

AS  
1

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD  
\*\*\*\*\*

Registration O.A. No. 261/87

Shri Hafeez Uddin ..... Applicant.

Versus

Union of India & Others ..... Respondents.

Hon'ble G.S. Sharma, J.M.  
Hon'ble K.J. Raman, A.M.

(By Hon. K.J. Raman, A.M.)

In this application filed under Section 19 of the Administrative Tribunals' Act, 1985, the case of the applicant is as follows. He was recruited as a Volunteer Mobile Booking Clerk on 15-1-81, after he had passed his Intermediate examination, when he was about 19½ years old. Similar recruitments were made in 1977, 1978 and 1979 and the candidates recruited during these years, after they had completed three years of service, were regularised after screening by a Committee. The applicant figured in the list of the second batch of candidates appointed in 1980 and 1981 and whose names were forwarded by the Divisional Railway Manager in his letter dated 23-8-85 to the headquarters office for regularisation. The applicant had been waiting for the regularisation of his services, but the respondents had not done so. On the contrary, the applicants' services have been terminated with effect from 1-4-87 arbitrarily without compliance with the relevant rules. The applicant states that according to the policy decision of the Ministry of Railways circulated vide letters No.E(NG)III-77/RCI/80 dated 21-4-82 and E(NG)II/84/RC-3/8 dated 20-4-85, the Railway authorities are duty bound to take steps for absorption of the applicant against a regular vacancy, as the applicant fulfills the requirement of educational

LOP

qualification, age limit and 3 years service prescribed in the above letters. The applicant has also submitted a copy of a letter from the Hon'ble Minister of Railways stating that Volunteer Mobile Booking Clerks engaged as such prior to 14-8-81 would be considered for absorption in regular employment subject to their fulfilling the prescribed conditions. In the meantime, the Railway Board by its letter No.E(NG)II/86/RC3/87 dated 17-11-86, ordered discontinuation of recruitment of Volunteer Mobile Booking Clerks and, as feared by the applicant, he was discharged on 1-4-87, as stated earlier. Thus, the applicant's case is that he has fulfilled all the conditions for regularisation including age, educational qualification and period of service, as prescribed by the Railway Board in its letters of 1982 and 1985 referred to above, and was appointed before 14-8-81 (as required) and other persons in similar position recruited earlier have been regularised. But he has not only been denied regularisation, but even his services were arbitrarily terminated.

2. In the reply, the respondents deny that the applicant worked continuously from 1981 to 1987, stating that there were gaps in the service of the applicant. As regards the cases of persons recruited prior to the applicant and whose services had been regularised according to the applicant, the respondents do not deny the fact. However, they have vaguely stated that there were a number of schemes with different terms and conditions and that it is not known under what scheme the candidates referred to, worked, and that to draw analogy will not be justifiable. The respondents state that the applicant has worked only for a period of 722 days instead of 1095 days, the minimum needed to qualify for absorption. The respondents have not pointed out to any other factor standing in the way of the absorption of the applicant. It is stated ; " In the instant case, the

RS  
M

petitioner did not fall in line with those who had since completed three years service and it was only because of this lacuna that he was not found eligible for consideration for absorption."

3. In the rejoinder filed, the applicant points out that the periods of break in service of the applicant, detailed by the respondents in their reply, stood condoned in terms of Railway Board's letter No. E(NG)II/80/CL/25 dated 21-10-80 and, accordingly, the applicant had thus acquired temporary status, having worked <sup>for</sup> more than 120 days. It is further stated that the breaks in service were caused due to non-availability of work and not due to unauthorised absence or non-availability of the applicant to do the work when summoned. It is pointed out by the applicant that the recruits of the earlier years (shown in Annexure 6 to the Application) had also not worked for 1095 days and yet they ~~were~~ were screened and their services regularised. On the same basis, the applicant is also entitled to regularisation of his services. In support of his case, the applicant has cited the decision by the Principal Bench, Delhi, in OA 1174A of 1986 (Miss Neera Mehta and Others Vs. Union of India & Others, relying on Supreme Court Judgement in Indra Pal Yadav Vs. Union of India 1985(2) SLR p. 248 as well as CAT, Calcutta judgement in "Samir Kumar Mukerjee & Others Vs. G.M., Eastern Railway and Others" ATR/1986 (2)CAT).

