

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 2nd day of May 2002

Original Application no. 1761 of 1994.

Hon'ble Maj Gen K.K. Srivastava, Member A
Hon'ble Mr. A.K. Bhatnagar, Member J

Onkar Nath, S/o Sri Ganga Prasad,
Halt Agent Purandarpur, Vill Badhara
Kanhai, P.O. Kavaladah, Alias Saildah,
Distt. Maharajganj.

... Applicant

By Adv : Sri S.K. Om

Versus

1. Union of India through Secretary,
Railway Board, New Delhi.
2. Chief Commercial Manager,
N.E. Rly., Gorakhpur.
3. Divisional Commercial Manager,
NE Rly., Ashok Marg, Lucknow.

... Respondents

By Adv : Sri V.K- Goel

O R D E R

Hon'ble Maj Gen K.K. Srivastava, AM.

In this OA, filed under section 19 of the A.T. Act, 1985, the applicant has prayed that the respondents be directed to absorb and appoint the applicant as Booking clerk permanently.

2. The facts, in brief, giving rise to this OA are that the applicant in pursuance to an advertisement for Ticket Selling Agent at Purandarpur Halt Railway Station, NE Rly., applied in 1983 and after interview he was appointed for selling Railway Tickets on commission basis w.e.f. July 1983. The agreement

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between the applicant and the respondents was reviewed from time to time, the last one on 1.1.1994 for period extending upto 31.12.1994. The applicant, having rendered 9 - 10 years of service to the Railway on Puranderpur halt station approached Divisional Commercial Manager (in short DCM) and Chief Commercial (in short CCM) for appointing and regularising his services as booking clerk but they did not consider his case. The applicant represented on 24.2.1993 and 12.8.1994 to Secretary (Establishment) Railway Board for regularising his service but the respondents refused to appoint and regularise his services. Applicant met DRM, respdt no. 3 on 3.1.1994 and handed over his representation dated 24.2.1993. Instead of regularising the applicant's services, he was directed by respdt no. 3 to execute a fresh agreement failing which the commission will be stopped from January 1994. Hence this OA which has been contested by respondents by filing counter reply.

3. Heard Sri S.K. Om, learned counsel for the applicant and Sri V.K. ^{Goel} ~~Swastava~~, learned counsel for the respondents and perused records.

4. Sri SK Om learned counsel for the applicant submitted that although the applicant was appointed as Ticket Selling Agent on commission basis his nature of work and duties were similar to that of a permanent Booking Clerk. He used to sell Railway Tickets to passengers entraining at Puranderpur Halt Station besides checking and collecting tickets from passengers detraining there. The learned counsel argued that the Railway administration did not post any Railway Official and therefore the applicant had to look after and protect the property of Railway consisting of building, trees, platform, electrical installations etc. In

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addition the applicant also maintains accounts, stock register, train cash book etc. He also receives parcels, carry on announcement for incomming and outgoing trains. Since nature of work of the applicant is permanent and ⁱⁿperennial in nature and he has ⁱⁿ~~xxx~~ rendered 9 - 10 years of service he is entitled for regularisation. The learned counsel has placed reliance on the judgment dated 29.10.1992 of this Tribunal Principal Bench in Pradeep Kumar Srivastava Vs. U.O.I. & Ors wherein the question of regularisation of Ticket selling Agents, Booking Clerks, Additional Booking Clerks, Mobile Booking Clerks and Social guides was considered and in para 15 of the judgment the question of contractual engagement was examined and it has been held that they are liable for regularisation. In the same judgment it has been further directed that in case of over age the petitioners would be entitled for age relaxation. Sri SK Om submitted that the case of the applicant is exactly similar and he is entitled for relief as the judgment of the Principal Bench in case of ~~PK~~ Srivastava (supra) has been affirmed by the Apex Court.

5. Sri S.K. Om learned counsel for the applicant submitted that the decision of Principal Bench in P.K. Srivastava case (supra) is binding as has been held by Full Bench of this Tribunal in CR Rangadharneiah & ors Vs. Chairman Railway Board & Ors 1994 Vol 27 ATC (FB) 129 that the decision of anearlier Division Bench is binding on the subsequent division Bench.

6. The learned counsel for the applicant submitted that the applicant's claim cannot be rejected on the ground of limitation. The learned counsel has placed reliance on the decision of Apex court reported in AIR 1988 Supreme Court 517 wherein the Apex Court has given the benefit of regularisation after 8 years. Similar view was also taken by Hon'ble Supreme Court in AIR 1988 SC 519. Learned counsel for the applicant has also relied upon

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another judgment of the Apex Court in National Federation of Railway Portors, Vendors and Bearers Vs. U.O.I. & Ors 1995 SCC (L&S) 1119.

7. Resisting the claim of the applicant Sri V.K. Goel learned counsel for the respondents submitted that the claim of the applicant is barred by limitation because the applicant is working as Ticket Selling Agent since 1983, whereas he has filed this OA in 1994. The cause of action arose much before.

