

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 3084/2011

Reserved on 16.08.2016
Pronounced on 22.08.2016

Hon'ble Mr. P.K.Basu, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

Shri Pankaj Kumar,
S/o Shri Mahavir Singh,
Loco Pilot (Goods)
Working under
Senior Crew Controller,
Northern Railway, Meerut City
R/o 49/4, Saraswati V Ihar,
Phase-4, Rohtak Road,
Meerut (U.P)

... Applicant

(By Advocate Mrs. Meenu Mainee)

VERSUS

Union of India through:-

1. The General Manager,
Northern Railway, Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
State Entry Road,
New Delhi.

... Respondents

(By Advocate Shri Shailendra Tiwary)

ORDER

Hon'ble Mr.P.K.Basu, Member (A):

The applicant's case is that he was working as Diesel Assistant in the grade Rs.5000-8000 and became eligible for being considered for the post of Goods Driver/Loco Pilot Grade Rs.5000-8000(selection post) because he had already put in 2 years service as Diesel Assistant and had also acquired experience of 60,000 K.M. of footplate. In 2005, the respondents conducted a selection to fill up 609

vacancies of Goods Driver. All the 609 vacancies could not be filled up for want of sufficient number of eligible candidates and as such only 323 candidates were empanelled.

2. The applicant requested the respondents in November, 2008 to include his name in the panel of 2005 as he was wrongly ignored on mistaken belief of 6 years service eligibility instead of 2 years.

3. Consequent to DPC, 323 candidates were empanelled but the name of the applicant was not included on 15.01.2009. However, the respondents corrected the panel and issued a modified panel on 18.02.2009 in which his name was included in the panel in respect of selection held in 2008 but did not include his name in the panel of 2005.

4. It is further stated in the OA that 62 of applicant's colleagues who were also not called for selection in the year 2005 on account of erroneous assumption of 6 years eligibility instead of two years have qualified the next selection of 2008 but their names interpolated in the earlier panel of 2005 and a separate list has been issued. It is further stated that a set of 28 candidates who were not allowed in the selection of 2005 filed OA which was allowed and all 28 candidates were interpolated in the earlier panel. In any case, ultimately the matter reached this Tribunal in OA No. 2125/2009 praying for direction to the respondents to interpolate the name of the applicant in

the panel of Loco Pilot (Goods) issued on 30.09.2005. The OA was disposed of vide order dated 15.11.2010 to pass a speaking order within a period of three months.

5. The respondents passed impugned order dated 01.07.2011 as a result of the directions of this Tribunal in OA 2125/2009.

6. We have gone through the impugned order whereby. his application has been rejected. The respondents in the reply have stated that the applicant was not even in the zone of consideration as on 31.12.2004, the cut off date for holding selection of Loco Pilot Goods in 2005 and thus cannot seek his employment against the said selection as the cut off date for 2005 selection was 31.12.2004 and the applicant had joined Delhi Division on 14.7.2004 on acceptance of bottom seniority as per Para 312 of IREM Vol.I, which basically provides that any Railway servant who seeks transfer from one Railway to another will be allotted bottom seniority.

7. Heard the learned counsels and perused the relevant pleadings.

8. The crux of the issue is that whereas the applicant claims that he possessed the two years experience as Diesel Assistant taking together his service period in Delhi Division and the Division in which he was earlier posted, the Railways have held the view that since he joined on 14.07.2004 in Delhi Division and the cut off date to be

included in 2005 panel was 31.12.2004, he had not completed two years. Also because, as he got bottom seniority, his immediate senior one Sh.Tek Chand was not eligible for the said selection held in 2005, as he had not completed two years of service as on 31.12.2004. Since, Tek Chand was not eligible it is argued that there is no question of the applicant getting promoted over the head of his senior Tek Chand. The applicant was, however, included in the panel after examination held in 2008.

9. Learned counsel for the applicant argued that seniority and eligibility are two separate issues and as laid down by the Hon'ble Apex Court in the case of **Smt. Renu Mullik Vs. Union of India and Another** (1994 (1) SCC 91) 373) if the Government servant is transferred at his own request he loses seniority only and not eligibility.

10. The only issue to be decided in this case is whether the applicant is eligible for consideration for the 2005 panel as he had eligibility of two years and 16000 footplate. In Renu Mullick case (supra) the Hon'ble Supreme Court has held as follows:-

"Constitution of India, Art.309 - Central Excise and Land Customs Dept. Group (C) Posts Recruitment Rules (1976), Rule.4, Schedule Note 3 - Promotion - Promotion to the post of Inspector- Vide Executive Instructions dt. 20.5.1980, a Group 'C' Officer, when transferred on his own request, from one Central Excise Collectorate to another, is not entitled to count the service rendered by him in the former Collectorate for the purpose of seniority in the new charge - Whether the said officer is further deprived of the said service even for determining his eligibility for promotion to the higher cadre? - Held no."

11. We are of the opinion that in view of the judgment, while the applicant has lost seniority due to his transfer on request from one division to another he cannot be denied the benefit of his eligibility period of two years just because he has joined the new Division on 14.07.2004.

12. OA is, therefore, allowed and the respondents directed to interpolate the name of applicant in the panel of 2005 against the general/reserved candidates which are available and grant him consequential benefits. Arrears will, however, be restricted to the period from the date the OA was filed that is 25.08.2011 onwards.

(RAJ VIR SHARMA)
MEMBER (J)

(P.K.BASU)
MEMBER (A)

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