

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

DATE OF DECISION: 2.7.1991.

1. OA NO.1584/89

Shri M.S. Gangaikondan

Applicant

versus

Union of India & Ors.

Respondents

2. OA No.1581/89

Shri F. Rajendra Kumar

Applicant

Versus

Union of India & Ors.

Respondents

3. OA No.2154/89

Shri G. Elangovan

Applicant

Versus

Union of India & Ors

Respondents

4. OA No.1896/89

Shri Ramesh Babu & Ors.

Applicants

Versus

Union of India & Ors.

Respondents

Coram:

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

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



For the applicants

Shri B.S. Mainee, Counsel

For the respondents

Shri O.N. Moolri, Counsel

(Judgement of the Bench delivered by

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

S/Shri M.S. Gangaikondan, F. Rajendra Kumar and G. Elangovan have filed OA Nos.1584/89, 1581/89 and 2154/89 respectively, under Section 19 of the Administrative Tribunals Act, 1985 challenging the impugned order issued by the Director (Establishment), Railway Board vide No. E(NG)II-86/RC-3/87 dated 17.11.1986 (Annexure A-I).

The applicants are stated to have been working as Mobile Booking Clerks (MBCs) in Madras Division of the Southern Railway for various spells between November, 1980 to April, 1984, for periods ranging between 16 months to 28½ months. Instead of paying honorarium on hourly basis, as has been the case generally in similar engagements, they were paid commission at the rate of Rs. 1/per 100 tickets sold. They were all disengaged prior to 17.11.1986 and consequently have all challenged their disengagement from service and sought reengagement, regularisation and other consequential reliefs.

2. The argument advanced in these cases is based on the decision given by the Tribunal on 13.8.1989 in the case of Miss Neera Mehta and Others Vs. Union of India and others ATR 1989(1) CAT 380 as the issues of law and fact involved are said to be identical to those in the case of Miss Neera Mehta (supra).

In Miss Neera Mehta's case, the applicants were appointed as Mobile Booking Clerks in the Northern Railway on various dates between 1981 and 1985 on a purely temporary basis against payment on hourly basis. They had rendered service for periods ranging between 1½ to 5 years. Their services were sought to be terminated vide telegram issued on 15.12.1986. This was challenged before the Tribunal. The case of the applicants was that they were entitled for regularisation of their services and absorption against regular vacancies in terms of the circular issued by the Ministry of Railways on 21st April, 1982, which envisages that "those volunteer/Mobile Booking Clerks who have been engaged on the various railways on certain rates of honorarium per hour 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 aforesaid circular further laid down that "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."

3. The applicants herein were engaged on the Southern Railway in what has been called as 'Mobile Booking arrangements'. Only feature which distinguishes the present case from Miss Neera Mehta (supra) is that the applicants herein were paid commission at the rate of Rs. 1/- per 100 tickets sold instead of honorarium on hourly basis.

4. Since all the three applications raise common points of law and fact, we propose to dispose of them by this common judgement.

5. We have carefully gone through the records of these cases and heard the learned counsel for both the parties.

We have also perused the additional counter affidavit filed by Shri O.N. Moolri, the learned counsel for the respondents. Shri Moolri dwelt at length on the point that the applicants herein were not the employees of the respondents but were engaged as Ticket Selling Agents. As such they were only Commission Agents as distinguished from the MBCs employed on honorarium basis. The learned counsel also raised the issue regarding limitation as the cases have been filed only in 1989 and not in 1987 when other similarly engaged persons came to the Court.

6. A perusal of the additional counter affidavit and documents enclosed reveals that although the engagement of the Mobile Booking Clerks was referred to as 'Mobile Booking Arrangement', yet in the body of the orders they are



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referred to as 'Mobile Booking Clerks'. For instance in the Office Order No.M/P 1(C)/334/80 dated 10.11.1980, referring to the 'mobile booking arrangements' in the body of the order sanction is accorded by the DRM/MAS "for the engagement of 15 extra staff as shown at the stations indicated below, to work as Mobile Booking Clerks on payment of Rs.1/- per 100 tickets sold for selling tickets outside the book counters, so as to reduce the waiting time of the passengers in the queue....." (emphasis supplied).

