(8)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA 3077/2002, with OA 3078/2002, OA 3079/2002,
OA 3083/2002 and OA 3087/2002

New Delhi, this the 27th day of February, 2003

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J)
Hon'ble Shri C.S. Chadha, Member(A)

OA 3077/2002
Surender Singh
Mobile Bookin Clerk, Northern Railway
Railway Station, Sulhani(Ferozpur Division)
Punjab .. Applicant

OA 3078/2002
Jeetender Pal Singh
Mobile Bookin Clerk, Northern Railway
SS, Ferozpur .. Applicant

OA 3079/2002
Vipin Kumar
Mobile Bookin Clerk, Northern Railway
SS, JUC .. Applicant

OA 3083/2002
Madhu Bala
Mobile Bookin Clerk, Northern Railway
Railway Station, Jammu .. Applicant

OA 3087/2002
Anil Kumar
Mobile Bookin Clerk, Northern Railway
Under cMI, Jullandher city .. Applicant

(Shri B.S.Mainee, Advocate for all applicants)

versus

Union of India, through
1. Secretary
   Ministry of Railways
   (Railway Board)
   Rail Bhavan, New Delhi
2. General Manager
   Northern Railway
   Baroda House, New Delhi
3. Divisional Railway Manager
   Northern Railway, Ferozpur Cantt .. Respondents

(Shri R.L. Dhawan, Advocate)

ORDER(oral)

Shri C.S. Chadha

These five OAs, namely OA 3077/2002, OA 3078/2002, OA 3079/2002, OA 3083/2002 and OA 3087/2002 relate to the same matter and, therefore, are being disposed of by a common order.

2. The brief facts of the case are that in August, 1973, the Railways initiated a Scheme with a view to help the low paid railway employees to supplement their income by giving an opportunity to their wards to work during the rush summer season as well as to help passengers get better service by engaging the wards as Mobile Booking Clerks (MBCs), Reservation Clerks (RCs), Enquiry Clerks etc. This was done merely to help the railway employees as well as to get over the problem of the summer rush and yet not create permanent employment. They were all given an hourly wage rate for the work they did during the summer season and as soon as the summer season was over they were disengaged. This Scheme was discontinued in 1981. It was reintroduced on 11.9.81 and various Railway zones were advised to engage MBCs again on the railways. On 21.4.1982, directions were issued by the Railway Board vide Annexure A/5 that such volunteers/MBCs who had been engaged on various railways on hourly honorarium basis may be considered for regular absorption against regular vacancies provided they had the minimum qualification required for direct recruits and who had already put in 3 years service as volunteers/MBCs. Accordingly, several booking clerks were regularised. The scheme was again changed and Railway Board directed disengagement of such employees vide order dated 3.12.86. However, vide Annexure R/8 dated 6.2.90, the scheme was reintroduced. Para 2 of the circular dated 6.12.90 reads as under:

> "2. In the light of judgement dated 28.8.87 of the Central Administrative Tribunal, Principal Bench, New Delhi in O.A.No.1174/86 (Neera Mehta and Others Vs. UOI & Others) and dismissal of SLP No.14618 of 1987 by the Honourable Supreme Court on 7.9.1989, Board have decided that the cut off date of

14.8.1981 referred to above, will be substituted by 17.11.1986. Accordingly, mobile booking clerks who were engaged as such before 17.11.1986 may be considered for absorption in regular employment against regular vacancies, subject to the other conditions stipulated in the aforesaid letters of 24.4.82 and 20.4.85."

