

Central Administrative Tribunal

NEW DELHI ~~HYDERABAD~~ BENCH : AT ~~HYDERABAD~~ NEW DELHI

O.A. No. 1846/1988

Date of Decision :

1991

T.A.No.

Om Pal Singh

Petitioner.

Shri B.S. Mainee

Advocate for the
petitioner (s)

Versus

The Secretary, Min. of Railways,
New Delhi & others

Respondent.

Ms. Shashi Kiran

Advocate for the
Respondent (s)

CORAM :

THE HON'BLE MR. Ram Pal Singh, V.C (J)

THE HON'BLE MR. B.N. Jayasimha, V.C (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?
5. Remarks of Chairman on columns 1, 2, 4
(To be submitted to Hon'ble Chairman where he is not on the Bench)

(HBNJ)

Ram Pal
HRPS

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : PRINCIPAL BENCH
AT NEW DELHI

O.A.No.1846 of 1988

DATE OF DECISION: 6.3.91

Om Pal Singh

... Applicant

Shri B.S.Mainee

... Advocate for the Applicant

Versus

1. Union of India, through
the Secretary, Min. of Railways,
Railway Board, New Delhi.
2. The General Manager,
Northern Railway, New Delhi.
3. The Divl.Rly. Manager,
Northern Railway, Moradabad.

... Respondents

Ms. Shashi Kiran

... Advocate for the Respondents

CORAM

The Hon'ble Shri B.N.Jayasimha, Vice-Chairman (Admn.)

The Hon'ble Justice Shri Ram Pal Singh, Vice-Chairman (Judicial)

JUDGMENT

(of the Bench delivered by the Hon'ble Shri B.N.Jayasimha,
Vice-Chairman).

...

The applicant is an ex-Mobile Booking Clerk in the Northern Railway at Bulandshahr, U.P. and this application is against the orders of the 3rd Respondent No.MBA-79C Pt.II dated 29-3-1987 terminating his services with immediate effect, and ~~for~~ ^{his} for a direction to the Respondents to regularise ~~the~~ ^{his} services of the applicant in terms of Railway Board's letter No.E(NG)II/83-RC3/34 dt.16-5-1986.

Ram Pal Singh

2. The applicant states that he was appointed w.e.f., 1.10.1979 as a Mobile Booking Clerk by the 3rd respondent, and continued as such till 29.3.87 when he was terminated from service. When he was working at Bullandshah, a charge sheet for imposition of a minor penalty was issued on 30th Dec.'86 by the Divisional Commercial Supdt., Northern Railway, Moradabad alleging that he had accepted Rs.150/- from an outsider without any requisition slip from him for making reservation of two berths in 3 tier sleeper of 412 DN of 25.5.86 and that he subsequently passed the said amount to an outsider on seeing the Vigilance team. It was also alleged that an amount of Rs.153/- was found extra in his Govt. Cash. The applicant submitted his defence on 8.1.87 clarifying how Rs.150/- was left by a passenger for getting reservation. By the impugned order dt.29.3.87 the applicant's services were terminated without holding any enquiry to prove the charge and without giving a reasonable opportunity to defend himself. Being a casual labour and also a workman under the Industrial Disputes Act, he was entitled to one month's notice as well as retrenchment compensation but the same were denied to him. His appeal dt. 1.5.87 to the Divisional Railway Manager, moradabad was dismissed with one line order, "He has met me. File" and there was reply to his further review petition dt.26.4.'88 to the General Manager, Northern Railway. The applicant says that he worked from 1.10.79 to 29.3.87 without any break under the scheme of the Railways to engage volunteer/Mobile Booking Clerks for coping with the ever increasing passenger and other traffic on the Railways, that having put in more than 7 years of service, he was entitled to temporary status as well as regularisation as per Railway Board's letter No. E (NG)II/83-RC3/34 dt.16.5.'85 and consequential service benefits like regular scale of pay.

