

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 1564/99

New Delhi, this the 30th day of March, 2001

HON'BLE SHRI KULDIP SINGH, MEMBER (J)
HON'BLE SHRI S.A.T. RIZVI, MEMBER (A)

Shri Suresh Rajak,
S/o Sh. Jageshwar Rajak,
Ex. Part-time Booking Clerk,
Under Station Superintendent,
North Eastern, Distt. Begusarai,
(Bihar).

R/O C/O S.K. Chawla,
4417, Basant Road, Chawla Electricals,
New Delhi- 110 055.

.....Applicant

(By Advocate: Shri B.S. Mainee)

Versus

1. Union of India through
the Secretary,
Ministry of Railways,
(Railway Board),
Rail Bhawan, Raisina Road,
New Delhi.

2. The General Manager,
North Eastern Railway,
Gorkhpur (UP).

3. The Divisional Railway Manager,
North Eastern Railway,
Sonepur.

.....Respondents

(By Advocate: Shri B.S. Jain)

O R D E R

Hon'ble Shri S.A.T. Rizvi, Member (A):-

The applicant who had in early 1980s worked allegedly as a Volunteer/Mobile Booking Clerk (for short V/MBC) is aggrieved by the respondents' act of not re-engaging him even though his case is on par with similar cases decided by this Tribunal and the Hon'ble Supreme Court. Hence, this OA.

2. We have heard the learned counsel on either side and have perused the material placed on record. *da*

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3. The facts of the case stated in brief are that prior to 1981, the Railway Board had issued instructions to the various Railway Zones to appoint V/MBCs to cope up with the ever increasing passenger traffic. The Railway Zones were subsequently advised on 11.9.1981 to continue to engage V/MBCs. By their letter dated 21.4.1982, the Railway Board, referring to the meeting of the PNM held on 23/24.12.1981, conveyed a decision that the V/MBCs who had been engaged in various Railways in accordance with the aforesaid scheme on specified rates of honorarium per hour/day could be considered for absorption against regular vacancies of Booking Clerk (BC) subject to the V/MBCs fulfilling the minimum qualifications required for direct recruits and further subject to a minimum of three years' service as V/MBCs. The persons engaged to work as V/MBCs were known by different designations in different railways. They were variously known as Volunteer Booking Clerks, Mobile Booking Clerks, Part-time Booking Clerks and Additional Booking Clerks and in some places as Railways Coaching Clerks.

4. The applicant was engaged as a Part-time Booking Clerk at the Saheerpur Kamal Railway Station of the N.E. Railway on the basis of his application dated 11.7.1983. He continued to work as a Part-time B.C. upto 31.12.1983 under the Station Superintendent, Saheerpur Kamal, N.E. Railway. The applicant thus worked as such for 52 days. A certificate to that effect has been placed on record at Annexure-A-4.

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5. The Railway Board, respondent No.1 herein, vide their letter dated 17.11.1986 addressed to all the Railways, discontinued the practice of engaging V/MBCs with immediate effect subject to the Railways complying with such formalities as were required to be completed in accordance with the legal requirements. In order to cope up with the rush of work in future, the aforesaid letter also prescribed alternative arrangements that could be made in the exigencies of service.

6. Aggrieved by the discontinuance of the practice of engaging V/MBCs, some MBCs working in the Northern Railways filed OAs in the Principal Bench of the Tribunal. One such OA was filed by Miss Meera Mehta and Ors. The same was allowed by the Tribunal in the year 1987 and the respondents were directed to re-engage the MBCs who had worked prior to 17.11.1986. Similar directions were issued by the Tribunal in other cases. The respondents thereupon filed SLPs in the Hon'ble Supreme Court. In Union of India & Ors. Vs. Pradeep Kumar Srivastava & Ors., the Supreme Court vide its decision dated 27.7.1995, disposed of the pending appeals by giving the same direction to the respondents as had earlier been given by this Tribunal in Usha Kumari Anand's case. The appellant (Union of India) was directed in that case to examine cases of the various respondents in accordance with the aforesaid directions contained in Usha Kumari Anand's case. The Supreme Court had gone to the extent of reproducing the relevant portion from the

