

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A. No. 661 of 199³ decided on 29.7.1999

Name of Applicant : Shri Satyender Narain Singh

By Advocate : Shri B.S. Mainee

Versus

Name of respondent/s Secy. Min. of Rly. & others

By Advocate : Shri P.S. Mahendru

Corum:

Hon'ble Mr. Justice D.N. Baruah, VC (J)
Hon'ble Mr. N. Sahu, Member (Admnv)

1. To be referred to the reporter - Yes

2. Whether to be circulated to the other Benches of the Tribunal. - No ¹⁰

N. Sahu
(N. Sahu)
Member (Admnv)

Central Administrative Tribunal, Principal Bench

Original Application No.661 of 1999

New Delhi, this the 29th day of July, 1999

Hon'ble Mr. Justice D.N. Baruah, Vice Chairman
Hon'ble Mr. N. Sahu, Member (Admnv)

Shri Satyender Narayan Singh s/o Shri
Ganesh Prasad Singh, ex-Mobile
Booking Clerk, North Eastern Railway,
Bhagawanpur, c/o Shri B.S. Mainee,
240 Jagriti Enclave Vikas Marg Extn,
Delhi-110092.

- Applicant

(By Advocate - Shri B.S. Mainee)

Versus

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, Sonepur.

- Respondents

(By Advocate Shri P.S. Mahendru)

O R D E R (Oral)

By Mr. N. Sahu, Member (Admnv) -

In this Original Application the applicant seeks a direction to the respondents to reengage his services on the basis of the judgment of this Tribunal in the case of Miss Usha Kumari Anand & ors. Vs. Union of India & ors. ATR 1989 (2) CAT 37. It is further prayed that after completing four months of service the applicant be conferred temporary status.


2. The facts in brief are that the applicant worked as a Casual/Mobile Booking Clerk (in short "MBC") at Bhagawanpur Railway Station from 29.4.1983 to 18.7.83 and again from 18.4.84 to 31.5.84. The instruction issued on 6.2.1990 to the effect that all MBCs who worked prior to 17.11.1986 should be

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reengaged, has been brought to our notice. It is laid down in the subsequent instructions of the Railway Board that the aforesaid instructions dated 6.2.1990 will be valid up to 30.9.1992 and all those MBCs who worked prior to 17.11.1986 may approach the Railway administration before that date. The applicant filed a representation in response to the above instruction well before 30.9.1992 but he was not reengaged. Hence this O.A.

3. After notice, the respondents have filed a counter. We notice from paras 4.16 and 4.17 of the counter that the respondents had not denied the receipt of the representation. On the contrary it is mentioned that specific particulars were not furnished and as the instructions did not cover the relief claimed for, the representation was not considered.

4. Shri Mahendru, learned counsel for the respondents made three submissions. His first submission is that this Principal Bench does not have jurisdiction over the applicant because he was engaged as a part time MBC on Sonapur division of North Eastern Railway and from the memo of parties it is evident that he resided in Sonapur division and outside the jurisdiction of the Principal Bench of this Tribunal. As he had not put in a petition before the Hon'ble Chairman under Section 25 of the Administrative Tribunals Act, 1985, this Bench has no jurisdiction to deal with this case. Shri Mainee,



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learned counsel for the applicant on the other hand submits that the applicant had given the address in his verification as Deshram Gali Mandirwali, Badarpur, Delhi. As the verification has the force and status of an affidavit, it is for the respondents to prove that the contents of the affidavit are wrong. It is also mentioned that the applicant had in fact resided in Delhi not only at the time of filing of the O.A. but subsequently. In the absence of any material to discredit the "Verification" ~~said~~^{the} statement that he was residing in Delhi cannot be disbelieved. We cannot accept the claim of Shri Mahendru that this Principal Bench has no jurisdiction over this case.

5. The next point of Shri Mahendru is that this OA is barred by limitation. According to Shri Mahendru the cause of action had arisen in the year 1984 and after such a long time the applicant could not have approached the Tribunal. The learned counsel cited the decision of the Hon'ble Supreme Court in the case of Bhoop Singh Vs. Union of India & others. 1992 (2) SLJ 103 wherein their Lordships held the termination of service challenged after several years on the ground that similarly dismissed employee had been reinstated would not explain the inordinate delay. We have also considered this submission. The facts in this case are different. The applicant had approached the Tribunal on the basis of a scheme issued in 1990 wherein the Railway administration had given the options to those who worked before

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17.11.1986 to approach them for reengagement. The applicant had exercised that option and it is admitted that he filed a representation on 2.9.1992. That apart in a similar matter in the case of Parbhat Kumar & another Vs. Union of India & ors. 1993 (1) ATJ 50 a ground of limitation was raised by Shri Mahendru and this Bench held that the bar of limitation did not apply because the Railway Board itself in its circular dated 6.2.1990 issued in pursuance of various judgments had not fixed any time limit to deal with such cases and had provided that MBCs may be reengaged as and when they approach the Railway administration for engagement. As a similar issue was considered by a Division Bench of this Tribunal, we do not think it necessary to discuss this issue further. We hold that this O.A. is not hit by limitation.

