

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1174-A of 1986
T.A. No.

DATE OF DECISION 28th Aug., 1987.

Ms. Neera Mehta & Others

Petitioner / Applicants.

Shri B. S. Mainee

Advocate for the Petitioner(s)

Versus

Union of India & Others

Respondents

Shri S.C. Gupta and Shri Jagjit Singh **Advocate for the Respondent(s)**

CORAM :

The Hon'ble Mr. Justice K. Madhava Reddy, Chairman.

The Hon'ble Mr. Kaushal Kumar, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether to be circulated to other Benches? No



(KAUSHAL KUMAR)
MEMBER (A)
28.8.1987.



(K. MADHAVA REDDY)
CHAIRMAN.
28.8.1987.

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 1174A of 1986.

DATE OF DECISION: 28th August, 87.

Miss Neera Mehta & Others Applicants.

✓ V/s.

Union of India & Others Respondents.

CORAM: Hon'ble Mr. Justice K. Madhava Reddy, Chairman.

Hon'ble Mr. Kaushal Kumar, Member (A).

For the applicants Shri B.S. Mainee, Advocate.

For the respondents Shri S.C. Gupta and
Shri Jagjit Singh, Advocates.

(Judgment of the Bench delivered by
Hon'ble Shri Kaushal Kumar, Member)

JUDGMENT

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 have rendered service for periods ranging between 1½ to 5 years. Their services were sought to be terminated vide telegram issued on 15.12.1986 to the effect that "All MBCs working at yours should be discharged FORTHWITH as desired by the BCAPD." (Annexure A-2 to the application). The operation of this order was stayed by this Tribunal on 24.12.1986 and it is this order of termination / discharge which has been questioned in this application.

2. The case of the applicants is that they are entitled for regularisation of their services and absorption against regular vacancies in terms of the Ministry of Railways (Railway Board) circular No. E(NG)III-77/RCI/80, dated the 21st April, 1982 (Annexure A-3 to the application), which envisages that "those volunteer/mobile booking clerks who have been engaged on the various railways on certain rates of honorarium per hour

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of 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 three years' service as volunteer/mobile booking clerks". The circular further lays 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". It is also contended on behalf of the applicants that they are industrial workers or workmen and as such entitled to regularisation under Section 25F of the Industrial Disputes Act. It is further contended by the learned counsel for the applicants that the applicants are casual labour and as such are entitled for regularisation of their services after completing four months' service (para 2511 of the Indian Railway Establishment Manual). In this connection, a reference is made to the Railway Board's circular No. PC-72/RLT-69/3(I), dated 12.7.73 wherein it was decided by the Railway Board that the casual labour other than those employed on projects should be treated as 'Temporary' after the expiry of four months continuous employment.

3. The case of the respondents is that in August, 1973, the Railway Board, on the recommendations of the Railway Convention Committee, had introduced a scheme for requisitioning the services of volunteers from amongst the student sons / daughters and dependents of railway employees as mobile booking clerks to work outside their college hours on payment of some honorarium during peak season or short rush periods. The object of the scheme as spelled out in Annexure R-I to the counter was that such an arrangement would not only help the low paid railway employees to supplement their income but also generate among the students an urge to lend a helping hand to the Railway Admn. in eradicating ticketless travel. In this scheme,

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sanction or availability of posts was not at all relevant and the scheme was based on considerations of economy to help clearing the rush during the peak hours while at the same time providing part-time employment to wards of railway employees. The scheme was discontinued on 14th August, 1981. However, on the matter being taken up by the National Federation of Indian Railwaymen, a decision was taken and communicated by the Railway Board, vide their circular No.E(NG)III-77/RCI/80, dated 21.4.1982 (Annexure A-3 to the petition) for regularisation and absorption of these mobile booking clerks against regular vacancies. It was stipulated in the said circular that they should fulfil the minimum qualifications required for direct recruits and should have put in a minimum of three years' service as volunteer/mobile booking clerk. On a further representation, it was decided by the Railway Board vide their circular dated 20.4.1985 (Annexure R-II to the Counter) that the voluntary / mobile booking clerks who were engaged as such prior to 14.8.1981 and who had since completed three years' service may also be considered for regular absorption against regular vacancies on the same terms and conditions as stipulated in circular dated 21.4.1982, referred to above, except that to be eligible for screening, a candidate should inter-alia be within the prescribed age limit after taking into account the total period of his engagement as Voluntary / Mobile Booking Clerk. The learned counsel for the respondents argued that since the scheme had been discontinued on 14.8.1981, only those applicants who were employed prior to 14.8.1981, the cut off date, could at the most seek regularisation in terms of the Railway Board's Circulars dated 21.4.1982 and 20.4.1985. He further contended that most of the applicants were appointed after 9.1.1984 in pursuance of the D.O. circular dated 9.1.1984 sent

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by the Head Quarters Office, Northern Railway, New Delhi (Annexure R-III to the counter) and as such, they were neither covered by the original scheme of the Railway Board, which had been discontinued on 14.8.1981 nor by the scheme of regularisation as envisaged in the Railway Board's circulars dated 21.4.1982 and 20.4.1985.

