

Central Administrative Tribunal
Principal Bench

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OA No.551/2002

New Delhi this the 80th day of April, 2004

Hon'ble Shri V.K. Majotra, Vice-Chairman (A)
Hon'ble Shri Shanker Raju, Member (J)

1. Nand Kishore
S/o Shri Hari Chand
3220, Gali School Wali, Paharganj,
New Delhi-110005.
2. Rajesh Sharma
S/o Shri Ram Swaroop,
G-232, Preet Vihar, Vikas Marg,
Delhi-110092.
3. Rakesh Tirkha
S/o Shri M.L. Tirkha,
B-4/63-C, Keshavpuram,
Delhi-110035.
4. V.S. Chouhan,
S/o Late Sher Singh,
S/294, Prem Nagar-II, Nangloi,
Delhi-110041.
5. Jeet Singh
S/o Late Ram Prasad,
25, Jain Mandir, Near Shivaji Stadium,
New Delhi-110001.
6. Rajesh Mahajan,
S/o Shri M.L. Mahajan,
RZ-5/21-A, Prem Puri, Uttam Nagar,
Delhi-110059.
7. Anil Goyal,
S/o Smt. Krishna Goyal,
2/1, Delhi Kishanganj Railway Colony,
Delhi.
8. Mrs. Sujata Sharma,
D/o Smt. Usha Sharma
R/o 2/4, Delhi Kishanganj Railway Colony,
Delhi.
9. Bhupender Malhotra,
S/o Smt. Daman Malhotra,
33, Pocket 3, Pachim Puri,
Delhi.
10. Raj Pal Singh,
S/o Shri Suraj Bhan
A-2/30, Rama Park, Sirajpur,
Delhi-110042.
11. Om Prakash Kanojia,
S/o Shri Baldev Raj,
D-1-322, DDA Flats, Kalkaji,
New Delhi.

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12. Lal Bahadur,
S/o Shri Mathu Lal,
H-298, Moti Nagar, Karampura,
New Delhi.
13. Mahesh Chand,
S/o Shri Gopal Dutt,
162/3, Thompson Road, Railway Colony,
New Delhi-110001.
14. Jagdish Khurana
S/o Shri Dharam Veer Khurana,
F-7/100, Sector-16, Rohini,
Delhi.
15. Dharam Vir,
S/o Shri Kanwar Singh,
75/65, Motia Bagh,
New Delhi.
16. Chander Pal,
S/o Shri Kali Charan,
H-60, Block 'C' Sector-9, Vijay Nagar,
Ghaziabad (UP).
17. Mrs. Nirmala Khurana
Smt. Usha Arya,
4/33-A, Shivaji Nagar,
Gurgaon.
18. Mrs. Madhu Bala
W/o Shri Vijay Kumar
3630, Raja Park, Shakur Basti,
Delhi-110034.
19. Raj Kumar Sharma
S/o Shri M.P. Sharma,
B-122, Sector 9, New Vijay Nagar,
Ghaziabad (UP).
20. Gajendra Sharma (I)
S/o Shri R.C. Sharma,
T-10/B, Railway Colony, Shahdara,
Delhi-110032.
21. Gajendra Sharma (II)
S/o Shri R.C. Sharma,
78, Nav-Durga Vihar, Lakkarpur,
Faridabad (UP).

.....Applicants
(By Advocate : Shri Anis Suhrawardy)

Versus

1. Union of India
Through its Secretary,
Ministry of Railways,
Rail Bhawan, New Delhi.
2. General Manager,
Northern Railway HQ Office,
Baroda House, New Delhi.

