

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI**

ORIGINAL APPLICATION No.823/2000

Date of decision: 31.01.2020

**CORAM:- R. VIJAYKUMAR, MEMBER (A).
R.N. SINGH, MEMBER (J).**

Shri Abhay S. Dighe
Coupon clerk,
Under Railway Society's
Canteen, Lonavala.

... Applicant.

(By Advocate Shri S. V. Marne)

VERSUS.

1. The Union of India,
Through the General Manager,
Central Railway, Mumbai CST.,
Mumbai-1.
2. The Divisional Railway
Manager, Central Railway,
Mumbai CST, Mumbai-1.

..... Respondents.

(By Advocate Shri R. R. Shetty)

ORDER (O R A L)

Per: R.N.SINGH, MEMBER (J)

1. When the case is called out, Shri Vishal Shirke, learned proxy counsel appeared for Shri S. V. Mane, learned counsel for the applicant and Shri R. R. Shetty, learned counsel appeared for the respondents.
2. Heard the learned counsels for the parties.

3. This OA was originally considered by this Tribunal and dismissed vide order dated 12.10.2001. The matter was then taken to the Hon'ble High Court vide WP No.1597 of 2002 and the Hon'ble High Court of Bombay considered submissions on behalf of the parties and vide order/judgment dated 02.02.2018 set aside the order dated 12.10.2001 of this Tribunal and paras 7 to 9 of such order/judgment dated 02.02.2018 of the Hon'ble High Court reads as under:

"7. Learned Counsel for the petitioner invited our attention to the 38th yearly report of the Railwaymen's report, the name of the petitioner is shown as an employee of the canteen department. On the basis of the decision of the Apex Court in the case of **M. M. R. Khan (supra)**, 19 employees shown along with the petitioner in the canteen department have been regularized.

8. Learned counsel for the respondents supported the order passed by the Tribunal. In his submission, the decision in **M.M.R. Khan (supra)** has been considered by the Apex Court in the case of **Union of India and Ors. Vs. J. V. Subhainah and Ors. (1996) 2 Supreme Court Cases 258**. He invited out attention to paragraph 18 of the decision of the Apex Court wherein it is observed that if the employee of the Societies like cooperative canteens are declared to be Railway servants, there would arise dual control over them by the Registrar and Railway Administration but the same

was not brought to the attention of the Court when **M. M. R. Khan's** case was decided. In his submission therefore the petitioner's case is not covered by the decision of the Apex Court in case of **M. M. R. Khan** (*supra*).

9. In our opinion, having regard to the fact that 10 employees in the canteen department. under the Railwaymen's Consumer's Co-operative Society Ltd., Lonavla working with the petitioners who are similar situate have been regularized in service, the question whether the petitioner is also entitled to similar benefits will have to be gone into by the Tribunal. The petitioner was not represented at the time of hearing, it is therefore necessary in the interest of justice that one opportunity should be given to the petitioner to plead his case on merits. We also find that there are subsequent events which have come on record in this Court. It has also come on record that though the petitioner's case was considered for absorption, he was found unfit on medical grounds. The certificate dated 30/12/2006 issued by the B.J. Medical College & Sassoon General Hospital, Pune indicates that the petitioner is visually disabled and there is 100% permanent visual impairment in relation to his ocular condition. In the interest of justice therefore in our opinion it is necessary to give an opportunity to the petitioner to place this material before the Tribunal. In these circumstances, we are inclined to set aside the order passed by the Tribunal and remit the matter back to the Tribunal for a fresh decision on merits. The Tribunal may however consider the question of limitation sympathetically having regard to the fact that the petitioner was

prosecuting his challenge before this Court. Hence we are inclined to pass the following order.

ORDER

i) The judgment and order dated 12/10/2001 passed by the Tribunal in OA/823/2000 is quashed and set aside.

ii) OA is remitted to the Tribunal for a fresh decision on its own merits.

iii) Liberty is granted to the petitioner to apply for amendment of OA to raise appropriate challenges including the challenge to the order of termination.

iv) The Tribunal to consider the application for condonation of delay on its own merits and the question of limitation is kept open.

v) The Tribunal is requested to make endeavour to decide the OA as expeditiously as possible and preferably within a period of 6 months from today.

vi) It is made clear that we have not expressed any opinion on merits of the matter or on the question of limitation."

4. The applicant has then subsequently amended the OA and sought the following reliefs:

"(i) This Hon'ble Tribunal may kindly be pleased to direct the Respondents to regularize the applicant, keeping in view the Apex Courts' Orders/Railway Board's Orders/various paras quoted in IREM from 01.04.1990 and award him consequential benefits including seniority, scale etc.

(i-A) this Hon'ble Tribunal may be pleased to quash and set aside oral termination of the Applicant w.e.f. 15.09.2002 with all consequential benefits.

(i-B) In the alternative to prayer clause (I), this Hon'ble Court be pleased to direct the Respondents to absorb the Applicant as permanent railway employee w.e.f. 20.01.2004 with all consequential benefits, including arrears of pay, pay fixation, seniority, etc.

(ii) Any other relief or reliefs as this Hon'ble Court may deem fit and appropriate in the circumstances of the case.

(iii) It is also prayed that the cost of this petition will be awarded to the applicant, as he is forced to spend on avoidable litigation."