order of this Tribunal in Usha Kumari Anand's case. 20

The same is being reproduced in the following:-

"Following the decisions of the Tribunal in Meera Mehta's case and Samir Kumar Mukherjee's case, we held that the length of the period of service put in by the applicant in itself is not relevant. Admittedly, all these applicants had been engaged as Mobile Booking Clerks before 17.11.1986. In the interest of justice, all of them deserve to be reinstated in service irrespective of the period of service put in by them. Those who have put in continuous service of more than 120 days, would be entitled to temporary status with all the attendant benefits. All persons should be considered for regularisation and permanent absorption in accordance with the scheme. In the facts and circumstances of these cases, we do not, however, consider it appropriate to direct the respondents to pay back wages to the applicants on their reinstatement in service. The period of service already put in by them before their services were terminated, would no doubt, count for completion of 3 years period of service which is one of the conditions for regularization and absorption."

It would be seen that regularization/absorption of applicant in Usha Kumari Anand's case was made conditional on completion of three years of service in terms of the provisions made in the Railway Board's circular letter dated 21.4.1982.

7. The Railway Board had even before the Supreme Court decided the aforesaid case, issued a circular letter dated 6.2.1990 to all the zonal Railways to re-engage the MBCs whose services had been discontinued as a result of the aforesaid letter dated 17.11.1986 in accordance with the directions given by the Tribunal in various cases. The aforesaid circular letter of 6.2.1990 refers to the decision of this Tribunal in OA-1174/1986 (Meera Mehta & Ors. Vs.

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Union of India & Ors.) and the dismissal of SLP No.14618/1987 by the Supreme Court on 7.9.1989, and provides that all the MBCs engaged prior to 17.11.1986 will be considered for absorption in regular employment against regular vacancies subject to the conditions stipulated in the Railway Board's letters dated 21.4.1982 and 20.4.1985 being fulfilled. By the same letter, the various Railways were also directed to re-engage as MBCs anyone who had worked as V/MBC prior to 17.11.1986 whenever approached. By a subsequent letter dated 31.3.1992 the re-engagement of the V/MCSs was kept open upto 31.09.1992 which implied that only those V/MBCs were to be considered for re-engagement and subsequent regularization/absorption as had been engaged as such prior to 17.11.1986 and had on being discontinued vide Railway Board's circular dated 17.11.1986, approached the Railways for re-engagement at any time prior to 31.9.1992.

8. According to the applicant, a few erstwhile colleagues of his who had worked with him in 1983, had filed OA-2522/91 (Ashish Kumar Saha & 16 Ors. Vs. Union of India & Ors.) praying for directions to the respondents to re-engage them as MBCs. The said OA was allowed on 13.3.1996 (Annexure-A-9). The applicant who had earlier represented in pursuance again after the Supreme Court's judgement in the aforesaid case and yet again after this Tribunal's decision dated 13.3.1996 in OA-2529/91. The aforesaid representations dated 21.10.1990 & 28.4.1996 have been placed on record at

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Annexure-A-10 & A-11 respectively. In the absence of any response from the respondents, the applicant submitted yet another representation on 21.2.1997 (Annexure A-12). In this last representation, the applicant has referred to the case of Ashish Kumar Saha & Ors. (supra) who had been called by the respondents for appointment vide their letter of 24.10.1996. Since no reply was received, the applicant has submitted an appeal on 06.12.1997 for the consideration of the Railway Board. In the aforesaid appeal, the applicant has pointed out that his case is on par with Ashish Kumar Saha & Ors. (supra) who have already been called up for appointment as above. The respondents have failed to give any reply to the applicant and that is why the the present OA.

9. In support of his contention, the applicant has gone on to place reliance on the decisions of this Tribunal in Lakshmi Chand Vs. U.O.I. & Ors. (OA 450/95) decided on 10.10.1996, Rakesh Chand Vs. U.O.I. & Ors. (OA 403/97) decided on 03.06.1997. In both these cases, the benefit of the Hon'ble Supreme Court's judgement dated 27.07.1995 (Union of India & Ors. Vs. Pradeep Kumar Srivastava & Ors.) has been extended to the applicants.

