

Central Administrative Tribunal Lucknow Bench Lucknow

Original Application No. 34/2005

This, the 29th day of April 2009

**HON'BLE MR. M. KANTHAIAH, MEMBER (J)
HON'BLE DR. A.K. MISHRA, MEMBER (A)**

Prabhat Chand Rawat aged about 40 years son of Shri Bachchan
Prasad, 14/48, Vikas Nagar, Lucknow

.....Applicant

By Advocate: Sri M.A.Siddiqui

Versus

1. Union of India through the General Manager, North Eastern Railway, Gorakhpur, U.P.
2. The Chief Commercial Manager, North Eastern Railway, Gorakhpur.
3. The Divisional Railway Manager, North Eastern Railway, Ashok Marg, Lucknow.
4. The Divisional Commercial Manager, North Eastern Railway, Ashok Marg, Lucknow.
5. The Senior Divisional Commercial Manager, North Eastern Railway, Ashok Marg, Lucknow.

Respondents.

By Advocate: Sri Deepak Shukla for Sri Prashant Kumar

ORDER

By Hon'ble Dr. A. K. Mishra, Member (A)

In this application, the order dated 16.12.2004 of the respondent No.3 rejecting his representation for permanent absorption has been assailed.

2. The applicant was engaged as a Mobile Booking Clerk under a scheme which was introduced during 1983. In this scheme, wards of



retired Railway employees were engaged not exceeding 5 hrs. a day for selling tickets during peak hours. Subsequently, the applicant was screened and was granted temporary status on the post of Mobile Booking Clerk. He was afforded opportunity for undergoing training before he could be considered for appointment as a Commercial Clerk. In spite of the opportunities granted, the applicant could not pass the training examination even after availing of three chances. At paragraph 4.5 of the application, he admits that he has poor eye sight with problems of cataract. He was served with a notice on 2.7.04 for termination from his service when he failed to qualify the training test. The applicant made a representation for engaging him in any other category except Mobile Booking Clerk. The applicant also filed O.A. No. 344/2004 before this Tribunal which this Tribunal, disposed of vide its order dated 26th August, 2004 with a direction to the respondent No. 2 to decide the representation of the applicant within 2 months. In compliance of the direction of the Tribunal, the respondents considered his representation and finally rejected it. Hence this application.

3. The grounds taken by the applicant are as follows:-

- i) that he was worked continuously for 21 years with Railways and attained the temporary status;
- ii) that there are a few untrained Mobile Booking Clerk who are still continuing to work in the division, some of whom have been absorbed in Group 'D' category.
- iii) that the procedure prescribed under the Disciplinary and Appeal Rules have not been followed and as such, principles of natural justice have been violated.

4. The respondents have submitted that the applicant originally was engaged as a Mobile Booking Clerk on part time basis that too on the payment of honorarium. He was given temporary status after screening and was being considered for permanent absorption as



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per the scheme of the Railway Board. If he could not qualify in the training examination, he himself is to be blamed. The railways have provided as many as three chances to him for this purpose. He did not have any enforceable right in his capacity as a Mobile Booking Clerk with temporary status.

5. Since he is not a regular employee, he could not be considered for change of category to another Group on medical ground. All other submissions regarding his years of service, earning of increments, poor performance in the examination meant for commercial clerk would not stand in good stead as far as his legal claim for absorption in the Railways are concerned. The respondents were within their right in terminating the services of a purely temporary employee who was not recruited through any recognized mode of selection and who failed to make the grade for absorption in spite of many chances being given to him.

6. The applicant has claimed by way of relief for a direction to set aside the impugned order dated 16.12.2004 and also for regularization of the applicant in any group 'C' or 'D' post. The constitutional Bench of the Hon'ble Supreme Court in the case of **Secretary, State of Karnataka and others Vs. Umadevi (3) and others reported at (2006) 4 Supreme Court Cases 1** have laid down the law that regularization of employees who are not recruited through the procedure prescribed by the recruitment rules is against the constitutional of principles and as such could not be countenanced by any court of law.

7. In view of the settled position of law which has been laid down by the Hon'ble Supreme Court, it would be difficult to entertain any application requesting for a direction for regularization of a candidate who has not been recruited as per selection procedure prescribed by recruitment rules. In this case, a special dispensation has been made by the Railway Board providing for regularization of



Mobile Booking Clerk who had acquired temporary status but unfortunately, the applicant could not make the grade.

8. In this circumstances, we do not find any merit in the original application, hence dismissed but without any order as to costs.

Apri 29/04/09

(Dr. A.K.Mishra)

Member (A)

(M. Kanthaiah)

Member (I)

HLS/-