

Central Administrative Tribunal  
Principal Bench

O.A.No.1861/2002

Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 13<sup>th</sup> day of March, 2003

1. Jagdish Singh Rawat s/o Sh. L.R.Singh
2. Devendra Kumar s/o Sh. Dhani Ram
3. Rajesh Sharma s/o Sh. R.S.Sharma
4. Dinesh Kumar s/o Sh. Ram Pal Singh
5. Bhubnashwar Goswami s/o Sh. Moti Lal
6. Raghuveer Singh s/o Sh. Narendra Singh
7. Dinesh Sharma s/o Sh. J.D.Sharma,

All are working as Booking Clerk at Northern Railway Station, Aligarh (Applicant No.2, 3, 4, 6 & 7), at Northern Railway Kurja (Applicant No.1) and applicant No.5 at Allahabad. (UP).

.... Applicants.

(By Advocate: Sh. Yogesh Sharma)

Vs.

1. Union of India through  
The General Manager  
Northern Railway Baroda House  
New Delhi.
2. The Division Railway Manager  
Northern Railway  
Allahabad Division  
Allahabad (UP).

.... Respondents

(By Advocate: Sh. R.L.Dhawan)

O R D E R

By Shri Shanker Raju, M(J):

Applicants, seven in number, have assailed respondents' order dated 16.9.1999 where their claim for accord of temporary status as Mobile Booking Clerks, on completion of 120 days prior to 17.11.1986, has been rejected. They have sought quashment of these orders with directions to respondents to grant them temporary status from the date of completion of 120 days continuous service from the date of their initial engagement with all consequential benefits.

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2. Applicants have been engaged as Booking Clerks from 1982 to 1986 and had completed 120 days during the same year of engagement. They have been granted temporary status w.e.f. 1990 except the case of applicant Sh. Devendra Kumar, who has been accorded temporary status in 1990.

3. Applicants, who have been disengaged in 1986, have approached CAT, Principal Bench in different OAs by an order dated 23.5.1989 directions have been issued to reinstate them in service and that their regularisation also to be held in accordance with Railway Board's circulars dated 21.4.1982 and 20.4.1985. An SLP preferred against the Judgement was dismissed on 19.11.1989.

4. In compliance of the decision of Tribunal, by an order dated 24.8.1990, GM (Personnel) issued directions to consider three years instead of 1095 working days for regularisation and their temporary status to be given to Mobile Booking Clerks who completed four months continuous service. The DRM, Allahabad by an order dated 12.7.1990 passed orders confirming Mobile Booking Clerk's temporary status on completion of 120 days.

5. Applicants, who have completed 120 days in the year 1986 have been granted temporary status not from completion of 120 days but after the reinstatement in 1990, giving rise to present OA.

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6. Sh. Yogesh Sharma, learned counsel appearing on behalf of applicants, stated that in pursuance of the decision of this Court in OA 896/88 dated 4.6.1990 in Mohinder Kumar & Others v. Union of India, directions have been issued to accord temporary status to those Mobile Booking Clerks, who had completed four months continuous service. Accordingly, by an order dated 24.8.1990, General Manager (Personnel) decided to accord temporary status to Mobile Booking Clerks on completion of 120 days service. SLP against this order has been dismissed and as such the decision of the Tribunal has attained finality.

7. In pursuance thereof, respondents have themselves accorded temporary status to two other similarly circumstance from back date by an order dated 17.10.1993. It is also contended that in Delhi Division also temporary status has been accorded and pay revision has taken place in case of similarly circumstance from 1981 and onwards. Accordingly, applicants have been meted out the differential treatment, without any basis, which is violative of Articles 14 and 16 of the Constitution of India.

8. In so far as General Manager's letter dated 3.10.1991 is concerned, it is contended that the same runs on the face of the Tribunal's order and being contrary to the directions issued, cannot be sustained.

9. Shri Yogesh Sharma referring to impugned order contended that the order passed on representation in pursuance of directions of the Court on 11.5.1999, the reason assigned to deny the benefit of applicants cannot be countenanced as the decision of the Tribunal has attained finality and the same has been implemented and even attained<sup>by</sup> dismissal of SLP.

