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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 31st day of March 2006.

Original Application No. 1345 of 2005.

Hon'ble Mr. K.B.S. Rajan, Member (J)
Hon'ble Mr. A.K. Singh, Member (A)

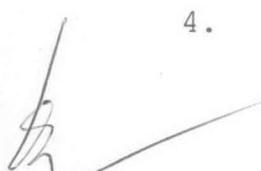
1. Munna Prasad, S/o Sri V.P. Gupta
2. Nank Kishor, S/o Late Hajari Lal
3. Lallan Jha, S/o Sri S. Jha
4. Raj Kishore, S/o Late Hajari Lal
5. Vidya Ram, S/o Late Natthu Lal
6. Om Prakash, S/o Late V.P. Gupta
7. Giriraj Tiwari, S/o Late Mahesh Tiwari
8. Smt. Sushila Devi, D/o Late Mahanand
9. Tikaram, S/o late Lalit Bahadur
10. Ram Kuver Yadav, S/o late Bahau Yadav
11. Bachau Lal, S/o late Girdhari Lal
12. Om Prakash, S/o Late Banarsi Prasad
13. Roli Pitar, S/o late Saloman Pitar
14. Shabbir Khan, S/o late Amir Khan
15. Faiyaz Ahmad, S/o late Jahid Ali
16. Bachau Pal, S/o late Chhedi Lal Pal
17. Pyare Lal, S/o Sri Mahavir Prasad
18. Vindhayachal, S/o Late Khaderu
19. Anand Prakash, S/o Sri Pandev

.....Applicant

By Adv: Sri K. Agarwal

V E R S U S

1. Union of India through Secretary,
Ministry of Railways,
New Delhi.
2. Railway Board, Rail Bhawan,
New Delhi, through it's Chairman.
3. General Manager, Northern Railway,
Gurudwara House,
New Delhi.
4. Divisional Railway Manager,
Northern Railway, Hazaratganj,
Lucknow.



5. Indian Railway Catering and Tourism Corporation Limited through Group General Manager, 7th Floor Bank of Baroda Road, 16th Parliament Street, New Delhi.

.....Respondents

By Adv: None

O R D E R

By K.B.S. Rajan, Member-J

First the legal position, whereafter, the same would be telescoped on the facts of the case to ascertain whether the action on the part of the respondents is deviating from the legal position.

2. Can judicial interference be permitted in the policy decision of the Government?

3. In *Union of India v. Kannadapara Sanghatanegala Okkuta & Kannadigara*, (2002) 10 SCC 226, the Apex Court, citing the decision in Delhi Science Forum case, has held as under:-

"That the court will not interfere in questions of policy decision is clearly brought out by the following passage from a decision of this Court in *Delhi Science Forum v. Union of India*¹ when at p. 413, it was observed as follows: (SCC p. 413, para 7)

'7. What has been said in respect of legislations is applicable even in respect of policies which have been adopted by Parliament. They cannot be tested in court of law. The courts cannot express their opinion as to whether at a particular juncture or under a particular situation prevailing in the country any such national policy should have been adopted or not. There may be views and views, opinions and opinions which may be shared and believed by citizens of the country including the representatives of the people in Parliament. But that has to be sorted out in Parliament which has to approve such policies. Privatization is a fundamental concept underlying the questions about

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the power to make economic decisions. What should be the role of the State in the economic development of the nation? How the resources of the country shall be used? How the goals fixed shall be attained? What are to be the safeguards to prevent the abuse of the economic power? What is the mechanism of accountability to ensure that the decision regarding privatization is in public interest? All these questions have to be answered by a vigilant Parliament. Courts have their limitations - because these issues rest with the policy-makers for the nation. No direction can be given or is expected from the courts unless while implementing such policies, there is violation or infringement of any of the constitutional or statutory provision. The new Telecom policy was placed before Parliament and it shall be deemed that Parliament has approved the same. This Court cannot review and examine as to whether the said policy should have been adopted. Of course, whether there is any legal or constitutional bar in adopting such policy can certainly be examined by the Court.'

6. We further find that the High Court has issued a direction to the appellants herein to locate the zonal office of the Railways at Bangalore. Apart from the fact that in matters of policy the court will not interfere, such a direction could under no circumstances have been issued."