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3. Divisional Railway Manager,
Northern Railway,
State Entry Road,
New Delhi.
4. Shashi Bhushan/Anoop Singh
5. Raj Kumari/Daulat
6. Surinder Kr. Sharma/Chet Ram
7. Kamla Pd/Sri Ram Chaurasia SC
8. Surinder Kr. Srivastava/B.P. Srivastava
9. Neelam Rani/Raghu Nath,
10. Mohan Lal Bhanka/Ram Dayal Dhanka
11. Sukhbir Singh/ Munni Lal
12. Sat Inder Kumar/Yashwant Singh
13. Paranjeet Kaur/Surinder Singh
14. Kamlesh Rani/Bhim Sain
15. G.I. Jaiswal/Babu Ram Jaiswal
16. Lal Ji Ratnakar/Bani Pd
17. Gokal Pd/Bhussu Ram
18. Mohinder Singh
19. Jai Prakash / Ram Dass
20. S.K. Aggrawal/R.D. Aggrawal
21. Bharam Pal/Tanna Lal
22. Baboo Ram/Ram Lal
23. Inder Garg/ Ashok Garg
24. Khem Chand/ Ram Charan
25. Banti Pal/ Dhani Ram
26. Sanjeev Kr. Sharma/ Raj Kumar
27. Kishan Kumar/Ram Chander
28. Rajinder Kumar/Chaman Lal
29. Ran Singh/ Ram Singh
30. Sanjeev Kumar/Gopal Dass
31. Shiv Dutt/Amar Singh
32. Harender Kr. Sharma/Roop Ram

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33. Hanuman Sahai Meena/B.S. Meena
34. Sri Kiahian Meena/Rang Lal Meena
35. V.K. Gupta/R.K. Gupta
36. Phool Singh Meena/Djharam Pal
37. Naresh Kumar/ Munni Lal
38. Santosh Kumar/Shiv Rattan
39. Lalit Kumar/Sita Ram
40. Rekha Malhotra/K.L. Malhotra
41. Madhu Kant Thakur/Din Dayal
42. Surinder Pal Singh/Inder Jeet Singh
43. Gopal Dass/Om Prakash Singh
44. Yoginder Singh/Ajit Singh
45. Rajinder Singh/Ram Saroop
46. Naresh Kumar/Narain Dass
47. Krishan Lal Meena/Sampat Ram Meena
48. Satya Dev Gaur/Bas Dev
49. Sukh Dev Singh/Mal Singh
50. Bhagwan Dass/Lal OChand
51. Ramesh Chand Meena/Sawalia Ram Meena
52. Jagmal Singh/ Ram Jawari
53. Harish Kumar/Loku Ram
54. Om Pal Singh/Subey Singh
55. Vijay Singh/Suraj Bhan
56. Manoj Kumar Jain/M.K. Jain
57. Parkash Kumari/Tilak Raj
58. Rakesh Bhalla/Keshav Bhalla
59. Madan Lal/
60. Parveen Kumar/Jawahar Lal
61. Sanjay Kumar/K.D. Verma
62. Sumitra Devi/Mahipal
63. Mukesh Chand Arya/Laxmi Narain

64. Taruna Verma/S.L. Verma
65. Sunita Devi/Vir Pal Singh
66. Usha Sharma/Chatarpal
67. Ajay Kumar/Sushil Kapoor
68. Jaya Paul/Ram Swaroop
69. Mahinder Kumar/Raghunath
70. Urmila Devi/Rajinder Pal
71. Anita Rani Malhan/Anil Malhan

.... Respondents
(By Advocate: Shri M.K. Gaur)

O R D E R

Hon'ble Shri V.K. Majotra, Vice-Chairman (A)

MA-2748/2002 has been made on behalf of applicants for impleading 68 persons who would be affected in the event of the present OA being allowed. The official respondents have only stated that applicants are not senior to those sought to be impleaded. It has been contended on behalf of applicants that these persons were initially appointed on 28.1.1987 and the date of commencement of their training is between 14.11.1986 and 1.1.1987. Obviously, these persons were sent on training immediately after the appointment. However, though appointed much earlier than these persons, applicants were deputed for training after them. This MA is allowed and amended Memo of parties taken on record. Private respondents 4 to 71 have not appeared before the court despite service of notice, they are proceeded ex-parte.

2. These applicants were initially appointed as Mobile Booking Clerks with the respondents since 1984 onwards. Vide order dated 28.8.1987 in the case of **Neera Mehta and Ors. Vs. Union of India & Ors** (OA No. 117-A/1986), respondents were directed to re-engage all those who had been appointed prior to 17.11.1986. However, the services of these applicants were again disengaged w.e.f. 18.5.1988. OA-896/1988 titled **Mahendra Kumar and Ors. Vs. Union of India** was preferred before this Tribunal. The same was allowed on 4.6.1990 with the following directions:-

