

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment Reserved On: 18th October, 2010
Judgment Delivered On: 1st November, 2010

+ **W.P.(C) 1932/2005**

UOI Petitioner
Through: Mr.Jagjit Singh, Advocate

versus

NAND KISHORE & ORS. Respondents
Through: Mr.Anis Suhrawaray and
Mr.S.Mehdi Imam, Advocates
Mr.Ravi Kant Jain proxy for Mr.Amit
Anand, Advocate for R-72 and R-73

W.P.(C) 7894/2005

UOI Petitioner
Through: Mr.Jagjit Singh, Advocate

versus

S.K.SHARMA & ORS. Respondents
Through: Mr.Ravi Kant Jain proxy for Mr.Amit
Anand, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. Since common question of law arises for consideration in the two captioned writ petitions, arguments were heard in both the matters on 18.10.2010 and decision was reserved. The

present judgment decides both the writ petitions. Pertaining to W.P.(C) No.1932/2005 the relevant facts are that in the third report on commercial and allied matters published in the year 1991 Railway Convention Committee made recommendations for the employment of children and dependants of railway employees as Mobile Booking Clerks. The relevant portion of the said report reads as under:-

“The committee appreciate the idea of requisitioning the services of volunteers from amongst students sons/daughters and dependants of railway employees as Mobile Booking Clerks of work outside their college hours on payment of some honorarium during peak season or short rush periods. Such an arrangement would not only help the low paid railway employees to supplement their income but also generate among the students an urge to lend a helping hand to the railway administration in eradicating ticket less travel. The committee would, therefore, like the Ministry of Railways to take active steps to extend this system wherever it may be warranted. At the same time care will have to be taken to see that vested interest do not develop and that the objective of curbing the incidence of ticket less travel is efficiently sub-served with due regard to the need for effecting economy in all areas of Railway operation.”

2. Vide circular No.70-Tel/106/68 issued in the year 1973, the Railway Board accepted the aforesaid recommendations of the Committee and framed a scheme for employment of volunteers from amongst the children and dependants of Railway employees as Mobile Booking Clerks and employed hundreds of persons under the said scheme. Thereafter on 14.08.1981 a decision was taken by the Railway Board to discontinue the said scheme. Relevant would it be to note that the ethos to appoint children and dependants of railway employees as Mobile Booking Clerks was, as noted by the Committee, relevant extract whereof has been noted in para 1

above, they having gained knowledge in the field of booking and issuing tickets during peak seasons.

3. On 21.04.1982 circular No.E(NG)II-77/RC1/80 was issued by the General Manager, All Indian Railways, regularizing the services of the persons who were engaged as Mobile Booking Clerks and had put in three years service as Mobile Booking Clerks. The said circular reads as under:-

“The question of regularization of these Volunteer Booking Clerks through screening by a Departmental Committee of absorption on the Railways was again discussed by the NFIR during the PNM meeting held with the Board on 23rd and 24th December 1981. After taking into account all aspects of the case the Ministry of Railways have decided that these Volunteer/Mobile Booking Clerks who have been engaged on the various Railways on certain rates of honorarium per hour or per day, may be considered by you for absorption against regular vacancies provided that they have the minimum qualifications required for direct recruits and have put in a minimum of 3 years service as Volunteer/Mobile Booking Clerks. 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.”

4. On 20.04.1985 another circular was issued by the General Manager, All Indian Railways, regularizing the services of the persons who were engaged as Mobile Booking Clerks prior to 14.08.1981 and had put in three years service as Mobile Booking Clerks till 20.04.1985. The said circular reads as under:-

“The question of regularization of these Volunteer Booking Clerks through screening by a Departmental Committee of absorption on the Railways was again discussed by the NFIR during the PNM meeting held with the Board on 23rd and 24th December 1981. After taking into account all aspects of the case the Ministry of Railways have decided that these

Volunteer/Mobile Booking Clerks who have been engaged on the various Railways on certain rates of honorarium per hour or per day, may be considered by you for absorption against regular vacancies provided that they have the minimum qualifications required for direct recruits and have put in a minimum of 3 years service as Volunteer/Mobile Booking Clerks. 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.

