

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI.

8

Regn. Nos.:

Date of Decision: 22.1.1993

1. DA-523/91, and
2. DA-1371/91

1. Shri Anand Kumar Jha and
24 Others
2. Shri Belal Ahmed and
36 Others.

}
} Applicants

Versus

Secretary,
Ministry of Railways
and Others

}
} Respondents

For the Applicants

}
} Shri B. S. Mainee, Advocate

For the Respondents

}
} Shri P. S. Mehindru, Counsel

CORAM:

The Hon'ble Mr. P.K. Kartha, Vice Chairman (J)

The Hon'ble Mr. B.N. Dhoundiyal, Administrative Member

1. To be referred to the Reporters or not, *u*

JUDGEMENT

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

As the issues raised in these two applications are common, it is proposed to deal with them in a common judgement. We have heard the learned counsel for both the parties and have gone through the records of the case carefully. The applicants in both these applications have worked as Volunteer Ticket Collectors for assisting the

u

.....2....



ticket-checking staff at railway stations to avoid ticketless travelling. With a view to combatting the menace of ticketless travelling on Indian Railways, the Railway Board had introduced a scheme of engaging the services of the Volunteer Ticket Collectors for assisting the ticket-checking staff at railway stations. The applicants have relied upon the instructions issued by the Railway Board in this regard contained in their letters dated 16.6.1964, 8.3.1968, 26.12.1968, and 19.2.1981. By letter dated 31.3.1983, the Railway Board decided that the rate of 'out of pocket allowance' payable to the Volunteers will be Rs.8/- per day per Volunteer. The number of Volunteers to be engaged by the different Railways was also specified in the said letter.

2. On 7.7.1983, the Railway Board issued instructions to all General Managers of Indian Railways to engage Volunteers to assist the existing Ticket Collectors posted at important stations, such as zonal headquarters, regional headquarters, State capitals, etc., on checking the passengers at the various exit points. The Volunteers were to be drawn from the serving employees, retired Railway employees, wards of Railway employees, and bona fide Scouts/Guides. Each Ticket Collector shall be given a complement of 4-6 Volunteers. The Volunteers were to be provided with arm bands for identification and were to be issued a letter of identity.

3. The applicants have stated that they were also appointed as Volunteer Ticket Collectors by the respondents in 1983 & 1984. They

10

worked for various periods mentioned in the Memo. of parties annexed to the applications.

4. The version of the respondents is that the Railway Administration had written letters to the District Secretary, Bharat Scouts and Guides District Association, Samastipur, to provide willing Scouts to render voluntary services to assist the ticket-checking staff in combatting ticketless travelling. In response to the same, the said Association provided Scouts who were willing to offer their services for the above job at important stations and their services were utilised as such. The payment of pocket allowance was made by pay order through the Association. The Volunteer Scouts were not issued any appointment letters for their respective engagement since the scheme was not intended as a job-oriented service. The intention was to utilise the services of the volunteers in the interest of the nation.

5. The applicants have stated that they have worked as Volunteer Ticket Collectors efficiently and that their work had always been satisfactory. The respondents have not controverted the averment made by the applicants that their work was satisfactory.

6. The applicants have stated that they were marking attendance in the Attendance Register every day and were given their wages as per their days of work. According to the respondents, a record was kept by them for the purpose of

(AY)

making payment in respect of each Volunteer on the basis of the number of days worked by such Scouts/Volunteers. No Attendance Register as such was, however, maintained.

7. The applicants have contended that they were casual labourers as defined in the Indian Railway Establishment Manual and were governed by the Rules as contained in Chapter 25 of the said Manual. In this context, they have relied upon the circular dated 12.7.1973 issued by the Railways, according to which, a casual labourer other than those employed on the projects, should be treated as temporary after the expiry of four months' continuous employment. The respondents have stated that none of the applicants completed continuous employment of four months and that their engagement cannot be treated as engagement of casual labourers.

8. According to the applicants, they were disengaged but were not re-engaged thereafter in accordance with the scheme as laid down by the Railway Board which was withdrawn later. The version of the respondents is that the services of the applicants were discontinued as the same were no longer required.

9. A similar issue had arisen before the Calcutta Bench of this Tribunal in Samir Kumar Mukherjee & Others Vs. G.M., Eastern Railway and Others, A.T.R. 1986 (2) CAT 7. In that case, the applicants had been engaged as Volunteers for work

~

12

at Asansol and Durgapur Railway Stations to help the ticket-checking staff of the Railways from 21.11.1984 to 6.1.1985 and again from 10.1.1985 onwards. Though no appointment letters were issued, they were given identity cards and arm-bands. A muster roll was maintained for recording their attendance and they were paid at a fixed rate of Rs.8/- per day. Though they were called Volunteers in the relevant orders of the Railway Board, they were also locally known as Special T.Cs and T.T.E. Helpers. In that case, the applicants had completed more than 365 days of continuous engagement before moving the Tribunal. They had challenged the order dated 16.12.1985 passed by the respondents purporting to disengage their services with effect from January 30/31, 1986. The Tribunal held that the applicants were Railway employees and what they had received as payment was nothing but wages. The manner in which they functioned and the way they were paid, made it obvious that they were not Volunteers. They were casual employees and by working continuously for more than 180 days, they were entitled to be treated as temporary employees. The Tribunal, therefore, held that to disengage or dismiss them arbitrarily without notice or without giving any reason, was violative of the principles of natural justice.

