

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 528/2000

DATE OF DECISION 26/7/2001

S.S.Bhagat

Applicant

Shri G.K.Masand

Advocate for
Applicant.

Versus

Union of India and 3 others

Respondents.

Shri S.C.Dhawan -Respondent Nos.1 to 3 Advocate for
Shri D.V.Gangal -Respondent No.4. Respondents.

Coram:

Hon'ble Shri S.L.Jain, Member(J)
Hon'ble Smt. Shanta Shastry, Member(A).

1. To be referred to the Reporter or not? /
2. Whether it needs to be circulated to
other Benches of the Tribunal? /
3. Library. ✓

Q-9
(Smt. SHANTA SHAstry)
MEMBER(A)

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**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:528/2000
DATED THE 26th DAY OF JULY 2001**

**CORAM:HON'BLE SHRI S.L.JAIN, MEMBER(J).
HON'BLE SMT.SHANTA SHAstry, MEMBER(A)**

S.S.Bhagat, Ex.Canteen Manager,
of the Bhusawal Railway Employee's
Co-op. Consumers Society Ltd,
Bhusawal under direct control of
Divisional Railway Manager,
Central Railway, Bhusawal Division,
Bhusawal and
residing at Upali Nagar, Haddiwala
Chawl, Bhusawal - 425 201.Applicant

By Advocate Shri G.K.Masand

V/s.

Union of India, through

1. The General Manager,
Central Railway,
Chatrapati Shivaji Terminus,
Mumbai.
2. Chairman, Railway Board,
Rail Bhawan, New Delhi.
3. Divisional Railway Manager,
Central Railway,
Bhusawal Division,
Bhusawal.
4. The Chairman,
The Bhusawal Railway Employees Co-op
Consumer's Society Ltd.,
Bhusawal.

.... Respondents

By Advocate Shri S.C.Dhawan for
Respondent Nos.1 to 3.

By Advocate Shri D.V.Gangal for
Respondent No.4.

(ORDER)

Per Smt.Shanta Shastry, Member(A)

The applicant has prayed to set aside the impugned orders
dated 5/1/82 placing him under suspension, order dated 9/3/88
removing the applicant from service and the order dated 6/8/99 of
the Appellate Authority confirming the penalty order and to

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reinstate him as Canteen Manager with continuity of service and all consequential benefits including arrears of wages. He has also asked for cost.

2. The facts are that the applicant was appointed in the Bhusawal Railway Employees Co-op. Consumers Society w.e.f. 10/8/74. In course of time, he was promoted and posted as Canteen Manager vide order dated 26/7/80 of the Secretary, Bhusawal Railway Employees Co-op Consumers Society Ltd (in short society). In the year 1986-87, the Internal Auditors of the Society had noticed certain irregularities in the entries of Cash Book and Ledger Accounts of the Society and submitted his report to the Society. Thereafter, the applicant was suspended vide order dated 7/2/87 for misappropriation and fraud of the amount of Rs.12,472.50. An inquiry committee was appointed to inquire into the allegations levelled against the applicant. On the applicant's taking objection, another inquiry officer who was a member of the Managing Committee was appointed as Inquiry Officer. After completion of the inquiry, the applicant was awarded the punishment of removal from service and the same was upheld by the Appellate Authority also.

3. The applicant moved an application on 12/2/88 under Section 33C(2) of the Industrial Disputes Act in the Labour Court of Jalgaon for recovery of Rs.23,696/- being the subsistence allowance to be paid for the period 5/1/87 to 9/3/88 and the arrears due and payable as per the recommendations of the IVth Pay Commission. Applicant also ^{lodged by} ~~alleged~~ a complaint to the Labour Enforcement Officer (Central) vide his letter dated 30/12/1996 forwarding a copy of the Central Labour Commissioner (Central) and Chief Labour Commissioner for information. The Labour

Enforcement Officer in turn forwarded it to the Divisional Railway Manager, Central Railway, Bhusawal vide his letter dated 21/1/97. No reply was received. The applicant kept making representations and finally sent his representation to Shri Ram Vilas Paswan, then Minister for Railways on 21/10/97. Not having met ^{with} any success, he made a further representation on 30/8/1998 to Shri Ram Naik, then Minister of State for Railways. Thereafter, he was informed by Respondent No.3 vide letter dated 6/8/99 that his representation has been considered by the HeadQuarters Office who had decided to uphold the stand taken by the Managing Committee since the applicant did not remain as Canteen Manager till 1/4/90. He immediately submitted a review appeal to the General Manager on 17/9/99. No reply was given to him.

