

CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A.N. 765/92

Date of Decision 14-6-96

M.L.Sharma

Petitioner

Shri S.N.Pillai

Advocate for the Petitioner.

versus

Union of India & Ors.

Respondent

Shri V.S.Masurkar.

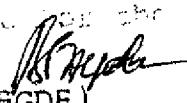
Advocate for the Respondents.

Coram:

The Hon'ble Mr. B.S.Hegde, Member (J),

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

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


(B.S. HEGDE)
MEMBER (J).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

BOMBAY BENCH, MUMBAI.

(16)

ORIGINAL APPLICATION NO. 765 / 1992.

Coram: Hon'ble Shri B.S.Hegde, Member(J),
Hon'ble Shri M.R.Kolhatkar, Member(A).

Pronounced this 14th day of June 1996.

M.L.Sharma. ... Applicant.
(By Advocate Shri S.N.Pillai)

V/s.

Union of India & Ors. ... Respondents.
(By Advocate Shri V.S.Masurkar):

O R D E R

(Per Shri B.S.Hegde, Member(J))

The applicant [redacted] filed this application against non-payment of due salary during the period of 1.4.1990 to 31.12.1991. The grievance of the applicant is that during the said period he has been paid consolidated wages of Rs.324/- p.m. instead of the regular pay and allowances in view of the Supreme Court decision. Accordingly, he has prayed that he is entitled to pay and allowances at Rs.1350/- from 1.4.1990, Rs.1380/- from 1.6.1990 and [redacted] Rs.1410/- from 1.6.1991 plus allowances.

2. The applicant has retired from service w.e.f. 31.12.1991 and he filed this O.A. in July, 1992. The applicant was initially appointed in the year 1974 as a Manager in a canteen attached to the Loco Shed at Pune which was being managed by a committee of Staff. The contention of the applicant is that the entire expenses in connection with the salary/wages of the employees was being reimbursed by the Central Railway administration and the canteen

...2.

BS

was run in a co-operative manner. In the year 1977 his services were terminated by the Committee of Staff and the applicant raised an Industrial Dispute. The Labour Court gave the award on 28.12.1982 directing the Staff Committee to reinstate him with continuity of service and back wages, nevertheless the Canteen Committee did not implement the decision of the Labour Court and hence the applicant filed a complaint under MRTU & PULP Act before the Industrial Court at Pune. The said complaint was disposed of with a direction to the Canteen Management to implement the award of the Labour Court by order dt. 9.2.1988. Earlier, for the period from 1982-90 the applicant had filed Writ Petition before the High Court of Bombay (Writ Petition No.2161/92 seeking relief against the Respondent Railway Department. However, after considering the rival contentions of the parties, the High Court dismissed the Writ Petition of the applicant stating that no orders can be passed against the 4th Respondent i.e. the Central Railway. After the dismissal of the Writ Petition, the Canteen Committee reinstated him on 27.7.1988.

3. The learned counsel for the applicant contended that since he was working as Manager in the erstwhile canteen he shall have to be treated as Manager after becoming Government Servant from 1.4.1990. In this connection the learned counsel for the parties relied upon the decision of the Supreme Court in M.M.R.Khan and Ors. v/s. Union of India & Ors.

...3.

BBB

(1990 SCC (L&S) 632). The learned counsel for the applicant drew our attention to certain correspondence addressed by the Respondents treating the applicant as Canteen Manager and contended that it is incumbent upon the respondents to fix his pay in the category of Canteen Manager which has not been done till his retirement.

4. The respondents in their reply have denied the contention of the applicant and submitted that it is true, that all the Staff Canteen employees have been declared as Railway Employees w.e.f. 1.4.1990.³ The applicant would also benefit by the said declaration. All the employees who were treated as Railway servants were fixed in suitable grade w.e.f. 1.4.1990. However, they were absorbed on regular basis only after their Medical examination and production of other necessary certificates as required by the office of the Respondent No. 3. The applicant was repeatedly requested on 10.1.1991, 5.8.1991 and 24.10.1991 in writing to get himself medically examined by collecting Medical Memo from the Respondent No. 3. The applicant neglected to comply with the requirements. The applicant was advised vide letter dt. 18.2.1991 to approach the office of the R-3 to complete the formalities of regularisation to fix his pay at the minimum of the revised grade from 1.4.1990. The applicant did not comply with the instructions communicated to him. Therefore, it is submitted that the payment of Rs.324/- as consolidated wages was in accordance with the decision awarded by the First Labour Court

Sh

.. 4/-

and his pay could not be fixed w.e.f. 1.4.1990 as the applicant could not comply with the instructions issued to him. The Respondents counsel Shri Masurkar vehemently urged that there is no lapse on the part of the respondents. That the applicant was treated as Government servant like others subsequent to the decision of the Supreme Court and it was incumbent on him to furnish the required certificates as required by the office so as to enable the respondent to fix his pay according to qualification and experience. As stated above, despite repeated request till his retirement the applicant did not comply with the instructions, whereby, the respondents were handicaped in fixing his scale for which the respondents should not be blamed. In this connection, the learned counsel for the respondents drew our attention to the observation of the Supreme Court in M.M.R.Khan's case which reads as follows :

"Accordingly, the workers 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."

In the light of the aforesaid observation, it is obvious that those who have been working in a non-statutory recognised canteens like the applicant shall have to furnish the required information to

(M)

the competent authority so as to enable them to fix their scale in accordance with the direction of the Supreme Court. Subsequent to the decision of the Supreme Court, the Board had framed a scheme in which the criteria was laid down for fixing the scale of the respective employees who have been working in non-statutory recognised canteens prior to 1.4.1990. It is clear from the Ex.A-14 except the applicant all others who have furnished the required information to the competent authority their pay has been fixed and for want of required information the applicant's pay could not be fixed for which only the applicant has to be blamed and not the respondents. Even as late as on 18.2.1991 the respondents directed the applicant to furnish his original school leaving certificate or College certificate etc. which he did not do so till his retirement. The contention of the applicant is that in that letter they have not asked the applicant to undergo medical examination.

