IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Date 23-5-88

Regn.Nos. OA 1376/87
with OA 1101/87, OA 1513/87, OA 619/87, OA 1030/87, OA 488/87, OA 193/87, OA 603/87, OA 590/87, OA 1418/87, OA 640/87, OA 472/87, OA 1853/87, OA 607/88, OA 1771/87, OA 859/87, OA 555/87, OA 398/87 and OA 1662/87

Miss Usha Kumari Anand ....Applicant
Vs.
Union of India ....Respondents

Shri Mahesh Kumar Singh & Others ....Applicants
Vs.
Union of India ....Respondents

Shri Sandeep Kumar Sharma & Another ....Applicants
Vs.
Union of India ....Respondents

Shri Yogesh Kumar & Others ....Applicants
Vs.
Union of India ....Respondents

Shri Sudhakar Singh & Another ....Applicants
Vs.
Union of India ....Respondents

Smt. Poonam Khanna ....Applicant
Vs.
Union of India ....Respondents

Shri Davinder Kumar ....Applicant
Vs.
Union of India ....Respondents

Kumari Saroj & Another ....Applicants
Vs.
Union of India ....Respondents

Shri Sushil Kumar Srivastava & Others ....Applicants
Vs.
Union of India ....Respondents

Shri Tripurari Jha ....Applicant
Vs.
Union of India ....Respondents

Miss Indu Bali & Others ....Applicants
Vs.
Union of India ....Respondents

Vidya Rani & Another ....Applicant
Vs.
Union of India ....Respondents

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Raja Ram Gupta	..Applicant
Vs.	
Union of India	..Respondents
Shri Nawal Kishore	..Applicant
Vs.	
Union of India	..Respondents
Shri Vinod Kumar Sharma	..Applicant
Vs.	
Union of India	..Respondents
Shri Abhai Kumar Sinha & Others	..Applicants
Vs.	
Union of India	..Respondents
Shri Gajender Sharma	..Applicant
Vs.	
Union of India	..Respondents
Shri Suresh Kumar	..Applicant
Vs.	
Union of India	..Respondents
Smt. Tajender Kaur	..Applicant
Vs.	
Union of India	..Respondents
For the Applicants in all the above mentioned cases	..Shri B.S. Mainee, Counsel
For the Respondents in all the above mentioned cases	..Shri Jagjit Singh, Counsel

Regn.No.OA 1747/88

Shri Natar Pal	..Applicant
Vs.	
Union of India & Others	..Respondents
For the Applicant	..Shri V.P. Sharma, Counsel
For the Respondents	..None

Regn.No.OA 1325/87

Shri D. Thangavelu & Others	..Applicants
Vs.	
Union of India	..Respondents
For the Applicants	..Shri B.S. Mainee, Counsel
For the Respondents	..Shri O.N. Moolri, Counsel

Regn.Nos.OA 1855/87, OA 1341/87, OA 1011/87, OA 1478/87, OA 1411/87, OA 1615/87 and OA 1740/87.

Shri Dhirendra Garg	..Applicant
Vs.	
Union of India	..Respondents
Shri Ravindra Singh & Others	..Applicants
Vs.	
Union of India	..Respondents
Shri Shivaji Misra & Others	..Applicants
Vs.	
Union of India	..Respondents
Shri Anil Vyas	..Applicant
Vs.	
Union of India	...Respondents
Shri Vipin Behari & Others	..Applicants
Vs.	
Union of India & Others	..Respondents
Smt. Madhu Kukreja	..Applicant
Vs.	
Union of India	..Respondents
Shri Rajesh Sharma & Others	..Applicant
Vs.	
Union of India	..Respondents
For the Applicants in the above mentioned seven cases	..Shri B.S. Mainee, Counsel
For the Respondents in the above mentioned seven cases	..Mrs. Shashi Kiran, Counsel

CORAM
THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)
THE HON'BLE MR. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment? yes
2. To be referred to the Reporters or not? yes

(The judgment of the Bench delivered by Hon'ble Mr. P.K. Kartha, Vice Chairman(J)

The applicants in these applications filed under Section 19 of the Administrative Tribunals Act, 1985 have worked as Mobile Booking Clerks* in the Railways for various periods prior to 17.11.1986. They have challenged their disengagement from service and have sought

* Respondents in OA 1325/87 contend that the applicants were Booking Agents.

reinstatement and regularisation and other reliefs. As the issues arising in these applications are similar, it is convenient to dispose them of by a common judgment.

