 17.04.1997, he has not been considered.

6. Heard the learned counsel and perused the pleadings as well as judgments cited by the parties.

7. It is clear that the only ground for denying the applicant promotion was the provision of circular dated 17.04.1997. However, since that stands quashed in O.A. No. 2153/2001 vide order dated 04.10.2002, this will no longer be a valid ground.

8. The respondents had been directed to produce the result of the applicant No.2, Shri Dileep Kumar Saxena. Learned counsel for the respondents has produced the result in original and it is seen that

Shri Dilip Kumar Saxena had secured 271.4 marks and ranked first amongst all five persons in the final result.

9. In view of this, the O.A. is allowed and the respondents are directed to promote Shri Dileep Kumar Saxena to the post of AME w.e.f. the date the others have been promoted, with all consequential benefits. The time frame fixed for compliance of our order is 90 days from the date of receipt of a certified copy of this order.

(Dr. Brahm Avtar Agrawal)
Member (J)

(P.K. Basu)
Member (A)

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