8. The learned counsel for the respondents submitted that the OA is not maintainable because the applicant is not holding any civil post and is not covered under section 14 of the AT Act, 1985. The Tribunal has no jurisdiction. We do not agree with this ~~contention~~^{contention} of the learned counsel for the respondents. It was also submitted that any direction to regularise would mean framing of rules and regulation. ^{We leave} ~~this~~ question ~~is~~^{is} ~~left~~^{left} for respondents to act upon if considered necessary.

Sri V.K. Goel also contended that since the applicant was working on contract basis he is not entitled for regularisation and he is not entitled for the parity ^{with} ~~of~~ Ticket Selling Agent because he is working as half agent and as such his case is different from the case of Pradeep Kumar Srivastava (supra). The learned counsel for the respondents placed reliance upon an unreported judgment dated 23.7.2001 of this Tribunal in OA no. 1030 of 1999 Ghan Shyam Prasad Mishra Vs. Divisional Supdt. wherein this Tribunal rejected the claim of the applicant who was also working as Ticket selling Agent on the ground of limitation.

9. We have given due consideration to the submissions of the counsel for the parties and closely examined the material on record. We find substance in the submission of the learned counsel for the applicant that the judgment of this Tribunal in the case

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of Ghan Shyam Prasad Misra is per-in-curiam in as much as similar judgment of Apex Court which affirmed the judgment of Principal Bench in PK Srivastava/^{case}(supra) was not brought to the notice of this Tribunal and as such this Tribunal could not consider that judgment.

10. We would like to mention that on our specific query counsel for the respondents could not explain any difference between Halt Agent and Ticket Selling Agent. From the perusal of the agreement it is apparent that applicant has been mentioned as Ticket Selling Agent at Halt Station and therefore it appears that due to this reason applicant has mentioned himself to be a Halt Agent. We are of the view that there is no difference in Halt Agent and Ticket Selling Agent. We would like to reproduce the relevant paras of the decision of this Tribunal's Principal Bench which is final having been affirmed by the Hon'ble Supreme Court :

"(1)

(2) We hold that the period of service rendered by the applicants as Mobile Booking Clerks, which expression includes Volunteers, Ticket Selling Agents, Booking Clerks, Additional Booking Clerks, Mobile Booking Clerks, Ticket Collectors, Coaching Clerks and Social Guides, is irrelevant for the purpose of their reengagement.

(3) We direct that the respondents shall confer temporary status on the applicants with all attendant benefits after they complete/have completed 4 months of service as Mobile Booking Clerks. The period of 4 months shall be counted irrespective of the number of hours put in on any particular day. The period of service already rendered by them should also be counted for the purpose of conferment of temporary status.

(4) We direct that the applicants who have become overaged by now shall be given relaxation in age for

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the purpose of regularisation to avoid hardship.

(5) We direct that the period of service already put in by the applicants would count for reckoning completion of 3 years period of service which is one of the prerequisites for regularisation/absorption."

11. We are in respectful agreement with the decision of ^{of} Principal Bench/^{of} this Tribunal in PK Srivastava (supra) case and the present case is ^{is} squarely covered by the said decision.

12. In para 4.8 of the OA the applicant has stated that he is looking after the the Railway property besides booking/collecting tickets from Passengers/^{etch} as none from the Railway is posted there. The respondents in Para 11 of their counter have given an evasive reply mentioning that Railway administration has Engineering and RPF departments for the protection of its property and material and the applicant is not responsible for protection of Railway Property and is responsible only for performance of terms and conditions of the agreement. We do not ^{is} agree with ^{is} the argument advanced by the respondents. The fact that none from the Railway is posted at Puranderpur Halt, it is but natural for the applicant to safeguard the interest of Railways. Thus the work of the applicant is of permanent and perennial nature.

13. The National Federation of Railway Porters, Vendors and Bearers case (supra) is a case of Contract labour wherein Railway Parcel Porters were working in Railway Station on contract basis for last several years. On the petition filed by them in regard to their regularisation the apex court directed the Asstt. Commissioner (Labour) Central Govt. to verify their working and as to whether the work ^{is} permanent and ^{is} perennial in nature. On the report submitted by Asstt. Commissioner (Labour) their lordships of the Hon'ble Supreme Court held that though the

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porters are working on contract basis but since the work is permanent and perennial in nature, therefore, they are liable for regularisation. We have no hesitation in observing that the applicant's case is exactly similar to that of porter's case in as much as petitioners is continuously working from last several years, which itself shows that the post of Booking clerk is required and the same is permanent and perennial at Puranderpur Halt Station.

14. We do not agree with plea of the respondents that the case is barred by limitation. The applicant made representation to DRM Respdt no.3 in 1994 and when his request for regularisation was not considered, he filed this OA on 23.11.1994. The OA has been filed well within the period of limitation. However, in case there is any delay, in the interest of justice we condone the same.

15. In the facts and circumstances and aforesaid discussions OA is allowed. The applicant is entitled for his regularisation and permanent absorption in Railways. We direct the respondents to take action for regularisation of the applicant within six months from the date of communication of this order in the light of Judgment dated 29.10.1992 of Principal Bench of this Tribunal in OA 2277 of 1990 Pradeep Kumar Srivastava Vs. U.O.I. & Ors.

16. There shall be no order as to costs.

AV
Member (J)

Member (A)

02 May 2002

/pc/