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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

O.A.No.3053 /1991 Date of Decision: 9 - 7 -1998

Shri Dinesh Chand Yadav .. APPLICANT

(By Advocate Shri B.S. Maini)

versus

Union of India & Ors. .. RESPONDENTS

(By Advocate Shri P.S. Mehandru)

CORAM:

THE HON'BLE SHRI T.N. BHAT, Member (J)

THE HON'BLE SHRI S.P. BISWAS, MEMBER(A)

1. TO BE REFERRED TO THE REPORTER OR NOT? YES

2. WHETHER IT NEEDS TO BE CIRCULATED TO OTHER BENCHES OF THE TRIBUNAL?

Member (A)
(S.P.Biswas)
Member(A)

Cases referred:

1. Amit Lal Berry Vs. Collector of Central Excise 1975 (4) 714
2. A. K. Khanana V. UOI, ATR 1988 (2) 518
3. K. C. Sharma & Ors. V. UOI & Ors. 1998 (1) SL 54
4. S. S. Rathore V. State of MP 1989 (3) JT 530
5. Jagdish Lal & Ors. Vs. CGT JT 1997 (5) SC 387
6. S. V. Pensulkar V. Bank of India 1997 SCC (L&S) 1602
7. State of Jaryana & Ors. V. Rajay Malia (1997) 1997 SCC (L&S) 1445
8. UOI & Ors. V. Belal Ahmed & Ors. decided on 27.7.96
9. Pradeep Kumar Srivastava V. UOI ATR 1993 (1) CAT 185
10. Girdhari Lal Vs. UOI decided on 3.1.96

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-3053/91

New Delhi this the 9th day of July, 1998. (17)

HON'BLE SH. T.N. BHAT, MEMBER(J)
HON'BLE SH. S.P. BISWAS, MEMBER(A)

Shri Dinesh Chand Yadav,
S/o Sh. Babu Ram Yadav,
C/o Sh. B.S. Mainee,
Advocate,
240, Jagriti Enclave,
Delhi-92. Applicant

(through Sh. B.S. Mainee, advocate)

VERSUS

Union of India through

1. The Secretary,
Ministry of Railways,
Railway Board,
Rail Bhavan,
New Delhi.
2. The General Manager,
N.E. Railway,
Gorakhpur.
3. The Divl. Railway Manager,
N.E. Railway, Izatnagar. Respondents

(through Sh. P.S. Mahendru, advocate)

O R D E R

Hon'ble Sh. S.P. Biswas, Member(A)

The applicant herein is aggrieved by the inaction on the part of the respondents to re-engage him as Additional Booking Clerk/Mobile Booking Clerk (ABC/MBC for short) since he claims to have worked prior to 17.11.1986 and is also entitled to be re-engaged and absorbed based on conditions stipulated by respondents in the concerned scheme. Consequently, he seeks issuance of directions to respondents to re-engage him in the capacity of ABC and also confer

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temporary status after he completes 4 months of service as per extent Railway Rules.

2. The background facts, necessary for disposal of this O.A. are as under:-

In accordance with the Scheme formulated by the Railway Board in 1973, sons/wards of Railway employees continued to be engaged as volunteers/ABCs/MBCs etc. to cope with the summer rush of passengers. The applicant was appointed as ABC on 21.6.1984 pursuant to the aforesaid Scheme. Earlier to that, it was decided in December 1981, in consultation with the Permanent Negotiating Machinery that the volunteers/MBCs/ABCs who had been engaged on various Railways in connection with the aforesaid Scheme on certain rates of honorarium per hour/per day may be considered for absorption against regular vacancies provided the said officials have the minimum qualification needed for direct recruitment and have put in minimum 3 years of service. This direction was circulated by Respondent No.1 to General Managers all over Railways through a communication dated 21.4.82 as at Annexure A-2.

Subsequently, by an order dated 17.11.86, the Railway Board decided to discontinue the practice of engaging such officials. The vacancies arising out of the termination of services of such officials, as per Respondent No.1, were to be filled up adopting other methods including engaging retired Railway employees.