Again on 26.2.1981, a further sanction was issued for the continued operation of the system of issue of tickets by 15 temporary Mobile Booking Clerks on the same terms and conditions. This was extended further in the same manner on 20.5.1981. It was in the note dated 17.8.1981

that the Mobile Booking Clerks were first directed to be redesignated as 'Ticket Selling Agents' at the instance of the Divisional Accounts Officer who advised the change in designation as pre-requisite for according concurrence to the continued engagement of the 15 temporary Mobile Booking Clerks. Even thereafter the Ticket Selling Agents have been referred to as Mobile Booking Clerks in respondents' letters dated 26.11.81; 2.7.82 and 3.8.82.

7. It is apparent that the engagement of the Mobile Booking Clerks was resorted to reduce/clear the summer-rush although respondent Southern Railway engaged them on commission basis instead of hourly honorarium basis. They were admittedly engaged under the scheme circulated by the Railway Board for clearance of summer rush etc. in August, 1973 in pursuance of the recommendation of the Railway Convention Committee (3rd Report on Commercial and Allied matters, 1971). Thus whatever may be the designation or the terms of engagement, the authority for their employment,

the nature and characteristics of the work and the job performed by the said "Ticket Selling Agents" was the same as performed by the Mobile Booking Clerks elsewhere. The trappings of designation and the terms of engagement cannot detract from the basic character and nature of the job performed by the applicants. The work done by them is undisputedly that of Mobile Booking Clerks as they were engaged for clearing summer-rush in pursuance of the 1973 scheme of the Railway Board. As pointed out by the learned counsel for the applicants the aspect of the terms of engagement of "Ticket Selling Agents"/MBCs has also been dealt with in paragraph 22, 23 and 24 of the judgement delivered by this Tribunal in Miss Usha Kumari Anand & Ors. V. Union of India & Ors. ATR 1989 (2) CAT 37. Instead of going into the details we consider it convenient to reproduce the said paragraphs:

"22. Shri O.N. Moolri, appearing for the respondents in OA-1325/87, contended that this Tribunal has no jurisdiction as the applicants at no stage had been taken into employment of the Railways. They were engaged as booking agents on commission basis and their contract was of pecuniary nature and was not in the nature of service or employment. The applicants were engaged

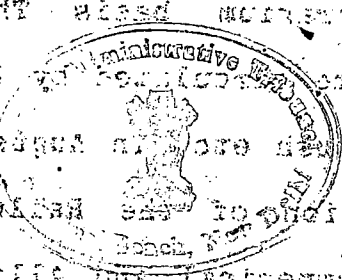
on a purely commission basis of Rupee one per 100 tickets sold. According to him, the decisions of

the Tribunal in Neera Mehta's case and Gajarajulu's case are not applicable to the facts and

circumstances of the application before us as the applicants in those two cases were engaged on an honorarium basis per hour per day. Further, the

system of their engagement was discontinued from

11.4.1984. The respondents have also raised the plea of non-exhaustion of remedies available under the Service Law and the plea of bar of limitation,



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21) 23. As against the above, the learned counsel of the applicant drew our attention to some correspondence in which the applicants have been referred to as "Mobile Booking Clerks" and to a call letter dated 3.11.1980 addressed to one of the applicants (vide A-1, A-5, A-10, A-13, A-14, A-15 and A-16 to the application). He also submitted that the purpose of appointing the applicants and the functions to be performed by them were identical, though the designation and the mode of payment was different. We are inclined to agree with this view.

24. In the facts and circumstances of the case, we also do not see any merit in the pleas raised by the respondents regarding non-exhaustion of remedies and limitation."

8. Regarding limitation the law in such case is well established. In **A.K. Khanna & Others V. UOI & Ors. 1988 (2)**

CAT 518 the Tribunal has held that ordinarily the benefit of a judgement should be extended to the similarly situate persons who were not party to the earlier litigation. If such benefits as allowed by the court are not extended to similarly placed persons, and they are driven to the court to seek redressal of their grievance the cause of action can be taken to arise from the date of the judgement, benefit of which is being denied merely on the ground that they were not party to the suit/application. We are of the view that the applications do not attract the limitation provision contained in Section 21 of the Administrative Tribunals Act.

