

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

(8)

D.A. No. 2731/91

New Delhi this the 22nd day of November 1995

Hon'ble Shri N.V.Krishnan, Acting Chairman
Hon'ble Shri D.C.Verma, Member (J)

Shri Arvind Kumar
s/o Shri Bhagwan Dass
ex. Additional Booking Clerk
Railway Station
Fatehgarh
(By Advocate: Sh. B.S.Mainee)

....Applicant

Versus

Union of India : Through

1. The Secretary,
Ministry of Railways
Rail Bhawan,
New Delhi

2. The General Manager
North-Eastern Railway
Gorakhpur

3. The Divisional Railway Manager
North-Eastern Railway
Izatnagar

.....Respondents

(By Advocate: Shri D.S.Mahendru)

ORDER(Oral)

Hon'ble Shri N.V.Krishnan, Acting Chairman

The Learned Counsel for the applicant states that the applicant was appointed as an additional Booking Clerk and worked as a Mobile Booking Clerk from 1-1-86 to 31-1-86 and 1-3-86 to 31-5-86 as evidenced by the Annexure A-2 certificate. In other words he had worked 62 days. It is stated that in terms of the Ministry of Railways letter dated 21-4-82 (Annexure A-I) such Mobile Booking Clerks (MBC) could be regularised subject to fulfilling the conditions mentioned therein. One condition is that the MBC must have put in 3 years service. By the subsequent order of the Railway Board dated 17-11-86, (Annexure A-3) Railway Board reiterated the earlier directions that the practice of engaging MBCs from the wards are dependent of Railway employees should be stopped forthwith.

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2. This order was challenged in OA 1174/86 filed by Neera Mehta & others in which the Tribunal granted a relief to the applicants therein. SLP filed against that decision was also dismissed in Supreme Court.

3. There upon, the respondents issued fresh instructions on 6-2-90 (Annexure A-4) relating to considering the voluntary MBC for absorption. Para-2 thereof reads as under:-

"In the light of judgement dated 28.8.87 of the Central Administrative Tribunal, Principal Bench, New Delhi, in O.A. No. 1174/86 (Neera Mehta and others Vs. UOI and Others) and dismissal of SLP No. 14618 of 1987 by the Hon'ble Supreme Court on 7.9.1989, Board have decided that the cut off date of 14.8.1981 referred to above will be substituted by 17.11.86. Accordingly, 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 the other conditions stipulated in the aforesaid letters of 21.4.82 and 20.4.86."

4. Subsequently, this Tribunal ~~and~~ also rendered judgement in Miss Usha Kumari Anand Vs UOI (AIR 1989(2) 37 CAT) in which the earlier Judgement in Neera Mehta's case was followed. SLP against this judgement was also dismissed in the Supreme Court.

5. The applicant's grievance is that despite these instructions & judgements he has not been absorbed. He has, therefore, sought the following relief:-

"That this honourable Tribunal may be pleased to direct the respondents to re-engage the services of the applicant because he is covered by the judgement rendered by this honourable Tribunal and reported in AIR 1989 (2) page-37 (Miss Usha Kumari Anand Vs Union of India) as also Railway Board's circular dated 6.2.1990."

6. Respondents have filed ~~the~~ ^{their} reply contesting these claims that the OA is barred by limitation. They also submitted that the applicant was not engaged under the particular scheme which was considered by the Tribunal in the earlier cases. He was engaged separately on

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the basis of some scheme independently formulated by the General Manager North Eastern Railway. Hence he is not entitled to any of this benefit.

7. When the matter came up for final hearing the Lt Counsel for the applicant drew our attention to a further decision of this Tribunal Shri Prabhat Kumar and others Vs. Union of India and others (1993 ATJ 50) in which the Tribunal held, advertizing to the argument that the office of the North Eastern Railway has a separate scheme, that there is no other independent scheme than what is formulated by the Railway Board.

8. Lt Counsel for the respondents also produced for our perusal an order dated 16.1.93 of the Supreme Court in Civil Appeal arising out of SLP (c) 14756-61 of 1993 etc. (UOI and Ors Vs Pardeep Kumar Srivastava & Ors). The Supreme Court held that the respondents are similarly situated as Usha Kumari Anand & Ors entitled to the same relief. The applicant was directed to examine the case of the respondents in accordance with the direction given in Usha Kumari Anand's case as contained in para 37 and 38 of the Tribunal's judgement.

9. In so far as the limitation is concerned we notice that the applicant gets a cause of action from the Annexure A-4 circular dated 6-2-90 which provides that the case for re-engagement should be considered as and when the concerned person applied for such re-engagement. In other words, this is an open ended matter. Hence no limitation lapses ^{le} applies.

10. The second question is whether it was necessary that the applicants should have rendered a specific length of service before they get any benefit. In Usha Kumari

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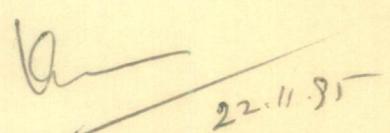
Anand's case approved by the Supreme Court, this Tribunal has held that it was not necessary. The engagement and disengagement should have been prior to 17.11.86. The service done ~~before that date~~ ^{before that date} ~~their~~ should be counted for regularisation.

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11. In this view of the matter we hold that the applicant is entitled to relief and accordingly following directions given in the case of Usha Kumari Anand, we direct the respondents to re-engage the applicant within a period of three months from the date of receipt of this order as a mobile booking clerk. In so far as absorption is concerned the applicant would be entitled to be considered for such absorption subject to the conditions specified in Annexure A-1 Memorandum dated 21-4-82 and the Memorandum dated 24-5-90 mentioned in the Annexure A-4 letter dated 6.2.90. For the purpose of computing three years service, the service of 62 days rendered by him shall be counted.

12. OA disposed of accordingly.


(D.C.VERMA)
Member (J)


22.11.91
(N.V.KRISHNAN)
Acting Chairman

cc.