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allowances, passes, notice before termination etc., He also contends that Respondent No.2 has regularised as many as 61 such Mobile Booking Clerks vide his letter No. 522-E/57/VOC/BIC dt.3.7.'86 and not regularising his services is discriminatory. The applicant relies upon a decision of this Tribunal in Miss Neera Mehta & others Vs. Union of India and others 1988 (2) SLJ 121 in support of his claim for regularisation of services.

3. The respondents in their reply say that as the applicant was found to have committed certain serious irregularities on 24.5.'86 by the Vigilance team, his services were terminated w.e.f.19.3.'87. The applicant was working as a volunteer Mobile Booking Clerk on honorarium basis and he is therefore not a regular railway employee. The question of holding any departmental enquiry under the statutory provisions of Art.311 of the Constitution or R.S (D&A) Rules do not apply in his case. Under a wrong presumption that the applicant is a regular employee of the railway service, a show cause notice was initially issued but subsequently realising that he is working only as Mobile Booking Clerk, the charge sheet has been cancelled. The applicant's services were terminated in terms of the agreement and therefore the question of following statutory rules and provisions of the constitution does not arise. He cannot also be treated as a workman as he is a volunteer worker and therefore he is not entitled for the protection under I.D. Act also. He is also not a casual labour at the time of termination of his engagement and therefore he is not entitled for treatment as a temporary railway employee. The absorption of Mobile Booking Clerks against regular vacancies is made only if they fulfil the minimum required qualifications prescribed for direct recruits and if they have also put in a minimum of 3 years service as volunteer Mobile Booking Clerk after passing

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the screening test. The applicant had not been regularised in the service at the time of his termination from service. Since he was engaged as a volunteer on payment of honorarium calculated on the basis of hours he spent in issuing tickets etc., either outside the booking offices or on separate booking counters, he is not entitled to getting a salary of a full fledged Booking Clerk.

4. We have heard the learned counsel for the applicant Shri B.S. Mainee and the learned Standing Counsel for the respondents Ms. Shashi Kiran. Relying upon the judgements in Samir Kumar Mukherjee & Ors. Vs. G.M., Eastern Railway & Ors. (ATR 1986 (2) SC/CAT 7) (ii) Neera Mehata & Ors. Vs. Union of India & Ors., (Delhi) (1988 (2) SLJ (CAT) P121) and (iii) Ms. Ushakumari & Ors. Vs. Union of India (1989(2) ATR 37) Shri Mainee states that the benches of this Tribunal have held (1) the Mobile Booking Clerks are to be treated as temporary employees and their service conditions will be governed by the relevant rules of Railways (b) when once the Railway Board had introduced a scheme of regularisation in respect of the voluntary/Mobile Booking Clerks and the scheme in fact continued with the tacit approval expressed or implied of the Railway Board upto 17.11.84 when they came out with alternative measures for coping with the rush of passengers during peak season, restricting the scope of regularisation scheme to those who were employed prior to 14.8.81 without actually not implementing the same would be clearly discriminatory and arbitrary (c) It has also been held that all the voluntary / Mobile Booking Clerks who were engaged on or before 17.11.1986 would be entitled to the regularisation of the services on completion of 3 years of service subject to

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the conditions laid down in the circular dt. 21.4.'82 and 20.4.'85 of the Ministry of Railways. Sri Mainee points out that in this case the applicant had been appointed in the year 1979 and he was continued as such till 29.3.'87. He was entitled for regularisation as he has fulfilled the condition of 3 years of service. He is also entitled to be treated as temporary Railway Servant and therefore his termination from service could only have been after following the R.S. (D&A) Rules. Countering these arguments Shri Shashi Kiran urges that at the time the services of the applicant were terminated, the applicant was governed by the terms of his employment and it is only by later judgements of the courts have laid down that these mobile booking clerks are entitled to temporary status. She therefore contends that the termination of service which is in terms of the agreement is proper. She relies upon the decision of the Calcutta Bench in Smt. Chandarani Mondal Vs. Union of India & Others (1989 (6) SLR 674) when it was held that under rule 6 of the E.D. Agents (Conduct and Service) Rules, 1964, termination of service of an agent appointed on provisional basis before the completion of three years is valid.

