

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.252/99

New Delhi this the 9th day of November, 2000.

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE-CHAIRMAN
HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (ADMNV)

1. Indian Railway Conference
Association Employees Union
affiliated to NFIR and INTUC,
recognised by IRCA,
Chelms Ford Road,
New Delhi through
its Joint Secretary.
2. Durga Das, S/o Late Sh. Sain Das,
R/o 31/2, Kishan Ganj,
Delhi-110007.
3. V. Vasu S/o late V. Lakshman Rao,
6/4, Railway Quarters, Daya Basti,
Delhi.

...Applicants

(By Advocate Shri Rajiv Sharma)

-Versus-

1. Union of India through
Chairman Railway Board,
Principal Secretary,
Govt. of India,
Ministry of Railways,
Rail Bhawan, New Delhi.
2. General Secretary,
Indian Railways Conference
Association, DRM Office,
New Delhi.

...Respondents

(Shri V.S.R. Krishna, Advocate for Respondent No.1)

(Mrs. Meera Chhibber, Advocate for Respondent No.2)

O R D E R

Justice V. Rajagopala Reddy, Vice-Chairman (J):

This OA was filed for a declaration that the staff of Indian Railway Conference Association (IRCA for short) are Railway servants for all intents and purposes.

2. The IRCA Employees Union and two other members of the Association have brought this OA. It is the case of the applicants that the IRCA is effectively a part and parcel of the Railways, its staff discharge the

CA

functions for the benefit of the Railways and most of its staff are the Railway employees, the President and General Secretary being the General Manager and an officer of JA grade in the Railways respectively and the financial, administrative and supervisory control over the organisation of IRCA is with the Railway Board. Hence, it is argued, they should be recognised as Railway servants. It is also urged that the staff of the IRCA are governed by the Rules contained in Indian Railway Establishment Manual (IREM for short) and Indian Railway Establishment Code (IREC for short) that are applicable to the Railway servants and by the Railway Servants (Discipline & Appeal) Rules, 1968. It is also stated that this question is no longer res integra in view of the judgement of the Supreme Court in Hans Raj Arora v. Union of India & Others, (Writ Petition (Civil) No.8213/1983) and several other judgements of the various High Courts. It is, therefore, stated that the applicants are none other than the Railway servants and they should be recognised as such.

3. The respondents strenuously contested the OA, stating that IRCA is an organisation independent of the Railways, established in or about 1902 with its own fundamental rules, Discipline and Conduct Rules. The fund of IRCA was constituted by the funds contributed by the Railways including foreign railways and post railways and is governed by the IRCA conference rules framed by the IRCA itself and the staff are not governed by the rules framed under the proviso to Article 309 of the Constitution and, therefore, is neither controlled nor supervised by the

✓ Railways. The posts in IRCA are borne by the cadre of IRCA and the members of the Association are not appointed or controlled by the Railways but by the Association itself. (3)

4. We have heard the learned counsel for the applicants and the counsel for the respondents. The true nature and content of RICA is not discernible either from the OA nor much light was thrown by the arguments of the learned counsel of applicants or R-1. The applicants seek to rely upon bits and pieces of material gathered, and placed out of context. The counter filed by R-2 has however, revealed much information as regards the constitution nature and purpose of IRCA and its present functions. R-2 is the Secretary of IRCA and he placed on record as Annexures to his counter the report sent by the General Secretary in 1958 to the President-Elect of IRCA. The first part of report states, iter-alia, as under:

"In 1879, i.e., 25 years after the first rail had been laid in India, there was a network of 89 separate railway systems, covering a total milage of 8,475, but on account of a lack of a common set of rules and regulations, the user of rail transport was inconvenienced. The main drawback was the unwillingness of individual railway system to permit its own wagons to move over the other railways. This resulted in an unsatisfactory state of affairs and with a view to overcoming the difficulties, the Director-General of Railways, the then highest Government official incharge of railways, convened a conference of all railways in February 1879 in Calcutta. This was the first railway conference held. The main purpose of the Conference of 1879 was to frame rules for the movement of one railway's wagons over another as to quote Government of India's letter 18th March, 1879 addressed to the Secretary of the State for India. The rules then prevailing were unsatisfactory and in time of risk traffic were the cause of much friction between companies and inconvenience to the public. This letter further reads: 'Our first object was, therefore, to remedy this evil and to this end the Conference has framed a revised set of rules for the interchange of stock'. At this

(4)

Conference opportunity was also taken for discussing the following other subjects of importance:-

(1) General rules and Regulations for Open Lines of Railways.

