

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1083/94

13.3.2004
Date of Decision:

S. Arnasalam & Anr.

Applicant.

Shri G.S. Walia

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri V.S. Masurkar

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. D.S. Bawej, Member (A)

Hon'ble Shri. S.L. Jain, Member (J)

- (1) To be referred to the Reporter or not? *
- (2) Whether it needs to be circulated to other Benches of the Tribunal?
- (3) Library Y


(D.S. BAWEJ)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO. 1083/94

Dated this the 13/4 day of March, 2000.

CORAM : Hon'ble Shri D.S.Bawaja, Member (A)
Hon'ble Shri S.L.Jain, Member (J)

1. Shivlingam Arnasalam

2. Suresh B.Chavan

R/o. C/o K.B.Nambiar
C-5/A, OM Gurupradniya
Co-op. Housing Society,
R.K.Road, Dahisar (W),
Bombay.

... Applicants

By Advocate Shri G.S.Walia

v/s.

1. Union of India through
The General Manager,
Western Railway,
Churchgate, Bombay.

2. Divisional Railway Manager,
Western Railway,
Bombay Central, Bombay.

3. Divisional Mechanical
Engineer (DL), Western
Railway, Bandra, Bombay.

... Respondents

By Advocate Shri V.S.Masurkar

O R D E R

(Per: Shri D.S.Bawaja, Member (A))

This application is filed jointly by two applicants. The case of the applicants is briefly as follows :- It is stated that they were engaged as casual labourers by Respondent No.3, Divisional Mechanical Engineer (DL), Western Railway, Bandra, Mumbai in the staff canteen at the daily wages. The applicants No. 1 & 2 were engaged on 1.6.1983 and 1.6.89 respectively. The applicants are continuing in service since then without any break. It is further submitted

that in the staff canteen there are six permanent employees. Out of 6 posts, two posts are vacant since 1991 and 1994 (one of Cook and one in Group-D) and the applicants are discharging the duties of these vacant posts. The applicants are entitled to be brought on regular establishment after completion of 120 days and also entitled to be regularised in service. However, the respondents did not take any action inspite of applicants having represented on 5.1.1993. Feeling aggrieved by non regularisation and apprehending termination of their services, the applicants have filed the present OA. on 10.10.1994.

2. The applicants have sought the following reliefs :-

- (a) Restrain the respondents from terminating the services of the applicants.
- (b) direct respondents to regularise the services of the applicants and grant the benefit of their previous service for all purposes and all other consequential benefits that accrue as a consequent of the regularisation.
- (c) direct respondents to pay the arrears of pay in accordance with enhanced scale of daily wages according to the prescribed increased rates as per the circular issued by the respondents.

3. The applicants have claimed the reliefs prayed advancing the ground that the applicants having been engaged for a long period are entitled to be regularised against the vacancies in

terms of the law laid down by the Apex Court. The applicants have relied upon the judgement of the Hon'ble Supreme Court in the case of M.M.R.Khan vs. Union of India, 1990 SCC (L&S) 632.

4. The respondents have opposed the OA. through the written statement. The respondents submit that the applicants are not working against the two vacancies as they were working as casual labourers even prior to the occurrence of these vacancies in 1991 and 1994. The applicants are being paid Rs.23.85 per day by the Managing Committee. Since they were appointed by the Managing Committee without obtaining prior approval of the competent authority, i.e. General Manager, the question of entitlement of regular employment as a Railway servant after a period of 120 days does not arise. The respondents also submit that services of the applicants have not been terminated and if at all services are terminated, provisions of Section 25 F of the Industrial Disputes Act will be complied with. As regards the payment of higher daily wages, the financial condition of the Managing Committee is not in a position to pay enhanced wages.

5. The applicants have filed rejoinder reply. While controverting the submissions of the respondents, the applicants have stated ^{that} not taking the prior approval of General Manager before being engaged as a casual labourer is a minor procedural irregularity and the same cannot come in the way of their regularisation as in such cases post-facto sanction of the

General Manager was given in some case as brought on record after taking minor action against the officiers who recruitted such casual labourers.

6. We have heard the arguments of Shri G.S.Walia and Shri V.S.Masurkar, learned counsel for the applicants and respondents respectively.

7. The applicants have relied upon the judgement of the Hon'ble Supreme Court in the case of M.M.R.Khan vs. Union of India, 1990 SCC (L&S) 632 in para 4.7 of the OA. Reference has also been made to decision dated 4.7.1991 in OA.No.562/90 of this Bench, M.Kupendran & Ors. vs. Union of India which has relied upon the judgement in the case of M.M.R.Khan. On going through the M.M.R.Khan's judgement, it is noted that the ~~Apex Court~~ has dealt with 3 types of canteens on the Indian Railways namely, (a) statutory canteens set up under Factories Act. (b) non statutory canteens set up under approval of Railway Board (c) non statutory canteens set up without approval of the Railway Board. Hon'ble Supreme Court in para 39 has held as under :-

" 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 ^(A) the relevant rules/orders."