2. At the outset, a brief reference may be made to the judgments delivered by the Calcutta Bench of this Tribunal in Samir Kumar Mukherjee & Others Vs. General Manager, Eastern Railway & Others on 25.3.86, ATR 1986(2) CAT 7 and by the Principal Bench in Miss Neera Mehta & Others Vs. Union of India & Others on 13.08.1989, A.T.R. 1989(1) CAT 380. In the aforesaid decisions, the Tribunal had considered similar issues.

3. In Samir Kumar Mukherjee's case, 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 the Tribunal held that the impugned order dated 16th December, 1985 of the Divisional Railway Manager, Asansol, be set aside/quashed and the applicants be treated as temporary employees. Once they are treated as

temporary employees, their service conditions will be governed by the relevant rules of the Railways.* The following extract from para 12 of the judgment is relevant:-

> " 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. To disengage or dismiss them arbitarily 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."

4. 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 15.12.86. 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

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* The SLP filed by the Union of India against the judgment of the Tribunal was dismissed by order dated 4.5.1987.

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."

5. 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."

6. The applicants also contended that they were industrial workers and as such entitled to regularisation under Section 25F of the Industrial Disputes Act. Another contention raised by them was that they were casual labourers and as such entitled for regularisation of their services after completing 4 months' service (vide para 2511 of the Indian Railway Establishment Manual). Reference was also made to the Railway Board's circular 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 4 months continuous employment.

7. The case of the respondents was 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

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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 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 Administration in eradicating ticketless travel. In this scheme, sanction or availability of posts was not relevant and it 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 dated 21.4.1982 for regularisation and absorption of these Mobile Booking Clerks against regular vacancies. On a further representation, it was decided by the Railway Board, vide their circular dated 20.4.85 that the voluntary/mobile booking clerks who were engaged as such prior to 14.8.81 and who had since completed 3 years' service may also be considered for regular absorption against regular vacancies on the same terms and conditions as stipulated in circular dated 21.4.82, except that to be eligible for screening, a candidate should be within the prescribed age limit after taking into account the total period of his engagement as Voluntary/Mobile Booking Clerk. The contention of the respondents was that since the original scheme of the Railway Board

had been discontinued on 14.8.81, only those applicants who were employed prior to 14.8.81, the cut-off date, could at the most seek regularisation in terms of the circulars dated 21.4.82 and 20.4.85.

8. In fact, the scheme was not discontinued on 14.8.81. The circular dated 21.4.82 refers to the Railway Board's wireless message dated 11.9.81, 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. In view of this, the various Railway Administrations continued to engage such persons. This is clear from the Railway Board's circular dated 17.11.86, which inter alia reads as follows:-

> " 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 Administations. 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."

9. The practice of engaging volunteer/Mobile Booking Clerks was finally discontinued only from 17.11.86 when alternative measures for coping with rush of work was suggested in the circular dated 17.11.86.

10. In the above facutal background, the Tribunal

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held in Miss Neera Mehta's case that fixation of 14.8.81 as the cut-off date for regularisation was arbitrary and discriminatory. The Tribunal observed as follows:-

> " While the applicants might have no legal right as such in terms of their employment for regularisation of absorption against regular vacancies, we see no reason why they should be denied this benefit if others similarly placed who were engaged prior to 14.8.81 have been absorbed subject to fulfilment of the requisite qualifications and length of service."

