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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

Registration (OA) no. 486 of 1987.

S.K. Agarwal and others

applicants.

Versus

Union of India through G.M.
Northern Railway, New Delhi & others.

Respondents.

CONNECTED WITH

Registration(OA) no. 579 of 1987.

Sunil Kumar and others.

applicant

Versus

Union of India and others.

Respondents.

Registration (OA) no 872 of 1987

P.N. Tripathi and others

applicants.

Versus

Union of India and others

Respondents.

Hon'ble D.S. Misra, A.M.

Hon'ble G.S. Sharma, J.M.

(Hon'ble D.S. Misra)

These are three connected applications under Section 19 of the A.T. Act XIII of 1985 against the termination of their services in violation of the policy decision contained in the letters dated 21.4.82 and 20.4.85 of the Government of India, Ministry of Railways and will be decided by a common judgment.

2. In Original Application no. 486/87 there are 17 applicants and in Original Application no 579/87 there are 3 applicants, who claimed to have worked as volunteer booking

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clerk, under Station Superintendent Allahabad ~~Railway of~~
Allahabad Division, Northern Railway for periods ranging from
1 to 5 years. In O.A.No. 872 of 1987 there are 8 applicants,
who have claimed to have worked as ^{Volunteer} Inquiry cum Reservation
Clerk at Allahabad under Northern Railway for periods ranging
from 6 months to 5 years.

3. The case of the applicants is that they are entitled
for regularization of their services and absorption against
reserved vacancies in terms of the Ministry of Railway
Circular dated 21st April, 1982 (annexure 1) to the application
in OA no. 486/87 which provides that volunteer booking clerks,
who have been engaged on certain rates of honorarium per
hour may be considered for absorption against regular vacancies
provided that they possess minimum qualifications required
for direct recruits and have put in a minimum of 3 years
service as volunteer booking clerk. The circular also provides
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. In the year
1983, the Railway Board issued another Circular dated 5.2.1983
for regularization of mobile booking clerks who had put in
3 years of service on 1.9.82 (copy annexure 2). In the year 1985
again the Government of India, Ministry of Railways issued
a circular letter dated 20.4.85 (copy annexure 3) informing
the General Managers All India Railways that on receipt of
representation, it has been decided that the volunteer/mobile
booking clerks who were engaged prior to 14.8.81 may also
be considered for absorption against regular vacancies on
the same terms and conditions as stipulated in the Ministry's

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letter dated 21.4.1982 except that to be eligible for screening a candidate should inter-alia be within the prescribed age limit after taking into account the total period of his engagement as volunteer/mobile booking clerk. The Union of India, Ministry of Railways have issued a circular dated 17.11.86 to the General Managers of All India Railways directing that the practice of engaging volunteer/mobile booking clerks on honorarium basis should be discontinued forthwith (copy annexure 7). The applicants after seeing the above circular made representations to the General Manager, Northern Railway (respondent no 2) praying for their absorption in regular vacancies on 20.2.87 (copy annexure 6), but the respondent no 2 did not pay any attention to the representations and passed orders for termination of their services which have become effective w.e.f. 31.3.87. The applicants have sought a direction to respondents to withdraw the circular letter dated 17.11.86 and to re-engage the petitioners with retrospective effect, i.e. 1.4.1987.

4. The case of the respondents is that in order to provide facilities to the passengers and deal with their rush in summer season and similar other occasions, it was decided by the Railway Board (true copy of letter dated 9.4.84 annexure CA1) to permit engagement of Class IV staff and retired railway employees to work in booking offices, inquiry and reservation offices as per details provided for a specified period which was fixed to be 90 days only; that the persons so engaged were to be paid on daily wage basis; that the above persons continued till the year 1986; that in the year 1986, the Railway

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Board introduced the new scheme known as SIG Scheme (Service Improvements Group Scheme) which provided for engagement of unemployed wards of serving railway employees at Allahabad Stations on hourly wage basis w.e.f. 1.4.86 (copy of letter dated 14.3.86 annexure CA 7); that this scheme clearly provided that the persons engaged should be made aware that their engagement on hourly wage basis will not confer upon them any right for continuance or to claim regular employment in railway department in future; that the Railway Board vide its letter dated 17.11.1986 discontinued the aforesaid scheme and the engagement of the applicants stands terminated w.e.f. 31.3.87; that none of the applicants has completed 3 years of service and the instructions contained in the Railway Board's letters dated 21.4.82 (annexure 1 to the application), 5.2.1983 (annexure 2 to the application) and 20.4.85 (annexure 3 to the application) were not applicable to the applicants, who were engaged for short durations not exceeding 90 days; and that the applicants have no right to claim regularization.

