

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

ALLAHABAD.

ORIGINAL APPLICATION NO. 431 OF 2006

ALLAHABAD THIS THE 19 DAY OF SEPT.2007

CORAM:

Hon'ble Mr. Justice Khem Karan, V.C.

Hon'ble Mr. K.S. Menon, A.M

1. Arvind Kumar, son of Shri C.D. Kumar, Resident of 1062/S19, Rajrooppur, Allahabad.
2. Shiv Prakash Shukla son of Late R.D.Shukla, Resident of 91 C/1, Sarvodaya Nagar, Allahabad.
3. Lalit Mohan Dubey, son of Shri Madan Mohan Dubey, resident of 201, Pura Baldi, Kydganj, Allahabad.
4. Brijesh Kumar Singh, son of Shri Raj Dev Singh, Resident of B-1610, Kareli Scheme, Allahabad.
5. Om Prakash Shukla, Son of Shri Thakur Prasad Shukla, Resident of Village Basaunhi, post office Manjhanpur, (Koraon), District Kaushambi.
6. Rajneesh Kumar Singh, son of Shri Heera Mani Prasad Singh, resident of 170 Manjhanpur, Allahabad City, Allahabad.
7. Harish Chandra Yadav, son of Shri kalu Ram, resident of 794, railway Colony, Chaufatka, Allahabad.
8. Shailendra Kumar Shriwas, son of Shri ram Sevak Shriwas, resident of 97/234, Jayantipur, Preetam Nagar, Sulem Sarai, Allahabad.
9. Jai Narain, son of Shri Ram Dev, Resident of 2/92-A, Ramanand Nagar, Allahabad.
10. R.K. Abbhi, son of Shri G.S Abbhi, resident of 656, D-LOCO Colony Allahabad.

..APPLICANTS

(By Adv: Shri Shyamal Narain)

VERSUS

1. Union of India through General Manager, North Central Railway, Allahabad.
2. The Divisional Railway Manager, North-Central Railway, D.R.M.Office, Nawab Yusuf Road, Allahabad.
3. Senior Divisional Personnel Officer, North-Central Railway, Nawab Yusuf Road, Allahabad.
4. Divisional Commercial Manager, North-Central Railway Nawab Yusuf Road, Allahabad.
5. Station Master, North-Central Railway, Allahabad Junction, Allahabad.

..RESPONDENTS

CONNECTED WITH

ORIGINAL APPLICATION NO.432 OF 2006

1. Rajendra Kumar Srivastava, S/o Late M.B.Lal R/o 98-C Kala Danda, Himmatganj Allahabad.

2. Sisir Kumar Srivastava (Porter)
S/o S.N.Srivastava, working Under Station
Master/ Block Hut EE

.. APPLICANTS

(By Adv: Shri Shyamal Narain)

VERSUS

1. Union of India, through General Manager, North Central railway, Allahabad.
2. The Divisional; Railway Manager, North Central Railway, D.R.M. Office, Nawab Yusuf Road, Allahabad.
3. Senior Divisional Personnel Officer, North Central Railway, Nawab Yusuf Road, Allahabad.
4. Divisional Commercial Manager, North-Central Railway, Allahabad.

.. RESPONDENTS

(By Adv: Shri B.B.Paul) *Shri Anil Dwivedi*

HON.MR.JUSTICE KHEM KARAN,V.C.

ORDER

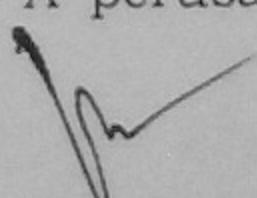
In both the O.As, applicants are challenging the notices, respectively issued to them U/S 25-F of Industrial Disputes Act, in purported compliance of orders dated 5.8.2005 of Hon'ble High Court at Allahabad in writ petitions referred to in the notices. They are also praying for commanding the respondents to treat them absorbed/regularized on the post they are working and also to promote them to the posts of Cabin Master in the grade of Rs.4000-6000.