11. The Tribunal allowed the application and quashed the instruction conveyed in the communication dated 15.12.86 regarding the discharge of Mobile Booking Clerks, in so far as it related to the applicants. The Tribunal further directed that all the applicants who were engaged on or before 17.11.86 shall be regularised and absorbed against regular posts after they have completed 3 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 21.4.82 and 20.4.85.*

12. The Principal Bench of the Tribunal followed its decision in Miss Neera Mehta's case in Gajarajulu and Others Vs. Union of India and Others decided on 10th November, 1987 (OA 810/87).@

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* SLP filed by the Union of India in the Supreme Court was dismissed vide order dated 18.3.88 with some observations.

@ SLP filed by the Union of India in the Supreme Court was dismissed vide order dated 10.5.88.

13. The learned counsel of the applicant relied upon the judgments of the Tribunal in Miss Neera Mehta's case and in Samir Kumar Mukherjee's case and submitted that these applications may be disposed of in the light of the said judgments.

14. Shri Jagjit Singh, the learned counsel for the respondents stated that the question whether the action of the respondents in terminating the services of the Mobile Booking Clerk with effect from 1.3.1982 was legal and justified was referred by the Central Government to the Industrial Tribunal in ID No.35/85 (Netrapal Singh Vs. the General Manager, Northern Railway & Others). The further question referred to the Industrial Tribunal was as to what relief the workmen was entitled to. In that case, Shri Netrapal Singh was appointed to the post of Mobile Booking Clerk on 24.11.78 and he worked in that post upto 28.2.82. His services were terminated on 1.3.82. by a verbal order. He was given no notice nor paid any retrenchment compensation. The rule of first come last go was also violated and he sought reinstatement with continuity of service and full back wages. The management in its written statement submitted that the case of the claimant was not covered by the provisions of Section 25F of the Industrial Disputes Act.

15. The Industrial Tribunal vide its order dated 29.9.86 came to the conclusion that the claimant had put in more than 240 days of work and, therefore, the management

ought to have complied with the provisions of Section 25F. The termination of his service though necessitated by the discontinuance of the scheme under which he was appointed, amounted to retrenchment. However, the management did not serve the requisite one months' notice nor make payment in lieu of such notice nor did it pay any retrenchment compensation equivalent to 15 days' average pay for every completed year of continuous service or any part thereof in excess of six months. Therefore, the Industrial Tribunal found that the action of the management could not be held to be legal. The Industrial Tribunal, however, noted that as the very scheme of employment of wards of railway employees as Mobile Booking Clerks had been discontinued, there was no case for reinstatement of the workman. In the circumstances, it was held that claimant was entitled to compensation for his retrenchment and a sum of Rs.2,000/- was awarded. The Industrial Tribunal also noted that recruitment to the regular post of Booking Clerk is through the Railway Service Commission and such recruitment will have to stand the test of Article 16 of the Constitution.

16. Shri Jagjit Singh, the learned counsel of the respondents brought to our notice that the SLP filed by the claimant in the Supreme Court was dismissed. He submitted that the decision of the Industrial Tribunal dated 29.9.1986 should be borne in mind while deciding the applications before us.

17. We have carefully gone through the records of these cases and have heard the learned counsel of both parties. In our opinion, the decisions of this Tribunal in Samir Kumar