10. In so far as the limitation is concerned, it is stated that the case is within the limitation and by referring to the MA for condonation of delay, it is contended that in pursuance of directions contained in OA 1338/99 whereby his representation is to be disposed of, by Contempt Petition No.294/2000 has been preferred therein the compliance affidavit dated 14.12.2000 passed by respondents copy of the order dated 16.9.1999 though not dispatched earlier to them, was disclosed and accordingly liberty has been given, the present OA has been filed within one year from the date of receipt of a copy of the order dated 16.9.1999.

11. Moreover, by referring to the decision of the Apex Court in M.R.Gupta v. Union of India & Others. 1995(5) SCC 628 it is contended that only consequence<sup>of</sup> temporary status would be fixation of pay of the applicants and as the pay and allowances is a recurring cause of action, OA is within limitation.

12. On the other hand, respondents' counsel through Shri R.L.Dhawan, strongly rebutted the contentions and taken the preliminary objection of constructive res-judicata. Relying upon the decision of Apex Court in Commissioner of Income Tax Bombay v. T.P.Kumaran, SLJ 1996(3) SC 101, contended that despite opportunity the applicants in the earlier OAs had not raised the issue of temporary status in the subsequent proceedings is barred by law to claim such relief.

13. Shri R.L.Dhawan further states that there is no sufficient cause for condonation of delay against the order dated 16.9.1999 and as applicants have filed the present OA only on 7.6.2002 which cannot be countenanced in the light of the decision of the Apex Court in P.K.Ramchandra v. State of Kerala, JT 1997(8) SC 189.

14. Shri R.L.Dhawan further places reliance on a Full Bench decision in Wazir Chand v. Union of India & Others, FB CAT Vol.II Page 287 to contend that GM is empowered to make rules for general application in respect of Group "C" and "D" employees in inconsistent with the rules made by the Ministry of Railways and by referring to the letter issued by GM on 3.10.1991 it is contended that temporary status to Mobile Booking Clerks, on completion of 120 days, was held by the CAT only in 1990 and prior to this the Mobile Booking Clerks were being considered for absorption against regular vacancies provided they had put in a minimum of three years service as MBCs. As per circular dated 21.4.1982 of the Railway Board

which stipulated absorption of Mobile Booking Clerks on completion of minimum three years of service and it is only ~~after~~<sup>after</sup> 1990, 120 days concept has been held, as such there is no question of grant of temporary status to applicants prior to 1986.

15. Moreover, in so far as question of according the benefit to similarly circumstance, it is contended that as wrong order, by mistake, passed by the Government shall not vest the applicants with an indefeasible right and has relied upon the decision of the Apex Court in Union Territory of Chandigarh Administration v. Jagjit Singh, JT 1995 (1) SC 445..

16. Moreover, placing reliance on a decision of this Court in OA 3053/91 decided on 9.7.1998 in Dinesh Chandr Yadav v. Union of India & Others, it is contended that temporary status and regularisation of Mobile Booking Clerks shall be governed by the rules and regulation on the subject and instructions available in the original Scheme..

17. In reply to MA for condonation of delay, it is stated that applicants have no valid and justifiable grounds to get condonation of delay and this delay deprived them of the remedy available in law as they lost their remedy by lapse of time, loses their right as well.

18. I have carefully considered the rival contentions of the parties and perused the material on record. Despite Railway Board's instructions, issued on 21.4.1982, envisaging minimum qualification for

direct recruitment and absorption against regular vacancies for Mobile Booking Clerks was minimum three years service, the Tribunal in Mohinder Kumar's case (supra) issued directions to accord temporary status to those MBCs on completion of four months continuous service, the aforesaid decision has been upheld by the Apex Court and has attained finality. In pursuance thereof, several persons have been given temporary status and their pay has been revised and re-fixed. This has taken place in all the Divisions and also in Delhi Division.

