

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## NEW BOMBAY BENCH

O.A. No. 68/89 and 129/89

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DATE OF DECISION 25.4.1991

MR. RAKESH KUMAR MISHRA and \_\_\_\_\_ Petitioner

Mr. Gulabsingh Prahladsingh Baish,

Mr. G. K. Masand,

Advocate for the Petitioner(s)

Versus

Union of India through \_\_\_\_\_ Respondent

General Manager, C.R., Bombay. VT.

~~Mr. V. G. Rege,~~

Advocate for the Respondent(s)

### CORAM

The Hon'ble Mr. U.C. SRIVASTAVA, Vice-Chairman,

The Hon'ble Mr. M.Y. PRIOLKAR, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH  
NEW BOMBAY

(10)

ORIGINAL APPLICATION No.68/89

MR.RAKESH KUMAR MISHRA  
residing at Village Harha-  
Malikapur, Post Harha  
Malikapur, Dist.Hardoi,  
State U.P.

... Applicant

Vs.

UNION OF INDIA  
through General Manager,  
Central Railway,  
Bombay - VT

ORIGINAL APPLICATION No.129/89

Shri Gulabsingh Prahladsingh Baish,  
Residing at Gram Post Office Naya Gaon,  
Y.Jetwara, Dist.Satna, M.P.

... Applicant

Vs.

THE Union of India,  
through General Manager,  
Central Railway, Bombay, VT.

... Respondent

CORAM : HON'BLE SHRI U.C.SRIVASTAVA, Vice-chairman  
HON'BLE SHRI M.Y.PRIOLKAR, Member (A)

Appearance

Shri G.K.Masand, Adv,  
for the applicant

Shri V.G.Rege, adv,  
for the respondents.

ORAL JUDGMENT

DATED: 25.4.1991

(PER : U.C.SRIVASTAVA, Vice-chairman)

These two cases are identical and are disposed of  
by this common judgment. They were appointed as Trainee

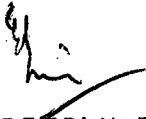
OA NO: 68 and 129/89

Rakshak in the Railway Protection Force of Central Railway. They were posted on regular basis as Rakshak in the month of 1983, Subsequently, Railway Protection Force was designated as an Armed Force and the designation was changed to Constable. Both of them were declared medically unfit for B-1 category but they were found fit for C-1 category by the Medical Board. This medical examination took place in the month of April 1986. In accordance with the rules they become eligible for absorption in the Central Railway where medical fitness required was C-1 category. By the notification dated 22nd July 1986, Asstt. Commandant (Fire) circulated the fact that the applicants have been declared medically unfit for B-1, but fit for C-1 to the various department of Central Railway, but it appears this was not circulated to some departments including Commercial department. As per rules since they were not absorbed for a period of 6 months after exhausting their entire leave, their names were struck off. Subsequently, it appears that a letter was received from Commercial Department where it was mentioned that there were vacancies of Hamal, under the Chief Commercial Superintendent, Central Railway Bombay, VT, and they were asked whether they are willing to join duty. Both of them accepted the same and joined the duty, and certain benefits were also given to them. On 15th June 1988 they were asked to discontinued their services. After waiting for some time they have approached this Tribunal. They have prayed that the respondents be directed to pay to the applicant wages to which the applicants are entitled.

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2. This application has been opposed by the Railway Administration on the ground that since the applicants were not absorbed in six months' time, after leave as prescribed in the rules, they very rightly discharged and further their appointment of Hamal is irregular not being accordance with the procedure laid down. Consequently they are not entitled to any salary and in fact action was being taken against the persons who have appointed them. It appears that subsequently salary has been paid to the applicants. The precise question that arises for consideration of this case is whether there was any procedural fault in applicants not being absorbed in service within the prescribed period. It is not the case of respondents that no intimation was given to all the concerned departments in and none of the departments vacancies arose. Obviously, in case the information had been given to the Chief Commercial Superintendent there was a clear possibility of their being absorbed in service within the stipulated period. Subsequently, they had been taken into service but on technical ground their services in any other Government department or any State Government. Under these circumstances the employees are not to suffer. The action of the opposite party from beginning appears to be not quite inaccordance with the policy and rules they have been following. In this circumstances, the application derves to be

allowed to the extent that this termination order has to be quashed with the condition that the applicants be given suitable appointments as and when vacancies occur but the entire period will be treated as extraordinary leave, the applicants will be entitled to other benefits, but no salary for the period during they are out of service. There will be no order as to costs. It is expected that the applicants would be given appointments within a period of three months from the date of communication of this order.

  
(M.Y. PRIOLKAR)  
Member (A)

  
(U.C. SRIVASTAVA)  
Vice-Chairman