(2) Draft of the Indian Railways Act.

(3) Establishment of Provident Fund for Railway Employees.

Encouraged by the results of the first conference the Director-General of Railways convened such conferences in the years 1880, 1882, 1884, 1888, various subjects relating to railway matters were discussed with a view to securing uniformity of practice and procedure.

Formation of
I.R.C.A. and
its functions.

2. From the experiences of these occasional conferences, necessity was felt of having regular sessions of the conference. At the 1902 conference it was accordingly decided to establish a permanent organisation - the Indian Railway Conference Association - independent of the Government - to conduct regular meetings of representatives of railways. The first session of conference, under the auspices of 'Indian Railway Conference Association' was held in October 1903. The object of the Indian Railway Conference Association as defined in the rules framed at this conference reads as under:-

".....The Association is constituted to frame or modify regulations for traffic inter-changed between railways party to the Association, and to act as a consultative committee and as a board of arbitration."

Committees and
Sections.

3. During the early period, the Association functioned through three main committees, namely (1) Goods Classification Committee; (2) Audit & Accounts Committee; and (3) Loco. & Carriage Superintendents Committee. These committees framed rules for interchange, accountal and maintenance. A Claims Arbitration Committee was also formed to settle disputes regarding inter-railway claims. Besides, an 'ad hoc' committee or Tariff Simplification was constituted in 1895 and on their recommendations, common Goods Tariff, Military Traffic Rules and Rules for the Conveyance of Explosives and other Dangerous Goods by Rail, applicable over all railways, were published by the I.R.C.A. in 1910. The first common Coaching Tariff for all railways was published by the I.R.C.A. in 1920. Similarly, a common set of rules for Train Engineers was first published by the I.R.C.A. in 1911.

5. Though rules regarding the movement of one railway's wagons over the other were framed at the first conference held in 1879, this matter

was the subject of discussion at many other sessions of the conference but the movements of wagons were still restricted in the absence of a central controlling authority. After the first world war it was decided by the I.R.C.A., on the suggestion of the Railway Board, to form a wagon pool on broad gauge sections to enable any railway's wagons being moved to any other system without hindrance. The scheme which was introduced as an experimental measure under I.R.C.A. was quite successful and it was put on a permanent basis in 1925.

Neutral Control.

6. Another very important function of the Association is that of a neutral authority for conducting examination of wagons at important junctions of more than one railway and other marshalling yards to ensure that each and every wagon passes from one railway to the other in a safe condition. This has ensured a high standard of maintenance of wagons.

Functions upto 1947.

7. Upto the year 1947, the functions of the I.R.C.A. related to the following:-

- (1) Conducting of nettings of technical sections, committees and the main conferences:
- (2) Framing of Rules for the management of traffic interchanged between railways;
- (3) Conducting of the wagon pool, road and Meter Gauge.
- (4) Conducting of Neutral Control of wagon examination.

A copy of Conference Rules, Part I, containing the constitution and functions of the I.R.C.A. is enclosed.

8.

1947 and onwards.

