

(2019) 09 CAT CK 0013

In the Central Administrative Tribunal

Case No : Original Application No. 4109 Of 2016

A.P. Pandey

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 05-09-2019

Acts Referred:

Citation : (2019) 09 CAT CK 0013

Hon'ble Judges : Nita Chowdhury, Member (A)

Bench : Single Bench

Advocate : Meenu Mainee, Shailendra Tiwary

Final Decision : Dismissed

Judgement

1. The applicant has filed the present OA, seeking the following reliefs:-

"8.1 That the Hon'ble Tribunal may be graciously pleased to allow this application and direct the respondents to treat the applicant as a regular employee and release all pensionary benefits like pension, gratuity etc..

8.2 That the Hon'ble Tribunal may also be graciously pleased to direct the respondents to give all consequential benefits like arrears, medical benefits, post retiral passes. etc.

8.3 That the Hon'ble Tribunal may further graciously be pleased to pass any other or further order as may be deemed fit and proper on the facts and circumstances of the case.

8.4 That the Hon'ble Tribunal may further be graciously be pleased to grant costs against the respondents and in favor of the applicant."

2. The applicant, in this case, is aggrieved by the failure of the respondents to grant pensionary benefits to him, like pension, gratuity etc. on the ground that he had not been regularized and continued to work as Mobile Booking Allowance with temporary status for 25 years. The applicant has pleaded that those, who

are initially appointed on daily wages acquired temporary status after 120 days of service whereafter they are entitled to all attendant benefits like full pay scale, medical benefits, allotment of quarters, protection of disciplinary and appeal rules etc which are admissible to a regular railway servant. They have further pleaded that after having been given temporary status such workers were entitled to be regularized and absorbed after holding the screening with three years service. The applicant has pleaded that the respondents had neither regularized the services of the applicant nor terminated him from service and instead he was continued to work as full fledged Booking Clerk drawing full pay as per rules. The applicant has further averred that he was allowed to continue without passing the screening in the year 1994 and thereafter no screening was held in respect of him. He has also averred that when he retired on 31.10.2015 after rendering satisfactory work for more than 25 years, the respondents have denied the pensionary benefits/post retirement benefits. The applicant, in this context, has relied upon the decision of the Tribunal of the in the case of Durga Prasad Vs. UOI, ATR 1991 in which it was held that the casual labour who have worked for 2 to 4 years should be considered for regularization of their services irrespective of whether their names have been sponsored by the Employment Exchange or not. The applicant further relied upon the case of the Hon'ble High Court in South Eastern Railway Vs. Sheikh Abdul Khedar IATJ 2004 (2) page 23 in which it was held that the casual labour with temporary status is entitled to count full period of temporary status for the pensionary benefits and half the period before getting status.

3. The respondents, while contesting the OA, have filed their reply in which they have stated that the Railway Board vide its letter dated 21.04.1982 decided that volunteer/Mobile Booking Clerk (MBC) can be considered against regular vacancies of Booking clerk on the condition that they fulfill eligibility of direct recruitment on the said post and the requisite essential eligibility of direct recruitment as Booking clerk is High School pass with English subject. They have contended that since the applicant had not passed the High School with English subject, he could not be regularized as permanent Booking clerk in Railway department. They have also contended that the applicant was engaged as Mobile Booking clerk on certain rate of honorarium on per hour per day basis payable monthly on temporary basis.

4. After hearing both the learned counsel for the parties and perusing the record, it is an admitted position that the applicant was called for screening to regularized as Booking Clerk in the year 1994 but he could not qualify the same because he was not having the requisite qualification, i.e. High School pass with English as a subject as shown from the documents annexed by the applicant himself at Annexure A/5. We have also examined the Railway Board letter No.E(NG)II- 77/PCT/30 dated 21.04.1982 which reads as under:-

"2. The question of regularization of these volunteer booking clerks through screening a departmental committee for absorption on the railways was again

discussed by the NFLR during PNM meeting held with the Board on 23rd and 24th December, 1981. After taking into account all aspects of the case, the Ministry of Railways have decided that these volunteer/mobile booking clerks who have been engaged on the various railways on certain rate of honorarium per hour or per day may be considered by you for absorption against regular vacancies provided they have the minimum qualifications required for direct recruits and have put in a minimum 3 years service as volunteer/mobile booking clerks. The screening for their absorption should be done by a committee of officers including the Chairman or a member of the railway service commission concerned."

5. From the above letter issued by the Railway Board, it is clear that the applicant should have minimum requisite qualification, i.e. High School pass with English as a subject which is necessary for consideration or absorption against regular vacancies but his services could not be regularized as Booking Clerk as he did not possess the aforesaid minimum requisite educational qualification.

6. We have also examined the judgments relied upon the applicant in the cases of Durga Prasad and Sheikh Abdul Khedar and find that the same is not applicable to the facts of the present case, as the applicant herein had never been regularized in terms of Railway Board letter 21.04.1982 due to non possessing of requisite qualification, i.e. High School pass with English as a subject.

7. Hence, in view of the above, we do not find any merit in the OA and the same is dismissed. No costs.