
(2023) 05 CAT CK 0041
In the Central Administrative Tribunal
Case No : Original Application No. 684 Of 2021

Om Prakash Srivastava

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 16-05-2023

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Constitution Of India, 1950 — Article 14

Citation : (2023) 05 CAT CK 0041

Hon'ble Judges : Dr. Sanjiv Kumar, Member (A)

Bench : Single Bench

Advocate : Rakesh Verma, Raj Pal Singh

Final Decision : Allowed

Judgement

Dr. Sanjiv Kumar, Member (A)

1. By way of the instant original application filed under section 19 of Administrative Tribunals Act 1985, the applicant has prayed for a direction to the respondents to regularize his services from the initial date of engagement and to give him promotion and benefit of arrears of pay as per rules. Prayer has also been made for a direction to the respondents to extend the benefit of M.A.C.P to the applicant with effect from regularization.

2. The facts of the case of the applicant, in brief, are that the applicant was initially engaged by the respondents as Mobile Booking Clerk and worked from 13.08.1983 to 14.10.1983. Thereafter his services were dispensed with. Again the applicant was appointed as Mobile Booking Clerk with effect from 27.12.1992 in pay scale of Rs. 975-1540 and was posted at Gonda Railway Station. It is stated that the applicant had attained the age of superannuation on 31.10.2021 and inspite of having worked for more than 29 years, he has not been allowed any promotion or ACP/MACP. It is submitted that many persons junior to the applicant were granted the benefit under ACP/MACP. Learned counsel for the

applicant contended that the Railway Board issued several circulars for regularization / absorption of the Mobile Booking Clerk but the applicant has not been given the benefit of same. It is further contended that in OA No. 1174/1986 – Meera Mehta and Ors. Vs. UOI & Ors, similarly placed applicants had claimed regularization of their services which was allowed and consequently the SLP filed by the railway administration was dismissed by the Apex Court. Thereafter, the said judgment was implemented and the Railway Board had issued a Circular dated 06.02.1992 whereby question of absorption / regularization of Mobile Booking Clerk was addressed. In the aforesaid judgment, it was held that after rendering three years continuous service, the Mobile Booking Clerk should be considered for regularization of the service. It is contended that the applicant was also allowed temporary status with effect from 30.07.1992 and he was placed in the panel for being regularized as Mobile Booking Clerk in October 2014. It is further contended that vide order dated 19.09.2017, the upper age limit of the applicant was relaxed for regularization but the applicant has not been regularized and he is due for retirement w.e.f 31.10.2021. Aggrieved the applicant filed a representation dated 01.02.2021, which is not decided by the respondents, hence the applicant has prayed to allow this OA and to direct the respondents to give consequential benefits.

3. Upon notice the respondents have filed counter affidavit wherein basic fact of the case is not denied that the applicant was engaged in railway service temporarily under the scheme of Mobile Booking Clerk in the year 1983 and after some time he was discontinued. However, in the year 1992, he was again engaged as Mobile Booking Clerk and after continuous work of 120 days as per rule, he was granted temporary status from 30.07.1992 by order dated 02.06.1997 and the applicant has retired from service as Mobile Booking Clerk on 31.10.2021. It is stated that the matter of regularization of service of the applicant was considered but after screening, he could not be regularized due to being failed two times in training, hence he could not be given the benefit of promotion and ACP/MACP. The respondents have further submitted that as per rules, the employees who are successful in screening examination have to pass training period for the post of Commercial Clerk and for which the employees of general category get two chances. The applicant was given two changes to pass in training period in which he was declared failed on both occasions; as such he retired from the post of Mobile Booking Clerk without being regularized. Hence, there is no case for the applicant and the OA should be dismissed.

4. The applicant has filed detailed rejoinder where he reiterates the other facts of the OA but he denied para 11 of the counter affidavit by stating that the condition of passing of training is attached with the incumbents appointed under the direct recruitment and the same was not applicable to him. So far as the regularization of Mobile Booking Clerk is concerned, the condition of passing the training is not attached. The applicant emphatically contends that several times, the issue has been raised before various court of law in several litigations and the same has been decided in favour of the applicants. In OA No. 1174-A of 1986 –