10. On the question of limitation, obviously involved in this OA, the learned counsel appearing for the applicant has relied on Supreme Court's judgements in Amrit Lal Bari Vs. Commissioner of Taxation,

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U reported as SLR 1973 (2) 152 and K.C. Sharma Vs. U.O.I. & Ors. reported as SLJ 1998 (1) 54 decided by the Constitution Bench of the Supreme Court. In the former case, according to the applicant, the Supreme Court has held that if a citizen has obtained a declaration from a court of law, others placed in similar circumstances can rely on the sense of responsibility of the respondents who should extend similar benefits to them also without forcing them to approach the court of law for obtaining similar declaration. In the later, the Constitution Bench held, according to the applicant, that if a petition is found to be covered by an earlier judgement, the delay should be condoned. Thus, in short the applicant places reliance on the judgements of the Apex Court on the question of limitation. Everything else already seems to have gone in his favour. We note, however, that the specific provisions regarding limitation made in the AT Act 1985 have not been discussed in the aforesaid cases.

11. During the course of arguments, the applicant has further cited the decision of the Supreme Court in Girdhari Lal Vs. Union of India & Ors. decided on 03.01.1996. In that case, the Court noted that the applicant would be entitled to the benefit of the Tribunal's order in Balwant Singh & Ors. Vs. Union of India, if he too was a party therein. The claim of the applicant was identical to that of Balwant Singh's case (supra). The Court in that case did not appreciate the resistance on behalf

of the Union of India to grant the same benefit to the applicant (Girdhari Lal) and noted that it would be appropriate if the Union of India treated all such persons alike and granted them the same benefit instead of driving each one of them to litigation in the course of which the Union of India itself is required to spend considerable public money. This aspect appeared to the Court to have been overlooked also by the Tribunal. The learned counsel appearing for the applicant has next proceeded to place reliance on Rameshwar Prasad Sinha Vs. Union of India & Ors. decided by the Supreme Court on 28.1.1993 (Civil Appeal No.354/93) in which again the question of limitation had come up for consideration. The court had held in that case that "in view of the applicant's application having been entertained and disposed of later, the view of the Tribunal on the question of limitation is not correct. The claim of the applicant, therefore, should have been considered and decided on merits which has not been done. The matter is fit for remand to the Tribunal for decision on merits. (emphasis supplied).

12. The respondents have proceeded to assail the various pleas taken by the applicant in the reply filed by them. They have firstly stated that part time Booking Clerks are not covered by the decisions of this Tribunal nor by the decisions of the Supreme Court and, therefore, the applicant who has admittedly worked only as a part time Booking Clerk for 52 days only, cannot claim benefit under the aforesaid

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✓ decisions of the Tribunal and the Supreme Court. According to the respondents, it is not possible to place reliance on the work certificate produced by the applicant and placed on record at Annexure A-4. The reason is that the Station Superintendent SKJ was not competent to engage the applicant as shown in Annexure A-2 & A-3. Part time Booking Clerks could be engaged, according to the respondents, only in accordance with the circular letter dated 16.04.1983 issued by the Chief Commercial Supdt., N.E.R. Gorakhpur placed on record at Annexure R-1. Further, according to the respondents, the applicant has failed to furnish details regarding his date of birth, educational qualification, etc. as required under the Railway Board's letter dated 21.4.1982. He could not, therefore, be considered for regularisation/absorption even if the Tribunal ultimately decided the case in his favour. The certificate of work produced by the applicant (Annexure A-4) would not show that he has worked from 01.10.1982 upto 31.12.1983 in broken spells for a total period of 71 days only. During the said period, he has worked as Safaiwala as well as a Part time Booking Clerk. Thus, he would appear to have worked both as Group 'C' as well as Group 'D' employee which is not possible in the circumstances of the case. Moreover, promotion from Group 'D' to Group 'C' coming his way in such a short time has not been mentioned. According to the respondents, the applicant was in fact never engaged as Group 'C' or Group 'D' employee in the Railways.

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13. Furthermore, according to the respondents, the application is to be rejected on the ground of jurisdiction also in as much as he had worked at a Railway Station at Bihar which is outside the jurisdiction of the Principal Bench and no application has been filed on behalf of the applicant under Section 25 of the Administrative Tribunals Act, 1985 read with Rule 6 of the C.A.T. (Procedure) Rules, 1987.

