

Central Administrative Tribunal
Principal Bench
OA-2529/91

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New Delhi, the 13th March, 1996.

Hon'ble Shri A.V. Haridasan, VC(J)
Hon'ble Shri R.K. Ahooja, M(A)

1. Shri Ashish Kumar Saha
S/o Sh. Santosh Kumar Saha
Ex-Part Time Booking Clerk
Degusaria, Sone Division
NE Railway, Gorakhpur.

2. Sh. Ram Narayan Roy

3. Sh. Salil Kumar Dutta

4. Sh. Bharat Ja Singh

5. Sh. Srilal Ram

6. Ram Kishore Mishra

7. Nasir Akhtar

8. Ashok Kumar Singh

9. Umesh Kumar Singh

10. Amrendra Kumar Singh

11. Krishna Kumar Sinha

12. Anil Kumar Singh

13. Binay Kumar Srivastava

14. Mithilesh Kumar Singh

15. Anand Prakash Tiwari

16. Armendra Kumar Pathak

17. Anand Prakash Tiwary

Applicants

(Advocate: Shri B.S. Mainee)

versus

1. Secretary,
Ministry of Railways,
Rail Bhawan,
Railway Board,
New Delhi.



2. The General Manager,
N.E. Railway,
Gorakhpur.

3. The Divisional Railway Manager,
N.E. Railway,
Sonepur.

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Respondents

ORDER (Pral)

Hon'ble Shri A.V. Haridasan, VC(J)

This is a second round litigation of the applicant regarding his non-engagement and regularisation. The applicants who were initially engaged as part-time booking clerk on various days during 1983 to 23.11.1986. Some worked during 1983-84, some in 1985 and some in 1986 but prior to 17.11.1986. Thereafter they were not engaged pursuant to the judgement of this Tribunal in Usha Kumari Anand's case, the Railway Board issued a circular dated 6.2.90 for re-engagement of those mobile booking clerks who were discharged from service prior to 17.11.1986. The applicants also claimed re-engagement. As the request was not accepted to by the respondents they filed OA No.1214/90. Though the respondents raised various contentions repelling those contentions the above application was disposed of with the following directions:

"The respondents are directed to re-engage the applicants if they

fulfil the conditions laid down in the Railway Board's Circular No.E(NG)II-86/RC-3/87 dated 6.2.1990 as clarified in letter No.E(NG)II-90/RC-3/106, dated 21.1.1991 and also to confer temporary status on such of the applicants who fulfil the conditions prescribed therein for that purpose. These directions shall be complied with within a period of two months from the date of receipt of a copy of this judgement by the respondents."

2. The applicants made a representation enclosing a copy of the said judgement. In reply to this representation the respondents issued impugned order dated 25.7.91 taking the stand that the case of the applicants is not covered by the said circulars and thus they are not entitle for re-engagement pursuant to Railway Board's instructions dated 17.11.86. Aggrieved by this the applicants have filed this application. In this application it is alleged that in view of the judgement in case of Amrit Lal Beri vs. Commissioner of Taxation (SLR 1973 (2)p.152), the stand taken by the respondents is arbitrary, unreasonable and calculated to deny the benefit of the decision rendered in OA-1214/90 and the decisions of this Tribunal in similar cases and that therefore respondents may be directed to re-engage the applicants as Mobile Booking Clerk/Part-time Clerks and to extend to them

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the benefit of judgement in Usha Kumari Anand's case reported in AIR 1989 (2) 37 CAT.

3. The respondents in their reply contended that the applicants were not disengaged on the basis of Railway Board's Circular and they are not entitled to the benefits. The respondents however, had raised a preliminary objection that the application is barred by Res judicata since the applicants had earlier filed an OA for the same relief.

4. When the application came up for final hearing Shri Mainee appeared for applicants but none appeared for respondents. The contention raised by the respondents that the application is barred by res judicata in view of the decision in OA 1214/90 between the parties is totally illfounded and untenable. The impugned order was passed in obedience to the ~~direction~~ contained in this Order in OA no.1214/90 to consider the case of the applicant in the light of the relevant case laws. In the impugned order the respondents have taken the stand that the applicants are covered by the circulars. Therefore, this application is not affected by bar of res judicata.

5. The facts of this case are identical to the facts of ~~the~~ case in Miss Usha Kumari Anand and Others vs. Union of India - reported in AIR 1989 (2) CAT 37 - In that case the Tribunal held as follows:

(14)

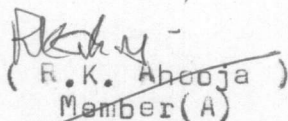
"Following the decisions of the Tribunal in Meera Mehta's case and Samir Kumar Mukherjee's case, we hold that the length of the period of service put in by the applicant in itself is not relevant. Admittedly, all these applicants had been engaged as Mobile Booking Clerks before 17.11.86. In the interest 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~~ ^{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 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."

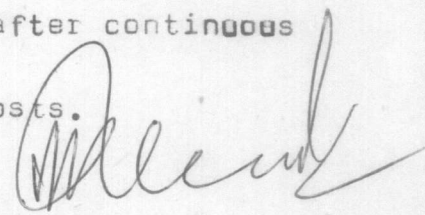
The Special Leave Petition filed challenging this decision of this Tribunal was dismissed by the Hon'ble Supreme Court. This decision was approved by the Supreme Court in the case of Union of India and others vs. Pradeep Kumar Srivastava and others decided on 27th July, 1995 -.

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6. In a recent decision in Arvind Kumar vs. Union of India and others - OA.2731/91 decided on 22nd November, 1995 (ATJ 1996 (1) 151) exactly on identical facts as this case, relying on the decision in Usha Kumari Anand's case. The Tribunal directed re-engagement of an applicant within a period of 3 months as a Mobile Booking Clerk and to grant the other consequential benefits - we are in respectful agreement with the view taken in that case and see no reason to take a different view.

7. In the result, the objections raised in the replies are over-ruled and the application is disposed of directing the respondents to re-engage the applicants within a period of three months from the date of receipt of this order as Mobile Booking Clerk/Part-time booking clerk. Insofar as absorption is concerned we direct that the applicants would be entitled to be considered for such absorption subject to the condition specified in Memorandum dated 21.4.82 and Memorandum 24.5.90 mentioned in the Annexure-4 letter dated 6.2.90. The applicants are also entitled for temporary status after continuous service of 120 days. No order as to costs.


(R.K. Ahuja)
Member(A)


(A.V. Haridasan)
Vice Chairman(J)