Representations have been received in this Ministry that the absorption in regular employment of Voluntary/Mobile Booking Clerks who were engaged as such prior to 14.8.81 and who have since completed three years the matter has been examined and it has been decided that the Voluntary/Mobile Booking Clerks who were engaged prior to 14.8.81 may also be considered for regular absorption against regular vacancies on the same terms and conditions as stipulated in Ministry's letter NoE(NG)II/77/RC1/80 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 initial engagement as Voluntary/Mobile Booking Clerks."

5. The respondents Nos.1 to 21 of W.P.(C) No.1932/2005 and some other persons were engaged as Mobile Booking Clerks between 01.01.1985 to 17.11.1986. Since they did not fulfill the conditions prescribed in the circulars dated 21.04.1982 and 20.04.1985 the Railway Board terminated the services of the respondents Nos.1 to 21 and such other persons on 15.12.1986.

6. Aggrieved by the termination of their services by the Railway Board, the respondents Nos.1 to 21 filed an application bearing No.1174/1986 under Section 19, Administrative Tribunals Act, 1985 before Principal Bench, Central Administrative Tribunal, New Delhi.

7. After holding that although Railway Board decided to discontinue the scheme in question with effect from 14.08.1981 the same continued till 17.11.1986 and therefore 17.11.1986 should be taken as cut-off date for regularization of the services of Mobile Booking Clerks instead of 14.08.1981 vide judgment dated 28.08.1987 the Tribunal allowed the application of the respondents Nos.1 to 21. The relevant portion of the said judgment reads as under:-

“In view of the above discussion, the application is allowed. The instructions conveyed in communication dated 15.12.1986 (Annexure A2) regarding discharge of Mobile Booking Clerks in so far as it relates to the applicants is hereby quashed. It is further directed that all the applicants herein who were engaged on or before 17.11.1986 shall be regularized and absorbed against regular posts after they have completed three years of service from the date of their initial initial engagement subject to their fulfilling all other conditions in regard to qualifications etc. as contained in circulars dated 21.4.1982 and 20.4.1985....”

8. It be noted here that similar applications were filed by some other persons who were similarly situated as the respondents Nos.1 to 21, which applications were also allowed by the Tribunal in terms of the afore-noted judgment dated 28.08.1987 passed by the Tribunal in O.A. No.1174/1986. (See the judgments dated 29.05.1989 and 29.10.1992 passed by the Tribunal in the decisions reported as Usha Kumari Anand & Ors v Union of India & Ors ATR 1989 (2) CAT 37 and Pradeep Kumar Srivastava & Ors v Union of India & Ors ATR 1993 (1) CAT 185)

9. Aggrieved by the afore-noted judgment dated 28.08.1987 passed by the Tribunal, Ministry of Railways, Union of India i.e. the petitioner filed a Petition for Special Leave to Appeal under Article 136 of Constitution of India before

Supreme Court, which petition was dismissed vide order dated 18.03.1988 in the following terms:-

“We see no merit in the petition. But after hearing both the sides we would clarify that for the sake of removing doubts the date 17/11/1986 as accepted by the Tribunal shall be the cut off date for those who have qualified by putting three years of service by 31/3/1987 are entitled to the benefit of the order.” (Emphasis Supplied)

10. In view of the fact that the respondents Nos.1 to 21 had not put in three years of service as Mobile Booking Clerks by 31.03.1987 a letter dated 12.05.1988 was issued by the Railway Board terminating the services of the respondents Nos.1 to 21.

11. Aggrieved by the termination of their services, the respondents Nos.1 to 21 filed application(s) under Section 19, Administrative Tribunals Act, 1985 before the Tribunal. In view of the directions contained in the afore-noted order dated 18.03.1988 passed by Supreme Court the Tribunal dismissed the application(s) filed by the respondents Nos.1 to 21 vide order dated 17.05.1988.