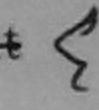
2. Brief facts giving rise to O.A. No.431 of 2006 are as under:
3. It transpires from perusal of order dated 4.11.1996 passed by this Bench in O.As No.1642 of 1994 to 1652 of 1994 (A-7) that all these 10 applicants worked as Voluntary/Mobile Ticket Collector in the Railways before 17.11.1986, for short spell. Armed with the decision of P.B in Neera Mehta's case A.I.R. 1991 (1) page 380 and Circular dated 6.2.1990, issued by Railway Board, they sought regular appointment. Some of the applicants of O.A. No.431 of 2006 (namely Nos. 1, 2, 7, 8, 9 and 10) and few others filed one O.A. No.793 of 1990 Atul Kashyap and others Vs. Union of India and others, for directing the Railways to give them the benefit of Circular dated 6.2.1990. Vide its order dated 21.11.1991 (A-3), a Division Bench of the Tribunal at Allahabad, disposed of that O.A., asking the respondents to consider their claim. The applicants of that O.A.of

1990, filed contempt case NO.159 of 1992, U/S 17 of Central Administrative Tribunal Act, 1985. It appears from perusal of order dated 28.1.1992 (A-4) that the Tribunal asked the opposite parties in the contempt case, to comply with directions dated 21.11.1991. It is alleged in para 4.10 of O.A., that in compliance of the said directions, the office of respondent NO.3 asked the respondent NO. 6 (perhaps No.5) to re-engage the applicants on conditions, as mentioned therein and they were engaged accordingly as Voluntary/Mobile Ticket Collector. Review application filed by respondents of O.A. of 1990, was pending. While the applicants were expecting conferment of temporary status and regularization, the respondents terminated their services in September, 1994, which they challenged by filing O.As No. 1642 of 1994 to 1652 of 1994.

4. All these 10 O.As of 1994 were disposed of by a common order dated 4.11.1996 (A-7). It transpires from perusal of this order dated 4.11.1996, that the main defence of Railways was that all of these applicant had worked for 10 days only and the same was not enough to confer on them any legal right. Their further plea was that circular dated 6.2.1990 of Board, did not apply to voluntary Mobile Ticket Collectors but to Mobile Booking Clerks. After noticing the decision of Apex Court in Sameer Kumar Mukherjee's, case, and Usha Kumar Anand's case, this Tribunal asked the respondents, to examine the cases of 10 applicants in the light of para 37 and 38 of Usha Kumar Anand's case. Special Leave Petition filed by Railways against said order dated 4.11.1996 was dismissed. The Railways filed applications under Rule 24 of the C.A.T (Procedure) Rules, 1987, requesting the Tribunal to refer the matter for decision to larger Bench, as there were conflicting decisions of the Tribunal. These application under Rule 24 were disposed of vide order 25.10.1999 (A-9). While the request for referring the matter to larger Bench was refused, but the Bench said in unequivocal terms in para 13 that in view of three judges decision of Apex Court in C.A. No.1015 of 1995, Volunteer Ticket Collectors were not entitled to the benefit of Usha Kumar Anand's case but were to be re-engaged as Volunteer and absorbed against Group 'D' vacancies.

5. But before this decision dated 25.10.1999, the applicants had already filed contempt applications, which were later on disposed of by a common order dated 10.1.2001 (A-8). A perusal of this order



dated 10.1.2001, would reveal that applicants (other than Atul Kashyap, who died) had already been engaged vide order dated 2.1.2001 as substitute Porter, on regular basis, in Group 'D', ~~but~~  subject to orders in writ petitions, pending in Allahabad High Court. The contempt proceedings were dropped.

6. In due course these applicants so appointed in January 2001, in Group 'D' appeared in written examination for promotion to the grade of Rs. 4000-6000 and were declared successful and put in panel dated 23.3.2006 (A-12).

7. The respondent NO. 3 issued general show cause notices dated 27.3.2006 U/S 25-F of Industrial Disputes Act, which are being impugned in this O.A. NO. 431 of 2006. It will be useful to reproduce the text of this notice and the same runs as under:-

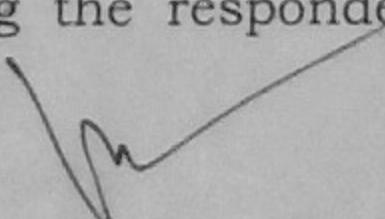
"In compliance of the orders passed by Hon'ble CAT/Ald in O.A. 1642/94, you are engaged in Group 'D' category as Substitute Porter/Box-Porter Gr. Rs. 2550-3200 (RSRP) although you did not fulfill the condition for re-engagement as per instructions issued by Rly Bd. And it was subject to decision in the writ petition filed by the Administration before Hon'ble High Court/Allahabad against the above CAT's orders.

Now in compliance with the judgment dated 05.8.2005 in Civil Misc. writ petition NO.2771/2000, you are hereby given notice for a period of 30 days from the date of receipt of this letter. On expiry of said period your services will be terminated.

Please acknowledge receipt of this letter"

8. Applicants are challenging this notice, mainly on the ground that, there is nothing in order dated 5.8.2005 of the High Court, which entitles the respondents to terminate the services of applicants u/s 25-F.