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As many as 55 officials working under DRM/Northern Railway, affected by the aforesaid orders of 17.11.86, approached this Tribunal by filing an O.A. No. 1174/87 in the name of Ms. Neera Mehta & Ors. Vs. U.O.I. & Ors. (ATR 1989(1) CAT 380). The O.A. was allowed on 13.8.87 with the direction that "all the Booking Clerks who were engaged on or before 17.11.1986 would be entitled to regularisation of the services subject to fulfilment of other conditions". The decision at ~~at~~ para 8 is important in this order. It was also held that persons similarly engaged after 17.11.86 would not be entitled to make any claim whatsoever. Since the employees similarly placed like those in Neera Mehta's case (supra) were reportedly denied the benefit, a large number of officials still aggrieved moved the Tribunal by filing as many as 21 O.As. (they belong to different categories) and those were decided on 23.5.89 by this Tribunal by a common order in the case of Ms. Usha Kumari Anand & Ors. Vs. U.O.I. & Ors., ATR 1989(2) CAT 37. The direction given in Usha Kumari's case was that "all the employees engaged as Mobile Booking Clerks in the Railways for various period prior to 17.11.86 deserve to be reinstated in service irrespective of the period of service put in by them". Details in paras 37 & 38 are crucial in this order.

3. Following the ratios in Neera Mehta and Usha Kumari Anand cases, this Tribunal decided a large number of similar cases. Thus, reliefs were granted by judgement dated 4.6.90 in OA-896/93 & connected 24 matters in the case of Mohinder Singh Vs. U.O.I. &

Ors., Judgement dated 2.7.91 in O.A.No. 1584/89 & connected matters (M.S. Gangai Kondan & Others Vs. U.O.I. & Ors), judgement dated 23.9.91 in OA-2000/90 (Shri Shashi Kumar Mishra & Ors. Vs. U.O.I. & Ors), judgement dated 17.1.92 in OA-1694/90 & connected matters (Shri Vijay Kumar Ram Vs. U.O.I. & Ors.), judgement dated 28.1.92 in OA-268/91 (Parbhat Kumar & Another Vs. U.O.I. & Ors), judgement dated 29.10.92 in OA-395 & 5 other connected matters (Pradeep Kumar Srivastava & Ors. Vs. U.O.I. & Ors.), judgement dated 26.5.93 in OA-2345/90 (Om Prakash Sharma Vs. UOI), judgement dated 22.11.95 in OA-2731/91 (Arvind Kumar & Ors. Vs. U.O.I.), judgement dated 10.10.96 in OA-450/95 (Laxmi Chand Vs. UOI), Judgement dated 14.5.96 in OA No. 1331/95 in the case of C D Garg Vs. Union of India & Others and judgement dated 21.1.97 in OA No.2422/92 and 7 other connected matters in (Rajesh Kumar Ors. Vs. U.O.I. & Ors.).

4. The respondent Railways took up both the cases of Neera Mehta and Usha Kumari Anand to the level of the Hon'ble Supreme Court in two different S.L.Ps and both of them were dismissed. Pursuant to this, the Board issued an order dated 6.2.90 and the relevant portion of that order, for our purpose, reads as under:-

2. "In the light of judgement dated 26.8.87 of the Central Administrative Tribunal, Principal Bench, New Delhi in O.A.No.1174/86 (Neera Mehta & Ors. Vs. U.O.I. & Ors.) and dismissal of SLP No.14518 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 17.11.1986.

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"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 21.4.1982. Such employees may be re-engaged as Mobile Booking Clerks as and when they approach the Railway Administration for re-engagement."

5. Sh. B S Maine, learned counsel for the applicant argued that the petitioner's claim is based on the decision of the Tribunal in the aforesaid two cases (that of Neera Mehta & Usha Kumari Anand) since his case is similarly placed like the applicants therein. Accordingly, he submitted a representation (A-5) in time to the respondents to allow him the benefit of the judgement as well as the reliefs provided by the Railway Board vide its order dated 6.2.90. The respondents, however, offered the benefits only to the petitioners in those cases and refused to reinstate others like the applicant herein though similarly placed. This is how the applicant is before us.

