

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
TANNO

375/91

100

DATE OF DECISION

23.12.92

P.Radhakrishna Pillai and Three Others _____ Applicant (s)

Mr.P.Sivan Pillai _____ Advocate for the Applicant (s)

Versus

Union of India through
the General Manager, _____ Respondent (s)
S.Railway, Madras-3 and two others.

Smt.Sumathi Dandapani _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. A.V.HARIDASAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 5.3.1991 the four applicants who have been working as Salesman/Cleaner/Bearer in the Southern Railway Canteen, Quilon under the Southern Railway have prayed that the respondents be directed to treat and absorb them as Railway employees with all consequential benefits with effect from 1.4.90. According to the applicants they were initially engaged in the Southern Railway Staff Co-operative Canteen which was a non-statutory canteen recognised by the Railway Administration on various dates between 1979 and 1981. They were subsequently confirmed in their posts on various dates between 1980 and 1983 and they are still continuing in the Railway canteen. They have relied upon the Supreme Court judgment in M.M.R.Khan and others vs. Union of India and others and the Railway Board's order issued in implementation of that judgment. In accordance with that judgment, workers engaged in the statutory as well as non-statutory recognised canteens in the Railway Establishments are railway employees and they are to be treated as such with effect from 1.4.1990 and that they would be entitled to all benefits

with effect from that date. They have also referred to the Railway Board's order dated 18.5.90 (Annexure A1) giving effect to the aforesaid decision of the Hon'ble Supreme Court. It has been stated by the applicants that there are ten employees in the canteen at Quilon and all of them were appointed and confirmed by the Managing Committee of the canteen. The Managing Committee paid the salary of all the employees in August 1990, but the respondents arbitrarily declined to sanction the salary of the four applicants. The Manager made a representation at Annexure-A2 which was followed by a notice of the Advocate of the applicants without any effect.

2. In the counter affidavit the respondents have stated that "a scheme was evolved by the Ministry of Railways in the case of employees of statutory canteens and non-statutory recognised canteens who are employed against sanctioned scales of pay, to treat them as temporary Railway servants, extending them the benefits as applicable to such temporary employees. This was based on a Supreme Court judgment dated 27.2.1990 reported in AIR 1990 SC 937 ". They have also referred to the Southern Railways letter dated 24.12.1990 at Ext.R1 in that connection and have stated that since the applicants are not working posts of sanctioned scale of pay, their status is only that of casual labourers not coming under the scope and purview of Ext.R1 order. They have stated that unless the applicants produce the documentary proof that they were appointed on a regular basis, they cannot be given the benefit of the order. They have also referred to the order dated 24.12.1990 at Ext.R2 whereby in implementation of the Supreme Court's aforesaid decision in M.M.R Khan's case, the employees of non-statutory posts of canteens at Trivandrum and Quilon working against the/ sanctioned scale of pay were treated as temporary Railway servants from 1.4.90. They have argued that the Supreme Court's judgment does not cover casual labourers.

3. In the rejoinder the applicants have argued that neither the Supreme Court's judgment, nor the Railway Board's order at Annexure A1 "make any difference as between casual employees and others nor it make any difference based on the sanctioned scales of pay as alleged in R1". They have argued that Ext.R1 is inconsistent with the Supreme Court's decision and the Railway Board's order at Annexure A1. They have contended that since the applicants have been in continuous employment for more than a decade and even after the Railway Board's order at Annexure A1 was issued, they are entitled to the benefits of that order. They have also denied that they were ever casual employees. They have produced proceedings of the Managing Committee granting them regular pay scale, confirmation and promotion. They have also produced at Annexure A11 the letter dated 24.1.89 addressed to the Divisional Personnel Officer intimating the appointment of applicant Nos. 1,3 and 4 and requesting "to issue early orders and sanctioning subsidy to the additional staff".

