

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

32-

Regn. No. RA 130/88
in OA 1262/88
MP 2534/88

Date of decision 07-04-1989.

Shri Vikram Singh

....Applicant

Vs.

Union of India & Others

...Respondents

For the applicant

....Shri R.K. Kaura,
Counsel

For the Respondents

....Shri B.K. Aggarwal,
Counsel

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. AJAY JOHRI, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment? *Yes*

2. To be referred to the Reporters or not? *Yes*

JUDGMENT

(The Judgment of the Bench delivered by Hon'ble Mr. Ajay Johri, Administrative Member)

The applicant in this application was working as a Peon in the office of the General Secretary, Indian Railway Conference Association (IRCA), New Delhi. He has challenged an order No. EP/4573/1 dated 23rd May, 1988 passed by the General Secretary, IRCA dismissing him from service. By this application filed under Section 19 of the Administrative Tribunals Act, 1985, he is seeking relief of setting aside of the impugned order and for his reinstatement in service with immediate effect and for his

3

reinstatement in service with immediate effect and for his

being deemed to be in service from the date of the issue of the order.

2. The applicant was originally an employee of the Northern Railway. He was appointed as a casual labour in December 1975 and was regularly selected in March 1982 in the Construction Organisation. According to him, he was subsequently transferred to the IRCA in July 1984 and while he was working in the IRCA, he was issued a major penalty charge-sheet on 23.3.1988 which ultimately resulted in his dismissal from service by the impugned order. The applicant has raised various issues in connection with the enquiry and the order of punishment and has approached this Tribunal for setting aside these orders.

3. In their reply, the respondents have said that the IRCA is an independent body having its own staff and is not a Central Government department. Its employees are not the employees of the Union of India, therefore, this Tribunal has no jurisdiction to adjudicate on this application. They have relied on a judgment given by a Bench of this Tribunal in TA(S)-590/1986 B.R. Bhatia Vs. U.G.I. where it has been held that the IRCA is a Voluntary Association and not a statutory authority much less it a part of the union or Union Territory. According to the observations of this Tribunal in this case, the Association has an independent existence of its own and since the applicant in that case was an employee of that Association, his grievance could not be entertained by this Tribunal. The respondents case

is that the applicant who was working on the Northern Railway

had requested by his application dated 19.4.1984 for being considered for a posting at Delhi and in that background, his services were put at the disposal of the IRCA where he was permanently absorbed as a Khalasi. Originally he was posted at Gorakhpur, but subsequently he got transferred to Delhi.

4. We have heard the learned counsel for the parties. The learned counsel for the applicant contended that the decisions given by this Tribunal in their judgments on 20.2.87 and 6.2.89 were not based on correct appreciation of the facts. In these two judgments, it was held that IRCA is an Association and that the employees of the IRCA are not employees of the Union of India and the Central Government. In our view these judgments have become final and this matter cannot be agitated now. The next contention raised by the learned counsel was that the applicant had requested for transfer to Delhi and in that background his services were transferred to the IRCA and he was not actually absorbed in IRCA as no option was taken from him for his absorption in that new organisation and, therefore, he continued to have his lien on the Northern Railway. This contention was however not taken by the applicant in his pleadings in the application. As a matter of fact, the main emphasis laid in the pleadings in the application in respect of jurisdiction is that IRCA is a department of the Railways and its offices and staff are to be treated as Railway Employees. This matter cannot be adjudicated again now as observed above. It has further been pleaded in the Review Application which is also before us in respect of an order given by this Tribunal on 6.9.88 in MP No.1525/88 that the applicant has not resigned from the railway service

on joining the IRCA. This Review Application has also been opposed by the respondents on the ground that the applicant has not raised any objection during the course of his disciplinary proceedings that IRCA was not his employer and that the General Secretary, IRCA was not competent disciplinary authority and, therefore, the order passed was without jurisdiction. The respondents have vehemently opposed the stand now being taken by the learned counsel of the applicant that the applicant is not an employee of the IRCA, instead he is a Northern Railway employee.

5. Having heard the learned counsel for the parties and perused the records of the case, it is clear that as far as IRCA is concerned, it is not a department of the Railways and this Tribunal has no jurisdiction over the employees of IRCA.

6. The only issue that remains to be settled now is whether the applicant was finally absorbed in the IRCA and he is an employee of IRCA or not. According to the respondents the applicant was absorbed in the IRCA with effect from Aug, 1984. But since there was a dispute regarding the fact whether the applicant was finally absorbed in the IRCA or not, the respondents were asked to produce the personal file of the applicant available with the IRCA. From the personal file it is evident that the applicant had requested for his change of category from that of temporary Gangman under XEN whom he was working had remarked on this application on 19.4.1984 that he would have no objection to spare him. Thereafter, the applicant also submitted an application to the General Secretary, IRCA requesting his application and the endorsement him for posting in IRCA as a Khalasi. On this made by the DSE

on the original application on 19.4.84, the IRCA wrote to the DRMs Office, New Delhi that they had no objection to absorb the applicant in the Neutral Control Organisation of the IRCA as a Khalasi. They, therefore, requested that he may be spared and his service book, etc., sent to them. The applicant was accordingly spared by an order dated 6.7.84 to carry out his transfer on bottom seniority. There is also an application dated 6.8.84 signed by the applicant in respect of his transfer in the IRCA in which he had stated as follows:-

