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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A.No. 19/1990

New Delhi this the 9th of June 1994

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

Hon'ble Member Mr. B.K. Singh, Member (A)

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| 1. Shri Ashok Kumar,
S/o Shri Parkash Chander | } | All Mobile Booking
Clerks, Northern Railway
Railway Station,
New Delhi. |
| 2. Shri Baljeet Singh,
S/o Shri Prithipal Singh | | |
| 3. Shri Ashok Kumar,
S/o Shri Rashan Lal, | | |
| By Advocate Shri B.S. Mainee | | ... Applicants |

Vs.

Union of India : through

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| 1. The Secretary,
Ministry of Railways,
Rail Bhawan,
New Delhi. | | ... Respondents |
| 2. The General Manager,
Northern Railway,
Baroda House,
New Delhi. | | |
| 3. The Divisional Railway Manager,
Northern Railway,
State Entry Road,
New Delhi. | | |

By Advocate : Shri K.S. Ahuja, proxy for Jagjit Singh

ORDER

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

The Applicant No. 1 was appointed as Mobile Booking Clerk in Delhi Division of Northern Railway with effect from 20.10.1980, the Applicant No. 2 in September 1981 and the Applicant No. 3 on 23.10.1981. They were initially paid on hourly basis @ Rs. 1.50 and subsequently the rate was enhanced to Rs. 2.25 per hour. The contention of the applicants

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is that they have already completed four months continuous service and thus they are entitled to temporary status as per the circular of the Railway Board dated 12.7.1973 (Northern Railway Serial No. 5949). It is further contended that the Railway Board Circular dated 4.6.1984 (Northern Railway Serial No. 8537) Casual Labour acquiring temporary status shall be entitled to all the rights and privileges admissible to temporary railway servant e.g. authorised pay scales, compensatory and local allowances, dearness allowance, medical facilities, leave, provident fund, passes, advances, notice for termination of service etc. The Railway Board by its Circular dated 21.4.1982 No. E (NG) III-77/RCI/80, the volunteer/Mobile Bookⁱing Clerks who have been engaged on the various railways on certain rates of honorarium per hour or per day may be considered for absorption against regular vacancies provided that they have a minimum qualifications required for direct recruitment and have put in minimum of three years as volunteers/Mobile Booking Clerks. The grievance of the applicant is that they have not been regularised even though they have completed more than three years continuous service and have the requisite qualification in spite of the repeated representations made to the respondents. The applicants earlier filed O.A. 1174/86 alongwith other number of applicants (Miss Meera Mehta & Others V. Union Of India. The issue in that case was the apprehension on the part of the applicants of being terminated from service of Mobile Booking Clerks and also they have prayed for regularisation of their services and also that they should be conferred temporary status as they had completed four years continuous service. That case was decided on 28.8.1987 reported in ATR 1989(1) S.C.380. That application was decided after quashing the order dated 15.12.1986 regarding discharge of Mobile Booking Clerks so far it

related to the applicants in that case with a further direction that all the applicants herein who have been engaged on or before 17.11.1986 shall be regularised and absorb^{ed} against regular posts after they have completed three years of service from the date of their initial engagements subject to their fulfilling all other conditions in regard to qualifications etc., as contained in Circular dated 21.4.1982 and 20.4.1985. In another case of Miss Usha Kumar Anand & Ors Vs. Union of India & Ors. reported in ATR 1989(2) CAT P 37 decided on 23.5.1989 a similar order was passed but in this case on certain applications in a number of O.As referred to in the operative part of the judgement were also ordered to be granted temporary status if they have put in four months continuous service as Mobile Booking Clerk and treat them temporary employees and that they will be entitled to regularization. The period from the date of termination of some of them to the date of reinstatement was treated as on duty and were also granted back wages for that period.

2. The applicants jointly filed this application in January 1990 and they have prayed that they should be conferred temporary status from the date they had completed 120 days continuous service as Mobile Booking Clerk and be granted all consequential benefits and they be paid salary in accordance with the pay scale as applicable to the regular Booking Clerk from the date they have completed 120 days continuous service.

3. The respondents in their reply took the preliminary objection that the application is barred by Sec.21 of the Administrative Tribunal Act, 1985 and that the applicants are not entitled to any benefit^{because} of the judgement referred

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to in the application. The respondents have forcefully denied the fact that the applicants were never appointed on temporary basis but they were engaged only on hourly basis and were discontinued from time to time. The Judgement of OA No. 1174/84 was challenged before the Hon'ble Supreme Court in SLP No. 14618/87. The Hon'ble Supreme Court did not interfered with the judgement but modified to the extent that those who have qualified by putting three years service by 31.3.1987 are entitled to the benefit of the Order. The applicants No. 1,2,3 alongwith other Mobile Booking Clerk filed OA No. 896/88 Mohinder Kumar Vs. Union of India and that application was dismissed by the Tribunal on 17.5.1988. This order of the Tribunal was set aside by the Hon'ble Supreme Court and OA 896/88 was directed to be disposed of on merit. SLP No. 14618/87 filed against the judgement of Neera Mehta OA No. 1174/86 was finally dismissed on 7.9.1988 and the Ministry of Railways issued instructions on 6.2.1990 which is enclosed as Annexure R-1 to the reply. After the aforesaid instructions the screening was done and that was completed by 16th June 1990. All the three applicants have been granted temporary status from August 1990 and they are getting full pay as admissible to the railway temporary servants. Ashok Kumar, Applicant No. 1 has since been regularised and has been brought on regular penal of coaching clerks. As regards Applicant No. 3 Ashok Kumar S/o Shri Prakash Chander the screening has been done and since he has become overage the necessary approval is sought by the competent authority alongwith 15 other candidates for regularization of age. As regards Applicant No. 2 he has already been screened but the major penalty proceedings are pending against him and when the same is finalised and ^{unless} he is exonerated to the charges

