

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn. Nos. (1) OA 2277/1990
(2) OA 2278/1990
(3) OA 2279/1990
(4) OA 2283/1990
(5) OA 395/1991
(6) OA 775/1991
(7) OA 1818/1991
(8) OA 2413/1991
(9) OA 1094/1992

Date of decision: 29.10.1992

(1) OA 2277/1990

Shri Pradeep Kumar Srivatsava

Applicant

Vs.

Union of India & Others

Respondents

(2) OA 2278/1990

Shri Dinesh Kumar Saini

Applicant

Vs.

Union of India & Others

Respondents

(3) OA 2279/1990

Shri Sanjay Gupta & Another

Applicants

Vs.

Union of India & Others

Respondents

(4) OA 2283/1990

Shri Rajesh Singh

Applicant

Vs.

Union of India & Others

Respondents

(5) OA 395/1991

Shri Ajay Kumar Singh

Applicant

Vs.

Union of India & Others

Respondents

(6) OA 775/1991

Shri Anil Kumar Singh & Others

Applicants

Vs.

Union of India & Others

Respondents

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(7) OA 1818/1991

Ms. Veena Kumari

Applicant

Vs.

Union of India & Others

Respondents

(8) OA 2413/1991

Kumari Neelu Tandan

Applicant

Vs.

Union of India & Others

Respondents

(9) OA 1094/1992

Ms. Kavita Kumari & Others

Applicants

Vs.

Union of India & Others

Shri B.S. Maine, Counsel

Shri P.S. Nahenoru, Counsel

Shri H.K. Gangwani, Counsel

Shri M.L. Verma, Counsel

For the Applicants

For the Respondents in

S. Nos. 1 to 6

For the Respondents in

S. Nos. 7 and 9

For the Respondents in

S. No. 8

For the Respondents in

THE HON'BLE MR. P.K. KARtha, VICE CHAIRMAN(J)
THE HON'BLE MR. B.N. DHOUDIYAL, ADMINISTRATIVE MEMBER

Question 1. Whether Reporters of local papers may be allowed to see the Judgment?

2. To be referred to the Reporters or not

JUDGMENT

After due deliberation (of the Bench delivered by Hon'ble Shri P.K. Kartha, Vice Chairman(J))

As common questions of law have been raised in

these applications, it is proposed to deal with them

in a common judgment.

2. The applicants before us have worked in the Railways

in various designations

in posts carrying/such as Volunteers, Ticket Selling

Agents, Booking Clerks, Additional Booking Clerks, Mobile

Booking Clerks, Ticket Collectors, Coaching Clerks and

Social Guides. They claim to have worked in the

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aforesaid capacities for various periods prior to 17.11.1986. They have challenged in these applications their disengagement from service and have sought for consequential reinstatement and regularisation and other reliefs.

3. We have gone through the records of these cases and have heard the learned counsel of both parties at length. There is one applicant each in OA Nos. 2277/1990, 2278/1990, 2283/1990, 395/1991 and 2413/1991. There are two applicants in OA 2279/1990, three applicants in OA 775/1991, four applicants in OA 1094/1992 and seven applicants in OA 1818/1991. Barring OA 2283/1990 in which the applicant has not produced any certificate in regard to the period of his service, the applicants in the other applications have supported their averments with certificates issued by the Railway Authorities regarding their period of service. The period of service rendered by them also ranges from a few days to a few months between 1982 to 1986.

4. The question whether the termination of services of the Mobile Booking Clerks in view of the change in the Policy of the Railways in November, 1986, is legally tenable, has been considered by this Tribunal in

the following cases and the following observations

have been made in those cases.

1. In the case of Shri D. S. Joshi vs. State of Maharashtra and others, the

a number of decisions. The applicants before us are relying upon them in support of the reliefs sought by them.

5. The leading case on this subject is that of

Ms. Neera Mehta & Others Vs. Union of India & Others,

AIR 1989(1) CAT 380. In that 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.