4. In reply to the rejoinder the respondents have stated that the Managing Committee of the Co-operative canteen had not obtained the approval of the Railway Administration for the engagement of the applicants. They have stated that 70% of the establishment charges of the canteen at Quilon is met by the Department by way of subsidy which includes the salary and other allowances. This subsidy was granted to cover the salary of six employees as per Ext.R3 series. The names of the six employees do not include the names of the applicants. They have stated that the appointments made by the Managing Committee without the approval of the Railways, cannot be recognised. Since no subsidy was paid by the Railways in respect of the salary of the four applicants, the judgment of the Supreme Court does not apply to them. They have also produced the Railway Board's order dated 18.5.1990 at Ext.R3 clarifying that "the prayer of employees of a few non-recognised (unsubsidised) non-statutory canteens which have sprung up, without the approval of the Railway Board as required by the provisions

in Chapter XXVIII of the Indian Railway Establishment Manual and in some cases with the approval and patronage of local authorities, for grant of status of railway servants, has been dismissed". It has also been stated therein that "due care may, therefore, be taken to ensure that the benefit of these instructions accrues only to the employees of the subsidised (recognised) non-statutory canteens set up with the approval of the Railway Board".

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. That the Southern Railway Staff Co-operative Canteen in which the applicants were initially engaged and later confirmed and which was converted into Southern Railway Canteen at Quilon is a recognised non-statutory canteen, is an admitted fact. The respondents in the additional reply statement dated 20th July 1992 have admitted that the establishment charges of the canteen at Quilon is subsidised to the extent of 70%. In the Joint Procedure Order issued by the Divisional Personnel Officer dated 27.8.90 at Ext.R4 it has been clearly indicated that in pursuance of the Supreme Court judgment dated 27.2.90 "employees of Non-statutory (Subsidised/recognised) canteens are treated as railway servants w.e.f. 1.4.1990" and " in view of the above decision, the employees of the non-statutory canteens at TVC and QLN whose appointments have already been approved by the Railway administration will come direct under the administrative control of this division for all purposes from 1.4.1990". Thus, the applicants who had admittedly been engaged in that canteen are employees of a non-statutory subsidised/recognised Railway canteen. In the aforesaid judgment of the Supreme Court dated 27.2.90 in M.M.R.Khan and others vs. Union of India and others, 1990 (Supp) SCC 191, after detailed analysis, the Supreme Court held as follows:-

"39. 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 11 Delhi based 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."

(emphasis added)

A bare reading of the aforesaid decision would show that ~~every~~^{the} employees in a non-statutory, recognised canteen in the Railways are to be deemed to be Railway employees with effect from 1.4.1990. The plea of the respondents that since the applicants were not working against posts with sanctioned pay scales, they do not fall within the purview of this judgment, cannot be accepted. The respondents have based their plea on the Southern Railways' circular dated 24.12.1990 at Ext.R1 which states that "the employees of the Non-Statutory (Recognised) canteens working against the posts of sanctioned scale of pay are treated as temporary Railway servants from 1.4.1990". This qualified statement is not only at variance with the finding of the Supreme Court, as quoted above, but is also inconsistent with the circular of the Ministry of Railways(Railway Board) dated 18.5.1990 at Annexure A1, para 3 of which reads as follows:-

"3. Consequent upon the said judgment of the Supreme Court, the Ministry of Railways have decided that the employees of the subsidised(recognised) non-statutory canteens should be treated as Railway servants with effect from 1.4.90. The employees of these canteens may therefore, be extended all benefits as are available to other Railway servants of comparable status from 1.4.90 except the SRPF, Railway Pension Rules and Group Insurance Scheme in respect of which a separate communication will follow. They will also be subject to same service condition regarding recruitment, promotion, etc. as are applicable to other Railway servants of comparable status."

(emphasis added)

Since the circular of the Railway Board does not limit the benefit of the Supreme Court judgment only to those employees who were in the sanctioned scales of pay, the circular dated 24.12.90 of the Southern Railway at Ext.R1 with this qualification cannot be upheld. Between the Southern Railways' circular and that of the Ministry of the Railways, it is the latter which should be followed.

