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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 390 of 1987.

Mahendra Kumar .... Applicant.

Versus

Union of India & others .... Respondents.

Hon'ble Ajay Johri, A.M.  
Hon'ble G.S. Sharma, J.M.

(Delivered by Hon. Ajay Johri, A.M.)

This is an application under Section 19 of the Administrative Tribunals Act XIII of 1985.

2. By this application the applicant, Mahendra Kumar, has sought implementation of the policy decision of the Government of India, Ministry of Railways, contained in their letters No.E(NG) III-77/RCI/80, dated 21.4.1982 and No.E(NG) II/84/RC3/8, dated 20.4.1985.

*3. as stated by the applicant*  
3. Briefly stated the facts are that the applicant was recruited as a Volunteer Booking Clerk by the Divisional Railway Manager (DRM), Allahabad and was posted at Naini Station on 14.1.81. He joined his duties on 15.1.81 and continued to work against the ~~over~~ sanctioned post which was renewed from time to time ~~for~~ a period of more than 5 years. Despite his fulfilling all the requisite terms and conditions he has not been considered for regularisation and his representations have also not been considered. During the previous orders all those who have completed 3 years' of service were called by the Headquarters Office (HQ office) of the Northern Railway for screening and their services were regularised at various times. According to the applicant, he figured in the second batch of candidates appointed as Volunteer Booking Clerks in the year 1980-81. These names were called by HQ office for regularisation and the recommendations were sent by DRM on 23.8.1985 but nothing

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has been heard by him in regard to his regularisation. At the moment he has crossed the age limit required for recruitment to the Railway service and, therefore, he fears that he will have no chance for fresh recruitment if he is left out. He has, therefore, prayed for suitable directions to be issued to the respondents to expedite his absorption against a regular post in accordance with the prescribed procedure and that the changed policy should not be applied to him for discontinuing employment of Volunteer Booking Clerks which is contained in the General Manager's letter of 3.12.1986 as this should be applicable to new entrants only.

4. In their reply the respondents have said that the post of Booking Clerks in the Railways are filled by direct recruitment or by promotion or by transfer of suitable staff. The direct recruitment is made through the agency of the Railway Service Commission (RSC). In order to provide facilities to passengers during the rush seasons certain persons were engaged in the Booking Office for specified periods. The purpose of this engagement was for the clearance of the rush. Such persons were paid only daily wages. Subsequently in April, 1984 there were certain modifications in regard to the amount to be paid to these persons. This policy of engaging such persons continued till the year 1986. In 1986 a scheme was launched which provided for opening of additional Booking Counters in order to provide adequate booking facilities. Under this scheme certain persons were engaged at particular stations on hourly basis without giving them any right for continuance or to claim regular employment. This scheme as well as the previous scheme were discontinued in November, 1986. The applicant was engaged under the above schemes. He worked intermittently and there were long gaps in his engagements. During 15.1.81 to 24.4.84 he worked for a total of 452 days only. On 21.4.82, thereafter on 5.2.83 and again on 20.4.85 the Railway Board issued instructions stipulating that persons who were engaged on daily wages as Mobile Booking Clerks could be

considered for absorption against regular vacancies provided they had minimum educational qualifications required for direct recruits and had put in a minimum of 3 years' of service as Volunteer/Mobile Booking Clerks. Such persons were to be screened by a committee including a Member of RSC. These instructions were only covering those persons who had worked as Booking Clerks for a minimum period of 3 years. They did not cover the cases of those who were engaged for a short duration. The applicant did not satisfy these conditions as he had not completed 3 years' of service. He was also not engaged as Volunteer/Mobile Booking Clerk, Reservation Clerk or Enquiry Clerk. He was only granted short duration engagements and he was engaged purely to meet the summer rush or Mela rush. By his application, according to the respondents, the applicant has tried to mislead this Tribunal. He was not given any engagement subsequent to 28.7.84. Thus the application is also time barred. The respondents have reiterated that the applicant's engagement never ~~exceeded~~ <sup>exceeded</sup> more than 60 days or 90 days at any stage. In regard to the recommendations sent by DRM on 23.8.85 the respondents has said that his name was wrongly included as his total period was only 452 days and that too intermittently, therefore, inclusion of his name by mistake does not give him any right.

5. We have heard the <sup>2a</sup> learned counsel for the parties. Our attention has been drawn by the applicant though his rejoinder affidavit to a judgment by the Principal Bench of this Tribunal in Registration (O.A.) No.1174-~~8~~ <sup>8</sup> of 1986, Miss Neera Mehta & others v. Union of India & others. In this case the applicants were ~~also~~ appointed as Mobile Booking Clerks on various dates between 1981 and 1985 on purely temporary basis. They had rendered service for periods running between 1 1/2 to 5 years and their services were sought to be terminated on 15.12.1985. In this case ~~also~~ <sup>2b</sup> the applicants were seeking regularisation of their services and absorption against regular vacancies in terms of Railway Board's orders of 21.4.1982.