9. In view of the above discussion, we feel that the reliefs provided to the applicants by the Tribunal in

1) **Miss Neera Mehta and Others Vs. Union of India and Others ATR 1989 (1) CAT 380**

11) **Miss Usha Kumari Anand - ATR 1989(2) CAT 37**

111) **OA No.896/88 Mohinder Kumar & Ors. Vs. UOI & Ors decided on 4.6.1991**

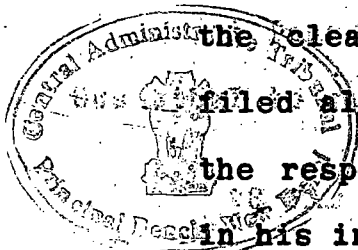
shall also be available to the applicants in the present OAs. We are, therefore, of the view that irrespective of the length of service put in by the applicants, they deserve to be reinstated in service as they had been engaged as Mobile Booking Clerks/Ticket Selling Agents before 17.11.1986. Further those who have put in continuous service for more than 120^{days} shall be entitled to temporary status with all attendant benefits. They should also be considered for regularisation and permanent absorption in accordance with the provisions of the scheme. We, however, do not consider it appropriate to direct the respondents to pay backwages to the applicants on their reinstatement in service. The period of service already put in by them before their services were terminated would however, count for completion of three years period of service for the purpose of regularisation and absorption.

10. The case in OA No.1896/89 is only a variation of the cases which have been discussed above. The applicants in this case, viz: Shri Ramesh Babu, Shri K. Srikumar and Mrs. M.F. Jahanbani, apart from challenging the Railway Board's order dated 17.11.1983 have also challenged the order No. M/P(IC)/563/22/11/P.A. System dated 24.5.1989.

Instead of employing the applicants on the ticket selling job the applicants herein were employed on the Public Address System for making announcements.

11. The respondents have taken the preliminary objection in the written statement that the order dated 24.5.1989 relates only to Shri Ramesh Babu. This however, need not detain us. The applicants have also challenged the order dated 17.11.1986. The applicants herein are wards of the railway employees who were employed on the Public Address System for making announcement in connection with

the clearance of summer-rush. We note from Annexure RI filed along with the additional counter dated 13.9.1990 by the respondents that the General Manager, Southern Railway in his inspection note had recorded:



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"Both at Katpadi and Arakkonam, the P.A. equipment is installed in a separate room adjoining the TTE's room. However, there is no separate announcer posted and only the ticket checking staff are making the announcements as required. It is suggested that a few students (preferably Railway Employees' children) are engaged as part time announcers on a honararium basis at least during the peak periods."

Thereafter the Senior Divisional Commercial Superintendent in his order dated 26.9.1980 observed:

"We have got Public Address System at the following stations without sanction of Announcers:

Madras Bench

Mambalam

Guindy

Tambaram

Chengalpattu

Arakkonam

Katpadi

Based on GM's Inspection Notes above, we may engage for a period of four months initially, children of railway employees or retired railway employees (one each) at AJJ, KPD, MSB, TBM and CGL to work as Announcers during peak hours on payment of an honorarium of Rs. 10/

12. The above notes elucidate that the applicants were appointed from among the wards of the railway employees/-retired railway employees. They were engaged as announcers during peak hours on payment of ~~an~~ honorarium of Rs.10/ per day and that there was no other scheme to engage wards of railway employees except the August 1973 scheme of the Railway Board for "clearing summer-rush or for other similar purpose in the booking and reservation office." (emphasis supplied).

13. In this view of the matter the applicants herein shall also be entitled to the benefits allowed in the three OAs, viz. 1584/89; 1581/89 and 2154/89 in paragraph No.9 above. We order accordingly.

13. The OA No. 1584/89; 1581/89; 2154/89 & 1896/89 are disposed of as above with no orders as to costs.

(I.K. Rasgotra)
Member (A)

(T.S. Oberoi)
Member (J)

2/7/91



Section Officer
Central Administrative Tribunal
Principal Branch, New Delhi

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