

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

O.A. No.60/635/2017

Date of decision: 05.10.2018

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

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1. Vipin Kumar, age 51 years, son of Sh. Kewal Krishan, Mobile Booking Clerk, Railway Station, Northern Railway, Kathua (J&K) R/o House No.130, Prem Nagar, Dhaki Road, Pathankot (Punjab) Group C.
2. Madhu Bala, age 58 years, D/o Late Sh. Kartar Chand, W/o Sh. Ramesh Chander, Mobile Booking Clerk, Railway Station, Northern Railway, Jammu, R/o House No.82, Friends Colony, 1-A, Extension, Trikuta Nagar, Jammu. (Group C).

VERSUS

... APPLICANTS

1. Union of India through General Manager (P), Northern Railway, Headquarter Office, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Ferozepur Division, Ferozepur Cantt.
3. Senior Divisional Commercial Manager, Northern Railway, Ferozepur Division, Ferozepur Cantt.
4. Senior Divisional Personal Officer, Northern Railway, Ferozepur Division, Ferozepur Cantt.

... RESPONDENTS

PRESENT: Sh. Barjesh Mittal, counsel for the applicants.

Sh. Rohit Sharma, counsel for the respondents.

ORDER (Oral)

SANJEEV KAUSHIK, MEMBER (J):-

1. Present O.A. has been filed by the applicants seeking inter-alia the following relief(s):-

"8(iii). The impugned order dated 09.02.2016 (A-1) qua both the applicants be quashed/set aside having been passed against the judgment dated 27.02.2003 (A-3) as well as against the order dated 18.09.2014 (A-4) and order dated 21.04.2015 (A-2) passed by Railway Board/Headquarter Office Northern Railway."

2. After exchange of pleadings, matter came up for hearing today.
3. On the commencement of hearing, learned counsel for the applicants submitted that the issue of reversion, after putting in a considerable length of service i.e. after 25 years of an applicant came up for consideration before this Court in the case of **Rajwant Kaur vs. UOI & Ors.** (O.A. No.60/221/2016) decided on 05.07.2018. In that case, the applicant who happens to be employee of respondent department, the same very plea as has been taken in the present case, was taken by the respondents to revert her while working as Mobile Booking Clerk to the post of Commercial Khalasi, as in the present case, and was rejected. He submitted that present applicants were also engaged as Mobile Booking Clerk and have now been reverted as Luggage Porter. Therefore, he prayed that since issue in totality has been considered in the above noted case and rejected and impugned order passed by the respondents therein has been set aside, therefore, similar order be passed in the present case as well. He also informs that Sh. Rohit Sharma, was counsel in that case also and

arguments he is raising in the present case have already been considered and negated in the case of Rajwant Kaur (supra).

4. Considering above, we are of the view that the present case is identical to the case of Rajwant Kaur (supra) and plea raised therein by the respondents has already been negated in para 6, 7 and 8, which are reproduced as under:-

"6. A conjunctive perusal of the pleadings makes it clear that applicant is working as Mobile Booking Clerk from 31.05.1993 and was granted temporary status w.e.f. 22.10.1993. Instead of regularizing her service, by considering length of service put in, respondents took test of persons who are holding that post. As many as 16 persons appeared out of which 5 qualified and 11 have been declared fail.

7. Considering the fact that applicant is continuing on said post without anything adverse against her for the last 25 years, then for not having the qualification, respondents cannot take harsh step to revert her at this belated stages, which would even otherwise be opposed to law. This has so been held in the case of Saudamini Prabha (supra), wherein Lordships have observed that while considering case of an employee for regularization, department cannot be allowed to take plea that he/she is not having required qualification, because with the afflux of time, applicant gained experience by working on that post, which itself can compensate for the required qualification in the given peculiar facts of this case. Therefore, the applicant cannot be reverted on the ground that she did not pass requisite test. Also in the judgment in the case of Hussain Sasansaheb Kaladgi (supra) their Lordships have held that a person cannot be reverted to a post, to which one was never appointed at all.

8. In the case of the applicant she was appointed on the post of Mobile Booking Clerk, whereas by impugned order she has been reverted to the post of Commercial Clerk, which is lower than to one she was appointed on. In view of the aforesaid discussion, the O.A. is accepted. Accordingly, the impugned order is quashed and set aside. Consequential benefits to follow."

5. For the parity of reasons given in the indicated case, the O.A. is also allowed in the same terms. The impugned order is hereby quashed and set aside. Needless to mention that the consequential benefits will follow. No costs.

(AJANTA DAYALAN)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Date: 05.10.2018.
Place: Chandigarh.

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