Their services were sought to be terminated and this

was challenged before the Tribunal. The case of the

applicants was that they were entitled for regularisation

on the basis of the completion of the absorption

of their services and absorption against regular vacancies

and absorption to regular posts in terms of the Circular issued by the Ministry of

Labour for regularisation of services in the Northern

Railways on 21.4.1982 which envisages that "those

will be absorbed into regular posts and regularised after

Volunteer/Mobile Booking Clerks who have been engaged

for temporary and temporary periods and are engaged

on various Railways on certain rates of honorarium per

hour, provided that they are not engaged for less than 8 hours 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 of service as

Volunteer/Mobile Booking Clerks". The aforesaid

Circular further laid down that "the screening for

regularisation of services is to be done by the concerned

officers including the Chairman or a Member of the

Railway Commission concerned".

6. The case of the respondents in Neera Mehta's case was that in August, 1973, the Railway Board, on the recommendations of the Railway Convention Committee,

had introduced a scheme for requisitioning the service 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 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

20.04.1985 that the volunteer/mobile booking clerks who

were engaged as such prior to 14.8.1981 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 21.4.1982, 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 Volunteer/Mobile Booking Clerks.

7. In its judgment dated 13.8.1987 in Neera Mehta's case, the Tribunal noted that the scheme was not discontinued on 14.08.1981. The Circular dated 24.1.1982 refers to the Railway Board's wireless message dated 11.9.1981 in which the General Managers of the Zonal Railways 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 also clear from the Railway Board's Circular dated 17.11.1986.

8. The practice of engaging Volunteers/Mobile Booking Clerks was, however, finally discontinued from 17.11.1986, and alternative measures for coping with rush of work were suggested in the Circular dated 17.11.1986. In the above factual background, the Tribunal held in Miss Neera Mehta's case that the practice of engaging

case that fixation of 14.3.1981 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 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 14.3.1981 have been absorbed subject to fulfilment of the requisite qualifications and length of service".

9. The Tribunal allowed the application and quashed the instruction conveyed in the communication dated 15.12.1986 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 17.11.1986 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 21.4.1982 and 20.04.1985.

10. Following the ratio in Neera Mehta's case, this Tribunal has granted similar reliefs to the applicants in Ms. Usha Kumari Anand and Others Vs. Union of India & Others decided on 23.05.1989 (ATR 1989(2) GAT 37), judgment dated 2.7.1991 in OA No. 1584/1989 and connected matters (Ms. Gangai Kondan & Others Vs. Union of India & Others), judgment dated 23.09.1991 in OA No. 2000/1990 (Shri Shashi

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Kumar Mishra & Others Vs. Union of India & Others), judgment dated 17.1.1992 in OA No.1694/1990 and connected matter (Shri Vijay Kumar Ram Vs. Union of India & Others) and judgment dated 28.1.1992 in OA No.268/1991 (Parbhak Kumar & Another Vs. Union of India & Others). It may also be mentioned that SLPs filed by the Union of India against the judgment of this Tribunal in Neera Mehta's case and in Ms. Usha Kumari Anand's case have been dismissed by the Supreme Court.

Shri B.S. Mehta, 11. The learned counsel for the applicants/submitter said that after the SLPs were so dismissed by the Supreme Court, the Railway Board has issued instructions on 6.2.1990 on the subject of absorption of Volunteers/ Mobile Booking Clerks in regular employment. A copy of the instructions issued by the Railway Board has been annexed to some of these applications. The instructions issued to the various Railways and the Central Railways of the Railway Board refer to the judgment of this Tribunal in Neera Mehta's case and the dismissal of the SLP by the Supreme Court on 7.9.1989 and state that Mobile Booking Clerks who were engaged as such before 17.11.1986 may be considered for absorption in regular employment against regular vacancies subject to other conditions stipulated in the Railway Board's absorption regulations. For example,

letters dated 21.4.1982 and 20.04.1985 on the subject.