6. As per learned counsel for the applicant, respondents' refusal to grant the benefits arising out of the above Judicial pronouncements of the Hon'ble Apex Court/ Tribunals goes against the law laid down or the order in the cases of Amrit Lal Berry Vs. Collector of Central Excise, 1975 (4) SC 714 and A K Khurana Vs. Union of India, ATR 1988 (2) 518. To add strength to his contentions, the counsel drew our attention to the latest judgement of the Hon'ble Supreme Court in the case of K C Sharma and Ors. Vs. Union of India & Others 1998 (1) SLJ 54 decided on

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25.7.97 wherein it has been held that--"Applications filed by similarly placed persons should not be rejected for bar of limitation." (quoted from Head Note).

7. The respondents have resisted the claim on grounds of the following:-

(A) The applicant has not given any proof of having served the notice on DRM and that he did not approach the Railways as stipulated in 6.2.96 order.

(B) The offer of re-engagement was to be given only to those ex-Mobile Booking Clerks who got terminated because of Railway Board's instruction dated 17.11.86 but those who had been discontinued earlier to November 1986 need not be considered.

(C) Sh. P S Mahendru, learned counsel for the respondents took the plea of limitation in course of hearing with great tenacity and fervour and cited the following judicial pronouncements in support of his contention simultaneously praying that the case be dismissed on this basis alone.

i) 1989 (3) JT 530 S S Rathore Vs. State of M.P.,

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iii) S V Pansulkar Vs. Bank of India
1997 SCC (L & S) 1662; and

iv) State of Haryana & Others Vs.
Ajay Walia (Ms.) 1997 SCC (L & S)
1445.

The present application is hit by limitation because the applicant has approached the Tribunal in 1991 whereas he should have come immediately after the decision in Neera Mehta's case on 13.8.87.

(D) The applicant's case could be considered only in the capacity of Group-D staff as laid down in the order of the Hon'ble Supreme Court in the case of U.O.I. & Ors. Vs. Belal Ahmed & Ors., C.A.No. 9267 arising out of S.L.P.(C) Nos. 17971, 4995/94 and a few others of 1994 decided on 27.7.95.

8. Before we examine the legality of respondents' objections, it would be apposite to mention that three important issues that got crystallised arising out of the decisions in the case of **Pradeep Kumar Srivastava Vs. U.O.I., ATR 1993 (1) CAT 185**. They are as under:-

8.A In that OA one of the basic questions as to what would constitute "Mobile Booking Clerks" was answered. In Sub-para (2) of the concluding para No.

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21, this Tribunal in its order dated 29.10.92 decided as, "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 re-engagement."²²

The Union of India approached the Hon'ble Supreme Court through SLP No. (C) 14756-61/93 against the decision of this Tribunal in Pradeep Kumar Srivastava's Case. This third SLP was also dismissed.

8.B. Besides, upholding this Tribunal's views as regards definition of "MBCs", the Apex Court vide their orders dated 27.7.95 in the said SLP observed on the question of offer of temporary status as under:-

"Learned counsel for the applicants, Union of India, however, tried to contend that the grant of temporary status to such employees as was done by the order in Usha Kumari Anand's case, which has become final and has also been implemented, is not correct and requires re-consideration. We are afraid, it would not be appropriate to do so in these appeals which relate to employees of the same category, there being no fact to make any distinction on that basis in these appeals. Since there is complete identity on facts in these appeals and those in which the decision in Usha Kumari Anand's case was rendered and the employer also is the same, it would be unjust to re-open this question in these appeals. For this reason alone, we consider it inappropriate to re-examine the points which have been considered in the decision in Usha Kumari Anand's case as indicated earlier."²³

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8.C. Thirdly, the controversy that General Manager, Northern Railway by an independent order on 13.4.83 had formulated yet another scheme for employing the unemployed children of Railway employees was set at rest. Thus, the Tribunal concluded as "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 for other similar purposes in the checking and reservation offices. This view also gains support from the judgement of this Tribunal in Gangai Kondan's case, referred to above."²²

9. We shall now proceed to examine the legality of the objections taken by the respondents. The respondents have claimed that the applicant did not approach the Railways and failed to serve an appropriate notice on the administration. In this respect, the stipulations in the Railway Board's order of 6.2.90 are very relevant. In paras 2 & 3 of the said order, the Board have indicated the extension of the cut off date from time to time and had decided that:-

"In regard to candidates engaged as mobile booking clerks but discharged consequent on discontinuance of the scheme by the Zonal Railways, as a result of Board's letter of 17.11.1986 referred to above or any earlier instructions to the same effect, they may be re-engaged as Mobile Booking Clerk as and when they approach the Railway Administration for their engagement."

