

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.2381 of 1997

New Delhi, this the 19th day of July, 2004

HON'BLE MR.V.K. MAJOTRA, VICE CHAIRMAN (A)
HON'BLE MR.KULDIP SINGH, MEMBER (JUDL)

(26)

Shri Lakshmi Chand
S/o Shri Harswaroop Singh
Ex. Mobile Booking Clerk,
Railway Station Mauzampur Narain,
Northern Railway (UP)

presently

House No.2551, Gali No.1
Kailash Nagar,
Shahdara,
Delhi.

...Applicant

By Advocate: Shri B.S. Mainee.

Versus

Union of India: Through

1. The Secretary,
Ministry of Railways,
Rail Bhawan,
New Delhi.

2. The General Manager,
Northern Railway,
Baroda House,
New Delhi.

3. The Divisional Railway Manager,
Northern Railway,
Moradabad.

.....Respondents

(By Advocate: Shri M.S. Saini with Shri R.L. Dhawan)

O R D E R (ORAL)

By Hon'ble Mr.Kuldip Singh, Member (Judl)

The applicant has filed this OA impugning an order dated 19.2.1997, Annexure A-I wherein it has been mentioned that while implementing the order passed in OA No. 450/95 entitled as Lakshmi Chand Vs. U.O.I. the respondents refused to reengage the applicant as Mobile Booking Clerk (hereinafter referred to as MBC) on the

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ground that the applicant who had admittedly worked as MBC from 27.7.79 to 9.9.81 had left the work at his own without informing the Railway Administration.

2. It is further stated that his case is not covered under the judgment of the Hon'ble Supreme Court in the case of U.O.I and Others Vs. P.K. Srivastava and also circular on the subject since the applicant was not discharged from service because of discontinuing of scheme of the engaging of MBC.

3. While assailing the impugned order the applicant submits that the grounds given by the respondents are not correct. The applicant had never left the services of his own but was disengaged by the respondents and was not re-engaged in spite of representations of the applicant.

4. It is further stated that the applicant had since worked for about 2 years so he has acquired temporary status in accordance with Rule 2511 of the Indian Railway Establishment Manual and no notice whatsoever was given to the applicant in the year 1981 when the applicant is alleged to have left the service because in such circumstances also, as per law, the notice has got to be issued to the casual worker but the same has not been issued in this case. In support of his contention learned counsel for applicant relied upon Full Bench judgment in the case of Mahavir Singh Vs. U.O.I. reported in ATJ 2000 (3) 1.

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5. The applicant further submits that he had earlier filed OA 450/1995 but no such plea was taken by the respondents and it is only on the ground of limitation that the OA was rejected.

6. On the contrary in the earlier counter-affidavit the respondents have conceded the case of the applicant on merits but had contested only on the ground of limitation, so now the respondents cannot turn around and say that the judgment of the Hon'ble Supreme Court is not applicable to the case of the applicant. Thus the respondents are estopped from taking any such ground while rejecting his request.

7. The respondents are contesting the OA. Respondents in their reply pleaded that the applicant was not discharged from service as MBC but he had left the work of his own on 9.9.81 and was not discharged consequent to the discontinuation of the scheme of engaging of MBC, so he cannot be re-engaged.

8. It is further stated that the respondents have examined the case of the applicant as per the direction of the Tribunal and passed the appropriate orders but the case of the applicant is not covered under the Scheme.

9. We have heard the learned counsel for the parties and gone through the records of the case.

10. The learned counsel for the applicant has referred to an earlier judgment passed by the Tribunal in the case of applicant, i.e., OA No. 450/1995 wherein

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also the applicant had claimed similar relief. Para 2 of the judgment shows that the respondents through their counsel Shri Patel had conceded that the case of the applicant is fully covered by the judgment given by Hon'ble Supreme Court in SLP No.14756/93 and 20114 /93 U.O.I.. and Others Vs. P.K. Srivastava and Others and other connected cases. The judgement also makes it amply clear that the OA was contested only on the ground of limitation but the Tribunal took the view that since the respondents themselves have conceded that the OA is fully covered by the decision of the Hon'ble Supreme Court so held that the question of limitation should not stand in the way of getting the relief prayed for, therefore, directed the respondents to dispose of the applicant's claim in the light of the Hon'ble Supreme Court's judgment by passing a speaking order thereon and it is in compliance of that order, the respondents passed an order dated 13/14.1.1997 vide Annexure A-8 and re-engaged the applicant as MBC at Gajraula Railway Station. Thereafter respondents passed impugned order dated 19.2.1997 Annexure A-I wherein the respondents had taken a stand that the case of the applicant is neither covered under the judgment nor under the circular issued by the Railway Board and disengaged the applicant. The counsel for the applicant contended that the respondents while terminating the services of the applicant had taken a false ground since they had earlier conceded that the case of the applicant is fully covered so they cannot turn around and say that the case of the applicant is not covered.

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11. In our view also when order Annexure A-8 was passed it was passed in terms of the judgment in OA 450/95 and applicant was re-engaged as MBC at Gajrola Station but what prompted the respondents to pass again an order in implementation of the same judgment given in OA 450/95 and taking altogether a different stand, the case of the applicant is neither covered under the Supreme Court judgment nor under the circular issued by the Railway Board and no opportunity was given to the applicant when order dated 19.2.97 was passed and once the order given in OA 450/1997 had already been complied by issuing order Annexure A-8, respondents could not have passed any order in the garb of implementing the same judgment.

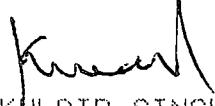
12. Moreover the stand of the respondents that applicant had abandoned service of his own is also not established since respondent had not issued any notice to applicant about his absence whereas as per Full Bench judgment in Mahavir Singh's case, the respondents were required to issue notice to applicant.

13. Thus we find that the order passed by the respondents is arbitrary and cannot be sustained at all. The applicant is entitled to be reinstated as Mobile Booking Clerk on the same terms and conditions as he was engaged as per Annexure A-8. The learned counsel for the applicant has also prayed for back wages but we find that since applicant is claiming to have only temporary status so he cannot be allowed wages for the period for which he had not worked so this request is rejected.

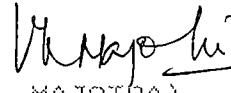


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14. The OA is allowed only to the extent that the applicant shall be reinstated by the respondents as Mobile Booking Clerk within a period of 4 months from the date of receipt of a copy of this order. No costs.


(KULDIP SINGH)

MEMBER(JUDL)


(V.K. MAJOTRA)
VICE CHAIRMAN (A)

/Rakesh

19.7.04