5. After the hearing was over, the applicant filed an affidavit wherein he had annexed a copy of the letter addressed to the Assistant Personnel Officer on 30.4.1992 stating that he is alleged to have furnished an original school certificate along with a xerox copy of the same was attached.

6. We have considered the matter. The relevant dates are as below :-

Date of appointment as Canteen Manager	:	16.12.1974
Termination	:	2.11.1977
Award of Labour Court	:	28.12.1982
Order of reinstatement by the Industrial Court	:	9.02.1988
Order of re-employment	:	27.11.1988
Resumed duty	:	7.12.1988

7. It is not in dispute that in terms of M.M.R.Khan's judgement the respondents revised the scheme in terms of which the applicant ~~who~~ was an employee in the Pune Loco Shed Canteen which was a non-statutory but a recognised canteen was entitled to be treated as a regular Government employee w.e.f. 1st4.1990. The main contention of the applicant is that he ought to have been regularised as a Manager in the Canteen in the scale of Rs.1200-1800 as was done in the case of a colleague of his, viz. Shri J.R.Kotwal but he was illegally fixed at pay of Rs.324/- which he was drawing in the Loco Shed Canteen when he was not a Government employee. From the background which was enclosed by the applicant, it is clear that the reasons for the Railways (Respondents) to do this was the basis of the complaint of the applicant before the Labour Court viz. that he was a Workman because he was not a Manager in the Canteen but a Clerk and it was on this basis that his termination was set aside and he got the relief of reinstatement. It is not in dispute that the applicant was reinstated w.e.f. 7th12.1988 and was in service on 1st4.1990, the crucial date. The applicant's contention is that the various orders of the department show that he was a Manager and would therefore like the regularisation to be done in the pay scale of Rs.1200-1800. The Department in its letter dated 15.1.1990 has, in fact, mentioned that he will not be fixed in the scale of Rs.1200-1800 but he will be fixed in the scale of Rs.950-1500 as Clerk at the basic pay at Rs.950 subject to his completion of various formalities. There is a reference that the applicant was resorting to threat of hunger strike etc. and the applicant was advised not to

Bt

do so and to represent his grievances in a proper manner for consideration by competent authorities. The main contention of the respondents is that the applicant inspite of repeated reminders did not complete the formalities to enable the respondents to regularise him in the Railway service. The applicant retired on superannuation on 31.12.1991. After the arguments were concluded the applicant had filed an affidavit stating that he had in fact sent original School Leaving Certificate by his letter dated 30.4.1992 which was the only requirement remaining to be completed.

8. In our view, there are two aspects of the matter. The first is the entitlement of the applicant to the salary in the time-scale of Rs.950-1500 as a Clerk till the date of superannuation. The second is his claim to the regularisation. So far as the claim to the wages is concerned, the applicant has pitched his claim to the payment of salary as a Manager. We are inclined to consider that he is entitled to payment of salary in the time-scale only as a Clerk and on that basis he is entitled to be fixed at Rs.950/- from 1.4.1990 and thereafter grant of increment till the date of retirement. We are also of the view, that the applicant is entitled to arrears of pay between the emoluments calculated above and the amount actually paid to him. So far as the question of regularisation is concerned, it is a different matter. The respondents are directed to consider the case of the applicant for regularisation on the basis of all available record, especially keeping in view their letters dated 15.1.1991 read with 18.2.1991

Bh

.. 8/-

and subsequent letter dated 30.4.1992 enclosing a copy of the School Leaving Certificate. On the basis of the available record and on the basis of rules, the case of the applicant for Regularisation may be considered. The OAC is thus partially allowed in terms of above directions which should be complied with within two months so far as payment of arrears are concerned and within four months so far as the question of regularisation is concerned. There would be no orders as to costs.

M.R.Kolhatkar

(M.R.KOLHATKAR)
MEMBER (A)

B.S.Hegde

(B.S.HEGDE)
MEMBER (J)

mrj

19

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

M.P. 693/96, 881/96 and R.P. 89/96 in
Original Application No. 765/92

Tribunal's order

Dated: 16.12.96

Heard Shri S.N. Pillai, counsel for the applicant. Shri V.S. Masurkar, counsel for the respondents.

Respondents have filed R.P. 89/96 seeking review of the order passed by the Tribunal dated 14.6.96. The respondents have also filed M.P. 693/96 for condonation of delay in filing the R.P. M.P. 881/96 is for extension of time for compliance with the judgement.

During the course of hearing the learned counsel for the respondents draws our attention to para 8 of the order passed by the Tribunal dated 14.6.96, wherein it is stated that the applicant is entitled to payment of salary in the time scale only as a Clerk and on that basis he is entitled to be fixed at Rs. 950/- from 1.4.1990 and thereafter grant of increment till the date of retirement. Regarding his claim to the regularisation as a Manager, the department has to consider the same keeping in view all available documents and pass appropriate orders in this regard. We have directed in the first instance regularisation as a Clerk. The question of his regularisation as a Manager is for the Railways to decide keeping in view our order. With this

clarification the R.P. is disposed of. The payment of salary and arrears as Clerk should be made within a period of one month from the date of receipt of this order.

R.P. 89/96, M.P.693/96 and M.P. 881/96 stand disposed of.

Copy of the order be given to the parties.

M.R. Kolhatkar

(M.R. Kolhatkar)
Member(A)

B.S. Hegde

(B.S. Hegde)
Member(J)

NS