

Central Administrative Tribunal, Lucknow Bench, Lucknow
Original Application No. 353/2007

Order reserved on 2.2.2015

Pronounced on 18/2/15

Hon'ble Sri Navneet Kumar, Member (J)
Hon'ble Ms. Jayati Chandra, Member (A)

Girish Chandra Srivastava aged about adult son of late Sri Ram Chandra Srivastava resident of Gonda Station, Gonda.

Applicant

By Advocate: Sri Praveen Kumar

Versus

1. Union of India through the General Manager, North Eastern Railway, Gorakhpur.
2. The Senior Divisional Commercial Manager, North Eastern Railways, Ashok Marg, Lucknow.

Respondents

By Advocate: Sri A.K. Chaturvedi and Sri B.B. Tripathi

ORDER

BY HON'BLE SRI NAVNEET KUMAR, MEMBER (J)

The present Original Application is preferred by the applicant u/s 19 of the AT Act with the following reliefs:-

- i. to quash the impugned order dated T/SS/Sr. DCM/03/02/30/06/2003 after summoning original from the respondents and also to quash the impugned order dated 1.7.2003 (supplied on 16.3.2005) contained as Annexure No.A-1 to this O.A. with all consequential benefits.
- ii) To engage the applicant as VTC and regularize him in the Railway Service on suitable post.
- iii) Any other relief, which this Hon'ble Tribunal may deem fit, just and proper under the circumstances of the case, may also be passed.
- iv) Cost of the present case.

2. The brief facts of the case are that the applicant was initially engaged as Volunteer Ticket Checker (hereinafter referred to as VTC) and discharge his duties at Gonda station. The services of the applicant were required to be regularized in pursuance of the Railway Board

Circular dated 21.4.1982 but instead of regularizing, the services of the applicant were terminated by an oral order. The applicant preferred an O.A. challenging the oral termination order and the Tribunal passed an order on 27.1.1992 which was subsequently upheld by the Hon'ble Apex Court with certain modification. The Hon'ble Apex Court directed the respondents to give employment to the applicant as Mobile Ticket Checker on daily wages till they are regularized as per Railway Board Circular dated 21.4.1982 and in compliance of the direction issued by the Tribunal and direction of the Hon'ble Apex Court, the authorities issued a circular for engagement of the VTCs. Accordingly, the applicant was engaged on payment of Rs. 8/- per day. The learned counsel for the applicant has also argued that since the applicant has already completed 120 days, as such he is entitled for temporary status and also entitled for all the benefits available to the Railway employees but instead of regularizing the services of the applicant against the available vacancies, the applicant was declared to be included in Engineering Section against the Group 'D' post i.e. Gangman by means of order dated 6.11.2001 and the applicant was also medically examined for the said post. During the said period, a Vigilance check was conducted and found certain VTCs involved in selling out the Railway property. Two persons namely Sri Anjani Kumar Sinha and Sri Vinod Kumar Verma were charge sheeted by the GRP, Gonda on 1.8.2003. Against the said oral termination, the employees represented to the authorities on 15.9.2003 but no fruitful purpose could be achieved and after due deliberation, the applicant was supplied with the control message against which the applicant again submitted representation but respondents has not taken any decision. It is also indicated by the learned counsel for applicant that without giving due and fair opportunity, the services of the applicant has been terminated, as such the action of the respondents is bad in the eyes of law and is liable to be interfered with and the impugned Control Message dated

1.7.2003 is liable to be quashed. Learned counsel for applicant has also categorically indicated that after serving of charge sheet, neither any FIR is filed nor any departmental proceedings has been initiated as such the action of the respondents is totally illegal and based on illegal approach, as such it requires interference.