9. The facts in O.A. NO.432 of 2006 are almost similar to the facts in O.A. NO.431 of 2006. The two applicants say that they worked as Voluntary/Mobile Ticket Collector in Allahabad Division of Northern Railway in 1982. They filed one O.A. NO.722 of 1990 for giving benefit of Board's Circular dated 6.2.1990, which this Tribunal disposed of vide order dated 20.6.1991, asking the respondents reinstate and

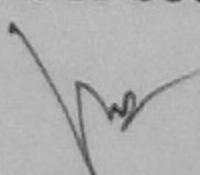


absorb them in term of Board's letter dated 21.4.1982 and 20.4.1985. It is said that in compliance thereof, they were issued appointment letters on 20.10.1991 and they joined as Mobile Booking Clerks on 26.2.1992. It was vide order dated 6.4.1998, that their services were terminated. They filed O.A. NO.414 of 1998 before this Bench, challenging the said termination. Vide its order dated 25.10.1999 the Tribunal set aside the termination order and directed the respondents to reengage or regularize them in Group 'D'. It is claimed in para 4.10 of O.A. and not denied by the respondents, that in compliance of orders dated 25.10.1999 they were appointed in December 2000, on the post of Porter in Group 'D' (A-4). It is said that writ petition No. 1605 of 2000 filed by Railways, against order dated 25.10.1999 has also been dismissed on 5.8.2005 (A-5). They also say that they appeared in written test held for promotion to the grade of Rs.4000-6000 and were empanelled (A-6). But before they could be promoted, they received a general notice dated 27.3.2006, U/S 25-F of Industrial Disputes Act. According to them, their services can not be terminated U/S 25-F as they never filed writ petition NO.2771 of 2000.

10. The respondents have contested both the O.As, almost on identical grounds. According to them, since the engagement/appointment of the applicants as Substitute Porter/Porter in Group 'D' were subject to the orders, to be passed in pending writ petitions and the Hon'ble High Court has clearly stated in its order dated 5.8.2005, that working for such a short spell of few days, does not entitle them to claim employment. Besides the above, they have also said that on a detailed enquiry, it was found that the applicants never worked in Railways on any post and so were not entitled to continue in service. They have tried to support their stand by referring to few decisions of High Court in writ petition NO.14888 of 2000 in W.P No.51926 of 2006.

11. By interim order dated 26.4.2006 passed in both the O.As, the respondents were restrained from passing final orders, pursuant to impugned notices. Those orders still hold good.

12. We have heard Shri S. Narain appearing for the applicants and Shri B.B Paul and Shri Anil Dwivedi appearing for the respondents and have gone through the material on record of both the O.As.



13. Shri Shyamal Narain has argued that there is nothing in High Court's order dated 5.8.2005, which permits the respondents to do away with the services of these applicants, which they got in compliance of the directions of this Tribunal, issued in respective OAs and proceedings. He goes on to argue that none of the writ petitions, which the Hon'ble High Court disposed of vide its order dated 5.8.2005, was filed by these applicants. The learned counsel submits that the dismissal of writ petitions NO.2771 of 2000 and 607 of 2000, does not affect the applicants, as none of the applicants was petitioner in those writ petitions. According to him, observations in last but one para of High Court's order dated 5.8.2005, also does not say that the respondents can terminate the services of the applicants. Shri B.B Paul has, however, argued that orders of the Tribunal stand merged in the order dated 5.8.2005, and since this order enables the respondents to verify the services of the applicants and pass the orders accordingly and since on verification it has been found that none of them worked, before 17.11.1986, so they are perfectly justified in issuing notices U/S 25-F of Industrial Disputes Act.

14. This much is not in dispute that the appointments of all these applicants (in both the OAs) in Group 'D' on the post of Porter/Substitute Porter were made in compliance of certain directions of this tribunal given in respective OAs and as per the statement of Shri B.B.Paul (see para 2 of Tribunal's order dated 10.1.2002 (A-8 in OA No.631/06), these were on regular basis subject only to the orders to be passed by the Hon'ble High Court Allahabad in pending writ petitions and by the Hon'ble Apex court relating to this matter. So the crux seems to be whether order dated 5.8.05 passed by the Hon'ble High court in writ petition No.2771 of 2000 'Dilip Kumar & Ors Vs. Union of India & Ors and in other connected 18 writ petitions namely W.P. Nos 53560/99,607/00, 10319/00, 1605/00, 54093/99, 17805/00, 18565/00, 17863/00, 17811/00, 17803/00, 17808/00, 17800/00, 17810/00, 11846/00, 10321/00 & 24100/98, enables the respondents to terminate applicant's services u/s 25-F of Industrial Disputes Act, 1947.