6. The respondents plea that the applicants were only casual workers also cannot be accepted because in the letter dated 10.9.90 at Annexure A2 addressed by the Manager of the canteen, the four applicants have been specifically mentioned to be permanent employees from various dates between 1980 and 1989 in running pay scales. A casual employee can neither be confirmed nor can he be in a running pay scale. The applicants have produced the proceedings of the Management Committee of various dates of 1983 confirming the applicants in running pay scale at Annexure A4 to A8. At Annexure A9 one of the applicants ^{has} ~~have~~ even been promoted as Salesman Helper in the scale of Rs.80-160. When the canteen was in the form of a Co-operative Society, its Managing Committee was fully empowered to employ the applicants and confirm them in running pay scales. Paragraph 2832 of the Railway Establishment Manual (Chapter XXVIII) ordains that although the Railway Administration "can employ as Agent a Staff Committee or a Co-operative Society for management, the legal responsibility for proper management rests not with the agency, but solely with the Railway Administration". In para 33 of the judgment of the Supreme Court in M.M.R Khan's case, it has been clearly stated that "the nominee of the railway administration on the managing committee of the canteen is to be the appointing authority". Thus, the appointment of the applicants in the canteen, cannot be held to be illegal. In case of non-statutory recognised canteens, para 2833 of the Manual defines powers of the Committee of Management of such canteens. The following extracts from para 31 of the aforesaid judgment of the Supreme Court would be relevant:-

"Paragraph 2833 contains provisions for the management of such non-statutory canteens. Among other things, it states that such canteens can be run either by a committee of management to be formed for the purpose or by a consumer co-operative society. The committee of management should consist of the duly elected representatives of the staff and where it is run by a co-operative society, it should consist of the representatives of the shareholders of the society. However, in either of the cases, a representative of the railway administration is to be nominated either as a Chairman or a Secretary or as a member of the committee. This nominee of the railway administration is under

an obligation to bring to the notice of the administration any decision of the managing committee which is likely to affect the interests of the railway administration in its capacity as an owner of the premises and of the furniture, equipment, etc., or if the decision is likely to be of considerable harm to the staff. In such cases, the managing committee cannot take action on the particular decision till the General Manager of the Railway has recorded his decision thereon. The paragraph further ordains that where the canteens are managed by a co-operative society, the society should make a suitable provision in its bye-laws for supervision of the canteen by the committee of management."

(emphasis added)

If the applicants' engagement in the co-operative canteen, Quilon had been illegal or irregular, the nominee of the Railway Administration on the Managing Committee should have brought it to the notice of the General Manager. Since nothing of this nature was done, the appointment of the applicants in the canteen cannot be faulted. In M.M.R Khan's case, the learned counsel for the Railways ^{had} raised the plea of inferior or private character of the employment of the staff of the co-operative canteens and had argued that they cannot be treated as Railway servants. He argued that it is not the Railways, but the Managing Committee which appoints the staff as a separate entity independent of the Railway Administration and there is no relationship of 'master' and 'servant' between the Railway Administration and the canteen employees. This argument was repelled by the Hon'ble Supreme Court emphasising further that there is hardly any difference between the statutory canteens and non-statutory recognised canteens. Referring to the administrative instructions on the departmental canteens in offices and industrial establishments of the Government, the Hon'ble Supreme Court observed as follows:-

"Besides, while discussing the case of the employees in statutory canteens we have pointed out the relevant provisions of the Administrative Instructions on Departmental Canteens in Government Offices and Government Industrial Establishments. These Instructions are applicable to both statutory and non-statutory recognised canteens. The Instructions do not make any difference between the two so far as their applicability is concerned. In fact these Instructions require that the canteens run by engaging solely part time daily wage workers may be converted to departmental canteens (para 1.3). Hence we do not see why any distinction be made between the employees of the two types of canteens

so far as their service conditions are concerned. For this very reason, the two notifications of December 11, 1979 and December 23, 1980(supra) should also be equally applicable to the employees of these canteens. If this is so, then these employees would also be entitled to be treated as railway servants. A classification made between the employees of the two types of canteens would be unreasonable and will have no rational nexus with the purpose of the classification."

