

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. O.A.113 of 1997
O.A.114 of 1997
O.A.115 of 1997

Heard On: 12-08-2004

PRESENT : HON'BLE MR. S.K. HAJRA, ADMINISTRATIVE MEMBER
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

O.A. No.113 of 1997 NIRANJAN MANNA
O.A. No.114 of 1997 KASHINATH HAZRA
O.A. No.115 of 1997 MANTU BANERJEE

.....Applicants

VS.

1. Union of India, service through the Secretary, Ministry of Railways, Rail Bhavan, New Delhi.
2. The General Manager, Eastern Railway, 17, Netaji Subhash Road, Calcutta-1.
3. The Chief Personnel Officer, Eastern Railway, 17, Netaji Subhas Road, Calcutta-1.
4. The Divisional Railway Manager, Howrah Division, Eastern Railway, Howrah.
5. The Divisional Personnel Officer, Howrah Division, Eastern Railway, Howrah.
6. The Assistant Personnel Officer, Howrah Division, Eastern Railway, Howrah.
7. The Advisory Committee, Howrah Division, Eastern Railway, Howrah.

.....Respondents.

For the Applicant : Mr. S.K.Dutta, Counsel

For the Respondents : Mr. P.K.Arora, Counsel

O R D E R

MR.K.V.SACHIDANANDAN.JM:

There are three applications which are identical having the same cause of action and having the same prayer and therefore we are disposing of the same by a common order.

2. The applicants were aggrieved by the cancellation of promotion order in grade Rs.260 -400/- as Halwai from Cook in grade Rs.225 308/-, which has been given effect to from January 16, 1985 in favour of the applicants on the ground of non-existence of such post in TRS/CS/Staff Canteen (non-statutory) and refixing the pay-scale of the applicants as Cook in grade Rs.225 - 308/- with effect from January

16, 1985 alongwith subsequent fixation in the Fourth Pay Commission scale from January 01, 1986 onwards. Aggrieved by the said order, the applicants have filed these three separate O.A.s almost claiming similar main reliefs:-

"i) To direct the respondents and each of them that the impugned order NO.EB/1/Canteen/E.R. dated December 12, 1996 issued by the Personnel Officer, Howrah, Howrah Division, Eastern Railway, Cancelling promotion order in grade Rs.260 -400/- as Halwai from Cook in grade Rs.225 - 308/-, which has been given effect to from January 16, 1985 in favour of the applicant on the ground of non-existence of such post in TRS/CS/Staff Canteen (non-statutory) and refixing the pay -scale of the applicants as cook in grade Rs.225 -308/- with effect from January 16, 1985 alongwith subsequent fixation of Fourth Pay Commission award January 01, 1986 onwards (being Annexure 'E' to the Original application) be quashed and/or set aside.

ii) To direct the respondents and each of them to regularise the annual increment and other service benefits as admissible to the post of Halwai of non-statutory subsidised (recognised) crashed canteens, Howrah, in favour of the applicants."

3. Respondents have filed detailed reply statement contending that the Railway Board vide order dated 13.5.83(Annexure-R) had directed to revise the pay scale of Canteen Staff, which came into effect from 1.6.82 and also directed to maintain the staff strength as on 1.6.82. But the Car Shed Canteen Managing Committee have decided to make promotion of the existing canteen staff effective from 16.1.85 quoting the Railway Board's letter dated 13.5.83 and recommendation for promotion came into force in favour of the Carshed Canteen Staff, which was made directly between Management Committee of Carshed Canteen and Accounts Office/Howrah. The 4th Pay Commission was effective from 1.1.86. In the meantime the staff of all non-statutory canteens employees have to be treated as Railway Employees w.e.f. 1.4.90 as per the Hon'ble Supreme Court's directives dated 27.2.1990. But the Local Management Committee of Carshed Canteen gave some local promotions to the canteen staff prior to 1.4.90 which had already been implemented w.e.f. 16.1.85, violating the instructions of CPO/CCC, Railway Board's and Supreme Court. Therefore, the said promotion orders of Carshed/Canteen staff were against imaginary sanction strength which was not existing in Carshed Canteen unit and were treated to be cancelled vide office order dated 12.12.96 and their pay



was refixed w.e.f.16.1.85. The applicants were also given the benefits on the implementation of the Supreme Court Judgment and also given benefit of such status of Railway employees and had been allowed to hold the posts of Halwi in grade Rs.260-400/- erroneously which was given to them prior to 1.04.90 due to non-availability of updated position and the regularisation was sought to be made for the wrong fixation of pay on a non-sactioned post which is justified.