12. Aggrieved by the order dated 17.05.1988 passed by the Tribunal, the respondents Nos.1 to 21 filed a Petition for Special Leave to Appeal under Article 136 of Constitution of India before Supreme Court. Vide order dated 30.09.1988 Supreme Court recalled its earlier order dated 18.03.1988. Thereafter vide order dated 20.02.1989 Supreme Court finally disposed of the petition in the following terms:-

“The Tribunal disposed of the claim by referring to the directions of this Court dated 18th March, 1988 in Special Leave Petition No.14618/87. In the meantime, the order dated 18th March, 1988, has been recalled and the Special Leave Petition is yet to be heard. In the circumstances, the impugned order

of the Tribunal dt. 17/5/1988, is vacated and the matter shall stand restored before the Tribunal for disposal in accordance with law.” (Emphasis Supplied)

13. In view of the directions contained in the afore-noted order dated 20.02.1989 passed by the Supreme Court, the application(s) filed by the respondents Nos.1 to 21 were restored before the Tribunal. Following the dictum laid down by the Tribunal in its earlier judgment dated 20.08.1987 passed in O.A. No.1174/1986 the Tribunal allowed the applications filed by the respondents Nos.1 to 21 vide judgment dated 04.06.1990. The relevant portion of the said judgment reads as under:-

“15. In view of the above discussion, we order and direct that respondents shall:

(i) regularize the Mobile Booking Clerks who were engaged prior to 17/11/86 by absorption against regular vacancies on completion of three years service and not actual 1095 working days. This will be, however, subject to the fulfillment of other conditions as provided in the Railway Board’s letters dt. 21/4/1982 and 20/4/1985.

(ii) confer temporary status with attending benefits on the applicants after they have completed four months service as Mobile Booking Clerks in accordance with the terms of their initial engagement. The period of four months shall be counted irrespective of number of hours put in on any particular day, having regard to the fact that the services of the Mobile Booking Clerks were available for full days.”

14. In view of the afore-noted judgment dated 04.06.1990 passed by the Tribunal, the services of the respondents Nos.1 to 21 were regularized and thereafter they were sent to Chaundasi, Uttar Pradesh to undergo training which was required to be undergone by the persons before being directly recruited to the post of Booking Clerk.

15. Thereafter a seniority list of Booking Clerks was published by the petitioner wherein seniority of the respondents Nos.1 to 21 was fixed on the basis of date of successful completion of training undergone by them.

16. Aggrieved by the aforesaid seniority list of Booking Clerks published by the petitioner, the respondents Nos.1 to 21 filed an application bearing No.1819/1992 under Section 19 of Administrative Tribunals Act, 1985 before the Tribunal. Vide order dated 06.08.1993 the Tribunal directed the respondents Nos.1 to 21 to make representations to the Competent Authority in respect of their grievance of fixation of seniority and that the Competent Authority should decide the said representations.

17. Accordingly, the respondents Nos.1 to 21 filed the representations before the Competent Authority however the Competent Authority failed to decide the same.

18. Aggrieved by the inaction of the Competent Authority, the respondents Nos.1 to 21 filed another application bearing No.1847/1994 under Section 19 of Administrative Tribunals Act, 1985 before the Tribunal. Vide order dated 20.07.1999 the Tribunal directed the petitioner/Competent Authority to decide the representations made by the respondents Nos.1 to 21 within a period of two months from the date of the said order.

19. Vide order dated 11.01.2001 the Competent Authority rejected the representations made by the respondents Nos.1 to 21 on the ground that the challenge laid down by the respondents to the seniority list in question is belated.

20. Aggrieved by the order dated 11.01.2001 passed by the Competent Authority, the respondents Nos.1 to 21 filed an

application bearing No.551/2002 under Section 19 of Administrative Tribunals Act, 1985 before the Tribunal inter-alia stating that the petitioner ought to have reckoned their seniority from the date of their initial engagement as Mobile Booking Clerks and not from the date of completion of their training.