It is further stated that in regard to the candidates engaged as Mobile Booking Clerks but discharged consequent on discontinuance of the scheme prepared by the Zonal Railways, as a result of Board's letter of 17.11.1986 or any earlier instructions to the same effect, they may be reengaged as Mobile Booking Clerks as and when they approach the Railway Administration for such engagement. Their cases for absorption in regular employment may be considered after they complete 3 years of service as Mobile Booking Clerks in the same manner as in the case of other Mobile Booking Clerks. The instructions of the Railways also state that the implementation thereof will, however, be subject to any directions, which may have been given by any of the Benches of the Central Administrative Tribunal and/or Supreme Court and which directions might have become final, either in any individual case or group of cases in which event such directions will prevail in those individual cases. During the hearing of these applications, the learned counsel for the applicant also drew our attention to the notification issued by the DRM's office, Northern Railway on 12.8.1992, according to which, "all Mobile Booking Clerks who were engaged prior to 17.11.1986 but discharged consequent on

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discontinuance of the scheme as a result of the Railway Board's letter of 17.11.1986 or any earlier instructions to the same effect are hereby informed that their engagement as Mobile Booking Clerks will be kept open upto 30.09.1992. This should also be displayed on all the notice boards."

12. In view of the foregoing, the learned counsel for the applicants argued with considerable force that the respondents should have on their own given the benefit of the judgment of this Tribunal in Neera Mehta's case and Ms. Usha Kumari Anand's case to the applicants before us without forcing them to file applications seeking similar reliefs.

13. As against the above, Shri P.S. Mahendru, the learned counsel for the respondents in some of these cases and Mr. O.A. S. OAs argued that the applicants were not engaged as Mobile Booking Clerks pursuant to the scheme of the Railways which was discontinued with effect from 17.11.1986. According to him, the applicants are not entitled to be entitled to the benefit of the said scheme. On the other hand, the General Manager, Northern Railway had taken an independent decision on 13.4.1983 and formulated a scheme for employing the unemployed children of the Railway employees. The respondents have annexed a copy

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of the scheme as Annexure R-1 to the counter-affidavit

at pages 30 to 33 in OA 2277/1990 of the paper book.

14. We are not impressed by the above contention.

We have carefully gone through the scheme prepared

by the General Manager. In our view, there was only

one scheme of the Railways to engage wards of Railway

employees which was prepared in August, 1973 by the

Railway Board for clearing summer rush and for other

similar purposes in the checking and reservation

offices. This view also gains support from the judgment

of this Tribunal in Gangai Kondan's case, referred to

above. In that case, it was held that

15. Shri M.L. Verma, the learned counsel for the

respondents in OA 2413/1991 contended that the applicant

was engaged as a Social Guide on contractual basis and

that the scheme which was discontinued by the Railways

from 17.11.1986 did not apply to the applicant. Shri H.K.

Gangwani, the learned counsel for the respondents in

OA 1818/1991 and OA 1094/1992, also contended that the

applicants were not entitled to the benefit of the

discontinued scheme which was discontinued by the Railways from

17.11.1986. The learned counsel

also contended that another argument advanced by the learned counsel

for the respondents is that most of the applicants have

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not worked for a continuous period of 120 days so as to entitle them to acquire temporary status in accordance with the provisions of the Indian Railway Establishment Manual and in the case of some applicants the period of service is only of a few days. As against this, the learned counsel for the applicants submitted that the period of service rendered by the Mobile Booking Clerks whose services have been terminated is irrelevant. In this context, he relied upon the decision of this Tribunal in Ms. Usha Kumari Anand's case where a similar contention had been advanced by the learned counsel for the respondents. In that case, the Tribunal had noted that the period of duty put in by the applicants ranged from less than one year in some cases to a little over 4 years in some others. The conclusion reached by the Tribunal as set out in para 37 of the judgment is that the length of the period of service put in by the applicant in itself is not relevant. What is material, is that whether the applicants had been engaged as Mobile Booking Clerks before 17.11.1986. Those who had been engaged before the said date, deserve to be reinstated in service irrespective of the period of service put in by them. (2) It is submitted that

