

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 538/96

Date of Decision: 25-03-98

Moosa Kasam K.Manga & Ors.

.. Applicant

Shri M.S.Ramamurthy.

.. Advocate for
Applicant

-versus-

Union of India & Ors.

.. Respondent(s)

Shri V.S.Masurkar.

.. Advocate for
Respondent(s)

CORAM:

The Hon'ble Shri M.R.Kolhatkar, Member(A).

The Hon'ble

(1) To be referred to the Reporter or not ?

(2) Whether it needs to be circulated to other Benches of the Tribunal ?

M.R.Kolhatkar

(M.R.KOLHATKAR)

MEMBER(A).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 538 / 96.

pronounced, this the day of 25th March 1998.

Coram: Hon'ble Shri M.R.Kolhatkar, Member(A).

Moosa Kasam K.Manga & Ors.,
C/o. Ramesh Ramamurthy,
Advocate,
6, Gulestan Building,
3rd Floor,
Prescot Road,
Fort,
Mumbai.

... Applicants.

(By Advocate Shri M.S.Ramamurthy)

V/s.

1. Union of India through
The General Manager,
Western Railway,
Churchgate,
Mumbai - 400 020.
2. The Chief Catering Service
Manager, Western Railway,
Churchgate,
Mumbai - 400 020.
3. The Chief Personnel Officer,
Western Railway,
Churchgate,
Mumbai - 400 020.
4. The Divisional Rail Manager,
Western Railway,
Mumbai Central,
Mumbai - 400 008. ... Respondents.

(By Advocate Shri V.S.Masurkar)

O R D E R

(Per Shri M.R.Kolhatkar, Member(A))

In this O.A., the applicants who started
service as Commission Vendors who were absorbed as
regular vendors on different dates as per Ex. 'D'
have sought the relief of directing the respondents
to count the service rendered by them as Commission
Vendors from initial dates of engagement till the date
of regular service as qualifying service for the purposes
of Pension and other retiral benefits. It is contended

that the action of respondents in not treating the applicants as regular servants prior to the date of regularisation is illegal and bad in law, keeping in view the Judgments of the Tribunal in the case of K.V.Baby & Ors. V/s. Union of India (1994 (1) SLJ CAT 344) and the observations of the Hon'ble Supreme Court in the case of M.M.R.Khan & Ors. V/s. Union of India & Ors. (AIR 1990 SC 937). It is also contended that the work done by the applicants as Commission Vendors was of a regular nature [redacted] which is also done by the Railways through its departmental Catering Units, and there is no reason to discriminate and deny the benefits of the service rendered by them as Commission Vendors.

2. The respondents have opposed the O.A. There is a preliminary objection that the joint application filed by the applicants who were regularised on different dates involves mis-joinder of parties. Secondly, the application is time-barred because absorption of the applicants took place between 1978 to 1984 and the applicants have approached the Tribunal only in 1996. Thirdly, it is contended that the applicants have not exhausted the departmental remedies and have approached the Tribunal directly. On merits, it is contended that the question of counting a particular spell of service as qualifying service for pension is a policy decision. Even in the case of Casual Labourers, whether Project Casual Labourers or Open Line Casual Labourers, it is only 50% of the service prior to the date of absorption which is counted as qualifying service for pension. The prayer of the applicants, therefore, to count the whole of service prior to absorption is therefore unreasonable and cannot be considered by the Railway Administration.

Lastly, the argument in terrorem is made viz. that although the applicants are only 11 or 12 in number, there are a large number of commission vendors regularised as Waiters in the Railways and any consideration of the request of the applicants would involve the Railways in immense financial liability.

3. I am not inclined to non-suit applicants on technical grounds. In my view, the right of Govt. servants to receive pension for service rendered is a continuing cause of action and O.A. is not time-barred.

4. As regards merits, I first consider the Judgment relied upon by the applicants in K.V.Baby & Ors. V/s. Union of India. A Division Bench of this Tribunal at Ernakulam Bench had to consider whether the Commission vendors/bearers directly appointed by the South Central Railway are entitled to salary as that of the regularly appointed vendors/bearers and the reply was given in the affirmative in para 18 of the Judgment. In M.Sivaraman & Ors. V/s. Union of India & Anr. (1990 (14) ATC 214) the Tribunal had rejected the contention that Commission vendors are independent Contractors and Tribunal held that the relationship between the Commission vendors and the Railways was that between servant and master.

5. The applicant has also relied on certain provisions of the Railway Services (Pension) Rules, 1993. Rule 14 deals with period which shall not be treated as service for pensionary benefits, and rule 14(xiv) deals with "period on contract basis except when followed by confirmation". Rule 24 deals with counting of service on contract.

6. In my view, both the rules cited by the applicant do not help the applicants because they

refer to contractual service as a mode of recruitment. Applicants were not in service on contract in the sense of the cited rules. They had a contract ^{of} service as distinguished from contract for service as held in M.Sivaraman's case but that is a different matter. What is involved here is the issue of deciding qualifying service for pension in respect of Casual Labourers. Now it is not disputed by the Railway Administration that 50% of the service rendered by Casual Labourers prior to regularisation is treated as qualifying service for the purpose of pension. Even according to general instructions of the Central Government in relation to Casual Labourers vide Chapter 22 at page 213 of Swamy's Manual on Establishment and Administration "50% of the service rendered on temporary status should be counted for the purpose of retirement benefits after regularisation of Group 'D' Officials." No doubt, this Rule is part of the scheme of the Personal Department drawn up for ~~conferment~~ confirmation of temporary status ^{of} ~~of~~ Casual Labourers but it is to be noted that the rule is part of the scheme drawn up by the Government consequent on a series of Supreme Court Judgments in relation to various departments like P & T, Railways etc. In the present case also, the relief of regularisation was given to the applicants in terms of the Supreme Court decision in Shital Singh and Anr. V/s. Union of India & Ors. (Writ Petition (Civil) Nos. 6804-05 of 1982) and T.I.Madhavan, Gen. Secy., All India Railway Catering Service Workers' Union V/s. Union of India & Ors. (1988 (Supp) SCC 437). In para 2 of the latter Judgment, the Supreme Court directed that all persons working as commission bearers and vendors on various railway platforms belonging to

the Central Railway and the South Central Railway would be absorbed progressively as members of the Permanent Railway Catering Service. Therefore, the general principle of counting 50% of the service of the Casual Labourers for retirement benefits prior to regularisation should equally apply to the commission vendors regularised as waiters in the Railway Catering Service in terms of the Supreme Court decision.

7. I therefore, dispose of the O.A. by directing the respondents to frame a general scheme of grant of retirement benefits to the regularised commission vendors by counting 50% of their service as commission vendors. The framing of such a scheme would no doubt involve consultation with the Unions and the Railway Board. Action in this regard may therefore be taken within six months from the date of communication of this order. To the extent applicants are covered under ^{general} such a scheme, necessary benefits should be extended to them after the promulgation of the scheme. There will be no orders as to costs.

M.R. Kolhatkar
(M.R. KOLHATKAR)
MEMBER(A).

B.

(0)