8. On going through the OA., we find that applicants have not clearly brought out as to the type of the canteen under reference in Bandra Diesel Shed. The only information that the applicants have averred in para 4.3 of the OA. is that 6 employees have been employed in the canteen. In para 4.7 while referring to the judgement in the case of M.M.R.Khan, it is stated that law laid down is that employees of non-statutory canteens are to be treated as Railway servant. The respondents in the written statement have confirmed this stating that there is a cadre of 6 sanctioned posts. The respondents have, however, not made any averment with regard to type of canteen. It is noted with regret that both the parties have failed to furnish these details which are of paramount importance keeping in view the law laid down in M.M.R. Khan for going into the merits of the issue agitated in the present OA. Keeping in view the fact that the staff canteen under reference is in a Diesel Shed and the averment made in para 4.7 of the OA., we take it that staff canteen is non-statutory approved canteen. We will examine the merits in the OA. with this presumption.

9. Now reverting to the judgement in the case of M.M.R.Khan, it is noted that non-statutory recognised canteens have been covered in paras 31 to 37. In para 31, it is brought out that non-statutory canteens approved by the Railway Board are governed by paras 2830 and 2831 of Indian Railway Establishment Manual (IREM). Provisions in the relevant paras have been detailed in paras 31,32 and 33 of the judgement. In para 36, it is stated that while according approval by the Railway Board, the number of

staff to be employed in the canteen, recurring and non recurring expenditure are regulated. In para 31, it is brought out that 70% of wages of the staff of such canteens are subsidised by the Railway. From para 33, it is clear that the Railway Board has also laid down the rules with regard to recruitment in these canteens and the nominee of the Railway Administration on the Managing Committee of the canteen is to be the appointing authority. After noting the provisions in IREM covering non statutory canteens set up with the sanction of the Railway Board, Hon'ble Supreme Court has concluded that the staff employed in such canteens are Railway employees and entitled to be treated as such.

10. Keeping in view the deliberations in para 9 above, it is clear from the judgement of M.M.R.Khan that such of staff of the canteen employed against the sanctioned posts as per the approval of the Railway Board and getting subsidy of wages to the extent of 70% were to be treated as Railway employees from 1.4.1991. In the present case as brought out earlier, the averments made in the OA. are sketchy and lack the essential details. The applicants have not brought out that the wages of the applicants were covered by 70% subsidy or they are being paid by the Managing Committee. The applicants have not produced any appointment letter. A copy of the muster roll of 1994 has been brought on the record but the same does not signify any thing with regard to the nature of engagement. The applicants can get the benefit of the judgement of M.M.R.Khan only if they meet with

MMR Khan's

the provisions in the IREM and detailed in the judgement in paras 31-37. In the absence of any details as brought out above, the only direction which can be given to the respondents ^{while} disposing of the OA. is to consider the case of regularisation of the applicants in terms of the judgement of M.M.R.Khan, Keeping in view the observations made in this order in the earlier paras.

11. The counsel for the applicants during the hearing produced the copies of the two Railway Board circulars, namely, RBE No.12/90 dated 18.5.1990 and RBE No.83/90 of the same date issued for implementation of the judgement in case of M.M.R.Khan. It is noted that RBE No. 83/90 pertains to non statutory (recognised) canteens and relevant to the present OA. The counsel for the respondents strongly opposed to production of these circulars across the bar during the hearing without relying upon them in the OA. and giving opportunity to the respondents of denial or acceptance of the applicability of these circulars. In any case, since the circular RBE No.83/90 is for implementation of the judgement of the M.M.R.Khan, we are referring to same as we have gone into the merits of the present case based on the M.M.R.Khan's judgement.

12. The applicants have sought the relief of enhanced daily wages of Rs.47/- per month relying upon the circular at Annexure 'D'. The respondents have contested this stating that the applicants are engaged by the Managing Committee and the financial condition of the Committee does not permit the payment

of the enhanced wages. In view of the fact that there is serious dispute with regard to status of the applicants' employment in the canteen, we decline to give any direction for the payment of enhanced daily wages.

13. The applicants had filed the present OA. on the apprehension that their services are likely to be terminated. As per order dated 14.10.1994, it was ordered to maintain status quo and the applicants are accordingly continuing in service. In fact, the respondents in the written statement have brought out that the services of the applicants have not been terminated and if the services are required to be terminated, then the same will be done following the extant rules and the provisions of law as per Industrial Disputes Act. The applicants in para 4.8 have contended that the respondents are violating the provisions of Section 25 F of Industrial Disputes Act as neither notice has been issued nor any compensation has been paid. In the light of these facts, with regard to relief of non termination of the services, it will be suffice to provide that services of the applicants will be terminated if so desired by the respondents following the extant rules and provisions of law.

14. In the result of the above, the OA. is disposed of with the following directions :-

- (a) The respondents will consider the case of the applicants for regularisation in terms of M.M.R. Khan's judgement and Railway Board's Circular RBE No.83/90 and the observations made in the order.

(v)

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In case the claim of the applicants is accepted, then they will be entitled of all the benefits as envisaged in RBE No.83/90. In case the applicants' case is not covered by the M.M.R.Khan's judgement, then the applicants will be advised of the same through a speaking order within a period of three months from the date of receipt of the order.

- (b) Interim order dated 14.10.1994 stands vacated. However, services of the applicants if required to be terminated, will be done only as per the extant rules and provisions of law.
- (c) No order as to costs.

S.L.Jain
(S.L.JAIN)
MEMBER (J)

D.S.Baweja
(D.S.BAWEJA)
MEMBER (A)

mrj.