

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

(22)

Regn.No.O.A.1735/87

DATE OF DECISION: 13.7.1991

Satish Chandra & Ors.

..... Applicant.

Versus

Union of India & Ors.

..... Respondents

CORAM:

Hon'ble Ms.Usha Savara, Member(A)

Hon'ble Mr.J.P.Sharma, Member(J)

For the Applicant

..... Sh.B.S.Mainee,
Counsel.

For the Respondents

..... Sh.O.N.Moolri,
Counsel.

(Judgement of the Bench delivered
by Hon'ble Ms.Usha Savara, Member(A)).

This application has been filed by the Applicant assailing the verbal orders of termination passed by the Station Superintendent Northern Railway, New Delhi w.e.f. 19.2.85, as well as the letter dated 21.8.87 from the Hon'ble Minister of State for Railways, Government of India.

2 The applicants' case is that they were appointed as temporary Ticket Collectors on daily rates of pay at New Delhi, Railway Station in the month of August / December 1983 and worked as such upto 14/15th March '84. They were re-appointed on 6.5.84 and worked upto August '84. Thereafter, they were re-engaged on 24.8.84 and were discharged on 19.2.85 by the verbal orders of the Station Superintendent Northern Railway, ^{Railway} Station, New Delhi. Since

they had been terminated without any notice or retrenchment compensation, as provided by law, the orders of termination were illegal, and should be quashed, and the applicants were entitled to be re-appointed as Ticket Collectors, accordingly to the Railway Boards' Policy.

3. Sh.B.S.Mainee, learned counsel for the applicant submitted that the appointments of the applicants were described as 'purely temporary' and were initially for a period not exceeding three months (Annexure A-4), but the applicants were continued in service even after expiry of three months. The Applicants had been working efficiently and to the satisfaction of the respondents; they were marking attendance Registers daily, and were on daily wage of Rs.14/- per day. They were performing the same duties as a full fledged Ticket Collectors and were also given shift duties as regularly employed Ticket Collectors were performing, but the salary paid to them was much less than the salary paid to regular Ticket Collectors.' All the applicants had completed four months continuous service, and were, therefore, entitled to 'temporary' status as per the decision of the Railway Board circulated vide Railway Boards' circular No.Pc-72/RLT/69/3(1) dated 12.7.73 (Northern Railway S.No.5949). According to a later circular dated 9.6.84, casual labour attaining 'temporary' status shall be entitled to all the rights and privilege admissible to temporary railway servants, for example, authorised pay scale, compensatory

and local allowances, dearness allowances, medical facilities, leave, passes, notice for termination of services etc. Since the applicants had been in continuous service for more than 120 days, they, having acquired 'temporary' status, were entitled to all the benefits of the aforementioned Railway Board circulars.

4 Sh.B.S.Maine referred to the volunteers and Mobile Booking Clerks who had been engaged on the various railways on fixed rates of honorarium per hour or per day, and who were to be considered for absorption against regular vacancies provided they had minimum qualifications required for direct recruits and had put in a minimum of three years of service as volunteers/Mobile Booking Clerks according to policy laid down by Railway Boards' letter dated 21.4.82 (Annexure A-5). It was submitted by the ld. counsel that as many as 60 Mobile Booking Clerks had been regularised by the Northern Railway administration in pursuance of the directions of the Railway Board. However, earlier the Railway Board had advised termination of all volunteers/Mobile Booking Clerks, and it was only when the Mobile Booking Clerks approached the Tribunal in 1986, and the Tribunal accepted the pleas of the Mobile Booking Clerks, by their order on 28.8.86 quashing the impugned order of termination that the issue was finally settled. Reference was made to the case of Samir Kumar Mukherjee and Ors. Vs

General Manager, Eastern Railway & Ors. decided on 25.3.86 - A.T.R. 1986(2)C.A.T. 7 to support the contention that the applicants in this case were also casual employees and were entitled to 'temporary' status since they had completed 120 days of continuous service and their termination without notice or without giving any reasons was violative of the principles of natural justice and Article 21 of the Constitution of India. It is also contended by the learned counsel that the Hon'ble Supreme Court dismissed the S.L.P. in the case of Samir Kumar Mukerjee's case on 4.5.87. Prior to that, the applicants had been representing to the respondents and through Members of Parliament, to the Minister of State for Railways since 1985, but had not received any response till the Hon'ble Minister of State turned down the representation by his letter dated 2.8.87. Therefore, it is urged that the O.A. has been filed within the limitation period. In view of this, the impugned orders should be quashed and the respondents be directed to reinstate the applicants in service. The respondents should also be directed to treat the applicants, in service continuously from the date of their discharge and the entire period be treated as duty with all consequential benefits. The applicants be granted 'temporary' status as per Rules/Law and be regularised when they have completed three years service.

