

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 212/94

Friday, this the 8th day of July, 1994

HON'BLE SHRI N. DHARMADAN (J)
HON'BLE SHRI S.KASIPANDIAN (A)

1. The Dakshina Railway Employees Union (DREU) through its Vice-President R. Gopalakrishna Pillai, 'Resmi', Nedungottur, Shoroor - 1.
2. N.R.Anil Kumar, Salaried Bearer, Vegetarian Refreshment Room, SR, Ernakulam South. .. Applicants

By Advocate Shri R.Santhosh Kumar.

V/s

1. Union of India, through The Secretary, Min. of Railways, Railway Board, New Delhi.
2. The Chief Personnel Officer, SR, Madras - 3.
3. The Divnl. Personnel Officer, SR, Trivandrum-1. .. Respondents

By Advocate Smt. Sumathi Dandapani.

ORDER

N. DHARMADAN (J)

The first applicant is the Union of Dakshina Railway Employees Union represented by its President and the 2nd applicant is the Salaried Bearer directly appointed by the Railways in Vegetarian Refreshment Room, Ernakulam. This original application has been filed on a representative capacity representing all the commission bearers specifically referred to in this application. They rely on the

judgment of this Tribunal in OA 1733/91, Annexure-A1, for quashing Annexure-A2 order of the 2nd respondent, Chief Personnel Officer, Southern Railway, Madras. The order reads as follows:-

" In terms of Railway Board's letter cited above, interim relief of Rs.100/- has been granted to all Railway Employees from 16.09.93.

It has been represented by the Commission bearers of Catering Deptt. that they should also be granted Interim Relief on par with Railway Employees. As Commission bearers are not Railway Employees, they are not to be given I.R. However, the matter regarding payment of I.R. to Commission Bearers is being referred to Railway Board for their dispensation. Till such time Board's orders are received in this regard, no payment of IR should be made to the Commission Bearers.

This issues with the approval of competent authority."

2. All applicants are being paid remuneration for their work on monthly basis directly by the Railway, i.e. salary in the scale of Rs.775-1025 which include DA, HRA, CCA etc.

While so, the Government of India sanctioned a sum of Rs.100/- as interim relief to all Railway employees w.e.f. 16.9.93. All the applicants were paid the said amount towards interim relief treating them on par with other Railway employees. Whiles, according to the applicants, Annexure-A2 was issued by the 2nd respondent directing the 3rd respondent to stop the payment of interim relief to the applicants. After Annexure-A2, the respondents are also proposing to make deductions from the salary of the applicants. Under these circumstances, they have approached this Tribunal with the following reliefs:-

- "(a) To call for the records leading to the issue of Annexure-A2 and quash the same in so far as it affects the payment of Interim Relief to the persons covered by this Original Application.
- (b) To direct the respondents to continue to pay the Interim Relief to the persons covered by this Original Application.
- (c) To issue such other orders or directions as deemed fit and necessary by this Hon'ble Tribunal in the facts and circumstances of this case."

3. It is after elaborately considering all the issues pertaining to the right of the Commission Bearers, who were appointed directly by the Railway that this Tribunal held that such Commission Bearers are to be treated on a par with Railway employees and they should be given all the benefits available to Railway employees. We have distinguished the decisions, relied on by the respondents Railways, including the one rendered by the Bangalore Bench of the Central Administrative Tribunal, and held as follows in Annexure-A1:-

"13. Central Administrative Tribunal, Madras Bench, in Southern Railway Employees' Co-operative Stores Workers' Union vs. The Secretary, Ministry of Railways and others, following the decision in M.M.R.Khan's case and the decision of the Bangalore Bench of this Tribunal in Sriramulu vs. R.Srinivasan & Ors., AIR 1987 (2) CAT 363, held as follows:-

'13. No doubt, there does not exist in this case Notifications of the Government as in the case of canteen staff treating canteen staff of Government offices as holders of the civil posts and governed by service rules. But there exists now a decision of the Supreme Court treating the Railway canteen employees as Railway employees. Such being the situation treating the store employees differently from canteen employees would be violative of Articles 14 and 16 of the Constitution in the same manner as the discrimination between Railway canteens and department canteens have been held to be discriminatory by the Supreme Court.'

14. In this case, admittedly, the commission bearers are directly engaged by the Railway and the Railway has all administrative control over them. They are continuing for an unduly long period without any security of job and the benefit analogous to that of regular employees. It will be inequitable to allow these employees to continue in the present position. Hence, in the interest of justice, they should be given equal status as that of regular bearers/waiters. Otherwise, it would cause injustice to them. Regularisation in terms of Supreme Court judgment may take further delay, having regard to the number of persons waiting in the queue for regularisation. The Supreme Court in Karnataka State Private College Stop-Gap Lecturers Association vs. State of Karnataka & Ors., AIR 1992 SC 677, after considering the question of regularisation of temporary or adhoc employees in accordance with rules observed that "no discrimination can be made for same job on the basis of method of recruitment. Such injustice is abhorring to the constitutional scheme". However, in this case Supreme Court has already considered this question positively and issued directions for absorption as stated above in the regular posts in accordance with their turn."

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"16. It is further contended, placing reliance on the decision of Bangalore Bench of this Tribunal in OA 241/92 and connected cases, Sri E.Mari vs. union of India and others, that applicants are not regular railway servants and as long as they are governed by the conditions of contract, they are not entitled to any relief. We are not satisfied with this contention and it cannot be accepted on the facts of this case. This decision is also distinguishable on the facts for the applicants have attained regular status and they are employees entitled to statutory protection.

