

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. 216/92
T.A.NO.

DATE OF DECISION 19.6.2000

Shri Nanji Tapubhai Petitioner

Mr.M.K.Paul Advocate for the Petitioner [s]
Versus

Union of India & Ors.

Respondent





Mr.R.M.Vin Advocate for the Respondent [s]

CORAM

The Hon'ble Mr.A.S.Sanghavi : Member(J)

The Hon'ble Mr. M.P.Singh : Member (A)

JUDGMENT

- 1, Whether Reporters of Local papers may be allowed to see the Judgment ? 
- 2, To be referred to the Reporter or not ? 
- 3, Whether their Lordships wish to see the fair copy of the Judgment ? 
- 4, Whether it needs to be circulated to other Benches of the Tribunal ? 

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Shri Nanji Tapubhai,
Hindi Adult,
Vardhman Nagar, Block No. 16,
Morbi-2.

: Applicant.

(Advocate : Mr. Mr. M.K. Paul)

VERSUS

1. Union of India,
Owning Western Railway,
Through : The General Manager,
Western Railway., Headquarters Office,
Churchgate, Mumbai-400 020.

2. Shop Superintendent (W),
Western Railway,
Bhavnagar Para.

: Respondents.

(Advocate : Mr. R.M. Vin)

ORAL ORDER

O.A. NO. 216 OF 1992

Date : 19.6.2000

Heard Mr. M.K. Paul, for the applicant and Mr. Vin, for the
respondents.

2. The applicant who is serving as a canteen boy in the Railway
Workshop, Morbi has moved this O.A. for considering his service with
effect from 6.5.58 for retirement benefits, pension etc. According to the
applicant he had been engaged as a canteen boy in the Railway

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Workshop in the year 1958 and he was working in Railway canteen under contractor in the Railway Workshop, Morbi. The railway had taken over the charge of the canteen in the year 1958 along with the other staff. He had also become the railway employee with effect from 6.5.58. He was issued an identity card on dated 15.5.67 by the works Manager, Bhavnagar, Workshop. Other employees namely Shri Kunverji Jetabhai and Shri Indulal Revashankar also, according to the applicant were working in the Morbi workshop in the year 1958 and they knew the applicant. The grievance of the applicant is that he has been regularised in the service with effect from 26.12.1978 and not from 6.5.58. He is continuously working as a canteen boy from 6.5.58 and therefore, his services ought to be counted from 6.5.58 for the retirement benefits, pension benefits etc. The applicant had represented to the railway administration to count his service from 6.5.58, but the railway administration has declined to consider his request. Hence this O.A. is filed.

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3. The respondents have contested the O.A. by filing the reply and contending interalia that according to the railway board circular dated 8.6.81, and in view of the Supreme Court judgement, canteen staff of the railway is being considered as a Railway servants and with effect

from 22.10.80. The applicant is also accordingly eligible to be considered as a railway servant for all retirement benefits. According to the respondents, the service rendered by the applicant in the canteen prior to the Railway board's letter dated 8.6.81, can not be considered as the service of the railway employee and he can not be treated at par like other railway employee for retirement benefits or any other benefits. The respondents have also relied upon the decision of this Bench in TA/85/87 decided on dated 22.12.87.

4. Mr. Paul, learned advocate appearing for the applicant submitted that the applicant has sufficient evidence to show that he had been working as a canteen boy since 1958. According to Mr. Paul, the affidavit of Mr. Indulal Revashankar as well as Mr. Kunvarji Tethabhai go to establish that the applicant had been working in the railway canteen, Morbi since 1958 and that these facts are not controverted by the respondents in the reply also. Relying on the decision of the Supreme Court in the case of Mr. M.R. Khan & Ors Vs UOI and others reported in AIR-1990, SC-937, Mr. Paul, has submitted that the Supreme Court in

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terms of the law laid down that the staff of the Railway is entitled to all benefits right from the 1958

5. Mr. Paul has thereafter prayed that the respondents be directed to consider the applicant's service from 1958 on regular basis for the purpose of retirement benefits etc.

