

8

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

DATE OF DECISION: 30.7.1990

1. OA No.1387/89
RAM CHANDER YADAV APPLICANT
VERSUS UNION OF INDIA & ORS. RESPONDENTS

2. OA No. 1313/89
RAJESH KUMAR APPLICANT
VERSUS UNION OF INDIA & ORS. RESPONDENTS
SHRI B.S. MAINEE ADVOCATE FOR APPLICANTS AT SL.
NO 1 & 2
MS. SHASHI KIRAN ADVOCATE FOR RESPONDENTS
AT SNO. 1 & 2

3. OA No.1548/89
SHRI MUKESH SINGH & ORS. APPLICANTS
VERSUS UNION OF INDIA & ORS. RESPONDENTS

4. OA No. 2061/89
SHRI ARUN KUMAR SHARMA APPLICANT
VERSUS UNION OF INDIA & ORS. RESPONDENTS

5. OA No.224/90
MISS ASHA RANI APPLICANT
VERSUS UNION OF INDIA & ORS. RESPONDENTS

6. OA No.1876/89
KUM. ANURADHA APPLICANT
VERSUS UNION OF INDIA & ORS. RESPONDENTS
SHRI B.S. MAINEE ADVOCATE FOR APPLICANTS
SHRI JAGJIT SINGH ADVOCATE FOR RESPONDENTS
AT SNO. 3-6
AT SNO. 3-6

Coram:

Hon'ble Mr. T.S. Oberoi, Member (J)

Hon'ble Mr. I.K. Rasgotra, Member (A)

JUDGEMENT

(Delivered by Hon'ble Mr. I.K. Rasgotra)

The applicants in all the above Original
Applications were engaged as Mobile Booking Clerks on



the Northern Railway. Their services were terminated by the respondents in accordance with Railway Board's letter No. E(NG)/II/86/RC-3/87 dated 17.11.1986 after they had worked for varying periods prior to 17.11.1986. They have challenged the orders terminating their service as illegal and arbitrary and filed these applications under Section 19 of the Administrative Tribunals Act, 1985. Identical issues of law and fact had come up for adjudication in OA No. 1174/86 (Ms. Neera Mehta & Others Vs. UOI & Others), which was decided by the Tribunal vide judgement dated 28.8.1987. Applying the ratio decidendi of Ms. Neera Mehta's case, a few more judgements were pronounced by this Tribunal, the last one being the case of Mohinder Kumar Vs. UOI & Others in OA No. 896/88, dated 4.6.1990. These judgements, in addition, have taken care of certain other aspects like grant of temporary status, reckoning of three years service for regularisations, payment of wages etc. The OAs before us at present raise common and identical issues of law and fact, which have been dealt with in our judgement dated 4.6.1990 in OA No. 896/88 (Mohinder Kumar Vs. UOI & Ors.) All the above OAs came up for hearing on 23.7.1990.

27. Ms. Shashi Kiran, Advocate appearing in OA No. 1313/89 and 1387/89 on behalf of respondents drew our attention to MP No. 1629/90 (OA No. 1313/89) and MP No. 1630/90 (OA No. 1387/89) and submitted that the applicants, Shri Rajesh Kumar (OA No. 1313/89) and Shri Ram Chander Yadav (OA No. 1387/89) have been reengaged as Mobile Booking Clerks as per respondent's letter No. 522E/57-II/VOC/BIC dated 20.2.1990 and another letter No. DM/1/-/ALD/90 dated 8.3.1990. In view of these developments the advocate for the applicants submitted that these cases may be dismissed as infructuous. The learned counsel also filed a copy of General Manager, Northern Railway (Respondent No.2)'s circular dated 20.2.1990 (issued in compliance with the directions of the Tribunal.) directing the

Divisional Railway Managers (DRMs) to re-engage the applicants as Mobile Booking Clerks as and when they approach the Division/Unit concerned and further that they be considered for engagement on regular basis after their completion of three years service in the same manner as in the case of other Mobile Booking Clerks.

3. Shri Jagjit Singh, Advocate appearing for the respondents in OA Nos. 1548/89; 2061/89; 224/90 and 1876/89 submitted that the respondents have already taken action in compliance with the judgement of the Tribunal to re-engage the Mobile Booking Clerks, who were disengaged on or prior to 17.11.1986. The other reliefs due to them in terms of the said judgement would also be considered/provided.