21. Per contra, the stand taken by the petitioner before the Tribunal was that the respondents Nos.1 to 21 should be treated as persons directly recruited to the post of Booking Clerk and therefore in view of the provisions contained in paragraph 302 of Indian Railways Establishment Manual their seniority should be reckoned from the date of completion of training undergone by them.

22. Vide impugned judgment dated 30.07.2004 the Tribunal allowed the applications filed by the respondents Nos.1 to 21. It was held by the Tribunal that the petitioner committed an error in treating the respondents Nos.1 to 21 as persons directly recruited to the post of Mobile Booking Clerk and therefore provisions contained in paragraph 302 of Indian Railways Establishment Manual do not apply to the respondents Nos.1 to 21; that the recruitment of the respondents Nos.1 to 21 as Mobile Booking Clerks was in nature of a special recruitment which was to be governed by the conditions prescribed in the circulars dated 21.04.1982 and 20.04.1985 issued by General Manager, All India Railways and that when no requirement of training was prescribed in the circulars dated 21.04.1982 and 20.04.1985 issued by General Manager, All India Railways the petitioner committed an error in reckoning the seniority of the respondents Nos.1 to 21 from the date of completion of their training instead of

revoking the same from the date of initial engagement of the respondents Nos.1 to 21 as Mobile Booking Clerks.

23. The relevant facts pertaining to W.P. (C) No.7844/2005 are that, akin to respondents Nos.1 to 21 in W.P. (C) No.1932/2005 the respondents Nos.1 to 11 in said case were also engaged as Mobile Booking Clerks between 01.01.1985 to 17.11.1986. In view of the judgments passed by the Tribunal in O.A. No.1174/1986 and other identical matters the services of the respondents Nos.1 to 11 were also regularized and thereafter they were sent to Chanduasi, Uttar Pradesh to undergo necessary training.

24. On 31.01.2003 a circular was issued by the petitioner regarding the selection for the post of Enquiry cum Reservation Clerk. The relevant portion of the said circular reads as under:-

“Sub: Selection for the post of E & RC Gr.4500-7000 against Promotee quota.

It has been decided to hold a selection for (87) posts 65C & 235T of the above post from the willing staff of the following categories having 3 years of regular service in the grade in which they are working.

- | | | |
|----|--|-----------|
| 1. | Sr.Commercial Clerk/Sr.TCR/Sr.BC/Sr.GC/Sr.PL | 4000-6000 |
| 2. | <u>Commercial Clerk/CC/BC/GC/PL</u> | 3200-4900 |
| 3. | TC | 3050-4590 |
| 4. | STE | 4000-6000 |

Applications are invited from the candidates who have completed these conditions as on 31-1-2003.....” (*Emphasis Supplied*)

25. Having put in three years of service as Mobile Booking Clerks as on 31.01.2003, the respondents Nos.1 to 11 applied for selection to the post of Enquiry cum Reservation Clerk in terms of the circular dated 31.01.2003. However, the

petitioner did not consider the respondents Nos.1 to 11 for the said selection on the ground that the respondents Nos.1 to 11 had not put in 3 years of service as Mobile Booking Clerk from the date of successful completion of training undergone by them.

26. Aggrieved by the act of the petitioner in not considering the respondents Nos.1 to 11 for selection to the post of Enquiry cum Reservation Clerk, the respondents Nos.1 to 11 filed an application under Section 19, Administrative Tribunals Act, 1985 before the Tribunal inter-alia stating that since they had put in three years of service from the date of their initial engagement as Mobile Booking Clerks the petitioner ought to have considered them selection to the post of Enquiry cum Reservation Clerk.

