

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 52/1998

New Delhi, this the 25 day of ^{November} October, 2000

Hon'ble Mr. Justice V.Rajagopala Reddy, VC (J)
Hon'ble Sh. Govindan S. Tampi, Member (Admn)

(23)

Shri Abhay Vikas Dubey
S/o Sh. Bankey Lal Dubey

Ex. Mobile Booking Clerk
under Station Superintendent
North Eastern Railway
Ganj Tandwara
Distt. Akasganj.

Presently Resident of :
C/o Shri Rajesh Kumar Dixit
E-137, Okhla III,
New Delhi.

(By Advocate : Sh. B.S.Maine)

...Applicant

V E R S U S

Union of India

Through

1. The Secretary
Ministry of Railways
(Railway Board)
Rail Bhavan, Raisina Road,
New Delhi.
2. The General Manager
North Eastern Railway
Gorakhpur.
3. The Divisional Railway Manager
North Eastern Railway
Izatnagar.

...Respondents

(By Advocate : Sh. P.S.Mahendru)

O R D E R

By Hon'ble Sh. Govindan S. Tampi, Member (Admn)

The applicant challenges the alleged failure of the respondents to re-engage his services as a Mobile Booking Clerk in terms of Railway Board instructions in their circulars No. E (NG)II /86/RC/3/87 dated 6-2-1990 and E(NG)II/87/RC/3/87

dated 31-3-1992 and the decision of the Hon'ble Supreme Court on 27-7-96 in the case of UOI Vs. Pradeep Kr. Srivastava & Ors.

(2A)

2. In terms of the scheme formulated by the Railway Board various Railway Zones had appointed volunteer/mobile booking clerks for coping with the increased passenger and coaching traffic and continued the same even after 11-9-81. On 21-4-92, it was decided by the Railway Board to absorb the volunteer/mobile booking clerks against regular vacancies provided they possessed minimum qualification for direct recruitment and grant them temporary status on their completing three years' service as volunteer/mobile booking clerks. The posts were called Booking Clerks, additional Booking Clerks and Coaching Clerks. The applicant, who worked in terms of the scheme as a part time Booking Clerk at Railway Station, Ganj Tandwara, from 1-5-84 to 18-6-84 and had performed satisfactorily. This practice was suddenly discontinued by the Railway on 17-11-86, but the system continued in a few zones. In OA No. 1174A/86 filed by Ms. Neera Mehta Vs. UOI, the Railways were directed to re-engage the services of Mobile Clerks who had worked prior to 17-11-86. This was also the direction of the Tribunal in the case of Ushal Kumari Anand, which was upheld by the Hon'ble Supreme Court. Following this on 6-2-1990, the Railway decided to re-engage the services of all the Mobile Booking Clerk who were engaged before 17-11-96 and whose services were dispensed with following the instructions on 17-11-96. A number of persons were accordingly re-engaged. A few of the colleagues of

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the applicants working the same devision (Izzat Nagar) approached the Tribunal in OA No. 395/91, and got the benefit which was also upheld by the Hon'ble Supreme Court. In the meantime, the Railway had also issued directions for re-engaging the services of mobile booking clerk upto 13-5-92. The applicants' representation was not considered by the Railway on the ground that they had filed a SLP before the Hon'ble Supreme Court against the decision in P.K.Srivastava's case and were awaiting the same. But even after the decision of the Supreme Court in SLP in P.K.Srivastava's case, though it was also for similar benefits, was not considered. Hence this application.

(25)

3. The respondents indicates that the OA is totally barred by limitation and that it was for the applicant to produce proof that he was infact engaged as a Mobile Booking Clerk earlier. Besides, the applicant had worked only for 49 days i.e. from 1-4-84 to 18-6-84 and his dis-engagement was not at all in pursuance of the Railway Board's instructions on 17-11-96. This would not cover the case of the applicant. The directions given by the Railway Board on 6-2-90 were in respect of Mobile Booking Clerk who were in service, but were discharged in terms of the Railway Board Instructions dated 17-11-96. It is also indicated that the applicants' case was differnt from that of P.K.Srivastava & Ors., allowed by the Tribunal and the Supreme Court and they cannot, therefore, get the benefit of the above decision, argue the respondents.