3. Accordingly, the applicants were re-engaged vide order at Annexure A/11 dated 2.9.1993. Railway Board's orders were clear on the following points: firstly they were all engaged as MBCs and secondly all were to be regularised after completion of 3 years continuous service (excluding Sundays and gazetted holidays) by a positive act of selection. It was also laid down that they may be engaged on hourly rates as ascertained from the Deputy Commissioner's office of the concerned area and those who had completed more than 120 days of service would draw Rs.975/- per month at the minimum of the grade of Rs.975-1540. Accordingly, applicants continued to work as MBCs from September, 1993 till they received the show cause notice (Annexure A/1), which was issued to them in pursuance of the directions given by the Railway Board vide Annexure A/2 dated 6.5.2002. Inter alia, it laid down that the Board had decided that the scheme of regularisation was only applicable to MBCs and those who had not been engaged as MBCs initially prior to 17.11.1986 should not be regularised. Railway Board's letter at Annexure A/2 therefore directed Divisional Railway Managers, Northern Railway "that a show cause notice may be given to similarly situated employees like the applicants herein and after giving them a fortnight time to explain, they should be discharged". In other words, decision to discharge them had already been taken by the Railway Board and in pursuance thereof all DRMs of

Northern Railway had given the show cause notice as at Annexure A/1 and thereafter, having fulfilled the directions of the Railway Board, discharged them by a similarly worded order. The main ground for this disengagement/termination of their services is that they were not initially recruited as MBCs but performed the work of either typists or enquiry clerks or reservation clerks. According to the learned counsel for the respondents, the scheme of regularisation was available to only those who were initially recruited as MBCs and not to other categories of staff, recruited under scheme of 1973 as extended again vide orders dated 6.2.90.

4. These OAs have been filed against the termination of services of the applicants. At the very outset, the learned counsel for the applicants brought to our notice that similar matters had already been decided not only by the Principal Bench of the Tribunal but the matter was also adjudicated upon by the High Court of Delhi in 1079/1989 (UOI Vs. Satpal Singh). This matter was also decided by the Hon'ble Supreme Court in SLP No.14756-61 of 1993 (UOI Vs. Pradeep Kumar Srivastava & Ors.) and other connected cases on 27.7.1995 and the orders of the Tribunal as well Delhi High Court had been upheld inasmuch as the orders of the Railway Board terminating the services of similarly placed persons on similar grounds were set aside and the orders of the Tribunal directing regularisation of such persons were upheld.

5. Learned counsel for the applicants also relied upon another judgement of the Chandigarh Bench of the Tribunal in OA 1146/PB/2002 decided on 3.2.2003. His arguments is

that this judgement applies on all fours to the present case. The main issue decided in the above mentioned case is that no discrimination can be made between one class of clerks and another class of clerks for the sake of regularisation if initially they were recruited in the same manner by following the same procedure and asked to work in any one of the various jobs of similar nature. They were engaged under the same scheme conceived for helping railway servants by affording an opportunity to their wards to earn some money during the summer rush season and at the same time to help railways overcome the problem without having to create permanent jobs. Therefore, the High Court also held in its order dated 9.3.99 that "in the light of the above discussion, we find that the objection of the petitioner that since the respondents were working as Railway Clerks and not as Mobile Booking Clerk has no merit". In other words, the High Court rejected the plea of the respondent-Railways that regularisation can be restricted only to the categories of MBCs and not to RCs.

6. During the course of the arguments, learned counsel for the applicants pointed out that in several cases persons who had not even worked as Clerks but as social guides/announcers/enquiry clerks etc. were also regularised under this scheme. As has been mentioned in the judgement of Chandigarh Bench (supra), there cannot be discrimination, for the purpose of regularisation, between different types of booking clerks taken for the summer season under the same scheme of recruitment because it would amount to discrimination and would be violative of Article 14 of the Constitution.