27. Per contra, the stand taken by the petitioner before the Tribunal was that the respondents Nos.1 to 21 should be treated as persons directly recruited to the post of Booking Clerk and therefore in view of the provisions contained in paragraph 129 of Indian Railways Establishment Manual they should be considered eligible for selection to the post of Enquiry cum Reservation Clerk only from date of successful completion of training undergone by them.

28. After holding that in view of the judgment dated 30.07.2004 passed by the Tribunal in O.A. No.551/2002 to the effect that the requirement of training is not a condition precedent for regularization of services of Mobile Booking Clerks in question and that their seniority is to be reckoned from the date of their initial engagement as Mobile Booking Clerks the respondents Nos.1 to 11 are eligible for selection to the post of Enquiry cum Reservation Clerk inasmuch as they

had put in three years of service from the date of their initial engagement as Mobile Booking Clerks vide judgment dated 30.10.2004 the Tribunal allowed the applications filed by the respondents Nos.1 to 11.

29. Aggrieved by the judgments dated 30.07.2004 and 30.10.2004 passed by the Tribunal the petitioner has filed the above captioned petitions under Articles 226 and 227 of Constitution of India.

30. During the hearing of the above captioned petitions, learned counsel for the petitioner contended that the Tribunal failed to appreciate the true import of the paragraphs 129 and 302 of Indian Railway Establishment Manual and that successful completion of necessary training was a condition precedent for regularization of the services of the respondents in question as Mobile Booking Clerk. In support of the said contention, counsel placed reliance upon the decision of Supreme Court reported as Swapan Kumar Pal & Ors v Samitabhar Chakraborty & Ors (2001) 5 SCC 581 and the decision of a Division Bench of this Court reported as Union of India & Anr v Afroz Ahmed & Ors 2006 (88) DRJ 478 (DB).

31. Per contra, learned counsel for the respondents supported the impugned judgments dated 30.07.2004 and 30.10.2004 passed by the Tribunal.

32. As evident from the afore-noted conspectus of facts, the main plank of the arguments of learned counsel of the petitioner in W.P. (C) No.1932/2005 is paragraph 302 of Indian Railways Establishment Manual. The relevant portion of paragraph 302 of Indian Railways Establishment Manual reads as under:-

“302. Seniority in initial recruitment grades: -

Unless specifically stated otherwise, the seniority among the incumbents of a post in a grade is governed by the date of appointment to the grade. The grant of pay higher than the initial pay, should not, as a rule, confer on railway servant seniority above those who are already appointed against regular posts. In categories of posts partially filled by direct recruitment and partially by promotion, the criterion for determination of seniority should be the date of regular promotion after due process in the case of promotee and the date of joining the working post after due process in the case of direct recruit, subject to maintenance of inter-se seniority of promotees and direct recruits among themselves. When the dates of entry into a grade of promoted railway servants and direct recruits are the same they should be put in alternate positions, the promotees being senior to the direct recruits, maintaining inter-se seniority of each group.

Note (i) In case the training period of a direct recruit is curtailed in the exigencies of service, the date of joining the working post in case of such a direct recruit shall be the date he would have normally come to a working post after completion of the prescribed period of training.

....” (Emphasis Supplied)

33. According to the learned counsel for the petitioner, the expression *‘In categories of posts partially filled by direct recruitment and partially by promotion, the criterion for determination of seniority should be.....the date of joining the working post after due process in the case of direct recruit’* occurring in paragraph 302 when read with the note appended to the said paragraph shows that in terms of paragraph 302 the seniority of a ‘direct recruit’ is to be reckoned from the date of his joining a particular post after having successfully completed training prescribed for the said post.

34. There is no difficulty with the aforesaid proposition advanced by the learned counsel for the petitioner. However,

the question is that whether the respondents Nos.1 to 21 in W.P. (C) 1932/2005 and the respondents Nos.1 to 11 in W.P. (C) 7894/2005 were the persons who were directly recruited to the post of Mobile Booking Clerk.