4. In the present case, the Railway Board themselves introduced a scheme of regularisation and decided upon the date of 14.8.1981 as being the cut-off date for determining eligibility to regularise voluntary/mobile booking clerks. The only significance of this date is that the scheme for engaging mobile booking clerks was discontinued on that date. However, enough material has been placed before us to show that the scheme was in fact not discontinued on the said date. The circular dated 21.4.1982 refers to the Railway Board's wireless dated 11.9.1981 in which the General Managers of the Zonal Railway were advised that the engagement of the volunteer booking clerks may be continued on the existing terms till further advice. A copy of the said wireless has been filed as Annexure R-IX of the reply to the additional rejoinder and reads as follows: -

" XXX XXX

No. E(NG) III-77/RCI/80 (.) IT HAS BEEN
REPRESENTED TO THE BOARD THAT EASTERN RAILWAY
ARE TAKING ACTION TO TERMINATE THE SERVICES
OF EXISTING VOLUNTEER BOOKING CLERKS ON THE
STRENGTH OF BOARD'S LETTER NO.80/TG-I/106/12
DATED 14.8.81 (.) THE INTENTION OF THESE
INSTRUCTIONS IS NOT TO ABRUPTLY TERMINATE THE
SERVICES OF EXISTING VOLUNTEER BOOKING CLERKS (.)
THE BOARD DESIRE THAT THE ENGAGEMENT OF THESE
VOLUNTEER BOOKING CLERKS BE CONTINUED ON THE
EXISTING TERMS TILL FURTHER ADVICE."

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The last sentence of the above wireless message clearly envisages that the engagement of the Volunteer Booking Clerks was to be continued on the existing terms till further advice, and the various Railway Administrations in fact continued to engage volunteer / mobile booking clerks. This position is further confirmed by the Railway Board's circular letter No.E/NG/II/86/RC3/87, dated 17.11.86, a copy of which is filed as Annexure A-1 to the petition. The opening paragraph of the said circular is extracted below: -

"As Railway Administration are aware, the Board had advised all the Railway to discontinue the practice of engaging the voluntary mobile booking clerks on honorarium basis for clearing summer rush, or for other similar purpose in the booking and reservation office. However, it has come to the notice of the Board that this practice is still continuing in some of the Railway Administrations. The Board consider that it is not desirable to continue such arrangements. Accordingly wherever such arrangements have been made, they should be discontinued forthwith, complying with any formalities required or legal requirements."

From the above, it is clear that in fact the practice of engaging volunteer / mobile booking clerks was finally discontinued only from 17.11.1986 when alternative measures for coping with rush of work was suggested in the circular dated 17.11.1986. Even if the Railway Board intended the discontinuance of the scheme from an earlier date, they did not take any effective steps to ensure its discontinuance prior to 17.11.1986 when they came forward with alternative measures for coping with the rush of passengers during peak season. In the

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circumstances, fixation of 14.8.1981 as the cut off date for regularisation cannot but be considered as arbitrary and to deny the benefit of regularisation to persons appointed after the said date would be clearly discriminatory. We are also unable to accept the contention of the learned counsel for the respondents that the engagement of most of the applicants was in pursuance of a new scheme evolved by the Northern Railway vide their letter dated 9.1.1984 and that the same should take out the applicants from the ambit of regularisation as envisaged by the Railway Board's circular which applied to the original scheme only. In this letter of 9th January, 1984, a reference is made in the opening paragraph to D.O. dated 12.6.1983 from the Director Traffic (Tourism), Railway Board addressed to CCS N. Railway, to the effect that some measures should be adopted to provide adequate booking facilities at various important stations particularly during the peak periods. The learned counsel for the respondents was at pains to emphasise that if the original scheme which had been introduced in 1973 were still in operation, where was the need for the Railway Board to say that some measures should be adopted for providing booking facilities during the rush period. On the other hand, this can also be interpreted to mean that since a scheme was already in vogue, only measures were required to be taken under the existing scheme, which did not call for any fresh approval or sanction from the Railway Board. The need for deployment of voluntary booking clerks during peak season and rush hours in the railways is a perennial phenomenon which the Railway Administration is well aware of and the Railway Board came out with alternative measures only in 1986 to cope with the rush during peak season after discontinuance of the practice of engaging volunteer mobile booking clerks.

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From this, it is obvious that the scheme was in effect discontinued only from 17.11.1986 by the Railway Board and the various Railway offices had continued to engage these mobile booking clerks after 14.8.1981. In fact, the wireless dated 11.9.1981 and the circular dated 21.4.1982 establish beyond doubt that the engagement of volunteer booking clerks was to continue on the existing terms and conditions till further advice:

5. While the applicants might have no legal right as such in terms of their employment for regularisation or absorption against regular vacancies, we see no reason why they should be denied this benefit if others similarly placed who were engaged prior to 14.8.1981 have been absorbed subject to fulfilment of the requisite qualifications and length of service.

