

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.1207/95.

Tuesday this the 29th day of February 2000.

(29-02-2000)

Coram: Hon'ble Shri B.N.Bahadur, Member (A),
Hon'ble Shri S.I.Jain, Member (J).

1. Uday Raj Singh,
2. Akhlesh Kumar Singh,
3. Uttam Kumar Singh,
4. Damodar Singh,
5. Gyaneshwar Bomble,
C/o. Shri G.S.Walia,
Advocate, High Court,
16, Maharashtra Bhavan,
Bora Masjid Street,
Fort, Bombay - 400 001.

...Applicant.

(By Advocate Shri G.S.Walia)

Vs.

1. Union of India, through
General Manager, Western Railway,
H.Q. Office, Churchgate,
Bombay - 400 001.
2. Divisional Railway Manager,
Western Railway, Divisional Office,
Bombay Central,
Bombay - 400 008.
3. Secretary,
Carriage Wagon Shop Yard Staff Canteen,
Western Railway, Mechanical Deptt.,
Bombay - 400 008.

...Respondents.

(By Advocate Shri V.S.Masurkar)

: O R D E R :

(Per Shri B.N.Bahadur, Member (A))

This is an application made by five applicants, all stated to be working as Table Boys in the Carriage and Wagon Supdt's Yard Staff Canteen, at Bombay Central, seeking the relief that this Tribunal direct the respondents to regularise them in the regular scale of

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Rs.750-940, from the date of appointment. The applicants' also pray for a consequential benefits of arrears of pay, increment, seniority etc.

2. The facts of the case, as presented by applicants are that, they were appointed by Respondent No.3 as Casual Labour on daily wages on 13.8.1994, in the aforesaid Canteen at Bombay Central. They aver that the Wagon Shop is governed by the Factories Act, and hence the aforesaid Canteen is a statutorily recognised Canteen. Out of twelve persons currently working in the Canteen, six are stated to be regular and the other six are Casual Labour.

3. The applicants goes on to aver in the OA that this Canteen is part and parcel of the Western Railway Administration and is under the direct control of a Managing Committee which is headed by R-3. Also, all other members of the Committee are Railway servants and Welfare Inspectors of the Railways. The other facts which are relevant to the case relate to the grievance of the applicants that they have not been regularised, despite their being entitled as per rules contained in the Establishment Code. It is averred that they are entitled to be granted temporary status. The applicants made representations dt. 7.4.1995 and 8.5.1995 for seeking regularisation. The applicants further seek to draw support from letter of Railway Board dt. 18.5.1990 to the effect that employees of Statutory Canteens will enjoy the status of Railway Servants w.e.f. 22.10.1980, along with other benefits available to regular Railway Servants of comparable status (Annexure 'A-3'). They also seek support of the Supreme Court decision in the case of M.M.R.Khan and Ors. Vs. Union of India & Ors. reported in (AIR 1990 SC 937).

4. Applicants state that in a meeting of the Canteen Committee held by R-3, it was resolved that the services of the applicants are to be terminated and they have been orally informed as such. This

action is charged to be arbitrary and illegal and in violation of Industrial Disputes Act. It is with these grievances, that the applicants are before us seeking the relief as mentioned above.

5. The respondents have filed a reply statement denying all allegations and taking, first, the preliminary point of objection to the effect that the applicants are employees of R-3 and that the Railway Administration viz. Respondents No.1 and 2 have nothing to do with their grievances, because the applicants were not recruited by Respondents No.1 and 2. Also, that Respondent No.3 has no authority to recruit any one on behalf of Respondents No.1 and 2. Thus, it is averred that this Tribunal has no jurisdiction to entertain the present application.

6. Stating their case on merits, the Official Respondents averred that the applicants' case is not covered by the ratio of the case of M.M.R.Khan's case, or of the Tribunal's Judgment in OA No.562/90 or of the Railway Board's letter dt. 18.5.1990. The orders of Railway Board, it is averred, do not apply to the applicants' since the issue decided by the Hon'ble Apex Court was in respect of those Canteen Staff who were till then working at Railway Canteens (in fact, on this issue the learned counsel for the respondents argued the matter to stress the point that there was a cut off date in this regard. This point will be dealt later). It is stated that applicants date of appointment is 13.8.1994 and the Railway Board Circular deals with cases of those staff engaged prior to the Judgment of Supreme Court and prior to the date of issue of Railway Board Circular (18.5.1990).

7. In the further part of the written statement, the facts and historical background of the case are expounded. It is denied that there is any violation of any rules relating to the Minimum Wages Act. It is also averred that provisions contained in the Railway Code and Indian Railway Establishment Manual (for short, IREM) are not applicable to appointees like the applicants who are appointed

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by R-3, without permission or consent of the Railway Administration. For this reason also, the question of granting Temporary Status does not arise.

8. We have heard the learned counsels appearing on both sides. The learned counsel for the applicants Shri G.S.Walia, argued that the Canteen in question is a Statutory Canteen and took us over the facts of the case, specifically to pages 11 to 14 of the paper book, showing the appointment of the applicants, and page 21 which is a copy of the orders of Railway Board dt.18.5.1990 relating to the implementation of the Supreme Court Judgment regarding Canteen Employees. It was the contention of the learned counsel for applicants, that in view of these orders of the Railway Board, this was a open and shut case and no discrimination can be made. He sought the support of the Judgment/Order of this Bench in O.A. No.562/90 (copy at page 24 of paper book). He argued that this Judgment supported his case and was itself based on the case of M.M.R.Khan's case decided by the Hon'ble Supreme Court.

9. The learned counsel for the applicant apart of citing the case of M.M.R.Khan and Others Vs. Union of India and Ors. (AIR 1990 SC 937) also cited the case of M.L.Sharma Vs. Union of India & Ors. (O.A. No.765/92 of Bombay Bench).

