

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

CIRCUIT BENCH AT JAMMU

OA No. 061/00031/2015

Pronounced on : 15.05.2018

Reserved on : 20.04.2018

**CORAM: HON'BLE MR.SANJEEV KAUSHIK, MEMBER(J)
HON'BLE MRS. P. GOPINATH, MEMBER(A)**

Smt. Kiran Bala
W/o Sh. Ashwani Kapoor
R/o Plot No. 137, Shopping Complex
Bakshi Nagar, Jammu.

.....Applicant

BY ADVOCATE: **Sh. Sanjay Kakkar**

VERSUS

1. Union of India through Secretary, Ministry of Railways, New Delhi.
2. Railway Board through its Chairman, Baroda House, New Delhi.
3. The General Manager, Northern Railways, Baroda House, New Delhi.
4. Divisional Railway Manager, Northern Railway Ferozepur Cantt.

.....Respondents

BY ADVOCATE: **Sh. P.S. Chandel**

ORDER

BY MRS. P. GOPINATH, MEMBER(A):-

1. Applicant in the OA submits that she came to be engaged as Inquiry-cum-Reservation Clerk (ERC) on 31.05.1983. Applicant was re-engaged on 06.08.1999, but has not been regularized by the

respondent despite completing the requisite length of service and also possessing the requisite qualification. Applicant preferred OA No. 1355/JK/2011 and the same was disposed of by an order on 27.04.2012 directing the Competent Authority to take a view in the matter within three months of the passing of the judgement. In the Contempt Petition filed, the respondents submitted that vide letter dated 12.05.2014, the Competent Authority had passed a detailed order.

2. During the pendency of the revival of the CP, the respondents issued letters dated 21.04.2015 (Annexure F) and 22.04.2015 (Annexure G). The applicant argues that the above two letters are in violation of various circulars and communications of the respondents governing the subject. The only requisite for regularizing the incumbents on the post of ERC/MBC is possession of minimum qualifications and putting in three years service in the said post.

3. The applicant challenges the holding of a written test and reduction to the scale of Class IV for failing to qualify the written test as the requisite qualifications for the post. The prayer of the applicant is for quashing Annexure F and Annexure G and to regularize the applicant by passing the qualifying examination, from the date of completion of three years of service and grant of monetary benefits thereon.

4. The respondents in reply statement submit that, in pursuance of the directions of regularization of one Satpal Singh and

the applicant by the Tribunal, a written test was held giving three weeks' time to applicant to appear for the same. The applicant along with other individuals qualified the written test of Mobile Booking Clerk (MBC) and were directed for pre-requisite training course. On completion of the said course, the applicant and other selected candidates were absorbed as Inquiry-cum-Reservation Clerks and regularized w.e.f. 26.06.2015.

5. Following the judgement of the Tribunal in Satpal and Kiran Bala case, the Railway Board issued a detailed order for regularization as a one-time measure stating as follows:-

- (i) Northern Railway may take immediate action for constituting a committee to prepare a final list of all such persons awaiting regularization.
- (ii) Once such list is finalized, candidates may be screened as per their qualification and suitability without any age bar.
- (iii) For this purpose, Railway may constitute a screening committee constituting of officers including Chairman/Member Secy. (RRB) of the RRB's concern in line with stipulations made vide letter No. E(NG)II-77/RC1/80 dated 21.04.1982 and No. E(NG)II/RC-3/87 dated 06.02.1990.
- (iv) Those who qualify will be eligible for regularization from the date of approval of the panel by the competent authority.
- (v) Those who fail to qualify would be considered for regularization in Grade Pay Rs. 1800 only by arranging revision of his Grade immediately.
- (vi) This facility would be given to even those candidates, who have failed earlier in screening test. However, no further chance would be given. This may be made clear in the notification/call letter as the case may be.

As per above orders of Railway Board, a three member 'JA Grade' officer committee was set up at Headquarters level to examine the entire issue and a report was sent to Railway Board to consider the matter.