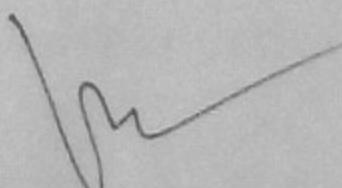
15. But before we advert to order dated 5.8.05 of the Hon'ble High Court, we would like to make a brief reference to the nature of controversy that was placed before the Hon'ble High Court, through the said 19 writ petitions.

16. Material placed on record by Shri B.B. Paul, the learned counsel for the Railways along with the affidavit dated 17.8.07 will make it

clear that few of the said writ petitions of the Union of India & Ors were directed against the order dated 25.10.99 (A-9 in OA No.431/06), passed on applications under Rule 24 of the Rules of 1987 in OAs No.1642/94 to 1652/94. Writ petition No.17800/00, 17802/00 etc are against this order. By this order dated 25.10.99 though the Bench rejected the request for referring the matter to the Larger Bench but in fact modified/clarified order dated 4.11.1996 by which the said OAs No.1642/94 to 1652/94 were finally disposed of asking the respondents to consider the cases of the applicants in the light of Para 37 and 38 of Usha Kumari Anand's case. Vide order dated 25.10.99 passed under Rule 24 of the Rules, 1987 the Bench clarified that the cases of these applicants, who claim to have worked as Mobile Ticket Collectors, for a short spell were not to be governed by what was said in 'Neera Mehta's case or in Usha Kumari Anand's case but their cases could be considered for re-engagement in Group 'D'. By filing the said writ petitions the Union of India & Ors challenged these directions for engagement in Group 'D'.

17. By another order dated 25.10.99 (A-3 in OA No.432/06) passed in OA No.414/98 (wherein applicants of OA No.432/06 were applicant No.1 & 3) and in OA No.581/98 filed by Sanjay Kumar Saxena, this Tribunal gave similar directions to the respondents to engage the applicants therein as Casual labour with temporary status, and with CIS scale in Group 'D' category and to regularize their services. Writ petition No.1605/00 filed by Union of India & Ors, is directed against this order dated 25.10.99.

18. By third order dated 25.10.99 (as annexed to affidavit dated 17.8.07), passed in OAs No.464/97 Dilip Kumar and Ors Vs. Union of India & Ors, OA No.65/94 Sanjay Kumar Singh Vs. Union of India & Ors, OA No.1940/94 Mithilesh Vikram Singh & Ors Vs. Union of India & Ors and OA No.545/97 Dheerendra Nath Saxena and Ors Vs. Union of India & Ors, this Tribunal concluded that the applicants were not entitled to the benefit of circular dated 6.2.1990 but their names may be entered in Live Casual Labour Register, after verification of their services, so that they may be engaged if casual labours are needed and be considered for regularization in Group 'D' as and when their turn came. Aggrieved of this order dated 25.10.99, Dilip Kumar and Ors filed one writ petition No.2771/00 and Prem Shanker and Ors filed another writ petition No.607/00 and aggrieved of the directions for accommodating these persons in Group 'D' Union



of India also filed writ petition, referred to in High Court's order dated 5.8.05.

19. Thus, all the three orders ~~though order~~ dated 25.10.99 passed in different cases were under challenge in writ petitions, decided by the Hon'ble High Court vide order dated 5.8.05.

20. Let us turn to the order dated 5.8.05, by which all the above 19 writ petitions were disposed of in one way or the other. Writ petitions No.2771/00 filed by Dilip Kumar and Ors and 607/00 filed by Prem Shanker and Ors, were dismissed with the conclusion that claim of the petitioners for re-engagement or regularization as Mobile Ticket Collectors was rightly turned down. The Hon'ble court observed that: 'it would be traversity of justice to permit the employment of the claimants inasmuch as same would violate Article 14 & 16 of the Constitution of India as there are separate rules duly framed in law for the recruitment of Ticket Collectors.

21. In so far as the directions of the Tribunal for re-engaging accommodating various claimants in Group 'D' were concerned, the Hon'ble High Court said like this:

"The other petitions filed by the railways challenging the same orders whereby the claimants have been directed to be placed in the live register of Group-D employee is concerned, the same has been pressed into service by Shri B.B. Paul relying on the decision of Maruti Udyog Vs. Ram Lal, reported in JT 2005 (1) SC 499, And it has been urged that the Tribunal has erred by Showing sympathy to the claimants which is impermissible in law. The directions contained in the order of the Tribunal, in our opinion, simply confers the benefit only in the event the services of the claimants is Verified and extends only a preferential consideration. To our mind the aforesaid directions do not in any way Prejudice the rights of any other casual labourer and, as such, the writ petitions filed by the railways against the aforesaid directions cannot succeed and are hereby dismissed."

