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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH  
~~XXXXXXXXXXXX~~

O.A. No. 329/88

198

~~XXXXXX~~

DATE OF DECISION 6-9-1988

Shailesh Painter & 65 others Petitioners

None for the applicants Advocate for the Petitioner(s)

Versus

Union of India & 3 Ors. Respondent

Shri A.L.Kasturey Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. C.Venkataraman, Member (A)

The Hon'ble Mr. M.B.Mujumdar, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *Yes*

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH

ORIGINAL APPLICATION NO. 329 of 1988

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Shailesh Painter and/others ... Applicants

vs

1. Union of India, through the General Manager, Western Railway, Bombay-20.
2. Railway Board, Ministry of Railways, Government of India, New Delhi-110001.
3. Divisional Railway Manager, Western Railway, Bombay Central, Bombay-400 008.
4. Divisional Commercial Superintendent, Western Railway, Bombay Central, Bombay-400 008.

*Western Rly  
is a complete  
authority as  
per letter dt.  
30.9.88*

... Respondents

CORAM:

The Hon'ble Shri C.Venkataraman,  
Administrative Member.

&

The Hon'ble Shri M.B.Mujumdar,  
Judicial Member.

Appearances:

None for applicants

Shri A.L.Kasturey, Advocate for  
respondents.

J U D G E M E N T

(Per Shri C. Venkataraman, Administrative Member,  
Dated: 6-9-1988)

This application has been filed by 66 persons whose names are found in the application, who had been working in the Western Railway at Bombay in the Commercial Department. They had rendered service for various periods ranging ~~fr~~ up to five years from various dates between 1981 and 1984. The reliefs sought for in this application are:

(i) to direct the respondents to regularise the services of the applicants by absorbing them against regular posts in standard scales of pay, if need be, by a formal screening;

(ii) to direct the respondents to pay the <sup>i</sup> applicants arrears of emoluments as Assistant Coaching Booking Clerks for the entire period of service rendered by them as Mobile Booking Clerks;

(iii) in respect of the 8 of the applicants listed from Sl.Nos.59 to 66 in the application,

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to direct the respondents to withdraw and cancel their letter dated 8-4-1988, according to which their services as Mobile Booking Clerks were dispensed with.

When this matter came up before us to-day, though the learned counsel for the applicants could not be present, a number of applicants were present and in particular Shailesh Painter (Sl.No.1) and A.R.Kulkarni (Sl.No.59). The former is to be taken as representing the category of applicants from Sl.Nos. 1 to 58 who had been working with the Western Railway as Mobile Booking Clerks and who have not so far been regularised against regular posts. They are still continuing in the same capacity. The latter viz., A.R.Kulkarni represents the category of 8 applicants from Sl.Nos. 59 to 66, whose services have been terminated by an order dated 8-4-1988 by the respondents. They have agreed that this matter may be disposed of by this Tribunal to-day in spite of the absence of their learned counsel in the light of a similar case having been decided by the Principal Bench

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of the Central Administrative Tribunal  
in OA 1174A/1985 in which judgement was delivered  
on 28-8-1987. Our attention was also drawn to  
the fact that after the said OA 1174A/85 was ~~a~~  
allowed by the Principal Bench, the respondents  
had taken up the matter before the Supreme  
Court, seeking special leave <sup>to</sup> ~~of~~ appeal. But  
it was dismissed by the Hon'ble Supreme Court  
on 18-3-1988. Accordingly, we propose to  
deal with the present application:

The applicants were appointed as Mobile  
Booking Clerks in the Western Railway on  
different dates between 15-8-1981 and 26-4-1984.  
In fact, applicants from Sl.Nos. 1 to 58 ~~who~~  
had been appointed prior to 29-7-1983 whereas  
those from Sl.Nos. 59 to 66 were employed  
between 23rd October, 1983 and 26th April,  
1984. Their employment was under a specific  
scheme under which the services of volunteers

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out of sons and daughters of Railway employees were mobilised for work in the railways during peak hours or during seasons of heavy rush. The object of the scheme was that such an arrangement would not only help the low paid railway employees to supplement their income but also generate amongst their wards an urge to lend a helping hand to the railway administration in eradicating ticketless travel. According to two decisions of the Railway Board, one dated 21-4-1982 (Ex.C) and another dated 20-4-1985 (Ex.D) persons who had rendered a minimum of three years of service as volunteers/mobile booking clerks could be screened for absorption in regular employment. However, the ~~later~~ order dated 20-4-1985 filed as Ex.D restricted such regularisation against regular posts only to those who were engaged prior to 14-8-1981. In

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spite of the Western Railway administration's anxiety to absorb those who entered service as mobile booking clerks after 15-8-1981 also mainly on the ground that the reason for their engagement still existed, the Railway Board had not agreed to it and by an order dated 19-5-1987 the Western Railway was intimated that only those who were engaged prior to 14-8-1981 could be regularised. On that basis, while the Railway administration had allowed the applicants in Sl.Nos. 1 to 58 to continue in their present posts, evidently with the hope of further taking up the matter with the Railway Board, also took action on 8-4-1988 <sup>✓ according to</sup> ~~in~~ which the services of the 8 applicants from Sl.Nos. 59 to 66 were ordered to be discontinued with immediate effect. The applicants are aggrieved by these two orders dated 19-5-1987 (Ex.J) and dated 8-4-1988 (Ex.L). It has also been

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brought out by the applicants that they have not been paid pay in the same scale as regular booking clerks even though, according to them, they have been performing work for eight hours everyday and not merely for three hours as visualised in the ~~ee~~ scheme under which they were taken initially. The prayer is accordingly, that the respondents should be directed to regularise the services of the applicants against regular posts and in a regular scale of pay, if need be, by a formal screening. The respondents should be directed to pay them arrears of emoluments in the scale of pay applicable to Assistant Coaching Clerks and for a further direction to cancel or withdraw the letter dated 8-4-1988 at Ex.L under which the services of eight of them were discontinued.