4. The applicant contends that the inquiry was not conducted properly at all. He was not given any opportunity to plead his case and therefore the order of removal was illegal. Further, he had not been paid any subsistence allowance though he was under suspension nor was the suspension revoked. The entire action of the respondents was against the principles of natural justice. Further, the applicant submits that he was working in the Departmental Non Staturoty (recognised subsidised canteen) managed by Respondent No.4 under the overall control of respondent No.3. The employees of Departmental Canteens and Tiffin Rooms were declared as holders of Civil Posts in connection with affairs of the Union and under the Central Government w.e.f. 1/10/79 vide Government of India's Notification dated 11/12/1979. Consequent upon acquiring status of holder of civil post, the applicant was entitled to all the protections against arbitrary actions as are available to regular

Central Government Employees and Railway Employees. Before taking any disciplinary action, the procedure as set out in Chapter-IV (Conduct and Discipline) of GSR-54 dated 23/12/1980 published in the Gazette of India, Part II Section 3, Sub Section (1) dated 17/3/81 was required to be followed. Further, in view of the directions issued by the Hon'ble Supreme Court in the case of MMR Khan and Ors., the Railway Ministry had issued instructions under No.E(W) 83 CN 1-8 dated 13/5/1983 directing therein that revised scales of pay should be made applicable to employees of Canteens managed by Co-op. Societies. The applicant states that employees of the Canteen managed by Co-op Societies were holding civil post and therefore were entitled to protection guaranteed under Article 311(2) of the Constitution of India from 1982 onwards. Therefore, the case of suspension and removal of applicant without taking recourse to Discipline & Conduct Rules is unconstitutional, arbitrary and bad in law. Even in the Indian Railway Establishment Manual, although the Railway Administration may employ anyone staff as Committee member for the management of the Consumer Co-op Society but the legal responsibility for the proper management rests solely with the Railway Administration. In the circumstances, the employees of the non statutory recognised subsidised Railway Canteens are entitled to be treated on par with the employees of the statutory canteen and they are also entitled to be treated for all purposes as Railway servants. The applicant states that his appeal was rejected by the Divisional Railway Manager only on the ground that he did not remain as Canteen Manager as on 1/4/90. The applicant therefore has tried to establish that he was a Railway

servant in terms of the Interim Relief granted by the Hon'ble Supreme Court in the case of MMR Khan reported in AIR 1990 SC 937.

5. Respondents 1 to 3 have taken the preliminary plea that the Tribunal has no jurisdiction to entertain the present application as the applicant was employed by the Employees Consumers Co-op Society and was removed from employment by the said Consumer Society prior to 18/5/90. When the Railway Board issued a letter by which the employees of subsidised Statutory Canteens were to be treated as Railway Servant w.e.f. 1/4/90, the applicant was not a civil servant or holding a civil post under the Union of India at any time. The Respondent No.4 is a private Co-op Consumers Society and the applicant was employee of that society. Therefore, this Tribunal has no jurisdiction. The other plea taken is that the application is barred by Principles of res judicata as the applicant also made an application before the Labour Court of Jalgaon vide Application No.IDA-123.88.

6. According to the respondents, the applicant was the employee of the Consumers Co-operative Society which was a Non Statutory Canteen and was established and controlled by employees from amongst themselves. The Railway Administration was not connected with it and it was never run under the control or direction of the Railway Administration. The Railway Administration is not responsible for the employment/retrenchment /termination of any employee of the said society. The said canteen was neither a departmental canteen nor a statutory canteen under the Factories Act. The applicant was not a Railway servant at any time. As per the definition of Railway Servant given in the IREC para 103 (43) edition 1985 Vol.I., the

respondent no.4 is a registered under the Maharashtra Co-op Societies Act and therefore the proper forum for the applicant for the redressal of his grievance is the Labour Court, under the Industrial Disputes Act. The applicant ceases to be an employee of the Co-op Society on and from 9/3/88 when he was removed from service of the society. Till 1/4/90, the said society was a non statutory, non registered, subsidised canteen and the employees working therein were treated as employees of the society and not of the Railways. The Ministry of Railways vide letter dated 18/5/90 directed that consequent upon the judgement of the Hon'ble Supreme Court dated 27/2/90 in Writ Petition No.2275.86 of 1982 filed by MMR Khan and Ors. V/s. Union of India & Ors held that the employees of the Statutory and employees of the subsidised recognised and non statutory canteens should be treated as Railway Servants w.e.f. 22/10/80 and 1/4/90 respectively and they shall be eligible for all benefits available to the serving Railway Employees from that date. Since the applicant had already been removed from service before 1/4/90, he never attained the status of Railway Servant and therefore he is not entitled to any benefit of the judgement of the Supreme Court. Therefore, the respondents have refused to consider the case of the applicant on merits.

7. The entire issue therefore now boils down to as to whether the applicant is a Government servant or not. Both the learned counsel for the applicant as well as respondents produced various documents to defend their stand. According to the respondents, the applicant is not a Railway Servant. Applicant claims that he is a Railway Servant by virtue of Interim Relief granted in MMR Khan (supra). The applicant has also pointed out

that though the society for which the applicant was working is a non statutory society, but it was subsidised and it was ^{receiving} ~~within~~ the subsidy from the Railway Administration.