6. In Inder Pal Yadav v. Union of India (1985 (2) SLR page 248) where a scheme for regularisation of casual project labour framed by the Railway Ministry came in for judicial scrutiny, the Supreme Court made the following observations: -

"5. The Scheme envisages that it would be applicable to casual labour on projects who were in service as on January 1, 1984. The choice of this date does not commend to us, for it is likely to introduce an invidious distinction between similarly situated persons and expose some workmen to arbitrary discrimination flowing from fortuitous court's order. To illustrate, in some matters, the court granted interim stay before the workmen could be retrenched while some other were not so fortunate. Those in respect of whom the court granted interim relief by stay /suspension of the order or retrenchment they would be treated

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in service on 1.1.1984 while others who fail to obtain interim relief though similarly situated would be pushed down in the implementation of the Scheme. There is another area where discrimination is likely to rear its ugly head. These workmen come from the lowest grade of railway service. They can ill afford to rush to court. Their Federations have hardly been of any assistance. They had individually to collect money and rush to court which in case of some may be beyond their reach. Therefore, some of the retrenched workmen failed to knock at the doors of the court of justice because these doors do not open unless huge expenses are incurred. Choice in such a situation, even without crystal gazing is between incurring expenses for a litigation with uncertain outcome and hunger from day to day. It is a Hobson's choice. Therefore, those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment, if not by anyone else at the hands of this Court. Burdened by all these relevant considerations and keeping in view all the aspects of the matter, we would modify part 5.1 (a)(i) by modifying the date from 1.1.1984 to 1.1.1981. With this modification and consequent rescheduling in absorption from that date onward, the Scheme framed by Railway Ministry is accepted and a direction is given that it must be implemented by re-casting the stages consistent with the change in the date as herein directed."

7. In Samir Kumar Mukherjee & Others v. General Manager, Eastern Railway & Others (ATR 1986 (2) C.R.T. 7), the facts

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of the case were more or less similar, namely, that the applicants were engaged as volunteers to assist the railway ticket checking staff for a short period and then their employment was extended from time to time. No appointment letters were issued, but muster-roll was maintained for recording their attendance and they were paid at a fixed rate of Rs.8/- per day. Though they were called volunteers in the relevant orders of the Railway Board, they were also locally known as Special T.Cs and T.T.E. Helpers. They worked continuously for a period of more than a year and their services were sought to be dispensed with. The Calcutta Bench of this Tribunal held as follows: -

"11. Apart from the provisions of Articles 14 and 21 which are applicable with all force in the case of these applicants, even the policy enunciated in the Directive Principles of State Policy enjoin that State should endeavour for securing the right of citizen to an adequate means of livelihood. That policy has been abruptly, ununderstandably and unaccountably given a go by.

"12. After carefully considering the arguments of either side, we conclude that the applicants are Railway employees. What they received as payment is nothing but wages. They were paid at a fixed rate of Rs.8/- per day regularly for more than a year and it is far-fetched to call such payment honorarium or out of pocket allowance. The manner in which they functioned and the way they were paid make 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.

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To disengage or dismiss them arbitrarily as they have been done by means of an order at Annexure-C without notice or without giving any reason is clearly violative of the principles of natural justice and Articles 14 and 21 of the Constitution of India."

8. Once the Railway Board had introduced a scheme of regularisation in respect of the Volunteer / Mobile Booking Clerks and the scheme had in effect continued till 17th November, 1986 with the tacit approval, express or implied, of the Railway Board when they came out with alternative measures for coping with rush of passengers during peak season, restricting the scope of the regularisation scheme to those who were employed prior to 14.8.1981, the so called cut off date when the decision for discontinuing the scheme was taken, but actually not implemented, would be clearly discriminatory, arbitrary and violative of Article 14 of the Constitution. All volunteers/mobile booking clerks who were engaged on or before 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 spelt out in circular No. E (NG) III-77/RCI/80, dated 21.4.1982 and No. E (NG) II/84/RC3/8, dated 20.4.1985 issued by the Ministry of Railways.

9. In the light of the view which we have taken, we do not consider it necessary to deal with the other contentions put forth by the learned counsel for the applicants.

10. The learned counsel for the respondents expressed an apprehension that any volunteers / mobile booking clerks who might be engaged by the Railways in future for short periods might claim similar protection and regularisation.

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We would like to make it clear that in the absence of any scheme of regularisation which the Railways may introduce in future or their adopting a policy of regularisation only in the case of a few to the exclusion of others, any persons similarly engaged after 17.11.1986 would not be entitled to claim any regularisation as such.

11. In view of the above discussion, the application is allowed. The instruction conveyed in communication dated 15.12.1986 (Annexure A-2) regarding discharge of Mobile Booking Clerks in so far as it relates to the applicants is hereby quashed. It is further directed that all the applicants herein who were engaged on or before 17.11.1986 shall be regularised and absorbed against regular posts after they have completed three years of service from the date of their initial engagement subject to their fulfilling all other conditions in regard to qualifications etc., as contained in circulars dated 21.4.1982 and 20.4.1985. The parties shall bear their own costs.

K. Madhava Reddy

(KAUSHAL KUMAR)
MEMBER (A)
28.8.1987.

K. Madhava Reddy

(K. MADHAVA REDDY)
CHAIRMAN
28.8.87.