

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn. Nos. (1) OA 2277/1990 Date of decision: 29.10.1992
(2) OA 2278/1990
(3) OA 2279/1990
(4) OA 2283/1990
(5) OA 393/1991
(6) OA 775/1991
(7) OA 1818/1991
(8) OA 2413/1991
(9) OA 1094/1992

(1) OA 2277/1990

Shri Pradeep Kumar Srivastava

..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 393/1991

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

a

(7) OA 1818/1991

Ms. Veena Kumari

..Applicant

Vs.

Union of India & Others

..Respondents

(8) OA 2413/1991

Kumari Neeru Tandan

..Applicant

Vs.

Union of India & Others

..Respondents

(9) OA 1094/1992

Ms. Kavita Kumari & Others

..Applicants

Vs.

Union of India & Others

For the Applicants

..Shri B.S. Mainee,
Counsel

For the Respondents in
S.Nos. 1 to 6

..Shri P.S. Mahenoru,
Counsel

For the Respondents in
S.Nos. 7 and 9

..Shri H.K.
Gangwani, Counsel

For the Respondents in
S.No.8

..Shri M.L. Verma,
Counsel

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. B.N. DHOUNDIYAL, ADMINISTRATIVE MEMBER

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

2. To be referred to the Reporters or not? *yes*

JUDGMENT

(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 posts carrying ^{designations} 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

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

2 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 of their services and absorption against regular vacancies in terms of the Circular issued by the Ministry of Railways on 21.4.1982 which envisages that "those Volunteer/Mobile Booking Clerks who have been engaged on various Railways on certain rates of honorarium per hour 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 their absorption should be done by a committee of officers including the Chairman or a Member of the Service ² Railway/Commission concerned".
a

18

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 and 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

92

69
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 Vounteer/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 Railway 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

de

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) CAT 37), — judgment dated 2.7.1991 in OA No.1584/1989 and connected matters (M.S. Gangai Kondan & Others Vs. Union of India & Others), judgment dated 23.09.1991 in OA No.2000/1990 (Shri Shashi

an

21 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 (Parbhat 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. Mainee, a
11. The learned counsel for the applicants submitted
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
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

an

22

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

Dr

23
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 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 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

Dr.

71

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.

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 scheme which was discontinued by the Railways from 17.11.1986.

16. Another argument advanced by the learned counsel for the respondents is that most of the applicants have

an

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 ^a ~~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.

α

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.

19. The learned counsel for the respondents^(Sh.P.S. Mahendru) 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^{are barred by limitation} 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) 1992JT(1) SC 394;
- (7) AIR 1992 SC 1348 and (8) AIR 1991 SC 2088.

27
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 of with the following orders and directions:-

(1) We set aside and quash the impugned orders of termination of services of the applicants. The respondents are directed to reinstate them to the post which they ^a ~~applicants~~ 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 ^{etc.} ~~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.

d

(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/absorption.

a

29
(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

RKS
29/10/92

Admitted

ccu/sr 29/10/92
Section Officer
Central Adm. & Secy. Dept.
Ministry of Labour & Emp't