5. The application was opposed by the learned counsel for the Respondents, Sh.O.N.Moolri on several grounds. The application was barred by limitation and suffered from latches and was, therefore, not admissible under the Laws. The applicants were engaged as temporary Ticket Collectors on daily rates of pay to worked intermittently and their services were terminated on 19.2.85, whereas the O.A. was filed on 18.11.87. No statutory representation had been made by them and they had not exhausted the remedies available under service law, but rushed to the Tribunal. They had approached the Member of Parliament and the Hon'ble Minister but have not invoked departmental remedies. For this reason also, the O.A. is barred by law. Further, the applicants are seeking employment to Class III posts, which are selection posts. They cannot ~~be~~^{be} equated with casual labourers, and are not covered by the decision the Hon'ble Supreme Court nor can they claim parity with Mobile Booking Clerks who were covered by a definite policy of the Railway Board.

6. On merit, the ld. counsel submitted that the applicants were not selected, but were engaged on daily wages purely as a temporary measure. They were engaged for limited period of sanction and did not acquire any right to the post (Annexure R1). The petitioners did not work continuously - as per their own statement. They were not given any training and their job was only to collect the tickets at the gate during the rush hours. Since the petitioners were neither selected, nor appointed in service the question of reinstatement does not arise, 6p..

and the petition should/ be dismissed as being without any merit.

7. We have heard the learned counsel at length. Certain defects were noticed in the plaint & so a supplementary petition was filed on behalf of the applicant to remove the defects. The facts of the case are undisputed and lie within a short compass. However, we will, first of all, deal with the preliminary objections. Sh.Moolri has pointed out that departmental remedies have not been exhausted, and the O.A. is barred by limitation. He has also pointed out that the letter of the Hon'ble Minister of State addressed to an M.P. on 21.8.87 is not an order and the applicant cannot count limitation from that date. The cause of action arose to them on 19.2.85, and the O.A. having been filed on 23.11.87 is grossly barred by limitation. Sh.Mainee, on the other hand, urges that the cause of action arose to the applicant on 25.3.86, when the judgment in the case of Samir Kumar Mukerjee's case was delivered. It is also his case that since the S.L.P. filed by the respondents in that case was dismissed on 4.5.87, therefore, the application is well within time. Though, we cannot but agree with the learned counsel of the applicants that the judgment in Samir Kumar Mukerjee's case gives the applicant a fresh cause of action, but the

application should have been filed within one year of the date of delivery of the judgment. However, the Hon'ble Supreme Court, in the case of Sandhya Rani Sarkar Vs Sudha Rani (1978) 2 S.C.C 116 has observed as follows:

"When substantial justice and technical considerations are pitted against each other, the cause of justice deserves to be preferred, for the other side, cannot claim to have vested right in injustice being done, because of non-deliberate delay"

We, therefore, overrule of preliminary objections urged by Sh.O.N.Moolri.

8 On merits, we find that the grievances of the applicants in this case are identical with those of the applicants in Samir Kumar Mukerjee Vs. General Manager, Eastern Railway, A.T.R. (1986) 2 C.A.T. 7(Cal). It was held in the said judgment that the applicants were railway employees and they were entitled to be treated as temporary employees. The Bench also held that disengagement and dismissal arbitrarily done would be "malice in law, arbitrary in its context and unreasonable and capricious apart from being unconstitutional". We cannot but agree with the decision of the Calcutta Bench, and hold that the abrupt termination of services of the applicants without adhering to due process of law, not only violates the principles of natural justice, but also contravenes the tenor of the Directive Principles of our Constitution for meting out social and economic justice to the citizens of India.

9. Considering the facts of this case, we hold that the applicants in this case should be treated as temporary employees with all attendant benefits, having completed 120 days of continuous service. The impugned order of termination is quashed and the applicants are to be reinstated within three months from the date of communication of a copy of this order. The period put in by them before their services were terminated would, no doubt, count for completion of three years period of service, which is one of the conditions for regularisation and absorption. Regularization would be done after verification of their qualifications for permanent absorption, subject to their fulfilling all other conditions. However, in view of the peculiar facts of this case, age relaxation is to be given by the Respondents. We do not consider it appropriate to direct the Respondents to pay back wages to the applicants on their reinstatement.

10. The case is disposed of as above. There would be no order as to costs.

J.P. Sharma
(J.P. SHARMA)
MEMBER(J)

18/7/91

Usha Savara
(USHA SAVARA)
MEMBER(A)

Proposed by me.

J.P. Sharma

18.7.91