

Central Administrative Tribunal
Principal Bench

O.A. 342/93

New Delhi this the 7th day of December, 1999

Hon'ble Shri S.R. Adige, Vice Chairman (A).
Hon'ble Smt. Lakshmi Swaminathan, Member (J).

Neeraj Kumar Soti,
S/o Shri Krishna Avatar Soti,
Ex. Mobile Booking Clerk,
Northern Railway,
R/o H.No. 27, Mansarovar Park,
Delhi.

Applicant.

By Advocate Shri B.S. Mainee.

Versus

Union of India through

1. The Secretary,
Ministry of Railways,
Rail Bhawan,
New Delhi.
2. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
3. The Divisional Railway Manager,
Northern Railway,
Moradabad.

... Respondents.

By Advocate Shri P.S. Mahendru.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member (J).

This application was originally filed by the applicant on 10.2.1993 claiming that as he had worked as casual/Mobile Booking Clerk (MBC) during various periods from 20.7.1979 to 13.12.1980 at Railway Stations, Najibabad and Masaumpur Narain, a direction may be issued to the respondents to re-engage him, as his case is covered by the judgement in **Usha Kumari Anand Vs. Union of India (ATR 1989 (2) 37)** and Railway Board's circular dated 6.2.1990.

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2. This O.A. was disposed of by order dated 11.8.1997 with a direction to the respondents to consider the applicant's case within eight weeks and grant him all reliefs as given to the petitioners in **Usha Kumari's case (supra)** as modified in Pradeep Kumar and Balkar Azad's cases. It was ^{agreed by} further directed that if the petitioner still feels ^{by} the order to be passed by the respondents, he is at liberty to revive his O.A. Accordingly, the respondents have passed the order dated 17.12.1997 which has now been impugned by the applicant. Learned counsel for the applicant has very vehemently submitted that an order should be issued to the respondents to re-engage the applicant as, according to him, his case is fully covered by the judgement of the Tribunal in **Usha Kumari Anand's case (supra)**.

3. When the application was originally filed on 10.2.1993, the applicant had stated that he had worked as MBC at Railway Station, Najibabad from 20.7.1979 to 25.9.1979, 18.10.1979 to 25.9.1979 and 18.10.1979 to 30.8.1980. He had further submitted that he was again engaged as MBC on 1.6.1980 and had worked at Railway Station Masaumpur Narain upto 13.12.1980. Respondents have stated that the statement made by the applicant in this paragraph are a matter of record, but it is seen that according to the applicant's own averments, while he states that he had worked as MBC at Railway Station Najibabad upto 30.8.1980, at the same time he states that he had been engaged as MBC in another Station i.e. Masaumpur Narain from 1.6.1980 to 13.12.1980. We note this inconsistency in the factual averments made by the application. In the Original Application, the applicant has

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nowhere stated that he had been discharged from service by the applicant but has only stated that he had worked upto 13.12.1980 as MBC.

4. The respondents on the other hand have stated in their reply that after 13.12.1980, the applicant had never turned up for his duty and absented himself without informing the concerned Station Master. They have also submitted that he had never reported for duty in spite of their letters dated 27.5.1981 and 27.6.1981. A copy of the letter dated 27.6.1981 has been produced by Shri P.S. Mahendru, learned counsel, who has submitted that the respondents have not been able to trace the earlier letter dated 27.5.1981. In the letter dated 27.6.1981, the respondents have intimated the applicant to report for work at Masaumpur Narain Railway Station at which place the applicant himself has stated that he had worked upto 13.12.1980.

5. One of the main contentions of the learned counsel for the applicant is that if, as contended by the respondents, the applicant had not been discharged by them and had not turned up for duty after 13.12.1980, being an employee who is entitled to be granted "Temporary Status" under the relevant Railway Rules, the respondents ought to have sent him the notice asking him to report for duty. In this connection, he has relied on the judgement in *Bir Singh Vs. Union of India* (ATJ 1990(1) 576). While it is seen that the respondents have stated that in fact they had sent two letters ^{ie. 2} in May, 1981 and June, 1981 asking the applicant to report for duty, they have only produced a copy of the letter issued on 27.6.1981 which has been sent to the applicant C/o his father's address who was working as Station Master at Bijnore Railway Station.