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10. The Scheme was subsequently extended upto September 1992. We also find DRM's Office / Northern Railway issued a notification on 12.8.92, according to which all Mobile Booking Clerks who were engaged prior to 17.11.86 but discharged consequent on discontinuance of the scheme as a result of the Railway Board's letter of 17.11.86 or any earlier instructions to the same effect are hereby informed that their engagement as Mobile Booking Clerks will be kept open up to 30.9.92. This should also be displayed on all the notice boards. When the orders say that the benefits will be get translated into action on approaching the Administration and the applicant did approach them by A-5 representation dated 28.5.90, it does not lie in the mouth of the respondents to deny the benefit on the plea of not having timely approached the respondents. It is true that the respondents have categorically denied of having received A-5. But after December 1991, the offer could be made when the O.A. was received by them in the back-ground of the Scheme having been further extended upto September 1992. On close examination of some of the O.As decided by various Benches of the Tribunal and its subsequent implementation by respondent Railways we are of the firm view that the respondents have not been keen to offer the benefits of earlier judgements to non-petitioners. We also make a pin-pointed reference on this aspect as it meant violation of the law/orders by Apex Court/ tribunal enunciated in the cases

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of Amrit Lal Berry, A K Khurana & K C Sharma (Supra). The learned counsel for the respondents drew blank on this.

11. In the case of Girdhari Lal Vs. UOI arising out of S.L.P. (C) No. 14005 of 1992 decided on 3.1.96, it has been held that U.O.I. are to treat all such persons alike and to grant them the same benefits instead of driving each one of them to litigation in course of which the U.O.I. itself is required to spend considerable public money. The applicant was, therefore, not required to approach the respondents for getting the benefit of the earlier orders of either of the Hon'ble Apex Court or the Tribunal. The same view has been taken by the Apex Court in the case of Amrit Lal Berry. (Supra)

12. We take up the next objection. According to the learned counsel for the respondents, the decision of this Tribunal in all the said cases is that those employees whose services were discontinued or those employees who had been disengaged on account of the said policy decision dated 17.11.1986 alone, could be considered for re-engagement. In OA-268/1991 decided on 28.01.1992, the services of the applicants therein who had been engaged in pursuance of the scheme and whose services had been done away with long before 17.11.1986, this Tribunal directed the respondents before it to re-engage the applicants in the said O.A. and to absorb them against regular vacancies on completion of 3 years service subject to their fulfilling other conditions laid down in the

Railway Board's letters dated 21.4.82 and 20.4.85. The Tribunal also gave some other directions. We see no reason to depart from the view taken by the Tribunal in the said O.A.

13. We shall now deal with the respondents' main plea on limitation. Even though the engagement of applicant was stopped prior to 17.11.86, pursuant to the judgement of the Tribunal in Ms. Neera Mehta's case the Railway Board had issued the circular dated 6.2.90 to all the General Managers indicating that MBCs who had rendered services prior to 17.11.86 and disengaged should be re-engaged as and when they approach the Railway Administration and thereafter consider them for grant of temporary status/absorption. Inspite of this circular of the Board, the request of the applicant was not considered by the respondents even in the light of the instructions contained in the above-mentioned circular. In Usha Kumari Anand's case, upheld by Hon'ble Supreme Court, the Tribunal had given the following directions:-

"Following the decision of this Tribunal in Neera Mehta's case and Sumir 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 those 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 to temporary status with all the attendant benefits. All persons should be considered for regularisation

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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 three years period of service which is one of the conditions for regularisation and absorption."

