

(10)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 1099/98

New Delhi, this the 17th day of November, 1998

HON'BLE SHRI T.N. BHAT, MEMBER (J)
HON'BLE SHRI S.P. BISWAS, MEMBER (A)

In the matter of:

1. Rail Yatri Niwas New Delhi Station
Mazdoor Union (Regd.)
Through its General Secretary
P-4/1028, Sultan Puri,
New Delhi - 110041.
2. Shri Ram Vir Singh (Room Attendant)
at Rail Yatri Niwas,
Ajmeri Gate,
New Delhi. Applicants

(By Advocatee: Sh. Shamim Khan Nashtar)

Vs.

1. Union of India
Through its Secretary
Ministry of Railway,
Rail Bhawan,
New Delhi.
2. Northern Railway
Through its General Manager,
Baroda House,
New Delhi.
3. M/s Good House Keeping
Through its Proprietor
Mr. M.R. Aggarwal,
WS-519, Raj Nagar,
Palam Colony,
New Delhi. Respondents

(By Advocate: Sh. R.L. Dhawan for Resp. No. 1 & 2
Sh. Sampuran Saluja for Resp. No. 3)

ORDER

delivered by Hon'ble Shri T.N. Bhat, Member (J)

The applicants, who are working as employees in the Rail Yatri Niwas at New Delhi Railway Station, have filed this OA seeking regularisation of their services and for providing to them minimum wages prescribed by the appropriate Government and other statutory facilities like ESI, provident fund, earned leave, etc.

17.11.98.

2. According to the applicants they have been working in the Rail Yatri Niwas under the direct supervision of Resp. No.2., namely, the General Manager, Northern Railway though admittedly under Resp. No.3 who is the contractor for running the said Rail Yatri Niwas. It is further averred by the applicants that it was only with a view to deny the benefits of regularisation and other consequential benefits that the Resp. Nos.1 & 2 have created Resp. No.3 as a middleman who is called the contractor. According to the applicants there are as many as 39 employees working on the jobs of room attendant, houseman, etc. for the last several years but they have not been granted the benefits which were admissible to a regular railway employee. It is further averred that the applicants are performing duties which are of a permanent nature and have already completed more than 240 days of service each in each year and cannot, therefore, be removed from service by a mere notice of one month.

3. The applicants have sought the following reliefs:-

a) That the Hon'ble Tribunal may please restrain the respondents not to terminate the services of the employee whose names have been mentioned in para 4 of the present application and who are the members of the applicants Union. As the respondents are threatening to the member of the applicant to terminate their services on or before 31st May, 1998.

11 b) To issue the direction to the respondent No. 2 to regularise the services of all the employees and make them permanent since the day of their respective joining to the Rail Yatri Niwas New Delhi Railway Station, New Delhi, without any further delay.

11 c) To issue the directions to the respondent No. 2 to provide at least the minimum wages to the employees of the Rail Yatri Niwas, as per the notification issued by the appropriate Government from time to time regarding the minimum wages. The Hon'ble Tribunal may also direct to the respondent No. 2 to issue the appointment letters to all the employees of Rail Yatri Niwas and also provide all other statutory facilities to the applicant members, which are prescribed by the Government for the employees who are doing permanent nature of job as the present employees are getting who are working with the respondent No. 2.

11 d) Issue a Order or Direction directing the respondent to abolish the contract labour system in such permanent nature of service as Rail Yatri Niwas has been established permanently which is a part and parcel of the services which the respondent No. 2 are provided in general.

Yours

(e) Any other relief and direction as may be deemed fit and appropriate in the facts and circumstances of the case may also be granted.

4. The claim of the applicants is resisted both by official respondents as well as private Resp. No.3, namely, M/s. Good House Keeping. The respondents have averred in their respective counter replies that although the Northern Railway is the owner of the Rail Yatri Niwas the same is, however, being run by Resp. No.3 in pursuance to a contract/agreement entered into by the said respondent with the Northern Railway. It is further averred that Resp. No.3 has been engaging daily wage workers to provide service to the railway passengers. According to the respondents there is no relationship of master and servant between the railways and the applicants and that, therefore, this Tribunal has no jurisdiction to entertain this OA.

5. The applicants have also filed their rejoinder in which they have reiterated the pleas raised in the main OA.

6. During the pendency of this OA various MAs have been filed by both the parties.

7. We have heard the learned counsel for both the parties on the main OA as well as the various MAs. With the consent of the learned counsel for both the parties we are finally disposing of the OA at the admission stage itself.