6. In the rejoinder filed by the applicant, he has denied the averments made by the respondents that the applicant had absented himself after 13.12.1980 and has submitted that in fact, the applicant was discharged from service. According to him, if the applicant had absented himself after 13.12.1980, the respondents would not have again called him in terms of their letters dated 27.5.1981 and 27.6.1981 as claimed by them in their reply. He, therefore, submits that the contentions of the respondents are contradictory. However, Shri B.S. Mainee, learned counsel, has very vehemently contended that as the applicant was entitled to be granted "Temporary Status" in accordance with the relevant Rules as he had already put in more than 180 days service as MBC, it was the bounden duty of the respondents to send him such a notice calling upon him to resume his duty. Therefore, the contention of the learned counsel for the applicant also appears to be contradictory. In the circumstances of the case, the judgement in **Bir Singh's case** (supra) relied upon by the applicant is not applicable to the present set of facts.

7. The applicant also relies on the Railway Board's instructions issued on 6.2.1990 which states that the MBCs who have worked prior to 17.11.1986 are entitled to be re-engaged as and when they approach the Railway Administration. Learned counsel for the applicant has contended that in accordance with these instructions, and the judgement in **Usha Kumari's case** (supra), the applicant has to be re-engaged and absorbed in regular service ^{as per} ~~provided~~ he had put in three years of service as MBC. The main contention of the respondents is that the applicant is not covered by the Railway Board's

Instructions as he had never been discharged but he had absented himself without any information and has thus left the job on his own accord and did not turn up in spite of their letters dated 27.5.1981 and 27.6.1981. Therefore, the main issue to be considered in this case is whether the applicant's contention that he was discharged from service or the respondent's contention that he had remained absent after 13.12.1980 without information to the concerned Station Master and left the job on his own accord is correct.

8. In case the applicant would have been discharged from service as contended by the learned counsel for the applicant w.e.f. 13.12.1980 and had also acquired temporary status because of his earlier service as MBC prior to the date, it could reasonably be expected that he would have approached the respondents to re-engage him in the intervening period till the issue of their letters dated 17.11.1986 and 6.2.1990 on which he relies upon followed by their subsequent Notification dated 31.3.1992. In other words, it appears that for more than 6-10 years, the applicant himself had not bothered to make a representation nor inquired from the respondents as to why they are not re-engaging him as MBC. It is also relevant to note that in the O.A. itself the applicant has stated that he had worked as MBC from 1.6.1980 upto 13.12.1980 at Railway Station, Masaumpur although for the period from 18.10.1979 to 30.8.1980 he states that he was also working in the same capacity at Najibabad Railway Station. When the O.A. was filed in Feb, 1993, the applicant has merely stated that he has worked with the respondents upto 13.12.1980, neither averring that he has been discharged by the respondents from the job on that date nor he has left the job on his own accord. It is only after the reply was filed by the respondents on 8.9.1993 where they have stated that the

applicant has left the job on his own accord after 13.12.1980, that he has submitted that he was discharged from service on 13.12.1980 on the ground that there was no further work and that he will be recalled when required. The applicant has not, however, placed on record any documents to show what effort, if any, he has made with the respondents to re-engage him as MBC between 13.12.1980 and 6.2.1990 when the Railway Board issued the letter regarding regularisation of MBCs who had worked earlier, i.e. prior to 17.11.1986 on which he heavily relies. In the amended O.A. filed by the applicant on 18.9.1998, he has referred to the representation submitted by him on 29.8.1992 in which he has brought out the relevant facts mentioned in this O.A. In this representation, he has submitted that he had given many representations although no details have been given, particularly of the dates and has stated that no reply has been given. In the facts and circumstances of the case, we are unable to agree with the contentions of the learned counsel for the applicant that the onus lies on the respondents to show that the applicant had left the job of MBC on his own accord after 13.12.1980. His own silence for a long number of years is also not at all satisfactorily explained nor has he placed any document on record to show that he has been discharged from service, as contended by him, to justify any interference in the matter.

9. In the facts and circumstances of the case, we find no arbitrariness in the decision taken by the respondents in the impugned letter dated 17.12.1997 and the judgement in **Usha Kumari Anand's case** ([supra]) will not assist the applicant. The O.A., therefore, fails and is dismissed. No order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

Adige
(S.R. Adige)
Vice Chairman (A)