14. The respondents have also argued that the applicant's case is hopelessly barred by limitation. The applicant, according to the learned counsel for the respondents, worked, if at all, as a Part-time Booking Clerk for 52 days only from 11.7.83 to 31.12.1983 (Annexure-A-4) he did not approach the respondents thereafter in 1984, in 1985 nor in 1986 for his re-engagement. The aforesaid scheme for the appointment of the V/MBCs was discontinued by the Railway Board w.e.f. 17.11.1986. The applicant did not come back to the respondents for his re-engagement even thereafter. Following the discontinuance of the aforesaid scheme w.e.f. 17.11.1986, those adversely affected approached the Tribunal and succeeded in getting favourable orders. The applicant did not wake up even then. On 06.02.1990, the Railway Board issued a general circular permitting re-engagement of all those who had been engaged as V/MBCs prior to 17.11.1986. The instructions clearly provided that all those who approached the respondents will be considered for re-engagement and also for

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regularisation/absorption. The applicant failed to avail of this opportunity also. Later, the offer was kept open till 30.09.1992 and it was provided that all those who approached upto that date, would be considered. On this occasion also, the applicant failed to approach the respondent authority. Quite a few other cases were favourably decided by the Tribunal in the meanwhile but the applicant did not move in the matter as expeditiously as he should have. A specific case pertaining to the applicant's erstwhile colleagues was decided by the Tribunal on 13.03.1996 (OA 2529/91). The verdict of the Tribunal had gone in favour of the applicants in that case. This also did not affect the applicant and he chose not to approach the Tribunal. Two more cases were decided by the Tribunal again in favour of the applicants on 10.10.1996 (OA 450/95) and 03.06.1997 (OA 403/97) and these too went in favour of the applicants placed similarly to the present applicant. The applicant remained inactive through out and if he is to be believed, he remained content with the representations filed by him one after the other. The respondents have not replied to any of his representations and have also not accepted in clear terms the receipt of the various representations filed by him. The law is settled that repeated representations cannot revive limitation and any one who sleeps over his right loses the same. In support of their contention regarding the bar of limitation, the respondents have placed reliance of this Tribunal's order dated 04.12.1999 (OA 94/96) order

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dated 13.11.2000 (OA 1120/99), order dated 04.05.2000 (OA 255/99) and order dated 24.08.2000 (OA 99/99). The last order deals with a similar case. We find ourselves in agreement with the views expressed in the aforesaid order of the co-ordinate Bench of this Tribunal and hold that even assuming that the applicant was justified in waiting until a favourable decision had been made in similar cases by this Tribunal and/or by the Apex Court, he could wait for a reply from the respondents only for a period of six months and should thereafter have approached this Tribunal within a period of one year after the expiry of the period of six months, according to the provisions made in Sections 20 & 21 of the Administrative Tribunals Act, 1985. The aforesaid Section 21 of the A.T. Act opens with the words "The Tribunal shall not admit an application", making it very clear that unless exceptional circumstances existed, the Tribunal is bound to observe the law of limitation laid down in the AT Act scrupulously and in letter as well as in spirit. In view of this position and having regard to the facts and circumstances which obtained in the cases referred to by the applicant and his counsel, we do not consider it necessary any more to discuss those cases which deal with the aspect of limitation. The applicant we find, has approached this Tribunal after an abnormal delay for which no reasonable explanation is forthcoming only on 28.06.1999. We are, therefore, in agreement with the learned counsel for the respondents that the present

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OA is hopelessly time barred and deserves to be rejected on that ground alone.

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15. The respondents have also urged that for want of an application u/s 25 of the AT Act, 1985 read with Rule 6 of CAT (Procedure) Rules, 1987, the present OA also deserves to be thrown out on the ground of jurisdiction. Since no application under the aforesaid Section/Rule has been filed, we find ourselves in agreement with the respondents in this respect also.

16. The present OA is accordingly dismissed on the ground of limitation as well as jurisdiction. No costs.



(S.A.T. Rizvi)
Memeber (A)



(Kuldip Singh)
Member (J)

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