Meera Mehta & ors. Vs. UOI & Ors, the Principal Bench of this Tribunal vide order dated 28.08.1987 had directed that respondents shall regularize the services of the petitioners therein, who were engaged on or before 17.11.1988, against regular post after they have completed three years of service from the date of their initial engagement subject to their fulfilling all other conditions in regard to qualification etc., as contained in circulars dated 21.04.1982 and 20.04.1985. Further, the Hon'ble Delhi High Court vide judgment dated 01.11.2010 passed in Writ Petition (C) No. 1932/2005 and 7894/2005, wherein the order of the Principal Bench was challenged, has observed that no condition with respect to completion of training before regularization was prescribed in the circulars of Railway Board dated 21.04.1982 and 20.04.1985. Learned counsel for the applicant submitted that in both the aforesaid judgments, the question of regularization of Mobile Booking Clerk have been considered and decided the issue of training for being regularized against regular post of such Mobile Booking Clerk and the court has clearly held that training is not the prescribed criteria. The learned counsel for the applicant also draws my attention to the circulars dated 21.04.1982 as well as 20.04.1985 and submitted that there is no such criteria laid down and hence there is no strength in the contention of the respondents and the applicant should be granted benefit of regularization and other consequential benefits by allowing this OA.

5. The case came up for final hearing on 15.05.2023. Shri Rakesh Verma, learned counsel for the applicant and Shri Raj Pal Singh, learned counsel for the respondents were present and both were heard. I have carefully gone through the entire record, and considered the rival contentions.

6. From the pleadings, it is clear that the basic facts of the case are not denied. The only contention of the respondents is that the applicant failed to clear the training and because of it, he was considered ineligible for regularization and since his service were not regularized, he could not be given the benefit of promotion as well ACP/MACP and pension.

7. From the record, it is clear that the facts in OA No. 1174-A/1986 and the facts of this case are similar. The observation of the Principal Bench in para 8, 9, 10 and 11 the order dated 28.08.1987 passed in OA 1174-A/1986 reads as under: -

"8. Once the Railway Board had introduced a scheme of regularization in respect of the Volunteer/Mobile till 17th November, 1986 with the tacit approval, express or implied, of the Railway Board when they came out with alternative measures for coping with rush of passengers during peak season, restricting the scope of the regularization scheme to those who were employed prior to 14.8.1981, the so called cut off date when the decision for discontinuing the scheme was taken, but actually not implemented, would be clearly discriminatory, arbitrary and violative of Article 14 of the Constitution. All volunteers/mobile booking clerk who were engaged on or before 17.11.1986 would be entitled to regularization of their services on completion of three years of service subject to fulfillment of other conditions as spelt out in circular No. E (NG) III-77/RCI/80, dated

21.4.1982 and No. E (NG) II/84/RC3/8, dated 20.4.1985 issued by the Ministry of Railways.

9. In the light of the view which we have taken, we do not consider it necessary to deal with the other contentions put forth by the learned counsel for the applicants.

10. The learned counsel for the respondents expressed an apprehension that any volunteers/mobile booking clerks who might be engaged by the Railways in future for short periods might claim similar protection and regularization. We would like to make it clear that in the absence of any scheme of regularization which the Railways may introduce in future or their adopting a policy of regularization only in the case of a few to the exclusion of others, any persons similarly engaged after 17.11.1986 would not be entitled to claim any regularization as such.

11. In view of the above discussion, the application is allowed. The instruction conveyed in communication dated 15.12.1986 (Annexure A-2) regarding discharge of Mobile Booking Clerks in so far as it relates to the applicants is hereby quashed. It is further directed that all the applicants herein who were engaged on or before 17.11.1986 shall be regularized and absorbed against regular posts after they have completed three years of service from the date of their initial engagement subject to their fulfilling all other conditions in regard to qualifications etc., as contained in circulars dated 21.4.1982 and 20.4.1985. The parties shall bear their own costs."

8. From simple reading of the above, it is clear that once the Railway Board had introduced the scheme of regularization in respect of volunteer /Mobile Booking Clerks and certain type of regularization and certain dates were allowed and the scope of same period was extended by the said judgment.

9. In another case, in Writ Petition No. 1932/2005 – Nand Kishore & Ors. Vs. UOI & Ors, Hon'ble Delhi High Court in its judgment dated 01.11.2010 has held as under: -

"40. As noted herein above, the Tribunal had directed the petitioner to regularize the services of the respondents in question on the same conditions as contained in the circulars dated 21.04.1982 and 20.04.1985 issued by the Railways. The conditions stipulated in the said circulars for regularization of services were that the concerned person should be within the prescribed age limit and should have put in three years of service. No condition with respect to completion of training before regularization was prescribed in the said circulars. By insisting on completion of three years of service after training, the petitioner is making an innocuous attempt to introduce a new condition on the regularization of the services of the respondents in question.

