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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. Nos. 816/87 & 79/88

198

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DATE OF DECISION 27.2.1991

1. Sharad B. Kadam
2. Tarun C. Agrawal

Petitioners

Mr. D.V. Gangal

Advocate for the Petitioner(s)

Versus

The Union of India & Ors.

Respondent

Mr. A.L. Kasturey

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. U.C. Srivastava, Vice-Chairman.

The Hon'ble Mr. P.S. Chaudhuri, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(U.C. Srivastava)
Vice-Chairman

12

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY
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Original Applications No.816/87 & 79/88

1. Sharad B. Kadam,
B-109, Mahavir Mahal,
Behind Parvati Cinema,
Vasai Road,
District Thane
... Applicant in
OA 816/87
2. Tarun C. Agrawal,
D/5 Shantabai Surajmal Estate,
Opp. Sundar Nagar,
Madina Manzil, Goregaon (E West),
Bombay 400 062.
... Applicant in
OA 79/88

V/s

1. Union of India through
General Manager,
Western Railway, Churchgate,
Bombay.
2. The Divisional Railway Manager,
Western Railway,
Bombay Central,
Bombay 400 008.
... Respondents

CORAM : Hon'ble Vice-Chairman, Shri U.C.Srivastava
Hon'ble Member (A), Shri P.S.Chaudhuri

Appearances:

Mr. D.V.Gangal, Advocate,
for the applicants and
Mr. A.L.Kasturey, Advocate,
for the respondents.

JUDGEMENT:

Dated : 27.2.1991

(Per. U.C.Srivastava, Vice-Chairman)

In these two applications filed under Section 19
of the Central Administrative Tribunals Act, 1985, an
identical question has been raised viz. the services of
the applicants in both of them were terminated by oral

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orders dated 14.2.1987 and 4.9.1987 respectively.

Mr. Sharad B. Kadam^m, the applicant in OA 816/87, applied^{to} the Western Railway for the post of Mobile Booking Clerk and he was appointed on 7.9.82 as Mobile Booking Clerk at Vasai Road. This appointment seems to have been made under Western Railway's circular dated 15.12.1979 regarding deployment of Mobile Booking Clerks from sons, dependents and relatives of Railway employees to work anywhere on the Bombay Suburban Section for issuing tickets outside the booking windows during morning, noon and evening hours. The working was to be three hours per day subject to a maximum of 100 hrs. per month for which they were to be paid honorarium @ Rs.1.75 per hour. The deployment was to be purely on temporary basis and they could be discontinued without any notice. The applicant in OA 79/88, Mr. Tarun C. Agrawal was similarly appointed as Mobile Booking Clerk with effect from 30.4.1982. He submits that he was undertaking the regular work of a Booking Clerk. They both submit that they were working for practically 8 hours a day, but they were paid only Rs.175/- p.m. for the maximum of 100 hrs. per month mentioned earlier. The applicants have prayed that the dismissal order is illegal and violative of Article 311 of the Constitution of India and that it be declared that they were in continuous service of the Railway and were entitled to full salary from the date of removal till reinstatement and that they should be granted consequential reliefs.

2. In the written reply the respondents have not denied that the applicants worked for practically eight hours daily but they only said that the applicants were submitting monthly vouchers and claiming honorarium specifying the number of hours worked during the month and that the engagement was purely temporary on honorarium basis for work not exceeding 100 hrs. a month.

3. We have heard the arguments of the learned counsel for the parties. The counsel for the applicants strenuously stressed the reliefs claimed by the applicants as similar cases had been decided earlier in favour of the applicants in those cases. In support of his contention the learned counsel cited a case decided by the Principal Bench on 28.8.1987 (Miss Neera Mehta & Ors. v. Union of India & Ors.) in which employees who were appointed as Mobile Booking Clerks on the Northern Railway between 1981 and 1985 on a purely temporary basis against payment on hourly basis challenged the termination order. The Bench after considering the legal and factual position allowed the application. The Principal Bench in this connection relied ^{on} a decision of ^{the} Calcutta Bench in Samir Kumar Mukherjee & Ors. v. General Manager, Western Railway & Ors. (ATR 1986 (2) CAT 7). In the Calcutta case also the applicants were engaged as volunteers to assist the railway ticket checking staff for a short period and then their employment was extended from time to time. No appointment letters were issued but muster-

roll was maintained for recording their attendance and they were paid at a fixed rate of Rs.8/- per day.

The Principal Bench observed:-

"8. Once the Railway Board had introduced a scheme of regularisation 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 regularisation scheme to those who were employed prior to 14.8.1981, 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 before 17.11.1976 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.E(NG) III-77/RCI/80, dated 21.4.82 and No. E(NG) II/84/RC3/8 dated 20.4.85 issued by the Ministry of Railways."

We find no reason to differ from the decision. It was contended on behalf of the respondents that there is vigilance case also against the applicants. That may be so, but it is for them to consider it at the appropriate time when the applicants are screened.

4. In view of what is said above, discontinuance of the applicants' services was not legal. Accordingly the order of discontinuation of the applicants is quashed. It is directed that both the applicants shall be considered for regularisation and absorption against regular posts after they have completed three years of service from the date of their initial deployment.

subject to their fulfilling all other conditions in regard to qualifications etc. as contained in circulars dated 21.4.1982 and 20.4.1985 (supra). In the circumstances of the case the parties will bear their own costs.



(P.S. Chaudhuri)
Member (A)



(U.C. Srivastava)
Vice-Chairman