Mukherjee's case and Miss Neera Mehta's case are entitled to greater weight than the order of the Industrial Tribunal in Netrapal Singh's case. The Industrial Tribunal has not considered all the issues involved affecting a large number of Mobile Booking Clerks whose services were dispensed with by the respondents in view of the discontinuance of the scheme. The question whether the volunteers who had continuously worked for a period of more than a year are entitled to be treated as temporary employees was considered by the Tribunal in Samir Kumar Mukherjee's case, in the context of the constitutional guarantees enshrined in Articles 14 and 21 of the Constitution. The question whether Mobile Booking Clerks were entitled to the protection of para.2511 of the Indian Railway Establishment Manual relating to the regularisation of casual labourers after they have completed four months' service, the relevance of 14.8.81 which was adopted by the respondents as the cut-off date for the purpose of determining eligibility to regularise volunteer/Mobile Booking Clerks and the implications of the discontinuance of the scheme by the Railway Board on 17.11.86 have been exhaustively considered by the Tribunal in Miss Neera Mehta's case, in the light of the decision of the Supreme Court in Inderpal Yadav Vs. U.O.I., 1985(2) SLR 248. The Industrial Tribunal had no occasion to consider these aspects in its order dated 29.9.1986.

18. Shri Jagjit Singh further contended that some of the applications are not maintainable on the ground that they are barred by limitation in view of the provisions of Sections 20 and 21 of the Administrative Tribunals Act, 1985.

In our opinion, there is sufficient cause for condoning the delay in these cases. The Tribunal delivered its judgment in Miss Neera Mehta's case on 13.8.87. These applications were filed within one year from that date. The respondents, on their own, ought to have taken steps to reinstate all the Mobile Booking Clerks, who were similarly situated without forcing them to move the Tribunal to seek similar reliefs as in Neera Mehta's case (vide Amrit Lal Berry Vs. Collector of Central Excise, 1975(4) SCC 714; A.K. Khanna Vs. Union of India, ATR 1988(2) 518).

19. Mrs. Shashi Kiran appearing for the respondents in some of the applications contended that the applicants are not workmen and they are not entitled to the protection of Section 25F of the Industrial Disputes Act. The stand taken by her contradicts the stand of Shri Jagjit Singh, who has placed reliance on the order of the Industrial Tribunal dated 29.9.86 mentioned above.

20. The other contentions raised by Mrs. Shashi Kiran are that there are no vacancies in the post of Mobile Booking Clerks in which the applicants could be accommodated and that in any event, the creation and abolition of posts are to be left to the Government to decide. In this context, she placed reliance on some rulings of Supreme Court*. These rulings are not applicable to the facts and circumstances of the cases before us.

*(1) T. Venkata Reddy Vs. State of A.P., 1985(3) SCC 198; K. Rajendran Vs. State of T.N., 1982(2) SCC 273; Dr. N.C. Shingal Vs. Union of India, 1980(3) SCC 29; Ved Gupta Vs. Apsara Theatres, 1982(4) SCC 323.

21. Shri V.P. Sharma, Counsel appearing for the applicant in OA-1747/88, relied upon the decision in Miss Neera Mehta's case. The respondents did not enter appearance in this case or file their counter-affidavit despite several opportunities given to them.

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 of 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.

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.

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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.

General analysis of the applications:

25. In the majority of cases, termination of services was effected by verbal orders. The period of duty put in by the applicants ranges from less than one month in some cases to a little over 4 years in some others. In the majority of cases, the applicants have worked for more than 120 days continuously. In some others, they have worked for 120 days if the broken periods of service are also taken into account. For the purpose of computing the requisite years of service for regularisation and absorption under the scheme, the broken periods of service are to be taken into account. This is clear from the Railway Board's letter dated 4th June, 1983 in which it is stated that the persons who have been engaged to clear summer rush etc., "may be considered for absorption against the appropriate vacancies provided that they have the minimum qualification required for direct recruits and have put in a minimum of 3 years of service (including broken periods)." The Railway Board's letter dated 17.11.1986 has been impugned in all cases. The reliefs claimed include reinstatement and consequential benefits, conferment of temporary status in cases where the person has worked for more than 120 days and regularisation and absorption after 3 years of continuous service and after the employees are screened by the Railway Service Commission in accordance with the scheme.

Special features of some cases

26. During the hearing of these cases, our attention

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was drawn to the special features of some applications which deserve separate treatment (OA-488/87, OA-555/87, OA-1376/87, OA-472/87 and OA-398/87).