- "i) Regularise the mobile Booking Clerks who were engaged prior to 17.11.1986 by absorption against regular vacancies on completion of 3 tears' services and not 1095 actual working days (emphasis supplied). This will be, however, subject to the fulfilment of other conditions as provided in the Railway Board's Letter's dated 21.4.1982 and 20.4.1988.
- ii) Confer temporary status with all attending benefits on the applicants after they have completed four months service as Mobile Booking Clerk in accordance with the terms of their engagement. The period of four months shall be counted irrespective of number of hours put in on any particular day, having regard to the fact that the services of the Mobile Booking Clerks were liable for full days.
- iii) Make payment of back wages from the date of termination of service in accordance with orders dated 5/12.5.1998, till the date they were taken back on duty consequent to the recall of the Hon'ble Supreme Court orders dated 18.3.1988 at the same rates at which they were employed prior to the date of termination of the services. This will be applicable only to those Mobile Booking Clerks whose services were disengaged and reengaged in consequence of Hon'ble Supreme Court's orders dated 18.3.1988 and recall of the said order vide Hon'ble Supreme Court orders dated 30.9.1988".

3: It is alleged that respondents did not grant any benefit to the applicants as per aforesaid orders dated 4.6.90 whereupon OA-1819/1992 was filed. This OA was disposed of on 6.8.1993 with direction to the respondents to dispose of a self-contained representation to be made by applicants to the respondents. The representation dated 1.9.1993 made by the applicants in compliance of the above directions of the Tribunal was not disposed of till 22.8.1994 when the applicants again approached the Tribunal through OA-1847/1994. Vide order dated 20.7.1999, in that OA directions were made to the respondents to dispose of the representation within two months. Alleging that respondents have passed a cryptic order on applicants' representation on 11.01.2001, applicants filed the present OA on 18.1.2002 seeking quashing of the impugned order dated 11.1.2001 (Annexure A-1) whereby their joint representation was disposed of as untenable stating that seniority list had already been issued vide letters dated 6/95 and 31.5.99 and that the applicants had not made any representation against the seniority list within the stipulated period of one month. Applicants have also sought directions to the respondents for regularisation of services of the applicants after completion of three years of continuous service from the date of their respective initial appointment in pursuance of directions of the Tribunal contained in order dated 4.6.1990 in OA-896/1988. Learned counsel of the applicants contended that respondents have not accorded the benefit of regularisation and seniority in terms of

the court's orders and that applicants have been compelled to approach the courts time and again. Learned counsel pointed out that presently the only issue for adjudication is whether the applicants should be allocated seniority on completion of three years service but with effect from the date of appointment without taking into consideration any condition regarding any training or merit therein. According to the learned counsel, applicants were required to be regularised in terms of conditions prescribed in Railway Board's Circulars dated April 21, 1982 and 20.4.1986. Learned counsel stated that these circular do not prescribe any condition of training.

4. On the other hand, learned counsel of respondents stated that the present OA is barred by limitation as applicants' representation dated 1.9.1993 had already been disposed of on 1.8.2000 (Annexure R-1) in pursuance of the directions of the Tribunal dated 20.7.1999 in OA-1847/94. According to learned counsel, Annexure A-1 has been issued by the respondents in response to applicants' representation dated 6.11.2000. Learned counsel maintained that cause of action had arisen on 1.8.2000. Learned counsel further stated that in compliance of the directions of this court as well as the Hon'ble Supreme Court's orders dated 18.3.88 and 30.9.88, the Mobile Booking Clerks on completion of 120 days casual labour MBC service were granted temporary status and they were further screened and regularised in order of their merit after passing the pre-requisite commercial

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training course from the Zonal Training School, Chandausi. He pointed out that they were assigned seniority in the category of Booking Clerk in terms of Paragraph 302 read with Paragraph 303 of IREM Vol.I 1989 Edition which stipulate that the seniority among the incumbents to the grade is governed by the date of appointment to the grade. Persons who are sent for initial training to training schools will get their seniority in order of their merit obtained in the examination.

5. Learned counsel of the applicants in response to the plea of limitation made on behalf of the respondents stated that respondents have replied to representation dated 1.9.1993 of the applicants only on 11.1.2001. While applicants had preferred a self-contained representation to the respondents on 1.1.1993 in response to order dated 6.8.1993 made in OA-1819/1992, respondents have not furnished any proof that the same had been disposed of by any earlier orders of the respondents which had been communicated to the applicants. It has to be deemed, therefore, that applicants' representation of 1.9.1993 was disposed of vide Annexure A-1 dated 11.1.2001. As such, the cause of action shall be with effect from 11.1.2001 when Annexure A-1 was issued. The present application is, therefore, not barred by limitation.