3. On behalf of the respondents, preliminary objections as well as reply is filed. Not only this, it is indicated that services of the applicant has rightly been terminated as the applicant was found involved in forged EFT which caused financial loss to the Railways. Learned counsel for respondents have also indicated that on the basis of vigilance report, an FIR was lodged and there is no bar in conducting the departmental as well as criminal proceedings together. After the decision of the Hon'ble High Court in criminal case No.1163/2000, it is mentioned in the counter reply that the applicant was offered the post of Gangman in Group 'D' in the scale of Rs. 2610-3540/- vide order dated 22.2.2002 in the Varanasi Division but in fact the name of the applicant does not find place in the said list, on the basis of an order of the Hon'ble Apex Court, the applicant continued to work as VTC. It is also indicated by the learned counsel for the respondents that since the applicant has not attend the temporary status, as such, he cannot be considered as Railway Employee but on the basis of the Hon'ble Apex Court order/ direction, the applicant continued to get out of pocket allowances @ Rs. 8/- per day. Learned counsel for respondents has vehemently argued that Vigilance team conducted a raid on 12.6.2003 and searched the train No. 5263 wherein it is found that one VTC namely Anjani Kumar Sinha found sitting in Pantry Car with forged EFT book from page Nos. 755378 to 955350 marked with Chief Inspector Ticket was found from his bag. Sri Anjani Kumar Sinha gave statement that another VTC Vinod Kumar Verma will come to collect these forged EFT at Budwal Railway station and when the train reached at Budwal Railway Station, Sri Vinod Kumar Verma was

caught by the vigilance team and it was established that these forged EFT were being used for long period of time of about six years by the racket. Accordingly, an FIR was lodged in which the name of the applicant finds place at sl. No. 3 in the list of accused persons but no charge sheet is filed by the police against the applicant. It is also pointed out by the learned counsel for the respondents that on the basis of Vigilance check and FIR, the services of the applicant were terminated.

4. On behalf of the Applicant, Rejoinder Reply as well Supple. Rejoinder Reply is filed through which mostly the averments made in the O.A. are reiterated and denied the contents of the counter reply. It is vehemently argued by the learned counsel for the applicant that after the FIR, neither any charge sheet is filed before the Criminal court nor any disciplinary proceedings are initiated against the applicant, as such the order of termination is bad in the eyes of law and also not in the spirit of the direction of the Hon'ble Apex Court as such, it requires interference by the Tribunal.

5. Heard the learned counsel for the parties and perused the records.

6. The applicant was initially engaged as VTC in the year 1983. The services of the applicant were required to be regularized in pursuance of the Railway Board circular dated 21.4.1982 but instead of regularizing the services of the applicant, the services of the applicant were terminated by means of oral order. The applicant preferred an O.A. before the Tribunal and the Tribunal directed the respondents to consider the case of each of the applicants and reinstate them against available vacancies. Those who cannot be reinstated for want of vacancies, shall be considered for employment against future vacancies and record in this regard will be maintained by the respondents. Further, respondents are directed to confirm temporary status to such of the applicants who completed four months continuous service and

they would also be entitled to be considered for regularization in accordance with the extant policy and the period of termination till the period of reinstatement will not be treated as on duty nor the applicant will be entitled for any back wages.

7. The said order was challenged before the Hon'ble Apex Court and the Hon'ble Apex Court observed as under:-

"The two directions given in paragraph 11 of the impugned order, however, go to show that while on the one hand the Tribunal stated that by the use of the expression 'temporary status' it meant the status conferred on casual workers on completion of 120 days and nothing more and at the same time the second direction issued was that they should be considered for regularization in Group D post as and when vacancies arise in their turn and in accordance with the seniority. The two orders passed by the Tribunal to which we have made our reference have created certain apprehensions in the minds of the appellants. It must also be true that even while it granted two directions under the impugned order, the Tribunal stated in no uncertain terms that the benefit shall be extended to the grant of emoluments admissible to casual labour enjoying the temporary status. Therefore this is a special type of status which is conferred by the Tribunal, perhaps under the establishment rules of the railways. But what is important is that the Tribunal desired that these respondents should be considered for Group 'D' post as and when vacancies arise. The ultimate effect of this is that the respondent will continue to work as volunteers on payment of out of pocket allowance at the rate of Rs. 8/= per day, but

as and when vacancies arise in Group D post, they should be considered for absorption in accordance with the inter se seniority between the volunteers. Nothing further then that it is contemplated by the impugned order of the Tribunal. We were shown an order of South Eastern Railways dated 27th January, 1994, wherein 12 volunteers of the ticket checking branch, the very respondent, had been called for screening test for absorption in Group D vacancies and they have been required to undergo pre-recruitment medical examination. This shows that the order of the Tribunal is being implemented by the concerned Railway Administration.