27. In OA-488/87, the applicant was appointed as Mobile Booking Clerk in Northern Railways w.e.f. 17.3.1985 vide order dated 15.3.1985. She had put in continuous service of more than 500 days. She was in the family way and, therefore, she submitted an application for 2 months' maternity leave on 16.9.1986. She delivered a female child on 8.10.1986. On 17.11.1986, when she went to the office of the respondents to join duty, she was not allowed to do so on the ground that another lady had been posted in her place. She was relieved from her duties w.e.f. 18.11.1986. The version of the respondents is that she did not apply for maternity leave, that she, on her own, left and discontinued from 17.9.1986 as Mobile Booking Clerk and that when she reported for duty on 18.11.1986, she was not allowed to join.

28. In our opinion, the termination of services of an ad hoc female employee, who is pregnant and has reached the stage of confinement, is unjust and results in discrimination on the ground of sex which is violative of Articles 14, 15 and 16 of the Constitution (vide Ratan Lal & Others Vs. State of Haryana and Others, 1985 (3) SLR 541 and Smt. Sarita Ahuja Vs. State of Haryana and Others, 1988 (3) SLJ 175). In view of this, the termination of services of the applicant was bad in law and is liable to be quashed.

29. In OA-555/87, the applicant was appointed as Mobile Booking Clerk on 18.5.1984 in Northern Railways. He has put in 800 days of work in various spells. His

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services were terminated on 22.8.1986. The version of the respondents is that he was involved in some vigilance case and was accordingly disengaged on 22.8.1986. He was, however, ordered to be reinstated vide letter dated 3.10.1986. Thereafter, it was found that there was no vacancy and, therefore, he could not be re-engaged.

30. The applicant has produced evidence to indicate that after his reinstatement was ordered, a number of his juniors were appointed and that even after the vacancies were available, he was not engaged because of the impugned instructions of the Railway Board dated 17.11.1986(vide letter dated 17.8.1987 of the Chief Personnel Officer of the Northern Railways addressed to Senior Divisional Personnel Officer and his letter dated 21.9.1987 addressed to the Divisional Railway Manager, Northern Railways, Annexures Z and Z-1 to the rejoinder affidavit, pages 78 and 79 of the paper-book).

31. In view of the above, we are of the opinion that the impugned order of termination dated 22.8.1986 is bad in law and is liable to be quashed.

32. In OA-1376/87, the applicant was appointed as Mobile Booking Clerk on 9.4.1985. She worked upto 7.7.1985. She was again appointed on 26.10.1985 and worked upto 13.5.1986. Again, she was appointed on 14.5.1986 and worked upto 31.7.1986. She has completed more than 120 days' continuous service. The version of the respondents is that she was again offered engagement on 10th November, 1986 but she refused to join as she was studying in some college.

33. As against the above, the applicant has contended that after she was disengaged on 31.7.1986, she made

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enquiries which revealed that there was no prospect of her re-engagement prior to the summer rush of 1987. In order to improve her education, she joined a college and paid exorbitant fees. When the offer of re-engagement was received, she met the officer concerned and explained the position to him. She was advised to continue her studies because the fresh offer was only for a short period. She was also assured that she will be re-engaged during summer rush of 1987 and till then, she could pursue her studies.

34. The undisputed fact is that she was disengaged prior to the passing of the impugned order by the Railway Board on 17.11.1986.

35. In OA-472/87, both the applicants were appointed as Mobile Booking Clerks in February, 1985 and they were removed from service w.e.f. 27.11.1986. The contention of the respondents is that only one ward or child of Railway employee should be engaged as Mobile Booking Clerk and that they were dropped and their elder sisters were kept. The contention of the applicants is that there was no such decision that only one ward/child of Railway employees should be engaged as Mobile Booking Clerks. Had there been any such decision, the applicants would not have been appointed. After having appointed them, the respondents could not have terminated their services without giving notice to them as they had already put in more than 1½ years of service. We see force in this contention.