4. Thus, 'a policy decision of the State unless affects somebody's legal right cannot be questioned'. See **Union of India v. Manu Dev Arya, (2004) 5 SCC 232.** Be it price fixation (1990 (3) SCC 223), or fixation of age of superannuation (1985(1) SCC 523), or any other Administrative Policy, [(1997) 11 SCC 670], unless the policy is accentuated by malafide or arbitrary or infringes any of the legal rights of any individual, such policy decision cannot be interfered with.

5. With the above dictum of law as laid down by the Apex Court, the case is to be examined.



6. The applicants have challenged the decision of the Railways in converting their catering department into an independent legal entity as a corporation named, "Indian Railway Catering and Tourism Corporation" and the existing employees of catering department are given option to switch over to the newly created Corporation, initially on deputation and thereafter on permanent absorption. Those who do not want to shift could exercise their option as such, in which event they would be accommodated in other departments. Certain terms and conditions as contained in the scheme are as under:-

- a. Individual will be required to exercise an option either to revert back to the Railways or for permanent absorption in IRCTC. Those who exercise their option to go back to the Railways, will be allowed to do so immediately after the option is exercised and will treated as surplus staff to be redeployed as per procedure already in force.
- b. During working in the Corporation on deemed deputation basis. They will continue to be treated as a Railway employee for all intent and purposes and will continue to get all the facilities as Railway servant. Some of them are :-
 - i. Pay and allowance as admissible under Railway Rules,
 - ii. Privilege passes and PTO as per Railway Pass,



iii. Grant of various kinds of leave as admissible under the Railway Leave Rules,

iv. Grant of TA/DA as per Railway Rules.

v. Seniority units will remain undisturbed as per extant policy of Railways,

vi. Those who superannuate during this period will get all their settlement dues by the Railways,

vii. Those who are allotted Railway quarters and are in occupation of the same will continue to enjoy this facility on payment of prescribed monthly license fee even after permanent absorption

viii. Railway medical facility which is enjoying at the time of transfer to the corporation,

ix. After absorption they will be governed by the rules and regulations of the corporation.

7. The applicants who are working in the catering department of the Railways have agitated against the very creation of the Corporation on the following grounds:-

a. The employees of the Railway Department are governed by the statutory rules framed to

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proviso under Article 309 of the Constitution of India.

- b. There is no provision under the Indian Railway Establishment Code or otherwise empowering the railway to transfer or place the services of its employees to any person or authority or a body which is not department or part and parcel of the Railway administration or which is not a government body whatsoever, in respect whereto the provisions can be made under Article 309 of the Constitution of India.
- c. Rules also nowhere empower the government to compulsorily place its employees on deputation with any private body without taking any consent of the railway servant.
- d. The respondents in a most arbitrary and illegal manner has passed orders transferring the applicants to respondent No. 5.
- e. The respondent intends to transfer the applicants together with posts which is not permissible under law.
- f. Though the policy is transfer all Group 'C' and Group 'D' employees but some persons are sought to be retained by the respondents which is in clear violation of mandate of Article 14 of the Constitution of India.

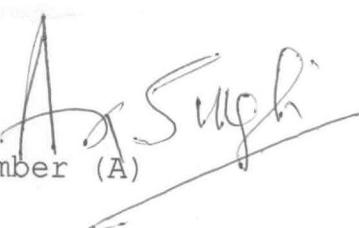
8. Arguments were heard. The contention of the counsel for the applicants is that the service conditions of the applicants are unilaterally changed by way of such creation of corporation.

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9. Undoubtedly, Railways are functioning as a public utility service (see **P. Nallathampi Thera vs Union of India, 1983 (4) SCC 598**) as well as commercial venture (**Chairman Railway Board vs Chandrima Das 2000 (2) SCC 465**). For better services, to quote the words of the authorities, "to upgrade, professionalize and manage the catering and Hospitality services at stations and on trains", the corporation has been created. The employees of the Railways, during their entire period of deputation are treated as Railway servants. No condition for compulsory joining of the Corporation has been stipulated. Thus, the employees have been given their right to exercise their option either to remain in the Railways or to switch over. Thus, none of their legal rights has been encroached upon by the respondents in their rendering public service by corporatizing the catering department of the Railways.

10. The OA is thus, thoroughly misconceived and is liable to be rejected and we accordingly order.

No cost.


Member (A)


Member (J)

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