6. The third ground raised by Shri Mahendru is that the case of the applicant is not identical with the cases decided in Miss Usha Kumar Anand's case (supra). Further point made by Shri Mahendru was that if a relief is to be granted then that should be as given in another decision of the Supreme Court in the case of Union of India & ors Vs. Belal Ahmed and others, SLP(C)Nos.17971-71A of 1993 etc. decided on 27.7.1995. Shri Mainee, stated that there is a wrong perception by the respondents in this regard. The Hon'ble Supreme Court passed two orders on the same date. One in the case of Union of India and others Vs. Pradeep Kumar Srivastava & others, SLP(C)

Nos.14756-61 of 1993 and other in the case of Belal Ahmed (supra). The first case dealt with the MBCs and the second case dealt with Ticket Collectors. The directions in Belal Ahmed's case (supra) are confined to Ticket Collectors. We find considerable force in this contention of Shri Mainee. As the Hon'ble Supreme Court has decided the issue pending before us in the case of Pradeep Kumar Srivastava (supra), we respectfully follow the said decision in disposing of this case. The Hon'ble Supreme Court has reaffirmed the decision of Miss. Usha Kumar Anand's case (supra) and the proposition laid down is as under -

"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 Kumar Anand's case as indicated earlier."

7. Shri Mahendru also cited the decision of Delhi Development Horticulture Employees Union Vs. Delhi Administration, Delhi & ors. JT 1992 (2) SC 394. He refers to para 22 of the report which states that "[T]hose employed under the scheme, therefore, could not ask for more than what the scheme intended to give them". We have perused the order of the Supreme Court cited by Shri Mahendru. We are, however, not impressed by the same argument. The question before us is directly dealt with and resolved by the Hon'ble Supreme Court in the case of Pradeep Kumar Srivastava (supra). We are bound to follow this order of the Supreme Court.

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8. Another contention of Shri Mahendra is that the applicant in the present case was not discharged on the conclusion of the scheme as in Miss Usha Kumari Anand's case (supra) wherein at para 4 the Tribunal had dealt with the case Miss Meera Mehta & ors Vs. Union of India & ors, ATR 1989 (1) 380. Para 4 is extracted below -

"In Miss Neera Mehta's 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. They had rendered service for periods ranging between 1 1/2 to 5 years. Their services were sought to be terminated vide telegram issued on 15.12.86. 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 21st April, 1982, 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 3 years' service as volunteer/ Mobile Booking Clerks"

9. The Hon'ble Supreme Court in the case of Pradeep Kumar Srivastava (supra) has also dealt with this point at page 3 of the order. The complete identity of facts with the case of Miss Usha Kumari Anand (supra) is not possible in every case. Even in Miss Meera Meththa's case (supra) the employees worked from 1 1/2 to 5 years. The period of service is not relevant. It may be two months or it may be two



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years. Even so, the Hon'ble Supreme Court has covered those people as coming within the ratio in Miss Usha Kumar Anand's case (supra). We do not find any substantial distinction between the cases decided by the Hon'ble Supreme Court and the case before us. This fact was also noticed by their Lordships in the case of Pradeep Kumar Srivastava (supra), an extract of which is reproduced below -

"Admittedly all the respondents with those cases we are concerned in these appeals also belong to the same category having been engaged prior to 17.11.1986 so that they also deserve to be given the same relief which was granted to similar employees in Usha Kumar Anand's case."

10. In the result the O.A. is allowed. The respondents shall within a period of two months from the date of receipt of a copy of this order reengage the applicant. But, as held in Miss Meera Mehta's case (supra), his absorption against a regular vacancy shall be considered only when he complies with the minimum qualification prescribed for direct recruits and has put in a minimum of three years of service as volunterr/MBCs. After requisite period of service, the respondents will consider grant of temporary status to the applicant. No costs.

Karashimbar
(N. Sahu)
Member (Admnv)

D.N. Baruah
(D.N. Baruah)
Vice Chairman