36. In OA-398/87, the applicant was appointed as Mobile Booking Clerk on 11.3.1981 and he worked continuously in that post upto 4.11.1985. His services were

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terminated on the ground that he was not son/daughter of serving Railway employee. The applicant was nephew of a serving Railway employee. The applicant has relied upon the Railway Board's order dated 20.3.1973 which provides that "dependents" of the Railway employees are also eligible for such appointments. Miss Neera Mehta whose case has been decided by the Tribunal, was not the child of any Railway employee but she was a dependent of a Railway employee. A large number of Booking Clerks who are still in service, are not children of the Railway employees but their relatives and others. There is force in the contention of the applicant in this regard.

Conclusions

37. Following the decision of the Tribunal in Neera Mehta's case and Samir Kumar Mukherjee's case, we hold that the length of the period of service put in by the applicant in itself is not relevant. Admittedly, all these applicants had been engaged as Mobile Booking Clerks before 17.11.1986. In the interest of justice, all of them deserve to be reinstated in service irrespective of the period of service put in by them. Those who have put in continuous service of more than 120 days, would be entitled to temporary status, with all the attendant benefits. All persons should be considered for regularisation and permanent absorption in accordance with the provisions of the scheme. In the facts and circumstances of these cases, we do not, however, consider it appropriate to direct the respondents to pay back wages to the applicants on their reinstatement in service. The period of service

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already put in by them before their services were terminated, would, no doubt, count for completion of 3 years period of service which is one of the conditions for regularisation and absorption. In view of the above conclusion reached by us, it is not necessary to consider the other submissions made by the learned counsel of the applicant regarding the status of the applicants as workmen under the Industrial Disputes Act, 1947 and the applicability of Section 25-F of the said Act to them.

38. In the light of the above, the applications are disposed of with the following orders and directions:-

(i) The respondents are directed to reinstate the applicants to the post of Mobile Booking Clerk in OA Nos.1376/87, 1101/87, 1513/87, 619/87, 1030/87, 488/87, 193/87, 603/87, 590/87, 1418/87, 640/87, 472/87, 1853/87, 607/87, 1771/87, 857/87, 555/87, 398/87, 1662/87, 1747/88, 1325/87, 1855/87, 1341/87, 1011/87, 1478/87, 1411/87, 1615/87 and 1740/87 from the respective dates on which their services were terminated, within a period of 3 months from the date of communication of a copy of this order. The respondents are further directed to consider all of them for regularisation and absorption after they complete 3 years of continuous service (including the service already put in by them before their termination) and after verification of their qualifications for permanent absorption. Their regularisation and absorption would also be subject to their fulfilling all other conditions as contained in the

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Railway Board's circulars dated 21.4.82 and 20.4.1985. However, if any such person has become over-aged in the meanwhile, the respondents shall relax the age limit to avoid hardship.

(ii) After reinstatement to the post of Mobile Booking Clerk, the respondents are directed to confer temporary status on the applicants in O.A. Nos.1376/87, 1101/87, 1513/87, 619/87, 1030/87, 488/87, 193/87, 603/87, 590/87, 1418/87, 640/87, 472/87, 607/88, 859/87, 555/87, 398/87, 1662/87, 1341/87, 1011/87, 1478/87, 1411/87, 1615/87 and 1740/87 if, on the verification of the records, it is found that they have put in 4 months of continuous service as Mobile Booking Clerks and treat them as temporary employees. They would also be entitled to regularisation as mentioned in (i) above.

(iii) The period from the date of termination to the date of reinstatement will not be treated as duty. The applicants will not also be entitled to any back wages.

(iv) There will be no order as to costs. A copy of this judgement be placed in all the case files.

28/5/1989

(D.K. Chakravorty)
Administrative Member

23/5/89

(P.K. Kartha)
Vice-Chairman(Judl.)