5. The applicant submits that he was an employee of the Railway Consumer's Co-operative Society Limited, Lonavala since 05.03.1986 and he was employed in the Canteen by this Society from that date. In this regard, to substantiate his claim, the learned counsel for the applicant invites our attention to the audit report filed by the Society (Annexure A-16) in which the list of employees under different categories are mentioned and in one of the annexures the name of the applicant is mentioned under the category of 'Canteen Department' along with 13 other persons

out of which 10 had been regularized by the respondents and 03 had left the service.

6. However, in orders of the respondents dated 20.01.2004 (Annexure A-18) the respondents had referred to a letter to the various corporate Society indicating that the applicant who is at Serial No.19 of this list had been found suitable after screening of staff working in quasi administrative organization connected with railways for absorption in grade-D category. However, during the medical examination conducted of the 31 candidates in this list so notified by the respondents it was found that the applicant was unfit for all categories on the basis that he had degradation in his visual condition. The learned counsel for the applicant argues that notwithstanding his medical report the applicant was in fact an employee of the canteen and therefore he was entitled to the regularization w.e.f. 01.04.1990 in accordance with the directions of the Hon'ble Apex Court in M.N.R. Khan Vs. Union of India, AIR 1990 SC 937.

7. The applicant had also filed a representation in this regard to the respondents

and consequent upon the orders of this Tribunal in OA No.1137/1998 decided on 27.06.2000 in which the respondents were directed to consider his request for regularization and to pass a reasoned and speaking order, which the respondents had passed an order dated 07.11.2000 (Annexure-3) in which they had contended that the applicant had always been working as Salesman in the Corporate Society since 05.03.1983 he was responsible for remittance and he was assisting on coupon distribution counter. Therefore, they held that the applicant was an employee of the Apna Bhandar of the Society and not of the Canteen and therefore he could not be considered for regularization w.e.f. 01.04.1990.

8. During the hearing the learned counsel for the applicant has reiterated his pleadings, made in the OA and has insisted on the credibility of the society's report which mentions the applicant as having been working in the canteen department. He also refers to the muster roll wherein he has been mentioned as working in the railway mains cooperative society for the period May 1987. Two persons have been

mentioned in the category of Salesman/Assistant Cook which include Shri Kondiram Mulchand Gandhi and the applicant Shri A. S. Dighe. Both these names find places in the Society's audit report and it is learnt that in the list of 31 persons considered for training by the respondents in their letter dated 31.01.2004 at Annexure A-18. Therefore, the learned counsel for the applicant argues that the applicant was actually serving as Assistant Cook in the canteen itself but not regularized whereas the other persons who have not been considered. The learned counsel for the respondents refers to the muster role for April 1990 in which both the persons Shri K. M. Gandhi and the applicant Shri A. S. Dighe are mentioned as Salesman.

9. The learned counsel for the respondents reiterated the pleadings of the respondents and has mentioned the assessment of facts as already recorded in the speaking orders. Though the learned counsel for the respondents vehemently opposes the relief claimed by the applicant, however, he has not been able to dispute the very findings of the Competent Authority under the

respondents in its speaking order dated 07.11.2000 wherein the finding has been returned that the applicant has always been working as Salesman in the Railways Consumers Co-operative Society Limited, Lonavala from 05.03.1986. He has not been able to explain why the audit report of the society could not be taken into consideration and once the similarly placed persons shown in the audit report had been considered and given the benefit of regularization w.e.f. 01.04.1990 the applicant should be deprived of such benefit.

10. We find that the respondents have opportunistically taken note of various other facts and denying the benefit of regularization to which he was entitled whereas persons similarly placed with him have been granted such a benefit.

11. In these circumstances, the OA is allowed. The termination order which was orally communicated in the year 2002, treated as 15.09.2002 is declared non-est and the respondents are directed to reinstate the applicant in a suitable supernumerary post in consonance of the provision of Section 47 of the

Disabilities Act and in case no suitable post is found by the respondents to accommodate the applicant to accommodate him against a supernumerary post keeping in view the provision of Section 47 of Disabilities Act.

12. Keeping in view the fact the applicant was required to be considered and declared as regular employee w.e.f. 01.04.1990 when the similarly placed persons were declared as such and he was not declared a regular employee w.e.f. 01.04.1990 on account of the reasons solely attributable to the respondents and the applicant has been deprived of the benefits flowing to him under the Disabilities Act, 1995 and the applicant was though always eager to work under the respondents, however, he had not been allowed to work by an oral order compelling him to approach this Tribunal and also the Hon'ble High Court of Bombay, the respondents are directed to treat the intervening period as spent on duty for all practical purposes including the vis-a-vis pension, increments, etc. in accordance with provisions of Disabilities Act and the peculiar facts and circumstances of this case.

13. The applicant shall be regularized at par with rest of his colleagues for whom orders have been passed by the respondents and he shall be entitled to counting of service for the purpose of grant of pension under the old pension scheme. The respondents, accordingly, shall pass necessary orders in this regard and accord him the consequential benefits which arise in his favour.

14. The aforesaid exercise shall be completed by the respondents as expeditiously as possible and in any case within three months from the date of receipt of certified copy of this order.

15. However in view of the facts and circumstances, no order as to costs

(R. N. Singh)
Member (J)

(R. Vijaykumar)
Member (A)

V.

JD
24/04/2020

