

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH : NEW DELHI

OA No.3183/2001

Date of decision: 12.09.2002

Ashok Kumar Pandey, Applicant

(By Advocate: Shri Chandra Shekhar)

VERSUS

Union of India & Others, Respondents

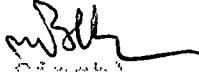
(By Advocate: Shri R.L. Dhawan)

CORAM:

The Hon'ble Shri M.P. Singh, Member(A)

The Hon'ble Shri Shanker Raju, Member (J)

1. To be referred to the Reporter or not? Yes


(M.P. Singh)
Member(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.3183/2001

New Delhi, this the 12th day of September, 2002

Hon'ble Shri M.P. Singh, Member (A)
Hon'ble Shri Shanker Raju, Member (J)

Ashok Kumar Pandey
514, Shakti Nagar
Chandausi (Moradabad), U.P. Applicant

(Shri Chandra Shekhar, Advocate)

versus

Union of India,

1. Chairman
Railway Board
Rail Bhavan, New Delhi
2. Chief Safety Officer
Northern Railways Hqrs., Office
Baroda House, New Delhi
3. Zonal Training Centre
Northern Railways, through its
Principal, Chandausi, Moradabad, UP
also as President, Mess Committee
Zonal Training Centre
Northern Railway, Chandausi,
Moradabad, UP Respondents

(Shri R.L. Dhawan, Advocate)

ORDER

Shri M.P. Singh, Member (A)

By the present OA, the applicant seeks directions to the respondents to regularise/absorb him as Catering Manager in the pay scale of Rs.4500-7000 Gr.'C' of the Indian Railways with all consequential benefits as admissible to his counterparts in Gr. C with further directions to the respondents to pay the back wages to him he is entitled to receive.

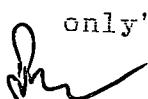
2. The case of the applicant is that he was appointed on 2.1.1978 on the post of temporary Store Clerk in the Mess Committee, Zonal Training Centre, Chandausi, Moradabad, UP. Thereafter, he was promoted from post to post and

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lastly he discharged the duty of Mess Manager. However, he came to know through newspaper on 8.11.2001 that Respondent No.4 terminated his services. The termination order has not been served on him. According to the applicant, there was no allegation, no charge sheet, no inquiry or no notice in respect of any disciplinary proceedings and his services have been terminated in a whimsical manner. He has therefore approached this Tribunal for regularisation/absorption of his services in pursuance of Railway Board directions dated 10.5.2001 by which a decision has been taken in respect of the Western Zone and Northern Zone employees in respect of quasi administrative offices/ organisations.

3. In the reply filed on behalf of Respondents No.1 to 3, it is stated that the services of the applicant have been terminated by the President, Mess Committee vide letter dated 31.10.2001 and the applicant has to approach the Labour Court for redressal of his grievance, which action was taken by 63 other workers of the Mess Committee whose services were terminated by the Mess Committee. In this connection the learned counsel for the respondents has drawn our attention to the judgement dated 30.7.1993 passed by the Labour Court in which the Presiding Officer has held that 'the condition of services of the posts are governed or regulated by the rules framed by the General Body of the Mess Committee. The duties of the domestic mess servants are only for the benefit of the trainees in their private capacity and salaries are not paid out of the revenue of the Railway. The appointment and conditions of the service of the mess domestic servants are governed by the Mess Committee only'. The learned counsel also submitted that the



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Respondents No. 3 is not a quasi-administrative organisation and the employees in the Mess Committee have been retained mainly on humanitarian grounds as the Mess is to run on contractual basis. Therefore, the claim of the applicant, being an employee of a purely private body, for regularisation as Mess Manager/Catering Manager in the grade of Rs. 4500-7000/- is not justified. In view of this position, the OA be dismissed.

4. Reply is also filed on behalf of R-4 opposing the OA. It is stated that this Tribunal has no jurisdiction to entertain the present OA. It is further stated that Mess Committee is not a quasi-administrative organisation of the Railway. It is a private body. R-4 can function even without messing facility, which is an additional facility for convenience of trainees. Applicant's last designation was Mess Assistant at Zonal Training Centre. In view of this position, the applicant is not entitled for any relief and the OA be dismissed.

5. We have heard the learned counsel for the parties and perused the records.

6. We find that the Presiding Officer, Central Government Industrial Tribunal, New Delhi, vide his judgement/order dated 30.7.1993 in ID No.5/86 and ID No.26/89 filed by the General Secretary, Zila Trade Union Council, Moradabad and the Mess Canteen Karamchari Union, Chandausi respectively, has held the view that 'the present claim filed by the employees of the Mess Committee is not based on facts and figures. They do not become railway employees by any stretch of imagination.

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Their mode of recruitment etc. all lead to this conclusion only'. The learned Presiding Officer, in his conclusion, has categorically held as under:

"The conditions and terms of service and other rules and regulations governing the service conditions of Mess domestic servants of of Zonal Training School Mess Committee, are approved by the managing committee, wherein the representative of the managing committee are the trainees only. The conditions of the employment service are governed purely by these rules. It is quite evident and established fact that appointment of the mess domestic servants is not made by the Railway but only by the President of the Zonal Training School Mess Committee and that none of the rules governing the railway employees are applicable to the Mess domestic servants. Mess domestic servant posts are not created by the railway nor these are being abolished by the Railway. The conditions of service of the post are governed or regulated by the rules framed by the General Body of the Mess Committee. The duties of the domestic mess servants are only for the benefit of the trainees in their private capacity and salaries are not paid out of the revenue of the Railway".

8. During the course of the arguments, the learned counsel for the respondents has submitted that the Union has gone in an appeal against the aforesaid judgement in the High Court and the matter is pending adjudication before that High Court. He further submitted that the applicant was not being paid from the consolidated funds of India and that he is not governed by the Railway Servants Appointment Rules.

9. The plea taken by applicant's counsel is that Mess Committee is a quasi-administrative office of the Railways, as per Railway Board's letter dated 30.5.2000. Even if it is considered that the Mess Committee is a quasi-administrative office of the Railways, we find that the letter dated 30.5.2000 pertains to recruitment in Group D category of the Railways of the staff working in quasi-administrative offices/organisations connected with

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Railways. The said letter stipulates that Railways may consider absorption of only those staff of quasi/administrative offices/organizations who were on roll continuously for a period of at least three years as on 10.6.97 and are still on roll subject to fulfilment of prescribed educational qualification required for recruitment to Group D posts. That apart, letter dated 30.5.2000 only provides for one of the sources of recruitment to Group D posts in Railways from amongst the persons working in quasi-administrative offices. Unless a person is recruited/absorbed from these organisations in Railways he does not become a railway servant. If a person is not a railway servant his termination can not be challenged in the Tribunal. In this case the services of the applicant have been terminated on 8.11.2001 and at present he is no more working even in the Mess Committee. Furthermore, the applicant was admittedly appointed as temporary Stores Clerk by the Mess Committee vide its letter dated 29.12.77 (Annexure 2) and not by the respondent-Railways.

10. The aforesaid position makes it clear that the present OA is not maintainable for want of jurisdiction and deserves to be dismissed. Applicant's reliance on the judgement of Hori Lal & Ors. Vs. UOI in OA 796/87 would render no assistance to him as the same is distinguishable and not applicable to his case.

11. In the result, for the detailed reasons discussed above, the present OA is dismissed being devoid of merit. No costs.

S. Raju
(Shanker Raju)
Member (J)

MPS
(M.P. Singh)
Member (A)

/gtv/