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he cannot be regularised. He can get the benefit only thereafter. The screening of the temporary status was considered in O.A. No.1174/86 but the same was not granted. Hence the applicant cannot get any relief in this application and the application is liable to be dismissed.

4. We have heard the learned counsel for the applicant and Shri Shyam Moorjani for the respondents. Firstly, this application is not maintainable because the applicant had already prayed for the grant of the temporary status in OA 1174/86 alongwith others in the case of Neera Mehta and Ors vs. Union of India. The operative part of the judgement has been quoted above. The matter has gone up to Hon'ble Supreme Court also in the matter of SLP. The applicant therefore again reagitated that issue on the basis of the benefits being given to similarly situated persons on the authority of Amrit Lal Behri's case reported in SLR 1975(1) page 152. When the matter was finally decided between the parties, the same petitioners cannot come again for further relief. That judgement has become final and in view of that the applicants cannot file any application for the grant of the relief which has been impliedly refused. The Hon'ble Supreme Court has finally dismissed the SLP on 7.9.1989 and now it shall not be open to the applicants to pray for declaration of temporary status from an earlier date when they have completed 120 days as they have already been confirmed temporary status with effect from August 1990. They have not challenged that order. In the present O.A, nor they have sought any review ^{of earlier judgement} The order is dated 21.8.1990 which is quoted below:

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COPY

" Northern Railway

DRM'S OFFICE
NEW DELHI

21.8.1990

No. C II/D/34(SN/MBC/90(Ty.Status)

CES/CTE, ACO (Resvn) IRCA
SS/NDLS, DLI, NZM, GZB, GZN, Gotra, Noli,
MDND, MOZ, PNP, SKK, KUN

Sub: Grant of temporary status to Mobile Booking Clerks

In view of the judgement(s) delivered in Case (s) No. OA 1174/86, 896/88, 1677/87, 2109/88, 1319/89, 1397/87, 1402/89, 1481/89, 1489/89, 1693/89, 33/90, 1677/89, 1676/89, 1942/89, 2056/89, 1376/89, 1377/89, 1379/89, 1334/89, 1908/89, 1499/89, dated 4.6.1990 and OA-1 548/89, 2069/89, 224/90, 1876/89 dated 10.7.1990 and OAs No. 422/87, 1478/87, 1376/87, 619/1030/87, 488/87, 603/87, 193/87, 640/87, 1953/87, 607/87, 555/87, 398/87, 1662/87, 1771/87, dated 23.5.1989 and OA No. 1997/89 dated 22.1.1990 and O.A. No. 1174/86 (CCP No. 3/90 Ashok Kumar & Others case).

The following MBCs are granted temporary status grade Rs. 975-1540/RPS on completion of 120 days continuous service as MBC subject to passing of the medical examination in the prescribed category. They may please be spared immediately for medical examination to MS/DMO/DLI. Their pay may be charged @ Rs. 975 + usual allowances. A list of such persons is attached herewith. It may be insured that their pay as mentioned above is charged accordingly, for the month of August 1990.

Sd/-
for Divl. Rly. Manager,
New Delhi
DA/Three

- c/- CCS(G) Baroda House, New Delhi
- c/- Law Officer, Baroda House, New Delhi.
- c/- SPO (T&C) Baroda House, New Delhi.
- c/- DPO (Bills) DRM Office, New Delhi.
- c/- Sr. D.O. DRM Office, New Delhi.
- c/- Sr. DPO, DRM Office, New Delhi.
- c/- ACO (Resvn) IRCA for necessary action
- c/- CPO/IR/Baroda House, New Delhi.


Contd....7.


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5. The learned counsel for the applicant has also referred to the case of Smt. N. Atchamma V. General Manager & ors. reported in ATJ 1994(1) 603. The fact of that case are totally different where the question of circular of pensionary benefits were involved. The learned counsel has also referred to the decision in the case of Parbhat Kumar & Anothers Vs. Union of India reported in ATJ 1993(1) 50. The ratio of the case is not applicable because they have impliedly being refused the relief now prayed for.

6. The perusal of the above order shows that on the basis of the judgement OA No.1174/86 and OA 896/88 the applicants have been granted temporary status. It is clearly mentioned that their pay should be charged from the month of August 1990. After passing of this order the applicants have also not sought any amendment in the O.A.

7. The application, therefore, is not maintainable and is devoid of merit and is dismissed leaving the parties to bear their own costs.


(B.K. Singh)
Member(A)


(J.P. Sharma)
Member(J)

Mittal