

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

D.A. No. 1812/1991

T.A.No.

DATE OF DECISION 2.9.1993

<u>Anil Babu Sharma</u>	Petitioner
<u>Shri B.S. Maine</u>	Adv. for Petitioner (s)
Vs.	
<u>Union of India &amp; others</u>	Respondents
<u>Shri Rajesh &amp; Shri V.P. Sharma</u>	Adv. for respondents

CORAM

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

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

1. Whether Reporters of local papers may be allowed *yes* to see the Judgement ?
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair *←* copy of the Judgement ?
4. Whether it needs to be circulated to other *←* Benches of the Tribunal ?

JUDGEMENT

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

This D.A. No. 1812 of 1991, Shri Anil Babu Sharma, applicant Vs. The Union of India and others, respondents, has been filed against order No.E(NG)II/86/RC-3/87, dated 17-11-1986 issued by the Dy. Director(Establishment) Railway Board, Rail Bhavan, New Delhi (marked Annexure A-1).

2. Heard the learned Counsel for the applicant Shri B.S. Maine and Shri Rajesh for the respondents at length and perused the record of the case. The *disputed* application u/s.25 of the Central Administrative

Tribunal Act, 1985. ~~has been filed~~. The application has been filed praying for direction to the respondents to re-engage the services of the applicant as a Casual labour/Mobile Booking clerk because this case is fully covered by the bunch of judgements pronounced by this Hon'ble Tribunal and quoted in AIR (1989) (2) page 37, .

Miss Kukari Anand Vs. Union of India. It has been further stated that the case of the applicant is also covered under the Railway Board Circular dated 6-2-1990 placed as annexure-5.

3. The facts of the case are that in pursuance to the Scheme launched by the Railway Board to appoint volunteers/mobile booking clerks in the various zones to cope with the ever increasing passenger and goods-traffic, the applicant was engaged as Mobile Booking clerk at Chandausi Station on honorarium basis, from 1-10-1979 to 8-8-1981. He was discharged on <sup>ground of</sup> misconduct for having indulged in malpractices of reselling of Railway tickets on 8-8-81.

4. During the course of arguments the learned Counsel for respondents argued that the application is not maintainable being time-barred and the circumstances ~~instances~~ leading to the inordinate delay in filing <sup>satisfactorily</sup> the application have not been explained and there is no scope for condonation. It was further pointed out that the applicant is not covered by the Railway Board's circular dated 6-2-1990 since it prescribes a minimum period of 3 years or more, for engagement to be eligible for re-engagement as a result of the scheme contained in Railway Board Circular dated 6-2-90. This applicant worked for less than two years on honorarium basis as mobile booking clerk. Thirdly he was discharged on grounds of misconduct for having indulged in malpractices of re-selling railway tickets.

5. Mr. Mainee learned counsel for the applicant could not explain away the period of limitation nor could he satisfy the Bench. He did not file any representation to the Railway authorities. Prior to the circular of 6-2-1990 there was a Circular No.E(NG)III -77/RC 1/80 dated 21-4-1982 marked Annexure-A-2 addressed to General Managers of Railways regarding absorption of Voluntary Mobile Booking clerks against regular vacancies if they had completed a minimum of 3 years of service as Volunteer/mobile booking clerk. It further stipulates that the screening for their absorption would be done by a Committee of Officers, including the Chairman or member of the Railway Service Commission. It is not clear why the applicant did not approach the authorities then if he was eligible to be considered for absorption. The presumption-an irresistible one would be that the applicant was convinced that he has no case and as such he kept a low profile and took no action ~~either~~ to file a representation to the Railway authorities.

6. It has rightly been pointed out that Annexure A-1 which is a circular of the Railway Board issued on 17-11-86 addressed to all G.Ms is to discontinue the practice of engaging the Voluntary / mobile booking clerks on honorarium basis. This certainly cannot be a ~~case~~ of action for the present applicant since his services had been dispensed with on 8-8-1981 for gross misconduct involving malpractices of re-selling railway tickets. Similarly circular No.E(NG)II-86/RO-3/87 issued by Railway Board to all its General Managers refers to all the circulars issued by Railway Board No.E(NG)III-77/RO-1/80 dated 21-4-82, No.E(NG)II-84/RE-G/8 dated 20-4-85 and No.E(NG)II-86/RC-3/87 dated 17-11-86 and 18-8-88 - all on the subject of absorption of disengaged voluntary