6. The applicant in the OA is seeking regularization benefit retrospectively from the date she became eligible i.e. on completion of three years of service. The respondents' argument is that the

regularization is not an automatic process to be implemented on completion of three years of service, but was subject to their appearing in an examination followed by the training to hold the job. On completion of above two conditions, the services of applicant and similarly placed persons were regularized. Retrospective effect of regularization is not admissible as a temporary or casual employee cannot be absorbed merely on length of such casual engagement, but only on completion of due process of selection as envisaged in the rules.

7. The applicant has worked as Inquiry-cum-Reservation Clerk and not as MBC during her period of engagement prior to regularization. This would also render the written test and training necessary for the post against which the applicant has been given a regular appointment.

8. In compliance of the Tribunal's order, the respondents, as a one-time measure, constituted a Committee to prepare a final list of all persons awaiting regularization. This was followed by screening of the persons so listed, as per qualification and suitability for the post. This facility was also extended to those candidates who had failed earlier in the screening test as a last chance. Applicant participated and qualified the written test and the training conducted thereafter and the service of the applicant was regularized vide order dated 26.06.2015 on successful completion of training. Thus, the orders issued by the Tribunal in respect of Satpal and the applicant in the OA were complied with. The regularization would become effective

from the above date after participating and qualifying the written test and the training and not prior to that date.

9. The applicant appears to prefer the route of jumping the rules relating to qualifying the regularization process and be considered from a date earlier than passing the examination and undergoing training. The applicant was engaged at a time when there was a need to engage more persons for dealing with the increasing volume of work. However, no process of testing the competency of the applicant for the job was undertaken in order to give her a regular job. Such a process would be necessary for regular appointment in the respondent department as laid down by Apex Court in State of Karnataka Vs. Uma Devi, JT 2006(4) SC 420. The applicant's contention that she should be regularized on a date prior to the holding of the competency/fitness test and undergoing training appears to be far-fetched. Though the procedure for holding the test and training could have been undertaken by the respondents on an earlier date, the fact is that the competency of the applicant was tested on the date the written test was held and giving appointment w.e.f. an earlier date, would be against the provision of rules allowing such regularization and highly irregular, argues respondent. If the process of examination and training were not mandatory for the recruitment, then, the applicant could have been considered from the date she had completed three years of service. That the respondents could have held the examination when the three years of applicant's service was completed along with other

similarly placed, would have been beneficial to the applicant. The respondent department had in 1973 drafted a scheme of engagement of such persons on a temporary basis to clear the summer rush and handle the increasing passenger traffic. The future of such persons who were giving assistance to the respondent to deal with rush in Railway travel should have been given a thought to. Not having been thoughtful of such persons, giving them some relief is necessary.

10. The Principal Bench of the Tribunal in OA No. 663/1995 filed by the applicant had in its order stated as follows:-

“Applicant’s claim for temporary status or regularization shall be governed by rules/regulations on the subject and the instructions available in the original scheme.”

Hence, the Tribunal had not set aside the compliance of the rules/regulations in the regularization process. The applicant’s claim for regularization prior to compliance of the rules on regularization would be in violation of the order passed by the Tribunal in OA filed by the applicant.

11. The applicant in fact is seeking a judicial review of the order of the Tribunal in her earlier case for regularization. The power of judicial review cannot be expanded or extended to go into the policy decision of the Government. This was discussed by the High Court of Madras in **M.Seeni. Ahamed Vs. UOI, 2016 Legal Eagle (MAD) 973** wherein demonetization of currency was discussed and where the court found no reason to interfere with the decision of the Government. The Apex Court in **State of Orissa Vs. Gopinath**

Dashhad, 2006 AIR (SC) 651 also similarly held that while exercising the power of judicial review of the administrative action, the court is not the appellate authority. The respondents in this matter had taken a decision that the policy of regularization would include the holding of the written test followed by the training. Hence, any relief bypassing these provisions to pre-dating the compliance of these provisions should not be encouraged. However, as a special case, not to be quoted as a precedent, we direct the respondents to regularize the applicants with effect from date of passing the qualifying examination. The applicants having qualified the examination, the training would not be a hindrance to qualifying to occupy the post.

12. For the foregoing discussion, applicant is directed to be declared qualified to hold the post of Mobile Booking Clerk (MBC) w.e.f. date of passing the qualifying examination. OA is allowed as ordered. No costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 15.05.2018
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