14.A. Following the above judgement, the Principal Bench of the Tribunal in Arvind Kumar & Ors. Vs. U.O.I., ATJ 1996(1) 151 issued directions to the respondents to re-engage applicants within a period of 3 months from the date of receipt of the order. In so far as the limitation is concerned we notice that the applicant gets a cause of action from the circular dated 6.2.90 which provides that the case for re-engagement should be considered as and when the concerned persons apply for such re-engagement. In other words, this is an open ended matter. Hence no limitation applies.

14.B. The applicant herein was engaged as ABC prior to 17.11.86. In all respects, his case is similarly situated like the applicants in Usha Kumari Anand's case and those of others in the cases of Arvind Kumar and Sanjeev Kumar. Therefore, we do not find any reason to deviate from the views taken in all the said cases. The plea of limitation, therefore, deserves to be over ruled.

14.C. In A K Khanna's case (Supra), this Tribunal held that ordinarily the benefit of a judgement should be extended to the similarly situated

persons who were not party to the earlier litigation. If such benefits as allowed by the court are not extended to similarly placed persons, and they are driven to the court to seek redressal of their grievance the cause of action can be taken to arise from the date of the judgement, benefit of which is being denied merely on the ground that they were not party to the suit/ application. The Tribunal therefore, held the view that the applications do not attract the limitation provision contained in Section 21 of the Administrative Tribunals Act.

14.D. In the Lakshmi Chand's case in OA 450/95 decided on 10.10.96, the respondents conceded "that this case is fully covered by the Hon'ble Supreme Court judgement dated 27.7.95 in SLP No. 14756/93 and 20114/93 UOI & Others vs. P K Srivastava & Ors. and other connected cases." This Tribunal held that the question of limitation should not stand in the way of the applicant in getting the relief prayed for.

14.E. We find a direct support in this respect in the decision of this Tribunal in the case of Rajesh Kumar & Ors. Vs. U.O.I. & 9 other connected matters in OA Nos. (2422/92, 1960/92 & 465/93) decided on 21.1.97. We were also told in course of the arguments that appropriate implementation orders in these cases have since been issued by the respondents.

15. The last objection of the respondents relates to the averment that all such employees should be considered for re-engagement/regularisation only in Group-D category. Suffice it is to say that this issue is well settled by the judgement of the Hon'ble Supreme Court in the case of Belal Ahmed & Ors. (SLP (C) No. 17971-71A etc. of 1994 decided on 27.7.95. It has been held therein that only those who are engaged as "volunteers to help ticket checking staff" will be taken as a Group-D category. These volunteers were to be paid out-of-pocket allowance at fixed rate per day. The Tribunal had desired that such officials should be considered for Group-D post as and when vacancies arise. Since they would continue to work as volunteers on payment of out-of-pocket at the rate of Rs.8 per day, they could be considered for absorption when vacancies arise in Group-D post. This stand of the Tribunal was upheld by the Apex Court while giving its order in the Belal Ahmed's case (supra). The respondents view that even all others could be considered for re-engagement in Group-D only cannot, therefore, be sustained.

17. In the result, the O.A. is allowed with the following directions:-

- (i) The applicant shall be re-engaged as ABC (or similarly such a position presently prevalent) within a period of 3 months from the date of receipt of a certified copy of this order.

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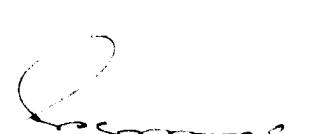
(ii) The applicant's claim for temporary status or regularisation shall be governed by rules/regulations on the subject and the instructions available in the original Scheme.

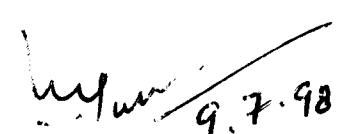
(iii) Services rendered earlier by the applicant shall also be counted for the purpose of commuting the required length of service while considering him for absorption/regularisation.

(iv) Persons engaged in similar positions after 17.11.86 would not be entitled to claim for such regularisation.

(v) Applicant who might have become over-aged now shall be given relaxation in age for the purpose of re-engagement to avoid hardship.

(vi) There shall be no order as to costs.


(S.P. Biswas)
Member (A)


(T.N. Bhat)
Member (J)