5) Before we consider these submissions we may notice certain circulars issued by the Ministry of Railways in regard to the services of mobile booking clerks. In their circular dt. 21.4.1982, the following instructions were issued.

"Attention is invited to Board's wireless of even No. dated 11th September, 1981 in which you were advised that the engagement of volunteer Booking Clerks on the Railways may be continued on the existing terms till further advise.

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"The question of regularisation of these volunteers Booking Clerks through screening by a Departmental Committee for absorption on the Railways was again discussed by the NFIR during the PNM meeting held with the Board on 23rd, 24th December 1981. After taking into account all aspects of the case, the Ministry of Railway have decided that these 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 the regular vacancies provided that they have the minimum of 3 years of service as volunteer/mobile booking clerks. The Screening for their absorption should be done by a Committee of Officers including the Chairman of a Member of the Railway Service Commission concerned."

In pursuance to these instructions, by an order dt. 3-7-84, as many as 61 mobile booking clerks in Delhi, Moradabad and Allahabad were screened for regularisation and put on a panel for the post of Commercial Clerk Gr. Rs.230-430/. From the above, it is clear that the applicant was entitled to be screened and regularised in terms of the circular referred to above. In Neera Mahta's case, mobile booking clerks recruited between 1981 and 1983 and who had rendered service ranging from 1½ to 5 years had challenged the action of the Railways in seeking to terminate their services from 15-12-1986. Noting that Railways had continued the scheme of mobile booking clerks until 17-11-86, the Bench held that the decision of the Railways only to regularise the services of those employed prior to 14-8-1981 cannot be sustained, and further held that all these mobile booking clerks who had been engaged prior to 17-11-1986 would be entitled to regularisation of their services on completion of three years of service subject to fulfilment of other conditions as ² spelt out _A in Circular No.E(NG) III-77/RCI/80 dated 21-4-1982 and No.E(NG) 11/84/RC3/8 dated 20-4-1985 issued by the Railways. In the case before us, the applicant is better placed as he was recruited in the year 1979 and as per Railway

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Board's circular dt. 20-4-1985 volunteer/mobile booking clerks engaged prior to 14-8-1981 and who had since completed three years were also to be considered for regularisation against regular vacancies on the same terms and conditions as stipulated in circular dated 21-4-1982. Thus, the applicant was eligible to regularisation even according to the Railway Board's instructions, at the time his services were terminated. In Samir Kumar Mukherjee's case, the Calcutta Bench held as under:

"The manner in which they (Mobile Booking Clerks) functioned and the way they were paid made it obvious that they were not volunteers. They are casual employees and by working continuously for more than 180 days, they are entitled to be treated as temporary employees. To disengage or dismiss them arbitrarily without notice or without giving any reason is clearly violative of the principles of natural justice and Articles 14 and 21 of the Constitution."

Applying this decision, it has to be held that the applicant is entitled to temporary status and under Para 2511 of the Indian Railway Establishment Manual, the Railway Servants (Discipline and Appeal) Rules are also applicable to temporary railway servants. In the result, we are of the view that the contention of the respondents that the services of the applicant were validly terminated under the terms of his employment has to be repelled. It follows, therefore, that the impugned order has to be set aside and we accordingly do so. The Respondents had issued a charge-memo. under Rule 11 of the Railway Servants (Discipline and Appeal) Rules, 1968 in their Memo. No.VC/Confl.) Comm1/864 dt. 7-12-86. We clarify that our order will not be a bar to the respondents to proceed with the enquiry in accordance with the rules if considered necessary.

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6. In the result, the Application is allowed. The applicant will be reinstated and will be treated as if he was in service from the date of termination. The Respondents will also extend him the benefit of the circulars regarding regularisation of his services subject to his fulfilling the conditions thereof. The arrears of salary, etc., will be paid to him within three months from the date of receipt of this order. There will be no order as to costs.

Ram Pal Singh
(Ram Pal Singh)
Vice-Chairman (J)

B.N.Jayasimha
(B.N.Jayasimha)
Vice-Chairman (A).