In an earlier portion of the judgment, the Hon'ble Supreme Court also had observed as follows:-

"As has been pointed out earlier, much before the order of this Court dated October 22, 1980, the employees of the departmental canteens/tiffin rooms were declared as holders of civil posts under the Government of India Notification No. 6(2)/23/77-Welfare dated December 11, 1979 which notification is an Annexure 4 to the Administrative Instructions referred to above. That notification stated that all posts in the said canteens/tiffin rooms are to be treated as posts in connection with the affairs of the Union, and accordingly, present and future incumbents of such posts would qualify as holders of civil posts under the Central Government. The notification further stated that necessary rules governing the conditions of service of the employees would be framed under proviso to Article 309 of the Constitution to have retrospective effect from October 1, 1979. Accordingly the service rules were framed under Article 309 as per the Notification No.GSR-54 issued by the Government of India, Department of Personnel and Training on December 23, 1980. These rules contained both the recruitment rules and conditions of service of the said employees including the procedure for disciplinary action to be taken against them. As stated earlier the Administrative Instructions are applicable to the canteens/ tiffin rooms run by all the ministries including the Railway Ministry unless they had previously decided to be exempt from them and had framed their own rules in that behalf."

Thus, even before 1980, the employees of the canteens were held to be occupying civil posts and their conditions of service were prescribed under Art.309 of the Constitution. The Supreme Court in M.M.R Khan's case held as follows:-

"Hence, we are of the view that if the said two notifications are applicable to the employees in the canteens run by the other departments of the Government of India, there is no reason why the same should not apply also to the employees in the canteens run by the railways."

Thus, we have no doubt in our mind that in whatever capacity the applicants had been engaged by the Managing Committee, they are entitled to be treated as Railway servants in accordance with the judgment in M.M.R.Khan's case read with the circular of the Railway Board

52

at Annexure A1. Further, having accepted the applicants as permanent employees of the canteen, the respondents are estopped from derecognising their status as regular employees of the canteen and the consequential benefits accruing from that status.

7. In the light of what has been stated above, the respondents cannot deny the benefits accruing to the applicants on the ground that subsidy was not allowed on their salary. Since their original appointment and later confirmation by the Managing Committee, cannot and has not been faulted, they are entitled to be recognised as Railway servants with effect from 1.4.90. If the Headquarters have not given the subsidy on their wages, it is an intradepartmental matter, for which the applicants cannot be made to suffer.

8. In the facts and circumstances, we allow the application and direct the respondents to treat the applicants as Railway employees with effect from 1.4.90 with all attendant benefits. There will be no order as to costs.



(A.V.HARIDASAN)
JUDICIAL MEMBER

(S.P.MUKERJI)
VICE CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

CPC 182/93 in OA 375/91.

Tuesday, this the 7th day of December, 1993.

C O R A M

HON'BLE MR JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN
HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

1. P Radhakrishna Pillai, Southern Railway Canteen, Quilon.
Salesman

2. L Anzar, Cleaner/Bearer, -do-

3. P Rajendran, Cleaner/Bearer, -do-

4. P Chellakuttan, Cleaner/Bearer, -do-Petitioners

By Advocate Shri P Sivan Pillai.

Vs.

V Rajeevan,
Divisional Personnel Officer,
Southern Railway,
Trivandrum--14.Respondent

By Advocate Smt Sumathi Dandapani.

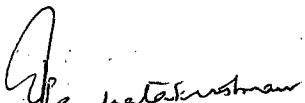
O R D E R

CHETTUR SANKARAN NAIR (J), VICE CHAIRMAN.

Petitioners complain of disobedience of Annexure-A order.
Respondent has filed a statement dated 7.12.1993, stating that petitioners have been granted the relief sought.

2. Recording the submission, we dispose of the petition. No costs.

Dated the 7th December, 1993.


PV VENKATAKRISHNAN
ADMINISTRATIVE MEMBER


CHETTUR SANKARAN NAIR (J)
VICE CHAIRMAN