4. During the final hearing, the learned Counsel of both the parties argued their cases reiterating the contentions as stated above.

5. In the case of Miss Neera Mehta & Others Vs. Union of India & Others (O.A. 1174 A of 1986) decided by the Principal Bench at Delhi, the scope and effect of the Railway Board's letters No. E(NG)III-77/RCI/80 dated 21-4-82 (Annexure 10 to the

Application), No.E(NG)II/84/RC3/8 dated 20-4-85 (Annexure 11 to the Application) and No.E(NG)II/86/RC3/87 dated 17.11.86 ~~to the Application~~ (Annexure 23 to the Application) have come for detailed scrutiny. In that case, however, the applicants were appointed as Mobile Booking Clerk on various dates between 1981 and 1985 - most of them having been appointed after 9-1-84. It was argued by the respondents in that case that only those engaged prior to 14-8-81 who had since completed 3 years service could be considered for regularisation against regular vacancies since such recruitment scheme was ordered to be discontinued after 14-8-81. However, the Hon'ble Principal Bench quashed the instructions of 15-12-86 for discharge of the applicants in that case and directed regularisation of the services of the applicants engaged on or before 17-11-86 after they had completed three years of service from the date of their initial engagement subject to their fulfilling all other conditions in regard to qualifications etc. as contained in circulars dated 21-4-82 and 20-4-85. The Hon'ble Supreme Court in that case rejected the Special Leave Application filed by the Railways, stating that there was no merit in the petition. This Bench had decided some cases on the basis of the above decision (e.g. Sunil Kumar & Others Versus Union of India & Others O A 579 of 1987).

6. This case, however, appears to be squarely covered by the Railway Board's circulars of 1982 and 1985 referred to above, since the applicant was admitted <sup>by</sup> appointed initially on 14-1-81, with effect from 15-1-81 (Annexure R1 to Rejoinder). He has been in service till 1-4-87, though there were breaks in service. According to the Railways, the applicant has not completed three years of service, but only <sup>772</sup> ~~722~~ days, and not 1095 days as shown in Annexure 9 to the Application. The applicant's

772  
~~5/5~~

argument is that this figure of 722 days is arrived at without condoning the breaks in service and if the breaks are condoned in accordance with Railway Board's letter No.E(NG)II/80/CL/25 dated 21-10-80 (Annexure R-2 to Rejoinder), then he would be having the required period of service. Another important point made by the applicant is that several candidates like him appointed in 1977, 1978 and 1979, who had worked for less number days than 1095 days, have been screened and regularised in-terms of the 1982 circular. The respondents have not denied the fact of regularisation of the services of these appointees. They have not given any acceptable reason why the present applicant's case could not be considered on the same basis as the earlier appointees. There thus seems to have been a denial of equal treatment to the applicant. The applicant has submitted a copy of letter dated 23-8-85 from the D.R.M. to the G.M. (Annexure 8 to the Application) wherein the latter has forwarded, "a list of Volunteer Mobile Booking Clerks who have served the Railways for three years or more" for further necessary action. The applicant is at No. 2 in this list.

7. It is obvious from the foregoing that the respondents had not applied the policy decision of the Railways Boards' letters of 1982 and 1985 in respect of the applicant, even though the applicant seems to come within their purview. The reasons given for not doing so are not satisfactory. The termination of the services of the applicant without any opportunity being given to him to state his case against such termination, in the light of the circumstances and cases cited above, is bad in Law and against equity and fair play.

8. Accordingly, the impugned order dated 1-4-87

terminating the service of the applicant is quashed. We direct the respondents that the applicant be re-appointed to the post held by him, forthwith, and, in any event, within one month from the date of this order. We further direct that the applicant shall be regularised and absorbed against a regular post after he had completed three years of service from the date of his initial engagement, subject to his fulfilling all other conditions in regard to qualifications etc. as contained in the circulars dated 21-4-82 and 20-4-85, in the same manner and on the same principles as has been done in the case of the persons referred to in Annexure 9 to the Application. This shall be done within four months from the date of this order. There will be no order as to costs.

*kmawm*

MEMBER (A)

*Sub-arrn*

MEMBER (J)

Dated: February 21, 1989.