6. On the other hand, Mr. Vin learned advocate appearing for the respondents has submitted that prior to the taking over the staff canteen by the railway, the same used to be maintained by the Private contractor and the contractors were retaining the service of their own staff. The applicant therefore was not to be considered as a Railway employee prior to the taking over of the canteen by the railway administration and as per the railway boards direction dated 8.6.81, the staff working in the canteen is to be considered as a Railway employee with effect from 22.10.80. Mr. Vin has further submitted that in view of this direction given by the Railway board, the applicant has been considered to be a railway servant with effect from 22.10.80 and he is entitled to all the benefits only with effect from 22.10.80.

7. We have carefully considered the rival contentions and

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also gone through the decisions of the Supreme Court in the case of Mr. M.R. Khan & Ors VS UOI and others. So far the service of the applicant are concerned, there is no dispute that he has been serving as a canteen boy in the Railway Workshop, Morbi and that even prior to 1978, he was working as a canteen boy in the said workshop. The affidavit filed by two colleagues of the applicant as well as the identity card produced by applicant suggest that he has been working prior to 1978 in the said canteen. The only question that requires to be considered at this juncture is whether his service can be considered for retirement benefits with effect from 1978 or from 1958. In this regard, the decision of the Supreme Court is quite clear. The decision of the Supreme Court in the case of UOI & Ors VS Jagga Rao & Ors in civil appeal no. 368 of 1978 directed the railway board to consider all the staff of the canteen as a railway employee and pursuant to that direction the railway board issued a notification dated 8.6.81 providing interalia as follows :-

Ministry of Railway have considered the matter further in the light of Supreme Court Judgement, as referred to above, and it has been decided that employees of all other statutory canteens on the Railways irrespective of the type and management of the canteen should also be deemed to be railway servants w.e.f. 22.10.80. It has also been decided that till Govt. decides otherwise, the staff of these statutory canteens will continue to be governed by the conditions of service and emoluments as existed on 21.10.80

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8. This notification in unequivocal terms provides that the railway board has accepted to consider the employees of the canteen to be the railway employees with effect from 22.10.80 considering this notification of the railway board in the case of MR Khan and Ors Vs UOI & Ors Supreme Court while giving the final directions has observed as under :-

The result , therefore, is that the workers engaged in the statutory canteens as well as those engaged in non-statutory recognised canteens in the Railway Establishments are Railway employees and they are entitled to be treated as such. The Railway Board has already treated the employees of all statutory and eleven Delhi basis non statutory recognised canteens as railway employees w.e.f. October, 22, 1980. The employees of the other non-statutory recognised canteens will, however, be treated as railway employees w.e.f. April 1, 1990. They would therefore, be entitled to all benefits as such railway employees with effect from the said date, according to the service conditions prescribed for them under the relevant rules/orders.


The writ petitions and appeals of these employees are allowed to the above extent accordingly with no order as to costs.

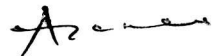
9. This decision of the Supreme Court relied upon by the learned advocate of the applicant in stead of helping the case of the applicant goes only to show that the effect of regularisation in the Railway service for the canteen boy or the canteen staff is to be given

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from the date mentioned in the notification i.e. 22.Oct. 1980 and not from earlier date. The same view has been taken by this bench in TA/85/87 decided on 22.12.87, a copy of which is produced by Mr. Vin at Annexure A/I. There also we have taken the view that the canteen boys are eligible to be considered for regularisation from the date mentioned in the railway board circular i.e. 22.10.80 and not earlier. We are bound by this decision and in our opinion also, the scheme by the railway board vide its circular dated 8.6.86 requires to be adhered to and the applicant is entitled to consider his service for regularisation w.e.f.26.12.1978 and not earlier.

10. For the reasons discussed above, and in the facts and circumstances of the case, we are of the opinion that O.A. is devoid of any merit. The O.A. is therefore rejected with no order as to costs.


(M.P. Singh)
Member (A)


(A.S. Sanghavi)
Member (J)

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