In view of the above since the position now stands clarified and any doubt which existed now stands removed by this order, nothing further remains to be done and we do hope that the question of absorption of the respondents, if not completed by now, will be completed expeditiously. The appeal will stand disposed of accordingly. No costs."

8. Subsequently, the respondents issued a circular for engagement of VTCs. Accordingly, the applicant was engaged on payment of Rs. 8/- per day. Subsequently, a Vigilance check was conducted and found certain VTCs involved in selling the Railway property and two persons namely Anjani Kumar Sinha and Vinod Kumar Verma were charge sheeted by GRP Gonda and FIR was lodged against four persons including the applicant whose name found place at Sl. No. 3 in the said FIR. The said incident took place on 12.6.2007 and in pursuance thereof, the respondents have issued a control message on 1.7.2003 and the applicant was not assigned further duties of VTC.


9. Feeling aggrieved by the said action of the respondents, the applicant preferred the present O.A. It is categorically indicated by the respondents that the copy of the said control message was made available to him on 16.3.2005. The applicant also represented for allowing him to work but the respondents have not taken any decision.

10. The case of the applicant is that he has acquired a special status as held by the Hon,ble Supreme Court in **Civil Appeal No. 1015/95 in the case of Union of India Vs Sagar Chand Biswas and others decided on 05/01/1995** and therefore, his services could not be dispensed with by the respondents as the respondents has passed the order without following the Principle of Natural Justice and without providing an opportunity of hearing to the applicant.

11. The applicant was engaged as Volunteer to help ticket checking staff and were paid out of pocket allowances @ 8/- per day and even after Vigilance check, and FIR, no action is taken against the applicant by way of neither filing any charge sheet before the criminal court or initiating any departmental proceedings against the applicant. The applicant also made a representation which was not decided by the authorities neither they have indicated in their counter reply that any such decision is taken.

12. It is also undisputed fact that the respondents have issued a circular for temporary arrangement to handle rush of passengers in booking/reservation work and also issued a circular for absorption of VTCs.

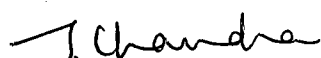
13. It is not to be disputed that an FIR was lodged on 12.6.2003, in which the name of the applicant finds place at Sl. No.3. But admittedly, no charge sheet is filed against the applicant before any competent court of law nor any disciplinary proceedings are initiated by the Department against the applicant.



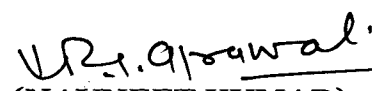
14. It is also undisputed fact that the applicant was not granted any opportunity of hearing before passing of impugned control message and orally terminating the services of the applicant.

15. As observed by the Hon'ble High Court in the case of **H.S. Srivastava Vs. Special Land Acquisition Officer** reported in **1993(11) LCD 441** that "An order adversely affecting an employee has to be a speaking order", we are inclined to interfere in the present O.A. Accordingly the impugned order dated 1.7.2003 is liable to be interfered with and is accordingly quashed. The applicant be treated in service without any back wages. The respondents are at liberty to proceed by means of issuing the charge sheet in accordance with law and in case such a charge sheet is issued, the entire proceedings shall be completed within a maximum period of six months and the applicant is directed to cooperate with the enquiry and in case he fails to cooperate with the enquiry, the respondents would be at liberty to proceed against the applicant ex-parte.

16. With the observations made in para 15 of this order, O.A. is allowed. No order as to costs.



(JAYATI CHANDRA)
MEMBER (A)


(NAVNEET KUMAR)
MEMBER (J)

HLS/-