17. The learned counsel for the applicant also contended that the applicants are similarly situated like the applicants in Writ Petition No.306/86 filed before the Supreme Court. Interim order passed by the Supreme Court in that case on 5.3.86 is produced as Annexure-A4. It is quoted below:-

'Same order as in W.P. No.3692 of 1981 i.e. issued Rule Nisi. Pending notice all the employees covered by the writ petition shall be paid salary in the same rate with effect from December 1983, as salaried bearers of the Railway catering are being paid."

He further submitted that the Railway have issued orders even after the disposal of Writ Petition 191/86 directing authorities to follow the interim order, Annexure-A4, and they are marked as Exhibits-R2 and R3 in the counter affidavit filed in OA 99/91, which is produced as Annexure-A6 along with MP No.667/93 filed in OA 1500/91. Those orders issued in 1986 and 1989 specify that the applicants should be paid salary on the basis of the interim order issued by the Supreme Court and they are now getting the said benefits. Respondents have no explanations for the submissions made by the learned counsel for the applicant except a submission that the number of writ petition stated in Annexure-A4 is also included in M.M.R.Khan's case decided by the Supreme Court on 27.2.90 and hence the interim order has no force. On a perusal of M.M.R. Khan's case, we are not satisfied that Writ Petition No.306/86 was also considered and disposed of on merits. The learned counsel for the applicants submitted that the Writ Petition No.306/86 is even now pending before the Supreme Court. When the respondents tried to vacate the interim order passed in this case on the ground that Writ Petition 306/86 was already dismissed, after hearing the parties we passed an order on 27.1.92 in the following manner:-

'M.P.153/92: This MP has been filed by the respondents in OA praying that the interim order passed on 2.12.91 directing the respondents to pay the applicants salary at the same rate as is applicable to salaried bearers in the Railway Catering Service from the date of the application till the disposal of the application may be vacated. The interim order sought to be vacated was issued following the interim order issued by the Hon'ble Supreme Court in Writ Petition No.306/86 in identical circumstances. The respondents in the OA have now filed this MP stating that in another Writ Petition No.191/86 the Hon'ble Supreme Court had given a different direction. A copy of the order of the Supreme Court in WP No.191/86 dated 18.12.1987 has been produced and marked as Annexure-P1. In this order reliance is placed by the Miscellaneous Petitioners to the observations of the Supreme Court as under:-

'..... We must necessarily modify the directions contained in this court's order dated March 10, 1986 as to payment of salary. In modification of the earlier direction, we direct that the vendors and bearers absorbed in the Railway Catering Service shall be entitled to salary as from the date of their absorption and not from December 1, 1983.'

The learned counsel for the petitioners therefore pray that in the light of the above decision of the Hon'ble Supreme Court, it is necessary that the interim order issued in this case should be vacated.

Having heard the counsel on either side, we do not find any reason or justification to vacate the interim order as prayed for in this MP. It was after perusal of a copy of the WP No.306/86 and the order issued by the Hon'ble SC being satisfied that the applicants in this OA are identically situated as the applicants before the Hon'ble SC in WP No.306/86 that the interim order was issued. The Hon'ble SC has not vacated or modified the interim order passed in WP No.306/86. Since a copy of the WP No.191/86 is not made available for our perusal, we are not in a position to know whether the applicants in this case and the petitioners in WP 191/86 before the Hon'ble SC are identically situated or not. As the interim order in this case was issued on the basis of the interim order issued by the Hon'ble SC in WP No.306/86, we are of the view that the above order is not liable to be vacated on the ground the Hon'ble SC has in a different case, given a different order. The order in WP No.191/86 might have been issued to suit the facts and circumstances of that case.

This MP therefore has only to be dismissed. We do so.'

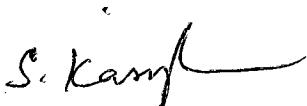
18. In the light of the foregoing discussions, we find considerable force in the submissions made by the applicants on the second question raised for our consideration. Accordingly, we answer the second question affirmatively and in favour of the applicants."

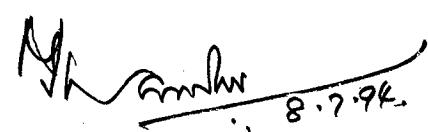
4. After the judgment the Railway ~~had~~ passed an order for grant of interim relief of Rs.100/- per month from 16.9.93. Accepting the judgment, the Railway had treated the Commission Bearers directly appointed by the Railway on par with Railway employees and disbursed to them the interim relief covered by the above order of the Railway. Accordingly, the applicants were receiving such amount till February 1994. Without any prior intimation or notice, the same was stopped after the impugned order.

5. The stoppage of interim relief to Commission Bearers of Catering Department, who were directly appointed by the Railway is arbitrary and illegal. It is also violative of the provisions of Article 14 of the Constitution of India. The reason given for stopping the payment that they are not Railway employees cannot be supported after the judgment, Annexure-A1.

6. Respondents in their reply only placed reliance on earlier judgment of the Bangalore Bench of the CAT and other decisions considered by this Tribunal in Annexure-A1 judgment. They were discussed in detail and distinguished in that judgment. It was held in that case that the Commission Bearers directly appointed by the Railway are to be treated on par with the Railway employees for the grant of all service benefits. In the light of the judgment, they are also entitled to the interim relief covered by the impugned order.

7. Having regard to the facts and circumstances, we are satisfied that there is considerable force in the submissions made by the learned counsel for the applicant, ^{hehly} and Annexure-A2 order is not supportable. It is liable to be quashed. Accordingly, we quash the impugned order, Annexure-A2, and allow the O.A. There will be no order as to costs.


(S. KASIPANDIAN)
MEMBER (A)


8.7.94
(N. DHARMADHAN)
MEMBER (J)