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

Reserved on: 7th November, 2019

Decided on: 19th November, 2019

W.P.(C) 2432/2013

MRS. VINOD

..... Petitioner

Through: Mr. J. P. Shukla, Advocate.

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Ms. Shipra Shukla, Advocate.

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH**

J U D G M E N T

Dr. S. Muralidhar, J.:

1. The challenge in the present petition is to an order dated 19th November, 2010 passed by the Central Administrative Tribunal (CAT), Principal Bench, New Delhi in OA No. 2165/2009 as well as to an order dated 19th April, 2012 dismissing Review Application No.19/2011.

2. The issue involved in the case at hand concerns the plea for regularisation of the Petitioner, who was working as a Mobile Booking Clerk (MBC) in the Northern Railway, with retrospective effect, and for re-fixation of her seniority.

3. At the outset, it requires to be noted that there were two Petitioners in the above OA No. 2165/2009 before the CAT. The Petitioner herein was

Applicant No.1 there and one Jatinder was Applicant No.2. However, no petition appears to have been filed in this Court by the Applicant No.2.

4. The facts in brief are that the Railway Board formulated a scheme on 20th July, 1973 for engaging wards/sons/daughters of Railway Employees for dealing with peak hours traffic for ticket booking. In some of the Zonal Railways such staff were designated Mobile Booking Clerks ('MBCs') and in some other Zones, as 'Volunteer Booking Clerks' or 'Part Time Booking Clerks'.

5. Subsequently, on 21st April, 1982 the Railway Board issued orders stating that such of the MBCs who possessed the minimum qualification required for direct recruits and minimum three years' service should be considered for absorption against regular vacancies. The Scheme of engaging MBCs was continued till 17th November 1986, when the Railway Board issued final orders withdrawing it.

6. As far as the Petitioner is concerned, her father worked as a Special "A" Guard. She applied for being engaged as an MBC and worked in the office of the Chief Booking Supervisor at Amritsar between 30th April, 1985 to 14th May, 1985. Her services as a typist were also utilised in the Reservation Office in Amritsar.

7. After the Railway Board discontinued the scheme of engaging MBCs, some of them working in Delhi approached the CAT. The CAT disposed of those OAs by a judgment in *Neera Mehta v. Union of India (1989) 1 CAT 380* and subsequently, in *Usha Kumari v. Union of India ATR 1989 (2)*

CAT 37, wherein it held that MBCs who had been working prior to 1986 would be re-engaged and that after the completion of three years of service they should be regularised and absorbed in accordance with the circular dated 21st April, 1982 of the Railway Board. SLP (C) No. 14618/1987 filed by the Railways against the judgment of the CAT in **Neera Mehta v. Union of India (1989) 1 CAT 380** was dismissed by the Supreme Court.

8. The Railway Board then issued a circular dated 6th February, 1990 directing Railway zones to engage MBCs as and when it was approached by them. Those not re-engaged filed OAs before the CAT. Five such OAs were decided by a common judgment in **Pradeep Kumar Srivastava v. Union of India ATR 1993 (1) 185**. The SLP filed against this judgment was heard on 27th July, 1995, when the Supreme Court directed the Railways to re-engage those MBCs who had worked prior to 17th November, 1986, irrespective of the number of days they had worked.

9. Pursuant to the above orders, the Petitioner was re-engaged in the booking office at Jalandhar Cantonment from 2nd September, 1993. After completion of four months of service, she was medically examined and found fit by a medical certificate issued on 23rd December, 1993. She was given temporary status with all benefits. She was transferred from Ferozepur to Delhi in 1995.

10. Upon not being regularised after completion of three years of service on 1st September, 1996, the Petitioner submitted a representation to the Railways. By a letter dated 16th February, 2000 the Divisional Railway Manager (DRM), Northern Railway, Respondent No.3 herein, issued a letter

directing 44 MBCs, including the Petitioner, to report to the Headquarters for a written test to be held on 11th March, 2000. She was however not relieved to take such written examination. On 14th June, 2001 the Petitioner again made a representation seeking regularisation.

11. The Petitioner then filed OA No.1930/2002 in the CAT. By a judgment dated 11th February, 2004 the CAT allowed the said OA and directed the Respondents to consider the case of the Petitioner for regularisation. Thereafter, the DRM, Northern Railway issued orders for screening the Petitioner. She was also given formal training. Orders regularising her services were issued on 3rd October, 2008 and 29th October, 2008.