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Shri A.L. Kasturey, the learned counsel appearing for the respondents stated that the matter relating to absorption of mobile booking clerks had come up for consideration before the Principal Bench of the Central Administrative Tribunal as brought out in a copy of the judgement of that Bench attached as Ex. 'N' to the application. He further made available for our perusal a communication No.E(NG)II/86/RC-3/87 dated 18th August 1988 from the Railway Board addressed to all the Zonal General Managers of Indian Railways. He pointed out that in terms of that letter instructions had been issued for the absorption in regular vacancies, of volunteer/mobile booking clerks who have completed three years of service as on 31-3-1987, subject to the terms and conditions stipulated by the Railway Board in their letters dated 21-4-1982 and 20-4-1985. The letter also

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invites a reference to the observation of the Supreme Court contained in their order dated 18-3-1988 under SLP No.14618 of 1987 and it concludes pointing out that the scheme of engagement of volunteers/mobile booking clerks on honorarium basis stands discontinued with effect from 17-11-1986. On this basis the learned counsel submitted that action is being initiated by the Western Railway administration for the regularisation of the services of the applicants.

decision of the

In the light of the/Principal Bench filed as Ex.N and the Railway Board's subsequent communication dated 18th August, 1988, when we examined the present application, we notice that all the 66 applicants had been taken as mobile booking clerks long before 17-11-1986 which is the cut off date for the operation of the scheme by the railways and the Railway Board's

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letter of 18th August, 1988 clearly specifies that whoever is appointed under the said scheme and had completed three years of service as on 31-3-1987 would be entitled to be absorbed on regular appointment. The applicants at Sl.Nos. 1 to 58 have completed more than 3 years as they had all been appointed long before 17-11-1986. The applicants from Sl.Nos. 59 to 66 have also been appointed prior to <sup>17-11-1986.</sup> ~~26-4-1987~~. As far as the first category of 58 applicants are concerned, in the light of what has been stated above, we direct the respondents to absorb them against regular posts in regular pay scales subject to their fulfilling the conditions which have been specified by the Railway Board in their letters dated 21-4-1982 and 20-4-1985, which have been filed as Exs.C and D in this application. As regards the applicants at Sl.Nos. 59 to 66, since they all entered service prior to the

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cut off date of 17-11-1986 as mobile booking clerks, they are also entitled to be retained and their services now cannot be dispensed with. However, out of them only those who have completed three years of service as on 31-1-1987 have a right to be absorbed in terms of the Railway Board's communication dated 18-8-1988. We therefore set aside the 4th respondent's order dated 8-4-1988 at Ex. 'L' and further direct that out of the 8 persons whoever has completed three years of service as mobile booking clerk as on 31-3-1987 should also be considered for absorption along with the first 58 applicants against regular posts. *in terms of the Ry Bd's letter of 18.8.1988.*

The question then arises as to what should be the position in regard to a few of the applicants who may not have completed three years of service as on 31-3-1987. Since we are setting <sup>order of</sup> aside the/termination of their services, they

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should be deemed to have continued in service after 8-4-1988 also. Even though some of them may not have completed three years of service on 31-3-1987, they would have completed three years of service before 8-4-1988. Thus the benefit of absorption against regular posts should be extended to such of those applicants also even though they do not fulfil the completion of criterion of/three years as on 31-3-1987.

✓ We would now turn to the last prayer in the application viz., that of payment of arrears of pay and allowances to the applicants as if they had been working against regular scales of pay. On this question we note that the applicants had been appointed under a specific scheme which did not allow any pay as such to them. They were only paid certain honorarium evidently on the basis that they did not have to work full time as <sup>regular</sup> Railway employees do. The

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applicants have however alleged that they have been working for more than three hours a day and, in fact, as many hours as regular employees would normally work. On this question this Tribunal does not render a finding because it is not expected of this Tribunal to be a fact-finding commission in the matter. Besides, the applicants having been appointed under a specific scheme, till they are absorbed as regular railway servants, they have to be governed only by the terms and conditions stipulated under the scheme. In the light of the judgement of the Principal Bench as confirmed by the Supreme Court, they have now become entitled for absorption as regular railway servants. We have also ordered accordingly in the preceding paragraphs. Therefore, we are of the view that the applicants are not entitled to be paid as regular railway employees till they actually get absorbed.

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In this connection, we note from the judgement of the Principal Bench wherein the salient features of the scheme have been brought out that the appointment of volunteers/mobile booking celrks on honorarium basis did not depend upon the availability of regular vacancies or even posts.

In the light of the above, the application is allowed to the extent indicated in the preceding paragraphs. It is further ordered that the screening and absorption of the applicants may be completed and orders issued within a period of one month from the date of this order.

The application is disposed of as above.

There will be no order as to costs.

(M.B. MUJUMDAR)  
JUDL. MEMBER

(C. VENKATARAMAN)  
ADMV. MEMBER

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S.V.