

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 1137/98

DATE OF DECISION:

The 27th Day of June 2000

1. Mr. Abhay S. Dighe Applicant.

Shri K.B. Talreja Advocate for Applicant.

Versus

Union of India thru G.M. Cen. Railway .. Respondents
& Another.

Shri. R.R. Shetty Advocate for Respondents

CORAM

Hon'ble Shri B.N. Bahadur, Member (A)

(1) To be referred to the Reporter or not? No

(2) Whether it needs to be circulated to
other Benches of the Tribunal? No

(3) Library. No

(B.N. Bahadur)
Member (A)

sj*

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.1137/98

DATED THE 27th DAY OF JUNE, 2000.

CORAM: HON'BLE SHRI B.N.BAHADUR, MEMBER (A)

(Twenty Seventh June 2000)

Shri Abhay S. Dighe,
Coupon Clerk, under
Railway Society's Canteen
Lonawala. Applicant
(Applicant represented by Shri K.B.Talreja, Advocate)
vs.

1. The Union of India
through the General Manager
Central Railway,
Mumbai CSTM,
Mumbai 1.
2. The Division Railway
Manager, Central Railway,
Mumbai CSTM-
Mumbai 1. Respondents.
(By Shri R.R. Shetty, Advocate)

O R D E R

[Per B.N.Bahadur, Member (A)]

This is an Application made by Shri Abhay S. Dighe, Coupon Clerk in the Railway Society's Canteen at Lonavala seeking the relief that the Respondents be directed to regularise the services of Applicant from the date of Applicant's actual working with the Respondents. The facts, as put forth by him, are that the Applicant joined as Coupon Clerk on 5.3.1986. His grievance is that out of 14 members of the Staff in the aforesaid Railway Staff Canteen, whereas 10 of them have been absorbed as bearers and confirmed with effect from 1.4.1990, his services have not been regularised.

2. Applicant further states that he had made a number of representations (A10 to A12), but to no avail. He challenges

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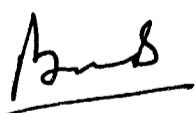
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the communication dated 3.2.1995 (A1) from the DRM (P) Mumbai through which the DRM has rejected the representation of the Applicant on the ground that his name had not appeared in any of the pay sheets. Applicant avers that the documents at Annexure 2,4, & 5 clearly show that he was on the Pay Rolls at the relevant time.

3. The Respondents have filed a written Statement in reply and take the defence that the Applicant's appointment was not subsidised by the Railways and hence he was a pure employee of the Cooperative Consumer Society at Lonavala. Hence it is averred that Applicant is not entitled to regularisation. Expounding this defence, the Respondents state that only employees from Serial No.1 to 10 in the first part of the list of employees had their employment subsidised by the Railways, and hence these Employees had been regularised. Consequently the employees at and beyond Sr.11, whose employment was not subsidised, were not regularised.

4. It is also averred by Respondents that regularisation is sought for the period from 1986 to 1990, and the Application is filed only on 17.12.1998 and on this count also the Application deserves to be dismissed.

5. It is also stated that as regards the Pay Sheet produced by Applicant, relating to the month of February 1990, the subsidy was given only from employees at Sr.No.1 to 10 and hence it is reiterated that only those persons were entitled to regularisation. The remaining part of the reply statement only reiterates or expounds the points made parawise.



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6. We have heard the learned counsels on both sides. Learned Counsel for the Applicant Shri K.B. Talreja took us over the the written application. He stated that the copies of the Muster Roll for the month of Feb 1990 appended by him as Annexure 2 clearly show the Applicant have been working at this time. He argued that employment of individuals were not subsidised and what was provided was subsidy to the Canteen as a whole. Thus he contended that there was no earmarked subsidy and it was wrong for the Respondents to take the defence that certain persons were subsidised and others were not. He reiterated that it was the Canteen that was subsidised and not individuals.

7. Learned Counsel stated that it was accepted by Respondents that he was in employment since 1986 and contended that this was not being questioned. He strongly criticised the point that at different times different stands were taken. In the replies to him the stand was that Applicant's name was not found on the Pay Sheets, whereas now the stand taken is regarding the argument of non subsidisation.

8. Learned Counsel took the support of the case of M.M.R. Khan decided by the Hon'ble Supreme Court [AIR 1990 SC 937] as also the Railway Board Circular of June 1990 on the subject implementation of this Judgement. He argued that other cases cited by him in his Application/Rejoinder should be considered.