8. The applicant has submitted that the respondents issued instructions to all the Zonal Railway Managers vide their letter dated 13/5/83 to fix the pay of the employees in non statutory canteens in revised scales w.e.f. 1/6/82 with a further direction to ask for additional funds required for enhanced subsidy payable. However, the Government of India vide notification No.6(2)/23/77/Welfare dated 11/12/79 declared the employees of the departmental canteens and Tiffin Rooms as holders of civil posts in connection with the affairs of the Union in Central Government w.e.f. 1/10/79. According to the applicant these conditions of service and recruitment rules for the employees of the Departmental Canteens will apply to employees of Canteens run by Co-op Societies governed by Byelaws of Societies and legal Co-op law in force. The applicant has further stated that the Canteens are managed by Co-op Societies, the managing committee is required to consist of Chairman or Hon. Secretary as a member of the said managing committee and the said person is appointed or nominated by Railway Administration as per provisions in the IREM. The Chairman of the Managing Committee is the appointing authority for the post of Manager and the Hon. Secretary is the appointing authority for all other posts. The Co-op Consumers Society is functioning under the administrative control of Railway Administration as per the provisions of IREM. Thus, it is the claim of the applicant that he was holding a civil post in the Government of India on the date he was removed from service.

9. The respondents however are not ready to accept the contentions of the applicant. According to them there are two types of canteens namely the statutory canteen and the non statutory canteen (recognised) canteens. The non statutory recognised canteens are given subsidy or funds for the management body whereas the non statutory non recognised canteens are not given any subsidy funds or funds by Railways and they are run by the employees themselves. In terms of Railway instructions dated 18/5/90, staff of the non statutory recognised canteens were given the status as Railway employees, provided they were on the role as on 1/4/90. The respondents deny that the applicant was working in a non statutory recognised canteen. Further, in terms of Railway Board's letter dated 13/5/83, the Management Body of the Society fixed the revised scales of pay w.e.f. 1/6/82 and the Railway Administration paid subsidy of 70%, 30% to be borne by the society. The instructions of 1983 were applicable to only non statutory recognised canteens and not to un recognised canteens. Further, as per the IREM Vol.II, para-2.2, 3.3, the elected body of the society manages the canteen, only one Welfare Inspector who is ex-officio member of the Managing Committee. The President and Chairman of the society are elected shareholders. The Chairman of the Managing Committee was not nominated by the Railway Administration but was elected by the Managing Committee of the society. Therefore it cannot be said that the applicant can be treated as a Railway Servant. The orders of treating the employees of the non statutory canteen as Government servants were issued only in 1990 and they were given the status of Government employees only from 1/4/90. Since

the applicant was not on the role⁸ of the society as on 1/4/90, having been removed earlier from service in 1988, the applicant cannot be said to be a Government servant.

10. We have given careful consideration to the rival contentions and have also pursued the instructions issued by the Railway Administration as well as the judgement of the Supreme Court in the case of MMR Khan (supra). The instructions issued by the Railways were in terms of the interim relief granted in the case of MMR Khan as well as the final judgement in the case of MMR Khan. There we turn to the aforesaid judgement. The judgement has discussed about the statutory canteens as well as the non statutory recognised canteens in paras 29 and 30. Since the applicant did not work with any statutory canteen, we need not go into that aspect. In para-30 of the judgement, the difference between non statutory recognised and non statutory unrecognised canteens has been brought out clearly and in the operative part of the judgement, the Hon'ble Apex Court has held that workers engaged in the statutory canteens as well as those engaged in non statutory recognised canteens under the Railway Establishment are Railway employees and they are entitled to be treated as such. The Railway Board had already treated the employees of all statutory canteens as well as non statutory recognised canteens as Railway employees w.e.f. 22/10/80. The employees of the several non statutory recognised canteens will however be treated as Railway Employees w.e.f. 1/4/90. 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.

In para-32 of the judgement, the Hon'ble Supreme Court has ruled that as far as employees in non statutory un recognised canteens are concerned, their petitions are dismissed. Thus, as per the judgement, only employees of non statutory recognised canteens can treat themselves as Railway employees w.e.f. 1/4/90 and not those who are working in non statutory un recognised canteens. Both the respondents have averred that the applicant did not belong to non statutory recognised canteen, but in view of the statement made in their reply to the rejoinder, they have admitted that the canteen run by respondent no.4 is non statutory canteen getting 70% subsidy and also that society has given revised pay-scales to its employees from 1982 onwards in terms of interim relief granted in the case of MMR Khan. Further, the respondents have said that such employees are entitled to be treated as Railway Employees only w.e.f. 1/4/90. In view of this, it is now clear that the canteen where the applicant worked is a non statutory canteen being subsidised by the Railway Administration. The only hitch is that the employees of this canteen become eligible to be treated as Railway Employees w.e.f. 1/4/90 and the applicant was not ~~on~~ ^{at} their role as on 1/4/90. If we consider this, then we have to agree that the applicant was not a Government servant when he was removed from service nor was he eligible to be treated as a Government servant at that time as the judgement in the case of MMR Khan was delivered only on 27/2/90 after the applicant had been removed from service.

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11. In our considered view, this clinches the issue. It is now established that the applicant was not a Government servant and therefore the question of entertaining the OA on merits does not arise. Accordingly, the OA is dismissed. No order as to costs.

Shanta J.

(MRS.SHANTA SHAstry)
MEMBER(A)

S.L.Jain

(S.L.JAIN)
MEMBER(J)

ABP.