In pre-partition directive No.XVII it was stated that the Pakistan Railways would be members of the I.R.C.A. on conditions to be determined between the Pakistan Railways and the Association. The President of the I.R.C.A., Sir Jeffry Reynolds, met the then Chief Commissioner, Sir S.J.P. Cambridge; Member (Transportation); Mr. Rowlerson; and Member (Staff), Khan Bahadur Z.H. Khan. After discussion he submitted to the Railway Minister, in September, 1947, a draft revision of the functions and constitution of the I.R.C.A. The main recommendation was that the I.R.C.A. would be a completed neutral self-governing autonomous railway body; also that the Director of Wagon Interchange should not be under the control of the Railway Board. (Incidentally it may be mentioned

that a separate flag for the I.R.C.A. was also devised which was however abandoned as staff protested).

On receipt of the President, I.R.C.A.'s recommendations, the Chief Commissioner of Railways, in his (Enclosure A) D.O.No.630-TC, dated 15th October, 1947, replied that it was no longer necessary for the I.R.C.A. to function and that it should be dissolved and that the Technical Committees and Sections should function under the respective Directorates of the Railway Board.

Subsequently the Railway Board issued (Enclosure B) orders in January 1949 that the Commercial Committee should continue to function under the I.R.C.A. as before. The functions of the I.R.C.A. since 1947 are stated in the enclosed (Enclosure C) note.

At a meeting of the General Managers of Indian Government Railways held on 3.2.56, it was recommended that the I.R.C.A. should be closed down and the work should be transferred to the direct control of the Railway Board. This recommendation was communicated to the Railway Board by the President, I.R.C.A., in his letter No.C/415/I/93, dated 6.2.56. The Railway Board in their letter No.630-TC/56, dated 26-4-57, stated as under:-

"After careful consideration, the Railway Board have decided that I.R.C.A. should continue functioning as an independent organisation as at present."

A meeting of the I.R.C.A. (General Managers) was convened by the President, I.R.C.A., on 22.2.58 and a copy of the resolutions passed is enclosed (Enclosure D)."

5. Part-I of the Conference Rules contain Fundamental Rules and General Constitution etc. Chapter-I contains the Fundamental Rules. Article I gives the Constitution of the IRCA, which is as below:

"ART.1--Constitution.--The Indian Railway Conference Association, hereinafter designated the Association, shall consist of such railway administrations working a railway open for passenger traffic in India as desire to join it each of whom shall be represented at its meetings by one delegate. The words "railways" hereinafter used in these rules mean a railway or railways parties to the Association.

Note.--(1) The Association may admit railways outside India as Association Members of the Association subject to the following conditions:-

(i) The Associate Member will subscribe to the Association annually a fixed sum to be determined by the Association.

(ii) The Association will provide the Associate Member with complimentary copies of literature and publications issued by the Association.

(2) An Associate Member can send a non-voting delegate to the meetings of the Association."

6. The General Manager, Northern Railway is the ex-officio President of the Association. Its functions are described in Article III which are as below:

"ART.3. --Functions.--The Association is constituted:-

(1) to frame rules for the management of traffic interchanged between railways;

(2) to act as a Board of Conciliation;

(3) to maintain records of wagon interchange, Broad Gauge and Metre Gauge separately between Indian Railways as well as between Indian Railways and Railways in Pakistan, as directed by the Railway Board;

(4) to conduct the Neutral Control of examination of Broad and Metre Gauge wagons at interchange junctions and other points;

(5) to advise on other subjects relating to railways which may be referred to it; and

(6) to carry out such other functions as may, from time to time, be assigned to it;

provided that the rules passed by the Association shall not extend to any matters of internal administration which shall remain under the complete and exclusive control of the several railways."

7. From the above it is clear that the IRCA was originally constituted during British regime as an Association of different railway companies, including the Railways presently outside India but then part of Indian Dominion as members of the association, to enable the

Railways companies to frame rules for interchange of wagons between railway companies, to act as a Board of Conciliation between two or more different Railway companies, to conduct neutral control examination at inter-change junctions between two or more Railway companies etc. Thus the association has no function whatsoever in the internal management of any railway company. The proviso to Article III makes it clear that the rules passed by the Association should not extend to any matters of internal administration as the same is with the exclusive control and jurisdiction of the Railway concerned. After independence and adoption of the Constitution, we have only Indian Railways as a department of the Government. The Association remains only as a shadow, a skeleton body bereft of its original form and constitution and functions. The Association itself decided to close down but it was continued, however, to function as an independent organisation, confining itself relating to interchange work at inter-Railways. A perusal of the Fundamental rules it is clear that the Association itself is empowered to frame rules for the inter-change of wagons. Chapter II speaks of Budget and its financial powers. It has its own budget and it exercises full financial powers in regard to all matters including the strength, cadre of its staff etc.