35. The respondents in question were not appointed under the Recruitment Rules of the Railways. They were engaged in the Railways on temporary basis and their initial engagement was continued from time to time. At one point of time, the services of the respondents in question were terminated. However, on sympathetic and humanitarian considerations, by way of issuance of circulars dated 21.04.1982 and 20.04.1985 the Railways gave a concession to the persons who were similarly situated as the respondents in question by permanently absorbing them in the Railways subject to fulfillment of the conditions prescribed in the said circulars, which concession was directed to be extended to the respondents by various judicial decisions noted in forgoing paras.

36. In that view of the matter, the respondents in question cannot be treated as persons directly recruited to the post of Mobile Booking Clerk inasmuch as they were recruited in terms of special scheme contained in the circulars dated 21.04.1982 and 20.04.1985 issued by the Railways.

37. The necessary corollary thereof would be that the Tribunal has rightly held that the provisions of paragraph 302 of Indian Railways Establishment Manual do not apply in case of the respondents in question and thus the seniority of the respondents in question cannot be determined on the basis of provisions contained in paragraph 302.

38. We now proceed to examine paragraph 129 of Indian Establishment Railways Manual relied upon by the learned counsel for the petition in respect of W.P. (C) No.7894/2005.

39. Paragraph 129 of Indian Establishment Railways Manual reads as under:-

“129 (1) The vacancies in the category of Enquiry cum Reservation Clerk (ECRC) in scale of Rs.1200-2040 will be filled as under:-

(i) 25% by direct recruitment through Railway Recruitment Board; and

(ii) 75% by promotion by selection from amongst Commercial Clerks, Ticket Collectors who have completed three years service and are suitable in respect of ECRC involving direct contract with general public.

(2) Qualification etc. for direct recruitment are as under:-

(i) Educational: A university degree or its equivalent.

(ii) Age: Between 18 and 25 years.

(iii) Training and Stipend: Three months on a stipend of 1200/- per month.” *(Emphasis Supplied)*

40. As noted herein above, the Tribunal had directed the petitioner to regularize the services of the respondents in question on the same conditions as contained in the circulars dated 21.04.1982 and 20.04.1985 issued by the Railways. The conditions stipulated in the said circulars for regularization of services were that the concerned person should be within the prescribed age limit and should have put in three years of service. No condition with respect to completion of training before regularization was prescribed in the said circulars. By insisting on completion of three years of service after training, the petitioner is making an innocuous attempt to introduce a

new condition on the regularization of the services of the respondents in question.

41. The matter can also be looked at from another angle. There is no requirement under paragraph 129 that commercial clerk should have put in three years service after completion of his training. The petitioner wants to read the expression “who have completed three years of service” occurring in paragraph 129 as “who have completed three years of service after training”. When the language used is clear and unambiguous, it is not permissible to add words in a provision or a rule.

42. This takes us to the decisions relied upon by the learned counsel for the petitioner.

43. The decisions relied upon by the learned counsel for the petitioner are of no assistance in the present case(s) for they stand on a completely different footing than the present case. In the said decisions, the issue of fixation of seniority of promotees or direct recruits was being considered by the Courts and thus paragraph 302 of Indian Railway Establishments Manual was clearly applicable whereas in the present case paragraph 302 is not applicable for the respondents in question are neither promotees nor direct recruits as already held by us in foregoing paras.

44. Before concluding it may be highlighted that the appointment of the respondents of the two writ petitions was the result of successive rounds of litigation and in each one of them they succeeded. As a result their induction got delayed. This has to be factored in. Besides, their appointment was the result of an executive decision taken to induct them in service not as per the applicable service rules and even for said

reason the issue of assignment of seniority to said respondents has to be considered with reference to justice been accorded to them at the core of any decision making process.

45. In view of the above discussion, the above captioned petitions are dismissed. However, we refrain from imposing any cost.

(PRADEEP NANDRAJOG)
JUDGE

(SIDDHARTH MRIDUL)
JUDGE

NOVEMBER 01, 2010
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