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4. In their rejoinder the applicant hotly contests the points raised by the respondents and states that his having worked as a Booking Clerk and been dis-engaged prior to 17-11-96, he was correctly entitled to be re-engaged and given temporary status in his turn.

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5. Heard both the counsel for the applicants and respondents. Reiterating the pleas made by applicant in the application, Sh. B.S. Maine, the learned counsel points out that the applicants' case was squarely covered by the decisions of the Tribunal in the cases of Neera Mehta and Usha Kumari Anand, which have got the stamp of approval of Hon'ble apex Court. It was also on all fours with the Pradeep Kumar Srivastava's case decided by the Tribunal upheld by the Supreme Court. He also invited our attention to the decisions of this Tribunal in OA No. 450/95 given on 10-10-96 and in OA No. 3053/91 decided on 9-7-98. He also sought to rely upon the decision of the Supreme Court in Girdhar Lal Vs. UOI and Ors. to the effect that the employer shall 'treat all such persons alike and grant them the same benefit instead of driving each one of them to litigate in the course of which the UOI itself is required to spend considerable public money'. The attempt by the respondents to artificially distinguish the decision of the Tribunal in P.K.Srivastava's case from the case of the applicant was improper, argues Sh. Maine.

6. Sh. P.S. Mahendru, the learned counsel for the respondents argues that the applicant cannot have a case as he was not engaged on Mobile Booking Clerk

under any particular scheme and that he was not disengaged specifically on account of the directions of the Railway Board on 17-11-96. Further his request is clearly barred by limitation. His representation to the Department was on 2-12-94 while he has come up in this application only in 1998. On this preliminary ground above the application should fail urges Sh. Mahendru.

(27)

7. We have given careful consideration to the matter and we have also considered the documents placed before us. The point for determination on merits is whether the applicant who had worked for a short period from May to June, 1984 as Mobile Booking Clerk is entitled for re-engagement on the basis of the letter of the Railway Board dated 6-2-1990 following the decision of the Tribunal and the Supreme Court in Usha Kumari Anand's case. However, the preliminary issue of limitation also has to be settled first. It is seen that on 6-2-90, the Railway Board had issued directions to the effect, persons who were engaged as Mobile Booking Clerks earlier but disengaged consequent on the discontinuance of the scheme by the Zonal Railways, as a result of Railway Board's letter 17-11-96 or on any earlier instructions to the same effect, may be re-engaged as Mobile Booking Clerks as and when they approach the Railway Administration for such engagement. The instructions go on to state that their cases for absorption in regular employment may be considered after they complete three years of service as Mobile Booking Clerks. Following the above, the Northern Railway issued further directions that the re-engagement of

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such persons as MBCs will be kept open upto 13-9-92. The applicant approached the Railway for the first time on 2-12-94, thereafter on 19-2-95 and on 17-8-96. Thereafter, according to him, he has been waiting for the decision of the Tribunal and the Supreme Court in the matters filed by some of his colleagues. Yet he chose to file this application only on 1-1-98. That being the case, the application is clearly hit by limitation in terms of section 21 of the Administrative Tribunal's Act. The Hon'ble Supreme Court has held in Kottarayya's case 1996 (6) SCC P.267 that the Tribunal cannot entertain matters which have not been brought before it on time within the permitted period of limitation. It is also settled in law that repeated representations perse would not cure the malady of limitation. The applicants' having known that the Railway have introduced the scheme in 1990 itself for re-engaging the persons who had earlier worked as Mobile Booking Clerk, but disengaged subsequently should have come to this Tribunal on a much earlier date; instead of his not having done so, he cannot expect the Tribunal waiting all these while, to come to his rescue and decide the case in his favour.

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8. In the above view of the matter, the OA is dismissed on being hit by limitation; without going into the merits. No costs.

(GOVINDAN S. TAMPT)
MEMBER (ADMN)

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(V.RAJAGOPALA REDDY)
VICE-CHAIRMAN (J)

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