Mobile Booking Clerks refers to a large number of judgements of Central Administrative Tribunals and dismissal of their SLP No.14618 by Hon'ble Supreme Court on 7-9-1989 and substitution of the cut-off date from 17-8-81 to 17-11-86, when they were dis-engaged as a result of the Board Circular to discontinue the engagement of voluntary/mobile booking clerks. The circular reiterates all the terms and conditions contained in their letter of 21-4-82 and 20-4-85. The mobile booking clerks who had put in a minimum of three years service could be considered for absorption in regular employment against regular vacancies. The Circular No.E(NE)II 84/RC-3/8 of 20-4-85 issued by Ministry of Railways (Railway Board) to all General Managers also refers to circular No.E(NG) 11/77 PG1/80 dated 21-4-82 and it also directed G.Ms to consider the question of absorption of Voluntary/mobile booking clerks provided they fulfilled the minimum qualifications required for direct recruitment who had put in a minimum of 3 years of service as Voluntary / Mobile booking clerk. The screening was to be done by a Committee of officers including the Chairman or a member of the Railway Recruitment Board concerned. This circular prescribed the cut-off date as 14-8-81 for voluntary/mobile Clerks who had completed 3 years of service for absorption against regular vacancies. This circular further stipulates that candidates may be within the prescribed age limit after taking into consideration the total period of their engagement as Voluntary/ mobile book clerks.

7. The present applicant did not avail of the facility allowed as a result of the circular issued on 20-4-1985 and the irresistible presumption is that he was ineligible on account of non-completion of 3 years before 14-8-81, before 21-4-82 and before 20-4-85 which were directions to consider the cases of voluntary/mobile booking clerks having completed 3 years fulfilling qualifications prescribed for direct recruits and who were within prescribed age-limit taking

into consideration their total engagement in Railways. Since the present applicant was not in the service of Railways beyond 8-8-81, and had been discharged on grounds of misconduct having completed less than two years of service, there was no scope for him to take advantage of the various circulars. For this applicant, therefore, the circular of 17-11-86 could not be an impugned order. It was meant for those who were in the employment of Railway Administration prior to 17-11-86 and it is these persons who filed a bunch of applications in which judgements were passed by the Hon'ble Central Administrative Tribunal, Principal Bench and it was in these cases that Railways filed a S.L.P. which was dismissed by Hon'ble Supreme Court. After dismissal a clear and concise circular dated 6-2-90 was issued prescribing terms and conditions for absorption against regular vacancies in the employment of Railway Board in the light of directions issued by Hon'ble Central Administrative Tribunal, Principal Bench. The present applicant does not fulfill the terms and conditions of eligibility as laid down in the various circulars and as such his case is neither similar nor identical with those whose cases were decided by the Hon'ble C.A.T., Principal Bench, Delhi.

8. The learned Counsel for the applicant has cited the following authorities in support of his client's case:-

1. Miss Usha Kumari Ananda Vs. Union of India, A.T.R. 1989 (2) 37, - cases of Mobile booking clerks not time-barred and those who have worked prior to 17-11-86 should be re-engaged and regularised after 3 years.
2. Shri Prabhat Kumar and others Vs. Union of India ATJ 1993 (1) 50 - cases of Mobile booking clerks not time-barred and those who have worked prior to 17-11-86 should be re-engaged and regularised after 3 years.

2.2 Railway Board itself issued instructions on 6-2-90

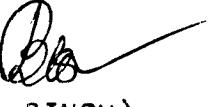
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to re-engage all mobile booking clerks, who had worked prior to 17-11-86.

3. Shri Pardeep Kumar Srivastava & Others Vs. U.O.I. A.T.P. 1993 (1) p. 85 - cases of Mobile booking clerks not time-barred and those who have worked prior to 17-11-86 should be re-engaged and regularised after 3 years.

9. These rulings are not applicable to the case of the applicant nor is he covered by the circular of Railway Board dated 6-2-1990 which prescribes terms and conditions of absorption of those who were working before 17-11-86 and whose services were dispensed with as a result of this circular and it pertained to those who had completed at least 3 years of service and were within prescribed age-limit taking into consideration their total engagement i.e. 3 years or more. These people were to be screened by a Committee consisting of 3 members <sup>including</sup> ~~including~~ the Chairman or member of the Railway Recruitment Board concerned. The services of the applicant had been terminated on 8-8-81 on grounds of misconduct. He had put in less than 2 years of service. He has been out of employment since 8-8-81 and he did not agitate his claims as a result of circular of 1982 or 1985 since he was totally disqualified to do so. He is not covered by Circular of 17-11-86 and as such he is not covered by circular dated 6-2-90. The period of limitation for him will start from 8-8-81 and as such it is highly time-barred. ~~In the light of~~

10. In the light of the observations made above the application is summarily dismissed as devoid of any merit or substance. No costs.

  
(B.K. SINGH)

Member (Admn.)

Dt. 2nd August 1993, New Delhi.  
(tgk)

  
(J.P. SHARMA) 29/9/93  
Member (Judl.)