6. Respondents have resorted to the provisions of 302 and 303 of IREM Vol.I 1989 for the condition of training and allocation of seniority on the basis of merit obtained in the examination held in the training

as also on the basis of the date of appointment to the grade after training. As per Annexure A-3 dated 6.2.1990, respondents have stated as follows:-

"In the light of judgment dated 26.8.87 of the Central Administrative Tribunal, Principal Bench, New Delhi, in OA No.1174/86 (Neera Mehta and others Vs. UOI and others) and dismissal of SLP No. 14618 of 1987 by the Hon'ble 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 21.4.82 and 20.4.85".

7. Applicants have been working as casual Mobile Booking Clerks and were discharged. As per Annexure A-3, Mobile Booking Clerks engaged before 17.11.1986 were to be considered for absorption in regular employment against regular vacancies subject to conditions stipulated in respondents' letters dated 21.4.82 and 20.4.85. Tribunal had also directed vide Annexure A-2 dated 4.6.1990 passed in OA-896/1988 and other connected matters that respondents were to regularise the Mobile Booking Clerks who were engaged prior to 17.11.1986 by absorption against regular vacancies on completion of three years service and not 1095 actual working days (emphasis supplied). This will be, however, subject to the fulfilment of other conditions as provided in the Railway Board's letters dated 21.4.1982 and 20.4.1985.

8. Respondents's letters dated April 21, 1982 and 20.4.1986 are re-produced as below:-

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"No. E9NG)III-77/RC1/80 New Delhi, dt. April, 21, 1982
The General Manager,
All Indian Railways,

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 regularisation of three 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 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 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.

Sd/-

(H.R. BHAGAT)

DY. DIRECTOR ESTT. (N)

Railway Board.

No. E(NG)III-77/RC1/80 New Delhi, Dt. 4.82."

"GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)

No. E(NG)II/84/RCB/8 New Delhi dated 20.4.1985

The General Manager,
All Indian Railways,

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

The question of absorption of Voluntary/Mobile 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

day might be considered by the Railways for absorption against regular vacancies provided they had 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 14.8.81 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/RC i/80 dated 21.4.1982 except that to be eligible for screening a 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 please be acknowledged. Hindi version will follow.

(H.R. BHAGAT)
DY.DIRECTOR ESTT. (N)
Railway Board."

9. Vide letter dated April 21, 1982, the condition for absorption against regular vacancies of volunteer/Mobile Booking Clerks was possession of minimum qualifications required for direct recruitment and a minimum service of three years as Volunteer/Mobile Booking Clerks. The screening for absorption was to be done by a Committee of Officers including the Chairman/a Member of the Railway Service Commission concerned. Vide letter dated 20.4.1985, it was further prescribed that to be eligible for screening a candidate should inter alia be within the prescribed age limit after taking into account the total period of his engagement as Voluntary/Mobile

screening a 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. Clearly, respondents' letters dated 21.4.1982 and 20.4.1985 do not prescribe any training for these applicants who had been engaged as Mobile Booking Clerks before 17.11.1986. Obviously, their regularisation was in the nature of a special recruitment which was to be governed by the conditions prescribed in letters dated 21.4.1982 and 20.4.1985. As these circulars do not prescribe training and on fulfilment of all conditions prescribed in these circulars, applicants had been screened by a High Level Committee, they were supposed to have been regularised on completion of three years and not 1095 actual working days. Naturally, their seniority has also to be related to the date of their initial appointment as Mobile Booking Clerks.

10. Having regard to the facts and circumstances of the case as discussed above, OA succeeds and is allowed. Annexure A-1 dated 11.1.2001 is quashed and set aside. Respondents are directed to treat the applicants as regularised after completion of three years of continuous service from the dates of applicants' initial appointment with consequential seniority. No costs.

S.Raju
(Shanker Raju)

Member (J)

cc.

V.K. Majotra
(V.K. Majotra) 30.4.04
Vice Chairman (A)