9. Arguing the case on behalf of the Respondents, the Learned Counsel reiterated the defence that Sr. No.1 to 10 have been identified in the records of the Respondents as having been those

employees, whose employment has been subsidised. The employment of those from Sr. 11 to 14 was not subsidised, and since the Applicant is at Sr. No. 14 he would thus not have been eligible for regularisation. It was contended that the applicant was not a Railway Servant, but only an employee of the Canteen Cooperative and hence there was no Master Servant relationship. Learned Counsel took the support of the judgement of the Supreme Court in the case of Indian Petrochemicals Corp. Ltd. (IPCL) vs. Shramik Sena cited at [AISL J 2000 SC 283]. The other points made by the learned Counsel were those already taken in the written Statement.

10. In a short reargument, Learned Counsel for Applicant stated that the case law cited [IPCL case] was not relevant to the present case, as that judgement related to contract labour. He further stated that there was no rule which stipulated that only a specified number of persons ^{are to be} subsidised, and raised the rhetoric question as to what criteria there was for ten persons being subsidised.

11. I have considered all papers in the case, including the case law cited, and the Railway Board's instructions, brought to my notice. I have also considered the arguments advanced before me by learned Counsel from both sides.

12. At the outset, I would like to state that, unfortunately, all facts, and supports thereto, that are relevant and crucial to the decision in this case have not been brought forth before me in this O.A., either by the Applicant or the Respondents. For instance, the crucial defence taken by the Respondents is that

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out of 14 people engaged in the said canteen the wages of only those at Sr.No.1 to 10 was subsidised, and hence these ten were regularised in service, and the Applicant being at Sr.No.14 was not. This point has been made again and again in the written statement. However, not a single piece of evidence by way of record in this direction has been produced. In fact, there are no annexures to the written statement filed by the Respondent, or even to additional statements filed by them. While there may be no case *per se* for disbelieving the Respondents' statement, this deficiency has made it very difficult for me to analyse the facts and issues, in view of counter claims made, and arrive at a decision.

13. Another point made by learned Counsel for Respondents was that the reason given in the letter at Annexure 6 is wrong in that his name has clearly appeared in the pay sheets as submitted by him at Annexure A-2. Also Annexure A-5 seems to lead to the same conclusion that Applicant was working in the said Canteen at Lonavala around 28.3.1990, which is the date of this Office Order Annexure A-5. The letter from the Divisional Office of Central Railway dated 3.2.1995 (A.1) states that verification of pay sheets from 1986 to 1990 shows that Applicant's name does not appear in Pay Sheets. It is not clear from this apparently contradictory position, as to what the true state of affairs are and deciding the issue one way or the other on such insufficient and apparently contradictory data, may lead to wrong conclusions. There is no doubt that the ratio of the judgement in the case of MMR Khan will need to be followed, but the ratio and decision can be applied in any



only when facts are fully available. As explained above, I am constrained in this direction. It is also true that Railway Board had issued instructions from time to time relating to regularisation of such staff as was employed in various Canteens depending on the status of staff strength of a particular Canteen, the status of subsidisation etc. These details are not available. For instance, it is only through the letter at Annexure I that an indirect indication is available at para 2 that the Canteen at Lonavala was a non statutory canteen.

13. In the peculiar facts and circumstances of the case, it would be the best course, in the interests of justice to either side, if a thorough reexamination of the claim of the Applicant is done after garnering all facts in the case and ~~taken~~ ^{Bab} a decision on merits, ^{keeping} in mind the various instructions of Govt. and the decision of the Hon'ble Supreme Court in the case of *M.M.R.Khan*.

14. Before making orders/directions as above, a mention must be made of the point regarding limitation delay and latches, as argued by the Respondents. On delay and latches it is seen that the Applicant had not slept over the matter and was in constant communication with the concerned authorities in Railway Administration and Ministry of Labour. Further, the important point is that this can be taken to be grievance on a continuing course of action. Therefore, the case cannot be dismissed on the point of limitation/delay and latches.

15. In view of the discussions above, this O.A. is disposed of with the following directions:

(a) The Respondents are directed to reconsider the case of the Applicant, with reference to his request for

regularisation of his services, considering all facts, Govt. instructions and the ratios of the judgement of Hon'ble Supreme Court in the case of MMR Khan. For this purpose, liberty is granted to the Applicant to make a fresh representation giving all facts and averments to the Respondents. This representation shall be made not later than one month after the receipt of a copy of this Order. If such representation is received, the facts therein shall also be considered by Respondents, who may otherwise proceed to dispose of the case, as directed, on the basis of earlier representations, records, and contentions in the present OA.

(b) the respondents shall decide the case on merits and in accordance with law, within five months from the date of this Order and shall intimate the decision through a reasoned order to the Applicant

(c) In the circumstances of the case there will be no order as to costs.

B.N.Bahadur

(B.N.Bahadur) *27/6/2005*
Member (A)

sj*