Referring to Para 15(i) of the judgement delivered on 4.6.1990, the learned counsel, however, submitted that the applicants had nowhere claimed that they should be regularised on 'completion of three years' and 'not 1095 working days' and that this was not part of their pleadings and thus this aspect should not have been adjudicated upon.

4. The advocate for the applicants, Shri B.S. Mainee prayed that the points of law and fact in the above OAs are the same which have been covered in the judgement delivered by the Tribunal on 4.6.1990 (OA No. 896/88 - Mohinder Kumar Vs. UOI & Ors.) and the same benefits should be extended to the applicants of these OAs. He further submitted that the issue relating to "3 years" and "1095 days" is part of the record and that it was in the interest of fair play and justice that the Tribunal covered this aspect.

5. We have heard the learned counsel of both the parties and perused the records carefully. The issues of law and fact involved in all these cases have already been traversed in the judgement delivered on



4.6.1990. Regarding Shri Jagjit Singh's submission about 'three years service' being defined as equal to '1095 actual working days' by the respondents, we would like to clarify that 'three years' cannot be converted arithmetically for regularising the services of the applicants. The Railway Board in their letter dated 21.4.1982 (pages 32-33 of the paper book of OA No. 896/88) laid down that Mobile Booking Clerks may be considered for absorption 'against regular vacancies provided that they have the minimum qualifications required for direct recruits and have put in a minimum of three years service'. The Railway Board had not defined 3 years as equal to 1095 actual working days. This enunciation appears only in DRM (Respondent No.3), New Delhi's letter CIID/34-CN-MT/Insp/84 AAA dated 12.5.1988 (page 65 of the paper book of OA No. 896/88)

In the interest of justice and with a view to minimise, if not remove the possibility of further litigation on the same subject, it was considered necessary and desirable to nip the potential for fresh litigation. As mentioned in the judgement dated 4.6.1990, the Railway Board's instructions provided only completion of 'three years' service from the date of engagement as one of the pre-requisite for regularisation of the Mobile Booking Clerks. The conversion of 'three years' into '1095 actual working days' is irrational and preposterous. The Mobile Booking Clerks are no different from the casual labour and they have accordingly been considered while giving directions in the judgement pronounced on 4.6.1990. Further, definition of continuous service is provided in Section 25(B) of the Industrial Disputes Act, 1947 as under:

"25-b Definition of continuous service - for the purposes of this Chapter,-
(1) a workman shall be said to be in continuous service for a period if he is, for that period, in

uninterruped service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case;

While the relief against the tyranny of 1095 days may not have been claimed by the applicants in words, both the letters of Railway Board dated 21.4.1982 and DRM's letter dated 12.5.1988 are part of the record and this regressive ~~extended~~ action could have been allowed to pass muster only at the peril of fairplay and justice.

6. In the facts and circumstances of the case, we order and direct that respondents shall provide relief to the applicants, in the following OAs:

- 1.OA No.1387/89 - Ram Chander Yadav Vs. UOI & Ors.
- 2.OA No.1313/89 - Rajesh Kumar Vs. UOI & Ors.
- 3.OA No.1548/89 - Mukesh Singh & Ors. Vs. UOI & Ors.
- 4.OA No.2061/89 - Arun Kumar Sharma Vs. UOI & Ors.
- 5.OA No. 224/90 - Miss Asha Rani Vs. UOI & Ors.
- 6.OA No.1876/89 - Kum. Anuradha Vs. UOI & Ors.

as per our directions given in our judgement dated 20.6.1990 (OA No. 896/88 - Mohinder Kumar Vs. UOI & Ors.), following the judgement in OA No. 1174/86 (Ms. Neera Mehta & Ors. Vs. UOI & Ors.)

There will be no orders as to the costs.

Enclosed
(I.K. Rasgotra) 30/7/1990
Member (A)

(T.S. Oberoi)
Member (J)

CERTIFIED TRUE COPY
Dated.....

Section Officer
Central Administrative Tribunal
Principal Bench, Family House
New Delhi