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which envisaged that those who were qualified and had put in a minimum of 3 years' service should be considered for absorption against regular vacancies. In this case ~~etc~~ the respondents' stand was that on 20.4.1985 the Railway Board directed that the Booking Clerks who were engaged prior to 14.4.81 and who had completed 3 years' of service may also be considered for regular absorption in terms of the letter of 21.4.82 and since most of the applicants were appointed after 9.1.84 they were neither covered by the original scheme which has been discontinued in 1981 nor by the scheme of regularisation as envisaged in the Board's letters of 1982 and 1985. The Principal Bench relying on the case of Inder Pal Yadav v. Union of India, (1985 (2) SLR 248) and the case of Samir Kumar Mukherjee & others v. General Manager, Eastern Railway & others (ATR 1986 (2) CAT 7) had concluded that once the Railway Board has introduced a scheme of regularisation in respect of Volunteer /Mobile Booking Clerks and the scheme had in effect continued till 17.11.1986 with the tacit approval, express or implied, of the Railway Board when they came out with alternative measures for coping with the work restricting the scope of regularisation scheme to those who were employed prior to 14.4.1981 was clearly discriminatory and arbitrary. Therefore, all Booking Clerks who were engaged on or before 17.11.1986 would be entitled to regularisation of their services on completion of 3 years' of service subject to fulfillment of other conditions as spelt out in the 1982 and 1985 letters. The Principal Bench has further observed that any person similarly engaged after 17.11.86 would not be entitled to claim any regularisation as such. On these considerations this application was allowed.

6. Sri Kashyap, learned counsel for the applicant, also referred to another case being Registration (O.A.) No.486 of 1987, S.K. Agarwal v. Union of India, which was decided by this Bench on 27.4.1988. In this case also reliance was placed on the decision given by the Principal Bench of this Tribunal in Registration (O.A.)

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No. 1174 of 1986 which we have quoted above. It was held by the Allahabad Bench in this case that the applicants were entitled to be engaged by the respondents according to requirements and in accordance with the scheme which was prevalent prior to the issue of the Board's circular of 17.11.1986 and that they are also entitled for regularisation and absorption against the post after they have completed three years' of service from their ~~date~~ date of initial engagement subject to their fulfilling all other conditions in regard to the qualifications.

In Registration (O.A.) No. 486 of 1987 there were 17 applicants who had worked under the Station Superintendent Allahabad for periods ranging from 1 to 5 years. Some of them also worked for only 6 ~~min~~ months. The Bench had further remarked that it was clear that the practice of engaging Volunteer/Mobile Booking Clerks was discontinued only on 17.11.1986 and even if there was intention to discontinue the same from an earlier date no effective steps were taken to do so. In regard to the fixation of 14.8.1981 as the cut off date for regularisation, the Bench had said that could not but be considered as arbitrary.

3/ <sup>by note</sup> 7. We agree that the observations made in para 5 of the judgment in Registration (O.A.) No. 486 of 1987 that though the applicants may have no legal right as such in terms of their employment for regularisation or absorption against regular vacancies they cannot be denied this benefit as other similarly placed persons, who were engaged prior to 14.8.81, were given for absorption, subject to fulfillment of the requisite qualifications and length of service. The facts and circumstances of the applicant's case are no doubt

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similar to the facts and circumstances of the applicants in O.A. Nos. 486 of 1987 and 1174 of 1986.

8. The Principal Bench case relied upon by the applicant was challenged in the Supreme Court by the Union of India by a SLP. This was disposed of by the Hon'ble Supreme Court with the following orders given on 18.3.1988 :-

"..... We see no merit in the petition. But after hearing both sides we would clarify that for the sake of removing doubts the date 17.11.86 as accepted by the Tribunal shall be the cut off date but those who have qualified by putting three years service by 31.3.87 are entitled to the benefit of the order."

These directions of the Hon'ble Supreme Court make it clear that the cut off date for completing 3 years' service would be 31.3.1987. Those who have not completed this period by 31.3.1987 will have no claim for regularisation. Thus the question of continuing such Mobile Book-<sup>3/</sup>ing Clerks who have not completed 3 years' service till they complete it by ignoring the fact that the scheme has been discontinued, does not remain to be settled now. In the ratio of the Hon'ble Supreme Court's orders, those who have not completed three years' service by 31.3.1987 have no case for regularisation. The applicant worked intermittently between the period 1981 to 1984 and has not been engaged thereafter. He had not completed three years' service too by <sup>31<sup>st</sup> March</sup> 1987. Hence, though his case may be similar to that of those covered by this Bench's judgment in O.A. No.486 of 1987 and connected case the clarification regarding the cut off date seals his fate.

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9. In view of the above we find no merit in the application. The application is accordingly rejected. We make no order as to costs.

*S. Narayan*  
MEMBER (J).

*S. S. S. R. A.*  
MEMBER (A).

Dated: June 28/6, 1988.

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