19. In so far as the prospective ruling is concerned, there is nothing in the order passed by the Tribunal to indicate that the regularisation has been restricted from 1990 and does not relate back to completion of 120 days continuous service for engagement of MBCs.

20. Taking note of 1982 instructions, yet this Tribunal has accorded temporary status, on completion of 120 days service, this clearly shows that these directions issued by the Tribunal supersede the earlier rules where for absorption of MBCs against regular vacancies minimum criteria is three years continuous service.

21. In so far as the plea that instructions of GM issued on 3.10.1991 have not been taken into consideration by this Tribunal cannot be countenanced as the aforesaid instructions have been issued not in suppression of the earlier instructions of 1990 and nowhere the earlier instructions have been superseded

or observed to be non-existing. The aforesaid position before 1990 of according temporary status to Mobile Booking Clerks have existed even at the time the matter has been decided by the Tribunal in Mohinder Kumar's case (supra). In view of the rejection of the SLP, the same has attained finality and is binding on me.

22. The resort of respondents to Full Bench in Wazir Chand's case (supra) that any instructions not inconsistent with the rules issued by GM for Group 'C' and 'D' employees have no statutory force and is not well founded as in the light of the decision of this Court earlier in Mohinder Kumar's case (supra) any instructions issued to infiltrate on to the arena covered by the judicial order or in violation of the same or in any manner inconsistent, cannot be countenanced.

23. Apex Court in Anil Ratan Sarkar v. State of West Bengal, 2001(5) SC 327 held that administrative instructions cannot infiltrate to arena covered by the judicial order. In the face of the directions of this Court in Mohinder Kumar's case (supra) and a conscious decision taken by the GM to accord temporary status to all MBCs therein on completion of 120 days continuous service, their subsequent order which is inconsistent and has not superseded the earlier order the earlier order holds the field and the aforesaid order passed by the respondents is inconsistent with the directions. <sup>Accordingly</sup> the order issued cannot be sustained in law.



24. Another aspect of the case which warrants judicial interference is that despite the existence of the circular issued by GM on 3.10.1991, respondents have not only accorded temporary status to MBCs on completion of 120 days even from 1986 and subsequent orders prior to 1990, the order passed by respondents on 23.1.1996 temporary status has been accorded to MBCs working in Delhi Division. Nowhere in the pleadings filed by the respondents have taken the plea of mistake committed by them. The aforesaid orders are not even withdrawn by respondents. In that event their contention and resort to Jagjit Singh's case (supra) that a wrong order or mistake would not confer any right to a person, cannot be countenanced and has no legs to stand.

25. In so far as the limitation is concerned, applicants who have been apprised ~~of~~<sup>u</sup> the orders passed rejecting representation in 1999 and was served upon the copies along with the additional affidavit filed in the Contempt Petition their limitation starts from 2001 and the OA has been filed within one year from the date of receipt of a copy of their order and moreover, in the light of the decision in M.R.Gupta's case (supra) as the matter pertains to fixation of pay and allowances which are recurring cause of action, the OA cannot be thrown out on technical plea of limitation.

26. In so far as the res-judicata is concerned, applicants have been given liberty to approach this Court if aggrieved by an order passed by respondents and accordingly the present OA has been

filed constructive res-judicata has no application in the present case as earlier the applicants have filed two OAs one for regularisation where the representation has been ordered to be disposed of.

27. In the result, I find that in similarly circumstance, MBCs have been accorded the benefit of temporary status from the date they had completed 120 days service, non-extending the same benefit and treating the applicants on unequal footing would certainly constitutes violation<sup>of</sup> of principles of equality which cannot be sustained in view of the Articles 14 and 16 of the Constitution of India.

28. In the result, for the foregoing reasons, OA is allowed. Impugned orders are quashed and set-aside. Respondents are directed to accord to applicants temporary status from the date of completion of 120 days continuous service from the date of their initial engagement and they are also entitled for all consequential benefits to follow. The aforesaid directions shall be complied with, within a period of two months from the date of receipt of a copy of this order. No costs.

S. Raju  
(Shanker Raju)  
Member(J)

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