5. The applicants filed rejoinder/affidavit. A supplementary counter affidavit was filed on behalf of the respondents and a supplementary rejoinder affidavit was filed on behalf of the applicants. The applicants filed a copy of the judgment of the Principal Bench in Original Application No. 1174 of 1986 MISS. NEERA MEHTA AND OTHERS VS. UNION OF INDIA in which the applicants were working as volunteer/mobile booking clerks and their services were sought to be terminated vide a telegram issued on 15.12.86. In that case the Principal Bench had stayed the operation of the above mentioned order by its order dated 24.12.86 and by its order dated 28.8.87 allowed the application by holding that the

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instructions contained in the communication dated 15.12.86 regarding discharge of mobile booking clerks insofar as it related to the applicants, was arbitrary. It also directed that all the applicants in that case 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 engagements subject to their fulfilling all other conditions in regard to qualifications etc. as contained in Circulars dated 21.4.82 and 20.4.85.

6. We have heard the arguments of the learned counsel for the parties. The case of the applicants in OA no. 486 of 1987 and no. 579 of 1987 is similar to the case of the applicants in OA no. 1174 of 1986 decided by the Principal Bench New Delhi vide its judgment dated 28.8.87. The above mentioned judgment gives the history of the scheme introduced for helping the regular railway staff engaged in clearing the rush during the peak hours and also to provide part time employment to wards of railway employees. The judgment has also discussed and rejected the plea taken by the learned counsel for the respondents that since the scheme has been discontinued on 14.8.81 and most of the applicants were engaged after 9.1.1984, as such they were neither covered by the original scheme of the Railway Board introduced in the year 1973, which was discontinued on 14.8.81, nor by the scheme of regularization as envisaged in the Railway Board's Circulars dated 21.4.82, and 20.4.85. It would be relevant to quote paras 4 and 5 of the judgment which deals with the subject under consideration in OA no. 486 of 1987 and 579 of 1987.

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"(para 4)-In the present case, the Railway Board themselves introduced a scheme of regularisation and decided upon the date of 14.8.81 as being the cut-off date for determining eligibility to regularise voluntary/mobile booking clerks. The only significance of this date is that the scheme for engaging mobile booking clerks was discontinued on that date. However, enough material has been placed before us to show that the scheme was in fact not discontinued on the said date. The circular dated 21.4.82 refers to the Railway Board's wireless dated 11.9.81 in which the General Managers of the Zonal Railways were advised that the engagement of the volunteer booking clerks may be continued on the existing terms till further advice. A copy of the said wireless has been filed as annexure RIX of the reply to the additional rejoinder and reads as follows:-

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No E(NS)III-77/RCI/80(.) IT HAS BEEN REPRESENTED TO THE BOARD THAT EASTERN RAILWAY ARE TAKING ACTION TO TERMINATE THE SERVICES OF EXISTING VOLUNTEER BOOKING CLERKS ON THE STRENGTH OF BOARD'S LETTER NO. 80/TS-I/106/12 DATED 14.8.81(.) THE INTENTION OF THESE INSTRUCTIONS IS NOT TO ABRUPTLY TERMINATE THE SERVICES OF EXISTING VOLUNTEER BOOKING CLERKS(.) THE BOARD DESIRE THAT THE ENGAGEMENT OF THESE VOLUNTEER BOOKING CLERKS BE CONTINUED ON THE EXISTING TERMS TILL FURTHER ADVICE."

The last sentence of the above wireless message clearly envisages that the engagement of the volunteer Booking clerks was to be continued on the existing terms till further advice, and the various Railway Administrations in fact continued to engage volunteer/mobile booking clerks. This position is further confirmed by the Railway Board's circular letter no E/NS/II/86/RC3/87, dated 17.11.1986, a copy of which is filed as annexure A-1 to the petition. The opening paragraph of the said circular is extracted below.

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"As railway administration are aware, the Board had advised all the Railway to discontinue the practice of engaging the voluntary mobile booking clerks on honorarium basis for clearing summer rush, or for other similar purpose in the booking and reservation office. However, it has come to the notice of the Board that this practice is still continuing in some of the Railway Administrations. The Board consider that it is not desirable to continue such arrangements. Accordingly wherever such arrangements have been made, they should be discontinued forthwith, complying with any formalities required or legal requirements."

From the above, it is clear that in fact the practice of engaging volunteer/mobile booking clerks was finally discontinued only from 17.11.1986 when alternative measures for coping with rush of work ~~was~~ suggested in the circular dated 17.11.1986. Even if the Railway Board intended the discontinuance of the scheme from an earlier date, they did not take any effective steps to ensure its discontinuance prior to 17.11.1986 when they came forward with alternative measures for coping with the rush of passengers during peak season. In the circumstances, fixation of 14.8.81 as the cut off date for regularisation ^{but} cannot be considered as arbitrary and to deny the benefit of regularisation to persons appointed after the said date would be clearly discriminatory. We are also unable to accept the contention of the learned counsel for the respondents that the engagement of most of the applicants was in pursuance of a new scheme evolved by the Northern Railway vide their letter dated 9.1.1984 and that the same should take out the applicants from the ambit of regularisation as envisaged by the Railway Board's circular which applied to the original scheme only. In this letter of 9th January, 1984, a reference is made in the opening paragraph to D.O. dated 12.6.83 from the Director Traffic(Tourism), Railway Board addressed to CCS N.Railway, to the effect that some measures should be adopted to provide adequate booking facilities at various important stations particularly during the peak periods. The learned counsel for the respondents was at pains to emphasise that if the original scheme which had been introduced in 1973 were still in operation, where

