

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

No. O.A. 1212 of 1997  
M.A. 194 of 1998

Present : Hon'ble Mr. D. Purkayastha, Judicial Member.

Hon'ble Mr. G. S. Maingi, Administrative Member.

ANGSUMAN BANERJEE & ANOTHER

... Applicants

Vs.

UNION OF INDIA THROUGH THE  
GENERAL MANAGER, CLW  
CHITTARANJAN.

... Respondents

For the applicants in the O.A. : Mr. Balai Chatterjee, counsel.  
Ms. B. Mondal, counsel.

For the respondents in the O.A. : Mrs. B. Ray, counsel.

Heard on : 5.8.1999 and 20.8.1999. Order on : 09.9.99

ORDER

G. S. Maingi, A. M.

The applicants have filed the O.A. praying for a direction upon the respondents to treat them as Railway employees for all purposes and grant them the benefits as also the annual bonus.

2. The applicant no.1 is working as Optician in the CLW Hospital w.e.f. 15.10.1981 and applicant no.2 is working as Dental Mechanic in the CLW Hospital w.e.f. 15.10.1978. The short question for adjudication in this application is whether both the applicants who are employees of the Staff Benefit Fund Committee, can be treated as Railway employees when even the Private Railway Coolies who are utilised as Parcel Porters for more than 240 days are treated as Railway employees with temporary status. \*

3. We have heard Mr. Balai Chatterjee, 1d. counsel, leading

*lspns*

Ms.B. Mondal, for the applicants and Ms.B.Ray, 1d.counsel for the respondents.

4. A miscellaneous application, being no.194 of 1998 has been filed by the respondents in the O.A., where they have prayed for vacating the interim order passed by this Tribunal on 23.3.1998 in the O.A.

5. Mr.Balai Chatterjee, the 1d.counsel for the applicants has placed reliance upon the following case laws in support of the case of the applicants -

- (i) AIR 1984 SC 161 (paragraph 28)
- (ii) 1996 (Vol. ) SCC 773
- (iii) AIR 1986 SC 737
- (iv) IRE Code Vol. I.
- (v) ATC 1990 Vol.14 214 (paragraph 5)
- (vi) ATC 1991 Vol.17 page 250
- (vii) ATC 1988 Vol.8 page 161
- (viii) ATC 1988 SC 517
- (ix) AIR 1987 SC 777
- (x) ATC 1992 Vol.20 617
- (xi) IR Establishment Code Vol. I - para 1201 onwards.

6. The applicants besides praying for a declaration that they be declared as Railway employees for all purposes and granted the benefits of a Railway employee with retrospective effect including annual bonus, have also made a prayer to give a go-by to any so-called contract which was contractual to the rules being a Railway servant.

7. The 1d.counsel for the applicants has relied upon paragraph 4.3 of the O.A. which states that the applicants are essentially required employees of the CLW and having no independent status for which all the correspondences from them are issued in the office pad of the CLW as they would not have had their own office of separate identity.

8. We have considered the case laws as cited above, which have been relied upon by the 1d.counsel for the applicants and find that those are not relevant in the instant case.

9. It is found from annexures 'A/2/1', 'A/3' and 'A/3/1' of the O.A. which are dated 20.5.1980, 13.8.1981 and 29.10.1981 respectively, <sup>These</sup> have all originated from the office of the

Secretary, Staff Benefit Fund Committee. The very fact that those letters have been typed out on the pad of the Chittaranjan Locomotive Works does not make the present applicants Railway employees. When the second applicant, Ashoke Patra, was given the offer of appointment on 20.7.1978 (annexure 'A/4/1'), it was clearly stated that the post of Dental Mechanic would not be treated as Railway employee and no accommodation and Railway passes as also other Railway benefits would be given to him from the Railway Administration. The applicant had also to report as per the offer of appointment at his own expense. Similarly in a departmental letter dated 18.10.1978 addressed to the applicant no.2, Ashoke Patra (annexure 'A/4/1/2') which carries the terms and conditions of appointment, it was stated that the applicant is not guaranteed allotment of a Railway quarters and that he should abide by the rules and regulations of the Staff Benefit Fund Committee alongwith various other conditions. A similar offer of appointment was sent to the applicant no.1 which can be found at annexure 'A/3'. It is found from annexure 'A/4' of the application that the pay scales of both the applicants were revised on 19.2.1987 by the Dy.S.P.O, and it was clearly stated therein that both the applicants had been employed by the Staff Benefit Fund.

10. The respondents in M.A.194 of 1998 have clearly stated that the payments for the preceding 3 years were being made out of the Staff Benefit Fund Committee resources i.e. for the years 1994-95, 1995-96 and 1996-97 and the terms of employment of both the applicants were being extended by the said Committee for short durations from time to time. It has also been stated by the respondents that the Staff Benefit Fund Committee was facing severe financial crises in paying the salary of the employees and they had approached the Railway Board for grant of additional funds vide their letter dated 26th May, 1997. The respondents have produced the extracts of the Staff Benefit Fund Rules and Bye-Laws extracted from paras 1201 to 1212 of the Indian Railway Establishment Code, Vol. I. It is very clearly stated in para

1201 that the Fund shall be managed by the Committee at the Headquarters of the Railways presided over by the Sr.Dy.General Manager and besides the Chairman, the Committee will consist of the following -

- (i) The Chief Medical Officer.
- (ii) The Chief Personnel Officer.
- (iii) A Welfare Officer to be nominated by the General Manager who shall act as the Secretary of the Committee; and
- (iv) Ten representatives of the staff - six members shall be from recognised Unions, to be equally divided amongst the Unions and the remaining four shall preferably be elected by the Central Staff Council.

It is stated in paragraph 7 of para 1201 of the Indian Railway Establishment Code that the expenditure from the Staff Benefit Fund would be authorised by the Committee or a Sub-Committee duly appointed within two years under the general supervision of the General Manager. That goes to establish that since it is a welfare scheme, therefore, the Railway wants that its fund should be utilised properly and there is no mis-utilisation in any manner.

11. From the above discussion, it becomes clear that the Staff Benefit Fund Committee is operated by and under the control of a Committee appointed for that purpose which is under the overall supervision of the General Manager and the funds available to it is out of its own revenue and its employees are only its employees and not of the Railways.

12. Keeping in view the above finding, we are of the view that there is no merit in the Q.A. and the Q.A. is dismissed without interfering with the orders passed by the Staff Benefit Fund Committee. We make it clear that the applicants cannot be treated as Railway employees and are to be treated as the employees of Staff Benefit Fund Committee.

13. As a result, M.A.194/1998 also stands disposed of. Interim order, if any, stands vacated.

14. No order is made as to costs.

*G.S. Masingi*  
(G.S. Masingi)  
Administrative Member

*D.P. Purkayastha*  
(D.Purkayastha)  
Judicial Member