10. Arguing the case on behalf of the Respondents, their learned counsel, Shri V.S.Masurkar, made the point that the Supreme Court had directed the framing of a Scheme in the Post & Telegraph Department's case. Similarly, in the case of M.M.R.Khan (supra), it had been directed that a Scheme should be framed. He strenuously asserted that the applicants are not the employees of the Official Respondents and that they had been appointed by the Canteen Committee, as described in detail in the Written Statement. The

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counsel for Respondents asserted that the Railway Board Circular cited by applicants only talks of workers working on that day and that the applicants are not covered by the Judgments cited, either. He sought to draw special focus on the date of the Judgment of the Supreme Court in the case of M.M.R.Khan i.e. 27.2.1990, hence made the point that this was a cut off date as indeed explained in the Circular being referred to.

11. The Counsel for the Respondents made the assertion that employment of the applicants, made by the Secretary of the Canteen Committee, was a back-door employment and that after 1990, the respondents were bound only by the law and rules ^{AmB} ~~then~~ existing. It was stated that para 4 of the Circular of Railway Board dt. 18.5.1990 clearly implied that, after the issue of this Circular, only the DRM of Railways could employ people. He sought to focus on para 4 to make the point that it talked of "present strength". It was argued that the Judgments relied on had no relevance in the case of the applicants and that the instructions in para 6 of the aforesaid circular of Railway Board had clearly enjoined that ^{the} strength of recognised Canteen should be kept to the bare minimum, and that any additions in the future will have to be processed in terms of the ban orders. It was argued that M.Kupendra's case was in the year 1990 and this was a case of 1994, [reference ~~to~~ the Judgment of this Bench in OA 765/92]

12. The learned counsel for applicants in re-argument made the point that it was incorrect to say that the ratio of Khan's case apply only to such appointees as who are appointed prior to that time, ^{and that} ^{AmB} this was not stated either in the Judgment or in the Circular of the Railway Board.

13. We must, at the outset, say that the instructions of the

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Railway Board dt. 18.5.1990 referred to above are important. In fact, there are two circulars issued on the same date i.e. 18.5.1990 and titled R.B.E. No.82/90 and R.B.E. No.83/90 and both are filed and available in the paper book at pages 21 and 22 respectively. The first Circular No.82/90 is applicable in the present case.

14. The crucial question that arises in this case for determination, ^{is} as to whether there is any difference in the position in respect of employment in Canteens after the date of issue of the Circular of Railway Board dt. 18.5.1990. It is true that those employees who were already there, have, undisputedly, been given the benefit in view of the Supreme Court Judgment by the Respondents as per orders issued. But, in regard to any addition made after the date of the issue of this Circular the position will have to be governed by the instructions as contained in para 4 aforesaid of the Circular No.82/90. Para 4 reads as under:

"4. It is further clarified that assessment of man power requirement in the statutory canteens should be done based on functional requirement and the same should be kept to the bare minimum. Any additions to the present strength which might become necessary in future will have to be processed in terms of the extant ban orders."

15. It is clear from a reading of this paragraph that the Railway Administration is clarifying and reiterating that its lower formations ^{should} / make an assessment of manpower requirements in Statutory Canteens on the basis of functional requirement and ^{them} also exhorting to keep such requirements to the minimum. It is clear from a reading of this Circular that this is a guidance for future course of action. It is also stated that even if any additions to the present strength becomes necessary, due procedure will need to be followed. All this can very reasonably be deemed to imply that this will refer to only such appointments as are made by the Railway Administration per se and not in respect of employees who

are appointed without the regular procedure being followed by the Administration.

16. Now, in this case it is clear from the appointment orders filed by the applicants themselves (pages 11 onwards) that they were appointed in 1994 as Daily Workers, and also that their appointments were made by the Secretary of the Canteen Department and not by the Railway Administration. Now, this being the case and the fact that they were not appointed on or before the date of the instructions emanating after the Judgment in M.M.R.Khan's case, it can be concluded that they will not be eligible to the benefits which flow out of this Judgment. It is well settled that if Government considers necessary, policy changes can be brought about by it after any Court decision provided such policy changes operate with prospective effect. Such indeed, is the case here and the action of the Railway Administration, regarding instructions issued regarding keeping its additional strength to the minimum in future through the Circular dt. 18.5.1990 cannot be faulted. Thus, there is strength in the argument taken by the respondents in this regard and the benefit cannot be said to accrue to the applicants merely because others who were employed much earlier [redacted] have been provided with the benefit in view of Court's decision. The learned counsel for applicants has cited the case of M.L.Sharma decided by this Bench in OA 765/92. It is seen on perusal of this case that the applicants' therein had joined the service in 1974. In view of the above discussions, this case cannot provide any help, therefore, to the applicants cause. In regard to the case of M.Kupendra and others (decision in OA No.562/90 by this Bench) it is seen that the Judgment/Order annexed with the OA by the applicants does not throw light in regard to the date of appointment of the applicants therein and since this was a crucial factor, we have checked up the position from the case file of this OA (562/90), we find that the appointments of the applicants therein were made during

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11.1.1985 and 5.3.1989 as indicated in para 4.1 of the OA itself. The point made was that since six vacancies had arisen in June, 1990 regularisation should be provided and hence the ratio in the case of M.M.R.Khan was applied. No benefit of ~~the~~ Order in this case can therefore be derived by the applicants.

17. In view of the above discussions, we are not convinced that the applicants have made out a case for the relief sought or for any intervention by us. In consequence this OA is hereby dismissed. There will be no order as to costs.

PLD
(S.I.JAIN)

MEMBER(J)

B.Saleem

29/02/2000

(B.N.BAHADUR)
MEMBER(A)

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