Shri B.B. Paul appearing for the respondents in both the OAs has vehemently argued that it is the above portion of order dated 5.8.05, that enables the respondents to verify the fact as to whether the applicants actually worked as Volunteer Mobile Ticket Collector they prior to 6.2.1990 or 17.11.1986. He says the appointments of all these claimants in Group 'D' were subject to the orders to be passed in these writ petitions, so the applicants cannot object to the verification of their service and to dispense with their services on the basis of the result of such verification. It has been stated in para 13 of the affidavit dated 17.8.07 that the respondents undertake not to

take final decision against the applicants without (i) first verifying the alleged records of the applicants; (ii) considering their objection and (iii) affording adequate opportunity of hearing to each of the applicants. It appears to us that this undertaking was given in reference to the query of the bench during the course of the arguments as to how section 25-F of Industrial Disputes Act was being pressed into service, as the same related to retrenchment of a workman.

22. Shri Shyamal Narain argues that none of the present applicants had filed any writ petition before the Hon'ble High Court and so whatever observations have been made by the Hon'ble court in its order dated 5.8.05, in the context of the merits of the claim of Dilip Kumar & Ors cannot be pressed into service so as to oust the applicants from the job. He says that observations made in last but one paragraph of order dated 5.8.05 should not be read out of context and should be confined to the directions of the Tribunal given in cases of Dilip Kumar & Ors.

23. We have considered the respective submissions in the light of the entire material on record. As stated above, directions dated 25.10.99 of the Tribunal for accommodating the respective claimants in Group 'D' were subject matter of the decision of the Hon'ble High Court. It is not possible to confine the said observations / directions given in penultimate para of order dated 5.8.05, only to the claimants in OA No.464/97, 65/94, 1940/94 and 545/97. To say that while services of some of such claimants, who have been re-engaged in Group 'D' can be verified and action taken, and the services of the rest, who had been re-engaged in group 'D' and whose matters were before the Hon'ble Court, cannot be verified and action taken, appears to be a little ridiculous and illogical. Upon a careful perusal of order dated 5.8.05 we find ourself in agreement with Shri B.B.Paul that order dated 5.8.05 enables them to verify whether the applicants actually worked as Volunteer/Mobile Ticket Collector or Assistant to the checking staff, before they put their claim for re-engagement or regularization for the first time. If the result of this verification goes against the applicants before us, the respondents will be free to pass suitable orders accordingly and if the same goes in favour of them, then their services in Group D cannot be terminated on that ground.

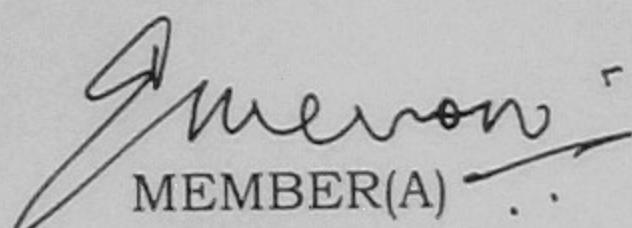
24. Since the respondents have themselves undertaken in para 13 of affidavit dated 17.8.07 that they will not take a final decision against the applicants without first verifying alleged service record,

without considering their objection and without affording adequate opportunity of hearing so the applicant should have no apprehension that justice will not be done to them.

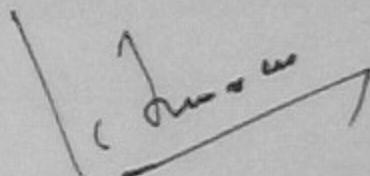
25. Notice U/s 25-F deserves to be quashed as case is not one of retrenchment. The case is one of action in terms of the orders of the Hon'ble High Court.

26. So all the two OAs are disposed of and the impugned notices u/s 25-F of Industrial Disputes Act are hereby quashed with a direction to the respondents not to take any decision against the applicants in regard to their services in Group D, without first verifying alleged service record, and without giving them an opportunity to file objection against any proposed move and also without affording reasonable opportunity of hearing to each of them. Both the OAs stand disposed of accordingly. No order as to costs.

27. Let a copy of this order be kept in the file of the connected OA i.e. 432/06.



J. Emerson
MEMBER(A)



VICE CHAIRMAN

Dated: September 19th, 2007

Uv/