17. We respectfully reiterate the same view expressed in Ms. Usha Kumari Anand's case.

18. The learned counsel for the respondents also contended that the applicants are not entitled to the reliefs on the ground that the claims are barred by limitation. The learned counsel for the applicants submitted that the issue regarding limitation which had been raised in Parbhat Kumar's case has been dismissed by the Tribunal in its judgment dated 28.1.1992.

(Sh.P.S. Mahendru) The learned counsel for the respondents/relied upon a catena of decisions in support of his contention that the claims preferred by the applicants before us are barred by limitation and we have duly considered them.

20. The question whether the applications filed by Mobile Booking Clerks whose services were terminated by the respondents pursuant to the policy decision taken by them to discontinue their engagement by order dated 17.11.1986, has been considered in Ms. Usha Kumari Anand's case and other decisions of this Tribunal. In our opinion, there is sufficient cause for condoning the

The case law relied upon by the learned counsel for the respondents:-

- (1) 1974 SLR(2) 56; (2) 1990 SLR (6) 198;
- (3) 1991 ATC (17) 335; (4) 1992 SLR(1) 665;
- (5) 1992 JT (3) SC 322; (6) 1992 JT(1) SC 394;
- (7) AIR 1992 SC 1348 and (8) AIR 1991 SC 2088.

delay in these cases. 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 reliefs as in Neera Mehta's case (Vide Amrit Lal Berry Vs. Collector of Central Excise, 1975(4) SC 714; A.K. Khanna Vs. Union of India, AIR 1988(2) 518). The Railway Board themselves have issued revised order on 6.2.1990. Non-implementation of these orders by the respondents in the case of the applicants is their grievance. We, therefore, overrule the preliminary objections raised by the respondents on the ground that the claims preferred by the applicants are barred by limitation.

21. In the conspectus of the facts and circumstances of the case, we allow the applications and dispose them in accordance with the following scheme and in accordance of with the following orders and directions:-

(1) We set aside and quash the impugned orders of the respondents terminating the services of the applicants. The respondents are directed to reinstate them to the post which they were holding at the time of their termination pursuant to the policy decision taken by the respondents to discontinue the scheme regarding the engagement of Volunteers/from amongst the wards and dependents of the Railway servants. Before reinstating the applicants, the respondents may, however, verify from their records as to whether all the applicants had worked in the Railways.

(2) We hold that the period of service rendered by the applicants as Mobile Booking Clerks, which expression includes Volunteers, Ticket Selling Agents, Booking Clerks, Additional Booking Clerks, Mobile Booking Clerks, Ticket Collectors, Coaching Clerks and Social Guides, is irrelevant for the purpose of their reengagement.

(3) We direct that the respondents shall confer temporary status on the applicants with all attendant benefits after they complete/have completed 4 months of service as Mobile Booking Clerks. The period of 4 months shall be counted irrespective of the number of hours put in on any particular day. The period of service already rendered by them should also be counted for the purpose of conferment of temporary status.

(4) We direct that the applicants who have become overaged by now shall be given relaxation in age for the purpose of regularisation to avoid hardship.

(5) We direct that the period of service already put in by the applicants would count for reckoning completion of 3 years period of service which is one of the prerequisites for regularisation/asborption.

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Ministry of Labour and Employment*

(6) 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.

(7) The respondents shall comply with the above directions expeditiously and preferably within a period of three months from the date of receipt of this order.

(8) There will be no order as to costs.

Let a copy of this judgment be placed in all the case files.

(B.N. DHOUNDIYAL)
MEMBER (A)
29.10.1992

(P.K. KARTHA)
VICE CHAIRMAN (J)
29.10.1992

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