Yours

8. During the course of his arguments the learned counsel for the respondents cited before us a judgment of the Apex Court in Civil Appeal No.1350/96 which was disposed of by the judgment dated 3.4.97. This judgment was delivered by the Apex Court in a number of appeals which had been filed against some judgments of the CAT. It had been held in the judgment that the CAT has no jurisdiction to entertain an application filed on behalf of a railway contractor's labour as such labour ^{cannot} be considered as employed by the railways. The Apex Court has upheld the view expressed by the Tribunal that in such matters the Tribunal has no jurisdiction. In view of this clear pronouncement of the Apex Court we have no doubt in our mind that there is no relationship of master and servant between the railways and the applicants, as admittedly, the applicants have been engaged by the contractor and not by the railways. We may, in this regard, refer to a document relied upon by the respondents which gives a general description of the activities of M/s Good House Keeping, Resp. No.3 herein. It clearly shows that the aforesaid respondent is a private contractor who provides catering services to several organisations which also includes the Northern Railway. The learned counsel for the official respondents has contended that no employees are permanently assigned to the Rail Yatri Niwas by the contractor and that out of the several employees on the roll of Resp. No.3 the employees are sent to different places by Resp. No.3 for carrying out the day to day work. The respondents have also annexed to their counter the undertaking given by Resp. No.3 to the effect that none of the persons engaged by the contractor shall be entitled to any railway passes or other concessions of

any kind ordinarily admissible to railway employees. We further find that Resp. No.3 has entered into an agreement with the Railways for providing the necessary services at the Rail Yatri Niwas which are enumerated in the Annexure to the applicant. The agreement, it appears, was initially executed for a period of 3 years on 7.11.94. Even the applicants admit in their OA that they have been engaged by Resp. No.3; but their contentions is that since they have worked for a long time they are entitled to be regularised not merely as the employees of Resp. No.3 but also as regular railway employees. This contention, in our considered view, has no force.

9. It appears that the main reliance of the applicants is on the provisions contained in the Contract Labour (Regulation and Abolition) Act, 1970. The learned counsel for the applicants cited before us the judgment of the Apex Court in All India Statutory Corporation etc. vs United Labour Union and Others reported in 1997 (1) CLR 292. Since the aforesaid law journal is not available in our library. We asked the learned counsel for the applicants to furnish a photostat copy of the judgment.

We have carefully gone through the judgment, which was passed by the Apex Court in Civil Appeal No. 15535 of 1996 on 6.12.1996. The Apex Court was dealing with a notification issued on 9.12.76 by the Central Government by which employment of contract labour for sweeping, dusting and washing of buildings owned or occupied by establishments in respect of which the appropriate Government under the aforesaid Act is the Central Government was prohibited. The Apex Court held that since

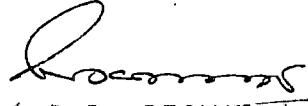
the Central Government was the appropriate Government for those establishments the notification issued under Section 10 of the Act containing the aforesaid prohibition was valid and after the issuance of the notification it was not open to the Central Government to appoint any committee to once again go over the self same question. A careful reading of this judgment would clearly reveal that it related to a statutory corporation under the International Airport Authority of India Act 1971 in respect of which the Central Government had issued a notification prohibiting engagement of contract labour for certain jobs like sweeping, dusting and washing of buildings. This notification was issued under the Contract Labour (Regulation and Abolition) Act 1970. The aforesaid Act aims at the abolition of contract labour in respect of only such categories as may be notified by the appropriate Government and, at regulating the service conditions of contract labour where abolition is possible. Section 10 of the Act envisages issuance of notifications by the appropriate Government prohibiting employment of contract labour in any process, operation or other work in any establishment. When such a notification is issued, engaging or employing of contract labour in that establishment relating to such process, operation or other work would be prohibited. There is no such notification issued by the Government in respect of the Indian Railways, more particularly, the New Delhi Railway Station of the Northern Railway. Therefore, the aforesaid judgment of the Apex Court has no application to the facts of the instant case.

(2)

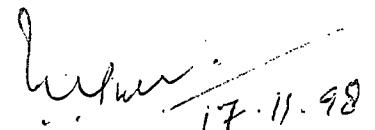
10. Similarly, the other judgments cited at the Bar by the learned counsel for the applicants are not applicable as those judgments also have been handed down under the aforesaid Act of 1970.

11. We are convinced that the applicants are not railway employees and they cannot claim the benefit of regularisation or even the conferment of temporary status. We are also convinced that this Tribunal has no jurisdiction to entertain this OA. This OA is hereby dismissed accordingly, but without any order as to cost.

12. As the main OA itself has been dismissed, MAS 1115/98, 1917/98 filed by the applicants do not survive. These MAS are also, therefore, dismissed and disposed of.



(S.P. BISWAS)
Member (A)



17.11.98
(T.N. BHAT)
Member (J)

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