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was the need for the Railway Board to say that some measures should be adopted for providing booking facilities during the rush period. On the other hand, this can also be interpreted to mean that since a scheme was already in vogue, only measures were required to be taken under the existing scheme, which did not call for any fresh approval or sanction from the Railway Board. The need for deployment of voluntary booking clerks during peak season and rush hours in the railways is a perennial phenomenon which the Railway Administration is well aware of and the Railway Board came out with alternative measures only in 1986 to cope with the rush during peak season after discontinuance of the practice of engaging volunteer mobile booking clerks. From this, it is obvious that the scheme was in effect discontinued only from 17.11.1986 by the Railway Board and the various Railway offices had continued to engage these mobile booking clerks after 14.8.81. In fact, the wireless dated 11.9.1981 and the circular dated 21.4.82 establish beyond doubt that the engagement of volunteer booking clerks was to continue on the existing terms and conditions till further advice.

5. 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 other similarly placed who were engaged prior to 14.8.1981 have been absorbed subject to fulfilment of the requisite qualifications and length of service."

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7. The judgment has referred to the law laid down by the Hon'ble Supreme Court in the case of Inderpal Yadava vs. Union of India, S.L.R. 1985 (II) page 248 regarding regularization of casual labour under the railways. In this judgment, there is also a reference to a decision of the Calcutta Bench of the Tribunal in Sameer Kumar Mukherjee and others vs. G.M., Eastern Railway and others (ATR 1986(II) CAT 7) in which case the applicants were engaged as volunteers on daily wages basis to assist the Railway Ticket Checking Staff for a short period and their employment was extended from time to time. They worked continuously for a period of more than a year and their services were sought to be dispensed with. It was held in that case that the payment received by the applicants was nothing but wages, that they were casual employees and by working continuously for more than 180 days they were entitled to be treated as temporary employees and the termination of their services without notice or without giving any reason was clearly violative of the principles of natural justice and Articles 14 and 21 of the Constitution.

8. In O.A. no. 1174 of 1986, the Principal Bench has further observed: "once the Railway Board had introduced a scheme of regularization in respect of the volunteer/mobile booking clerks and the scheme had ~~in~~ effect continued till 17th November, 1986 with the tacit approval, express or implied, of the Railway Board when they came out with alternative measures for coping with rush of passengers during peak season, restricting the scope of the regularization scheme to those who were employed prior to 14-8-81, the so called cut off date, when the decision for discontinuing the scheme was taken, but actually not implemented, would be clearly discriminatory, arbitrary and violative of Article 14 of the Constitution. All volunteers/mobile booking clerks who were engaged on or

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before 17.11.1986 would be entitled to regularisation of their services on completion of three years of service subject to fulfilment of other conditions as spelt out in Circular No (NS) III-77/RCI/80, dated 21.4.2982 and No E(NS) II/84/RCI/80, dated 20.4.85 issued by the Ministry of Railways."

9. In our opinion the facts and circumstances of the case of the applicants in OA no. 486 of 1987 579 of 1987 are similar to the case of the applicants in Original Application No. 1174 of 1986 decided by the Principal Bench of the Tribunal and the Principle enunciated therein would, therefore, be applicable to these applicants also.

10. The applicants in O.A.no. 872/87 had started working as Reservation cum Inquiry clerk prior to the issue of instructions dated 17.11.1986. The services of applicants nos. 1 to 4 were dispensed with effect from 26.2.1987 and applicants nos. 5,6,7, and 8 are not working since 31.7.86, 21.7.86, 31.7.86 and 26.7.86 respectively. It has been admitted by the respondents that applicants nos. 1 to 4 and 8 have worked for more than 180 days and other applicants for less than that period. We are of the opinion that even though these applicants were not working as volunteer/mobile booking clerks, they were employed as volunteer reservation cum inquiry clerks under the scheme for providing help to passengers during rush periods and they are governed by the same terms and conditions as volunteer/mobile booking clerks. Accordingly we hold that the principles enunciated in the judgment of the Principal Bench in OA No. 1174 of 1986 would be fully applicable to the applicants in O.A.no. 872/87.

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11. In original application no. 1174 of 1986, the applicants had obtained a stay before their services could be terminated. In these three cases the services of all the applicants were terminated. However, applying the principle of the decision given by the Principal Bench of the Tribunal in OA no. 1174 of 1986, we hold that the applicants are entitled to be engaged by the respondents according to the requirements and in accordance with the scheme which was prevalent prior to the issue of Railway Board's Circular dated 17.11.1986. These applicants are also entitled for regularization and absorption against the 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 the Ministry of Railway Circulars dated 21.4.1984 and 20.4.1985. The applicants will be taken on duty forthwith and in any case within a period of one month from the date of receipt of this order. In the circumstances of the case, parties shall bear their own costs.

Sharma
27/4/88
A.M.

Sharma
J.M.

JS. 27.4.1988