" I am absorbed as Khalasi in Neutral Control Organisation and posted at Gorakhpur under Neutral Inspector but I request to your kind honour that I may please be posted at New Delhi Neutral Control Point so that I may look after my ailing wife and School going children. "

There is another order dated 3rd August, 1984 issued by the General Secretary and addressed to the Neutral Inspector at Gorakhpur saying that since he has been absorbed as a Khalasi and he is being spared by Northern Railways he is posted at Gorakhpur against an existing vacancy.

7. In the Service Book of the applicant which was also transferred to IRCA there is an endorsement that he was transferred under GS, IRCA with effect from 15.7.84. This endorsement has been made on 28.2.85. There is another endorsement that the applicant was transferred from AEN, Shamli and posted as Peon temporarily in the general branch of the IRCA vide an order dated 21.8.84. The other endorsements in the Service Book relate to the applicant's opting for the revised pay in the revised scales and the nomination for DCRG and these endorsements have been made by the General Secretary,

IRCA. The correspondence in connection with the transfer of the applicant shows that he was absorbed in the IRCA. In this background and the very admission made by the applicant in his application, which is available in the personal file when he requested for his transfer from Gorakhpur to Delhi that he was absorbed in the IRCA, there is no doubt left that the applicant had become a temporary Peon on his release from the Construction Organisation of the Northern Railway, in the IRCA and, therefore, he could not be considered as an employee of the Northern Railway. As a matter of fact, he was only a temporary Gangman under the XEN Construction and temporary staff will naturally not have a lien.

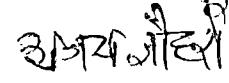
3. After we had reserved the judgment, the learned counsel for the applicant has produced certain documents to press for his contention that the IRCA is a department of the Railways. They are - the notification dated 2.8.1988 on the subject of Presidentship of the Association, another notification dated 31.7.1988 in respect of handing over and taking over of the office of the President and the IRCA Service Agreement for Class III employees. It is the contention of the learned counsel for the applicant that in terms of paras. 2 and 3 of the Service Agreement, it is provided that the employee shall serve the General Secretary in any other post to which he may, from time to time, be appointed whether on promotion, reduction or otherwise in any place in India and that the Administration will

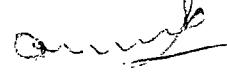
have full power and authority at any time to dismiss the railway servant or reduce him in rank or remove him as a disciplinary measure, in compliance with the provisions of clause (2) of Article 311 of the Constitution of India. He has also relied on para. 4 of this Agreement which says that the employee shall be bound by all general rules and regulations of State Railway Establishment that may, from time to time, be in force. While disposing of Miscellaneous Petition No. 2377/88 in R.A. 3/89 (suit No. 405/84) on 6.2.1989, when the matter came up again before a Bench of this Tribunal, the Tribunal had considered the reference made in the order of the Senior Sub-Judge, Delhi to the decision of the Supreme Court in Civil Writ No. 8213/83, on which the learned counsel is also placing reliance. After having considered the matter, the Tribunal came to a conclusion that the order dated 14.3.1987 of the Hon'ble Supreme Court nowhere held that the employees of the IRCA shall be deemed to be employees of the Railway Administration. It was submitted before us by the learned counsel that in his Misc. petition No. 2534/88 in R.A. 130/88 in this O.A., he has made a prayer that the matter in regard to the IRCA being a Department of Railways be referred to a Full Bench of three Members of this Tribunal for a detailed review and adjudication as to the jurisdiction of the Tribunal. We find absolutely no force in these contentions. The judgment given in M.P. No. 2377/88

as well as in the judgment delivered on 20.2.1987, this matter has been discussed threadbare and if the applicant was aggrieved by the orders and decisions given in these cases, the right course for him was to file a Review Petition in that O.A. or move the appropriate forum against the orders. We cannot sit as an appellate forum on the decisions taken by this Tribunal in these O.A.s.

9. We have already examined the matter in regard to the status of the applicant, who was absorbed as a temporary peon in the IRCA after having been transferred from the post of temporary Gangman and having been so absorbed, he became an employee of the IRCA. As a matter of fact, the IRCA had clearly mentioned in their letter on receipt of reference from the Northern Railway that they are prepared to absorb the applicant in their Organisation. Even their order speaks in the same language.

10. Thus, since the IRCA is not a Department of the Railways and is an association governed by separate Rules etc. and the applicant is an employee of that organisation, his case cannot fall within the jurisdiction of this Tribunal. In this view, we dismiss this application as well as the Review Petition (M.P. 2534/88) being not maintainable for want of jurisdiction. We leave the parties to bear their own costs.


(Ajay Jehri)
Member (A)


(P.K. Kartha)
Vice-Chairman (J)