7. Learned counsel for respondents placing reliance of the judgements of the apex court in A.K.Sharma & Ors. Vs. UOI (JT 1999 Vol.1 113) and State of Haryana Vs. Ram Kumar Meena (SC SLJ 1997 Vol.2 257) contended that a mistake committed by the Government in favour of an employee can always be rectified and in any case the mistake of the Government cannot confer a right on such an employee and he cannot be allowed to perpetuate the mistake further. He also cited the decisions of S.P. Gupta Vs. State of J&K (JT 1997(7) 14) and Ahmedabad MC Vs. Virender Kumar Jayanti Lal Patel {1993(2) SCC 213} to drive home home the point that all recruitments must be made strictly in accordance with Rules and that appointments made in violation of the Rules cannot be sustained in the eyes of law. He therefore tried to argue that recruitment of the applicants made in the year 1993 in violation of the Recruitment Rules cannot be allowed to remain uninterfered with. Since they were not recruited in a proper manner, by following the prescribed recruitment rules, their services can always be terminated. However, we feel that this argument is not open to the respondents because they are using the stick of non-use of proper recruitment rules to beat the applicants, whereas the same lack of application of recruitment rules has been allowed to be perpetuated by regularisation of only those who were initially recruited as MBCs. In other words, they have tried to argue that initial recruitment of MBCs even if done in violation of the recruitment rules may be allowed to stand. In response to our question as to why the MBCs also recruited in violation of the R/Rules should be allowed

to continue, learned counsel for the respondents stated that this was done as a one-time exception to accommodate those who had already served in the Railways. We have no doubt in our mind that the one-time exception was made with a noble cause in mind, i.e. after having used the services of the wards of railway servants for their own good to meet summer rush they should not be discarded. They had therefore decided that all booking clerks who did not go through the proper channel but had served the Railways for more than three years should be regularised if they had the minimum qualification required for such jobs. Therefore, the one-time exception if allowed to remain for only those who were recruited as MBCs would amount to discrimination if it is not allowed to stand for those who were initially recruited in the same manner palpably for the same purpose but who served at one of various different points of the Railways. The discrimination between one type of employee and another cannot be allowed to remain.

8. In fact, the respondent department had felt that the regularisation of similarly placed persons as ordered by Central Administrative Tribunal, Principal Bench, was not in order and had therefore sought a remedy in higher judicial fora but their efforts met with failure. The Hon'ble High Court and the apex court have both upheld the principle that employees recruited under the Railway Board's circular of 6.12.1990 must all be regularised irrespective of the fact that they were initially recruited as mobile booking clerks or in any other similar capacity.

9. In view of the above, we find that the respondents have completely disregarded the principles laid down not only by the Principal Bench of the Tribunal but also by the High Court of Delhi and even the Hon'ble Supreme Court inasmuch as the directions that similarly placed persons were entitled to regularisation was ignored as far as the applicants are concerned. We are informed that apart from these five applicants, nine more similarly placed persons were also terminated on the same ground. Learned counsel for the respondents tried to find a justification for the order by stating that the Railway Board had taken a conscious decision not to extend the benefit of regularisation to those who had not been initially engaged on the post of MBCs. We cannot agree that the Railway Board can issue such a clarifiation in clear violation of the directions of the Supreme Court. The Delhi High Court had also clearly held that this sort of action is discriminatory and therefore cannot be allowed to stand.

10. We, therefore, feel that this is a right case where we should place on record our serious concern and anguish about the total lack of respect by the Railway authorities towards judicial pronouncements even of the highest court of the land. It is a case of total non-application of mind by the respondents and harassment of the applicants who, after having served for a long period, have been terminated in an absolutely arbitrary manner, contrary to the pronounced judgements as aforementioned.

11. All the aforesaid OAs are therefore allowed and orders of termination of the applicants are set aside. Applicants should be re-instated from the date they were disengaged as if the impugned orders of the termination had never been passed. We hold that the applicants are entitled to all consequential benefits of pay, allowances and seniority and further promotion in accordance with the rules and instructions on the subject.

12. This order should be complied with within a period of three months from the date of receipt of a copy of this order.

13. We also feel that in view of the discussions above heavy costs should be imposed on the respondents for unnecessarily forcing the applicants to take recourse to litigation. Therefore cost of Rs.2000 in each of the OA is directed to be paid by the respondents.

14. Let a copy of this order be placed in other OA files.

(C.S. Chadha)
Member(A)

(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

/gtv/