8. The learned counsel for the applicant seeks to place reliance on the following to support his plea. Rule 8 of the Conference Rules, is one of the rules relied upon by the learned counsel for the applicants, which reads as under:

8. Rules regarding Establishment.--The provisions of the codes and rules applicable from time to time to Indian Railway Establishment in matters relation to pay, travelling allowances, joining time, miscellaneous advances, provident fund, pensionary benefits, gratuity, foreign service, leave, discipline and appeal, conduct, etc. and ay other rules that the Association may prescribe are applicable to the staff of the Association." 19

9. The above does not support the plea at all as it only shows that the rules applicable to the Indian Railway Establishment including the rules regarding discipline and appeal, conduct etc. are made applicable to the members of the staff of IRCA apart from the rules that are made by the Association itself.

10. They are not governed per se by the Railway Servants (Discipline & Appeal), Conduct Rules etc. It is no doubt true that as seen from the proceedings dated 8/9-6-95 Annexure A-III that the Joint Director (Establishment) Railway Board had felt that the appeal in the disciplinary matters relating to the IRCA staff lies with the Railway Board. That was with reference to A.K. Chaturvedi, an employee of the IRCA. But this was clarified in letter dated 8.11.95 (Annexure A-V of respondent 1) with regard to the appeal of the very same Chaturvedi that the Railway authorities could not function as disciplinary/appellate authority for IRCA employees as they are not railway employees. The appeal was, therefore, sent back to the association itself.

11. It is also not correct to contend that the Railway Board scrutinise the expenditure/accounts of IRCA placing reliance on Annexure A-VI. In the proceedings dated 5.1.95 written by the Railway Board to the IRCA it

has been stated that the Accounts Officer and the Financial Adviser and Chief Accounts Officer, Northern Railway shall be the Accounts Officer and the Financial Adviser to IRCA in all matters and for that purpose the FA&CAO, Northern Railway may depute any Accounts Officer to perform the work on his behalf. This would not show that IRCA is part of Railway administration. It would show that certain officers are looking into the expenditure in regards the work done by the Railway employees, who were deputed to IRCA. The letter dated 10.4.61 which was placed reliance upon by the applicants only shows that the appointment of class II sanctioned posts in the IRCA shall be made by the President in consultation with its Executive Council and that temporary vacancies in class II could be filled up by the President IRCA. Further the letter dated 10.5.79 written by the Joint Director, Railway Board to the General Secretary, IRCA only shows that the staff of the Indian Railways are posted on deputation and these proceedings permitted the revision of percentage of the distribution of posts to IRCA. It is also made clear that the deputationist from Railways should seek fresh promotion on their railway or if they are promoted to higher grade post in IRCA they should not be allowed deputation allowance unless they are given the higher posts on their parent Railway. This clarifies the position that the Railway employees are posted in IRCA on deputation basis to facilitate the work that has been entrusted by the Railways to IRCA.