41. The matter can also be looked at from another angle. There is no requirement under paragraph 129 that commercial clerk should have put in three

years service after completion of his training. The petitioner wants to read the expression "who have completed three years of service" occurring in paragraph 129 as "who have completed three years of service after training". When the language used is clear and unambiguous, it is not permissible to add words in a provision or a rule."

A simple perusal of the above paragraphs of the judgment shows that the Hon'ble High Court had examined the circulars dated 21.04.1982 and 20.04.1985 wherein the condition of regularization of temporary Mobile Booking Clerks is given that the concerned person should be within the prescribed age limit and should have put in three years of service and no condition of completion of training before regularization was prescribed and hence the Hon'ble High Court did not agree to the contention of the department and relief was confirmed.

10. Further, the applicant has placed the circular dated 21.04.1982, which reads as under: -

"Sub:- Voluntary/Mobile Booking Clerks on the Railways.

Attention is invited to Board's Wireless of even number dated 11/9/81 in which you were advised that the engagement of Volunteer Booking Clerks on the Railways may be continued on the existing terms till further advice.

The question of regularization of these Volunteer Booking Clerks through screening by a Departmental Committee of absorption on the Railways was again discussed by the NFIR during the 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 rates of honorarium per hour or per day, may be considered by you for absorption against regular vacancies provided that they have the minimum qualifications required for direct recruits and have put in a minimum of 03 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 Committee concerned."

A perusal of the aforesaid circular shows that for regularization of Mobile Booking Clerk through screening by a Departmental Committee for absorption, they may be considered for absorption against regular vacancies provided that they have the minimum qualification required for direct recruits and have put in a minimum three years of service as Volunteer / Mobile Booking Clerks. Hence, there is no criteria for completion of training and passing some examination as contended by the respondents to deny the claim of the applicant.

11. Further, the Railway Board's Circular dated 20.04.1985 relied upon by the learned counsel for the applicant, is being quoted below: -

"Sub:- Voluntary/Mobile Booking Clerks on the Railways.

The question of regularization of these Volunteer Booking Clerks in regular employment on Railways through screening by a Departmental Committee was discussed by the NFIR during the 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 had decided vide their letter no. E(NG)IIRC1/80 dated 21.4.82 that Voluntary/Mobile Booking Clerks who has been engaged on the various Railways on certain rates of honorarium per hour or per day, might be considered by the Railways for absorption against regular vacancies provided that they have the minimum qualifications required for direct recruits and had put in a minimum of three years of service as Voluntary/Mobile Booking Clerks. The screening for their absorption was to be done by a Committee of officers including the Chairman or a Member of the Railway Recruitment Board concerned.

Representations have been received in this Ministry that the absorption in regular employment of Voluntary/Mobile Booking Clerks who were engaged as such prior to 14.8.1981 and who have since completed three years should also be considered, the matter has been examined and it has been decided that the Voluntary/Mobile Booking Clerks who were engaged prior to 14.8.81 may also be considered for regular absorption against regular vacancies on the same terms and conditions as stipulated in Ministry's letter No. E(NG)/II/77/RCI/80 dated 21.4.1982 except that to be eligible for screening and candidate should inter alia be within the prescribed age limit after taking into account the total period of his engagement as Voluntary/Mobile Booking Clerks.

Receipt of this letter may be acknowledged"

A simple reading of this also shows that age limit is prescribed herein and there is no mention of any other condition like completion of training and passing some examination before regularization.

12. The respondents were asked to explain and show any other condition except the conditions prescribed in circular dated 21.04.1982, wherein minimum qualification is mentioned with passing examination and some training but they could not show anything else. They were also specifically asked whether the case laws quoted above, which cover the case of the applicant, have attained finality or have they challenged them but they could not show any thing contrary to the same.

13. Hence considering the case of the applicant covered by the above quoted judgments, the OA is allowed and the respondents are directed to regularize the services of the applicant from the date he completed three years after being given temporary status and he became eligible for regularization with all consequential benefits. The applicant will be entitled for 6% simple interest on the amount due. The said exercise should be completed within four months from the date of receipt of certified copy of this order.

14. All pending associated MAs stand disposed off.

15. No order as to costs.