12. The Petitioner then approached the CAT in OA No. 2165/2009 seeking regularisation from an earlier date, on par with other MBCs whose services had been regularised. On 19th November, 2010 the CAT dismissed the OA No. 2165/2009. Thereafter, the Petitioner filed Review Application No. 19/2011. It is pointed out that the issue of regularisation of MBCs was held in their favour by the CAT and its judgment was upheld by this Court by the order dated 1st November, 2010 in W.P.(C) No. 1932/2005 (*Union of India v. Nand Kishore*). The SLP against the said order was dismissed by the Supreme Court on 21st October, 2011.

13. In the impugned judgment dated 19th November, 2010, the CAT observed that the terms of the scheme, which were formulated by relaxing the statutory rules, did not confer a legal right on the Petitioner to claim regularization of her services on the completion of three years.

14. The Petitioner states that the Respondents took as long as four years to regularise the services despite the directions of the CAT to give her all consequential benefits. There was no satisfactory explanation for the delay in complying with the order.

15. The CAT has in the first impugned order observed as under:

“10. As already mentioned above, the present regularizations are by way of exception to the regular Booking Clerks appointed under the rules through either of the channels of direct recruitment or promotion. Assuming for a moment the validity of the applicants' claims, such a retrospective regularization and re-fixation of seniority is bound to have its ripple effects on the other regular members of the cadre, appointed in accordance with the rules. In *Uttar Pradesh Power Corporation Ltd. Vs. Ayodhya Prasad Mishra & Anr.* [(2008) 10 SCC 139], the Hon'ble Apex Court had observed that treating un-equals as equals would offend the doctrine of equality. In *R.K. Mobisana Singh Vs. K.H. Temba Singh & Ors.*, [(2008) 1 SCC (L&S) 315], the Hon'ble Apex Court had ruled that retrospective regularization of ad hoc promotees did not entitle them to claim seniority over direct recruits. The ***Sheela Rani's*** case (supra) relied upon by the learned counsel for the respondents laying down the law that retrospective regularization cannot be allowed as it would upset settled seniority is relevant too.

The claims of the applicants are not found to be tenable on this ground as well.

11. Even though, the learned counsel Shri Mainee would insist regarding the applicants having suffered because of delayed action on the part of the respondents in completion of the prerequisites for regularization; the factual trajectory shows a rather tortuous course. It is found that even after the respondents had decided to discontinue the scheme, the same had been challenged before the judicial fora on a number of occasions. In the given context, to attribute any arbitrariness on

the part of the respondents would not be appropriate. We also find merit in the averment of the learned counsel Shri Dhawan that the regularization in the case of both the applicants has been done in accordance with the statutory provisions on completion of the prescribed conditions.”

16. The review application filed by the Petitioners/Original Applicants was also dismissed by the second impugned order dated 19th April, 2012.

17. Having heard learned counsel for the parties, the Court is of the view that the CAT ought not to have rejected the Petitioner’s plea for regularisation in the facts and circumstances of the case. The repeated orders passed by the CAT, which were upheld by this Court and the Supreme Court, made it abundantly clear that the Railway Board’s Circular dated 21st April, 1982, upheld in various judgments of this Court and the Supreme Court does give a legal right to the Petitioner to seek regularisation and absorption. In ***Railway Board v. P.R. Subramaniam AIR 1978 SC 284*** the Supreme Court has explained that the circular of the Railway Board carries statutory force of a Rule.

18. Further the judgments of the CAT in similar cases, including in ***Neera Mehta v. Union of India (1989) 1 CAT 380***, ***Usha Kumari v. Union of India (supra)*** and ***Pradeep Kumar Srivastava v. Union of India (supra)***, having been upheld by the Supreme Court, it is no longer open to the Respondents to single out the Petitioner for discriminatory treatment in the matter of regularisation as MBC. Indeed, the Petitioner’s case appears to be fully covered by the Railway Board instructions which have been upheld by the Supreme Court.

19. For all of the aforementioned reasons, the impugned orders of the CAT dated 19th November, 2010 in OA No. 2165/2009 and 19th April, 2012 in RA No. 19/2011 are hereby set aside. The Petitioner would be entitled to all the consequential benefits having been allowed the reliefs claimed in OA No. 2165/2009 as a consequence of this judgment. A direction is issued to the Respondents to regularise the Petitioner as MBC after having completed three years of service in that position i.e. after 1st September, 1996. There shall be no order as to costs.

S. MURALIDHAR, J.

TALWANT SINGH, J.

NOVEMBER 19, 2019

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