12. It is again misconceived to contend that the rules relating to pension to IRCA employees are governed by the Pension Rules relating to the Railway employees. The

✓ letter dated 22.12.98 written by the Railway Board to the IRCA only shows that the Railway Board has approved the proposal of the IRCA to extend the pensionary scheme as was applicable to the IRCA. It is, therefore, not possible to accept the contention that the IRCA is also governed by the same rules as regards pension as applicable to the staff of the Indian Railways so also the Central Government Insurance Scheme. The learned counsel then contends that the IRCA employees are also allotted railway quarter for their residence and in the letter dated 8.2.80 written by the Section Officer states that the IRCA employees are Railway employees for all intents and purposes. But a mere letter written by the Section Officer stating that the employees of the IRCA were also Railway servants cannot impose the character of the Railway servant upon the staff of the IRCA. It is also clear from the impugned memorandum dated 10.9.96 rejecting the request for merger of the ministerial staff of the IRCA with the Railway Board which has been passed by the Railway Board that the IRCA is an organisation with its own constitution and they do not come within the definition of the Railway servant as defined in IREC. The learned counsel heavily relies upon Rule 26 of the Railway Servants (Pension) Rules, 1993 which reads as under:

"26 - Counting of service rendered in the Indian Railway Conference Association - If a part of the service rendered by a Railway servant is in the Indian Railway Conference Association, such service shall be deemed as having been rendered under the Government and shall be taken into account for calculating the qualifying service under these rules."

✓

13. As per this rule any part of the service rendered by a Railway servant in the IRCA was deemed as having been rendered under the Government for the purpose of calculating the qualifying service. Nothing more turns on it.

14. Chapter-III relates to the provisions relating to the definition of qualifying service of a Railway servant for the purpose of fixing pension. Rule 22 defines that the continuous service as the Service in the Indian Railways or in former company or in the former State Railways which have been taken over by the Central Government. Rule 25 deals with previous service of employees of the former private or former State Railway Companies and who were appointed afresh in the Indian Railway. Rule 26 deals with IRCA as it was one of the private association relating to the Railways. The period of service rendered in the former Railway Companies and quasi-Railway bodies and that of the IRCA was deemed as a service rendered under the Government and was also taken into account for qualifying service under the Rules for the purpose of fixation of pension. This is only a deeming provision and from this it cannot be said that the IRCA service is part of the service rendered by a Railway servant in the Indian Railways. The above letters and provisions only show that the IRCA has been closely inter-lined with the Indian Railways in that Indian Railway has been entrusting much of its work to be performed by IRCA on demand and the members of the IRCA are utilised for the said purpose. In any point of view the staff of IRCA cannot be said to be railway servants within the definition of IREC.

23

15. The judgement in Hans Raj Arora (supra) has left the question open whether the IRCA employees are Railway servants and hence this case is of no help to the applicants. The law is too well settled that the following tests are to be complied with, if one is a Government/ Railway servant: a) whether the salary or wages are paid from the State Funds?, b) whether the State hold the administrative control and c) whether the State could regulate conditions for the post. In Guru Gobinda Basu v. Sankari Prasad Ghosal and Others, AIR 1964 SC 254, a Constitution Bench decision, the Supreme Court enumerated the following characteristic features to determine whether an officer is under the control of the authority concerned:

- (1) the appointing authority;
- (2) the authority vested with power to terminate the appointment;
- (3) the authority which determines the remuneration.
- (4) the source from which the remuneration is paid; and
- (5) the authority vested with power to control the manner in which the duties of office are discharged."

16. None of these conditions are fulfilled in in this case in respect to the IRCA employees to say that they are Railway servants.

17. In view of the foregoing discussion, what emerges is that IRCA is an independent Association governed by its own rules having its own budget, financial and administrative control. The members of the association are governed by the conditions of service as per the rules framed by the Association performing the functions as enumerated in Chapter-I. The staff of the association,

CA

therefore, are neither appointed by the Railways nor are paid from the funds of the Government or from the Railways. They are neither controlled by the Railway Board nor are they removable by any functionary in the Railways. Its rules are not framed under the proviso to Article 309 of the Constitution of India. Its employees are, therefore, neither holding civil posts nor any post under the Railways. They do not come within the definition of Railway employee within the meaning of Indian Railway Establishment Code.

18. In the result, we find no merit in the OA and it is accordingly dismissed, in the circumstances without costs.

(Govindan S. Tampi)
Member (Admnv)

'San.'

(V. Rajagopala Reddy)
Vice-Chairman (J)