10. The applicants are relying upon the aforesaid judgement and similar other judgements of the Tribunal. The S.L.P. filed by the Union of India against the judgement of the Tribunal in Samir Kumar Mukherjee's case was dismissed by the Supreme Court by order dated 4.5.1987. *a*

13

11. Thereafter, the Railway Department complied with the directions of the Calcutta Bench and issued orders on 13.4.1989. The applicants before us made representations to the Railways to give them similar treatment, but this has not been acceded to. They have argued that the respondents should have, on their own, given to the persons similarly situated the same benefits. In this context, they have relied upon the observations of the Supreme Court in Inder Pal Yadav Vs. Union of India, 1985 (2) SLR 248. The applicants also have relied upon the judgement of this Tribunal in Miss Neera Mehta and Others Vs. Union of India and Others, A.T.R. 1989 (1) CAT 380. In that case, the applicants were appointed as Mobile Booking Clerks in Northern Railway on various duties between 1981 and 1985 on purely temporary basis against payment on hourly basis. Their services were said to be terminated by Telegram issued on 15.12.1986. This was challenged before the Tribunal. The case of the applicants was that they were entitled to regularisation of their services and absorption against regular vacancies in terms of the circular issued by the Ministry of Railways on 21.4.1984 which envisages that "Those Volunteer/Mobile Booking Clerks who have been engaged on the 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' service as Volunteer/Mobile Booking Clerks". The aforesaid

(14)

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 Railway Service Commission concerned.

12. In Neera Mehta's case, the applicants had relied upon the Railway Board's circular dated 17.2.1973, wherein it was decided that the casual labour other than those employed on projects, should be treated as temporary after the expiry of four months' continuous employment.

13. The case of the respondents was that in August, 1973, the Railways had introduced a scheme for regularising the services of Volunteers from amongst the student sons/daughters and dependents of Railway employees as Mobile Booking Clerks to work outside their College hours and on payment of honorarium during peak season or short rush periods. The scheme was discontinued on 14.8.1981. However, on the matter being taken up by the National Federation of Indian Railwaymen, a decision was taken and communicated by the Railway Board by their circular dated 29.4.1982 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 20.4.1985 that the Volunteers/Mobile Booking Clerks who were engaged as such prior to 14.8.1981 and who had since completed three years' service, may be considered for regular absorption against regular vacancies.

~

(15)

14. The Tribunal observed in Miss Neena Mehta's case that the scheme was discontinued on 14.8.1981. It was ^{however,} continued till the Railway Board issued their circular dated 17.11.1986 whereby the practice of engaging Volunteers/Mobile Booking Clerks was finally discontinued. Accordingly, the Tribunal held that the applicants in Neena Mehta's case who were engaged on or before 17.11.1986, shall be regularised and absorbed against regular posts, in accordance with the Railway Board's circulars and instructions.

15. Following the decision of the Tribunal in Neena Mehta's case, the Tribunal has decided numerous other cases relating to the Mobile Booking Clerks, granting reliefs to the applicants therein.

16. The applicants are also relying upon the decision of the Railway Board that the name of each casual labourer who was discharged at any time after 1.1.1981 on completion of work or for want of work, should continue to be borne on the Live Casual Labour Register. The respondents have stated that these instructions are not applicable to the applicants before us as they were not casual labourers.

17. In our considered opinion, the applicants are also similarly situated as the applicants in Sameer Kumar Mukherjee's case, though all the applicants before us have not worked for a period of four months continuously. The respondents have

(16)

raised the plea of limitation on the ground that the applicants have been filed only in 1991. The applicants have contended that they had made representations and that in any event, the respondents should have, on their own, treated them on par with the applicants in Sameer Kumar Mukherjee's case and given them the relief without driving them to litigation.

18. Admittedly, the applicants had worked as Volunteer Ticket Collectors for various periods which was in the interest of the Railways. Their services were discontinued not on account of their unsatisfactory work and conduct, but due to the introduction of a policy not to engage such persons. In our opinion, the applicants were, in fact, engaged as casual labourers and they should be given the benefits admissible to casual labourers in accordance with the Indian Railway Establishment Manual.

19. In the light of the above, the applications are disposed of with a direction to the respondents to consider engaging the applicants as casual labourers whenever vacancies exist and in preference to persons with lesser length of service and outsiders. They should also be considered for regularisation and absorption in accordance with the relevant instructions issued by the respondents.

a

(17)

20. The applications are disposed of on the above lines.

There will be no order as to costs.

Let a copy of this order be placed in both the case files.

B. N. Dheundiyal
(B.N. Dheundiyal) 22/1/83.
Administrative Member

P. K. Kartha
22/1/83
(P.K. Kartha)
Vice-Chairman (Judl.)