4. The applicants have filed a supplementary affidavits contending that the Railway confirmed the promotion of the applicants to the post of Halwai to the revised pay scale of Rs.950-1500/- at non-statutory subsidised Carshed Canteen, Howrah Division, Eastern Railway and the sanctioned posts of Halwai have not been abolished by the Railway respondents and they are required to run the Canteen smoothly. The respondents have filed supplementary reply reiterating the contentions in the reply statement. The applicants have filed rejoinders making a plea that the Canteen Committee was authorized to decide its staff strength as well as cadres structure and when the Canteen committee within its power have decided to give promotion of these applicants, there was no question of violation of any directive as alleged in the said reply. The promotions and pay fixation were made with the concurrence of Accounts Office/Howrah, therefore, there was no irregularity. The interpretation is given in the tune of the Apex Court Judgment.

5. We have heard Sri S.K. Dutta, counsel for the applicant and Sri P.K.Arora, counsel for the respondents.

6. Ld. counsel for the applicants submitted that the committee had every right of promoting and sanctioning posts. The ld. counsel for the respondents on the other hand, submitted that the fixation of such posts and granting of promotion are not binding on the Railway when the applicants have been declared to be Railway servants by virtue of the orders of the Supreme Court.

7. We have given due consideration to the pleadings. It is an admitted fact that the employees in the non-statutory canteen by virtue of the order of the Hon'ble Supreme Court they have been treated as Railway Employees and absorbed to the service of the Railway Administration. This was with reference to the decision of the Hon'ble Supreme Court in the case of M.M.R. Khan, Subir Kr. Begchi & Ors. VS. Union of India and Ors. 1990 AIR Supreme Court Cases Page 937 and such employees have come under the direct supervision of the railway respondents from 01.01.1990 and the employees of these non-statutory subsidised (recognised) canteens are paid at the same rate and on the same post at which the employees of the statutory canteens are being paid. The managing committee is the functionary as of the advisory committee. Admittedly, the alleged promotions by the committee were made prior to the taking over by the Railways but the contention of the Railway is that by the order of the CPC/CCC it was directed to maintain staff strength as on 1.6.82 and there should not be any violation regarding the staff strength and it was obligatory to maintain the status-quo till finalisation of the Supreme Court's decision. Admittedly, the promotion is made subsequent on 1.6.82 to the applicants when there was no sanctioned posts by the Railways and the standard designations and scales available in the non-statutory canteen of Crashed/HWH as on 1.4.1990 were as follows:-

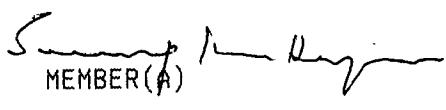
1.	Cook	in scale	Rs.825-1200/-(RSRP)
2.	Asst. Cook	"	Rs.750-940/-
3.	Washboy	"	Rs. - do -
4.	Tea Maker	"	Rs. - do -

But on the other hand, Local Management Committee of Carshed Canteen given some local promotions to its staff prior to 1.4.90 which was already implemented w.e.f. 16.1.85, violating the instructions of CPO/CCC, Rly. Board's and Supreme Court.

7. We find some force in the said documents and contentions and on going through the spirit of the Hon'ble Supreme Court's judgment, we find that such submissions could be made only against sanctioned posts and any hasty promotion made by the Committee is not binding on the railways. Therefore, we could not find any cogent reason to set aside all the demotions of the applicants. However, we note that full compliance of the supreme court order has been made and applicants have been absorbed in the Railway establishment. In the circumstances we are of the considered view that so far as the impugned orders of demotion are concerned, it was due to reason that there was no sanctioned strength and they have been refixed according to the available and eligible posts as the applicants deserved. In that respect the impugned orders cannot be faulted. However, our interference is called for with regard to the recovery, we are of the considered view that the applicants have been receiving the alleged excess payment not on a misrepresentation made by the applicants and in such a circumstances, no recovery instruction can be made for the applicants. Therefore the recovery operation of the impugned order has to be set aside. To fortify our view we are quoting the decision of Supreme Court in Shyam Babu Verma & Ors. Vs. Union of India & Ors in 1994(2) SCC page 521, in which the Supreme Court has laid down the dictum that excess amount of pay cannot be recovered from the employees for reasons not attributable to the government servants. Therefore, ~~any~~ recovery is not justified. Therefore, we partly allow these O.A.s by setting aside the recovery portion of the impugned orders of the respondents towards excess amount drawn by the applicants in the event of demotions to the lower posts. The O.A.s are accordingly disposed of. In the circumstances, no order as to costs.



MEBER(J)



MEMBER(A)